



# Have Your Say on Work Health and Safety

JUNE 2024



## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

### **MORE INFORMATION**

Information, examples and answers to your questions about the topics covered here can be found on our website: [www.mbie.govt.nz](http://www.mbie.govt.nz).

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# Minister's foreword

All workers and their families deserve to have confidence that they will return home safe. Businesses also know the costs – both personal and financial – of workplace incidents, and the difficulties of attracting and keeping workers in risky sectors.

New Zealand's poorly performing health and safety system could be costing this country billions, and can have a devastating personal impact on workers and their families if a worker is harmed.



The Coalition Agreement between the National Party and ACT committed to reforming health and safety law and regulations. An effective health and safety system will support this Government's objective of lifting New Zealand's productivity and economic growth.

Workers, organisations, and businesses spend a lot of time and money trying to comply with health and safety rules and regulations, yet New Zealand's workplace fatality rate is far too high compared with countries like Australia and the United Kingdom. While some people complain about too much health and safety regulation, others may point to New Zealand's dismal statistics and complain there is not enough, and others still may complain that the entire system encourages or focuses on the wrong behaviour.

It is clear the current approach to health and safety is not achieving the results most New Zealanders would expect. The *Health and Safety at Work Act* is now almost ten years old, and I think now is an appropriate time to take a step back and look at what's working and what needs to change.

The health and safety system needs to be clear, sensible, proportionate, and effective. The steps businesses and workers take to protect health and safety should be considered appropriate and meaningful, rather than just another tick-box exercise. I want to make sure businesses and organisations are focused on addressing the things that are causing workers harm, rather than being caught up in unnecessary compliance or trying to interpret and navigate complex or perplexing rules and regulations.

I want to hear from New Zealanders of all backgrounds so I can better understand where to best focus efforts for improvement. I want to know what New Zealanders think the role for government should be in the health and safety system, what government gets right, and where government is going badly wrong.

Of course, the health and safety system is bigger than just government: in fact, the main players are businesses, organisations, and workers. But it's important that government sets the right framework so that businesses, organisations, and workers alike can thrive and get on with their critical roles in society and the economy.

I strongly encourage you to make a written submission or complete the online submission form. I will also be meeting with stakeholders around the country.

Hon Brooke van Velden  
**Minister for Workplace Relations and Safety**

# We want to hear about your experiences

We want to start a conversation about New Zealand's work health and safety regulatory system, particularly how you think it's working now and what you think should change.

Following the Pike River Coal Mine Tragedy in 2010, a Royal Commission and Independent Taskforce recommended changes to New Zealand's work health and safety regulatory system to address failings and improve health and safety. This led to the creation of a new health and safety regulator in 2013 – WorkSafe New Zealand – and passage of the *Health and Safety at Work Act* (HSW Act) in 2015.

It's been nearly 10 years since passage of the HSW Act. Successive Governments have invested heavily in the work health and safety regulatory system, including in WorkSafe. Businesses and other organisations (eg schools, charities) have also invested significantly to understand the law and meet its requirements.

Although New Zealand's work health and safety law is adapted from the Australian law, New Zealand's health and safety record remains worse than Australia's and has been slow to improve. We have heard that businesses are struggling to understand their health and safety obligations and are unsure how to comply, which creates risks for workers.

That's why it's timely to review the work health and safety regulatory system. We want a system that supports businesses to focus on preventing harm to workers and minimises compliance costs.

We want to hear about your experiences with the work health and safety system as a whole and with its different parts. Your feedback will help shape what form the Government's health and safety reform might take. This consultation document sets out some specific areas for your feedback:

- How businesses and organisations make their decisions about health and safety, the reasons behind these decisions, and their cost.
- Whether the law strikes the right balance between flexibility and certainty, or whether it may be too detailed in some cases, or not detailed or clear enough in others. We are also interested in people's thoughts on the information sources they use.
- How businesses and organisations engage with workers, how workers participate in health and safety, and the impact this has on health and safety.
- Experiences with health and safety regulators, and the people and organisations that act on behalf of the regulators or have other roles within the system.
- Whether the work health and safety regulatory system is meeting its objective.

You are also welcome to share feedback on any other aspect of the work health and safety system.

# The consultation process

The consultation is open from 14 June 2024 until 31 October 2024. You can provide a written submission by:

- completing the submission form and emailing it to [HSWHaveYourSay@mbie.govt.nz](mailto:HSWHaveYourSay@mbie.govt.nz)
- completing an online submission form at [mbie.govt.nz/have-your-say/work-health-and-safety](https://mbie.govt.nz/have-your-say/work-health-and-safety)
- mailing your submission to:  
Health and Safety Policy  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140.

This consultation document has questions that you can use to complete your submission. The questions are not compulsory; you can answer as many as you want or share your own thoughts about the work health and safety system.

Please send any questions on the submissions process to [HSWHaveYourSay@mbie.govt.nz](mailto:HSWHaveYourSay@mbie.govt.nz).

## What will happen with feedback?

The information provided in submissions will be used to inform the Ministry of Business, Innovation and Employment's (MBIE) policy development and will inform advice to Ministers about improvements to the work health and safety regulatory system. We may contact submitters directly if we require clarification of any matters in the submissions.

## Release of information

MBIE will publish a summary of submissions on its website. Submissions remain subject to request under the *Official Information Act 1982*. Please clearly indicate in the cover letter or e-mail 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 for withholding the information. 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*.

## Private information

The *Privacy Act 2020* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of advice in relation to this consultation, for contacting you about your submission, or to advise you of the outcome of the consultation, including any next steps. We may also use personal information you supply in the course of making a submission for other reasons permitted under the *Privacy Act* (eg with your consent, for a directly related purpose, or where the law permits or requires it). Please clearly indicate in your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

We will only retain personal information as long as it is required for the purposes for which the information may lawfully be used. Where any information provided (which may include personal information) constitutes public records, it will be retained to the extent required by the *Public Records Act 2005*. We may also be required to disclose information under the *Official Information Act*, to a Parliamentary Select Committee or Parliament in response to a Parliamentary Question. You have rights of access to and correction of your personal information which can be found on the MBIE website at <http://mbie.govt.nz/privacy>.

# Scope of consultation

This consultation is focused on the purpose and performance of the work health and safety regulatory system.

**What is a 'regulatory system'?**

Regulation isn't just about the law. Parliament passes laws, but to achieve Parliament's intended outcomes, government agencies and other organisations need to deliver services and make sure people follow the rules. The laws, rules, agencies, organisations, and their practices are collectively known as a 'regulatory system'.

The 'work health and safety regulatory system' refers to the:

- *Health and Safety at Work Act 2015* (the HSW Act)
- supporting regulations, safe work instruments, standards, approved codes of practice, and guidance that sit under the HSW Act
- regulators that implement the law and support people to comply through engagement, enforcement, and standard setting
- people and organisations authorised by the regulator or regulations to certify or licence businesses for high-risk work and activities.

MBIE is the Government's lead advisor on work health and safety policy. WorkSafe New Zealand is the primary work health and safety regulator, and there are two other regulators in the system: Maritime New Zealand (for ships and major ports (the latter from 1 July 2024)) and the Civil Aviation Authority (for aircraft). WorkSafe also authorises third parties to inspect or licence other businesses, and some of the regulations rely on other third parties. For example, compliance certifiers are authorised by WorkSafe to check compliance with the *Health and Safety at Work (Hazardous Substances) Regulations 2017*, and Scaffolding, Access and Rigging New Zealand issues certificates of competence for scaffolding.

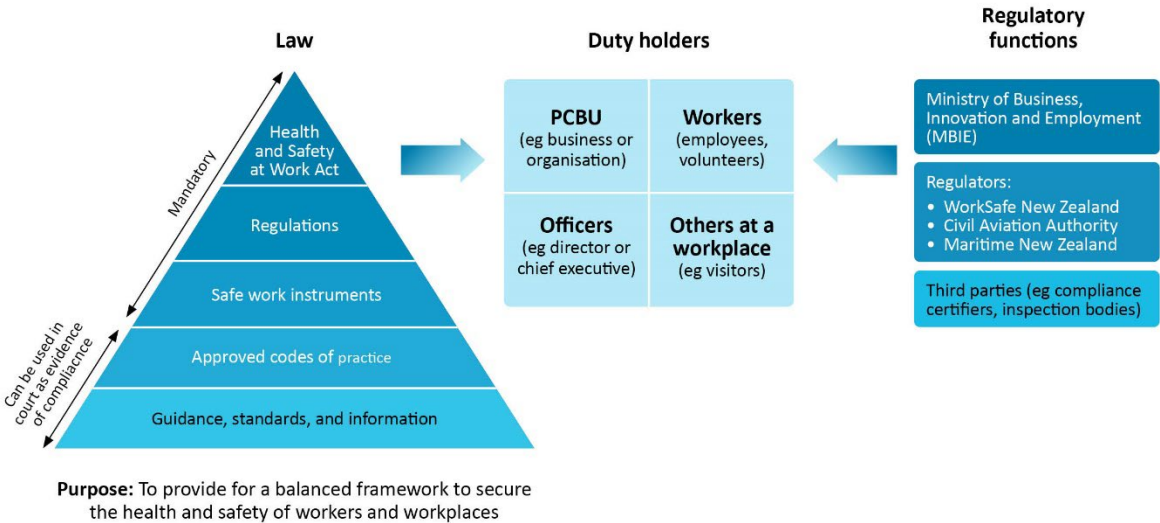


Figure 1: Work health and safety regulatory system

## What is not in scope?

We are not consulting or seeking feedback on government agency funding, the rate of the Health and Safety at Work Levy, or the effectiveness and efficiency measures and targets for the frontline activities of WorkSafe. These are being progressed separately.

### Questions

1. What is your name?
2. Are you submitting on behalf of an organisation, as a worker, as an employer, or in another capacity (please specify)?
3. If you are submitting on behalf of an organisation, what is the name of that organisation?
4. Please provide us with at least one method of contacting you, in case we need to discuss your submission further.
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. In relation to work health and safety, do you consider your sector/industry to be high-risk, medium-risk, or low-risk?
7. Where in New Zealand is your work located?
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

We are seeking to understand how businesses and organisations make their decisions about health and safety and the reasons behind these decisions.

The HSW Act places the primary duty of care on a business or organisation to ensure the health and safety of workers and others affected by the work of the business or organisation. This is based on the principle that those who create the risks are best placed to understand and manage those risks.

Businesses that work together may have the same health and safety duties (referred to as ‘overlapping duties’). For example, multiple businesses may have overlapping duties in a shared workplace such as a port. Duties can also overlap in a contracting chain, where contractors and subcontractors provide services to a head contractor or client and don’t necessarily share the same workplace.

The HSW Act also places a duty on businesses that are ‘upstream’ in the supply chain (eg, engineers, manufacturers, importers, and suppliers) to ensure that the machinery and equipment that they supply is safe to use.

## Questions

9. Thinking about just the key actions your business or organisation takes to manage health and safety risks to its workers and others affected by its work:
  - a. what are these actions?
  - b. why does it take these actions?
  - c. do you think these actions are reasonable? (Please explain your answer.)
  - d. do you think these actions are effective in managing health and safety risks? (Please explain your answer.)
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?
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?)
  - b. how much time does your business or organisation spend on health and safety?
  - c. for workers, how much time do you spend on health and safety?



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.

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

We are seeking feedback on whether the law strikes the right balance, or whether it may be too detailed in some cases, or not detailed or clear enough in others.

The HSW Act aims to balance flexibility to respond to different circumstances with providing certainty through detailed requirements to comply with health and safety obligations.

For lower-risk businesses and activities, the HSW Act provides greater flexibility on how to comply, so that businesses take actions that are proportionate to the risks. For higher-risk businesses and activities, there is more detail on how to comply in regulations, standards, approved codes of practice, and guidance.

As the HSW Act applies wherever work is being done, it also covers sectors and industries that may have their own legislation. For example, there are separate regulatory systems for transport and building. We also want to hear about your experiences where the work health and safety regulatory system overlaps with other regulatory systems, including whether this is causing you any problems.

### **Example: Temporary traffic management for road works**

Temporary traffic management is a visible example of the flexibility within the HSW Act that you might come across in your daily life – you will regularly see temporary signs and road cones around road works. These are actions contractors take to keep road workers and others using the road safe. These can be on lower-risk, quiet residential streets, or on multilane highways where there is a higher risk to workers.

Temporary traffic management is an activity where it is important to get the balance right between certainty and flexibility. There are no specific requirements relating to temporary traffic management in the HSW Act or its regulations. Instead, there are guidelines most of the industry follows.

Previous guidelines for temporary traffic management had more detailed requirements; although this provided certainty, it was also a ‘one-size-fits-all’ approach that was less flexible. New guidelines from the NZ Transport Agency are intended to take a more flexible, risk-based approach, which can be more efficient and cost effective while still keeping people safe. However, this provides less certainty and requires judgments to be made about the risks at particular road work sites.

## Questions

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:
- requirements that are too detailed, strict, or inflexible to allow you to comply?
  - where there is not enough detail or too much ambiguity in law or regulations to help you comply?
  - requirements that are causing you problems?
  - requirements that are working well?
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)
15. For each of the sources of information or advice that you use, please select all that apply:
- 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.
16. Are you able to provide any examples of where you have had difficulties 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

We want to understand how businesses and organisations engage with workers, how workers participate in health and safety, and the impact this has on health and safety.

All businesses and organisations are required to have ways of engaging with their workers and allowing them to participate in work health and safety regardless of their size, level of risk, or type of work. The HSW Act gives businesses and organisations flexibility in how they achieve this.

Worker engagement and participation can take many forms, from regular discussions and 'toolbox talks' to more formal approaches like health and safety meetings and health and safety representatives. Workers also have a duty to take reasonable care with their health and safety. We want to understand what forms of worker engagement and participation you find most effective.

## Questions

17. Does your business or organisation have:

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

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

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

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

We are seeking feedback on your experiences with the health and safety regulators, and the people and organisations that have roles within the system.

This consultation document has covered the parts of the work health and safety regulatory system that are critical to its functioning – businesses, workers, and the law and supporting information (eg guidance). Another key part of the system are the health and safety regulators – WorkSafe, Maritime New Zealand, and the Civil Aviation Authority.

The wide-reaching nature of health and safety law means WorkSafe, as the primary regulator, must cover a range of hazards and risks across different businesses, activities, and sectors/industries (eg industries with the potential for catastrophic harm, such as mining, through to lower-risk workplaces, such as retail).

This requires the regulator to decide how it focuses its attention on the riskiest sectors and activities, while also supporting lower-risk businesses to comply through information provision such as education and guidance.

Businesses also engage with third parties that are authorised by WorkSafe or by regulations to check compliance, inspect equipment and machinery, audit safety systems, and issue licences or certificates of competence. For example, compliance certifiers are authorised by WorkSafe to check compliance with the *Health and Safety at Work (Hazardous Substances) Regulations 2017*.

## Questions

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 in question 20, did you get what you needed to comply with your health and safety obligations? Feel free to provide further information.

- yes, completely
- yes, partially
- no

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

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? Feel free to provide further information.
- yes, completely
  - yes, partially
  - no
- b. Would you describe your interactions with the third parties as useful, reasonable, and timely? Feel free to provide further information.
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.

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

We are seeking feedback on whether the work health and safety regulatory system is currently meeting its objective.

It is important that a regulatory system has clear objectives, and that it delivers clear benefits to New Zealanders over time that outweigh any costs or negative effects.

We think that the objective of the work health and safety regulatory system should be to protect people from harm, in a way that is clear, effective, flexible and durable, proportionate to the risks, and balances risks with costs. Each element of this objective is explained in the table below.

Clear	The duties, obligations, and rights of businesses and workers are understood and provide certainty. The responsibilities and the accountability of the regulators (and third parties with roles within the system) are understood and provide certainty.
Effective	The work health and safety regulatory system achieves its objectives and minimises unintended consequences.
Flexible and durable	The work health and safety system is responsive and can deal with changes such as in risk, technology, and ways of working.
Proportionate to the risks	Regulation and the regulator's actions are sufficient to address the risk.
Balances risks with costs	Compliance costs are minimised.

### Questions

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.

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?

### Questions

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

## What happens next?

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 system.