# A joint submission from 61 companies on the work health and safety regulatory system

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| Vector | MinterEllisonRuddWatts | Manulife Forest Management (NZ) | Z Energy | Orion Group | Meridian Energy | Downer NZ |
| Heritage Lifecare | Industry Med | Horizon Energy Group | Steel & Tube | Clarus | Transpower | Timberlands |
| Mitre 10 NZ | Freightways | EnviroNZ / EnviroWaste | Auckland Airport | Foodstuffs North Island | Citycare Water | Habit Health |
| Powerco | Onefortyone | McConnell Dowell | MinEx Health & Safety in NZ Extractives | HEB Construction | Aurecon NZ | Babcock NZ Ltd |
| Port of Tauranga | Pipeline & Civil | Landpower Management Services | Mercury | Northpower | Methanex | Beca |
| Bay Venues | Tonkin & Taylor | Veolia Water | Triplex Consulting Limited | Business Leaders' Health and Safety Forum | Claymark Group Limited Partnership | Ventia NZ Operations Ltd |
| Fonterra Co-operative Group | Genesis Energy | Woolworths NZ | Electricity Engineers' Association (EEA) | Connetics | Transporting New Zealand | Total Care Health |
| Tegel Foods | KiwiRail | T & G Global | Cosman Parkes | NZ Post | Genera Group | EA Networks |
| Air New Zealand | Port of Auckland | Auckland University of Technology | Silver Fern Farms | Pact Group | | |

**Business Leaders' Health & Safety Forum**

# Introduction

## Who we are

1. We are a group of 61 diverse organisations who are predominately members of the Business Leaders' Health and Safety Forum (the Forum).

2. We are all driven by a shared motivation to see an uplift in New Zealand's performance in workplace health and safety.

3. We collectively and individually believe that good health and safety performance is not only good for our people and their families, but it is simply part of good business.

4. Our organisations come from across the New Zealand economy:
   - energy
   - construction and infrastructure
   - ports
   - manufacturing
   - forestry
   - retail
   - health care
   - mining
   - agriculture
   - transport & logistics
   - forestry
   - FMCG
   - defence
   - aerospace

5. Our collective impact and influence on the New Zealand economy and workforce is material:
   - We employ **nearly 200,000 people**
   - We engage **close to 45,000 contractors**
   - We influence **more than 79,000 businesses** through our supply chains
   - We oversee the management and operation of **over $125b in assets**.

## Why we are submitting with one voice

6. Good and effective health and safety performance drives improved productivity, reduces harm to our people, eases the burden on our already stretched health system, and drives a culture of innovation and improvements.

7. As a country, however, New Zealand is failing to realise these net gains for our businesses, workers, communities, or our economy. This failure is despite sustained and significant investment from business and government alike since the Pike River Mining disaster in 2010.

8. By working collaboratively, we as a group aim to offer concrete solutions to the national regulatory settings that we believe will contribute to New Zealand becoming safer, healthier and more productive. This will help close the unacceptable gaps between us, Australia and the United Kingdom (UK).

9. The Forum's State of a Thriving Nation 2024 report paints a clear and confronting case for why change is needed. Our sustained and ongoing national performance is poor, with the financial burden of work-related harm costing us over $4.9 billion in 2023, up from $4.4 billion in 2022. We note the increasing gap in our performance between our colleagues in Australia and the UK. New Zealand now has a 60% higher fatality rate than Australia and many times worse than the UK.

10. We would note that the Forum's report also found that in a survey of 1,000 New Zealanders just under 50% of people have been impacted by workplace harm. This staggering result plainly demonstrates that New Zealand's health and safety performance is not just a workplace problem, it is a national problem, and therefore demands a national response.

## We want to play our role

11. We want to continue playing a constructive, collaborative, and solution-focused role to finally turning the dial on improving New Zealand's health, safety, and productivity.

# Our approach to forming our views

12. We have come together to create this joint submission through the following process:

    - Forum members initiated discussions with the Forum and this led to an invitation to them to sign up to this joint submission – resulting in 61 members stepping up.
    - A working group was established, with 12 representatives from the 61 organisations, to shape and critique our approach.
    - A data survey was circulated across all organisations to identify the critical issues and solutions we wished to address.
    - All participating organisations attended drop-in workshops to synthesise and make sense of the key themes established from our survey.
    - All participating organisations reviewed and endorsed working drafts of this submission.
    - Our working group confirmed the final substantive issues and recommendations for wider approval.
    - All participating organisations in this joint submission approved the final version.

13. As a group of organisations, we are committed to outlining the key drivers for change in the health and safety system and improving outcomes for New Zealand workers. We are prepared to actively engage with policy-makers and stakeholders to ensure these changes are implemented.

# Clear agreement about core barriers to improvement

14. Despite the diverse range of organisations creating this submission, we believe there is a small and clear number of barriers in our health and safety at work legislative and regulatory settings holding back New Zealand's national performance. Specifically, there:

- are regulatory gaps and outdated regulations
- is a lack of up-to-date and accessible guidance
- is confusion about overlapping duties for persons conducting a business or undertaking (PCBUs)
- is inconsistency and overly reactive regulatory implementation
- is a lack of leadership and system stewardship across the government agencies that support the health and safety at work framework
- is deficiency in our national data and insights
- are weak incentives for positive safety performance.

## Regulatory gaps and outdated regulations

15. While the Health and Safety at Work Act (HSWA) 2015 is effective, supporting regulations are outdated or incomplete. Key regulations around Plant and Structures, Hazardous Work, and Hazardous Substances remain stalled.

16. Finalising these regulations is crucial. However, equally important is the implementation of robust processes to monitor when new regulations are required as a result of emerging risks, and ensuring regulations are periodically reviewed and updated to remain effective.

## Lack of up-to-date and accessible guidance

17. There is insufficient guidance supporting the legislation, with many approved codes of practice (ACOP) being outdated, difficult to find, and hard to apply. This disproportionately affects small to medium-sized organisations that often lack the resources or expertise to interpret guidance and ACOPs, leading to compliance challenges, increased safety risks, and operational costs. It also places additional burdens on client organisations, which are left to ensure that smaller contractors meet their safety obligations.

18. A purposeful approach to co-designing and endorsing guidance with industry is needed. The *Good Practice Guidelines – Scaffolding in New Zealand*, as well as the WorkSafe NZ (WorkSafe) endorsed Institute of Directors' *Good Practice Guide for H&S Governance* are good examples of this approach. A formal and resourced process is also needed to regularly review and update the guidance and codes to ensure they remain relevant and accessible to all.

## Overlapping PCBU duties confusion

19. The requirements of managing overlapping duties as they exist today are leading to confusion, inefficient implementation, and unclear role definitions. This leads to unnecessary paperwork, complex codified agreements, and wasted resources without genuinely improving safety outcomes. Clearer guidance is required to create clarity about the expectations to achieve the outcomes intended within the overlapping duties requirements.

20. In the future, further regulation may be necessary to formalise these duties, as seen in the UK's Construction (Design and Management) regulations. Addressing the confusion surrounding overlapping duties is crucial to ensuring PCBUs engage meaningfully and innovatively to overcome complex risks across duty-holders who work together.

## Regulatory inconsistency and limited proactivity

21. There are inconsistent regulatory interpretations by regulators, and a reactive approach after harm has occurred, leading to a sense of an overly punitive approach. A more pre-emptive, industry-specific approach is needed, including regular communication and proactive workplace visits.

22. Building the inspectorate capability should focus on training inspectors with industry-specific expertise and equipping them to offer practical and proactive safety advice. Our organisations are seeking an inspectorate with the capability to engage at both strategic and tactical levels with PCBUs. We recommend this must become the norm to improve workplace safety and efficiency.

## Lack of system leadership and stewardship

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

24. 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. Most of the findings of the 2013 Independent Taskforce on Workplace Health and Safety following the Pike River tragedy remain relevant 10 years later. Also, the lack of stewardship of the health and safety system results in a rudderless direction, which the most critical problems that we have outlined in this submission are symptomatic of.

## Data and insights deficiency

25. A lack of available centralised data undermines the ability to create insights and manage risks proactively. A proposed national data hub could integrate insights across industries to provide better feedback and inform risk management practices. Current data systems are fragmented and insufficient for addressing systemic safety risks. Our organisations would like the ability to have access to a national data hub so that they can create insights and share these across sector groups and cross-cutting forums. We believe that this use of data could enable alignment on meaningful leading indicators for health and safety performance and maturity.

## Weak incentives for safety performance

26. The current system emphasises enforcement over incentives, with little reward for proactive safety management. Our organisations see a need for both financial (e.g. ACC levy discounts etc) and non-financial (e.g. supply chain and procurement recognition of good safety capability) incentives to encourage better safety performance.

27. Even considering the current and previous ACC incentives, there is no coherent or meaningful approach that we see of establishing what positive health and safety performance looks like. Nor are there corresponding approaches to incentivise more effective performance. At the same time, what incentives we do have are being changed and removed (e.g. ACC Accredited Employers Programme (AEP) changes and ACC Fleetsaver removal).

28. These issues collectively highlight the need for a more coherent, clear, and proactive health and safety approach that supports innovation, collaboration, and ongoing safety improvements across industries. Also, an approach that rewards and recognises good performers, while traditional regulatory enforcement addresses poor performance.

29. The UK offers reduced employer liability insurance premiums for businesses with excellent safety records. This aligns economic incentives with safety outcomes. Australia's workplace health and safety laws also encourage incentives through reduced premiums under certain schemes (e.g. workers' compensation) for companies with robust safety programmes. These types of incentives are driving positive outcomes in both the UK and Australia, but so far New Zealand has not seen the benefit of incentives within our framework.

30. The importance of a coherent and agreed approach to incentivising good performance is especially important in the New Zealand context, given the cost of injury is socialised via ACC along with the corresponding inability to sue for damages.

# Recommendations

31. In response to these challenges, we have a focused set of recommendations we believe would materially support businesses and industry to better manage the risks to harm from work:

    i. Improve clarity for duty-holders (via completing core regulations and improving guidance and ACOPs)

    ii. Clarify and simplify overlapping duty responsibilities

    iii. Enhance regulatory practices and inspectorate competency

    iv. Drive ongoing leadership, monitoring, and performance of system stewardship

    v. Establish a national data and insight hub for health and safety

    vi. Establish meaningful incentives for good health and safety performance in the system

## Improve clarity for duty-holders

32. We would like to see clarity improved for businesses by:
    - accelerating the implementation of key regulations
    - improving guidance and ACOPs.

**Accelerate the implementation of key regulations**

**> What**

33. Finalise and implement the outstanding Phase II regulations to modernise safety regulations in these areas:
    - Plant and Structures
    - Hazardous Substances
    - Hazardous Work.

34. Ensure ongoing oversight and maintenance of the suite of regulations with reference to international developments, emerging and new risks, and industry feedback.

35. The lack of a supporting suite of regulations that is harmonised within the legislative framework is driving a lack of understanding in the health and safety system where various perspectives exist on the current obligations. This often results in either over-compliance or under-compliance.

> How

36. Co-design in partnership with industry the required regulations (where they are not already in a state of advanced development). Leverage comparable regulation from Australia and the UK that we can 'shift and lift' efficiently.

> When

37. Short-term (6-12 months): Prioritise finalising the draft Plant and Structures regulations.
Medium-term (1-2 years): Develop and implement Hazardous Substances and Hazardous Work regulations, harmonising where the framework is currently contradicted (such as the Hazardous Substances and New Organisms (HSNO) Act 1996).
Long-term (2-5 years): Establish a recurring review process and an ongoing environmental scan of emerging risks, to keep regulations updated and determine new regulations as required for the risk environment.

**Improve guidance and codes**

> What

38. Develop and regularly update industry-specific guidance and ACOPs to support the legislative framework.

> Why

39. Our current suite of guidance and codes are either out of date, not fit for purpose, or do not exist. We reference the ACOPs for forestry and forklift training as examples of drafts that have either not been finalised over several years, or where technological developments and the evolution of equipment over three decades has rendered the code redundant.

> How

40. Co-design and endorse industry developed guidance. Leverage comparable standards from Australia and the UK that we can 'shift and lift' efficiently.

> When

41. Short/medium-term (6 months to 2 years): Engage with industry stakeholders and regulators to co-create new or updated guidance materials. Begin by reviewing and identifying outdated codes of practice and gaps in existing guidance.
Long-term (2-5 years): Establish a recurring review process and an ongoing environmental scan of emerging risks to keep the guidance and codes updated, and develop new guidance or codes as required for the risk environment.

# Clarify and simplify overlapping duties

> **What**

42. Provide clear guidance on the roles and responsibilities associated with overlapping duties to reduce confusion and improve collaboration among duty-holders.

> **Why**

43. Ambiguity in understanding roles and responsibilities in relation to overlapping duties has led to confusion, duplication of effort and resources, and (in some cases) inconsistent interpretation and application of duties between PCBUs.

> **How**

44. This clarity can be provided via regulations, such as the Construction (Design and Management) regulations in the UK or the chain of responsibility regulations in Australia. Equally, this could be achieved by WorkSafe endorsed guidance. We are not committed to either solution. However, a solution to the current ambiguity on this significant issue is critical, and it is likely that guidance could be established at speed, followed by regulations where necessary.

> **When**

45. Short-term (6-12 months): Develop and issue updated guidance on overlapping duties. Medium-term (1-2 years): Engage with stakeholders to co-design a systematic approach to applying overlapping duties, which may include regulation.

# Enhance regulatory practices and inspectorate competency

> **What**

46. Improve the competency and capability of inspectors through specialised training in industry-specific knowledge, and balance enforcement activities with proactive interventions.

> **Why**

47. We reference the State of a Thriving Nation 2024 report in noting the comparative lack of proactive regulatory activities carried out by New Zealand regulators vs their Australian compatriots. It is likely that the greater proactive focus of the Australian regulators is a critical part of their improved regulatory and harm outcomes.

> **How**

48. Develop inspectorate capability and capacity to a level of competency where there is the capability to engage at both a strategic and operational level.

49. <u>Short-term (6-12 months):</u> Conduct a needs assessment to identify gaps in inspector knowledge and capability. Determine an effective channel strategy and approach for a proactive engagement framework (with consideration for the resourcing limitations that our regulators are faced with).
   <u>Medium-term (1-2 years):</u> Implement training programmes and improve proactive engagement between inspectors and businesses, including the ability to engage at a corporate level.

# Drive ongoing leadership, monitoring, and performance of system stewardship

> What

50. We propose the creation of an Advisory Group to support the Minister to oversee, monitor, and help steer performance across the system through a focused and clear national plan for the health and safety of New Zealand workers. This group should comprise a small group of respected and credible leaders from business, experts, and workers to oversee the refreshed national action plan.

> Why

51. The achievement of system stewardship across the key players of the New Zealand health and safety system (and alignment with other legislative frameworks) would fundamentally accelerate the reduction of harm for New Zealand workers.

> How

52. This group would ensure that the national plan, derived from the <u>Health and Safety at Work Strategy 2018-2028</u>, sets clear short-, medium-, and long-term goals for New Zealand, including clear roles and responsibilities across agencies, clear indicators of progress, and transparent reporting.

> When

53. <u>Short-term to ongoing:</u> Develop a refreshed strategic implementation plan with clear roles and responsibilities across agencies to support the Health and Safety at Work Strategy 2018-2028. Use the Ministerial Advisory Group to monitor progress against agreed goals, carry out environmental scans of the emerging risk environments, and recommend international developments that should be adopted within our health and safety system.

# Establish a national data and insight hub for health and safety

**> What**

54. Create a centralised data hub to provide feedback loops, cross-industry insights, and give dataset access to business to support proactive risk management across all sectors. Utilise the skills and experience of our joint organisations in the creation of health and safety insights from data.

**> Why**

55. Data, evidence, and insights are lacking from our health and safety system. A significant number of our organisations have indicated that advanced analytics and access to self-serve data would enhance their ability to identify risks proactively and share these learnings across industry and cross-cutting groups (such as the Forum).

**> How**

56. Determine the appropriate agency location for ownership of the national data and insight hub. Resource and establish how this function will engage with organisations and health and safety sector groups to serve the purpose of insight creation.

**> When**

57. <u>Short-term (6-12 months):</u> Begin scoping and design work for the data and insights hub, involving key stakeholders who are currently experts in designing data infrastructure for use in the creation of insights.
<u>Medium-term (1-2 years):</u> Build and pilot the data hub, with an initial focus on occupational health data.

# Establish meaningful incentives for good health and safety performance in the system

**> What**

58. We want more coherent, consistent, and meaningful incentives for good health and safety performance (and sanctions for poor performance to ensure a level playing field). We are clear that incentives should only exist where meaningful indicators warrant an incentive.

**> Why**

59. There is a lack of coherence, credibility, and effectiveness in our current framework. Incentives are an area of our health and safety system that create confusion and a lack of clear signals.

60. There are numerous examples where clients and contractors alike are unclear about what capabilities, approaches, or harm performance rates should attract positive consideration during competitive tendering. Equally, there are minimal to no financial incentives through ACC levies in recognition of great performance.

61. <u>Short-term (6-12 months):</u> Review the current legislative framework and regulatory enforcement strategies in line with insurance levying and identify opportunities to create incentives for meaningful health and safety performance.
<u>Medium-term (1-2 years):</u> Introduce incentives that encourage investment in proactive safety measures and performance-based outcomes.

# Context and summary of analysis

## The legislative framework

62. The HSWA 2015 remains fit for purpose. Our participating organisations see no need for significant changes. We reference the Forum's Been There Done That report in noting that: "*The framework provides a flexible architecture for achieving and maintaining high standards of health and safety performance without choking industry and innovation.*" Our participating organisations value the Act's flexibility, allowing them to adopt new safety practices and technologies as they emerge. To support the Act, our survey identified two key areas where the legislative framework requires improvement. These areas are outlined below.

## Regulation

63. A suite of 10 regulations were progressed with the Health and Safety Reform Bill, which became the HSWA 2015. These regulations were ultimately passed in 2016 and 2017. A second phase of regulations was planned to progress, covering three major areas:
   1. Plant and Structures
   2. Working at Height
   3. Hazardous Substances and Hazardous Work.

64. The draft Plant and Structures regulations have been circulated since 2019 but remain unresolved, with no visible progress on the Hazardous Substances and Hazardous Work regulations. The 2017 Hazardous Substances regulations replaced the previous 12 Hazardous Substance regulations, multiple ACOPs, and other documents with a new single framework. This resulting framework contradicted itself, added complexity by removing approved ways of working, and does not align with the extant HSNO Act (especially around classifications), and a level of risk-based assessment for different scenarios. Our supporting regulations in the legislative framework are woefully unfit for purpose and act as a handbrake on the performance of the framework in totality.

65. In Australia, the model Work Health and Safety regulations cover plant safety comprehensively, ensuring that regulations remain relevant by incorporating regular updates in response to emerging risks. The UK's regulatory approach also follows this principle, with updates under the Health and Safety at Work Act 1974 providing continuous oversight and regulatory updates.

66. Most of our participating members strongly support the rapid finalisation and implementation of these proposed regulations, to ensure safer work environments across all sectors.

## Guidance and approved codes of practice

67. New Zealand health and safety legislation subscribes to the [Robens](#) model. This enables the flexibility that duty-holders can determine how to meet their obligations. It is now largely accepted in the Australian and UK legislative frameworks (which also subscribe to the Robens model) that the legislative framework requires the support of guidance materials and ACOPs that are regularly reviewed and updated for effectiveness in priority areas.

68. In New Zealand there is a lack of guidance supporting the regulations and Act. Where guidance or codes do exist, they are hard to find, and are sometimes oversimplified or not contextual to the industry or risk they intend to support. There is also a growing issue of guidance and codes that are well out of date and are no longer fit for purpose. Our participating organisations frequently referenced the challenges that small- to medium-sized organisations are facing in seeking clarity to understand their obligations. In the absence of guidance (and regulation), smaller contractors are not always confident, placing a larger burden on client organisations to obtain assurance of effective risk control.

69. The *Good Practice Guidelines – Scaffolding in New Zealand* and the WorkSafe endorsed Institute of Directors' *Health and Safety Governance* guides are an excellent example of industry and regulators co-creating practical and useful guidance. We encourage more strategic direction towards the co-creation of such guidance to support organisations of all sizes. Our participating organisations are prepared and ready to share resources to enable the co-design of effective guidance.

70. An example of the lack of progress in creating effective guidance is the Working at Height guidelines. Despite efforts from industry associations (such as the NZ Roofing Association), to push for these guidelines, they are outstanding and still reference the Health and Safety in Employment Act 1992. Although some parts were modified in 2019, the documentation hasn't been fully updated. As a result, certain aspects are outdated and do not reflect current roofing practices, leading to inconsistent and ambiguous safety procedures in construction workplaces.

71. Many of our organisations noted the validity of existing guidance developed in other jurisdictions, which would be fit for purpose in a New Zealand context, and these could be rapidly adopted and authorised for use.

72. The painfully slow progress in updating ACOPs is a major concern. Some codes are outdated by decades and fail to account for contemporary controls and new technologies. An example of this is the Forklift Training ACOP, which was published in 1992. We also note the painfully slow progress towards an updated Forestry Code of Practice, which was recommended by the independent forestry safety review in 2014 and the Coroner in 2021. A systemic review process is critical to ensure codes remain relevant and effective.

73. The UK's HSE (Health and Safety Executive) system exemplifies this practice. They have a continuous process of reviewing and updating ACOPs and guidance materials. This ensures that companies have clear, up-to-date information to comply with regulations. Australia also adopts a similar approach, where industry bodies co-design with regulators, resulting in standards such as the Safe Work Australia guidelines.

74. We urge the regulators to encourage the development of industry-created guidance materials. This is to mitigate emerging risks and endorse relevant international best practice guidelines, so as to uplift the guidance and codes landscape that supports our legislative framework. We are calling for a structured review process to be adopted to ensure that both the guidance and codes remain relevant and fit for purpose.
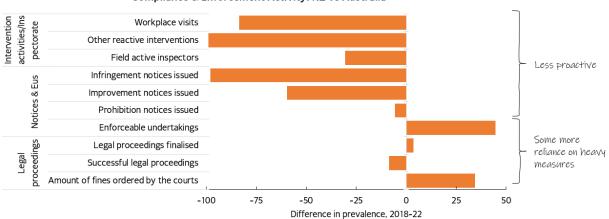
# Overlapping duties

75. A significant concern for our organisations is the challenge of understanding and applying overlapping duties. While the intent of this obligation is to prevent the inappropriate delegation of health and safety responsibilities and to encourage cooperation, its application is often unclear. This ambiguity has led to confusion, duplication of effort and resources, and (in some cases) inconsistent interpretation and application of duties between PCBUs. In extreme cases, legal departments draft agreements to codify and impose requirements on PCBUs, further complicating the situation.

76. We have seen examples where overlapping duties result in excessive paperwork being generated to meet obligations without genuinely improving safety outcomes. This adds unnecessary costs for businesses, with the 'evidence' often used only for punitive purposes when something goes wrong. Some of our organisations are also concerned about their legal standing if their approach to overlapping duties is viewed as overreach rather than cooperation, especially when roles and responsibilities are unclear.

77. While many examples highlight the confusion and inefficiency caused by overlapping duties, there are a few instances where collaboration has been successful in managing these responsibilities. A standout example is the Eastern Busway Alliance in Auckland, where collaborative work design and experimentation has delivered innovative, safe, and efficient

solutions to complex work challenges. This example demonstrates how overlapping duties can be applied effectively. Unfortunately, positive examples are not the norm, and they are not the result of a systematic approach that can be shared and applied more broadly across industries.

78. We request that immediate priority be given to improved guidance on roles and responsibilities when executing the obligations associated with overlapping duties. As a long-term recommendation it's possible that further regulation may be required in the future as we have seen the UK with the construction (design and management) regulations. In Australia, the chain of responsibility laws in their road safety regulations ensure that every party in the supply chain, from the manufacturer to the transporter, has clear duties and accountabilities. This avoids confusion over shared responsibilities.

79. We are agnostic as to the right solution, but resolving the current ambiguity on this significant issue is critical.

# Regulatory practices

80. Our participating organisations have expressed significant frustration with current regulatory practices, which fall into two main categories: issues with the competency and capability of the inspectorate, and a reactive, enforcement-focused approach.

81. Inconsistent interpretations by the inspectorate often leads to prescriptive requirements, even when no legislation or regulation supports them. Our organisations believe that having an inspectorate with industry-specific expertise and a proactive approach to understanding controls and mitigations would significantly improve regulatory practices to support the legislative framework. We reference the State of a Thriving Nation 2024 report in noting the comparative lack of proactive regulatory activities carried out by New Zealand regulators vs their Australian compatriots. We recommend a shift in New Zealand's regulatory activity towards greater proactive interventions.



*Source: 2024 State of a Thriving Nation report – Compliance and Enforcement Activity NZ vs Australia 2018-2022*

82. In reflecting on experiences with our current regulators, participating organisations highlighted one positive example of engagement and collaboration with regulators. The tripartite group involving Maritime NZ, port leadership, and unions has agreed on action plans, ACOPs, and industry insights. This example illustrates proactive engagement and effective collaboration between regulators and industry, practices we believe should be replicated throughout the broader health and safety system.

83. Australia's High Hazards Unit is referenced as an example of effective collaboration between industry and regulators. Their proactive approach ensures regulators provide strategic guidance rather than being solely reactive. The UK's HSE has similar inspector training, focusing on industry-specific risks, which allows them to engage constructively with businesses to improve compliance.

84. The recently released strategy and priority plans by WorkSafe is viewed as a missed opportunity to clearly define its role and strategy for engagement by our organisations. We recognise the resourcing challenges faced by central government and regulators, but emphasise that our organisations are prepared to support collaborative efforts in any way possible. As one participant in our workshops commented: *"The system doesn't work with weak regulation, weak enforcement, and weak guidance. There is a vast community of knowledgeable people prepared to step in and help. MBIE and WorkSafe have access to great resources."* Another organisation stated that: *"WorkSafe NZ must aspire to become a more strategic, trusted, and a visible entity for its stakeholders. Assessing the skills its staff need now and in the future is critical."*

85. In discussions about how regulators interact with businesses, one CEO shared the following sentiment: *"We only see regulators when there's trouble, and there's no ongoing feedback. What's missing is a regular forum where industry and regulators can exchange ideas in a constructive, safe environment."*

86. From the submissions we have received, it's evident that poor regulatory performance is contributing to greater harm to New Zealanders. We are committed to playing an active role in creating clarity and assisting with progressing strategic plans and playing our part in their execution. We support regulators in holding non-performers accountable. Collaboration is crucial for strengthening regulatory practices at both strategic and tactical levels, and our organisations are ready to contribute in any way we can.

# System stewardship and lack of alignment across government

87. Our organisations expressed frustration over the lack of alignment between key government agencies in the health and safety system. This misalignment stems from the lack of a clear implementation plan for the Health and Safety at Work Strategy 2018-2028, resulting in fragmented efforts and reduced effectiveness. As highlighted in the Been There Done That report, New Zealand lags behind Australia and the UK in implementing cohesive health and safety strategies.

| Strategic elements | New Zealand | Australia | United Kingdom |
|---|:---:|:---:|:---:|
| Vision | ✅ | ✅ | ✅ |
| Clarity and targets | ❓ | ✅ | ✅ |
| Collaboration | ✅ | ✅ | ✅ |
| Ownership and accountability | ❌ | ✅ | ✅ |
| Credibility | ❌ | ✅ | ✅ |

✅ = Strong   ❓ = Weak   ❌ = Absent

*Source: Been There Done That report – Comparatives strategy implementation – New Zealand, Australia, and the UK*

88. Businesses find themselves at the receiving end of ACC, MBIE, regulators, and other agencies' priorities, settings, and expectations. Currently, there is no alignment, connection, or integration across these different agencies. Businesses are therefore faced with added costs, unnecessary complexity, confusion, and at times frustration. As businesses, none of us could identify who has ultimate visibility or oversight.

89. Our health and safety system is hindered by insufficient central coordination, leadership, and alignment. The roles of MBIE, ACC, WorkSafe, and other regulators are not effectively integrated to drive better health and safety outcomes. Further to this, the broader legislative framework often falls into regulatory conflict for our organisations as they attempt to navigate their obligations.

90. The aviation sector in New Zealand faces challenges due to overlapping regulatory jurisdictions between the Civil Aviation Authority (CAA) and WorkSafe. The CAA operates under a global aviation safety framework, while WorkSafe enforces health and safety through the Robens-based system. This lack of integration leads to confusion, resulting in misapplication of the HSWA 2015 and unclear PCBU responsibilities. The maritime sector's transition to a single regulator has led to clearer regulatory expectations, streamlined compliance processes, and will improve safety outcomes. This model demonstrates the value of having a singular point of regulatory authority for industry-specific standards.

91. In the building sector there are significant public safety risks where work is being undertaken too close to overhead lines. A regulatory gap has emerged between the electrical codes of practice and the development of new housing. The New Zealand Electrical Code of Practice for Electrical Safe Distances (ECP34) mandates safe distances for construction near overhead electric lines, as required by the Electrical (Safety) Regulations 2010. However, awareness among builders is low, and enforcement is weak, posing serious public safety risks, including potential electrocution. It is also leading to new homes and buildings being erected dangerously close to overhead lines. The problem is worsening with increased building intensification across the country.

92. To address this, industry stakeholders have urged the Building and Construction Minister, the Hon Chris Penk, to include ECP34 in the Building Code, ensuring compliance through the building consent process. Minister Penk supports finding a solution and the energy sector has urged prioritisation at WorkSafe. However, WorkSafe does not have any oversight in the early design or consenting processes for new buildings, so enforcement during the construction phase of a build would still result in unsafe workplaces without any real system ownership of this important issue.

93. Over time, Forum members have realised that much of our time and resources is spent addressing symptoms of broader system stewardship issues, rather than resolving the underlying systemic problems. This was the driver behind the establishment of the 2023 Taskforce and the publication of the Been There Done That report. Within that report the new Taskforce identified that much of the 2013 Taskforce's recommendations following the Pike River tragedy were still relevant and had not been completed 10 years later. For these reasons we are recommending the establishment of an Advisory Group to support the Minister to oversee, monitor, and help steer performance across the system through a focused and clear national plan for New Zealand health and safety. This group should comprise a small group of respected and credible leaders from business, experts, and workers to oversee the refreshed national action plan. This group would ensure that the national plan, derived from the Health and Safety at Work Strategy 2018-2028, sets clear short-, medium-, and long-term goals for New Zealand, including clear roles and responsibilities across agencies, clear indicators of progress, and transparent reporting. The achievement of system stewardship across the key players of the New Zealand health and safety system (and alignment across other legislative frameworks) would fundamentally accelerate the reduction of harm for New Zealand workers. This recommendation remains the most pertinent and urgent in terms of reforming the New Zealand health and safety legislative framework.

## Data stewardship

94. A key finding from our survey data indicated full agreement in the lack of effectiveness regarding data, evidence, and insights to support feedback loops in the health and safety system. We propose establishing a national data and insights hub, including a focus on occupational health, for use by health and safety sector groups, organisations, and regulators. This resource would provide insights to prevent harm across multiple sectors. Although this would be a significant undertaking, a centralised data hub, with self-service functionality, would be transformative for New Zealand's health and safety landscape.

95. In the UK, the HSE operates a robust data collection and analytics platform, enabling real-time access to health and safety performance data across industries. This data-driven approach supports proactive risk management. In Australia, Safe Work Australia collects and disseminates workplace injury and safety data, helping to identify trends and inform policy.

96. Currently, the way data is collected, maintained, and shared is fragmented and lacks the integration necessary to identify systemic risks or harm. Capability in terms of how to build the appropriate data architecture so that it is possible to create insights after collection, maintenance of the data, and insight sharing expertise will be critical to achieving this goal. The application of advanced analytics is underway in many of our organisations and could be used to create insights for the broader health and safety system. We believe that in updating the national plan (referenced above), consideration should be given to establishing this data hub, to be used collaboratively by all stakeholders.

## Balance incentives and enforcement across the health and safety system

97. Another critical issue that our survey data unanimously supported is the lack of balance between incentives and enforcement in the health and safety system, which is needed for driving positive outcomes. Our organisations often highlighted WorkSafe's enforcement-heavy approach, with less emphasis on systemic incentives. As one CEO lamented: *"Enforceable undertakings often require investment in industry guidance after harm has occurred. We would prefer to invest in guidance upfront and see the promotion of positive performance in the system."*

98. Our organisations identified that the framework for incentives is weak and does not necessarily reward positive health and safety performance. We are clear that incentives should only exist where meaningful indicators warrant an incentive. Our organisations have observed the proposed changes to the ACC incentives However, it is not clear that these will drive a meaningful improvement in proactive risk management and harm prevention and may prove to be ineffective.

99. There is a lack of coherence, credibility, and effectiveness across both competitive tendering exercises and our ACC levy signals. Incentives are an area of our health and safety system that create confusion and a lack of clear signals. We believe that incentives (both financial and non-financial) for meaningful health and safety performance should be prioritised for drafting within the refreshed national action plan to enable the balance between enforcement and incentives.

100. The UK offers reduced employer liability insurance premiums for businesses with excellent safety records. This aligns economic incentives with safety outcomes. Australia's WHS laws also encourage incentives through reduced premiums under certain schemes (e.g. workers' compensation) for companies with robust safety programmes. These examples demonstrate how other countries have implemented stronger frameworks, which could be adapted in New Zealand to enable incentives for meaningful safety performance within our system