

GM Safety Forum

WORK HEALTH AND SAFETY CONSULTATION SUBMISSION

ABOUT US

The GM Safety Forum (<https://www.hasanz.org.nz/information/gm-safety-forum>) is a volunteer member association, supported by HASANZ, consisting of the most senior health and safety professionals (tier 2 or 3) in NZ businesses who have the mandate and ability to mentor CEOs and/or Directors on safety, health and wellbeing.

Our purpose is to collectively drive the reduction in harm across New Zealand workplaces through the development of H&S leadership capability.

One of our strategic goals is to support NZ in best practice health and safety application: helping to set industry standards, providing collective input into the development of government and sector group policies. Examples of this work include:

- [Living with Covid Principles](#). 2022. Providing practical guidance to businesses in response to Covid19. Led by the GM Forum in collaboration with technical experts, Business Leaders H&S Forum, Ministry of Health, MBIE, WorkSafe, DPMC.
- [Health & Safety Governance: A good practice guide](#). 2024. Providing an update to the 2016 'blue book' on good health and safety governance. Led by the GM Safety Forum in collaboration with the Institute of Directors and WorkSafe.

The GM Safety Forum will continue to provide leadership and support relevant agencies where there is a need across New Zealand to improve workplace health and safety practices. We have shared our strategy [here](#) and are open to supporting other initiatives that may require our expertise as they arise.

CONSULTATION PROCESS

In response to MBIE's call for feedback on the Health and Safety at Work Act and approach in New Zealand, the GM Safety Forum:

1. Surveyed our members (150) for feedback
2. Conducted a workshop to explore the feedback and issues

This is a summary of the feedback collated through this process.

We have intentionally provided feedback in a story-telling fashion to be able to provide anecdotal evidence and specific examples to back up our recommendations.

FEEDBACK

THEME 1: FINISH WHAT HSWA STARTED

The launch of the Health & Safety at Work Act 2015 (HSWA) aligned us to best practice in Australia and gave us a wider concept of accountability associated with Persons Conducting a Business or Undertaking (PCBU). This was akin to "pulling the rug out from under us" and it made all Business Owners, Executive Managers, Professionals and Directors take notice. This was a good thing initially, but it was not fully executed as well as it could have been.

"I can remember when HSWA changed, and I was continually refreshing the WorkSafe page in anticipation of the new guidance and clarity that would come. It never came. The page looked the same; the guidance slowly trickled out and people lost interest. It was a lost opportunity."

Example 1 – PCBU & Safety in Design

The PCBU model resulted in meaningful dialogue and reshaped focus as organisations, businesses and leaders explored what it meant for them. For example:

- the Low Volume Vehicle Technical Association explored the PCBU concept as it applied to their evaluation and certification of modifications to vehicles.
- Architects and engineering consultancies explored the UK models for construction and looked at Safety in Design and how it might be applied in NZ more authentically – focused on end results, not on process.
- The Councils explored what their obligations were in signing off consents for buildings.
- Water authorities explored how they might be able to involve contractors early in designing their maintenance programmes to reduce risks to workers and improve efficiency.
- Product manufacturers considered what their obligations were to their customers, end users and those who would need to maintain their product or plant. A realisation was made that imported machinery meeting European directives, for example, did not guarantee a safe solution on site.

This was all good discussion. But it was led primarily by law firms, associations, professionals and institutions (e.g., IoD, IPENZ, Simpson & Grierson, Construction Clients Group (CCG), etc) rather than by the regulator during the period of most energy/interest from 2012 to 2016.

The fact that WorkSafe was not leading the way during the early start ran the risk of misinterpretation; at worst, it was certainly a missed opportunity to galvanise meaningful change and provide clarity to industries seeking it. For example, CCG released their [Position Statement on Health & Safety in Design](#) in 2016; WorkSafe did not release guidance on [Health & Safety by Design](#) until 2018.

The release of guidance and good regulation has been delayed; however, what has been done is not broken. Consideration should be given to the next phase to engage with businesses, their needs and approach to gain simplicity, visibility and alignment on best practice – in each sector.

Example 2 – Hazardous Substances

A refresh of the Hazardous Substances regulations has been discussed since HSWA was released; however, it can be argued that it still isn't complete. In 2021, NZ finally aligned with Globally Harmonised System of Classification and Labelling of Chemicals (GHS); however, the broader regulations have still not included a review against the Australia Model Regulations.

If we take the current Health and Safety at Work (Hazardous Substances) Regulations 2017 and consider an example: The dairy & wider agricultural sector in New Zealand heavily relies on the use of chemicals, including pesticides, herbicides, and fertilizers. The current ease of use of the hazardous substances regulations (particularly by small business farm owner operators) is debatable. The length (almost 600 pages) and the complexity mean that expert advice is almost always needed to interpret and apply the obligations. The regulations are also out of date (for example they refer to outdated Standards). WorkSafe has attempted to simplify with guidance but they are still at the mercy of the regulations if a business has an incident. We need to prioritise and need to align these regulations with the Global Harmonised System and Australian Model WHS regulations, removing the complexity between EPA (HSNO) and WorkSafe (HSWA).

We recommend finishing what the HSWA started by updating the suite of Phase II Regulations (plant and structures, hazardous substances and hazardous work) so that these regulations are passed and in force by 1 January 2028.

Alongside the passage of the Phase II regulations, the Government should work with industry sector stakeholders to scope out current critical and emerging health and safety risks and opportunities with a view towards developing a clear set of Phase III regulations and to provide sector-specific guidance and clarity on interpretation of the regulations.

THEME 2: ENABLE INDUSTRY SECTORS THROUGH FORMAL CHANNELS

Where WorkSafe has been targeted in their approach and aligned to industry through formal structures (e.g., regulation, inspectorate, etc), the industry has seen material improvements in health and safety.

The following are examples of this:

- Major Hazard Facilities. By 2019, all MHFs had safety cases approved and monitoring by the regulator was in place. Inspectorate were aligned to the relevant businesses to support and drive improvements.
- Construction Diving. WorkSafe works closely with DIAG and has designated WorkSafe inspectors to provide technical advice and support. This has provided both structure, clarity of requirements and technical advice for a high-risk activity and industry.
- Extractives. The quarrying and mining industry benefits from technical inspectors, reward and recognition of good practice, well established competencies and clear requirements from a regulatory perspective.

Beyond specific examples, WorkSafe has been operating in isolation from industry and businesses for the most part and this has been a barrier to progress. For example, the industry sector has established a variety of strategic safety bodies (CHASANZ, Safer Farms, ShopCare, FISC, etc). However, these are not structured the same, with the same mandate and with direct connection (e.g., secretariate, instruments, governance) to the regulator.

For example, chemical laboratories (e.g., NIWA, universities, etc) would appreciate the opportunity to create the same sort of industry/sector-led clarity and safe work instruments (e.g., Codes of Practice) that can interpret the various regulations (e.g., HSNO, HSWA) and establish clear requirements for the sector and provide the same level of dedicated, technical experts within the regulatory authorities to provide advice.

We suggest that WorkSafe/MBIE should look to building on international best practice to establish formal structures to engage more formally with different industry sectors and support us to lead improvements. For example, we could learn from the [UK HSE Industry-led approach](#) and we could learn from [Ontario](#) where they have specific regulations to align the Construction industry around health and safety practices.

We suggest that the regulator is the appropriate body to establish the authority and strategic intention of specific sector groups and provide secretariate support to ensure their success.

The following are emerging examples in New Zealand that could be used as the catalyst for change and drive sustainable health and safety improvements:

Maritime Ports – Example 1

“In the Ports we used a multiple agency approach, involving the Maritime NZ, Unions, Port and Stevedoring companies; this has delivered a significant uplift in safety standards. It’s the clearest set of expectations we have ever had; and it’s by-us, for-us.”

On the back of a number of tragic fatalities at Ports between 2016-2022, a tripartite group was brought together to analyse and address the causes of serious harm in the sector. Led by Maritime NZ, and involving senior representatives from the relevant Trade Unions, the Ports Industry Association (PIA), and Ports and Stevedoring companies, the Port Health & Safety Leadership Group (PHSLG) has demonstrated that an integrated and collaborative approach between the overlapping authorities that manage the overall safety system can deliver significant progress in a short period of time.

“Previously we had WorkSafe regulating safety for landside work, and Maritime NZ regulating seaside work. It made no sense, particularly as the most dangerous work is where cargo moves between these two jurisdictions. It often led to confusion and things literally fell between the gaps”.

Since July 2024, Maritime NZ are the sole safety regulator for the Ports industry sector, eliminating this complexity. The work of the PHSLG has also prioritised developing and issuing guidance for managing fatigue, and for the first time, has developed an [Approved Code of Practice](#) which drives consistency across the sector about what good safety practice for loading and unloading cargo at Ports looks like.

“It is difficult to hold each other to account to standards which aren’t always well defined, or that often aren’t applicable for the specific Port environment”.

Underlying this approach is a shared commitment from all parties involved to tackle and resolve long-standing issues which have held the sector back for many years. Whilst there is more to do, this is an example of where authorities with shared accountability are working together effectively and delivering results, which could be replicated across other industry sectors.

Example 2: Manufacturing Sector strategic review

In 2024, the manufacturing sector has completed a strategic review of the current state of occupational health, injury and safety across the industry. As part of this, EMA has prepared an independent study and strategic proposal to tackle rising costs and injuries in the sector with a specific industry focus on SMEs, sub-sectors and targeted initiatives based on industry-specific risks and trends.

[Project Whakahaumarū](#) is due to be released in November 2024 and poses a potential opportunity for the government to set Manufacturing up as the first government-endorsed, sector-led intervention with strategic intent and authority/endorsement from the regulator.

THEME 3: OVERLAPPING AUTHORITIES

Businesses regularly have to navigate the overlapping authorities and jurisdictions in relation to occupational health and safety. This is often confusing, slows momentum and is an inefficient use of a small resource-poor country like New Zealand. It also runs the risk of unhelpful political posturing and poor accountability.

There are known current overlapping duties across multiple risks (e.g., roads, police, maritime, air, transport, MPI, etc). There are emerging overlapping duties for relatively unexplored risks such as psychosocial where we are seeing overlap between ACC, WorkSafe, Human Rights Commission and Employment Relations Authority. For example, if a person feels unjustly treated in a workplace, they have a multiple of avenues and regulatory interventions which may be deployed which creates confusion, overlap and unnecessary emotional trauma to both the complainant and the people attempting to support solutions as well as an unnecessary burden on the system and businesses.

We recommend that MBIE consider stakeholder mapping and establishment of necessary instruments (e.g., MOU or HSWA) to relevant industries and critical risks to ensure that the necessary regulators are involved and efficiently working together for the best outcomes for workers and New Zealand.

The necessary authorities need to maintain control over the standards and work together for efficiency and clarity. We suggest this is an opportunity to engage with the GM Forum and that we work together.

Example 1- Traffic Management

The 'great road cone debate' which has been circulating in NZ and Auckland in 2024 is a great example of creating poorer outcomes for workers, businesses and New Zealand as a whole.

At the heart of the issue is that Code of practice for temporary traffic management (CoPTTM) has driven:

- a tick-box compliance approach to traffic management which did not produce safer outcomes for workers. In some cases, businesses had to argue for safer solutions where they didn't exist formally in COPTTM (e.g., COPTTM permitted traffic to travel at 100 km/hr alongside workers on rural state highways and 3 workers died in 2019);
- excess cones at times and locations where they didn't make sense but were required under COPTTM and, as such, drivers are rightly frustrated and do not adhere to traffic management and cones when they are there to protect workers.

We now have a situation where the road cone issue and the behaviour of drivers are intertwined. Our road workers are regularly physically and psychologically attacked (gun threats, verbal threats, reckless driving), partly as a result of this tension. As such, simply putting the onus on businesses to address it using a risk-based approach is, in our opinion, an attempt to shun partial responsibility by the various authorities and we will need help.

Other countries, such as Australia and Canada, have taken all all-agency approach to solutions. For example, increasing fines on contractors for leaving up traffic management unnecessarily and increasing fines on drivers who speed in construction zones.

Unfortunately, in NZ the transport agency repealed COPTTM in favour of a 'risk-based approach' – basically defaulting to businesses to make the roads safe and hoping that it addresses the 'great road cone debate'. As a result, the industry is doing its best and has come together as the [Temporary Traffic Management Steering Group](#) to pilot the new guidance and help navigate the transition.

The current evidence suggests, despite best efforts, that the move to the risk-based approach is far from smooth and that there is a real risk that standards will drop, and risks increase in the interim to both road users and those working on the road in the absence of action. There is even the potential for more road cones, not less if businesses take a risk-averse approach.

We suggest that the regulator has a role to play in ensuring that industry specific standards are agreed by industry and set in necessary instruments to ensure consistency and involvement of all necessary regulatory bodies or authorities.

Example 2 – Civil Aviation

In the aviation sector, confusion exists between WorkSafe and the Civil Aviation Authority (CAA), particularly regarding CAA Rule 100 (Safety Management Systems) and the Health and Safety at Work Act 2015. The supposed line of delineation is known as 'chocks-on vs chocks-off', meaning that when an aircraft pushes back to take off, the CAA has jurisdiction, and conversely as soon the aircraft has 'parked' and ground services have commenced, then the jurisdiction becomes that of WorkSafe. However, the reality and practically is not as simple, and very different.

As a practical example, aircraft refuelling often happens after an aircraft has parked (chocks-on), suggesting it would fall under WorkSafe jurisdiction. However, because the refuelling process involves both airside operations and flight safety protocols, CAA safety management rules still apply. It then becomes unclear which agency should enforce safety regulations—CAA or WorkSafe—especially if a safety incident occurs during refuelling (e.g., fuel spillage, fire risks, or personal injury). This overlap may lead to gaps in safety enforcement or delayed responses.

Miscommunication or confusion over which authority governs safe work practices creates confusion about which safety rules to follow, possibly leading to unsafe practices or regulatory gaps.

A more consistent regulatory approach is therefore needed in this sector. This would ensure safety standards and codes of practice are clear, consistent, and aligned with international best practices, tailored to New Zealand's specific needs. The maritime sector provides an example of how such alignment can improve safety outcomes, and we recommend a similar approach for aviation.

Example 3 – Psychosocial Regulation

There is a current overlap in psychosocial risk and its management. There are no clear lines between ACC, WorkSafe, Human Rights Commission and the Employment Relations Authority.

From our experience where GM Forum member businesses have Australian operations, further regulation in Australia relating to psychosocial risk has not been proven to materially improve outcomes, in our opinion. More regulation will not reduce the confusion, overlap and unnecessary emotional trauma to both the complainant and the people attempting to support.

A more aligned approach here is required across the overlapping stakeholders, not an additional burden of regulation, that has proven to drive up cost for no material benefit. This is an opportunity to learn from the Australian experience, engage with the GM Forum and other stakeholders to provide clarity and leadership.