



WORKSAFE

Way forward

OUR OUTCOMES-BASED
APPROACH TO HEALTH AND
SAFETY IN NEW ZEALAND



Te Kāwanatanga o Aotearoa
New Zealand Government

Introduction

This *Way forward* statement presents WorkSafe New Zealand's strategy to achieve the 'step-change' improvement in workplace health and safety in Aotearoa which we all aspire to.

It discusses our outcomes-based approach as a key driver for the choices we make in working to achieve optimum effectiveness as regulator.

WorkSafe's strategic framework is presented in the *Statement of Intent 2021-2025*. It outlines our regulatory approach as a 'really responsive regulator', which draws on the successful approaches of other modern regulators, and which is already delivering opportunities for significant change in improvements within New Zealand. The approach is articulated in the WorkSafe enterprise target operating model which supports delivery on our strategic intent.

The statement demonstrates the close alignment of our approach as regulator with the policy and expectations of successive Governments since the Pike River tragedy, and with the intent and scheme of both the WorkSafe New Zealand Act 2013 and the Health and Safety at Work Act 2015.

The statement concludes with a discussion of effective modern regulator practice, demonstrating the alignment of WorkSafe's approach with expected good regulator practice both internationally and within New Zealand.

Our key message is that Worksafe will be looking to duty holders up to Board level and right through supply chains. This doesn't mean taking the focus off education and enforcement, but augmenting these levers with a 'root cause' approach to help achieve our vision of workers coming home healthy and safe.



A handwritten signature in black ink, appearing to read 'Ross Wilson'.

Ross Wilson
WorkSafe Board Chair



A handwritten signature in black ink, appearing to read 'Phil Parkes'.

Phil Parkes
Chief Executive

Way forward

WorkSafe takes an outcomes oriented, really responsive approach to guide decision-making and regulatory activity

Two fundamental aspects define WorkSafe's orientation as workplace health and safety regulator in fulfilling our mandate under the WorkSafe New Zealand Act 2013. The first is an outcomes approach, where outcomes and impacts are the key drivers for regulatory activity and resource allocation. The second is the adoption of a stance as a really responsive regulator, where regulatory responses augment the traditional 'toolkit' of compliance and enforcement interventions and respond to factors in addition to the behaviour of regulated parties, such as the institutional environment and wider system performance.

Outcomes and impacts drive decision-making and activity

Three outcomes guide our approach to achieve our mandate as regulator:

- healthy work, where work is healthy for workers and those affected by work
- safe work, where work is safe for workers and those affected by work
- equitable outcomes, where work is healthy and safe for all in Aotearoa.

To realise this vision we are working to achieve tangible results in six impact areas:

- health and safety are integrated into work design, set-up and practice
- a capable workforce drives sustained health and safety improvement
- workers are partners in the health and safety at work system
- the health and safety at work system works with and for Māori, Pacific Peoples, and all workers
- knowledge and insights inform practice
- work-related risks are identified and eliminated or controlled.

These outcomes and impacts reflect our mandate for achieving the purpose of the Health and Safety at Work Act 2015, and meeting government expectations for **an urgent and sustainable step-change in harm prevention activity and a dramatic improvement in outcomes.**¹

¹ Report of the Independent Taskforce on Workplace Health and Safety, (April 2013).

The aim is for **shifting mindsets away from health and safety being viewed as an addition to work, to being an integral part of how work is designed, set up and undertaken.**² This includes a strong focus for supporting workers' participation and representation in decisions that affect their health and safety.

WorkSafe's *Way forward* focuses on integrating health and safety into the way that work is done and is in line with the Government's intent to embed a wellbeing approach across the public sector. In 2020, the Public Finance Act (1989) was amended to require the Treasury to report periodically on the state of wellbeing in New Zealand, and the Government to report annually on its wellbeing objectives via the Budget.³

Forestry sector

The focus of current WorkSafe approaches within the forestry sector is already delivering benefits for cultural and system change.

Approaching the forestry sector through a combination of cultural and 'upstream' lenses

Forestry provides an example of WorkSafe's approach to achieving equitable outcomes which is producing early results for worker participation and increased sector focus on health and safety. Forestry is a sector with a predominantly Māori workforce, which the statistics show has a disproportionate rate of health and safety incidents. Based on research into the characteristics of the forestry sector, we have adopted a two-faceted approach to improve health and safety outcomes within the sector. The first is a Kaupapa Māori harm prevention approach that enables the voice of the workers to be heard in a culturally appropriate way. Workers are invited to come along to wānanga to speak up in a culturally safe environment and share their thoughts and concerns. This enables worker participation and provides valuable insights for getting to the root causes of issues.

This is combined with activity to engage with key 'upstream' parties within the sector such as the Eastland Wood Council to share insights and reinforce messages that they need to engage better with their workers on health and safety arrangements, and take their health and safety into account alongside their own commercial interests. The WorkSafe Chair has also engaged with Iwi leaders to increase their understandings of the issues and the role that WorkSafe can play.

² *Statement of Intent 2021-2025.*

³ www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/using-lsf-and-he-ara-waiora

The focus is to address the risk of harm before it happens, rather than a more traditional singular emphasis on enforcement activity against the individual forestry operators in the middle.

It is early days, but these interactions have had the effect of bringing parties together from both ends of the spectrum in a combined whānau approach to affect cultural and system change for enduring benefits for workplace health and safety. It is an example of an evidence-based approach in getting those individuals who have an influence both for the cause of harm and its prevention to understand this and work in a collective effort to address this. The engagement has also addressed Te Titiriti obligations of parties.

Construction industry

Our approach is affecting changes to attitudes and approaches in the construction industry.

Health and safety outcomes in the construction industry

The Construction Sector Accord ('the Accord') was launched in April 2019 by the Prime Minister, Accord Ministers, and the industry Accord Development Group made up of 13 sector leaders from across industry and government. The Accord created a platform for industry and government to work together to meet some of the key challenges facing the sector including skills and labour shortages, unclear regulations, a lack of coordinated leadership, an uncertain pipeline of work and a culture of shifting risk. WorkSafe is working with the Accord to encourage a people-centred health and safety orientation rather than lowest cost approach to the process of constructing an asset from the earliest point in the design through the construction process to the final product.

The Accord's 2021 inaugural Beacons Award for recognising the construction sector's most transformative and innovative approaches went to New Plymouth District Council for 'the courage and leadership required to move away from the Lowest Price Conforming tender approach, and to develop long term partnerships in an attempt to deliver better infrastructure for New Plymouth, while also delivering positive health and safety and training outcomes for their supply chain partners. The judges noted how transformative this approach would be if it were adopted widely across the industry.⁴

This is an example of positive change in one area of supply chain leadership in public construction.

⁴ www.constructionaccord.nz/news/news-stories/new-plymouth-district-council-wins-beacons-award

WorkSafe recognises that there is more work to be done for communicating its strategy both internally and externally

The *WorkSafe New Zealand Strategic Baseline Review* report (January 2022) identified that there was not a clear understanding amongst some stakeholders interviewed of WorkSafe's strategy and regulatory approach.⁵ We agree with the need to tell a clear strategy story to stakeholders. We know this is an area where we need to improve clarity and consistency and are taking steps to address this. The Statement of Intent, outcomes framework and enterprise target operating model will form a significant part of this story and we are embedding this within the organisation.

Te Kāhu Mātai

In this regard, a significant initiative is Te Kāhu Mātai which provides the ability to connect with iwi, unions, and business representatives as a forum for rounded debate on health and safety issues.

Enabling stakeholder voice through Te Kāhu Mātai

Te Kāhu Mātai is a partners' council of iwi, business and union partners who engage and provide advice to the WorkSafe Board and bring iwi and social partner representation at a governance level. Whānau, hapū, iwi and other community groups have a stake in ensuring health and safety in workplaces improves. Te Kāhu Mātai is an important forum bringing these groups together with business and unions as social partners to work with WorkSafe.

Te Kāhu Mātai provides a valuable sounding board for WorkSafe when developing programmes or initiatives aimed at better health and safety. In addition, it provides the opportunity for iwi and social partners to act as a conduit for feedback and advice to WorkSafe on health and safety issues affecting business, workers and Māori, and to hold WorkSafe accountable.

Te Kāhu Mātai has convened on three occasions since it was established in April 2021 and has confirmed its support for the strategy as outlined in the WorkSafe Statement of Intent and current delivery priorities.

⁵ Ministry of Business, Innovation and Employment – *WorkSafe New Zealand Strategic Baseline Review*, Sage Bush January 2022.

WorkSafe adopts a really responsive approach to regulation

Responsive approaches to regulation have been adopted and implemented by regulators for many years, the most well-known being that developed by Ayres and Braithwaite in their work with the Australian Taxation Office in the 1990s. This approach involved the regulator first understanding the range of attitudes and behaviours in the regulated community (and the risks they pose) from those who would willingly comply, through those who needed some prompting, to the conscious non-compliers, and second choosing an appropriate response intervention to deal with the presenting behaviours. This could range from communications to raise awareness and educate through to stronger enforcement actions of sanctions and prosecutions. The focus was very much on the individual situation and the presenting risk.

Really responsive regulation: a more nuanced approach to regulatory practice

More recently, regulators have been adopting more nuanced approaches to regulatory decision-making for really understanding the situation and wider context, and considering risk of harm factors in addition to presenting behaviours. The regulatory response is tuned to a number of additional factors including: the operating and cognitive frameworks of firms, the institutional environment and performance of the regulatory regime, the different logics of regulatory tools and strategies, and to changes in each of these elements.⁶

Adopting a regime orientation means knowing the regulatory landscape, leading, and working with and through others to achieve regulatory outcomes.

We have adopted this really responsive approach to regulatory decision-making and activity. It underpins the logic of our enterprise target operating model, which is a key driver for our regulatory focus and responses. It is also in line with our function under the WorkSafe New Zealand Act 2013 to **make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes.**⁷

⁶ LSE, Law, Society and Economy Working Papers 15/ 2007 Robert Baldwin and Julia Black.

⁷ WorkSafe New Zealand Act 2013 s10 (b).

Traditional enforcement tools are necessary, but not sufficient

In this really responsive model traditional enforcement and education approaches are still essential tools, but they are considered insufficient to bring about the profound changes necessary to keep workers healthy and safe. A modern 'insights-driven' regulator needs to understand the upstream accountabilities, business models, supply chains, terms and conditions, and contracting arrangements that determine whether work is healthy and safe for the people who do it every day.

This does not mean taking the focus off usual activities of education, engagement, compliance and enforcement as required under legislation, but augmenting these with new approaches to achieve outcomes.

The post-Pike River reforms recognised that responsibility for keeping workers safe extended far beyond the direct employer. As the 2012 Independent Taskforce on Workplace Health and Safety put it, the typical response to death and injury had been to **seek and blame an immediate cause or responsible person**. Instead, the new regulator needed to **examine the root causes of incidents**.⁸

Whakaari/White Island

We have taken this approach in response to the Whakaari/White Island tragedy where 22 people died and 25 were seriously injured.

Response to the Whakaari/White Island tragedy

On 9 December 2019 Whakaari/White Island, an active stratovolcano island in New Zealand's northeastern Bay of Plenty region explosively erupted.

Twenty-two people died and 25 were seriously injured. WorkSafe's response has been to assess not only the failure on the day itself, but more importantly the deficiencies that led to the failure on 9 December 2019. In other words, the failure of systems that should have prevented the tragedy in the first place. Taking this approach, we have taken enforcement action against those 'upstream' parties for a lack of appropriate systems to manage risk prior to the harm being caused. Charges therefore have been laid on the people who sold the tickets/tours and the owners of the island but also agencies that were part of the system failure. It is these 'upstream' parties who are considered significant players in the system with accountability for acting to ensure harm prevention.

The Whakaari/White Island charges are examples of sheeting responsibility beyond the immediate tour operators to address root cause effects within the system.

⁸ Independent Taskforce on Workplace Health and Safety 2012.

Talley's

Another example of this more sophisticated orientation to regulation is our recent approach to achieving improvements in workplace health and safety in Talley's.

Really responsive regulation in action with Talley's

Talley's is a Motueka-based food manufacturing company which caters to both the New Zealand and international markets.

Using ACC data, we know that manufacturing is one of the sectors with the highest rates of acute harm and that meat processing has high rates of injury, and that Talley's has a long-standing poor record of health and safety performance. Despite predecessor organisations and WorkSafe spending many years using all our traditional input/output style regulatory responses of education, guidance, inspections, enforcement notices and prosecutions, the Talley's group of companies has not improved its performance.

Things came to a 'public' head when an anonymous whistleblower at Talley's frozen food factory in Ashburton came forward to TVNZ with images of filthy machines, saying it is 'just a matter of time' until there is another accident at the factory.

At this point, rather than just look at the state of the machinery in one location, we decided to look at the whole of the company operations to get to the underlying root causes that created its poor compliance record over time. We chose a Targeted Complex Intervention approach which looked across the group of companies rather than the single PCBU (Person Conducting a Business or Undertaking) where the event happened. Its intervention spanned upstream duty holders (Directors in the holding company) to the frontline (worker experience to see the impact of culture of work-related mental health – a priority in the Government Health and Safety at Work Strategy). This approach uses several of our six core activities at once in a bespoke intervention, combining enforcement, audit, education, innovation and building worker participation to address root causes and the systemic aspects of the issues.

Another element of the approach was to capitalise on the effect of the negative publicity on Talley's suppliers and distributors as a lever to encourage the company to take notice and effect significant change. Our Chief Executive has met with the Talley's board as a part of the intervention approach. Therefore, the board has agreed to undergo a SafePlus review – a voluntary self-assessment tool for companies which focuses on leadership, worker engagement and risk management. This will reinforce the messages from WorkSafe, and provide tangible

solutions for the company to work on. If this is not enough, we still have the option of litigation against the directors and senior officers. Or the company could make a long-term commitment to change, perhaps using the voluntary enforceable undertaking provision allowed for in the 2015 HSWA (Health and Safety at Work Act) legislation.

The intent has also been to achieve a 'halo effect' for other manufacturing companies, so that they understand that WorkSafe will not only look at the immediate situation of risk and harm, but also dig deeper to address root causes further up the chain of accountability.

Work-related health

Another example of modern regulatory practice is improved health outcomes for workers. This is a more sophisticated orientation to regulation as the benefits to improved health outcomes will take time to realise however the health impact on workers is significant.

Really responsive regulation in action – Mentally Healthy Work

Identifying and managing psychosocial risks in the workplace is not a new obligation under the Health and Safety at Work Act or a new area of work for WorkSafe. However, the development of a dedicated Mentally Healthy Work team and the associated development of the Kaimahi Hauora team of specialist health inspectors within WorkSafe has given this area greater visibility and focus.

These developments have coincided with cases of workplace bullying and harassment that have been widely covered in the media. These cases and our increased capacity and capability in this area have driven an increase in demand for our engagement, advice and enforcement in this area.

Businesses and workers in Aotearoa are becoming better oriented towards and knowledgeable about mentally healthy work. One of WorkSafe's tasks is to engage with and educate Aotearoa about mentally healthy work – what it is, why it is important and how to achieve mentally healthy workplaces that ensure workers are safe and healthy.

Our primary focus in 2020/21 was to work with external partners to develop simple, evidence-based messages about mentally healthy work to inform and guide business owners, leaders, workers and health and safety professionals.

Work by our Mentally Healthy Work team together with our Kaimahi Hauora team to promote a better understanding of mentally healthy work includes:

- a plan to develop materials to inform and support health and safety representatives about mentally healthy work. A new resource, *Mentally Healthy Work in Aotearoa New Zealand*, was released at the end of 2021
- work with the New Zealand Institute of Safety Management, the Health and Safety Association of New Zealand and the SafeSkills conference to share information about mentally healthy work and WorkSafe's role
- a qualitative research project about mentally healthy work
- the production of new videos called *What good looks like*, which share stories about mentally healthy work.

The recent *WorkSafe New Zealand Strategic Baseline Review* report 'strongly' supports WorkSafe **trying new initiatives and using its full range of regulatory levers to adopt the best approach to improve health and safety outcomes and ensuring that PCBUs and other duty holders met their duty of care.** It confirms our approach and suggests that we **continually reinforce that accountability for work-related health and safety sits with businesses and other duty holders.**⁹

Our outcomes-oriented approach provides clear direction for the step-change impacts we need to make, and for the outputs and activities we need to engage in to achieve these.

Traditional focus on economy and efficiency over effectiveness

The traditional model for applying intervention logic in the public sector has adopted an approach of first determining the activities to be engaged in by an organisation and the inputs required to enable these. Then the model looks to specify the outputs and outcomes that might be achieved through using these resources. This approach comes at the world through an economy and efficiency lens in the first instance, and makes an assumption that, all things being well, effectiveness will follow.

⁹ Ministry of Business, Innovation and Employment - *WorkSafe New Zealand Strategic Baseline Review*, Sage Bush January 2022.

This orientation presents significant issues, particularly for regulatory agencies, where regulatory effectiveness should be the prime focus, with a secondary eye, of course, on economy and efficiency. Back in the year 2000, an influential regulatory practitioner, Malcolm Sparrow, exhorted regulatory agencies in the United States to adopt a focus on outcomes first and process second if they wanted to be effective in their efforts.¹⁰

Regulatory failure from over-emphasis on efficiency over effectiveness

Adopting the traditional model has led to some regulatory failure across the public sector. Agencies are now developing regulatory strategies with the clearer focus on outcomes and assessing the regulatory effectiveness of their interventions.

Working harder is less likely to be effective than working smarter

The traditional model also discourages innovation and breakthrough, as it encourages a dynamic of working harder on the same things versus one of working smarter and stepping back, reflecting on the desired outcome and then adjusting activity and resource allocation accordingly. The more effective intervention logic is to turn the model on its head, focusing first on getting desired outcomes and impacts stated, and then moving to the outputs, activities and inputs required to deliver on these. In other words, effectiveness outcomes up front, followed by efficiency and economy considerations.

The WorkSafe SafePlus initiative encourages organisations to look to effective workplace health and safety outcomes first and then develop solutions to deliver on these

WorkSafe's SafePlus initiative is a good example where the regulator has developed a tool that supports its focus on outcomes and regulatory effectiveness. SafePlus is a self-help and WorkSafe-assisted programme that defines what good health and safety looks like, above minimum legal compliance and prompts pathways to achieve this. It developed out of an early recommendation of the independent taskforce (2012) for something (the Safety Star Rating Scheme) that would address the inadequacy of the current incentives for good health and safety performance, both to incentivise compliance (largely through penalties and other negative consequences) but also to excel beyond minimum requirements.¹¹ A new approach was necessary.

¹⁰ Malcolm Sparrow, *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance 2000*.

¹¹ Independent Taskforce on Workplace Health and Safety 2012.

Having a clear view of outcomes, we now have to further develop our understanding of the outputs, activities and inputs required and the cost implications of these.

We agree with the findings of the *WorkSafe Strategic Baseline Review* report that there is not a clear link between funding provided and regulatory outputs, and the need to better link its activities to outcomes.¹²

The focus has been on strengthening regulatory effectiveness through developing outcomes to be achieved and the enterprise operating model to get there. We are now taking steps to do the following:

- develop measures and tools for evaluating the results of our activity for achieving outcomes and impacts (that is, measuring regulatory effectiveness)
- develop the outputs and activities required to achieve outcomes and the linkages between them
- develop clearer understanding of the costs of activity to better demonstrate the linkages between funding provided, regulatory outputs and impacts, and
- strengthen our strategic financial management capability as a stronger base for future sustainable funding bids.

This work can flow naturally from the outcomes framework.

It will not be without challenge as, with a really responsive regulatory model, activity can be complex and change in order to respond to the presenting conditions.

¹² Ministry of Business, Innovation and Employment – *WorkSafe New Zealand Strategic Baseline Review*, Sage Bush January 2022.

Summary for *Way forward*

WorkSafe will:

- continue to operate as a really responsive regulator, delivering on our mandate under the WorkSafe New Zealand Act 2013 and the Health and Safety at Work Act 2015
- continue to take a balanced approach to our regulatory activity, using traditional education, compliance and enforcement tools combined with risk-based, systems-oriented approaches that address upstream factors, address organisational culture and increase worker participation
- through these measures, look to shifting mindsets away from health and safety being viewed as an addition to work, to being an integral part of how work is designed, set up and undertaken
- take steps to better communicate to stakeholders our strategic intent, desired impacts and operating approach
- develop measures and tools for evaluating the results of our activity for achieving outcomes and impacts (that is, measuring its regulatory effectiveness)
- develop the outputs and activities that are required to achieve outcomes and the linkages between them
- develop clearer understanding of the costs of activity to better demonstrate the linkages between funding provided, regulatory outputs and impacts, and
- strengthen our strategic financial capability as a stronger base for future sustainable funding bids.

Alignment with Government strategy and policy

WorkSafe was created to realise the Government's call for an **urgent, sustainable step-change in harm prevention activity**.¹³

Our stated outcomes for health and safety and the impacts required to realise these are clear, in line with Government expectations and reflect modern regulator ambitions and practice

The WorkSafe *Statement of Intent 2021-2025* aspires to a vision where 'everyone who goes to work comes home healthy and safe'. A fundamental underpinning of the strategy is to adopt a risk-based approach where risks are identified as early as possible and eliminated or controlled. As a responsive regulator, we have a commitment to targeting harm at the earliest point - **harm prevention is at the heart of what we do**.¹⁴

WorkSafe is the designated workplace health and regulator under the Health and Safety at Work Act 2015 (s189) and its impact intentions (see above) are in close alignment with the purpose of that Act (s3).

Modern regulator practice is firmly predicated on taking an outcomes oriented, risk-based approach, supported by intelligence, knowledge, and insights, and adopting a systems orientation for outcomes achievement (see below from more detail).

Through the holistic focus on integration of health and safety into work design and practice, seeing workers as partners, inclusion of the wider system of workers, and attention to risk management, our impact drivers reflect these proven orientations for effective regulator practice.

¹³ Working Safer: A blueprint for health and safety at work August 2013.

¹⁴ WorkSafe *Statement of Intent 2021-2025*.

Government policy and the intent of health and safety legislation support WorkSafe's focus for harm prevention and adopting a whole of system approach

The report of the Royal Commission on the Pike River Coal Mine Tragedy (October 2012) was a serious wake-up call on the significant deficiencies that existed in the health and safety at work system within New Zealand. In 2012 the Government established the Independent Taskforce on Workplace Health and Safety (the Taskforce) to advise on possible ways to reduce the rate of fatalities and serious injuries in the workplace.

Step change required in harm prevention activity

The Taskforce called for **an urgent, sustainable step-change in harm prevention activity and a dramatic improvement in outcomes to the point where this country's workplace health and safety performance is recognised among the best in the world in 10 years' time.**¹⁵ The then-Minister for Labour asserted **success will not be achieved by telling people what to do, but what they need to achieve, and breaking down the 'us and them' barriers in order for everyone to recognise their shared purpose.**¹⁶

Blueprint for changing the way we manage health and safety at work

The Government's response to the Taskforce's recommendations was outlined in *Working Safer: A blueprint for health and safety at work August 2013*, as the foundational blueprint for **changing the way we manage health and safety at work**. Key elements of the blueprint to drive focus and activity were the establishment of WorkSafe (December 2013) and provision for the Health and Safety at Work Act 2015.

- Establishment of WorkSafe (December 2013) as the primary regulator in the health and safety system to 'not only enforce, but also educate, guide and coordinate implementation across the system'.
- Enacting of the Health and Safety at Work Act 2015 ('the Act'), with the purpose to provide for a balanced framework to secure the health and safety of workers that includes eliminating or minimising risks, fair and effective workplace representation and cooperation, and assisting persons carrying out a business or undertaking (PCBUs) and workers to achieve a healthier and safer working environment.¹⁷

¹⁵ *Report of the Independent Taskforce on Workplace Health and Safety*, (April 2013).

¹⁶ *Working Safer: A blueprint for health and safety at work August 2013*.

¹⁷ *Working Safer: A blueprint for health and safety at work August 2013*.

Our regulatory approach is grounded in the vision of the Blueprint and the subsequent *Health and Safety at Work Strategy 2018–2028*

The blueprint's vision for achieving significant change through working safer, working smarter, targeting risk and working together is reflected in our ambitions to influence the way work is done and to **transform Aotearoa's workplace health and safety performance towards world-class**,¹⁸ through smarter regulatory approaches that address root causes and encourage sustainable health and safety behaviours within the system.

The Government's *Health and Safety at Work Strategy 2018–2028* takes the blueprint further with the aim to **drive ambitious, sustained and system-wide improvements in our health and safety performance, to significantly lift the wellbeing and living standards of all New Zealand workers and their families**. The strategy sets two goals and associated priorities to guide the approaches of parties in the system:

- focusing on what will make the biggest impact to reduce harm
- building everyone's capability to do this well.

Priorities are: encourage leaders at all levels to integrate health and safety; enable workers to be represented, engaged and to participate; lift capability of health and safety practitioners; and Develop and share better data and insights to improve decision making.

The strategy sets out expectations for those in the system, including:

- for businesses: health and safety to be reflected all through the supply chain and in procurement, and with strong worker involvement in identifying and managing risks
- for workers: to be able to influence health and safety, be supported and work in a healthy and safe physical environment.

WorkSafe's orientation is aligned with these government expectations

Our orientation for harm prevention in the first place aims to have the biggest impact to reduce harm within the system by addressing risk of harm 'at the source'. Our focus on the supply chain and upstream influences on work related harm for health and safety aligns with the systemic expectations of the *Health and Safety at Work Strategy 2018–2028*.

¹⁸ *Statement of Intent 2021–2025*.

WorkSafe's approach supports its mandate under the WorkSafe New Zealand Act

We are committed to using insights and the full range of regulatory tools to achieve better outcomes for workplace health and safety. As we have developed a more sophisticated understanding of attitudes, behaviours and workplace contexts through research and evidence, we have expanded our toolkit. This expansion does not distract us from engaging in the education, investigation, compliance and enforcement activity and stewardship responsibilities which are also fundamental for any effective regulator. In this regard, we fulfill our mandate under the WorkSafe New Zealand Act 2013.

WorkSafe New Zealand Act 2013

WorkSafe New Zealand's functions are to:

- a. advise on the operation of the work health and safety system, including coordination across the different components of the system
- b. make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes
- c. monitor enforce compliance with relevant health and and safety legislation
- ca. publish information about:
 - i. its approach to enforcing compliance with relevant health and safety legislation (including where a provision of relevant health and safety legislation overlaps with a provision in another enactment); and
 - ii its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation
- d. make recommendations about the level of any funding (including fees or levies) that WorkSafe New Zealand requires to effectively carry out its functions
- e. develop codes of practice
- ea. develop safe work instruments
- f. provide guidance, advice, and information on work health and safety to:
 - i. persons who have duties under the relevant health and safety legislation; and
 - ii. the public
- g. promote and support research, education, and training in work health and safety

- h. collect, analyse, and publish statistics and other information relating to work health and safety
- i. engage in, promote, and coordinate the sharing of information with other agencies and interested persons that contribute to work health and safety
- j. foster a cooperative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety
- ja. foster a cooperative and consultative relationship with the EPA when carrying out its functions, duties, and powers in respect of hazardous substances
- k. promote and coordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way
- l. perform or exercise any other functions or powers conferred on WorkSafe New Zealand by or under any other enactment
- m. perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

Our approach also supports its mandate under the Health and Safety at Work Act 2015

WorkSafe's outcomes-oriented, really responsive approach to regulation is directly in line with achieving all of the outcomes from the Health and Safety at Work Act. The really responsive approach is particularly relevant for providing fair and effective workplace representation, consultation, cooperation (subsection (b)), encouraging unions and employer organisations to take a constructive role (subsection (c)) and providing a framework for continuous improvement and progressively higher standards (subsection (f)).

Health and Safety at Work Act 2015

Section 3 (1) establishes the purpose of the Health and Safety at Work Act, and for which WorkSafe is the designated regulator (s189).

The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by:

- a. protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and
- b. providing for fair and effective workplace representation, consultation, cooperation, and resolution of issues in relation to work health and safety; and
- c. encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting PCBUs and workers to achieve a healthier and safer working environment; and
- d. promoting the provision of advice, information, education, and training in relation to work health and safety; and
- e. securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
- f. ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and
- g. providing a framework for continuous improvement and progressively higher standards of work health and safety.



Reflecting good, modern regulator practice

Our strategy and practice are in line with expected good practice for modern regulators both globally and within New Zealand.

Some historical precedent for looking at all aspects of the industry or sector

Adopting a systems approach and looking at upstream activity in the supply chain might be new within the workplace health and safety system but is in line with early work done within the civil aviation sector in New Zealand. As early as 1948 the Tymms Report observed that **everyone engaged in aviation is responsible for air safety, and the regulatory system should be such as to ensure that each carries his share of responsibility.**¹⁹

Some 40 years later, a subsequent review of the civil aviation system in New Zealand came to a similar conclusion that adopting a systems approach was **one of the keys to improved efficiency in the system.**²⁰

Government expectations for good regulatory practice (New Zealand Treasury 2017)

The Government expects that all government regulatory agencies ‘will have regard, and give appropriate effect, to good regulation principles and regulatory stewardship responsibilities within the bounds of their agency resources and mandates.’²¹

Expectations for an effective regulatory system include having clear objectives, enabling regulators to adapt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or

¹⁹ Tymms, Sir Frederick et al, *Report of the United Kingdom Civil Aviation Mission 1948 for the Government of New Zealand*, (1984).

²⁰ Swedavia – McGregor Report *Review of Civil Aviation Safety Regulations and the Resources, Structure and Functions of the New Zealand Ministry of Transport Civil Aviation Division*, 1988.

²¹ *Government expectations for good regulatory practice* (New Zealand Treasury 2017).

innovative approaches to meeting their regulatory obligations, and having scope to evolve in response to changing circumstances or new information on the regulatory system's performance.

Expectations for good regulator practice include: maintaining a transparent compliance and enforcement strategy that is evidence-informed, risk-based, responsive, and proportionate to the risks or harms being managed, providing accessible, timely information and support to help regulated parties understand and meet their regulatory obligations, providing simple and straightforward ways to engage with regulated parties, and hear and respond to their views.²²

We meet these expectations through our outcomes orientation, particularly for equitable outcomes and approaches to our regulatory practice as expressed in the enterprise target operating model.

Responsive regulation

We have explained really responsive approaches to regulatory practice earlier in this statement. In terms of good practice, fundamental to these is for the regulator to be **attuned** to their settings insofar as they are heedful of such matters as differences in ideas and approaches, and the potential of different regulatory options. They will be **intelligent** in that they know precisely what they are setting out to achieve, and their systems will enable information processing for performance evaluation and communication to stakeholders on their actions. They will be **dynamic** and display both a sensitivity to changes in their regulatory environment and an ability to adapt their regime to such changes.²³

Responsive approaches are increasingly being used by regulators globally and in New Zealand.

A graphic and often quoted example is the experience of the construction of the infrastructure to support the London Olympics in 2012. There was a spectacularly low rate of injury incidents and deaths compared with other construction programmes. London 2012 was the safest Olympic build ever, with a reported injury rate of 0.17 per 100,000 person-hours (0.34 per 100 full-time employees by the method used in the US) and far below the 0.55 building industry average in the UK. The effort lasted four years, and for the first time in Olympic history all projects were completed without a fatality.²⁴

²² Ibid.

²³ Robert Baldwin, *Achieving Excellence and Lucidity*, in Gary Coglianese ed., *Achieving Regulatory Excellence* 2017.

²⁴ www.ehstoday.com/construction/article/21915795/exploring-the-recordbreaking-health-and-safety-performance-of-the-2012-olympic-games

The difference-maker was the recognition of the tight connection between health and safety, and the interdependence of the two. So, looking after workers' health first meant they were fed well before starting work, and had support to address other health issues that might impact the way they work.

Occupational health and safety support was also provided to encourage workers to make positive changes to how they worked in order to look after their health. In other words, making health and safety an integral part of how the work was done.

The Waka Kotahi *Tū Ake, Tū Māia Regulatory Strategy 2020–2025* expresses its approach as **regulating in the real world**, with a commitment to bring clarity and understanding to a complex regulatory system and ensure that all involved are accountable. **Effective regulation contributes to the economic and social wellbeing of New Zealand and supports our communities to thrive.**²⁵

To do this the agency will target effort for the greatest impact, decision-making will be risk based and focused on harm prevention, activity will be responsive and forward thinking, and informed by evidence and intelligence.²⁶

Tests for 'good' regulation

In their comprehensive exposition on regulatory theory, strategy and practice, recognised experts describe five criteria or tests for good regulation.²⁷ These are:

- Is the action or regime supported by legislative authority?
- Is there an appropriate scheme of accountability?
- Are procedures fair, accessible and open?
- Is the regulator acting with sufficient expertise?
- Is the action or regime efficient?

In describing our approach above we conclude that against these criteria:

- our action is supported by the WorkSafe New Zealand Act 2013 and the Health and Safety at Work Act 2015
- our work on looking at supply chain and upstream accountability is appropriate for addressing root causes and effecting more enduring improvements (though still to be fully evaluated)

²⁵ *Tū Ake, Tū Māia Regulatory Strategy 2020–2025*, Waka Kotahi New Zealand Transport Agency.

²⁶ *Ibid.*

²⁷ Robert Baldwin, Martin Cave, Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice Second Edition 2012*.

- our work for achieving 'equitable outcomes' through culturally sensitive ways and means is enabling greater access for worker participation in identifying risks and solutions
- there is more work to be done to identify the specifics of activities and associated capability to achieve desired outcomes and impacts
- we recognise the need to address the efficiency aspects of our work and draw the linkages between funding, outputs and impacts.

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