



Submission Form: Have Your Say on Work Health and Safety

The Ministry of Business, Innovation and Employment (MBIE) wants to hear about your experiences with New Zealand's work health and safety regulatory system.

How to make a submission

Fill out your answers to the questions and delete these first two pages of instructions. The questions in this form are not compulsory; you can answer as many questions as you want. Where possible, please provide us with evidence to support your views. Examples can include facts and figures or references to independent research. If you have other views or thoughts that are not covered by the questions, you can write these under question 25.

If you have completed this form, you can send it by:

- email to HSWHaveYourSay@MBIE.govt.nz
- post to:
Health and Safety Policy
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

Alternatively, you can complete the [online submission form](#).

Please send any questions on the submissions process to HSWHaveYourSay@mbie.govt.nz.

The deadline for submissions is 31 October 2024 at 5pm.

What we will do with your submission

MBIE will review and consider all feedback, which will inform advice to Ministers on any improvements that could be made to the work health and safety regulatory system.

MBIE will not publish individual submissions but will publish a summary of submissions on its website. The summary of submissions will not include names of submitters but may list the names of organisations that have submitted. If you do not wish for your organisation's name to be published, please indicate this by checking the box on page three and in your covering email or letter.

Official Information Act 1982

Submissions may be released in full or in part if requested under the *Official Information Act 1982*. If your submission contains confidential information, please clearly indicate in the e-mail or cover letter accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld together with the reasons under

the *Official Information Act*. MBIE will take such objections into account and will consult with submitters as it considers necessary when responding to requests under the *Official Information Act*.

Please also indicate on the front of your submission that it contains confidential information (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Privacy Act 2020

The *Privacy Act 2020* applies to your submission. Refer to page five of the consultation document.

Submission on consultation document: *Have Your Say on Work Health and Safety*

Your name, email address, phone number and organisation

Name	Alan Pollard
Email address	Alan@civilcontractors.co.nz
Phone number	021 576 109
Organisation	Civil Contractors New Zealand

- ☐ The *Privacy Act 2020* applies to submissions. Please tick the box if you do **not** wish for the name of your organisation to be included in any information about submissions that MBIE may publish (MBIE will **not** publish names of submitters).
- ☐ MBIE will upload a summary of submissions to its website, www.mbie.govt.nz. If you do **not** want a summary of your submission to be included on MBIE's website, please check the box and type an explanation below:

I do not want my submission included in a summary of submissions on MBIE's website because...
[insert reasoning here]

- ☒ I consent to my contact details being saved for future MBIE consultations on work health and safety.

Please check if your submission contains confidential information

- ☐ I would like my submission (or identifiable parts of my submission) to be kept confidential and **have stated** my reasons under the *Official Information Act 1982* for consideration by MBIE.

[Insert reasons based on the *Official Information Act* here]

Responses to consultation document questions

1. What is your name (and role title)?

Alan Pollard, Chief Executive Officer, Civil Contractors New Zealand

2. Are you submitting on behalf of an organisation, as a worker, as an employer, or in another capacity (please specify)?

On behalf of an organisation and on behalf of the civil construction industry.

3. If you are submitting on behalf of an organisation, what is the name of that organisation?

Civil Contractors New Zealand

4. Please provide us with at least one method of contacting you, in case we need to discuss your submission further.

By email – Alan@civilcontractors.co.nz

By telephone – **021 576 109**

5. What sector or industry does your submission most closely relate to?

- ☐ Accommodation and Food
- ☐ Administration and Support
- ☐ Agriculture, Forestry and Fishing
- ☐ Arts and Recreation
- ☒ Construction
- ☐ Education and Training
- ☐ Electricity, Gas, Water and Waste Services
- ☐ Financial and Insurance Services
- ☐ Health Care and Social Assistance
- ☐ Information Media and Telecommunications
- ☐ Manufacturing
- ☐ Mining
- ☐ Professional, Scientific and Technical Services
- ☐ Public Administration and Safety
- ☐ Rental, Hiring and Real Estate Services
- ☐ Retail Trade
- ☐ Transport, Postal and Warehousing
- ☐ Wholesale trade
- ☐ Other (please specify): _____

6. Do you consider your sector/industry to be high-risk, medium-risk, or low-risk?

High risk – CCNZ is an industry association representing more than 800 businesses and organisations that physically construct and maintain NZ's horizontal infrastructure, namely the water, transport, energy and other infrastructure networks.

7. Where in New Zealand is your work located?

Nationally

8. How many employees does your business or organisation have?

- ☐ No employees

- ☐ 1 – 5
- ☐ 6 – 9
- ☒ 10 – 19
- ☐ 20 – 49
- ☐ 50 – 99
- ☐ 100 or more
- ☐ Unsure

Focus area one: businesses are best placed to understand and manage their risks

9. Thinking about just the key actions your business or organisation takes to manage health and safety risks:

a. what are these actions?

Civil Contractors New Zealand performs several actions nationally and regionally with regard to health and safety, namely:

- Supporting members by distilling industry knowledge into practical guidance
- Advocating for quality industry standards and guidance
- Understanding good practice through our technical committees and sharing good health and safety knowledge and standards with our members
- Engaging with authorities including WorkSafe, NZTA and local government around good health and safety standards
- Running face to face roadshow and conference events to discuss reaching better health and safety outcomes, and also webinars to help members understand their legal obligations and provide feedback on any issues
- CCNZ partners with other relevant organisations and industry groups in this space, including the New Zealand Transport Agency, the Association of Consulting and Engineering, the Temporary Traffic Management Industry Steering Group, and others.

b. why does it take these actions?

- Contractors work in high-risk situations. Horizontal infrastructure construction poses significant risk, not just to workers, but also to members of the public.
- High-risk situations can involve working at heights (i.e. cliffside rock and soil stabilisation), confined spaces (i.e. work conducted inside pipelines or large scale trenches), working within the road corridor, and working in marine environments (i.e. wharf and seawall construction).
- This work is conducted using heavy equipment ranging from excavators, drill rigs and piling equipment to smaller hand-operated equipment such as concrete saws and plate

compactors. There are also unseen risks such as the risk of underground service strike – for instance high-pressure gas pipelines, power lines and internet cables.

- We take action to support the industry because our members prioritise the health and safety of the people that work for them above all other considerations.
- We also undertake action in the health and safety space because our members businesses continually seek to improve on their health and safety practices
- Our support in this space is necessary because members seek clarity on their obligations and the best methods to perform their health and safety duties.

c. do you think these actions are reasonable? (Please explain your answer.)

- Yes. It's important for the industry to have clear and agreed guidance to set their expectations.
- Our members tell us this is an important role for an industry association in serving its members.
- Managing health and safety risk to workers and the New Zealand public is of paramount importance to our industry

d. do you think these actions are effective in managing health and safety risks? (Please explain your answer.)

- They can be, if they are endorsed by authorities (i.e. WorkSafe). Endorsed whole of industry guidance and actions can better meet the H&S needs of companies.
- **Technical support and endorsement of guidance**
However, industry guidance can only go so far, and better support is needed from Government agencies such as WorkSafe to ensure contractors have confidence they are taking the right steps to manage health and safety risk appropriately.

At present, while member businesses strive for excellence in health and safety, there is little in the way of certainty.

WorkSafe is currently in the situation where it holds and maintains a huge amount of guidance that can be interpreted subjectively, and is not presently resourced to update the vast amount of information it holds. Perhaps an alternative model where WorkSafe is adequately resourced to engage with industries to review and endorse industry good practice would be a more sensible use of resources.

- **Upstream and downstream PCBUs**
CCNZ members conduct works on behalf of clients, which can be government agencies local authorities, or private clients. Contractors invest significantly in managing health and safety risk. However, a critical factor in effectively managing health and safety risk is whether the upstream PCBU supports good health and safety outcomes.

The issue is that excellent plans and procedures for understanding and managing health and safety risk can be undermined if clients aren't committed to funding good health and

safety outcomes, this can lead to increased risk. The roles and responsibilities of the clients and upstream PCBU in managing health and safety risk need to be better understood and supported.

The tendency (including at the client, agency, and regulatory levels) to see health and safety risk as an issue for the head contractor only (not for everybody) needs to be overcome if we are to be truly effective in managing health and safety risk as an industry.

Members have reported several cases where charges were inappropriately pushed to the upstream and downstream PCBU without good reason.

10. How well does your business or organisation understand its work health and safety obligations?

- ☐ very well
- ☐ quite well
- ☒ not that well
- ☐ not at all well

a. If you answered, “not that well” or “not at all well”, what do you think would help you to understand?

The issue in this space is that legislation is subjective, for instance ‘reasonably practicable’ could mean a variety of things from different perspectives and business scales. Because of the uncertainty this generates, it is not easy to understand all health and safety obligations.

Using the Work Health and Safety Regulatory System model featured on p6 of the consultation materials as a basis, the issue can be described as having the HSWA at one end, and industry guidance, standards and information at the other, but not much in the way of regulations, safe work instruments and approved codes of practice in between.

In other countries with similar health and safety legislative frameworks, there is a considerable amount of information in this space to provide clarity.

The uncertainty arising from this lack of clarity results in non-reporting of near misses for fear or repercussions and prosecution, and prevents sharing of detailed health and safety information across the industry.

At present, while near misses are addressed comprehensively within companies, this sort of information sharing only happens externally at an industry level when a company has been through a formal process with WorkSafe, as companies are very cautious about repercussions.

That said, members are dedicated to following the highest standards of health and safety possible. With more supportive guidance and engagement from WorkSafe at a technical level, better whole-of-industry outcomes can be reached.

Act (principles based) – we have this

Good regulation – we don’t have much of this

Codes of Practice – we don’t have many of these

Individual industry good practice guidance – we have a lot of this

Health and safety standards

Contractors use ISO standards (in the health and safety space, this is [ISO 45001](#)) to set and follow audited systems and processes for good health and safety outcomes. These systems are based on the nature of their businesses. These standards are good, but are geared to managing risk in large companies. Better guidance and toolsets are needed to support smaller businesses. In short, the standards are good standards, but they are hard to implement at small scale and doing this comes at a massive cost.

For smaller players, technology and templated systems need to catch up to better support smaller players in the market.

The [Totika system](#) for recognising health and safety prequalification amongst suppliers, is a huge step in the right direction, as it sets one universal standard, with one cross-recognition framework, that incorporates external assessment and certificate schemes through recognition of ISO 45001 certification, SafePlus On-site assessments and Q-Safe certification.

Education

It should be noted that new entrant workers do not enter the industry with industry-specific health and safety knowledge, and the training of new entrant workers to understand the systems they operate under comes at significant expense.

If New Zealand's education system could provide more safety preparation and better health and safety knowledge by delivering competency at the schools level. This may reduce the expense, as employers would need to assess capability and provide training and education at site and activity specific levels, as opposed to educating new workers on all facets of health and safety from the ground up.

At present, employers bear the significant cost of training workers and creating bespoke education systems from the ground up themselves – and their clients also bear this training expense as part of the project cost.

More use of universal health and safety competency training systems, including consideration of a universal learning management system accessible to employers, may reduce the significant costs of systems, training and education that is currently borne by individual companies developing bespoke systems internally.

The topic of education and its role in delivering good health and safety outcomes for new workers entering the civil construction industry is discussed more extensively in CCNZ's [Developing a Skilled Civil Construction Workforce](#) report.

11. Thinking about just the key actions the business or organisation takes:

- a. about how much would it cost per year to comply with your health and safety obligations? (If you are unable to estimate an annual cost, can you give some examples of spending to meet your obligations?)

This is largely not applicable for CCNZ as an industry association, as the member businesses we are submitting on behalf of operate at a larger scale and in different circumstances to our staff as a representative organisation.

However, it should be recognised that there are currently excessive and ineffective health and safety compliance obligations (such as pre-qualification and training) currently being imposed on small contractors.

It's likely that the cost of compliance for the industry and its clients in its entirety is **in the billions of dollars annually** (more research would be needed to provide a more specific amount). While this is justified to prevent injury and fatalities, it is a cost worn by the New Zealand public.

Because of this, more support is needed for shared industry-wide initiatives that can provide certainty and reduce the cost of compliance.

The cost of consistency

Members have reported inconsistency between client groups. In summary, promotion and investment in best practice costs more than poor practice and non-compliance.

If clients don't differentiate through procurement, and the regulator doesn't enforce good standards, those following best practice find themselves financially unable to compete with those that don't. Winning work in competitive tender environments should depend on capability to deliver work safely and profitably – and performance against these promised health and safety criteria requires not just assessment and enforcement by the regulator, but also a level of technical expertise that allows the regulator to assess these situations adequately.

Temporary traffic management

Since the advent of the Health and Safety at Work Act, temporary traffic management often makes up a third of the cost of jobs. It needs to be fit for purpose.

This has always been set out in the HSWA – however the move from a prescriptive approach (i.e. setting a required distance of cones) has needed considerable attention and support.

While the move to risk-based TTM has potential to address this, improve outcomes and reduce cost, it has also generated considerable uncertainty. CCNZ is working hard to support the transition, but realistically this will only be possible if clients, road controlling authorities, designers, contractors and road users are able to collaborate to understand their collective obligations under the new approach.

b. how much time does your business or organisation spend on health and safety?

As a membership organisation for a high-risk industry, CCNZ spends a considerable amount of time working to understand and mitigate risks to workers.

In their work, members employ full-time health and safety staff to ensure risk is properly managed.

As mentioned elsewhere in this submission, the most significant and often-overlooked time expenditure lies in educating staff members of their health and safety requirements, and in creating bespoke systems to report on health and safety outcomes in a way that can be audited.

Critical risk vs non-critical risk

Some members noted that there was too much focus on non-critical risk which in turn was resulting in excessive compliance costs that were not preventing serious harm.

c. for workers, how much time do you spend on health and safety?

CCNZ's members spend a considerable amount of time supporting workers to meet health and safety requirements.

This occurs daily (signage and site safety meetings), weekly, monthly, annually (annual 'health and safety hui' days), and as otherwise required (site-specific H&S meetings and H&S toolbox talks). But also through specific staff tasked with setting and communicating standards.

Once good standards are established, these can then be discussed and agreed at a national level through technical committees and communicated to the wider industry (i.e. bitumen safety information). For this to happen appropriately requires a significant time investment from members and the wider industry.

12. Where your business has overlapping duties with other businesses, what has been your experience in working together to manage health and safety risks? Think about clarity of roles, how you share duties, what processes you put in place.

CCNZ's members are well equipped to work with other constructors with overlapping duties (i.e. when subcontracting to vertical constructors).

However, as noted in the Construction Health and Safety New Zealand Submission, this is a difficult area for most construction companies, with a lack of clear guidance from regulations around how to manage deep national and international supply chains, risk and compliance cost tends to be 'added to the price tag' for larger businesses, or passed down to the smallest businesses, often those most exposed to health and safety risk.

Clients should be held more accountable in leading the setting of health and safety risk environments by eliminating or engineering out risk at the earliest opportunity – rather than leaving it to the front-line workers, who only have often costly and ineffective means (e.g. PPE) to manage the risk.

Issues more frequently occur when upstream PCBUs seek to contract H&S risk to the contractor. This is expressly against the Health and Safety at Work Act, however there is little in the way of enforcement and encouragement for clients under the current regulatory approach.

Focus area two: the law is designed to balance flexibility and certainty

13. The HSW Act aims to balance flexibility and certainty. Thinking about the parts of the work health and safety law you frequently engage with, can you provide examples of:

a. requirements that are too detailed, strict, or inflexible to allow you to easily comply?

- It is currently not possible for a PCBU to be insured against H&S claims. But often, PCBUs will take all reasonable steps to mitigate H&S risk, but an incident still happens. Then they are aggressively pursued by Worksafe.

Unless negligence or wilful negligence is involved, a PCBU should be able to insure against H&S risk.

- Some members reported overburden of legislation for small business. This can be offset through regulations, safe work instruments and codes of practice and clear and industry-specific guidance from the regulator. To be ultimately successful, it requires more

collaboration between industry, regulator and clients to ensure good standards can be met by companies operating across a variety of scales.

b. where there is not enough detail or too much ambiguity in law or regulations to help you comply?

- The health and safety system is not being meaningfully led, plainly demonstrated by the government's dormant national Health and Safety at Work Strategy 2018-2028. This is pushing unclear responsibilities back onto businesses, and resulting in poor and variable outcomes.

- The legislation must be clearer around responsibility of upstream PCBU's to procure for safe work in particular ensuring adequate due diligence is being performed during contracts, not just tick box prequal exercises.

If procurement is not set correctly, companies can win work at lowest price by not implementing good practice health and safety with no consequences for such practice. Clients who procure those works not being held accountable.

Every contractor having different approaches and risk appetite to perform the same tasks, with no differentiation made of competing tenders or client acceptance. Client not setting the standard on minimum acceptable safety risk, or being prepared to pay more for best practice?

There are multiple layers of PCBU, with everyone checking each other, but generally, upstream PCBUs do not understand what specialist sub-contractors are doing or the risks.

The contractor or subcontractor then has to educate and re-educate their clients every time. This is mainly due to a lack of minimum standards and the lack of upfront recognition of capabilities.

- Often, there is an absence of detail in regulations, that can be subjectively applied to different circumstances.
- Lack of enforcement means there is inconsistent application of safety rules and procedures across the industry. Often, there is little enforcement besides prosecution when a fatality or serious harm incident occurs.
- What 'reasonably practicable' differs in interpretation between individuals and companies. And it largely depends on what companies can afford regarding time and money.
- In summary, the current situation is incentivising risk-cost tradeoffs between contractors, subcontractors and clients, when realistically all parties have a role.
- Lack of data to understand the true cost of poor H&S outcomes to the wider economy and identify the worst offenders, e.g. harm data is not collated by project or client so it is impossible to know if there are trends to identify clients or sets of clients that are consistently harming by procuring for lowest cost without considering H&S. We need better data on catastrophic risks to identify improvements in the specific areas to

eliminate work-related deaths and serious harm.

- For construction in particular, a single standard for construction health and safety management may go some way to resolving the issue.

c. requirements that are causing you problems?

- Perhaps the biggest issue raised by members was that WorkSafe is not currently responsive or resourced to support the industry. The regulator plays a significant role in providing certainty of what is reasonably practicable – a role it is currently not resourced to perform, or refuses to perform.

There are two facets to this. Firstly, WorkSafe could (and should) provide a role in advising on what steps may be reasonable, even if it's not a formal endorsement. At present, companies are left with a lot of uncertainty. If WorkSafe had capability and capacity it could act as a partner and sounding board for businesses trying their best to keep workers and the public safe.

Secondly, WorkSafe also needs the resources to check and enforce deliberate cutting of corners. It's not good enough for companies to be penalised at the tender box for pricing in appropriate measures to keep workers and the public safe.

- Licensing is an important factor in ensuring health and safety competency, however the current Wheels, Tracks and Rollers endorsement system is not meeting the industry's needs. It is seen as a tick-box system, and does not instil the level of health and safety competency required of workers.
- Members have notified that they are being unjustly prosecuted by WorkSafe when others are clearly at fault (i.e. reckless drivers), and WorkSafe is targeting company prosecution, even when an agency or individual is clearly at fault. Several examples have been provided by members.
- There is a lack of specific guidance and codes of practice around specific high-risk activities (i.e. airborne contaminants, non-standardised TTM between central and local Road Controlling Authorities, working around mobile plant, etc).
- Members also noted that there is a tendency to see requirements as specific to contractors, and more clarity was needed on individual and public responsibilities.

d. requirements that are working well?

- It took some time for WorkSafe guidance on protecting road and roadside workers to be written, but the guidance provides more clarity to industry on expectations, which is a good thing.
- Some members noted the current system has the potential to work well, however it needs to be better resourced in terms of support in case of uncertainty and enforcement for those who are deliberately disregarding their health and safety obligations.

- Holding directors legally responsible for H&S failings has made boards more tuned into this area.
- Procurement-wise, New Plymouth Council excluding H&S as a priceable item, rather a provisional sum to be discussed and expended in conjunction with the contractor.
- In the case where an incident has occurred, enforceable undertakings have the potential to provide effective materials and guidance around how to manage risk, and sometimes fulfil the purpose they are intended to by sharing solutions with the wider industry. Unfortunately this positive impact is sporadic, and all too often companies opt for prosecution instead as it is cheaper.

14. What sources of information or advice do you use to help you understand your responsibilities under the law and how to comply? Select all that apply:

- ☒ law or regulations
- ☒ guidance
- ☒ approved codes of practice (ACOPs)
- ☐ health and safety advisors or consultants
- ☒ the regulator (eg WorkSafe)
- ☒ third parties authorised by WorkSafe or the regulations (eg compliance certifiers or auditors)
- ☒ industry associations
- ☐ social media
- ☐ word of mouth
- ☐ none
- ☐ other (please specify): Knowledge of our more than 800 member businesses

15. For each of the sources of information or advice identified above that you use, please select all that apply:

Source one: Laws and Regulations

- ☐ the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- ☐ the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- ☒ the information or advice is relevant to my work
- ☒ the information or advice is consistent across sources
- ☒ the information or advice is easy to find
- ☐ the information or advice is easy to understand
- ☐ the information or advice is easy to apply

Source two: Guidance

- ☒ the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- ☒ the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- ☒ the information or advice is relevant to my work
- ☐ the information or advice is consistent across sources

- ☐ the information or advice is easy to find
- ☒ the information or advice is easy to understand
- ☒ the information or advice is easy to apply

Source three: **Approved Codes of Practice**

- ☒ the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- ☒ the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- ☒ the information or advice is relevant to my work
- ☐ the information or advice is consistent across sources
- ☐ the information or advice is easy to find
- ☒ the information or advice is easy to understand
- ☒ the information or advice is easy to apply

Source four: The regulator

- ☒ the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- ☒ the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- ☐ the information or advice is relevant to my work
- ☐ the information or advice is consistent across sources
- ☐ the information or advice is easy to find
- ☒ the information or advice is easy to understand
- ☒ the information or advice is easy to apply

a. Feel free to provide any further feedback about the sources of information or advice you use.

More endorsement of industry standards is needed. At present WorkSafe is struggling to maintain its guidance library, instead, it should focus on engaging with industry to set and monitor best practice, based on sound data.

16. Are you able to provide any examples of where you have difficulty complying with your legal requirements because of the overlap between work health and safety legislation and other requirements? Please specify the relevant regulatory systems (eg the building regulatory system) if you can.

Focus area three: worker engagement and participation

17. Do you know whether your business or organisation has:

- elected health and safety representatives ☒ Yes ☐ No ☐ Don't know
- informal health and safety representatives or champions ☒ Yes ☐ No ☐ Don't know

- a health and safety committee ☒ Yes ☐ No ☐ Don't know
- a system for regular health and safety communications ☒ Yes ☐ No ☐ Don't know
- regular meetings where health and safety is discussed ☒ Yes ☐ No ☐ Don't know
- regular health and safety briefings, eg 'toolbox' meetings ☒ Yes ☐ No ☐ Don't know
- other worker engagement and participation practices (please specify): _____

18. From your experience, either for a business or as a worker, how effective do you think the worker engagement activities that your business or organisation uses are?

- ☒ very effective
- ☒ quite effective
- ☐ not that effective
- ☐ not at all effective

Please explain your answer, including providing any examples if you have them.

CCNZ itself has a small staff, and is a low risk organisation, however we do take time to prioritise worker wellbeing and safety in a demonstrable way, through our office practices, and regional and national events for members.

CCNZ is a strong advocate for workers, and works directly with individuals to target harm reduction.

19. From your experience, either as a business or as a worker, do you think workers are doing enough to keep themselves and their colleagues safe?

All actors in the creation of the health and safety control environment should be held to account for the performance of the overarching system in proportion to their influence over that system.

Good employers strive to provide clarity for workers. If advice is disregarded this can put people at risk.

Risk can be mitigated but not eliminated using control measures, so this comes back to the question 'what is reasonably practicable' – a concern that should be applied to workers as well as companies, while reflecting the fact that individual workers do not always have influence over the control measures that are in place.

Focus area four: an effective work health and safety system needs effective regulators

20. In what ways have you interacted with WorkSafe or another health and safety regulator?

- Education and training materials: ☒ Yes ☐ No
- Online and published information and resources: ☒ Yes ☐ No
- Workplace visits (eg inspections and follow up activity): ☐ Yes ☒ No
- Public campaigns (eg social media, appearance at events): ☒ Yes ☐ No
- Queries to the regulator: ☒ Yes ☒ No
- Applications for licences, certificates, or exemptions: ☒ Yes ☐ No
- Registering equipment: ☐ Yes ☒ No

- Notifications (eg of incidents or high-risk activities): ☒ Yes ☐ No
- Interaction with regulatory tools (eg safe work instruments online): ☒ Yes ☐ No

a. Thinking of each interaction you selected in question 20, did you get what you needed to comply with your health and safety obligations?

Education and training materials: Variable

- ☐ yes, completely
☒ yes, partially
☐ no

Online and published information and resources:

- ☐ yes, completely
☒ yes, partially
☐ no

Workplace visits (eg inspections and follow up activity):

- ☐ yes, completely
☒ yes, partially
☐ no

Public campaigns (eg social media, appearance at events):

- ☐ yes, completely
☐ yes, partially
☒ no

Queries to the regulator:

- ☐ yes, completely
☐ yes, partially
☒ no

Applications for licences, certificates, or exemptions:

- ☐ yes, completely
☐ yes, partially
☐ no

Registering equipment:

- ☐ yes, completely
☐ yes, partially
☐ no

Notifications (eg of incidents or high-risk activities):

- ☐ yes, completely
☐ yes, partially
☒ no

Interaction with regulatory tools (eg safe work instruments online):

- ☐ yes, completely
☒ yes, partially

☐ no

Feel free to provide further information.

b. Would you describe your interactions with the regulator as useful, reasonable, and timely? Feel free to provide further information.

CCNZ values its relationship with the regulator (WorkSafe) and has had many successful interactions as an association. Close future partnership with the regulator will be needed in the creation and promulgation of effective regulation, codes of practice and guidance is possible to greatly lift the performance of the overall construction sector.

The use of data, digital channels and evidence-based interventions to reach and deploy effective change across the construction industry can only be done in partnership with industry and workers. With adequate resourcing, WorkSafe can be empowered to create efficient and effective improvement.

In terms of engagement with member businesses, WorkSafe's approach is overly reactive and punitive rather than incentivising. PCBU's who take all reasonable steps to mitigate risk but are subject to some incident occurring are reluctant to advise WorkSafe as, despite being open and honest about something having occurred, they will be aggressively pursued by WorkSafe. There is currently a culture where smaller businesses are scared to raise issues with WorkSafe. CCNZ is happy to collect and supply anonymised examples, if this is useful.

Our view is that WorkSafe needs to form genuine partnerships with contractors to help educate them, to recommend system or process improvements where appropriate, and to foster an environment of mutual trust and respect. Members have advised that interactions with the high-risk unit at WorkSafe operate in this manner, and CCNZ also has positive experiences working with the construction engagement lead. However, these highlights in industry-regulator engagement are often massively under-resourced, and take a long time to reach any successful conclusion. Better incentives are needed.

There is a significant and ongoing absence of coordination between the agencies responsible for the health and safety system (especially WorkSafe, ACC, MBIE, and other agencies), leading to fragmented efforts and stagnating performance in the health and safety system.

Addressing Regulatory Inconsistencies and Improving Guidance

There remains variability in the application of HSWA, particularly in how inspector advice is delivered and interpreted. This can create confusion for businesses, especially small and medium-sized enterprises, which may struggle to comply with inconsistent guidance.

It is crucial that regulatory interpretation becomes more consistent, with clear, accessible, and up-to-date guidance available to all industry participants. WorkSafe should also partner more closely with industry bodies, leveraging their expertise to ensure that guidance is both practical and relevant to specific sectors.

Supporting Industry with Advisory-Focused Inspection

While enforcement plays an essential role, there is room for inspectors to provide more advisory support rather than focusing solely on compliance.

By enhancing recruitment processes, ensuring inspectors have industry experience, and providing competitive compensation and specialized training, WorkSafe can offer more value to businesses. Increased workplace visits, coupled with a more proactive, consultative approach, could lead to better compliance and a safer working environment for all.

**21. Which third parties authorised by the regulator or regulations have you interacted with?
Select all that apply:**

- ☒ Licensing bodies (eg for scaffolders or mining)
- ☒ Auditors (eg of health and safety systems or processes)
- ☒ Compliance certifiers, assessors, or inspection personnel (eg for hazardous substances, pressure equipment)
- ☐ Other (please specify):

a. Thinking of your most recent interaction, did you get what you needed to comply with your health and safety obligations?

- ☐ yes, completely
- ☒ yes, partially
- ☐ no

Feel free to provide further information.

Certifying bodies need appropriate support, guidance, endorsement and engagement from the regulator.

Government and industry have a role in the regulation of health and safety consulting advice in New Zealand and also to provide simple and effective guidance and templates for health and safety management systems that small businesses can follow so they are not at risk of spending on ineffective and unhelpful health and safety consulting advice.

b. Would you describe your interactions with the third parties as useful, reasonable, and timely? Feel free to provide further information.

Yes – for quarrying and mining certificates of competency (including tunnelling). This engagement provides CCNZ and its members with insights and channels for feedback and progress in high-risk tunnelling environments.

22. Do you know what consequences you would face for not complying with your health and safety obligations? Do you think these consequences are appropriately balanced and reasonable? Please explain your answer.

Generally, the construction industry is not well informed of the consequences of not complying with health and safety obligations. Many businesses feel they do not have adequate support, and are afraid to ask for advice or share examples of practices that could be better for fear of repercussions.

There is only a small chance that a WorkSafe inspector will visit a construction site and from industry feedback, larger constructors and sites are most regularly visited but do not make up the

largest proportion of construction activity. This means that generations of construction businesses have started and grown with little or no interaction with the regulator.

In the case of significant egregious failings such as recent [scaffolding collapses](#) where there could have been multiple fatalities, there has been no known follow up from the regulator.

Penalties for poor health and safety performance are low compared to international standards. There is no corporate homicide/manslaughter legislation and the chances of a significant criminal proceeding being successfully undertaken against an officer or construction client is remote.

Instead of prioritising post-incident prosecution, the regulator should instead be resourced to take a more proactive approach that provides certainty for businesses trying their best, and encourages poor performers to strive to do better.

Focus area five: the objective of the work health and safety regulatory system

23. Do you think the threshold at which work-related risks need to be managed is:

- ☐ over-cautious?
- ☒ about right?
- ☐ under-cautious?

You can provide further information, including examples.

In the UK and Australia businesses are regularly prosecuted for failing to manage a significant health and safety risk. In New Zealand, although our legislation is similar, a prosecution is undertaken when a worker has been already hurt or killed.

Shifting Towards a Proactive Health and Safety Approach

Currently, there is an over-reliance on reactive measures in managing health and safety risks, with actions often taken after incidents occur. A shift towards a more proactive, anticipatory approach could enhance safety culture and reduce workplace accidents.

By encouraging risk identification and mitigation early in the process, we can better protect workers and prevent harm before it occurs. This requires a cultural shift across the board, from government agencies to individual businesses, and should be a key focus moving forward.

Once a workplace serious harm or fatality has occurred, there is delayed learning across the New Zealand business environment as the legal process is undertaken under privilege.

24. Do you think the work health and safety regulatory system is

clear?

- ☐ Definitely yes
- ☐ Probably yes
- ☐ Probably no
- ☒ Definitely no

effective?

- ☐ Definitely yes
- ☐ Probably yes
- ☐ Probably no
- ☒ Definitely no

flexible and durable?

☐ Definitely yes ☒ Probably yes ☐ Probably no ☐ Definitely no

proportionate to the risks?

☐ Definitely yes ☐ Probably yes ☒ Probably no ☐ Definitely no

balancing risks with costs?

☐ Definitely yes ☐ Probably yes ☐ Probably no ☒ Definitely no

Is there any other feedback you would like to give us?

25. Is there anything else you want to say about your experience with the work health and safety system?

Education

Companies train workers because they are aware they need to do this to under their health and safety obligations. New entrant workers are not health and safety aware, so to onboard a new worker comes at massive cost, and stands as a barrier to new entrants joining the workforce.

Education training and processes – but companies currently need to develop these bespoke in-house. The value and benefit of good health and safety training is not well enough understood outside of those companies that do it. A goal of most members, and something they hold up as a mark of pride, is to have no serious harm or lost time injuries through the course of a project.

Deepening Partnerships Between WorkSafe and Industry

Fostering stronger partnerships between industry and WorkSafe is essential for the future success of New Zealand's health and safety system. Health and safety must be seen as integral to business operations, not merely as a compliance requirement. To achieve this, WorkSafe should endorse industry-led initiatives and outputs to build confidence across sectors. Additionally, greater recognition and partnership with CHASNZ would allow for the alignment of safety priorities in construction, a high-risk sector that has been underrepresented in recent industry plans.

Guidance and best international practice

New Zealand can benefit significantly by learning from the experiences of other countries, such as Australia, the UK, and the USA. Adopting high-impact practices, legal frameworks, and lessons from international health and safety systems can enhance our own.

Strengthening Board Engagement in Health and Safety Oversight

Boards play a critical role in overseeing health and safety systems within organizations. To ensure that health and safety are given due priority, board members must be well-informed and actively engaged. Developing mechanisms to increase Occupational Health and Safety (OHS) expertise on boards, particularly in high-risk sectors, would enhance overall governance and ensure that safety considerations are integrated into decision-making processes.

Prequalification

Proliferation of prequalification remains a major issue from the perspective of placing an unreasonable financial and time burden on businesses who are being asked to complete multiple prequalifications of varying quality and not to a clear standard, increasing administrative obligation and muddying the waters without adding tangible value.

CCNZ has supported Construction Health and Safety New Zealand (funded by WorkSafe) to create an umbrella framework for prequalification in New Zealand which allowed for a single risk based standard to be deployed, similar to the SSIP concept in the UK. CHASNZ completed this framework, with WorkSafe assistance in 2020 and launched [Totika](#).

Totika has been successful in reducing the cost of prequalification in New Zealand while applying an appropriate independent standard. Totika allows contractors to choose who they are prequalified with based on the services offered. CHASNZ does not make any profits from Totika as contractors are not charged for joining the scheme and Client organisations pay a nominal fee (\$1,500 p.a.) to have access to all Totika registered contractor information. These fees are solely applied against the running costs of the hosted website.

Despite government initiating the Totika system, the regulator has not endorsed or supported its use. Totika is based on international standards such as PAS 91, ISO 45001 and even WorkSafe's own Safeplus assessment system.

Government review and potentially involvement in supporting a single prequalification framework in New Zealand would be appropriate. CHASNZ will continue to steward the Totika system on behalf of New Zealand industry (both construction and other sectors are involved) but is not positional in maintaining long term stewardship if another independent body or government function is better placed.

Other comments

- We support the joint submission made by the Business Leaders' Health and Safety Forum, and agree with the recommendations of the Forum's Joint Submission, namely:
 - i. Improve clarity for duty holders (via completing core regulations and improving guidance and Approved Codes of Practice
 - ii. Clarify and simplify overlapping responsibilities
 - iii. Enhance regulatory practices and inspectorate competency
 - iv. Establish a national data and insight centre of excellence for health and safety
 - v. Establish meaningful incentives for good health and safety performance in the system
 - vi. Drive ongoing monitoring and performance of system stewardship
- The current legislative system is reasonably well-suited and understood. But it is not well resourced, and its current implementation is poor.

Compliance, education, monitoring, technology and innovation are all important factors, but are not well supported leading to extensive (and expensive) duplication.

- Some members noted that court cases should aim to prosecute under various parts of the Act, not just the purpose of the Act.

- Companies winning work at lowest price and not implementing good practice health and safety with no consequences for such practice. Clients who procure those works not being held accountable.
- The responsibility to assess risk and set up effective objective and subjective controls is a key requirement if the system is to be more successful. This needs to be better understood across the board.

Thank you

Thanks for your feedback, we appreciate your time and effort taken to respond to this consultation. MBIE will review and consider all feedback, which will inform advice to Ministers on any improvements that could be made to the work health and safety regulatory system.