

Submission to the Ministry of Business, Employment and Innovation on:

Have Your Say on Work Health and Safety

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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1. Introduction

- 1.1. This review into the New Zealand health and safety system should be an opportunity to make improvements on the terrible track record on health and safety in this country.
- 1.2. Health and safety is not red tape bureaucracy, nor should it be regarded as such. Good health and safety laws are focused on creating the right conditions for industry – that is workers and employers – to agree on the systems and procedures to be implemented to keep workers healthy and safe.
- 1.3. That’s why health and safety is core union mahi. Unions recognise that health and safety is a fundamental aspect of good work, and that every worker has the right to work that is safe and healthy, and to have a voice on the operation of their work.
- 1.4. The CTU is recognised as the collective voice of working New Zealanders on matters of health and safety, whether they are union members or not. This is recognised nationally and internationally in agreed standards, such as the International Labour Organisation Convention 155 on Occupational Health and Safety which mandates consultation between unions (through the CTU), employers (through Business New Zealand) and the Government in the design and implementation of health and safety law.

- 1.5. Unions represent workers across a wide range of industries, both in the private and public sector, representing and supporting workers on the job, and at the industry level. Union involvement in health and safety ensures that workers have agency in the design and operation of the health and safety systems at their work.
- 1.6. Evidence shows clearly that systems where workers have a real voice in health and safety, are considerably safer than workplaces that are characterised by top-down hierarchical systems and management culture. This is known as ‘the union safety effect’.
- 1.7. The union safety effect highlights the significant positive impact that unions make on workplace health and safety. Union membership is associated with lower injury rates; more rigorous application of health and safety policies, monitoring, and reporting; and more effective forms of representation¹
- 1.8. All workers, whether union members or not, benefit from the role that unions play in workplace health and safety through enhanced promotion of health and safety practices and standards, enforcement of legislative obligations and duties, and proper reporting of incidents and near misses. Union presence will improve a workplace’s health and safety culture.
- 1.9. This submission is also informed by feedback from the participants at our “Ensuring worker voice on health and safety reform” forum at Parliament in September.

2. Summary of recommendations

- Adopt a blueprint for improvement based on identifying and committing to the key recommendations of the Independent Taskforce, in particular strengthening worker engagement, participation, and representation (“WEPR”).
- Strengthen the critical role of unions in health and safety at all levels.
- Confirm that the Health and Safety at Work Act 2015 and supporting regulations are largely fit for purpose and large-scale changes are unnecessary. Some improvements outlined in this submission could be adopted to more fully embed the Robens health and safety framework.
- Finalise the full suite of regulations to support the Health and Safety at Work Act and provide clarity to workers and businesses on how businesses meet their health and safety duties
- Properly mandate and resource WorkSafe to be a system leading and effective regulator

¹ WorkSafe NZ. (2018). Worker engagement, participation and representation [Literature review]. Author, Wellington www.WorkSafe.govt.nz

- Increase WorkSafe’s capacity and capability by increasing the number of inspectors, as well as support, administrative and specialist roles to ensure the inspectorate is both extensive and technically proficient.
- Adopt a particular focus on improving outcomes for Māori
- Support the important role of guidance including better use and development of approved codes of practice
- Expedite ratification of fundamental International Labour Organization conventions
- Introduce a Corporate Manslaughter Law, increase the maximum penalties and fines in the law, and adopt a new approach to strict liability infringement offences under the Act and Regulations
- Take more immediate action to address occupational harm and protect workers from the serious impacts of work on health
- Stop attacks on worker rights that have significant negative health and safety impacts

3. Blueprint for improvement

- 3.1. New Zealand, like other countries we compare ourselves to, has a health and safety system rooted in the Robens model. The Robens model posits important roles for the key stakeholders in workplace health and safety: a strong regulator, capable employers, and informed, empowered workers.
- 3.2. This underlying framework seeks to establish the right conditions for employers and workers to jointly tackle the risks and hazards present in the work they undertake.
- 3.3. Our current framework is built out of the work of the Pike River Royal Commission of Inquiry, and the Independent Taskforce on Workplace Health and Safety. This provided a comprehensive review of the failings of the New Zealand health and safety system and outlined a path forward.
- 3.4. A critical finding of the Independent Taskforce was New Zealand’s failure to properly implement the Robens model. Both the Royal Commission and the Taskforce singled out worker participation as a crucial weak link in the New Zealand health and safety system. As the Taskforce noted, *“New Zealand falls well short of the strength of worker representation legislation and levels of engagement operating in comparable jurisdictions.”*
- 3.5. Overall, the current foundations of the system, which emerged from the inquiries into the Pike River disaster, are the right building blocks for the New Zealand health and safety system. These foundations certainly don’t require wholesale changes. What is required is

a commitment to improvement, involving a commitment to properly resource and invest in the system, with a critical emphasis on union and worker engagement. Assessing our health and safety performance against our closest comparators – Australia and the UK who both employ similar frameworks to ours – reveals that our fatality rate is what the UK’s was in the 1980s, and currently twice that of Australia. While we share their commitment to the Robens model, we do not share their commitment to properly funding and resourcing the system to ensure it is successful.

4. Strengthening the union role in health and safety

- 4.1. Unions are one of the most effective mechanisms for improving workplace health and safety. The presence trade union membership continues to be one of the best mechanisms for improving workplace health and safety – what is called the “union safety effect”.
- 4.2. These health and safety benefits within a workplace are not limited to union members either, as reduced risk, better compliance, and enhanced WEPR practices benefit all people in the workplace.
- 4.3. And the union safety effect can be observed in other countries that we often compare ourselves to. Trades Union Congress research (the trade union peak body in the UK) found that a trade union presence helps to reduce ill-health; and that union density is a key component of workplace psycho-social safety (TUC, 2015). And a recent study from the Canadian Institute for Work and Health found that union membership was associated with a 25% lower rate of lost-time-allowed injury claims (Robson et al., 2021, 2022).
- 4.4. It is clear that improvements to workplace health and safety require strengthening and enabling workers and their unions to engage and participate in workplace health and safety.

Within workplaces

- 4.5. Strengthening workplace health and safety means giving unions the tools to support workers to enact change in their health and safety systems. This can be achieved by addressing some of the remaining WEPR gaps in HSWA.
- 4.6. Ensuring unions can support members on health and safety committees, access relevant health and safety information in supporting their members, and resourcing unions to provide union health and safety training would be effective mechanisms to support on the ground change.

- 4.7. As outlined below, better regulatory action around WEPR in workplaces is another way of supporting unions in the role they play.
- 4.8. A key mechanism for effective union engagement on workplace health and safety is the growing use of negotiated worker participation agreements. A worker participation agreement (also referred to as a “WPA”) is a document which outlines how the business’s agreed health and safety system will operate. These documents provide a written foundation for important details such as how health and safety representatives (HSRs) will be elected and trained, how many HSRs are needed, and how health and safety committees will be staffed and when they will meet and respond to raised issues.
- 4.9. We know that people are more likely to engage in a system which they have co-designed rather than one that is imposed on them without their input. WPAs are also a way to ensure that vulnerable workers or those who usually do not have a voice in workplace health and safety (e.g., contractors) are engaged. They also provide the basis for how a PCBU and the workforce will work together to risk assess and implement control measures.
- 4.10. WPAs are enduring and ensure that WEPR practices agreed with the workforce are not eroded as a business changes. Mechanisms to support and enhance the use of negotiated WPAs, including levers for unions to initiate the negotiation of WPAs would be an effective and positive improvement to the existing sporadic use of WPAs.

Across industry

- 4.11. At an industry level, health and safety industry bodies in New Zealand currently vary widely in their representation of industry. Relatively few are truly built on the Robens model and tripartism, with workers properly represented. Many are more realistically considered employer representative structures and are thus deprived of a proper worker perspective and voice.
- 4.12. There is a need to ensure better oversight of how these industry bodies function as tripartite for a. The Robens model is predicated on the underlying principle that Unions are the representatives of workers (regardless of the level of unionisation in an industry) as the focus is on the work, not the specific workplaces. This is often misunderstood in these industry groups.
- 4.13. If we want to legitimise industry bodies under a Robens framework, they need to be tripartite.

4.14. Union representatives need to be invited to participate in industry health and safety bodies and released in paid time if necessary to attend. This would ensure there is direct worker voice in those fora and the decisions that are made.

Nationally

4.15. We need to ensure that international commitments to engage with representatives of workers and businesses are actively upheld.

4.16. The Minister's lack of commitment to engaging with the CTU, which has an ILO mandate as the most representative body of workers in New Zealand, is concerning, and in breach of international commitments.

4.17. This government needs to remain committed to engaging in meaningful dialogue with both employer and worker representatives as part of its international obligations.

5. Health and Safety at Work Act 2015

5.1. Overwhelming feedback from workers and their unions reiterated that the legislation and the accompanying regulations remain fit for purpose and provide the right platform for workplace health and safety.

5.2. Workers stressed that the duties outlined in the legislation establish the right foundation for the relationship between the PCBU and workers. Specifically, the duty to engage with workers on matters that impact worker health and safety fundamentally underpins the processes for jointly identifying and assessing health and safety risks and implementing the agreed controls to manage those risks.

5.3. We strongly believe that HSWA should not be opened for broad changes. We do have recommendations for minor improvements to strengthen the Robens framework and align the legislation with the intent of the independent taskforce.

5.4. These include:

- Strengthening provisions to support health and safety representatives
- Improving and enabling best practice health and safety committees
- Improving access to high quality health and safety training
- Better recognition of psychosocial risks and harm to mental health
- Addressing inadequate fines and penalties

Health and safety representatives

- 5.5. HSRs are one of the primary mechanisms for worker representation in workplace health and safety. They are a critical avenue for ensuring that the interests of workers are considered in health and safety decision making,
- 5.6. Fundamentally, HSRs are a representative of their workforce, they are elected by their colleagues to represent them. This is why it is important that they have legislative powers to enact change and to protect the people they have been elected to represent.
- 5.7. The feedback that the CTU received from workers regarding this review stressed the importance of HSRs, and that elected HSRs need to be championed and valued for the mahi that they undertake. Workers noted that the independence of the role was critical, and that workplace procedures and processes work best when they involve the workplace HSRs. Workers also noted the important role of the union in supporting HSRs.
- 5.8. Strengthening support for HSRs could include
 - 5.8.1. Providing minimum entitlements and support for HSRs to undertake their HSR role. Currently the legislation states that PCBUs must allow a health and safety representative to spend as much time as is reasonably necessary to perform his or her functions or exercise his or her powers. Many workers find that there is an expectation that their HSR role occurs on their own time, or after BAU work is completed, undermining their capability to attend to their HSR duties.
 - 5.8.2. Removing limitations to enable HSRs to work across workgroups more easily. Workgroups are often superfluous or are not a justification for why an HSR cannot represent other members of their workplace.
 - 5.8.3. Continue and expand the work supporting HSR role clarity. Both WorkSafe and the Government Health and Safety Lead have undertaken recent work providing resources and support for HSRs outlining the role and business of an HSR. Further work to develop HSR role clarity and replicating this work relevant to other industries would support the effectiveness of HSRs.
 - 5.8.4. Support for HSR awareness and free and fair elections. One of the most common comments from workers was simply the need for a greater number of HSRs in their workplace. As noted above, the democratic nature of the HSR role also means supporting the free and fair election by workers of their HSR.
 - 5.8.5. Strengthening provisions enabling HSR choice of training provider – outlined in more detail below.

- 5.8.6. Making HSR lists to be available to everyone on a worksite, including the union representing workers on that worksite. Unions have an interest in knowing who their members' HSRs are. The literal reading of the current legislation has seen PCBUs decline to provide this information to unions despite there being sufficient health and safety and engagement reasons for doing so.
- 5.8.7. Further consideration of an HSR registry within WorkSafe should be revisited and implemented. The Taskforce was clear that WorkSafe needed to be responsible for providing greater support for reps after they have been trained, specifically stating "This must involve the new agency creating a central register of representatives, with acknowledgement of the levels of knowledge and skill they have attained". A register would help ensure that WorkSafe understands the make-up of, and gaps within, industries in relation to HSR coverage. It would also provide them with more efficient means to access and communicate with HSRs in their regulatory action, as well as providing HSRs with avenues for professional development and support in their work on the job.
- 5.9. Finally, we see a need for stronger protections for HSRs against adverse conduct. Raising personal grievances or otherwise formally raising issues with employers can be difficult or costly for workers without union support.
- 5.10. HSRs have important powers under HSWA to direct unsafe work to cease, and to support their colleagues in health and safety matters. This can, on occasion put them into positions where they are at odds with management. Adverse conduct occurs when HSRs are unduly targeted for their role in supporting and improving workplace health and safety.
- 5.11. Sections 98 and 99 of HSWA provide the Regulator with the powers to appoint an inspector to assist parties resolve issues and are currently under-utilised. We see greater promotion and use of these sections as an avenue to support workers and limit adverse conduct against HSRs.

Health and safety committees

- 5.12. There remains a need in the system to support the creation, training and ongoing assistance for health and safety committees (HSCs) so that they can be effective. These are another critical form of worker engagement, yet there remains barriers to their establishment.
- 5.13. Currently there is no obligation on any PCBU (high risk, SME or otherwise) to establish a health and safety committee (HSC), even when it is requested by workers. When

requested to establish a health and safety committee by a group of 5 or more workers, a PCBU only needs to consider whether they will agree to the request.

- 5.14. HSCs, when well-resourced and established in collaboration with the workforce, create a platform that jointly tackles health and safety issues that are salient to both workers and management. They are an important tool in rebalancing workplace power dynamics and for fostering productive connections between workers, unions and PCBUs.
- 5.15. Properly set up and functioning HSCs were commonly mentioned by workers as a key component of their well-functioning workplace health and safety systems. Workers reported to the CTU that well-functioning HSCs:
- Often involves the union participating directly
 - Occur on a regular and recurring basis
 - Have full health and safety management attending – specifically including those that have decision making authority
 - Utilised models of high engagement
 - Had minutes collected and sent out immediately
 - Involves workers and their representatives in:
 - o Reviewing incidents
 - o Developing learnings
 - o Auditing processes
 - Stressed the importance of collective support in developing processes and reporting; and
 - Had means for ongoing review where the PCBU and workers (incl. their union) work closely together to review incidents monthly and work proactively on solutions
- 5.16. The legislation should be amended regarding HSCs' lack of training requirements for all participants. Under HSWA, it is only HSRs who will have any entitlement to prerequisite training. A simple addition to the WEPR regulations would be to state that each member of an HSC is entitled to adequate training and information to undertake their role on the committee. We would also like to see more supporting mechanisms for all participants on a HSC to receive joint training in engagement and decision-making, as well as supports for best practice committee procedures such as minute taking, and joint review/ audit procedures.

5.17. There is also an opportunity to learn from recommendations in the Boland report in Australia, and develop a sample of HSC constitutions, agendas, minute templates and other supportive documents for inclusion in the appropriate Codes and guidance material to assist PCBUs and workers.

Health and safety training

5.18. The HSR role can often be both complex and challenging, and learners need to spend a significant amount of time learning about their role, rights and responsibilities to be effective on the job, to represent their colleagues on matters impacting their health and safety.

5.19. Workers feedback on training included:

- An expressed interest in regular and ongoing health and safety training for all workers to support core capabilities and strengthen good practice.
- Warnings that not all health and safety training is relevant for workers and can be overly focused on providing products for what they believe PCBUs want, not what workers need to do in their roles.
- Lack of training (internal or external to the business) was commonly associated with workplace systems that were underperforming.

5.20. Workers and unions also noted that despite the legislation clearly stating the training entitlements of HSRs (including to their choice of training provider for initial training), many workers find it difficult to access good quality training of their choice after being elected.

5.21. The choice of initial health and safety training is currently poorly regulated. Simple breaches of these requirements often go unremedied. Failure to enable HSRs to attend training of their choice could be a simple infringement offence as proposed elsewhere in this submission.

5.22. We have concerns regarding the difference in assessment quality of the pre-requisite unit standard for HSRs – unit standard 29315.

5.23. Unit standard 29315 is intended to provide HSRs with the knowledge and skills to prepare them as HSRs in the workplace, it also equips them with important powers under the Act.

5.24. This is a standard with a credit value of 2 credits that requires, according to NZQA guidelines, a nominal 20 hours of learning. Our view is that it is essential there is a robust quality assurance framework for all training organisations involved with HSR learning that reflects the NZQA guidelines.

- 5.25. However, many training providers are offering this course for a single day's duration (including assessment) which undermines the standard, and the quality of training outcomes. We are also aware of HSRs being put through initial training that does not provide them with US29315. These training options undermine the quality of an HSR's training and their right to choose their choice of training and have real impacts on the ground in workplaces.
- 5.26. We recommend reviewing the HSR training courses to ensure that all learners are receiving a quality training package and that their learning is being properly and robustly assessed in terms of US 29315.

Psychosocial risks and mental health

- 5.27. HWSA defines health as both physical and mental health, meaning PCBU duties to ensure the health and safety of workers relates to both physical and mental harm.
- 5.28. Strong feedback from workers stated that psychosocial health often fell off workplace health and safety. Workers reported that PCBUs may not consider mental health within their legislative health and safety duties, that certain risks or hazards were not seen as health and safety issues, or other work factors were simply not recognised as having an impact on worker health and safety.
- 5.28.1. For example, in relation to excessive workloads and burnout, unreliable work hours and lone working, and workers not able to take annual or sick leave when they should be.
- 5.29. Psychosocial health is growing in prominence, and psychosocial risks to health and safety are not limited to specific workplaces. Failure to address psychological hazards also has knock-on health and safety impacts such as fatigue, and short staffing leading to increased workloads which carry further health and safety risks.
- 5.30. In Australia, many States have been proactive by developing and publishing their own psychosocial hazards at work Code of Practice. These codes are designed to provide practical guidance on how to achieve the standards of work health and safety required under their legislation and regulation.
- 5.31. In Western Australia, their recent Code of Practice on Psychosocial Hazards in the Workplace has formally recognised insecure work as a work-related psychosocial hazard. Properly recognising the impact that insecure work has on health and safety is important so that we can begin to tackle the higher rates of incidents, poorer outcomes, and lack of access to WEPR provisions that is more prevalent in insecure work.

5.32. Replicating a similar approved code of practice, that recognises the impacts of insecure work in New Zealand would provide duty holders, and workers with clarity on what PCBUs need to do to keep workers safe from psychosocial harm. Workers can also be confident that appropriate action is being taken to protect their health

Fines and penalties

5.33. Fines and penalties need to be reviewed to ensure they are effective as a proper deterrent to PCBUs.

5.34. Compared to its Australian State counterparts, WorkSafe New Zealand do not fully utilise the infringement notices for on-the-spot fines for simple and clear breaches. The infringement notice mechanism provides another tool for WorkSafe to strengthen compliance and enforcement capability, it can also be responsive to system needs by allowing the regulator to focus on specific issues for priority areas for enforcement and to reflect current and emerging risks.

5.35. We recommend that the infringement notice mechanism be utilised more effectively.

5.36. We also note that there are a very limited number of WEPR infringement offences in the current Regulations, which include:

- Failing to adopt, or to explain why not, a health and safety representative's recommendation.
- Failing to have an up-to-date list of health and safety representatives readily accessible to workers.
- Failing to adopt, or to explain why not, a health and safety committee's recommendation.

5.37. In addition, WorkSafe inspectors should be expected to consider whether other provisions of the Act and regulations have been complied with including failing to hold an election for HSRs, failure/refusal to provide HSRs with paid training, refusal/failure to provide information to workers and HSRs, and failing to engage with the workers' union. These infringements could easily be added to the infringement notice regulations.

5.38. We note that the legislative requirements to engage with workers and their representatives on matters of health and safety are often not enforced adequately. And a regulator focus through infringement notices on WEPR breaches could begin to remedy this.

5.39. We also recommend actions to support compliance at a broader level. The 'corporate veil' is often used by certain entities, as an effective means of avoiding liability for breaches of

health and safety law. Where liability is affixed to a shell or subsidiary of a controlling entity, that controlling entity may be protected from the consequences of the breach, and companies that bear conventional liability may wind up leaving claimants with no recourse to remedy. Effective reform to our health and safety system requires the introduction of upstream liability that attaches to controlling corporations and entities.

- 5.40. Other mechanisms for ‘lifting the corporate veil’ and attributing liability to directors and controlling shareholders should also be implemented, along with measures to ensure that companies cannot engage in ‘phoenixing’, whereby the tactically wind up to avoid liability.
- 5.41. Finally, we recommend that the Government support the creation of a corporate manslaughter (also known as corporate homicide) legislation.
- 5.42. Introducing a crime of corporate manslaughter into the New Zealand legal system would hold corporations guilty for acts of culpable killing. Such a law would give the public confidence that corporations and their managing individuals would be held to account for acts of corporate killing, and it would also deter wrongful conduct on the part of corporations.
- 5.43. Support for a corporate manslaughter law would signal the needed paradigm shift, that the health and safety of workers is not something that belongs on a balance sheet by providing a further tool in the system to target the high-end offenders and ensure businesses that harm their workforce are adequately penalised.

Clarification on risk assessment and mitigation

- 5.44. Finally, we suggest a simple recommendation to support clarity for duty holders made in the Boland report in Australia, that would move the concepts underpinning the hierarchy of control measures out of regulations and into HSWA.
- 5.45. Boland noted in the report that “*Small businesses in particular are calling out to be ‘told what to do’ to meet their WHS obligations. The hierarchy of control provides practical steps for duty holders, and its inclusion in the model WHS Act will help to address existing confusion and uncertainty.*”
- 5.46. We see this to be a sensible change and advocated for this change in our submission on the Health and Safety Reform Bill (which became HSWA).

6. Finish the Health and Safety at Work Act Regulations

- 6.1. A critical component of the Robens model is the supporting role of regulations. Regulation, alongside education, guidance and support from the Regulator, is the primary way of supporting businesses to understand what they need to do by providing them with a roadmap to meeting their legislative duties
- 6.2. Good regulation provides certainty to workers and businesses alike about what minimum standards they can expect in their work and workplaces. It provides a concrete mechanism that workers can rely on to enforce their rights and ensure that statutory duties are being met.
- 6.3. In line with a risk based regulatory approach, good regulation enables a robust framework for assurance and compliance across particular risks.
- 6.4. It also provides certainty about regulator enforcement, giving businesses stability and confidence in the health and safety actions they engage in. This can help demystify, particularly for small businesses, what is necessary for them to meet their duties.
- 6.5. One of the biggest remaining gaps in the system remains in the form of the unfinished regulatory suite intended to support the Health and Safety at Work Act. MBIE itself noted this in its briefing to the current minister – that the outdated and incomplete regulatory system “*is creating uncertainties and inefficiencies for businesses and the regulator, in areas of risk that significantly contribute to ongoing work-related harm*”.
- 6.6. Finishing this regulatory suite which includes plant and structures (including working from heights), hazardous substances, and hazardous work, would go a long way to providing PCBU’s (and workers) with clarity in meeting their health and safety obligations.
- 6.7. The plant and structures regulations were slated for completion (and in force) from 2022, with the work on the hazardous work next in line.
- 6.8. The delay of these regulations is galling considering the four industries (Construction, Agriculture, Manufacturing, and Forestry) that WorkSafe has put particular focus on given their high rates of acute harm, and over-representation in incident and fatality statistics. WorkSafe sector plans, which outline each sector’s top harms, show that the missing regulations feature almost exclusively across them:²

² <https://www.worksafe.govt.nz/about-us/who-we-are/our-priorities/>

<p><u>Construction</u></p> <ul style="list-style-type: none">- A worker falls from height- A worker is hit by a falling object- A worker is hit by a vehicle or other moving object- A worker is exposed to substances hazardous to health including silica dust, welding fumes, wood dust, and asbestos
<p><u>Agriculture</u></p> <ul style="list-style-type: none">- A vehicle rolls or crashes- A worker is hit by a falling object- A worker is caught or trapped in machinery- A worker is hit or bitten by an animal- A worker is exposed to substances hazardous to health including welding fumes and toxic chemicals.
<p><u>Manufacturing</u></p> <ul style="list-style-type: none">- A worker is caught or trapped in machinery- A worker is hit by a falling object- A worker is hit or trapped by a vehicle or other moving object- A worker is exposed to substances hazardous to health including silica dust, welding fumes, toxic metals, or wood dust- A worker falls from height
<p><u>Forestry</u></p> <ul style="list-style-type: none">- A worker is hit by a falling object- A worker is hit or trapped by a moving object- A vehicle rolls or crashes

6.9. Finishing this regulatory suite would provide significant clarity to workers and businesses about critical safe work practices, risk identification, and duties to ensure that particular risks to health and safety are eliminated or otherwise minimised.

- 6.10. If clarity for business is a critical concern of this review, this action must be a priority. Reviewing the reasons behind the delay of the second tranche of supporting regulation offers an opportunity for future improvement.

7. WorkSafe

- 7.1. For New Zealand to improve its health and safety capacity, it is vital that the primary regulator WorkSafe, is well-resourced and provided the mandate to be a world class regulator and lead system change.
- 7.2. The need for a strong, independent, and properly mandated regulator was a critical finding of the Independent Taskforce. They heard from submitters that there was a failure of the then regulator to provide adequate leadership within the system, that enforcement was weak, and that there was inadequate investment in critical support functions such as education, training and professional advisers.
- 7.3. And despite building some capacity, WorkSafe has remained chronically underfunded for the scale of the job the agency has responsibility for.
- 7.4. More concerningly, the current trajectory is an ongoing and significant stripping back of both the organisation's capacity and capability. This is evidenced by the organisation's new limited and reactive regulatory approach and de-prioritisation of important legislative functions on the back of significant restructuring due to the ongoing 'costs-savings' exercise imposed on them.
- 7.5. The latest round of restructuring seems to embed a strategic purpose focused on responding to harm post facto, rather than appropriately focusing on risk and supporting prevention. This needs to be undone, if we are to see positive improvements in New Zealand's health and safety landscape.
- 7.6. Ongoing cuts forcing a new strategic direction puts WorkSafe at risk of losing many from its talented and experienced workforce, and heaping expectations, workload, and capacity constraints onto remaining staff who are already stretched beyond capacity. Effectively limiting their ability to meet the array of core legislative functions WorkSafe is tasked with.
- 7.7. Splitting WorkSafe roles into an unhelpful dichotomy of "back office" and "frontline" roles is damaging to system credibility and minimises the impact and public saliency of the WorkSafe functions that go beyond ensuring compliance with minimum standards (or work that supports that function).

- 7.8. These include establishing codes of practice; providing best practice guidance on how to work safely; data analysis; providing research and education; and promoting and co-ordinating work health and safety initiatives. It also includes administrative and support functions for the inspectorate, legal support and capacity for enforcement actions, and preventative work in the 'health' space to address growing issues around psychosocial risk, mental health, and occupational harm prevention.
- 7.9. These are all critical functions of a world class regulator that can leverage the legislative and regulatory framework to be effective. Given the stagnation of the workplace injury and fatality data which remains unacceptably high, it is irresponsible to see funding cuts and scaling back of work that will improve system outcomes.
- 7.10. It is not credible for Government to say they are serious about improving the country's health and safety system while overseeing ongoing cuts to the agency tasked with improving workplace health and safety performance.

The need for a resourced and well supported health and safety inspectorate

- 7.11. New Zealand has a low ratio of inspectors to working population. Current inspector numbers have significantly dropped since 2013 (from 8.4 inspectors per 100,000 workers to 6.3 per 100,000 currently).
- 7.12. The independent taskforce recommended that inspector ratios be lifted to a ratio of 10.7 per 100,000, as they considered this to be sufficient to deliver [WorkSafe's] functions in relation to general workplace compliance activity, including compliance activity for hazardous substances.
- 7.13. The current 2024 ratio of inspectors to working population represents some 60% of the ratio recommended by the Taskforce. This is unacceptable.
- 7.14. Inspectorate coverage needs to be sufficient to ensure that inspections, and other enforcement and regulator support is occurring at businesses where it is needed the most, while also ensuring that no business is in effect exempt from regulator engagement due to lack of resourcing or coverage.
- 7.15. While inspectorate numbers need to be boosted, this must not come at the expense of inspectorate support functions. Piling administrative and support functions onto an already stretched inspectorate is not workable, and takes critically important inspectors away from work they should be engaged in.
- 7.16. Both inspector and support roles need to be increased significantly, and mechanisms put in place to ensure the ratio does not fall again through population increases, or attrition

rates. Support for specialist capacity in the inspectorate such as for high hazards, hazardous substances, and psychosocial harm needs to be in place to ensure that inspectors are supported to be effective in their work.

- 7.17. We also suggest considering having dedicated WEPR inspector specialist capacity, who's primary function is to support HSRs, HSCs, and worker representatives on WEPR issues and assist with issue resolution. As mentioned above, there is a strong need for WEPR breaches need to be enforced more systematically.

8. Improving Health and Safety outcomes for Māori Workers

- 8.1. The Government's Te Tiriti o Waitangi obligations involve a need to operationalize a health and safety system that recognizes and uplifts Māori.
- 8.2. Māori workers are overrepresented in high-risk industries such as forestry and construction. We know from work-related injury claims, occupational disease data and fatality figures that kaimahi Māori are more likely to be seriously injured at work, and have higher rates of temporary and precarious employment
- 8.3. There is a need to provide Māori workers with a voice that is heard and valued in our health and safety system. And to that end, both Iwi and unions have a significant role to play in ensuring Māori representation.
- 8.4. We need to introduce throughout the system, a Te Ao Māori framework of Māori ways and being and doing work healthy and safe. We need the ability to develop, co-design and implement Māori owned systems.
- 8.5. This means exploring health and safety from a Māori cultural perspective, that is founded in the rangatiratanga and mana of Māori workers and the whakapapa connections they have to one another, co-workers, hapū/iwi, and community.
- 8.6. We also need WorkSafe to continue to improve and develop their capability of capturing data around Māori injury rates, training, prevention, to support models of continuous development.

9. Guidance

- 9.1. The Robens Model establishes that core principles be set out in legislation, supported by more detailed regulation, ACOPs and guidance.
- 9.2. We strongly recommend that the development, and use of ACOPs be enhanced. ACOPs are intended to provide certainty and clarity for workers and PCBUs on guidance about how to fulfil their health and safety duties.

- 9.3. Development of ACOPs has stalled significantly, for example the updates to the Forestry ACOP recommended in 2014 (and later by the Coroner in 2021) are yet to be finished.
- 9.4. CTU affiliates advise that in practice an ACOP is a significantly stronger tool than other forms of guidance. They are useful for workers on the job as a first point of reference for proper safe practices. Given the formal status of an ACOP, and the language in it, workers and HSRs are placed in a much better position to insist on their rights, and to ensure the safety of themselves and others. This also assists with overcoming power imbalances inherent in these situations in workplaces.
- 9.5. Regarding guidance material more broadly, we would like to see more capacity for the development of guidance materials for both workers and business. Workers rely on good quality guidance to help them engage in their workplace health and safety and understand their rights when doing so.
- 9.6. We also suggest investment in better frameworks for navigating and searching for guidance material to assist workers and businesses
- 9.7. We reiterate our concerns that WorkSafe's internal expertise is also at risk under the public service cuts programme which risks further entrenching a system gap of health and safety guidance.
- 9.8. For all new and reassessed guidance material, we recommend that all material explicitly promotes the importance and value of representation, engagement, and participation, and emphasises that better consultation and participation will reduce exposures to risk in workplaces. This is particularly so in complex working environments.
- 9.9. Finally, if WorkSafe is going to rely more broadly on endorsing industry group or international guidance, we note again the importance of tripartism and ensuring that any WorkSafe endorsement must be accompanied by strong reassurance of worker and union involvement in its development and sign-off.

10. Occupational harm

- 10.1. Occupational disease continues to dominate New Zealand's fatality statistics. An estimated 750–900 workers die annually as a result of the impact that work has on their health. Decisive action in the occupational health arena remains absent.
- 10.2. Our capacity for thorough monitoring and surveillance of occupational diseases is currently limited. As a result, we still struggle to fully quantify the impact of work on worker health, identify diseases at an early stage, and take decisive action. There remains a strong need to strengthen a collaborative, cross-government and cross-disciplinary

work programme to improve occupational health and injury data collection, monitoring, research and action.

- 10.3. The ongoing failure to decisively act on the issues of engineered stone, and accelerated silicosis represents the system failure to prevent, control and manage occupational disease effectively in New Zealand.
- 10.4. Furthermore, occupational health capacity is set to be further diminished in ongoing WorkSafe restructures and cuts, further weakening system capacity to deal with the impact of work on worker health. The Independent Taskforce noted that lack of regulator led government leadership and coordination had stalled any progress in occupational health improvements over 10 years ago. We are concerned that the pulling out this capacity from WorkSafe is going to set occupation health back once again. We need more support for occupational health not less.
- 10.5. We would also like to see improved availability and accessibility of occupational health advisers and professionals for businesses and workforces. Workers also need to be better supported through improved co-ordination of their medical history through their working life, enabling them to better catch and respond to occupational health issues.

11. Ratification of ILO conventions

- 11.1. New Zealand also has relevant international commitments to preserving and enhancing fundamental rights at work, and for creating and maintaining a comprehensive framework for workplace health and safety.
- 11.2. At the 110th session of the International Labour Conference in June 2022, the International Labour Organization (ILO) adopted Convention 187 (Promotional Framework for Occupational Safety and Health Convention) as a fundamental convention, seeking to elevate safe and healthy working environments. The purpose of C187 is to prevent occupational injuries, diseases, and deaths by ensuring that ILO Members ‘establish and implement national policies, systems and programmes, in consultation with workers’ and employers’ organisations, to promote a safe and healthy working environment and advance the right of workers to such an environment’.
- 11.3. C187 represents a commitment to continuous improvement in the prevention of occupational injuries, diseases and death.
- 11.4. New Zealand has not yet ratified C187 and needs to do so to reflect the importance of promoting and enacting workplace health and safety and to ensure that successive governments can be held accountable internationally against this standard. Ratification is

in line with international best practice and would demonstrate commitment to the implementation of key ILO standards.

12. The impact of insecure and vulnerable work on health and safety

- 12.1. There is currently a sustained drive in the Government's policy platform to move workers into more vulnerable forms of employment. This comes with significant health and safety risks and needs to be highlighted as they embark on a "first principles review" of workplace health and safety.
- 12.2. The push towards insecure work and the removal of workers' rights to challenge or engage in their workplace, leaves workers without a voice, and is contrary to internationally established good health and safety practice.
- 12.3. Concerningly, a major initiative of the government has been to introduce 'contractor law reform' that is aimed at deeming some of the most vulnerable employees in the country to be 'independent contractors', without any regard for the 'real nature' of their work. This initiative will serve to shield businesses that are in reality employers from liability and responsibility for meeting basic health and safety standards and passing these burdens onto the workers under their control.
- 12.4. Historically the race to the bottom mentality of employment standards has had marked detrimental impact on health and safety. As Johnstone and Tooma (2012) note:

"Increased restructuring and the growth of outsourcing, resulting in increasingly precarious and contingent work, has significant implications for work health and safety. The very same competitive pressures that induce firms to engage contingent or precarious work arrangements also encourage underbidding on contracts, poorer quality or inadequately maintained equipment, inadequate levels of staffing, longer work hours and other forms of corner-cutting on work health and safety. Where these work arrangements introduce third parties or create multi-employer worksites they lead to fractured, complex and disorganised work processes, weaker chains of responsibility and 'buck passing', and inadequate knowledge specific to the job and associated work health and safety as workers move from job to job. As organisations outsource tasks, they diminish in size and increasingly become small or medium sized firms – with all the difficulties that small firms have in complying with work health and safety requirements.

There is now extensive research showing the detrimental impact that contingent and precarious work has on the work health and safety and wellbeing of workers engaged

in those arrangements (as measured by injury rates, disease and hazardous substance exposures, mental health, and work health and safety knowledge and compliance). A recent review of over 100 studies of job insecurity and downsizing concluded that more than 80 per cent of the studies found work health and safety had been adversely affected. Even greater adverse results were found in a review of 26 studies of outsourcing, subcontracting and home-based work while the results for a review of 22 studies of temporary work were less pronounced but still consistent. A recent international review of research on work health and safety in supply chains found that the vast majority of these studies identified negative work health and safety effects associated with the use of supply chains. Reviews of research into small business also suggest worse work health and safety outcomes...”

- 12.5. In its report, the Taskforce noted that “employees new to positions or engaged in temporary, casual or seasonal work may be particularly at risk”. The Taskforce reported that casual workers, those on 90-day trials, short-term contractors, and seasonal workers were all identified as less likely to report injuries or voice concerns for fear of not being re-employed in the future.
- 12.6. A National Occupational Health and Safety Advisory Committee report to New Zealand’s then-Minister of Labour (Bohle et al., 2009) stressed that employees in casual and insecure work were at greater risk of workplace injury than those who are employed in full-time fixed positions.
- 12.7. International and New Zealand evidence confirms that insecure and low wage workers are especially at risk of injury and occupational disease. A European Parliament study found that temporary workers face more difficult working conditions than permanent workers and are at higher risk of developing musculoskeletal disorders.
- 12.8. A 2007 Deakin University study noted the international and Australian research that confirmed temporary workers have a higher incidence of workplace injury and those injuries are more severe. It found for such workers in Victoria, Australia, that labour hire workers were more likely to be injured early in their placement than direct employees, despite similar qualifications.

It is important that this review note that decisions to push worker into forms of insecure work, and remove their voice in the workplace, will have a significant negative impact on New Zealand’s health and safety system.