



A trade union perspective on the New Zealand health and safety system

Cory Bourne NZCTU Policy Team Lead & H&S Specialist

coryb@nzctu.org.nz

DOI: 10.26686/nzjhsp.v1i2.9545

Workplace health and safety have always been a trade union priority.

Trade unions at their core are a democratic collective of workers seeking to use their joint strength to enact positive improvements to their work and workplaces. Workers recognise that safe and healthy work is a fundamental aspect of good work and that it is workers who bear the brunt of poor health and safety practices. Ensuring that work is safe, and workers come home healthy is a critical component of union work. So too is ensuring that workers have agency in the design and operation of their work.

Key to the operation of any union is the concept that it represents workers collectively, it reflects the diversity of its membership and provides members with a voice. This enables many workers to speak up, knowing they can do so without fear of reprisal.

The Union Safety Effect

Unions have been shown to be one of the most effective mechanisms for improving workplace health and safety.

WorkSafe (2018) found that having a union in a workplace is associated with lower injury rates; more rigorous application of health and safety policies, monitoring, and reporting; and more effective forms of representation such as health and safety committees, what we call the “union safety effect”.

The union safety effect is also observed in comparator countries. Research from the Trades Union Congress (the union peak body in the United Kingdom) also finds that a trade union presence helps to reduce ill-health; and that union density is a key component of workplace psycho-social safety (TUC, 2015).

A recent study from the Canadian Institute for Work and Health found that union membership was associated with a 25% lower rate of lost-time-allowed injury claims (Robson et al., 2021, 2022).

Johnstone & Tooma (2012) summarise the importance of worker participation

There is much stronger evidence on the positive effects of collective worker participation on work health and safety. ... Many of the studies prove that there is a relationship between objective indicators of work health and safety performance (such as injury rates or exposure to hazards) in workplaces that have implemented structures for worker participation, such as the presence of trade unions, joint health and safety committees, or union or worker health and safety representatives.

And, as Dr Bill Roseberg outlines “It is not only union members who benefit from the reduced risks to their health and their safety, but everyone in a workplace” (Rosenberg, 2019).

Unions’ critical role in the foundational health and safety framework

The significant impact that unions have on workplace health and safety is reflected and enshrined in internationally recognised health and safety frameworks. Unions play a critical role, as representatives of workers, both through worker engagement, participation, and representation mechanisms in workplaces, and, through tripartite engagement and oversight at the national and industry levels.

New Zealand, and many other common law countries, find that the roots of their health and safety system can be traced back to the ‘Robens Report’ (named for Lord Alfred Robens) and the 1972 report of the Committee on Safety and Health at Work.

The oft-cited Robens model posits equally important roles for the key stakeholders in workplace health and safety: a strong regulator, capable employers, and informed, empowered workers. It can be summarised as seeking the right conditions for employers and workers to jointly tackle the risks and hazards present in the work they undertake. “The efforts of industry and commerce to tackle their

own safety and health problems should be encouraged, supported and supplemented by up-to-date provisions unified within a single, comprehensive framework of legislation” (Eves, 2014).

This tripartite approach to health and safety also has widespread international support. The International Labour Organisation (ILO), the United Nations agency whose mandate is to advance social and economic justice through labour standards, recognises its conventions on health and safety (ILO C155, 1981; ILO C187, 2006) fundamental conventions (ILO, 1981). The ILO also recognises trade unions are the primary representative structures of working people.

Fundamental conventions are conventions that are universally applicable and are of utmost importance for states to adopt.

Conventions 155 and 187 lay out a framework of complementary roles for government, employers, and workers for improving safety and health at work. The importance of participation is emphasized.

At a national level the conventions require governments to consult with the most representative organisations of employers and workers (unions) in developing, implementing, and reviewing national health and safety policy and systems. Within workplaces, the conventions “highlight cooperation between management, workers and their representatives [unions] as an essential element of OSH measures. Convention No. 155 also provides for consultation on OSH of workers or their representatives” (ILO, 1981).

Weak foundations in New Zealand:

These foundations however were not strongly established in New Zealand. New Zealand was late to the party in adopting the Robens Model in the Health and Safety in Employment Act (HSIEA, 1992), 20 years after the United Kingdom and Australia did so. It was also a much-weakened version of the framework as applied in those countries, unsurprising given the nature of the political leadership at the time. We are still living with the consequences of this period, and this can be seen in New Zealand’s poor health and safety performance compared to Australia and the UK.

The catalyst for the modern health and safety system as it currently stands was the Pike River disaster, where on 19 November 2010, 29 miners were killed in a coal mining explosion on the West Coast. Their deaths were unnecessary and avoidable.

The resulting Royal Commission on the Pike River Coal Mine Tragedy (2012 volume 1, para 29) (the Royal Commission) and Independent Taskforce on Workplace Health and Safety (Jager et al., 2013) (the Taskforce) found major flaws in the performance of the regulator and the operation of the HSIEA 1992. The Royal Commission noted that “major change [is] required and fast” and that “administrative and regulatory reforms are urgently needed to reduce the likelihood of further tragedies.”

In their report, the Independent Taskforce observed that New Zealand had failed to properly implement the Robens Model. The Taskforce’s recommendations focused on how these gaps should be addressed. Their report laid out a vision to address the 12 core issues with our health and safety system (Jager et al., 2013, pp. 11-12 Executive Report):

- confusing regulation
- a weak regulator
- poor worker engagement
- inadequate leadership
- capacity and capability shortcomings
- inadequate incentives
- poor data and measurement
- risk tolerant culture
- hidden occupational health
- major hazard facilities
- particular challenges to SMEs
- particular at-risk populations.

Both the Royal Commission and the Taskforce singled out worker participation as a crucial weak link in the New Zealand health and safety system. As the Taskforce noted, “New Zealand falls well short of the strength of worker representation legislation and levels of engagement operating in comparable jurisdictions.”

The Royal Commission and Taskforce reports laid the groundwork for the health and safety system we have today. This system is based around the Health and Safety at Work Act 2015 (“HSWA”) and the establishment of the health and safety regulator WorkSafe.

A step in the right direction

Unfortunately, the commitment to bring New Zealand in line with the countries we compare ourselves to, and fully establish the Robens Model only went so far. The John Key National government did not introduce the full suite of mechanisms for best practice worker engagement and provided arbitrary opt-outs from them. As summarised by Jeff Sissons (then CTU Legal Counsel) (Sissons, 2015):

It is both remarkable and grim how many backwards steps the Health and Safety at Work Act 2015 takes in relation to worker engagement (as it is called under the new law):

- *health and safety representatives are optional for small-to-medium enterprises that are not high-risk and may be isolated to small PCBU-determined workgroups in all other circumstances);*
- *employers have increased powers to push for the removal of health safety representatives;*
- *health and safety committees are optional for all PCBUs;*
- *there is no requirement to provide training for health and safety committee members;*
- *the default worker participation scheme where agreement cannot be reached is no longer present;*
- *unions have a greatly reduced role in the set-up of the system, the election of health and safety representatives and assisting workers;*
- *the system is not cohesive: representatives and committees have separate and distinct roles. Both functions are needed but the system allows neither, one or (rarely) both.”*

The exemption for smaller businesses not to have health and safety representatives and committees was removed in June 2023 with the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Act 2023. This was a long-awaited fix which returned the decision of how workers in small businesses want to engage on matters of health and safety back to the workers to decide.

Overall, HSWA was a definite step in the right direction and has the right elements to be an effective piece of legislation. The underpinning logic is sound, but it still requires some improvements to remedy the remaining gaps. It certainly doesn’t require wholesale changes. The best practice machinery previously omitted from HSWA, and regulations should be introduced, following the example of the 2023 Amendment Act.

History repeats - the realities and the gaps in our system

Concerningly, many of the issues that the Taskforce identified in its 2013 report are once again relevant today.

This article has already outlined the need to improve worker engagement, participation, and representation in health and safety. Research shows that these mechanisms make direct improvements on the shop floor. The current government appears to be uninterested in examining how worker engagement, participation, and representation can be improved in legislation or regulation.

The country’s health and safety regulator, WorkSafe, has recently been stripped back through a ‘cost-saving’ exercise resulting in the loss of one-seventh of its workforce. This has been accompanied by a new strategy that sees WorkSafe looking to “influence businesses and workers to meet responsibilities to ensure work is healthy and safe” through promoting and contributing to a balanced framework for securing the health and safety of workers and workplaces.”

Although WorkSafe’s new strategy provides clarity for its slimmed-down operations and seeks to show how its actions will make a difference, it also has WorkSafe retreating from its critical systems leadership role, a role WorkSafe is uniquely placed to undertake. There are also serious questions to

be asked about how an under-resourced inspectorate will be effective in a limited, reactive, and short-sighted enforcement approach.

WorkSafe also have an array of core legislative functions which go beyond simply ensuring compliance with minimum standards. These include establishing codes of practice; providing best practice guidance on how to work safely; data analysis; providing research and education; and promoting and co-ordinating work health and safety initiatives (WorkSafe New Zealand Act, 2013). These are critical support and administrative functions that enable the legislative and regulatory framework to be effective. Realistically the significant organisational cuts will have direct consequences for WorkSafe's ability to meet all of its obligations.

The union movement has long called for WorkSafe to be properly resourced and properly mandated to address system gaps through enforcement, engagement, and education by the regulator. We witnessed the severe outcomes of the impact a weak regulator in the 1990s and 2000s first-hand, and remained concerned that lessons haven't been learned from the past.

And nearly 10 years on from the inception of the HSWA, its necessary supporting regulatory suite remains unfinished. The largest missing piece of the puzzle is the Plants and Structures Regulations. Work on this appears to have stalled indefinitely after being in development for the better part of five years. Waiting in the queue behind these regulations is the Hazardous Substances Regulations. Industry has been calling for this regulatory suite to be completed, which would provide much-needed clarity to workers and businesses regarding safe work practices such as working with and near mobile plant and working at heights. The Ministry of Business, Innovation, and Employment (MBIE, 2023) recognised the significant impact of the delay in finalising this regulation in its briefing to the incoming Minister. MBIE noted that we have "an outdated and incomplete regulatory system" which "is creating uncertainties and inefficiencies for businesses and the regulator, in areas of risk that significantly contribute to ongoing work-related harm". This action should be the focus of any Minister claiming they want to see clarity in the system for business.

Finally, occupational disease continues to dominate New Zealand's fatality statistics. An estimated 750–900 workers die annually as a result of the impact that work has on their health. Decisive action in the occupational health arena remains absent. This is exemplified by Minister van Velden continuing to ignore the CTU's ongoing calls to ban engineered stone and protect workers from the harm caused by cutting and drilling the material. Australia led the world by taking decisive action to ban the product, a decision based on the large body of research and broad consultation. But rather than be led by example, the New Zealand government continues to kick the can on this issue, seeking its own advice, and relitigating the same issues Australia has already answered.

A longstanding issue rears its head again

A major challenge in the pursuit of improving health and safety outcomes in New Zealand are the entrenched cultural attitudes towards safety and employment relationships. In the experience of unions, where industrial relations within an organisation are not constructive, it often follows that commitment to health and safety is equally unenthusiastic. Management from the board down need to be committed to health and safety as a core component of business, not view it as a tacked-on compliance cost, or otherwise as a tribalistic us vs them dispute.

The 2013 Taskforce report identified the significant hurdle that is the New Zealand health and safety culture: "Our national culture includes a high level of tolerance for risk, and negative perceptions of health and safety. Kiwi stoicism, deference to authority, laid-back complacency and suspicion of red tape all affect behaviour from the boardroom to the shop floor."

The dominant workplace culture in New Zealand tends to be of a top-down and hierarchical nature. This is a critical issue and barrier for improving New Zealand's health and safety context. Even today, the latest Government's attack on working peoples' rights at work – the reintroduction of 90-day trials for all and the repealing of the Fair Pay Agreements Act – will have direct consequences for workplace health and safety. The push towards insecure work and the removal of workers' rights to challenge or engage in their workplace, leaves workers without a voice. This is the antithesis of good health and safety practice.

In its report, the Taskforce noted that "employees new to positions or engaged in temporary, casual or seasonal work may be particularly at risk" (Jager et al., 2013, p. 13). The Taskforce reported that casual workers, those on 90-day trials, short-term contractors, and seasonal workers were all

identified as less likely to report injuries or voice concerns for fear of not being re-employed in the future.

A National Occupational Health and Safety Advisory Committee report to New Zealand's then-Minister of Labour (Bohle et al., 2009) stressed that employees in casual and insecure work were at greater risk of workplace injury than those who are employed in full-time fixed positions. Yet despite the known risks, the push towards more insecure work proceeds. 90-day trials have been reinstated to all businesses, leaving new employees unable to speak up for fear of an unchallengeable dismissal. Promises to force working people into contractor arrangements regardless of the real nature of the employment relationship will only serve to push down primary responsibility for health and safety onto the workers themselves. And the Fair Pay Agreements Act (which had machinery within negotiated agreements to enable health and safety standards to be improved across industry, agreed by workers and employers in that industry) has been scrapped.

The Minister for Workplace Relations and Safety has also embarked on a 'first principles' review of the health and safety system in the name of business clarity and economic efficiency.

Fortunately, broad support remains for strengthening the foundations of New Zealand's health and safety system. Business groups, health and safety industry professionals, and unions, while having their own opinions about what tweaks and adjustments are necessary to the current system, appear aligned that the foundational framework of the system should remain the north star.

For instance, in its recent report "Been there. Done That. A report into New Zealand's repeated health and safety failures", the Business Leaders' Health and Safety Forum (2024) note that "Lifting performance is not just about competing with other countries, it's about New Zealand applying a proven model in service of healthier work and a more productive workforce [...] Whilst the Act is in place and largely fit for purpose, the regulations, codes of practice, and guidance such as safe work instruments are either absent, obsolete or lack clarity".

The New Zealand Institute of Safety Management's (NZISM, 2024) recent survey of members found widespread consensus among its members (health and safety professionals) that:

- *[HSWA] is not viewed as fundamentally broken. Most [members surveyed] think the main elements of the Act are either working well or only require minor changes.*
- *The existing regulations are also seen as working well or in need of small tweaks.*
- *Respondents want the Government to complete the suite of regulations planned when [HSWA] was passed. Following Australia's lead, there is a strong call for greater regulation of psychosocial harm.*
- *Across the Board, there is a call for greater guidance and information as to how to meet duties under the Act and regulations. WorkSafe guidance is referred to often but could be improved and expanded.*
- *Those surveyed want WorkSafe to get back on its feet by being adequately resourced and effectively managed. WorkSafe inspector capacity and capability is an area of significant potential investment.*

There are gaps that need addressing in the health and safety system of New Zealand, and the workplace death and injury data shows that improvement is needed. Thankfully, the framework is there, and the path forward is clear. It's about strengthening what works. From a trade union perspective that means giving workers, supported by their trade union representatives, a real voice about how their work can be designed and carried out safely within a properly functioning Robens model.

References

Bohle, P., Buchanan, J., Cooke, A., Considine, G., Jakubauskas, M., Quinlan, M., Rafferty, M., & Ryan, R. (2009). *The evolving work environment in New Zealand. Implications for occupational health and safety* [Technical Report 10]. National Occupational Health and Safety Advisory Committee, Wellington

Business Leaders' Health & Safety Forum. (2024). *Been there Done that – a report into New Zealand's repeated health and safety failings* [Review]. Author, Wellington
<https://www.forum.org.nz/>

- Eves, D. (2014). *Two steps forward, one step back: A brief history of the origins, development and implementation of health and safety law in the United Kingdom, 1802–2014*. History of Occupational Safety and Health. <https://www.historyofosh.org.uk/>
- Health and Safety in Employment Act (1992). <http://www.legislation.govt.nz/>
- ILO. (1981). *The Fundamental conventions on occupational safety and health* [Report]. International Labor Organization, Geneva <https://www.ilo.org/>
- ILO C155: 1981 Occupational Safety and Health Convention, International Labour Organization, Geneva. <https://www.ilo.org/>
- ILO C187. (2006). *Promotional Framework for Occupational Safety and Health Convention* [International Convention C187]. International Labour Organization, Geneva <https://www.ilo.org/>
- Jager, R., Cosman, M., Mackay, P., Mullins, M., Rose, P., & Rosenberg, W. (2013). *Independent Taskforce on Workplace Health & Safety*. Wellington www.hstaskforce.govt.nz
- MBIE. (2023). *Briefing for the Incoming Minister for Workplace Relations and Safety* [Briefing]. Ministry of Business, Innovation and Employment, Wellington <https://www.mbie.govt.nz/about/who-we-are/our-ministers/briefings-to-incoming-ministers>
- NZISM. (2024). *Health and Safety Reform: survey overview* [Report]. New Zealand Institute of Safety Management Inc, Auckland
- Robson, L., Landsman, V., Latour-Villamil, D., Lee, H., & Mustard, C. (2021). *Updating a study of the union effect on safety in the ICI construction sector* [Research Report]. Institute for Work and Health, Toronto <https://www.iwh.on.ca/>
- Robson, L., Landsman, V., Latour-Villamil, D., Lee, H., & Mustard, C. (2022). Unionisation and injury risk in construction: a replication study. *Occupational and Environmental Medicine*, 79(3), 169. <https://doi.org/10.1136/oemed-2021-107617>
- Rosenberg, W. (2019). Unions as a public good. *CTU Monthly Bulletin*, (214). <http://www.union.org.nz/economicbulletin214>
- Royal Commission on the Pike River Coal Mine Tragedy. (2012). [Enquiry Report Volume 1]. Wellington www.pikeriver.royalcommission.govt.nz
- Sissons, J. (2015, September). The trouble with a two-legged stool: worker involvement under the Health and Safety at Work Act 2015. *Employment Law Bulletin*, 76-80.
- Tooma, M., & Johnstone, R. (2012). *Work Health and Safety Regulation in Australia*. Federation Press.
- TUC. (2015). *How unions make a difference on health and safety: The Union Effect* [Literature review]. Trades Union Congress, <https://www.tuc.org.uk/>
- WorkSafe New Zealand Act (2013). <http://www.legislation.govt.nz/>
- WorkSafe NZ. (2018). *Worker engagement, participation and representation* [Literature review]. Author, Wellington www.WorkSafe.govt.nz