

SUBMISSION BY OPTIME LIMITED & SAFETYBOX TO
THE INDEPENDENT TASKFORCE ON WORKPLACE HEALTH AND SAFETY

To: Independent Taskforce

On: Workplace Health and Safety

Name: Optime Limited

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1. My name is Robyn Levinge. I am the founder and owner of Optime Limited, which specialises in helping New Zealand companies achieve optimum health, safety and wellbeing for their staff.
2. I am a health and safety professional with over 20 years experience in health and safety management and senior management positions, working for global and New Zealand corporates that are multi-national and multi-risk, particularly in the construction and telecommunications industries. I have worked at board level and have significant strategic and operational experience in health and safety management within organisations.
3. My international qualifications and expertise include:

Tertiary:

Bristol University (UK):

- NEBOSH Diploma Part 1
- NEBOSH Diploma Part 2

British Safety Council (UK):

- International Diploma in Occupational Safety and Health

My Professional Memberships include:

- Member of International Institute of Risk and Safety Management - UK
- Member of Institute of Occupational Safety and Health (MIOSH) - UK
- Member – New Zealand Institute for Safety Management

4. I fully support the work of the Taskforce and the Government's goal of achieving a 25% reduction in workplace deaths and serious injuries by 2020.
5. Specific answers to the Taskforce's questions are set out in this submission and the key points summarised in the overview below.
6. I consent to my submission being placed on the Health and Safety Taskforce website.

OVERVIEW:

7. New Zealand's woeful health and safety record is a national disgrace. The fact that there has been no legislative review of the Health and Safety in Employment Act since its introduction in 1992 is illustrative of why Kiwis continue to be killed and injured at work. As a country, we have simply not given health and safety the priority it deserves at any level.
8. Unlike road safety, domestic violence or drink driving, we have never made workplace health and safety a national priority with an overarching public campaign to highlight the scale of the problem and to educate and raise awareness on how to ensure Kiwi's return home safe from work each day.
9. Eight years ago, when I returned to New Zealand, my key observations of this country's health and safety framework and the management of health and safety at both an operational and strategic level were:
 - a. Competency lacking at all levels – highlighted by the fact that there has never been a review of the legislation to keep pace with international best practice and significant changes in New Zealand work practices.
 - b. The health and safety sector and industry has suffered from too much talk and no action. By contrast, in Australia and the UK continual change and improvement in the framework and implementation is being led from the industry sector including (businesses, health and safety professionals, professional institutes and industry task/work groups).
 - c. A critical lack of guidance, support and advice, particularly for SME's, in implementing and managing sustainable health and safety systems. There is also no access for SME's to a free helpline or easy to reach, immediate and competent advice.
 - d. A failure at a governance level to understand the extent of responsibility for health and safety (particularly amongst company directors).
 - e. A lack on international experience and expertise.
 - f. A lack on competent training courses for safety professionals in New Zealand and a lack of safety training for managers within businesses.
10. Almost a decade later, as the Pike River disaster has shown, there has been little real progress in addressing the fundamental issues that continue to result in injury and death in the workplace.
11. The need for change is urgent. The Government must act quickly upon recommendations from the Taskforce to signal to every worker and employer that turning around our 'Dickensian' record is a national priority. To do this, leadership is required at every level along with real and practical change to make our workplaces safer.
12. In the same way finance company directors have been prosecuted for reliance on the advice of others with regard to a company's financial statements and performance, a company director's ignorance can be no defence when a company commits a health and safety crime against its workers.
13. The current framework consists mostly of the Health and Safety in Employment Act 1992 and general guidance from regulatory bodies i.e. MBIE and ACC. There is little in-between, leaving too big a gap between the broad legislation and general guidance with onus to comply.

14. It is a positive step to have major risks covered by regulations or Approved Codes of Practice (ACOP's) as it provides a focus on responsibility and compliance, i.e. hazardous substances and working at heights. This is similar to the United Kingdom's "6 Pack" Regulations but it is not as prescriptive. This change would narrow the gap and give more structure, which would assist businesses with clearer rules for compliance and give more specifics for regulators and inspectors to audit against.

15. In summary, there are 10 urgent priorities for change. These are:

1. Shifting New Zealand's health and safety framework from a hazard assessment to a risk assessment system to be more globally aligned. (This critical change was mooted several years ago, but again, no action was taken).
2. Simplifying the process of assessing hazard and risk for businesses. The current process for SME's in particular appears too complicated and is not globally aligned.
3. Streamlining the regulatory framework to get rid of the fragmentation amongst those bodies responsible for monitoring health and safety compliance.
4. More prescriptive guidance for high-risk activity.
5. Changing the culture of ignorance that persists towards health and safety, particularly in SME's. Businesses must actively work on health and safety on a daily basis, not avoid it until the DOL or ACC pays a visit.
6. Taking ownership of health and safety at every level of every business in New Zealand.
7. Ensuring directors take on the duty of care for protecting workers and changing the culture of companies and not simply push the responsibility for health and safety on to a Health and Safety Manager. The legal responsibility is on the employer.
8. Moving health and safety from a paper-based box-ticking exercise to an integral part of every business, regardless of size. This will require a major shift in the way ACC manages and audits health and safety.
9. Increasing overall health and safety competency.
10. Implementing a workplace audit over and above ACC, which focuses on everyday implementation of workplace health and safety.

ANSWERS TO THE TASKFORCE'S QUESTIONS

Who Gets Hurt, Killed or Suffers From Ill-Health or Disease as a Result of Work?

Q1. What do you think is driving the differences in health and safety outcomes for different demographic groups?

- The way we recruit people in New Zealand particularly in high risk industries.
- The use of labour hire companies whose safety inductions and training are often not as good or onerous as a direct employer. (Labour hire companies may also have larger numbers of Maori workers or older workers, as these companies are often not the first choice of main employers.)
- How we select and engage employees.
- Labour hire companies, self-employed or SME businesses rarely do pre-employment medicals. Not picking up on pre-dispositions to occupational health injuries or harm and previous or ongoing physical (non-capabilities) that may impede a person's ability to function properly in a role can increase risk.
- We have a limited pool of skilled workers in New Zealand, so pre-selection criteria is sometimes put aside as the commercial drive to win contracts overtakes the importance of the skills and ability of a person or team chosen to perform a job within that contract.

Q2. What changes are needed to the workplace health and safety framework to improve outcomes for demographic groups with higher than average rates of injury and illness?

- Place criteria on labour hire groups to select personnel correctly and be responsible for the health and safety of their workforce.
- Develop specific standards and/or guidance material for these employers to ensure selection criteria are met and health and safety is a priority for all workers.
- Introduce pre-employment medicals and checks as part of ACC/WSMP and partnership programme audit standards.
- Develop general guidance for employers on how to select and engage employees.
- Introduce prescriptive legislation on contractor and labour hire engagement and management for employers.
- Include monitoring of this to be part of the ACC audit process.

Regulatory Framework

Q3. What do you think the challenges are with the current workplace health and safety regulatory framework?

- The current framework assumes that those who create or work with the risks to occupational health and safety are competent to manage the risks.
- The level of competency in equipping employers and companies to be able to adequately assess the risks has been poor in New Zealand.
- New Zealand and the regulators lack the manpower and, in some cases, the capability to monitor and enforce the current legislation.
- The current framework is too open to interpretation so leaves a gap that is hard for employers to manage and hard for regulators to assess compliance.
- There is a lack of good guidance material and ACOP's that would assist with narrowing the boundaries of the Act and its requirements.

Q4. How do you think the workplace health and safety regulatory framework could be improved?

- The framework would be improved by taking learnings from overseas and having more duties placed on designers, manufacturers and importers, and; labour hire employers. The duties and best practice could be presented in ACOP's so it can be used as evidence in Court but is not prescriptive. Bridging the gap between the Act as it currently stands and the rest of the supporting guidance so the grey areas are not so grey making it easier for employers to learn, up skill and enforce. The definition of employer needs to be expanded as well as duty holders.
- More prescriptive and fit for purpose Codes of Practice and guidance to support the Act, which still leave some scope for employers to define and determine their risk with guidance available to them on what best practice looks like.
- To raise the competency of assessing risk, all legislative materials need to spell out clearly what best practice looks like, how to implement and monitor it.
- Each role must be defined in legislation i.e. in particular, director's duties and extent of duty.
- More authority and onus given to employers and safety reps to enforce the legislation.

Regulators Roles and Responsibilities

Q5. How effective are the regulators in influencing workplace health and safety outcomes?

- Not effective at all. Experience shows and proves they are not competent in their knowledge in some cases, not flexible and very difficult to engage with i.e. it's very difficult even to get advice over the phone.
- There is a national widespread lack of trust and respect amongst employers for the regulators. This is causing employers to avoid the regulators or to present information incorrectly.
- The lack of trust comes from lack of understanding of business operation, the approach taken (enforcer as opposed to supporter), the level of competency (less than the business itself) so can be confusing, conflicting information and responses.

Q6. How could the regulators' roles and responsibilities be changed to improve their effectiveness in influencing workplace health and safety outcomes?

- Completely change how the regulators disseminate information i.e. information currently available on regulator websites must be improved to be more accessible and user-friendly.
- Improved telephone support services.
- Raise the level of competency with the regulating bodies and the advice they are able to give to businesses.
- Increase the numbers of regulators and ensure competent regulators are assigned to specific industry sectors. This will increase business coverage and significantly improve the competency of support and advice given to businesses.
- Work with businesses through work groups.
- Require businesses to attend one work group each year.
- Regular e-mail and mail contact with businesses.
- One way to increase coverage for businesses is to utilise private safety consultants in New Zealand as part of a regulator team to increase coverage.
- Utilise private safety consultants in New Zealand as specialists (these people are usually internationally experienced and qualified) so competency is higher.
- Urgently establish a 24/7 health and safety hotline for all businesses to access based on subscription that gives support and guidance.

New Zealand's changing workforce arrangements

Q7. What impacts are New Zealand's changing workforce and work arrangements having on workplace health and safety outcomes?

- Because New Zealand has not continually and consistently reviewed and updated its health and safety framework, advice and guidance, the impacts of the changing workforce and work arrangements are widening the gap in terms of New Zealand's health and safety statistics and placing more pressure on health and safety outcomes in a negative way.

Q8. What changes to the workplace health and safety framework, if any, are needed as a result of the changing workforce and work arrangements?

- We need to continually and simply change the framework as and when our workforce and arrangements change.
- This change must begin as an urgent priority.
- The Act states that individual companies re-assess hazards and risks when there is a significant change in workplace or operation, but we have failed to take this approach on a national level.
- Specific changes are summarized in the overview and throughout the answers to the Taskforce's questions.

Worker Participation and Engagement

Q9. How effective do you think worker participation is in improving workplace health and safety in New Zealand?

- It is very effective and the proof is in the approach taken in other countries and the reduction in workplace injuries and deaths that has resulted.
- The success of any engagement programme to build worker participation depends on the competency of those leading the engagement and participation, how it is managed and presented to workers to gain their buy-in.

Q10. What improvements can be made to worker participation in workplace health and safety so as to get better workplace health and safety outcomes?

- A national public education campaign to highlight the current rate of deaths and accidents and to build awareness of everybody's role in bringing those numbers down.
- More workgroups and avenues for workers to participate.
- Ensuring high levels of competency in the leaders of such groups and their management.
- Selling and marketing and creating instant benefits for those workers attending these groups i.e. Tree support and documentation, discounts on levy fees.
- Network opportunities and avenues.
- Multiple layers of participation that connect and filter i.e.
 - Workplace health and safety committees feeding into
 - Industry, local, health and safety committee feeding into
 - Regional health and safety committee feeding into
 - National health and safety committee.

Regular reporting and information flows both ways through these layers.

Leadership and Governance

Q11. To what extent do directors and other senior leaders provide effective leadership and governance of workplace health and safety?

- As demonstrated by the Royal Commission report into the Pike River Mine disaster, there is a significant gap at Governance level in providing effective leadership of workplace health and safety.
- In my experience, there is currently a lack of understanding of and due diligence on directors responsibility in relation to health and safety.
- The leadership is effective if their business and workers are operating at best practice, understand their responsibilities and obligations under legislation (are autonomously complying) and the business is benefitting and can see the benefits of competent health and safety leadership.
- To ensure sufficient health and safety support and roles are in place.
- To be part of an external networking participation health and safety (could be inline with internal company safety representatives responsibility)
- Have relevant and meaningful participation in company health and safety.

Q12. What improvements can be made to directors' and other leaders' participation in workplace health and safety, so as to get better workplace health and safety outcomes?

- What's urgently needed is for directors to start taking on that duty of care. Boards must have a regular process in place to check that the company health and safety responsibility is maintained.
- New Zealand should follow Australia's lead in placing more duties on directors in respect of health and safety.
- This move will ensure directors closely monitor and stay abreast of how health and safety is being managed in their organisation, rather than relying on the advice of others in the organization that they are compliance. It will also encourage directors to employ a specific health and safety role or have a closer relationship with the health and safety roles in their organisation.
- This in turn, will raise the competency levels of health and safety professionals as directors will need certainty they are being advised correctly and have someone to rely on to manage health and safety effectively in their business.
- It will also encourage the competency of health and safety to be raised internally within an organisation as opposed to relying heavily on external consultants for advice.

In addition:

- ACC audits should include director's attendance at committee meeting and are part of focus groups.
- Separate section for auditing (ACC) leaders understanding and level of participation
- Any ACC health and safety audit starts with interviewing the director or leaders.
- All site visits by health and safety regulator inspectors are done with leaders or directors in attendance.
- External regulator or leader participation forums are set up and run.
- Again highlighting clearly in guidance material what best practice for leaders looks like so there is a benchmark.

Capacity and Capability of the Workplace Health and Safety System

Q13. To what extent do firms have the capacity and capability to effectively manage workplace health and safety issues (including through accessing external resources?)

- Most SME's cannot afford external health and safety specialists so rely on Government/industry guidance, which is difficult to find - websites are not user friendly, information is fragmented (Department of Labour, ACC, Institutes) and can be difficult to comprehend.
- Telephone support is subject to availability and the competency of those answering the calls.
- The current external information available to businesses and the way it is presented relies on the worker or recipient having a level of understanding of health and safety and legislation. It also relies on them understanding the inter-relationship between ACC, Department of Labour, OSH, Employment Act, Institutes and other bodies that interconnect. The information needs to be simplified and targeted at specific user groups with varying levels of understanding.

Q14. What options are there for improving firm level capacity and capability to deliver better workplace health and safety outcomes?

- New Zealand should take learning's from the UK. The institutes there lead the industry in providing support, guidance and learning for all aspects on health and safety. They communicate in a range of relevant ways and via many channels to ensure they deliver to the needs of their users/customers.
- The institutes here need to be more competent and capable in taking a stronger role of intermediary between business and Department of Labour and Government bodies. The International Institute of Safety and Health (IOSH) in the UK are an excellent example.
- There needs to be a prescriptive framework to set out what constitutes competency for health and safety professionals in New Zealand. Again, NEBOSH and IOSH in UK are an excellent example.
- Health and Safety professionals must be registered with an approved institute. Our current New Zealand institutes possibly do not meet the standards of International institutes the choice we face is to raise the competency of our existing institutes or to use international institutes to benchmark our professionals.
- Professionals must be ACC accredited and regularly monitored or audited.

Incentives

Q15. How effective are existing financial and non-financial incentives in improving workplace health and safety outcomes?

- They are not effective at all hence the state of our nation's health and safety performance and the reason for this review.
- Most small business owners not motivated to manage health and safety.
- To succeed, any incentive for them to do so has to far outweigh the effort of managing health and safety.
- Similarly, the fines and penalties for non-compliance or a health and safety breach must be set at a level, which supports making health and safety a priority for every business.

Q16. How could incentives be better used to improved workplace health and safety outcomes?

- Ensure incentives are multi-linked and interdependent on meeting many criteria i.e. levy discounts are achievable if:
 - Meet standards on ACC audit
 - Attend national participation committees
 - Leaders attend forum
- The level of fines, must signal the clear expectation that death or harm to workers is unacceptable.
- Before a fine is imposed a business should receive a formal warning with a clear set of actions to be undertaken (not just a letter with minimal actions) i.e.
 - Leaders attend national training
 - PIR's attend participation meetings
 - Independent audit undertaken at company's expense by registered practitioner (regulator checks that recommendations implemented) or report from auditor completed.
 - Company has to submit health and safety management report on their performance for 2 years.

Influencing Health and Safety Outcomes Beyond One's Own Workplace

Q17. How successful are Government, industry, corporate or other potentially influential bodies in influencing workplace health and safety outcomes beyond their own workplaces (for example through influencing their suppliers, counterparts, and competitors)?

- Again, New Zealand's current Health and Safety statistics would suggest they are currently not successful at influencing health and safety outcomes beyond their own workplaces.
- In particular, they are successful at all in influencing suppliers and providers to ensure health and safety of what they are supplying and providing. There is currently no motivation or onus placed on these groups to ensure what they are supplying and providing is not going to cause harm when used.

Q18. What could be done to get Government, industry, corporate or other potentially influential bodies to exert greater influence on improving workplace health and safety outcomes beyond their own workplaces?

- Firstly, place stricter legislative requirements on suppliers and providers to ensure their products are not going to cause harm when used.
- Ensure all goods and services supplied or provided come with a Certificate of Safety Compliance or Standard.
- Develop a national register that suppliers and providers can be a member of if they meet certain safety criteria. Make this register available to the public and include incentives such as:
 - Registered businesses get a discount on levy fees or some motivator.
 - They can use a "safety star rating" for marketing purposes.
- Government to provide better guidance and clearer more up to date information on selecting and engaging suppliers and providers.
- There needs to be more onus on businesses to ensure what they provide internally to their staff in terms of machinery and equipment is not going to cause harm or fail.

Major Hazards

Q19. How strong is New Zealand's current approach to regulating major hazards?

- After working overseas in Health and Safety, New Zealand's approach to regulating major hazards is not strong at all. In fact, I would go as far to say that we lack an understanding of what a major hazard is and even more concerning is the hazards we do know are major yet we do nothing to ensure they are managed. Again, this lack of action on a known and significant hazard was highlighted by the Royal Commission into the Pike River Mine Disaster.
- As stated in the overview to this submission, urgent action is required on regulating major hazards. We should not be waiting until this review is completed next year, we should be acting on this now to protect New Zealand workers.

Q20. What improvements to the regulation of major hazards would lead to better workplace health and safety outcomes?

- Set up a taskforce or work group including senior industry professionals to:
 - Identify all major hazards
 - Develop a major hazard register
 - Develop guidance on minimum requirements to manage major hazards
 - Assist and support businesses to ensure guidance is met
 - Communicate and notify relevant officials, communities and towns on crisis management plans to ensure they are prepared and protected in the event of a major hazard threatening their safety.
 - Regulators to inspect major hazard workplaces regularly
 - Take guidance from overseas
 - Use overseas major hazard experts to teach and up skill regulator inspectors to raise level of New Zealand competency of those assigned to manage and monitor these operations and businesses.
- This is urgent. We cannot afford any further delays in implementing such a system to protect against major hazards.

Health and Hazardous Substances

Q21. + Q22. – No comment.

Small to Medium-Sized Enterprises

Q23. What workplace health and safety challenges are specific to the self-employed and to small-to-medium enterprises?

- External health and safety support is being chosen based on cost - not by quality or competency.
- Support is being chosen based on an immediate solution, i.e. compliance or tender and not on the long-term sustainability of the support or the solution.
- There is a huge lack of knowledge and understanding about what's really needed to ensure a sustainable health and safety system. There are many health and safety consultants selling paperwork and promising what is a quick fix and many companies don't have the understanding to be able to choose competent advice.

Q24. What improvements could be made to the workplace health and safety framework, and its implementation, to ensure that it's effective for self-employed and small-to medium sized enterprises?

- Detailed guidelines on what best practice looks like and how to meet it.
- State clearly what minimum requirements are and ACOP's on frequency of monitoring.
- State clearly that all health and safety support or systems are developed and implemented by a competent person.
- Define clearly 'competent'. This will allow SME's to choose external support carefully and avoid cowboys. Also allows companies to up skill and create health and safety competency in-house.
- Ensure support that is cost effective is in place prior to any changes in framework.
- All changes should be made with the solution for best practice /higher cost and minimum practice/ low cost.
- The framework needs to define in detail what is 'competent' and all businesses develop and implement a health and safety system by a competent person.
- The health and safety system needs to clearly define what constitutes it and it has to include monitoring and not just paperwork and processes.
- Improving ACC auditing to focus on action and monitoring rather than paperwork. This is to avoid 'tick box' systems.

Measurement and Data

Q25, Q26 – No comment

Our National Culture and Societal Expectations

Q27. Do you think New Zealand culture influences our workplace health and safety outcomes?

- As stated above, unlike other significant causes of death and harm such as drink driving, we have failed as a nation to make unsafe work practices socially unacceptable. As a society our current attitude of apathy and acceptance is driving our internationally shameful record on workplace health and safety. This is a national issue, which we must all play a role in turning around. We have to state that every New Zealander has the right to return home safe from work each day.

Q28. What might we do to improve our culture relating to workplace health and safety?

- Package, promote and market health and safety the way we do for other public health/public safety initiatives.
 - Run national campaigns that drive participation
 - Create mottos
 - Define what culture we want first then market this i.e. 'Kiwi's work safe'
 - Market this through multiple channels
- Back it up with
 - Change in framework
 - Change and increase fines and consequences
 - Change in regulator attitude and support
 - Register of competent Health and Safety professionals so SME's know where to get help
 - Introduce a 24/7 helpline for businesses 0800 Safety Line (Safety Box)
 - Proactive calls and visits by inspectors.

- Setting the target simply 'Kiwi's work safe'
- Provide/Set up support services to guide businesses at the beginning of campaign
- Change ACC audit standards
- Take action. All other countries update and make regular changes to Health and safety national guidelines and legislation – for 20 years New Zealand has simply talked about it.
- Previous changes to the system have not been coupled with a focus on motivator changes to change the approach and attitude.

Other factors

Q29. What might we do to improve our culture relating to workplace health and safety?

– Already covered in this submission.

Q30. Do you have any other suggestions for how to improve workplace health and safety outcomes in New Zealand?

- For SME's in particular, the SafetyBox (www.safetybox.co.nz) provides the type of ongoing practical guidance and support to dramatically improve health and safety outcomes. It is simple and user friendly, taking the headache out of health and safety for managers.
- This service includes a 24/7 helpline, where employers can access specialist advice from specialists with an extensive understanding of their specific industries.
- The service also acts like a 'virtual manager' for employers sending e-mail alerts detailing the steps they need to take to keep remain compliant and keep up to date with the latest information.
- Importantly, SafetyBox focuses on integrating health and safety as a priority for businesses in a sustainable, affordable and achievable way. The information is clear, simple and easy to follow and is contained in one easy to access portal.
- This is the type of service that must be available to all New Zealand businesses in order to remove the complication, duplication and confusion that currently prevents many from fulfilling their duty of care to their workers.
- In particular, SafetyBox bridges the currently yawning gap between the legislation, regulatory bodies and the kiwi businesses who are tasked with implementing Health and Safety systems.