

Making Sure Everyone Comes Home Safe from Work

Too many people in New Zealand are being harmed by their work - physically, mentally and emotionally. The experience of COVID-19 has shown that the way we can lead the world in keeping people safe is to have active participation and empowerment for everyone in a workplace. That way hazards are identified and controlled early and often, with a positive workplace culture.

Right now, there are problems with the law that covers everyone's right to have a say in their health and safety equally, problems with people accessing their rights in reality versus on paper, and problems with what to do if things go wrong. This includes the government regulator, WorkSafe, who need to be supported to do a better job of leading our regulatory and enforcement framework of health and safety and acting when working people are harmed.

Unions have a key role in this process – a unionised workplace is a safer workplace. And politicians can choose to take the actions below to make our workplaces safe and healthy – whoever you are, and whatever job you do.

Start Review of the Health and Safety at Work Act 2015 (HSWA) Within the First 100 Days of Taking Office

This year (2020) was earmarked as the year for a significant review of New Zealand's health and safety legislation, being 5 years since the HSWA was introduced. However, we are still waiting to find out when, and what the scope of any review will be.

To provide clarity to working New Zealanders, candidates and political parties need to commit to progress this work. Given the Government's excellent public health response to COVID-19, and the lessons learned from the all-of-government health and safety response, the appropriate time for this review is the straight after the Election.

The basic principles for a timely, robust and effective review are:

1. The terms of review must be agreed and the review opened within the first 100 days of the next Government's term, with a clear set of recommendations and Government response to those delivered before the end of the first year in office.
2. There must be direct inclusion of working people's experience with current laws and regulations in practice, with a public participatory and culturally appropriate consultation process.
3. It must be undertaken in partnership with key stakeholders, including unions, and consider their real-world experiences of health and safety at work.
4. The outcomes of the review must be fully implemented within the three-year term of the next Government

Scope and Terms of the Review

- Examine New Zealand's high rates of death and mental and physical injury at work and the drivers and underlying reasons for this and investigate how these interact with our current legislation and health and safety practice.
- Consider working people and their unions' ability to engage and participate in their health and safety, both legislatively and in practice, including the ability to prevent, amend and stop unsafe work.
- Assess working people and their unions' formal representation in law and practice in our health and safety systems, and the obligations on employers and business operators to engage in good faith with working people on their health and safety.
- Evaluate escalation pathways and resources when there is a problem, and real-world resolution rates and outcomes when people raise health and safety issues in New Zealand workplaces –whether formally recorded, or not.
- Gauge the ability of our health and safety laws, systems, and agencies to fulfil Treaty of Waitangi obligations to Māori people, particularly as employees.

- Measure the impact of our health and safety law, systems and agencies on Pasifika people, disabled people, youth, independent contractors, migrant working people and any other demographics of working people disadvantaged in health and safety outcomes in New Zealand.
- Judge WorkSafe's ability to operate as intended in law, including education, incentives, investigation and prosecutions and any barriers to this. Including how WorkSafe engages with working people and their representatives in unions, and ensures positive engagement is standard practice for employers in New Zealand.

Putting Unions at the Heart of Health and Safety

We already know that empowering working people to take an active role in health and safety is the best way to create healthy workplaces and workplace cultures. There are simple changes we can undertake right now to make work safer and give the people most affected a direct say in their wellbeing at work.

Health and Safety Representatives:

- Remove the ability for businesses with 20 or less employees to opt out of electing health and safety representatives, so any workplace that has a willing person to take on the responsibility can step up.
- Ensure sufficient penalties in law for businesses who undermine the democratic process of electing health and safety representatives and enhance WorkSafe's enforcement of workplace democracy.

Health and Safety Committees:

- Make health and safety committees a workplace requirement and make sure all health and safety committee members are appropriately trained.
- Make a union position on committees mandatory where there is a willing, unionised representative present.

Union Engagement on Health and Safety:

- Improve default worker participation where agreement cannot be reached, including specifically:
 - Develop work groups 'in agreement' with workers, not 'in consultation' with workers
 - A default ratio of at least one health and safety representative to every 20 workers where agreement cannot be reached
 - Health and safety representatives should not be limited to assisting those in their own workgroup, but should be able to represent all workers onsite, including contractors, and visitors.
- Provide information available to health and safety committees to unions present in the workplace as well.
- Create 'roving representatives' supported by unions, as there are in the United Kingdom.

Give the System More Teeth – Infringement Offences Overhaul

Currently the bar for prosecution by WorkSafe is very high, with WorkSafe adopting an 'educative approach' in the first instance that is appropriate for most businesses. But, where education has been provided and things have not improved, or there is a persistent culture at a worksite which risks the health and safety of working people, there needs to be a 'middle level' option for enforcement – to stop more serious injuries occurring.

The regulator should be empowered to implement spot fines, rather than requiring prosecution through the courts, to help them uphold minimum standards and save prosecution for the worst offences, while effectively creating a mid-tier enforcement tool with teeth.

- It would focus on breaches not requiring significant prosecution resource such as failing to engage with working people and their union.
- It would adopt a scheme like Australia, where fines run between \$144 - \$720 for individuals, and \$720 - \$3600 for a business
- Repeat offenders would be listed and further investigated.

Emphasise the Importance of Psychosocial Harm in the Act

The term psychosocial encapsulates mental health and wellbeing at work including, among other issues, stress, anxiety, depression and fatigue. While these are very common forms of workplace injury, they are inadequately addressed in our health and safety legislation. In recent times there has been a push to bring attention to worker mental health, but our health and safety system lags behind.

In recognition of this shift, and learning from the impact of COVID-19 on mental health and safe work, our legislation needs to be updated to provide effective regulation of harm from psychosocial hazards. We need to change the law to treat psychosocial harms with equal weight to other workplace harms and injuries, while designing resolution pathways that respect the nature and impact of such harms on the people who are raising them. This must recognise that good work is a significant component of people's wellbeing, and that what constitutes 'good' work is dependent on personal, social and cultural circumstances. Better recognition of psychosocial harm in law must align with other hazards in the Act to cover all kinds of work, including casual and voluntary.

Making WorkSafe Work

Proactive changes are required to WorkSafe's balance between enforcement and education. This needs to form part of the 100-day review of the HSWA.

Prosecutions and Sentencing:

- Address WorkSafe's conservative approach to undertaking prosecutions. Even with the existing legal framework, there is huge scope for WorkSafe to develop case law through increased prosecutions, particularly with improved funding to fully implement their role under the Act.
- Make the punishment fit the crime – so penalties are based on the magnitude of breaches and impact, rather than businesses getting lower fines or sentences because of the 'economic impact' it might have on the business. This is particularly the case where businesses 'phoenix' through an insolvency process to avoid paying damages and hold on to assets for personal gain.
- Greater penalties for repeat offenders

Funding:

- Increase the funding for WorkSafe so the inspectorate can carry out its role as intended in law, upholding minimum health and safety standards in New Zealand workplaces, including providing more inspectors.
- Earmark funding specifically for upskilling and support for the inspectorate to a level adequate for the complexity of the work they undertake – in some cases, like the prosecution requirements of the New Zealand police.
- Remove the ACC requirements on WorkSafe funding to be tied to return on investment, allowing for a greater flexibility of funding to meet WorkSafe's purpose under law.

WorkSafe also needs to operate independently of the Ministry of Business, Innovation and Employment, including having full independent funding and control for their call centre for working people and employers seeking advice and support.