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Health and Safety Policy
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Kia ora Health and Safety Policy

Health and safety regulatory system review

The Institute of Directors (IoD) welcomes the opportunity to provide feedback on the proposed amendments to the Health and Safety at Work Act 2015 (HASWA). The IoD strongly supports the goal of enhancing New Zealand's health and safety performance, and believes directors and boards play a critical role in achieving better health and safety outcomes. In this submission, we highlight the importance of maintaining legislative clarity while addressing the challenges, responsibilities and uncertainty faced by boards under the HASWA. Our submission draws on the experiences of our members and focuses on ensuring that legislative reforms and their implementation, including enforcement, support both effective governance, and practical health and safety management.

Directors' role in health and safety governance

Boards and directors are uniquely positioned to lead improvements in health and safety outcomes through their governance role. Good governance is essential to creating a culture of safety that permeates all levels of an organisation. While the operational aspects of health and safety are typically the responsibility of management, boards must ensure that robust systems, policies and practices are in place to manage risks effectively. Directors' duties, as outlined in section 44 (Duties of officers) of the HASWA, require them to exercise due diligence, which involves understanding the risks faced by their organisations and ensuring these risks are being properly managed.

About the Institute of Directors

The IoD has over 10,000 members, is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community.

We believe in the power of governance to create a strong, fair and sustainable future for New Zealand. Our role is to drive excellence and high standards in governance.

We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance. This includes a focus on directors and boards leading their organisation by actively defining their strategy and purpose, setting expectations of management about how that will be addressed, and considering reporting on implementation of those actions.

The governance responsibilities of directors include:

- **Setting the tone from the top:** Boards must prioritise health and safety as a key part of organisational strategy, ensuring it is integrated into the business's overall objectives and culture
- **Promoting a proactive safety culture:** Boards can influence organisational culture by encouraging transparency, ensuring workers feel empowered to report hazards, and fostering continuous improvement
- **Monitoring and reviewing health and safety performance:** Directors should regularly review health and safety reports, ensuring any incidents or near misses are thoroughly investigated and lessons are implemented to prevent future harm
- **Holding management to account:** Directors must ensure that management is effectively implementing health and safety systems and adhering to best practices

This governance oversight is essential not just for compliance but for driving a broader cultural change that values health and safety as integral to business and organisational success.

To support this, IoD has worked across the health and safety system, including with WorkSafe as the regulator, and the BLH&S Forum and the General Manager Safety Forum, to prepare and publish a new health and safety governance guide, "*Health and Safety Governance – a good practice guide*". (July 2024). This is part of us promoting good governance practices that supports improved health and safety outcomes, alongside events (in person and online) and governance training focused on health and safety.

However, this on its own is not enough to support improved health and safety outcomes. Changes in the system are needed, mostly to the way it is operated, supported by limited legislative change.

The importance of health and safety governance in New Zealand

The role of boards and directors in leading health and safety improvements is particularly crucial in New Zealand, where health and safety outcomes continue to lag behind other developed nations. Despite the introduction of the HASWA in 2015, New Zealand's health and safety record is still concerning:

- **Workplace fatalities:** On average, 71 workers die each year in New Zealand due to work-related accidents. This rate is approximately twice as high as Australia's, where workplace deaths have been around 35–50 per year over the past five years, despite having a larger workforce. In an ever-starker comparison, the United Kingdom (UK), with a population 13 times larger than New Zealand, reports fewer than 150 workplace fatalities per year, demonstrating how far New Zealand has to go to improve safety outcomes. The UK's success is attributed to a strong culture of safety governance, with boards held accountable for driving continuous improvement
- **Serious injuries and illnesses:** There has been an upward trend in the number of injuries resulting in more than a week away from work, with this figure rising almost every year over the past decade, apart from during the COVID-19 lockdown in 2020

- **Work-related illnesses:** In addition to physical injuries, New Zealand has alarmingly high rates of work-related ill health, with an estimated 5,000–6,000 hospitalisations annually. These illnesses impose significant burdens on both businesses and the public health system
- **Economic costs:** The total cost of New Zealand’s poor health and safety outcomes is estimated by Sense Partners in analysis undertaken for the Business Leaders Health and Safety Forum (BLH&S Forum) in 2024 at \$4.9 billion annually. This encompasses lost productivity, medical costs, and compensation claims, highlighting the economic as well as human toll of workplace incidents

These statistics underscore the urgent need for stronger governance leadership in health and safety, in conjunction with other changes to the system. Boards have a key role to play in addressing this systemic issue by not only ensuring compliance with legal obligations but also championing a shift towards proactive, preventive health and safety strategies. Directors and their boards working collectively should take a leadership role in promoting improved health and safety in New Zealand. By doing so they can help reduce workplace harm to improve employee well-being and drive better business outcomes.

Key proposals for change

Directors and boards in New Zealand can continue to improve their contribution to health and safety outcomes, and the IoD is doing its part to support this, along with partner organisations.

However, the existing health and safety regulatory system, including the legislation and its implementation need to support this aspiration. Presently it does not.

There are changes that could be made to the legislation, implementation and enforcement that would support directors and their boards to further enhance their contribution to improved health and safety performance and encourage good practice governance in achieving this goal.

Maintaining legislative continuity with targeted changes

IoD Position:

HASWA’s core structure provides a solid foundation for ensuring health and safety compliance. However, the IoD believes any legislative amendments should focus on improving the implementation and regulatory guidance, rather than introducing extensive changes that could undermine stability or create uncertainty. Stability and certainty are crucial for enabling boards to confidently meet their health and safety obligations.

Relevant Legislation:

Section 44 of the HASWA sets out the duties of "officers," including directors, requiring them to exercise due diligence to ensure the company or another type of organisation with a board complies with its health and safety duties. This section should remain central, with any amendments focused on clarifying existing responsibilities rather than fundamentally altering them.

Proposed Changes:

- **Retain the core structure of the HASWA**, focusing amendments on improving the application of the law and regulatory clarity
- Ensure changes support directors' roles in governance without creating unnecessary complexity in the understanding of their obligations under section 44 (see further commentary below)
- Give regulators a clearer mandate to develop supporting tools, such as regulations and better focused approved codes of practice, which provide "safe harbours" similar to the approach adopted in Australia. This should extend to audits undertaken by the health and safety regulator, or a regulator-approved provider

Clarifying the distinction between governance and management roles

IoD Position:

Under section 44 of the HASWA, directors must ensure their company complies with health and safety requirements through due diligence. However, the line between governance and operational responsibilities are blurred in the way the legislation is currently framed, creating uncertainty and confusion for boards/directors and, arguably, for regulators. Directors should remain focused on strategic oversight, while management should be responsible for the operational implementation of health and safety systems. Making a clearer distinction in the legislation between governance and executive management would enhance the effectiveness of health and safety governance, and the outcomes achieved in the health and safety system.

At the same time, an advisory board or group that is having a significant influence on the direction and control of a company or other organisation should be regarded as the equivalent of any other governance board. Health and safety issues are too important for those exercising influence not to be bound by the duties for directors and boards. For some, there is a belief currently that an advisory board or group is a way to avoid health and safety governance obligations.

Relevant Legislation:

Sections 36–37 of the HASWA place operational responsibility on the "Persons Conducting a Business or Undertaking" (PCBUs). This is the company or organisation as a whole typically overseen by management. The officer definition (section 18 of HASWA) takes a regulator-centric perspective (i.e. what is convenient for regulators rather than those being regulated) and conflates directors and their governance role with executive management and their operational role.

Proposed Changes:

- **Amend section 18 (Meaning of officer) of the HASWA** to clarify the distinction and roles between governance (director and board responsibility) and operational (executive management responsibility) roles in health and safety

- **Ensure directors are able to focus on their strategic role** without being burdened with operational duties, while still fulfilling their oversight responsibilities under section 44 (both individually and, with amendment, collectively) and within a defined and limited scope.

Improving regulator governance understanding

IoD Position:

The IoD emphasises the urgent need to improve governance understanding among not just WorkSafe, but also other regulators and policymakers involved in health and safety. Recent reviews show that WorkSafe, along with other regulatory bodies, lacks a deep understanding of how governance impacts workplace safety. This is evident in a focus on compliance and enforcement rather than on proactive governance and risk management. The IoD and the SageBush Baseline Review (2022) both stress that WorkSafe must shift to a system-wide, proactive focus, targeting the root causes of harm rather than solely reacting to breaches. The August 2024 Crown Law report by Barrister, James Carruthers, “*Review of WorkSafe’s Prosecution Function*” made the following observations:

- “57.1 There was a sense among panel prosecutors and defence counsel that, when it comes to who to investigate, SI (Specialist Investigations) tends to play it safe and stick to what is familiar (PCBUs), perhaps because of a lack of understanding of what is required if they branch out (Officers)”
- “79.1 WorkSafe is generally on the money in terms of what went wrong and how serious it was, but could diversify its charging portfolio to take more near miss cases and more cases against officers”

Relevant Legislation:

The HASWA mandates that officers (directors and senior leaders) take an active role in ensuring health and safety compliance (section 44). However, a lack of clarity among regulators and policymakers about the role of governance in driving safety outcomes has led to fragmented enforcement and inconsistent leadership. WorkSafe, under the WorkSafe New Zealand Act 2013, is responsible for improving the health and safety system but, as with some other regulators, has focused heavily on reactive enforcement, missing opportunities to influence governance practices that could prevent harm upstream.

Proposed Changes:

- **Enhance governance knowledge:** WorkSafe and other regulators need to better understand and promote the governance responsibilities of officers under the HASWA. Regular training and enforcement targeting officer accountability will drive stronger health and safety leadership across industries. Legislation and policy reflecting an understanding of the role of directors and boards in improving health and safety outcomes would also help

- **Improve policy advisory role:** Policy advisors (mostly MBIE) and those they advise must integrate good governance best practices into health and safety strategies, ensuring that governance is recognised as a critical component of workplace safety. Better alignment between policy frameworks and governance accountability will drive more effective and consistent health and safety outcomes across sectors
- **Focus on systemic risks:** Regulatory bodies, including WorkSafe, must shift from reactive interventions to a proactive focus on upstream risks. By engaging in supply chain oversight and addressing governance failures, regulators can prevent harm before it occurs
- **Increase regulatory transparency:** Regulators must commit to transparent, outcome-focused reporting on how their actions and policies influence governance (directors and boards) and, through governance, health and safety outcomes. This will build public trust and ensure accountability in regulatory practices

Introducing collective accountability for boards

IoD Position:

The current HASWA framework places significant emphasis on individual accountability for directors. While this is important, the IoD advocates for the introduction of collective board accountability in relation to health and safety governance. Boards should be able to work collaboratively to fulfil their health and safety obligations, with shared responsibility for ensuring compliance and overseeing performance. Collective board, as well as individual director, obligations under the HASWA, would promote boards using their collective skills, talents, experience and world views to focus on improved health and safety outcomes in their companies and other organisations through good practice governance. The current arrangements set up the potential for directors to think first about their individual situation, rather than having the incentive to work collectively as a board.

Relevant Legislation:

Section 44 of the HASWA requires individual directors to exercise due diligence but introducing a collective accountability model would encourage greater collaboration and engagement at the board level.

Proposed Changes:

- **Introduce collective board accountability for health and safety governance**, alongside existing individual due diligence responsibilities (with appropriately defined and limited scope) and those of the PCBU
- **Encourage boards to take a shared responsibility** for the organisation's health and safety performance, fostering stronger engagement and collaboration

Reducing emphasis on punitive penalties and shifting to encouraging proactive governance through codes, education and guidance

IoD Position:

Overall, the current health and safety regulatory system and its implementation does not work in a systemic way. The result is an undue focus on penalties (i.e. the top of the [Braithwaite triangle](#)) rather than equivalent emphasis on education and clear guidance. This is contributing to poor health and safety outcomes.

While punitive measures are necessary for serious breaches, the current penalties under the HASWA can create a culture of fear rather than proactive engagement in health and safety. This results in a focus on avoiding legal action and compliance, rather than following the spirit of the law to deliver improved health and safety outcomes. The lack of certainty about enforcement (in part because acceptable practice is not defined) and the understanding of governance among regulators compounds this problem. In addition, implementation of the legislation took a “legalistic” turn early on which also needs to be addressed.

It is notable that in recent months, another regulator, the Inland Revenue Department, has increased its focus on [tax governance](#) and has begun outlining its expectations of directors and boards in this area. There is currently no equivalent in the health and safety system, beyond the directors’ duties in the HASWA and the guide published by IoD and WorkSafe.

The focus, therefore, needs to shift from director punishment and fear to fostering a transparent and proactive health and safety culture, supported by clear guard rails about acceptable practice. Incentivising public reporting and continuous improvement against established standards and approved codes of practice would encourage boards to prioritise health and safety without the fear of harsh penalties.

Relevant Legislation:

Sections 47, 48 and 49 of the HASWA impose significant penalties, including fines and imprisonment, for breaches of health and safety duties. These penalties should remain for cases of gross negligence but should be balanced with incentives for transparency and proactive engagement.

Proposed Changes:

- **Retain punitive measures for gross negligence** but reduce their prominence in cases where proactive measures are being taken
- **Regulators to developed health and safety standards and approved codes of practice** against which directors and board practice can be measured and on which they can rely in relation to any legal action by the health and safety regulators
- **Encourage public reporting on company or other organisation health and safety governance**, linking transparency with incentives for continuous improvement and highlighting the ways in which boards are supporting improvements in health and safety outcomes

Government agencies working proactively and systemically

IoD Position:

The IoD, in alignment with the BLH&S Forum, emphasises the urgent need for proactive leadership to improve New Zealand's health and safety system. Both organisations recognise that the absence of a coordinated, system-wide approach has led to fragmentation, with agencies such as MBIE, ACC, and WorkSafe failing to collaborate effectively. This lack of cohesion has resulted in unclear roles, duplicated efforts, and inconsistent enforcement of safety standards, all of which hinder meaningful progress in reducing workplace harm.

The BLH&S Forum's 2024 report, "*Been there. Done that: A report into New Zealand's repeated health and safety failures.*" (June 2024) calls for stronger system leadership, advocating for an agency or body that can take responsibility for driving health and safety improvements. The IoD supports this call, stressing that without clear ownership and leadership across government agencies, New Zealand's health and safety performance will continue to lag behind international best practice.

Our observation is that we, along with the BLH&S Forum and the General Managers Safety Forum, with some support from WorkSafe, are doing our part to connect and make progress with health and safety governance as far as we are able. We are keen to be joined in a similarly connected and systemic approach by the policy departments, other regulators and government agencies responsible for health and safety.

In addition, government procurement practices in relation to health and safety may also be contributing to poor health and safety practice with a focus on liability rather than outcomes. A review of health and safety practices sought in contracts with the largest government purchasers of goods and services such as the New Zealand Transport Agency/ Waka Kotahi and Health New Zealand/Te Whatu Ora, would also support an outcomes-based approach to health and safety, while understanding the role that boards can play in supporting this.

Relevant Legislation:

New Zealand's workplace health and safety framework is governed by the HASWA, which places duties on PCBUs to ensure the safety of their workers. The HASWA is supported by key agencies – Worksafe, other health and safety regulators, MBIE, and ACC – each tasked with different aspects of the system, including policy development, enforcement, and injury compensation.

While the HASWA provides a solid legislative foundation, its effectiveness is limited by the failure of these agencies to operate as a cohesive system. The IoD and the BLH&S Forum argue that the current siloed approach diminishes the potential for the HASWA to drive consistent, nationwide improvements.

Proposed Changes:

- **Centralised leadership and proactive oversight:** A central leadership body should be established to oversee the health and safety system, with clear accountability for coordinating the efforts of MBIE, WorkSafe, other health and safety regulators and ACC. This body must proactively lead the implementation of the 2018-2028 Health and Safety Strategy (or a successor strategy), ensuring all agencies work towards shared goals with clear timelines and deliverables. This oversight should extend to the health and safety elements of government procurement, particularly by the biggest purchases of goods and services within government
- **Clear role definitions and active system leadership:** The roles of the key agencies under the HASWA must be clearly defined and their responsibilities streamlined to prevent overlaps. MBIE should focus on policy and legislative oversight, WorkSafe and other health and safety regulators on proactive enforcement and education, and ACC on injury compensation and rehabilitation. There will inevitably be overlaps in these responsibilities which need to be managed. Doing so would create a unified system where each agency contributes effectively to national health and safety objectives in a systemic and co-ordinated way
- **Transparent reporting and independent monitoring:** Regular, independent reporting on the health and safety system's performance is essential for driving improvements. The IoD and the Forum recommend the creation of an independent body to monitor and report on progress, ensuring transparency and accountability across all agencies. This would include publicly accessible audits and progress reports, aligned with the goals of the 2018-2028 Strategy (or an updated strategy if this is an outcome of the current review)

Greater transparency in settlements with health and safety regulators

IoD Position:

Some of our members with direct experience with WorkSafe prosecutions and others are concerned about the lack of precedent with the reliance on Court judgements. There are many settlements with WorkSafe and regulators that are not transparent and do not allow lessons to be learned or guidance to be obtained about acceptable health and safety practice. In many cases this arises because those being prosecuted have limited ability, resources or incentives to defend the charges WorkSafe and other regulators have brought.

This works against a “learning system” which supports ongoing improvements in health and safety practice by organisations and those governing them to the detriment of improved health and safety outcomes.

Relevant Legislation:

Part 4 of HASWA – Enforcement and other matters - provides for a suite of enforcement tools to be used by regulators related to health and safety performance and practices.

Proposed Changes:

- Make the lessons, insights and precedents from regulator settlements with PCBUs and Officers (senior management and directors/ boards) more transparent: This would increase learning by everyone involved in the health and safety system to improve practice rather than relying simply on Court judgements to set precedents when many of the lessons are “buried” in settlements
- Ensure these lessons, insights and precedents are known, understood and acted on throughout the health and safety regulatory system: It is vital that this knowledge from settlements and other regulatory actions are shared across regulators and policy makers in the health and safety regulatory system, and are applied consistently in education and enforcement action.

Conclusion

Taken overall, IoD recommends focused health and safety regulatory system changes to strengthen health and safety governance leading to improved performance and outcomes.

Key proposals to achieve this include:

- **Clarify Governance vs Operational Roles:** Amend the HASWA to distinguish board-level oversight from management’s operational duties, enhancing directors’ focus on strategic health and safety responsibilities
- **Centralised Leadership:** Establish a central oversight body to coordinate efforts among WorkSafe, MBIE, and ACC, reducing fragmentation and driving consistent safety improvements
- **Enhanced Guidance from Regulators:** Provide clear, practical tools and approved codes of practice to support boards in confidently applying best practices and meet their obligations under the HASWA
- **Balanced Enforcement:** Shift from a punitive focus to proactive guidance and education, making lessons from regulatory actions transparent and accessible

These targeted reforms will empower boards, promote a proactive safety culture, and help reduce New Zealand’s workplace harm.

We welcome the opportunity to engage further with you, the Minister and other stakeholders with the next phase of policy development and, once completed, the implementation of a new approach to health and safety, particularly as it relates to directors, boards and governance.

Ngā mihi



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