



A disgraceful tale of déjà vu: New Zealand's repeated health and safety failures

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Background

In August 2023, the Business Leaders' Health and Safety Forum (the "Forum") published its inaugural *State of a Thriving Nation* (Eaqub, 2023) report. While many of those working closely with the health and safety system in New Zealand may not have been surprised by the report's key findings – the \$4.4 billion annual cost of New Zealand's health and safety performance and how we're continuing to drag behind comparable nations such as Australia and the UK in terms of worker harm rates – it caused many to stop and consider exactly what is going wrong in Aotearoa.

Alarmed at our country's slow, costly and poor safety progress, Forum members, including our Board and Steering Group, started asking bigger questions. Why, in a country of known innovators are we lagging behind? What is it about Australia, and particularly the UK, that is working? What's going on in the wider health and safety system that's causing this drift?

In response, the Forum set up an independent Health and Safety Systems Taskforce in late 2023 with the following scope:

- to review the reasons for flatlining performance with a focus on the critical guardrails provided by regulations and regulatory posture
- to evaluate the legislative framework (ie, Health and Safety at Work Act 2015 (HSWA), regulations and guidance), regulatory implementation (ie, mailing WorkSafe NZ's performance), and strategic and system alignment (ie, national action plan, system targets and accountability, effective oversight, connection across other functions such as immigration, employment practices and infrastructure)
- to make recommendations to increase the effectiveness of the regulations, the enforcement thereof and the performance of the wider health and safety system.

We brought together seven senior business and industry leaders spanning a variety of industries and backgrounds, all with a keen interest and background in health and safety, led by Forum Director Toby Beaglehole.

Analysis

To inform our analysis and findings, the Taskforce conducted a range of interviews, surveys and thorough review of the health and safety regulatory landscape.

Interviews

Between both of us, the Taskforce Chair and the Forum CEO, we interviewed 30+ stakeholder representatives from government agencies, large and medium-sized corporates and various not-for-profit organisations and industry bodies. These interviews were specifically aimed at understanding the impact of regulation and policy on contractors and sub-contractors, and to explore how central policy decisions played out at the front line.

Surveys

The Forum ran two surveys throughout March 2024: the first for Forum members (CEOs and senior managers) and the second for industry stakeholders. Both surveys asked four questions relating to the performance of the health and safety system in New Zealand. Circa 130 responses were received for each survey.

Review of health and safety regulatory landscape

Taskforce member Stacey Shortall asked her team at law firm MinterEllisonRuddWatts to undertake a regulatory map, with opportunities for change of all health and safety legislation and regulations (including standards, notices, codes of practice and instruments).

We also analysed international and New Zealand health and safety reviews including the NSW Auditor-General's Report (2024) on the *Effectiveness of SafeWork NSW*.

Our report: Been there. ~~Done that.~~

It became clear early on that New Zealand has failed to learn. If we compare our observations as we set out below, to those of the findings from the 2013 Independent Taskforce's report (2013) on Workplace Health and Safety they are eerily similar.

How is it we are still here?

In our report ~~Been there. Done That.~~ A report into New Zealand's repeated health and safety failures (2024) we unpack these findings:

1. New Zealand has poorly implemented HSWA 2015 with insufficient follow-through to develop appropriate regulations, approved codes of practice (ACoPs) and guidance.
2. The primary regulator (now WorkSafe NZ) has been better resourced but has still failed to provide sufficient guidance for those wanting to do the right thing, and sanction for those who do not.
3. While the legislatively required 2018-2028 Strategy for Health and Safety at Work exists, an implementation plan and measurement of delivery and progress with key measures like fatalities remain absent.

Failure to learn

The 2013 Independent Taskforce on Workplace Health and Safety established that our high rates of harm were in a large part the result of never properly implementing the key components of the Robens Model (Lord Robens et al., 1972), which delivered sustained improvements in the UK and Australia. Those insights were accepted by the government of the day and directly informed their health and safety reforms, including the Health and Safety at Work Act 2015 (HSWA). Yet, most of the 2013 Taskforce's recommendations have been either not implemented or only partially implemented.

As a new, independent Taskforce set up 11 years on, we are left wondering why this has been left to languish by successive governments?

Strategy not implemented or effective

Under HSWA the Minister is required to publish a national strategy that outlines the Government's overall plans for the direction of improving the health and safety for workers in New Zealand. While the Strategy itself is complete, an implementation plan and monitoring of delivery and progress with key measures like fatalities remain absent.

This is unacceptable, and the lack of an action plan and clear accountability for implementation of the Strategy is glaring. Furthermore, there has been no accountability for the absence of that action plan, nor any group or mechanism established to drive the intended outcome.

We're now six years into the Strategy's delivery period, and yet no government or agency has taken responsibility for this lack of action.

Regulation poorly implemented and unresponsive

Data from the two surveys informing the Taskforce, and our 30 interviews with senior stakeholders were almost unanimous on two areas:

- close to 60% of survey respondents were unclear or extremely unclear on New Zealand's national plan of action and priorities for improving health and safety
- 90% of survey respondents wanted the Government to prioritise improvements to New Zealand's health and safety performance.

As well as this, respondents and interviewees also rated Government, closely followed by regulators as the highest participants, not being held to account for health and safety performance in this country.

Our findings also highlighted the languishing state of health and safety regulation. One blatant example is the Plant and Structures Regulations. These have been circulating since 2019 and are aimed at around 75% of workplace fatalities. The Plant and Structures Regulations have now been put on hold, and in mid-2024 we've seen the budget for those regulations moved towards the Minister of Workplace Relations and Safety's reform of Health and Safety legislation (Van Velden, 2024). This risks robbing Peter to pay Paul – when what is needed is action and accountability.

Our report outlines the dire situation we now find ourselves in as a country:

- some regulations have only been partially implemented, and lack codes of practice, guidance or safe work instruments to help interpret regulatory expectations
- regulatory change is too slow and doesn't keep pace with progress and actual practice
- there is an absence of demonstrable oversight of the framework of regulations and guidance to ensure gaps are filled, guidance is accurate and up-to-date, good safety behaviour is defined and poor safety behaviour is addressed.

While it's true that those who create the risk need to manage the risk. these system-wide problems impede businesses' ability to implement safe practices efficiently as the lag can be years long, with the result that some required regulations have not been implemented at all.

As one CEO told us while we were pulling the report together, "The regulatory context, the allocation of resources and the resulting focus provides a signal to business around what matters and what good looks like. In the absence of regulatory clarity in New Zealand currently, that signal is missing."

Within the regulatory mapping of health and safety done on behalf of the Taskforce we can already see significant opportunity for change.

Ownership

Our report is clear on ownership, or lack of it. As we highlight on page 22 of the report:

The absence of national-level ownership by Ministers and the relevant government agencies for ongoing health and safety improvements is a fundamental flaw in New Zealand's approach.

The Taskforce sees this lack of ownership as multi-faceted:

1. There's inadequate central coordination. The Ministry of Business, Innovation and Employment (MBIE), Accident Compensation Commission (ACC) and WorkSafe NZ's roles are not integrated in support of delivering improved health and safety outcomes. Those we interviewed told us they saw a lack of leadership and ownership of the system, and a tendency for agencies to point to overlapping responsibilities as a justification for adopting a passive posture.
2. Levers and opportunities have not been exercised. System levers such as regulations, guidance, inspection, investigation and enforcement have not been well managed. Our interviews and work showed us that enforcement in New Zealand is sporadic and offers little by way of cautionary lessons, helpful examples of instructive case law.

Recommendations

The Taskforce believes that strong leadership and oversight, with an orchestrating regulatory role, will unlock the potential of business to establish clear, safe and workable codes of practice and guidelines, as we have seen in other countries.

We owe it to our workers, whanau, communities and businesses to do better.

That's why in our report we are calling on Government to implement **five key recommendations** which we believe could be in place within six months and don't require significant costs.

1. Rewrite the 2018-2028 Health and Safety Strategy and relaunch it to include a three-year action plan which is time-bound, measured and explicit and includes health and safety improvement targets supported and informed by relevant data.
2. Determine the most appropriate mix of regulations, codes and guidance to eliminate duplication and specify businesses' accountabilities and expectations.
3. Apply the rules to address poor performance and share leading performance. This requires WorkSafe NZ to play a more active role in consistently applying regulatory

standards and delivering clear and consistent messaging, guidance and enforcement where necessary.

4. Establish an independent governance group to set targets, create collaboration and hold the key system players to account for improvement.
5. Establish and maintain a coherent, credible and current body of government and industry data and insights to inform both WorkSafe NZ and business health and safety efforts. This does not necessarily mean additional investment cost; it means a coordinated response by government and industry and a methodical and considered approach to problem resolution.

As we set out in the Foreword of our report:

When we do act, we can thrive. The Forum believes the path is clear, and that strategy, regulatory guidance, ownership and action will deliver a better result for New Zealand.

Let's do better, New Zealand.

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