

NZISM submission on:

‘Have your say on work health and safety’



SUMMARY OF RECOMMENDATIONS

THE HEALTH AND SAFETY AT WORK ACT 2015

Protected titles for health and safety practitioners should be introduced.

A requirement should also be added to the Health and Safety at Work Act 2015 that PCBU's and officers receive competent advice with regard to the discharge of their health and safety duties.

Greater clarity is needed on shared duties.

The Government should review sentences and sentencing for offences under the Health and Safety at Work Act 2015 including:

- Whether additional aggravating or mitigating factors should be considered alongside those in the Sentencing Act 2001 such as whether the breach caused death, and the total turnover of the company
- Whether fines should be uplifted in general or specifically in relation to regulatory offences

Consideration should be given to moving the s 47 test from “recklessness” to “gross negligence.”

REGULATIONS

MBIE should be tasked with and resourced to complete the suite of Phase II Regulations (plant and structures, hazardous substances, hazardous work) so that these regulations are passed and in force by 1 January 2028.

Alongside the passage of the Phase II regulations, MBIE should work with WorkSafe New Zealand (WorkSafe), the Ministerial Advisory Group (see below) and other stakeholders to scope out emerging health and safety risks and opportunities with a view towards developing clear set of Phase III regulations.

GUIDANCE

WorkSafe should critically assess their framework and process for endorsing guidance.

WorkSafe should also do more to support and endorse industry-developed guidance and to adopt best practice guidance from overseas jurisdictions.

Designated resource within WorkSafe should be devoted to a review of potential options for adoption of guidance from overseas regulators with necessary adjustments (starting with Australia and the United Kingdom).

THE HEALTH AND SAFETY REGULATORS

New Zealand should streamline its regulatory framework by adopting a single safety regulator for each sector.

WorkSafe should amend its strategy to provide greater focus on:

- Targeting high risk businesses (via an intelligence-led approach)
- Importers and manufacturers of workplace equipment
- Engagement with directors

WorkSafe NZ needs to lift its aspirations and shift its focus to being more strategic, trusted, authoritative, respected (and slightly feared) and visible to its stakeholders.

WorkSafe should undertake an international benchmarking exercise (bringing in expertise from Australia and the United Kingdom) to understand:

- Ratios of inspectors to working population and their distribution between industry and role types
- How inspectors in other jurisdictions are trained and supervised as new, senior and specialist inspectors and how this compares to WorkSafe's approach (including the question of sector specific training); and
- Recruitment strategies of the Australian and United Kingdom regulators for inspectorate staff (including market relativities)

The current four priority sectors should move to a co-governed Standing Committee model with WorkSafe and ACC as the facilitators, catalysts, funders, intelligence and evaluation providers, with industry groups having a formal oversight and governance role.

WorkSafe should develop a priority plan to address cross-cutting risks (including those outside of the current priority sectors) including robust intervention logic and engagement with sectoral and cross-sectoral stakeholders.

Government should review injury prevention funding arrangements with a view towards:

- Risk-rating the Working Safer Levy and increasing risk rating within the ACC work account levy setting process
- Amending the balance between the Working Safer and ACC work account levies to permit greater injury prevention funding that sits outside of ACC's narrow return on investment calculation of reduction in levies

- Providing greater certainty and stability of long-term funding for partners
- Significantly increasing investment in occupational health injury prevention initiatives

THE HEALTH AND SAFETY AT WORK STRATEGY

A targeted review of the Health and Safety at Work Strategy should be undertaken. A major focus of a refreshed Strategy needs to be implementation of action plans to address major risks and opportunities.

Officials (and perhaps key stakeholders) should be tasked to engage with the Australian regulators to understand lessons learned and success factors for the Australian strategy.

The refreshed strategy should be developed and monitored by an independent Ministerial Advisory Group. We encourage officials to investigate the Ministerial Work Health and Safety Board model in Queensland as a possible model for the Ministerial Advisory Group.

We recommend that the Ministerial Advisory group should include representatives of:

1. Employers and workers
2. Health and safety experts (including practitioners and academics)
3. Iwi

It may be useful to consider the role of victims (per the Queensland model). The role of Government agencies should be carefully thought through. It may be more appropriate for Government agencies to act as a secretariat rather than full voting members.

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INTRODUCTION

About NZISM

The New Zealand Institute of Safety Management is the professional body for health and safety generalists (managers, advisors and consultants). We have 2,800 members (70% of the estimated 4,000 strong generalist workforce). Our members work across all industries and with all business sizes.

We are the largest member association within the Health and Safety Association of New Zealand (HASANZ) and have recently celebrated our 52nd anniversary.

We have fourteen local branches from Northland to Southland. We provide our members with internationally recognised professional accreditation and a full programme of continuing professional development and learning.

NZISM's submission on this consultation has been strongly informed by our [Health and Safety Reform Survey](#) undertaken in April 2024. With 1,321 responses from our members and other health and safety experts, we believe these results represent the views of a significant proportion of the health and safety system.

The case for investment in better safety and health outcomes

The cost of New Zealand's poor health and safety record to workers, families, communities, businesses and Government is massive and from both a moral and cost perspective dwarfs compliance costs.

To illustrate this we note that WorkSafe's recent report [Work health and safety: An overview of work-related harms and risks in Aotearoa New Zealand](#) (June 2024) contains a useful summary of the types of harms caused by work-related hazards. The table on p 107 contains an estimate of the Disability Adjusted Life Years lost to the top 19 causes of work related harm:

Table 45: Estimated disability-adjusted life years (DALYs) from work-related harm, by disease or condition

Category	Disease or condition	Work-related risks	DALYs attributed to work, 2017*
Acute injury	All injuries	Vehicles, falls, other unintentional injuries, work-related violence	5,350
Cancer	Lung cancer	Asbestos, silica, diesel engine exhaust, welding fumes, chromium VI, nickel, environmental tobacco smoke	5,350
	Mesothelioma	Asbestos	1,400
	Breast cancer	Night shift work	700
	Non-melanoma skin cancer	Solar radiation	200
	Melanoma	Solar radiation	150
	Bladder cancer	Diesel engine exhaust	150
	Other cancers	Benzene, wood dust, asbestos, various other exposures	220
	Respiratory disease	COPD	Vapours, gases, dusts, and fumes
Asthma		Various asthmagens	1,700
Pneumoconiosis		Asbestos, silica, coal dust	250
Kidney disease	Chronic renal failure and nephritic syndrome	Lead, copper, chromium, tin, mercury, welding fumes, silica	400
Musculoskeletal disorders (MSDs)	Back pain	Lifting, awkward positions, forceful movements, vibration	10,200
	Other MSDs	Lifting, awkward positions, forceful movements, vibration, repetitive movements	3,500
Cardiovascular disease	Ischaemic heart disease	Job strain, night shift work, environmental tobacco smoke	3,000
	Ischaemic stroke	Job strain	150
Hearing loss	Noise-induced hearing loss	Loud noise, vibration	3,700
Mental ill health	Depression and anxiety	Job strain	6,300
	Alcohol / drug misuse	Low job control	2,200

*Rounded to the nearest 100 for figures above 1,000; rounded to the nearest 50 for figures below 1,000

Noting that these figures contain a number of assumptions, these 19 risks combined equated to the loss of almost 50,000 DALYs in 2017. This is an enormous burden.

Our health and safety record compares poorly to many of our peers. As the Business Leaders' Health and Safety Forum have conservatively estimated in their [2024 State of Thriving Nation Report](#), the cost of harm due to workplace injuries and illnesses is at least \$4.9 billion dollars a year.

Our view is that improvements in New Zealand’s health and safety performance should be treated not as a cost but as an investment in our families, communities, and businesses.

Reducing the burden of work-related harm has significant value for the Government in a wide range of ways. For example:

- Preventative measures lessen the burden of work-related injuries and illnesses on our stretched health system
- Working people are less dependent on the welfare system (or weekly compensation from ACC)
- Workers who are not dealing with long-term injuries or occupational diseases can (if they choose) work productively for longer and provide more taxable income as a result

Like all investments, there is a need to target investment in health and safety where it will return the maximum benefit to New Zealand.

The structure of this submission

We have discussed our response to the consultation informally with officials. They have acknowledged that the questions in the consultation form ‘Have your say on work health and safety’ may not be well suited for health and safety professionals and their associations. They have encouraged us to convey the information in the most useful and coherent way possible.

To do this we have structured our submission based on areas for improvement as follows:

- Changes to the Health and Safety at Work Act 2015
- Improvements to regulations and guidance making processes
- Health and Safety Regulators
- The Health and Safety at Work Strategy

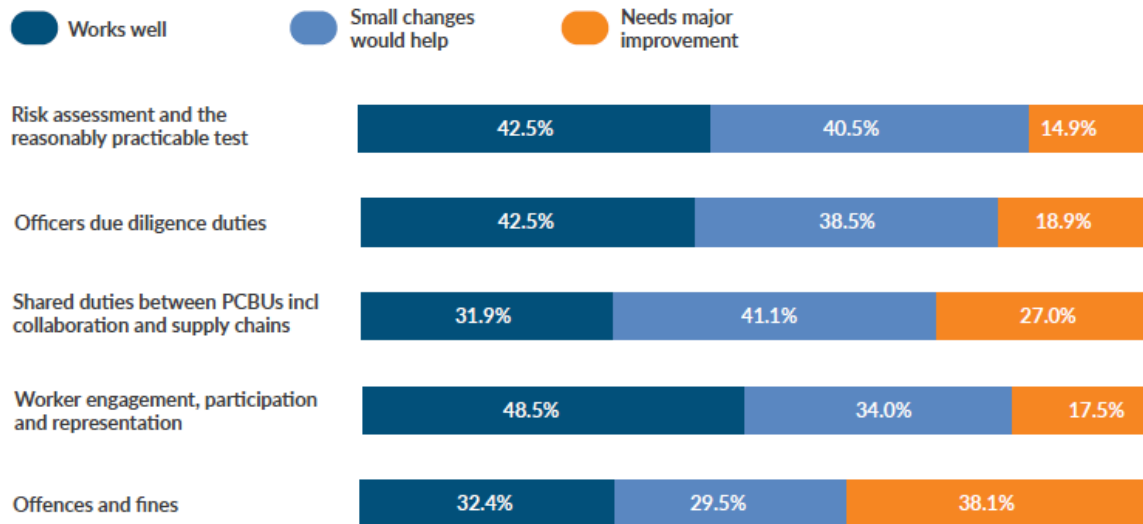
The sections on legislation, regulations and guidance correlate loosely to focus areas 1 and 2 in the consultation document. The section on the regulator correlates to focus area 4 and the section on strategy to focus area 5.

THE HEALTH AND SAFETY AT WORK ACT 2015

The Health and Safety at Work Act 2015 is essentially fit for purpose

Our survey of more than 1,300 health and safety professionals suggests a consensus that the Act is fundamentally fit for purpose and any changes will not significantly improve injury and harm outcomes. This is not surprising: Our legislation is a closer copy of the Australian Model WHS Act (as it was in 2014) than that adopted by most Australian states. If our primary health and safety legislation is essentially the same as Australia’s then our performance gap likely resides elsewhere.¹

We asked survey respondents whether they believed key sections of the Health and Safety at Work Act 2015 were fit for purpose, required minor change or major change. Their overall scores were as follows:



While we do not consider that changes to the Health and Safety at Work Act 2015 are where the most significant gains will be made, we recommend some changes that we believe will be beneficial:

- Strengthening requirements for competent advice
- Clarification of overlapping duties
- Application of fines and penalties
- Gross negligence

¹ That is not to say that other laws may not have a significant part to play. The Independent Taskforce on Workplace Health and Safety along with many others have identified the no-fault nature of the Accident Compensation Scheme and the Accident Compensation Act’s bar on litigation for personal injury except in cases of gross negligence as potentially significant factors in New Zealand’s “risk tolerant” culture.

Requirements for competent advice

Anybody can set up shop or promote themselves as a health and safety expert without restriction or sanction. There are no requirements to meet a minimum standard of education, knowledge, experience or ethics.

NZISM and others have put significant effort into self-regulation and the promotion of competent health and safety advice through the development of skills, knowledge, and associated continual professional development. NZISM requires our members to commit to a code of ethics and there is a complaints process for redress against an NZISM member who has failed to uphold these standards.

NZISM also maintains an accreditation framework which permits members to increase their standing as they become more senior and knowledgeable. Our accreditation framework is internationally aligned including with our equivalents in the United Kingdom and South Africa, and with the International Network of Safety and Health Professionals Organisations Framework.

However, the reality is that only the motivated maintain accreditation. The incentives for health and safety practitioners to pursue accreditation are primarily professional standing with their peers and for discerning PCBUs who understand the knowledge, skills and commitment to ongoing professional improvement that accreditation represents.

Without clear signals to the market, people without knowledge, skills or competence can hold themselves out as experts in health and safety. The lack of requirement to join a professional body such as NZISM means that there is no recourse to a professional body for a person who feels that they have received substandard advice or services. There is no way to exit incompetent or fraudulent actors from the market. We suspect this lack of quality control contributes to some of the stories of poor practice we see in the market.

There are a number of complementary possible solutions to this issue.

We recommend the introduction of protected titles for health and safety practitioners. This means that only those people who are registered, or endorsed, in a particular health and safety profession can use the titles associated with that profession. This would follow the lead of other professions with protected titles including lawyers, engineers and many health practitioners. This would articulate an expectation that the person is appropriately trained and qualified in the health and safety profession, registered, and that they are expected to meet the professional standards of practice.

We also recommend that a requirement is added to the Health and Safety at Work Act 2015 that PCBUs and officers receive competent advice with regard to the discharge of their health and safety duties. This is the approach taken in the United Kingdom under [reg 7 of the Management of Health and Safety at Work Regulations 1999](#). This would act as a more

explicit signal to PCBUs and officers to consider the qualifications and experience of those providing health and safety advice. These requirements could then be expanded upon for example in WorkSafe guidance or procurement standards (such as the Government procurement rules).

Clarification of overlapping duties

The Health and Safety at Work Act 2015 does not permit organisations or people to transfer their duties under the Act (s 31). Duties can be shared between people and organisations and each must “discharge that person’s duty to the extent to which the person has the ability to influence and control the matter” (s 32). Where PCBUs share a duty they must consult, cooperate and coordinate activities with each other so far as reasonably practicable (s 33).

What this means in practice is not well understood. In many circumstances, organisations and people are unclear as to the extent of their duties and either under- or over-react. This is particularly noticeable when attempting to integrate health and safety management practices across multiple PCBUs, especially when different PCBUs have varying safety protocols or priorities. Ambiguity about who is responsible leads to confusion about who should address particular hazards or risks. The end result is duplication of efforts in health and safety management, leading to inefficiencies and increased costs to businesses.

As two respondents commented in response to our survey:

- *The concept of 'influence and control' is not well understood and when it is, useful steps to address the shortfall are avoided on the basis that 'no-one else is doing this'. Lead PCBUs are good at imposing expectations downstream but there is little to no effort in ensuring that downstream PCBUs understand their duties and the 'why'. In the contract space, I often see very robust H&S expectations imposed downstream, which are often not lawful, and always never monitored. This is leaving downstream PCBUs bewildered about what they should be doing and they make it up. They often do not have the confidence to consult upstream for fear of losing the contract. No-one wants to open that can of worms.*
- *One small sentence is responsible for a massive amount of conversation. All over the work influence. It has a very large scope. I feel that the intention/inclusion of this wording was to prevent the delegation of H&S duties to external parties. I agree with the intention but the outcome for us ends up being a legally binded document in the form of an Memorandum of Understanding (MOU). This is expensive, requires lawyers, senior leaders and takes a load of time and effort. We consistent have conversations within our team about what should be done and how. We seldom have answers and we have an internal legal team at our disposal. The Zespri case law is unhelpful as precedent. Examples of documentation that establishes what WorkSafe deems acceptable would be much appreciated.*

We have seen a number of defended hearings where the scope of shared duties were found by the Courts to be narrower than WorkSafe advanced (such as *WorkSafe v Athenberry Holdings Limited* [2018] NZDC 9987 aka the Zespri case referred in the comment above, and *WorkSafe New Zealand v National Emergency Management Agency* [2022] NZDC 8020 [4 May 2022]).

Our concern is that the application of the law relating to shared duties, including the control and influence test (as applied in the *Athenberry* case) and the duties of PCBUs to people who are not workers (as applied in the NEMA case), may have limited the scope of shared duties. We badly need either clearer guidance by way of amendments to the Act or regulations or precedent case law (WorkSafe did not appeal either *Athenberry* or *NEMA*).

We recommend that greater clarity is provided on shared duties. We are agnostic as to the best way to do this.

Fines and penalties

When the Health and Safety at Work Act 2015 was passed it represented a six-fold uplift in maximum fines over the Health and Safety in Employment Act 1995. However, sentencing for significant health and safety breaches lags behind comparable jurisdictions due primarily to the application of the factors in s 9 of the Sentencing Act 2002.²

One of the most significant calls for change as identified in our survey was in relation to fines and sentences where more than a third of respondents called for major improvement. The majority of comments suggested that fines or sentences needed to be increased to act as more of a deterrent.

The alternative or non-monetary orders provided for within the Health and Safety at Work Act 2015 are rarely used by the Judiciary with only a handful of cases involving adverse publicity orders, training orders, work project orders and court ordered enforceable undertakings since the Act was implemented.

Health and safety laws aim to ensure high safety standards and worker protection through two main components, namely detailed regulations that specify technical requirements and a primary duty that mandates employers to ensure, as far as reasonably practicable, the overall health and safety of workers.

² For a useful discussion of relevant sentencing levels in New Zealand, Australia and the UK see Lill, J. (2024). Comparing Health and safety sentencing in NZ and abroad . *New Zealand Journal of Health and Safety Practice*, 1(2). <https://doi.org/10.26686/nzjhsp.v1i2.9476>

We believe that fines for regulatory offences remain too low as such, resulting in most cases being charged under primary duty of care rather than regulatory breaches. When fines for regulatory offences are perceived as inadequate, then a shift in preference to charge under the primary duty provisions results with the intent to achieve higher fines and more significant penalties rather than the reflection of a broader, more serious breach of the overall duty of care.

The current approach to charging practices indicates that the regulatory framework is not operating as originally intended, where specific regulatory breaches are supposed to be addressed through their respective penalties.

This suggests a misalignment with the original intent of the health and safety laws. The laws were intended to operate with a balanced approach: specific regulations for detailed breaches and a primary duty for overarching failures. If regulatory fines are not fulfilling their role as effective deterrents, it may be necessary to reassess and potentially revise the penalty structures to ensure that they align with the law's intended operation and effectively promote workplace health and safety.

The current approach may have the consequence that large corporates can treat penalties as a cost of doing business, and smaller businesses have it adjusted down to something they can manage.

Puzzlingly, WorkSafe seems not to issue infringement notices (on the spot fines for strict liability offences). This is a major difference with Australia and we encourage WorkSafe to rethink their position on the issuance of infringement notices.

We recommend that the Government review sentences and sentencing for offences under the Health and Safety at Work Act 2015 including:

- Whether additional aggravating or mitigating factors should be considered alongside those in the Sentencing Act 2001 such as whether the breach caused death, the total turnover of the company
- Whether fines should be uplifted in general or specifically in relation to regulatory offences

Recklessness conduct

The most serious offence under the Health and Safety at Work Act 2015 is reckless conduct in respect to a duty (s 47). This is punishable by a maximum sentence of \$3 million for a

PCBU or \$600,000 and a term of imprisonment of five years for a natural person who is a PCBU or an officer of a PCBU.

However as Grant Nicholson and Elizabeth Wray have convincingly argued³ the impact of the District and High Courts’ decisions in *WorkSafe New Zealand v Waste Management NZ Limited*⁴[2021] NZDC 12388 has made it difficult for the Crown to successfully prosecute s 47 offences because to succeed in establishing the offence, the Crown must show recklessness by an individual worker.

We are unlikely to see its use except in exceptional cases where a single worker has sufficient knowledge and reckless intent to proceed in the face of risk, and it is hard to envisage a significant number of cases where workers will willingly admit to acting recklessly, and as soon as worker witnesses for the prosecution deny having relevant knowledge, regulators will rightly be concerned about the difficulty of proffering the necessary evidence to secure a conviction. If this proves to be the case, and we do not see regulators using charges under section 47 of the HSWA in appropriate cases against large organisations, then the deterrent value of the higher penalties available for reckless offending will effectively be neutered for those large organisations.

We recommend that consideration is given to moving the s 47 test from “recklessness” to “gross negligence.”

³ Nicholson, G., & Wray, E. (2024). Crime and Punishment: Is the existing offence for reckless breaches of health and safety duties working, or does New Zealand need something new?. *New Zealand Journal of Health and Safety Practice*, 1(2). <https://doi.org/10.26686/nzjhs.v1i2.9544>

⁴ *WorkSafe New Zealand v Waste Management NZ Limited*⁴[2021] NZDC 12388; *WorkSafe v Waste Management NZ Limited* [2021] NZHC 3444

REGULATIONS

Progress on regulations under the Health and Safety at Work Act 2015 has stalled

The Report of the Independent Taskforce on Workplace Health and Safety identified the regulatory framework as a significant issue (p 11 of the Executive Report):

Confusing regulation: *The system currently fails to make clear expectations of regulated entities and duty holders, and the regulator does not make compliance easy for the vast majority who want to comply. sanctions for those who intentionally, or through neglect, break the law are not adequate. The framework is confusing with multiple pieces of legislation, blending hazard- and risk-management specifications, falling across overlapping and ambiguous jurisdictional boundaries. There is a lack of coordination between agencies and gaps in coverage.*

A suite of ten new regulations were progressed contemporaneously with the Health and Safety Reform Bill (which became the Health and Safety at Work Act 2015). These regulations were ultimately passed in 2016 and 2017.

A second phase of regulations was planned to progress covering three major areas:

- Plant, structures and hazardous work at heights;
- Hazardous substances; and
- Hazardous work.

These regulations were intended to follow hot on the heels of the Phase 1 regulations. MBIE’s 2015 Regulatory Impact Statement: *Additional decisions to improve New Zealand’s Workplace Health and Safety Regulatory Framework* stated that “The second phase will be developed and consulted on in a staged fashion over a period of two years, and is due to commence in the first half of [2015]. Phase two will consider other work-related matters and is soon to be developed and consulted on.”

Progress on these regulations has stalled. By the time of the *WorkSafe New Zealand Strategic Baseline Review* by SageBush in 2022, MBIE was saying that these areas would be progressed over “the next ten years” (p 121). We understand that an exposure draft of the plant and structures regulations has been prepared but is now on hold pending the results of this review.

This regulatory void creates significant challenges. For example:

- Parts of the Health and Safety in Employment Regulations 1995 remain in force (in anticipation of the plant and structures regulatory changes). These include requirements that self-propelled mobile plant has suitable roll-over protection (r 20) but specifically excluded from these requirements are (among others) agricultural

harvesters, tractors and machinery weighing less than 700 kg (which will include quad bikes)

- Our hazardous substances regulations are riddled with references to outdated Australia / NZ Standards, do not line up with the Globally Harmonised System, and relate primarily to storage rather than how to use substances safely.⁵ The problems with the Hazardous Substances Regulations were significant enough to warrant a regulatory tidy up (the Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021) dedicated almost entirely to addressing errors in the regulations. This tidy up did not address the root challenges with the regulations

We recommend that MBIE is tasked with and resourced to complete the suite of Phase II Regulations (plant and structures, hazardous substances, hazardous work) so that these regulations are passed and in force by 1 January 2028. This gives MBIE and the Government three years to complete work on badly needed regulations.

We recognise that there is more than one possible approach to regulating health and safety issues. Some risks (particularly those which are novel) may be better suited to guidance or a combination of guidance and regulation in the first instance. Decisions as to the best mix of regulation and guidance sit ultimately with the Minister for Workplace Relations and Safety and Cabinet. But no decision at all is harming New Zealand workers and making it harder for businesses to know what to do.

Regulatory inertia is hurting our ability to deal with new risks

Ten years on from the introduction of the Model WHS Laws in 2008, the Australian Government commissioned a 2018 [Review of the Model WHS laws](#) by Marie Boland (‘the Boland Review’). The Boland review made a number of observations about the Model WHS Act and regulations that are very likely applicable to New Zealand’s legal framework.

The Boland Review proposed a number of useful improvements to the Model WHS Regulations including:

- Review of the model WHS Regulations and model Codes against agreed criteria on the purpose and content of the second and third tiers of the model WHS laws as they relate to the seven Australian Strategy priority industries⁶

⁵ For an example of use regulations see the UK’s Control of Substances Hazardous to Health (COSHH) Regulations 2002.

⁶ The Australian Health and Safety Strategy 2012-2022 (referenced above) identified the following priority industries: agriculture, manufacturing, construction, road transport, accommodation and food services, public administration and safety, and health care and social assistance. It is instructive to compare these to the priority industries in WorkSafe New Zealand’s 2024 Strategy. WorkSafe’s priority industries include the first three of Australia’s seven (plus forestry).

- Development of dedicated regulations dealing with psychosocial harm. This was acknowledged as a complex and poorly understood area in Australia. It is certainly also the case in New Zealand.

There are also significant categories of new and emerging risks (including old risks made more severe by new uses such as silica benchtops).

We recommend that alongside the passage of the Phase II regulations, MBIE should work with WorkSafe NZ, the Ministerial Advisory Group (see below) and other stakeholders to scope out emerging health and safety risks and opportunities with a view towards developing clear set of Phase III regulations.

Possible areas for regulation might include:

- Respirable silica and other dusts⁷
- Novel and renewable energy sources (including lithium battery and hydrogen fuel cell powered vehicles and importation of liquid natural gas)⁸
- Artificial intelligence
- Robots and cobots
- Risks associated with climate change (such as disaster preparedness and working in extremes of heat)

⁷ Given the severity of accelerated silicosis there is a strong case for quick action on this problem. This should likely be progressed as part of the Hazardous Substances regulatory reform or faster.

⁸ These also may be progressed as part of the Hazardous Substances Reforms

GUIDANCE

The importance of guidance

Good-quality guidance is at the heart of Robens-based health and safety systems. The Robens Report noted (at page 50):

As a general rule, non-statutory standards and codes of practice provide the most flexible and practical means of promoting progressively higher standards of safety and health at work. They should be used more extensively in future.

A well-functioning health and safety system puts a lot of focus into getting this guidance right and there’s a strong case for more investment in this. However, WorkSafe’s current financial issues mean this investment may be some years away. Also, the loss of expertise within the regulator means they don’t necessarily have the technical capability to determine current best practice.

In our recent survey of 1,300+ health and safety experts, one of the most common themes was the need for better quality guidance and information. Our members rely on good quality guidance to advise businesses on how to keep their workers safe.

The current state of WorkSafe’s guidance

There are more than 500 pieces of published WorkSafe guidance but the quality is mixed, the majority are out-of-date and it is difficult to find needed guidance due to a clunky web interface and poor search functionality.

Important guidance such as the flawed but significant Good Practice Guide on Managing Psychosocial Risks appears to have been discontinued at the draft stage. Other crucial guidance such as the updated Forestry Approved Code of Practice recommended by the Independent Forestry Safety Review (in 2014!) and the Coroner (in 2021) has been much too slow to be revised.

In our [Health and Safety Reform Survey](#), NZISM members have mentioned several examples of problematic outdated guidance. For example:

“The current approved code of practice for industrial lift trucks is current dated as 1992, this is unacceptable for a high risk piece of equipment used in almost every NZ industry. the regulations are too relaxed with forklift licences being obtained in 4 hours and no follow up or competency enforced afterwards. There isn't enough regulations outlined between alternative types of forklifts and license requirements. It appears to currently be weight based but this is such a small portion to consider with the global market now offering a huge range of reach trucks, order pickers, tele handlers, articulated forklifts etc. Each one of them with steep learning curves.”

Endorsement of industry-developed guidance

WorkSafe has endorsed seven pieces of guidance since adopting a formal Endorsing Guidance and Educational Products Policy in 2017. One endorsement per year is not likely to significantly improve safety outcomes.⁹

Part of the problem relates to the capacity and willingness of industry and workers to develop this guidance. Encouragement and funding would assist. Work at pace is possible: During COVID for example some excellent guidance was produced fast and the recent IOD WorkSafe Health and Safety Governance Good Practice Guide was developed in less than 6 months.

We recommend that WorkSafe critically assess their framework and process for endorsing guidance. Endorsed guidance has input from workers and small businesses and should represent a statement as to what is genuinely reasonably practicable (rather than simply what is cheap or easy).

Projects to develop effective guidance may be a worthy use of ACC's workplace injury prevention funding.

Adoption of international best-practice guidance

WorkSafe should also do more to support and endorse industry-developed guidance and to adopt best practice guidance from overseas jurisdictions.

A significant part of the rationale for the adoption of the Model WHS Act was the ability to adopt Australian guidance. The Independent Taskforce on Workplace Health and Safety noted (at paragraphs 419 and 420 of their Full Report):

With the proposed adoption of the [Australian] model law, the Taskforce considers that there is an opportunity to adopt the best available material from Australia to speed up the development of supporting regulations, ACOPs and guidance material for New Zealand.

The new agency should also look to other comparable jurisdictions, including the UK and Canada, to identify good practice in regulations, ACOPs and guidance material. The Taskforce considers that the best material available internationally should be adopted unless there is good reason not to.

⁹ There is also a paucity of Safe Work Instruments with only five brought into force since the passage of the Health and Safety at Work Act 2015: <https://www.worksafe.govt.nz/laws-and-regulations/safe-work-instruments/>

Following the review of their model law and regulations, Australia has embarked on a significant exercise to improve their codes of practice. Adapting their guidance should be straightforward given the similarity of our legislation.

We recommend that a designated resource within WorkSafe is tasked with a review of potential options for adoption of guidance from overseas regulators with necessary adjustments (starting with Australia and the United Kingdom). This work should be undertaken with input from health and safety experts and the relevant overseas regulators.

THE HEALTH AND SAFETY REGULATORS

The role of the health and safety regulators (WorkSafe NZ, CAA, MNZ) as kaitiaki of the operation of the system is crucial to its effectiveness and the mana and respect with which it is held by stakeholders. Currently that respect is highly variable and certainly not optimal. WorkSafe NZ in particular is at risk of losing its credibility as a modern, intelligent regulator with its back to basics approach and constant churn of staff leading to a loss of institutional knowledge, relationships and experience.

Our members who work for WorkSafe NZ feel they lack the leadership, professional development opportunities and supporting infrastructure to enable them to thrive and achieve their potential. By contrast MNZ is investing in building its team to work in the port sector (a number of whom were let go by WorkSafe NZ) and has already received strong support from all stakeholders in that challenging industry for the difference they are making together.

We identify some of the key issues that this review could address:

- The scope of each regulator’s role
- WorkSafe's strategy, mindset and perspective
- The need for an intelligent regulator supported by highly skilled people
- Sector engagement
- Cross-cutting risks
- System funding

Scope of the role of regulators

We currently have two highly specialized sector-based HSWA regulators and one broad-based regulator. In addition, we have something of a hybrid in relation to road and rail with NZTA, Police and WorkSafe NZ all having a role to play but in a somewhat uncoordinated way.

There are also a variety of other regulators whose role overlaps with WorkSafe NZ but who, in the vast majority of cases, are not covered by MoUs or similar agreements to define each other's scope, interface arrangements, data sharing etc. A number of examples are listed below but there are many more:

- Fumigation (MPI)
- Zoos (MPI)
- Health and disability sector (Health and Disability Commissioner, Health Quality and Safety Commission, MoH, Professional regulatory bodies and others)
- Police (Independent Police Conduct Authority)
- Early childhood education (ERO, MoE and others)
- Airports (CAA)

We think that New Zealand should consider streamlining its regulatory framework by adopting a single safety regulator for each sector. Having a regulator who understands a sector, already has links to the key stakeholders, has other regulatory powers, is understood and respected by the sector and who is able to see health and safety in context, will improve consistency and efficiency.

We have recently seen the benefits of MNZ being the sole safety regulator for ports and there is no reason why a similar approach could not be adopted for airports given CAA's licensing and regulatory roles covering most aspects of their operations. It is nonsensical for WorkSafe to try and intervene over a ground handling issue (plane fuelling, baggage handling, vehicle collision, etc.) when there is a regulator who already enforces HSWA in place. In other countries like the UK the dividing line is landside HSE, airside CAA.

Designating other agencies who are not HSWA regulators is more complex but not insurmountable. MPI for example already oversees all export and import fumigation at ports and transitional facilities to ensure efficacy from a biosecurity perspective and have an overlapping duties role to protect their own staff when inspecting such facilities. Giving them an HSWA designation would only make a marginal change to how they perform their current functions. A similar situation exists with zoos where MPI proactively regulate the animal containment facilities under HSNO but if a keeper is hurt or killed (*Hamilton and Zion*) WorkSafe come into an unfamiliar environment to try and make sense of the arrangements. Should an issue arise that is beyond the competence of one regulator then arrangements could be made to co-opt a technical specialist to assist without disrupting the primary relationship.

Recent cases in the health and disability sector (such as IHC) have highlighted challenges between different legislative and policy requirements such as human rights, privacy and Enabling Good Lives. A regulator who is not embedded in this complex sector cannot hope to do anything other than act transactionally –sometimes with unintended consequences.

Rail is regulated by NZTA who approve safety cases for rail operators. However, if an accident occurs (such as a shunting event) it is WorkSafe NZ who investigate, or MNZ if it happens on a rail ferry. The Transport Accident Investigation Commission already has a role in rail, maritime and aviation but not road transport. They could act as a backstop to ensure the transport regulators are held to account.

Issues arising from operational activities in the Police, Defence and Security services raise complex public policy questions about the balance of risk and benefit. It is not clear that current arrangements are providing the intended framework for these agencies to make difficult decisions without fear of subsequent prosecution or being able to simply exempt themselves from scrutiny.

The SageBush review highlighted the need for WorkSafe NZ to be clear on its role and hence its strategy for engaging. However, given the breadth of its scope under HSWA it is highly susceptible to being called into areas it knows little about, whilst applying only limited resources to major areas of risk such as psychosocial harm or occupational disease.

Finally, there is the issue of who regulates the health and safety of WorkSafe’s staff. It is inappropriate to either leave them without protection under HSWA or to expect WorkSafe NZ to regulate itself.

WorkSafe's strategy, mindset and perspective

WorkSafe’s most recent strategy and operational plans demonstrate a somewhat simplistic view of its role. The critique of WorkSafe NZ contained in the Business Leaders’ Health and Safety Forum report (State of a Thriving Nation 2024) is accurate in our view and shows how poorly it understands its place in the health and safety ecosystem compared to more mature regulators such as the HSE.

It is still very transactional in its approach seeking to identify individual workplaces and activities to target – yet without a strong evidence base on which to do so. A recent OIA request (240102) highlighted that the majority of its proactive interventions are not to places it has identified as high risk and that the Company Risk Model is not even used when triaging reportable events.

System level interventions such as with upstream duty holders who import or supply equipment for use at work are virtually non-existent and uncoordinated. For example, it is possible to supply a brand-new workplace vehicle without fitting reversing cameras and extra mirrors to reduce blind spots, despite this being one of the most common causes of workplace death and injury.

Similarly, our members see multiple examples of machinery that is supplied that does not meet AS4024 (the machinery guarding standard). Approaching individual users to ask about their procurement policies is far less effective than collectively engaging all the suppliers of particular high-risk plant to work on a plan to raise the bar. Unless New Zealand stems the tide of unsafe equipment coming into the country it will only make the job of identifying and rectifying it at a workplace level that much harder.

In other areas we have unnecessarily different standards for common risks such as protective structures on forestry machinery that are covered by a 1999 Approved Code of Practice that is out of line with international standards and hence adds significant costs to purchasers.

Recent experience has indicated a vacuum in WorkSafe’s capability to engage with directors to use the officer duty to positive effect. Despite multiple offers of assistance, it is only recently that it agreed to fund the development of the new Good Governance Guide and endorse it. But it has no intervention strategy to engage with this important segment of the market either proactively or reactively and as a result has failed to capitalise on the opportunity provided after Pike River, highlighted by the Independent Taskforce and enabled through the legislative change.

We recommend that WorkSafe amends its strategy to provide greater focus on:

- Targeting high risk businesses (via an intelligence-led approach)
- Importers and manufacturers of workplace equipment
- Engagement with directors

The need for an intelligent regulator supported by highly skilled people

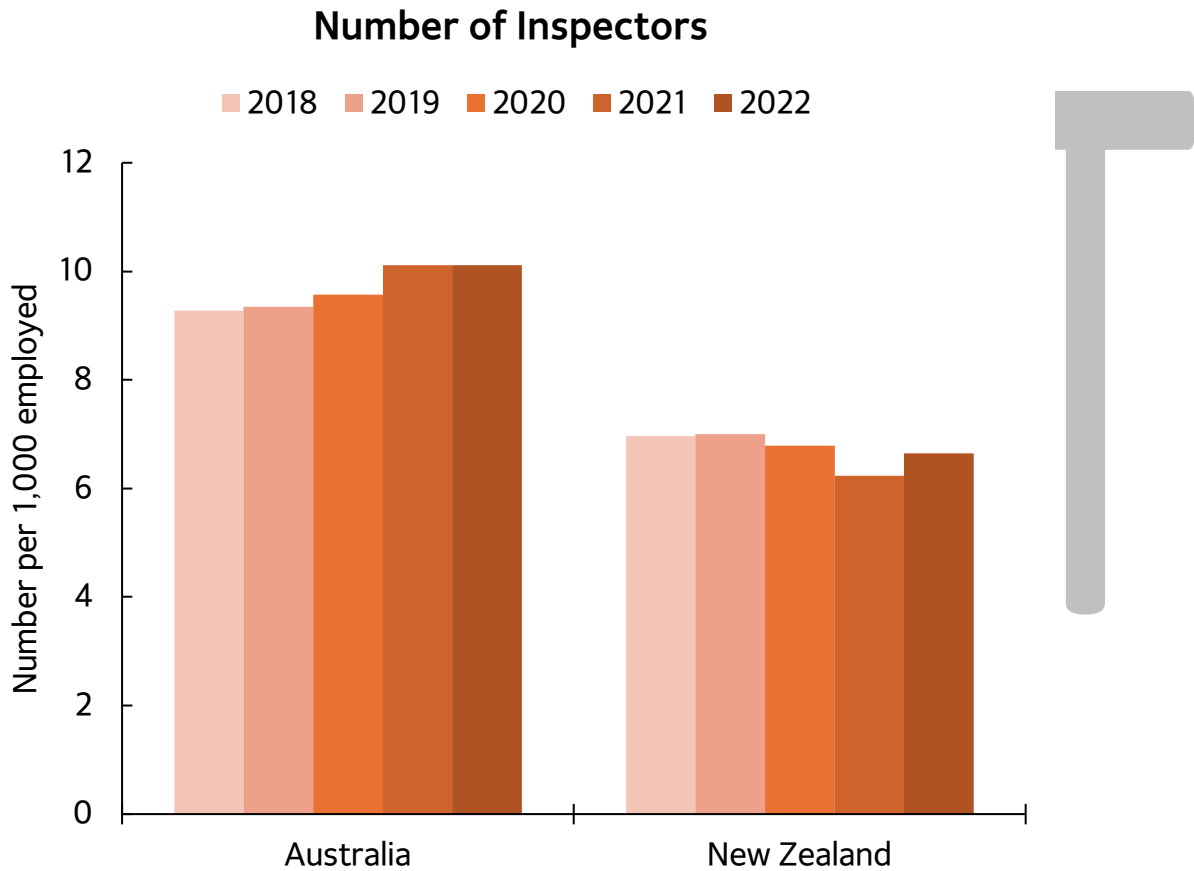
WorkSafe NZ has, with a few exceptions such as the High Hazard Unit, failed to employ and develop front line staff (all those that engage with industry whether or not having a warrant) to a level commensurate with the complexity of the issues and contexts within which they are working. The word **complexity** is used advisedly as workplace health and safety is not just complicated but particularly challenging to influence given the complex and dynamic ecosystem it exists in, national and international political, economic and social factors that influence it, rapidly changing technology, the local demographic of workplaces and workers, changing public tolerance of risk etc. Many of these factors were identified in the recent FutureSafe Aotearoa report.

In our view, WorkSafe NZ needs to lift its aspirations and shift its focus to being more strategic, trusted, authoritative, respected (and slightly feared) and visible to its

stakeholders. It needs to reflect on the skills its staff will need now and for the future and work with tertiary institutions, professional bodies and overseas regulators to help create the standards and educational and vocational opportunities it needs for the next 20 years.

As one former Chief Executive of WorkSafe stated in a private conversation “I would rather have fewer of the right people than more of the current ones” but given the internationally low ratio of inspectors to workers in New Zealand, it may be more an issue of quantity and quality.

The latest Business Leaders State of Thriving Nation Report (2024) has the following comparison of relative inspector numbers:



Source: Safe Work Australia (2023). Comparative Performance Monitoring Report 25/ Work Health and Safety Performance.

We recommend that WorkSafe undertakes an international benchmarking exercise (bringing in expertise from Australia and the United Kingdom) to understand:

- Ratios of inspectors to working population and their distribution between industry and role types

- How inspectors in other jurisdictions are trained and supervised as new, senior and specialist inspectors and how this compares to WorkSafe’s approach (including the question of sector specific training); and
- Recruitment strategies of the Australian and United Kingdom regulators for inspectorate staff (including market relativities)

Sector engagement

Market segmentation is vital given the different risks, maturity levels and relationships that exist. One of the strengths of the UK HSE approach (recognised in the 1972 Robens report), is its strong sectoral links. Each of the priority sectors has a designated centre of excellence which acts as an internal and external focal point for engagement. This includes sector and worker bodies, trade associations and suppliers, policy makers, other sector regulators, inspectors and communications teams. In many cases there is tripartite sector oversight through formal industry advisory committees that help identify priorities, direct resources and publish sector guidance. This co-regulatory model ensures there is clarity of expectation – a no-surprises approach, up to date sector guidance, a cohort of trained inspectors working collaboratively, who understand the wider industry context and their role in supporting change.

A useful model to consider is Queensland where six Sector Standing Committees have been established covering construction, health and community services, manufacturing, retail and wholesale, rural, and transport and storage.

Their primary function is to “provide advice and make recommendations to the Work Health and Safety Board about workplace health and safety in the relevant industry sectors. ISSCs use their industry networks to consult on industry-specific work health and safety issues and to promote and distribute work health and safety information.”¹⁰

Whilst elements of such an approach have existed in WorkSafe, for example with the forestry industry, there is still a sense of keeping the sector group (FISC) at arm's length and there has been limited ability for them to hold MBIE to account for failing to deliver on agreements such as updating the Forestry ACOP.

We have heard examples in other sectors of inspectors turning up to high performing businesses (due to the lack of effective targeting) who have no knowledge of the sector, or its standards and leave having ticked the box but added no value to the interaction. In

¹⁰ <https://www.worksafe.qld.gov.au/about/who-we-are/workplace-health-and-safety-queensland/work-health-and-safety-board-and-committees/industry-sector-standing-committees>

other cases, the failure to identify obvious hazards has left businesses believing everything is OK or has simply undermined the credibility of the regulator.

In our view the current four priority sectors should move to a co-governed Standing Committee model with WorkSafe and ACC as the facilitators, catalysts, funders, intelligence and evaluation providers, with industry groups having a formal oversight and governance role.

Cross-cutting risks

Whilst sector engagement is part of the solution there are also many important cross-cutting risks that need to be approached differently. This is part of the warp and weft concept articulated by the Independent Taskforce.

The current strategy does not clearly identify how, or if, these issues will be addressed. Examples include mental health, exposure to hazardous materials, interactions with mobile plant, workplace violence, and related issues such as having a national system for occupational health records to reduce the duplication of effort and cost, as well as lack of value in the current approach.

One of the challenges in the current environment is the lack of clarity as to how priorities are determined by WorkSafe. Critical risks involving reasonably foreseeable acute deaths and serious injuries can be readily identified from data, but our intelligence base for other risks, especially those not covered by ACC, is poor. Risks that have both a societal component and those involving other regulators (such as occupational road risk) are particularly problematic for WorkSafe to determine its contribution.

Cross functional taskforces are one way of addressing this – although without adequate resources and commitment to support programme activity their value can be limited. For example, there is current political interest in the move from CoPTTM to the New Zealand Guide to Temporary Traffic Management. This topic involves WorkSafe NZ, NZTA, Local Authorities (both as road controlling authorities and local road maintenance clients), Police, Contractors, Utility companies, training and equipment providers, traffic management specialists, etc. However, the current evidence suggests, despite best efforts, that this transition is far from smooth and that there is a real risk that standards will drop, and risks increase in the interim to both road users and those working on the road.

The situation with other cross-cutting risks is just as complex and dysfunctional.

We recommend that WorkSafe develops a priority plan to address cross-cutting risks

(including those outside of the current priority sectors) including robust intervention logic and engagement with sectoral and cross-sectoral stakeholders.

Targeting System funding

As the SageBush report noted, the need for clarity of strategy and priority needs to be supported by allocation of resources. At present this system is confusing and contradictory with a lack of joined up thinking around how to fund the wider system to deliver outcomes rather than just funding agencies.

WorkSafe is funded largely by the Working Safer Levy collected by ACC from employers. The rate of levy is flat –currently \$0.08/\$100 of allowable earnings. This means it is not risk related and a low-risk business will pay the same as a high risk one. This seems counter intuitive when ACC already rates businesses and sectors for the wider ACC levy that pays for accident compensation. If WorkSafe is targeting its resources at high-risk activities, then surely those who undertake such activities should bear a greater proportion of the cost.

We are not proposing a user-pays or fee for service model (other than in relation to licensing type activities) but think that more resource could be provided to WorkSafe without further Crown spending by applying a flexible levy. As the Levy is currently underspent any residual funds should be used to support NGOs and others in the wider system.

The wider ACC levy uses a claims rate assessment at a sector level with some individual adjustments for good or poor performers within it. We do not consider that this weighting is currently sufficient of an incentive or deterrent to encourage firms to invest in health and safety. There is already provision for greater loading in certain circumstances but according to a recent OIA, ACC has never invoked this.

Over time there may be an opportunity to revise the basis for levies to reflect the issue of control of risk rather than employment of workers. For example, a construction management company that contracts out all the high-risk work will pay a far lower levy than a vertically integrated company delivering the same project.

ACC has various mechanisms by which sector groups or others can apply for project funding. These schemes are dependent on being able to demonstrate a positive return on investment to the ACC scheme, as required by the ACC Act, which severely limits their scope to things which are quite specific and measurable in the short to medium term

rather than being able to fund more strategic long-term investment which builds capacity and capability. Most sector health and safety groups are not for profits or charities with limited resources – often borne disproportionately by a small number of players in a sector (the exception is FISC which is partly funded from the Log Levy but heavily dependent on the ups and downs of the log price and market volatility). Having more longer-term core funding from ACC means that all those in the sector are contributing through their levies and benefitting from reduced claims cost in due course.

Having a system level view of priority issues, agreeing the contributions that different parts of the system can play in delivering harm reduction activities and then funding all those most able to make a difference (as with the Road to Zero road safety strategy) is the only way in which we will achieve sustainable change.

The other major issue with funding is around occupational health, the cost and harm from which vastly outweighs acute safety events. Much of this harm is not covered by ACC and hence the cost is carried by the health, social welfare and disability systems as well as employers, workers, whanau and the wider community. We would ideally like the scope of the ACC scheme to cover much more of this cost as envisaged by Sir Owen Woodhouse, but given this is unlikely to occur in the short term there needs to be more thought given as to how to invest in prevention of occupational ill health whether physical or mental. This is not just a benefit to workers but takes pressure off already overloaded systems that are often ill prepared to address this type of issue. Te Whata Ora for example does not have a publicly funded occupational health service so relies on general specialties to be able to diagnose and treat occupational conditions. Most qualified Occupational Physicians operate privately, including for those conditions covered by ACC.

Activity to monitor and respond to significant workplace exposures to hazardous materials is fragmented and under-resourced. We think that having a confidential database of results would provide WorkSafe with a much better picture of the extent of such exposures than it has currently from the Carcinogens Survey. We know, for example, that in the asbestos removal industry there is virtually no monitoring of exposures inside an enclosure and hence no evidence of the effectiveness of control measures to protect workers. In priority areas such as exposure to welding fumes it is only if WorkSafe requires air testing to be done, and ask for the results, that they get to see them.

The HSW (General Risk and Workplace Management) Regs contain requirements for health and exposure monitoring and reporting in certain cases, but these are not well known about or followed and the fine levels (maximum fine is \$50,000) for failing to meet the duty are so low as to be meaningless, especially given the low level of enforcement activity.

We recommend that Government reviews injury prevention funding arrangements with a view towards:

- Risk-rating the Working Safer Levy and increasing risk rating within the ACC work account levy setting process
- Amending the balance between the Working Safer and ACC work account levies to permit greater injury prevention funding that sits outside of ACC's narrow ROI calculation of reduction in levies
- Providing greater certainty and stability of long-term funding for partners
- Significantly increasing investment in occupational health injury prevention initiatives.

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THE HEALTH AND SAFETY AT WORK STRATEGY

What happened to the 2018 Strategy?

An object lesson in the failures of Government and Government agencies to deliver on health and safety priorities is the implementation of the Health and Safety at Work Strategy 2018-2028. Section 195 of the Health and Safety at Work Act 2015 states:

195 Health and Safety at Work Strategy

(1) The Minister must publish a strategy, called the Health and Safety at Work Strategy, that sets out the Government’s overall direction in improving the health and safety of workers....

(5) The strategy must—

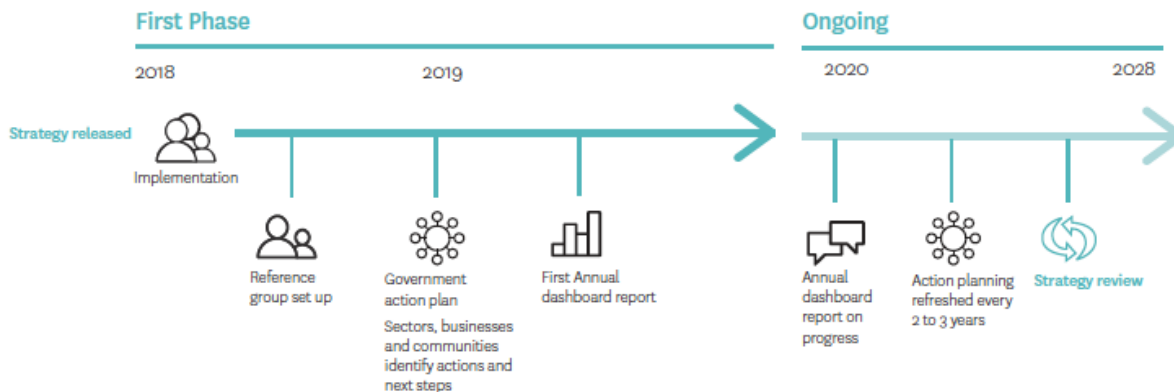
- (a) identify any significant issues relating to capacity or capability in the work health and safety system and any plan for addressing the issues; and*
- (b) take account of ACC’s injury prevention priorities.*

(6) The strategy, or amendments to it or replacement of it, must be developed by a process that involves consultation—

- (a) with regulatory agencies; and*
- (b) with other persons who have an interest in work health and safety in New Zealand or with organisations representing those persons....*

Work on the Strategy was begun under the previous National-Act-Maori Party coalition in 2016 and completed by the Labour-NZ First-Green Party coalition in 2018. The Strategy is available here: <https://www.mbie.govt.nz/assets/69361d5a98/health-safety-at-work-strategy-2018-2028.pdf>

The Strategy itself is reasonable in its framing and aspirations, if somewhat limited in its aspirations. What it lacks is implementation. The strategy commits the Government to a series of action plans, dashboard and regular refresh. See for example this diagram from the Strategy:



Why did the Strategy fail? The COVID-19 Response took an enormous amount of Ministerial and Government agency focus and resources out of the system but the Strategy was moribund before that.

Conversations with those present at the early reference groups sessions suggest that no agency was prepared to take responsibility for and resource the government action plan. Stakeholders were greatly outnumbered by officials at the early meetings.

Our view is that the lack of systematic direction has been responsible for some of the drift in our health and safety system and perhaps indirectly the plateauing of our progress in relation to fatalities and serious injuries.

The need for a refreshed strategy

We recommend that a targeted review of the Health and Safety Strategy is undertaken (we are agnostic as to whether a full new strategy is required or a commitment to implementation of the previous one is sufficient). This should include a significant “lessons learned” component about the failure to launch of the previous strategy.

A major focus of a refreshed Strategy needs to be implementation of action plans to address major risks and opportunities. The implementation of the actions should not sit solely with Government (in many cases, businesses, unions or NGOs will be better placed to deliver) but resourcing is likely to be a key question.

We can look to Australia for lessons on the more successful implementation of their first [Health and Safety Strategy 2012-22](#) and their recent [Health and Safety Strategy 2023-2033](#). The Australian Strategies set out clear and measurable targets, priority industries and are supported by data and measurement.

We recommend that officials (and perhaps key stakeholders) are tasked to engage with the Australian regulators to understand lessons learned and success factors for the Australian strategy.

Independent advice to Ministers

The problems of agency fragmentation, priorities, funding and incentives mean that no one agency (of MBIE, ACC, WorkSafe and the other designated regulators) is well-suited to lead this work alone. This is a case of institutional incentives not a criticism of individual public servants.

We recommend that the refreshed strategy should be developed and monitored by an independent Ministerial Advisory Group. This will give Ministers the confidence of independent advice on key health and safety matters (freer from institutional capture by Government agencies) and will incentive action from non-Governmental agencies.

Various models could be explored for the Ministerial Advisory Group. Officials provided advice to the former Minister for Workplace Relations and Safety on a Health and Safety Action Leadership Council. Various parties have been involved in [FutureSafe Aotearoa](#).

We encourage officials to investigate the Ministerial Work Health and Safety Board model in Queensland. The Work Health and Safety Board is Ministerially appointed and acts the peak advisory body to the Queensland Government on work health and safety matters. The primary function is to give advice and make recommendations to the Minister about policies, strategies, allocation of resources and legislative arrangements for work health and safety.

The Work Health and Safety Board consults with employers, workers and their representative organisations, as well as the work health and safety community to get industry feedback. Members include social partners and independent experts supported by a consultative committee whose members have either suffered serious injury or bereavement as a result of a workplace accident.

We recommend that the Ministerial Advisory group should include representatives of:

4. Employers and workers
5. Health and safety experts (including practitioners and academics)
6. Iwi.

It may be useful to consider the role of victims (per the Queensland model). The role of Government agencies should be carefully thought through. It may be more appropriate for Government agencies to act as a secretariat rather than full voting members.

International legal obligations

The creation of an effective Health and Safety at Work Strategy is consistent with New Zealand’s obligations under International Labour Organisation Convention 187 on Promotion Framework for Occupational Health, 2006. This convention has recently been added to the fundamental conventions that all States agree to comply with as part of ILO membership.

Article 5 of C187 states that:

1. *Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.*
2. *The national programme shall:*
 - (a) *promote the development of a national preventative safety and health culture;*
 - (b) *contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;*
 - (c) *be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;*
 - (d) *include objectives, targets and indicators of progress; and*
 - (e) *be supported, where possible, by other complementary national programmes and plans which will assist in achieving progressively a safe and healthy working environment.*
3. *The national programme shall be widely publicized and, to the extent possible, endorsed and launched by the highest national authorities.*

Our view is that the current Health and Safety Strategy is only partially compliant with our obligations under C187. There is a lack of monitoring and evaluation, objectives, targets and indicators of progress.

Lack of compliance with fundamental International Labour Standards is problematic in and of itself. The New Zealand Government may be called to account by the ILO for failure to meet basic labour standards.

Breach of these standards may also cause problems for our bilateral Free Trade Agreements. For example, the New Zealand European Union Free Trade Agreement [Chapter 17 on Trade and Sustainable Development](#) contains commitments to “respect, promote and realise the principles concerning the fundamental rights at work which are

the subject of the fundamental conventions of the ILO”¹¹ (art 19(3)(3)) and to “make continued and sustained efforts to ratify the fundamental conventions of the ILO if they have not yet done so (art 19(3)(5)).

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¹¹ Article 19(3)(4) states that “The Parties welcome the decision of the 110th International Labour Conference by which a safe and healthy working environment is added to the fundamental principles and rights at work. No later than at its first meeting the Trade Committee may adopt a decision to amend paragraph 3 accordingly to reflect this addition.” We are unsure as to whether this decision has yet been reached.