



Health and safety governance advisors, advice and influences

The **Better Governance**
Report Series

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Introduction to the *Better Governance* Project

The health, safety and wellbeing of kaimahi (workers) is both an ethical and legal responsibility for those who lead businesses and organisations

The governance discussions, decisions and actions of boards, officers and leaders play a crucial role in enabling good health and safety performance, and in reducing harm associated with mahi (work) and in wāhi mahi (workplaces). This was recognised by the *Royal Commission into the Pike River Mine tragedy* and by the *Independent Taskforce on Workplace Health and Safety*.

Officers and leaders can directly impact and influence the health and safety performance of their organisations' leadership and management teams, and their kaimahi. They can also impact and influence the supply chains and sectors in which they operate, and across the motu (country).

We know that health and safety are generally on the agenda for boards and their officers. We also know that performance in Aotearoa New Zealand against some measures has stalled. In some cases, it is getting worse. Kaimahi are still being killed and seriously harmed at mahi. The agenda is not driving the necessary change.

Over the past five years, an average of **77 kaimahi** have been killed each year while working¹

Injuries resulting in **more than a week away from work** have risen every year over the past ten years, except in 2020

There are an estimated **5,000–6,000** hospitalisations each year due to work-related ill-health

¹ All health and safety-related statistics referenced in this report are from WorkSafe, and are subject to the data limitations noted at <https://data.worksafe.govt.nz/>

Mahi Haumaru Aotearoa – WorkSafe New Zealand (WorkSafe) has publicly signalled an intention to increase its focus on the role and mahi of boards, officers and leaders in supporting healthy and safe mahi and wāhi mahi under the Health and Safety at Work Act 2015 (HSWA). This provides the opportunity for boards, officers and leaders to improve health and safety governance culture, competency and consistency of practice, and to improve outcomes for their kaimahi, their business or organisation, their supply chains, the sectors in which they operate, and Aotearoa generally.

Health and safety governance has a critical and crucial role in improving outcomes for organisations and their kaimahi through better control of critical risks

The *Better Governance* project (the project) was initiated in the context of the renewed focus of WorkSafe, and because governance was an area of exploration identified by a number of health and safety leadership organisations and professionals. It is an improvement initiative led by the *Business Leaders' Health and Safety Forum* (BLHSF) and the *General Manager Safety Forum* (GM Safety Forum). It has support and subject matter expert (SME) representation from the *Institute of Directors* (IoD) and WorkSafe.

The project is intended to comprise multiple phases including:

1. **phase one:** discovery and options identification
2. **phase two:** options and intervention development, and implementation
3. **phase three:** monitoring and evaluation.

Following engagement with WorkSafe, funding was agreed to enable dedicated resourcing of phase one of the project. The funding has provided for a part-time project team member to support project management and coordination, stakeholder identification and engagement, an ecosystem map and the development of options for improvement and change. This team member is supported by a number of SMEs acting in a strategic and advisory capacity.

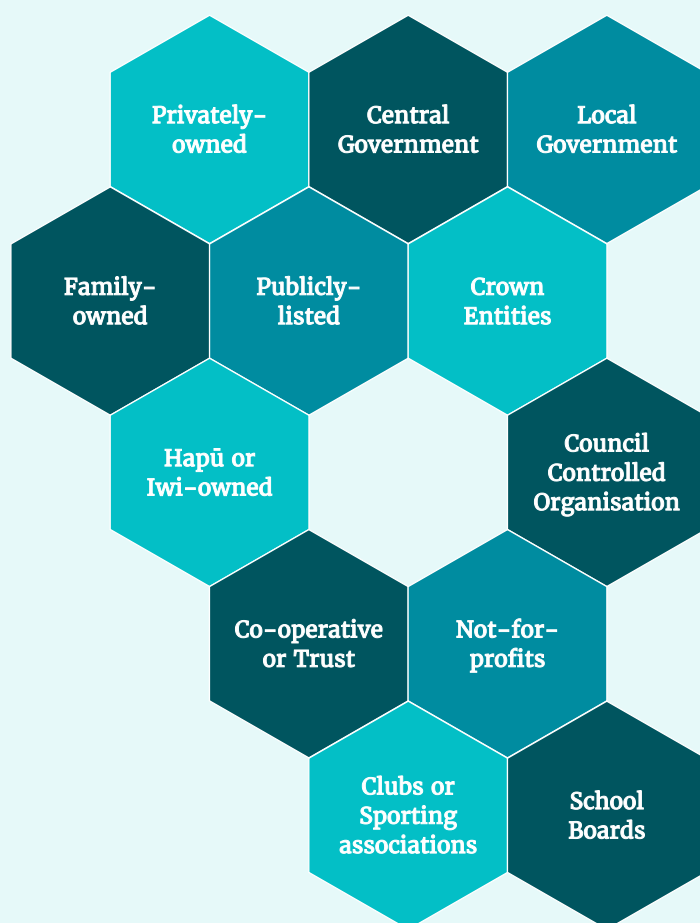
The project has, and will continue to, benefited from the contribution of as many stakeholders and SMEs that it can reach, and who are willing and able to contribute. The team and its resources are small but it has a big ambition and a clear project vision:

Governance leadership genuinely improves health and safety performance in Aotearoa New Zealand

Background to the review

To help inform the project, the project team sought to understand the governance landscape, particularly who and what is influencing health and safety governance in Aotearoa New Zealand. Our engagement process and this review confirm that there are a range of different governance sectors and contexts in Aotearoa. This is shown in figure one below.

Figure one: High-level governance sectors and contexts in Aotearoa



97% of businesses in Aotearoa have **fewer than 20 employees**, and small businesses employ around 679,000 kaimahi²

Aotearoa has over **300 member-owned businesses**, employing over 50,000 kaimahi

In 2018, there were **115,770 non-profit institutions** in Aotearoa, with up to 150,630 kaimahi³

In June 2022, there were **185,300 kaimahi** working in public administration and safety in Aotearoa⁴

Each high-level sector identified in figure one could be broken down into additional components. The cooperative sector is a good example of this, with organisations having a range of different constitutions. The not-for-profit sector is another example, with large organisations as well as tiny single issue-focused organisations.

² <https://www.mbie.govt.nz/assets/small-business-factsheet-2021.pdf>

³ <https://www.stats.govt.nz/assets/Uploads/Reports/Non-profit-institutions-satellite-account-2018/non-profit-institution-satellite-account-2018.pdf>

⁴ <https://www.stats.govt.nz/information-releases/labour-market-statistics-june-2022-quarter/>

We know that governance is not present as a discrete function in many organisations. It is not always done by boards made up of professional directors and CEOs operating with trusted support and advisors. Few directors and officers will be supported by board secretaries or advisors within their organisations.

Aotearoa is a motu of small businesses, we have a large and varied not-for-profit sector, and a significant number of public sector and local council organisations. Governance is done by small business owners, family and whānau members, Hapū and Iwi, and by those governing and leading our not-for-profits. It is done across the public sector, and in councils by elected members who are not a conventional board. The practice of governance in Aotearoa is more varied than most think.

Most of our directors, officers and leaders are not members of governance organisations like the IoD, or health and safety leadership organisations like the BLHSF

Governance is done by people who do not have a lot of time, and who work in a complex and changing environment. Along with their HSWA obligations, there are a wide range of other legal obligations on boards, officers, and their organisations. We heard that matters, such as the pandemic and ESG agenda, are occupying officers' and leaders' time. The economy and the environment are also emerging concerns. It is hard for many understand all their obligations and to keep up with the pace of change.



Where boards and officers can access health and safety governance advice

To understand what might influence boards, officers, leaders and governance discussions and decisions, the team worked to identify a range of people and organisations that may be providing boards with health and safety governance information, guidance, advice and training.

We will not have identified all the relevant organisations and individuals, as our approach was undertaken in the context of the size of the team and its budget. However, a range of stakeholders from the groupings above attended workshops or met with the project team. They provided insights and suggestions that the project team reported back in our *Better Governance – Stakeholder engagement and discovery report* based on a series of questions focused on:

- whether people considered **good governance as important to health and safety decision-making** and outcomes
- what people thought about the **flatlining of health and safety improvements** since the introduction of the HSWA, and the case for further change
- the different governance contexts, and if there were **commonalities and differences in decision-making in different contexts or sectors**
- what was driving governance and assurance currently and **what is working well or not**, including whether it was compliance driven or driven by principles
- what **key mindsets and principles would be required to fix the problems** or to build on the positives.

Available health and safety governance materials

The project team has sought to map the health and safety governance materials publicly. Some key people and organisations also provided their materials, in confidence, for the project team to review. We'd like to thank them for their willingness to contribute to the project and to our mahi towards better health and safety governance.

We reviewed over 200 governance materials, including:

information and
guidance

templates and
checklists

questions
and answers
documents

training course
outlines and
workbooks

Our review was done on the basis that the material appeared or purported to be about governance generally or health and safety governance specifically. Of note, a fair amount of the material was about neither and much confused governance with management and operations.

Where the material we identified was about governance, we looked for some key themes that might be considered to provide a foundation for good health and safety governance to improve outcomes and organisational resilience. We also looked at whether the guidance made any reference to Te Tiriti o Waitangi – The Treaty of Waitangi, or to cultural competency and cultural safety.

Other influences and concerns

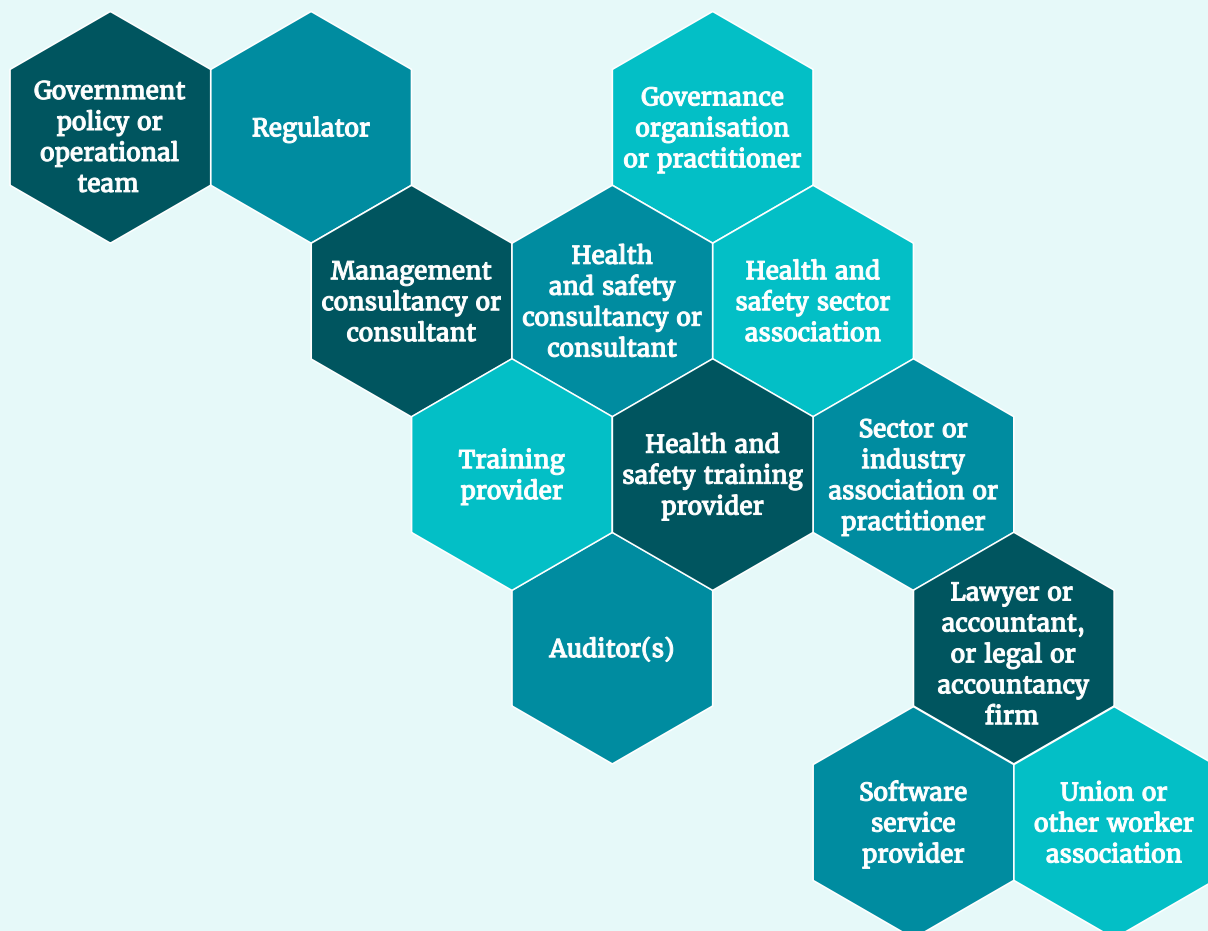
In this review, we also sought to identify other influences and potential concerns for boards, officers and leaders, and influences of board discussions and decisions. We were not surprised to hear that the pandemic remains on officers' minds.



Health and safety governance advice

The project team found that there are a range of people and organisations that provide governance advice and produce materials. The types of people and/or organisations we identified as giving advice or producing materials are shown in the figure, and discussed, below.

Figure two: types of people and/or organisations that provide governance advice



The advice given by these people and organisations includes general and specific advice, information, and guidance, and the provision of training and qualifications. Some materials are published and freely accessible, and our high-level review of these follows in the next section. In other cases, advice is purchased. It may be bought “off the shelf” or tailored, or a combination of both. Some may also audit health and safety systems, policies, and procedures against defined standards or those of their own making.

Governance organisations and practitioners

There are two main governance organisations in Aotearoa; the IoD which has around 10,000 members and a focus on boards and officers, and *Governance New Zealand* with around 1,500 members which has a focus on board secretaries. Both are membership organisations, meaning access to most of their information, guidance and training comes at a cost, although it is available to both members and non-members.

The IoD has comprehensive governance information, guidance, and training, and health and safety-focused materials. Some of those have been developed, and are delivered, by members of the project team. It has materials that include the not-for-profit sector but, with the exception of the material produced with WorkSafe, it is not freely available. It also has a focus on organisations where there is a clear separation between governance and management. Governance New Zealand does not have any health and safety-focused materials.

Community Governance is a relatively new organisation with a focus on the not-for-profit sector. It has the vision that all community organisations in Aotearoa are well governed, and has released a Good Governance Code.⁵ Currently, Community Governance does not provide any health and safety governance materials to the sector.

Community Governance recognises the range of governance maturity across the sector and the need to meet organisations where they are. Work towards the *Community Governance National Action Plan for Community Governance*⁶ included a quick review of the not-for-profit sector. It found that “there was limited opportunities for whole of board training and development and Chairs were also poorly provided for”.⁷

The project team also identified, and reached out to, a range of other governance organisations and hope to engage with them in our future work. One of these organisations focuses on the not-for-profit sector in Aotearoa, the others appear to be based in Australia. We are under the impression that the Australian-based organisations are not deeply engaged in the governance sector in Aotearoa. None of the stakeholders we have spoken with have mentioned them to us.

⁵ <https://communitygovernance.org.nz/board-resources/good-governance-code/>

⁶ <https://communitygovernance.org.nz/assets/uploads/CGNZ-2021-Community-Governance-NZ-National-action-plan-for-community-governance.pdf>

⁷ <https://communitygovernance.org.nz/assets/uploads/CGNZ-2021-Community-Governance-NZ-National-action-plan-for-community-governance.pdf>, page 11

Sector or industry associations and practitioners

There are a range of associations that support and/or lobby for their members and/or businesses and organisations in their sector and industry. The project team engaged with a number of these as part of this discovery phase. We found that they were providing governance advice which generally had a limited, high-level and compliance-focused health and safety component. We also identified some leading practice. Most of this advice was given through paid consultancy services and training.

We identified not-for-profit associations which were government funded and had a wealth of publicly available governance materials. Some of it was of a high quality and comprehensive. However, the project team found very little of it focused on health and safety governance. Where it did, it was at a high level and generally had a compliance focus.

One organisation's materials comprised of many landing pages, or pages with high-level content, with a significant number of links to further information. Not all the pages were relevant to boards and officers, or clear about officers' HSWA duties. Some contained advice that needed to be updated or removed as it did not reflect good practice or reference critical or material risks that should be the subject of governance discussion and decisions.

Central and local government organisations providing policy and operational advice

There is a significant amount of governance and business materials available on government websites, in particular those owned by the *Ministry of Business, Innovation and Employment* (MBIE) such as business.govt.nz. The team found that it could be challenging to search and navigate. The health and safety content identified was limited, high-level and compliance-focused. It was generally not targeted at boards or officers, but rather at *persons conducting a business or undertaking* (PCBUs) or operational managers.

The project team identified a significant amount of information on one government website that said it was for boards, but was not targeted at governance discussions or decisions. In some cases, it incorrectly defined an officer and confused their duties under the HSWA. It also contained numerous broken links and was due for review.

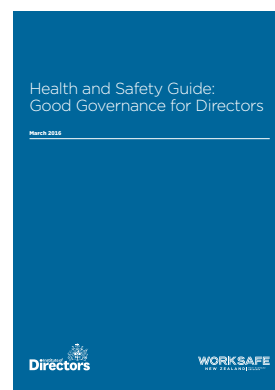
Regulators

WorkSafe was the only regulator with a suite of health and safety governance material. Some of it was produced in conjunction with the IoD. Most was published in 2016–17 and appears not to have been updated since that time. As a result, *the Health and Safety Guide: Good Governance for Directors* (known colloquially as “the blue book”) contains some broken links and is due for a refresh.

The WorkSafe / IoD blue book does provide a useful starting point to begin to understand the officer duties in the HSWA, and the difference between the role of a board and management. It is one of the few materials the team identified that mentions mahi, kaimahi, and worker engagement, participation and representation (WEPR) in any meaningful way.

The blue book contains a range of diagnostic questions, baseline actions and recommended practice. However, there is little advice on what might comprise an appropriate answer to each question, or detail on what would help achieve good outcomes where a recommended practice was implemented. For example, it recommends that directors, “commission periodic audits and reviews of the [health and safety] system”⁸ but does not provide advice on how a board might best initiate a review, the skills or qualifications that might be needed by the person or organisation undertaking it, what it should cover, or how they might assess its quality, discuss its findings or take action. The Safe+ tool is similar.⁹ We found this to be the case in a range of the materials identified.

The *Civil Aviation Authority* (the CAA) has a single factsheet setting out who duty holders are under the HSWA. It does not, however, set out what the duties are or how they apply in the sector. *Maritime New Zealand* (Maritime NZ) has a short factsheet setting out the officer duties and who comprises an officer.



⁸ Accessed via <https://www.worksafe.govt.nz/laws-and-regulations/operational-policy-framework/worksafe-positions/officers-due-diligence>, page 23

⁹ <https://www.worksafe.govt.nz/managing-health-and-safety/businesses/safeplus/resources-and-guidance/safeplus-onsite-assessment-methodology/>

Health and safety sector bodies

The project team looked for health and safety governance materials across Aotearoa's health and safety sector bodies, and found that this was not a focus for them and their mahi. The public sector's *Government Health and Safety Lead* (GHSL) has a leadership course developed in conjunction with the IoD, targeting public sector agencies governing without a conventional board. It has produced one of the better guidance documents that we reviewed; the *Health and Safety – A Good Practice Guide for Public Service Chief Executives and Officers*.¹⁰ Along with providing foundational advice, it speaks to the need for health and safety governance to be integrated, proactive and proportional. It provides some detailed advice on what that means, and the practices that can support positive outcomes and performance improvements.



The GHSL guide talks about the need to involve others, including kaimahi and their representatives, in health and safety governance but does not have a lot of detail on what this might look like. It makes one of the very few references to the need to work with partners and suppliers that the project team identified in the materials reviewed. This is discussed in more detail below.

Health and safety professionals and consultancies

A Google search shows that there are a significant number of health and safety professionals and consultancies offering health and safety governance advice. The project team has not been able to engage with them all, and their governance materials are not publicly available as they represent their intellectual property. It is not possible to assess the scope or quality.

Health and safety professionals may or may not be qualified or registered. There are three main health and safety professional registration bodies¹¹ in Aotearoa, with the *Health and Safety Association of New Zealand* (HASANZ) the umbrella organisation. Health and safety governance is an identified competence on the HASANZ Register, but currently only 19 people are deemed to have achieved this.

The *New Zealand Institute of Safety Management* (NZISM) sets out required qualifications and experience at each of its accreditation levels, with three levels – professional, certified professional, and certified fellow – eligible to apply to join the HASANZ Register.¹² Governance is acknowledged as a specialist skill. It is establishing a forum for members interested in developing their governance careers or who are currently engaged in governance, has training webinars, and is looking to develop a competency framework. Some of this mahi is being supported by a member of the project team.

¹⁰ <https://www.healthandsafety.govt.nz/a-z-topics/reports/good-practice-guides/health-and-safety-a-good-practice-guide-for-public-service-chief-executives-and-officers/>

¹¹ The New Zealand Institute of Safety Management, New Zealand Safety Council, New Zealand, New Zealand Occupational Hygiene Society

¹² <https://indd.adobe.com/view/38c95334-fe74-4dbe-8170-77663e2454bb>

Management consultancies

Management consultancies all provide health and safety governance advice. Generally, they work with larger businesses and organisations, and the public sector. In our stakeholder engagement, we heard that many businesses and organisations would not be able to afford specialist advice. As the advice given by consultancies is their intellectual property, the team was not able to access or assess the scope or quality of it.

We looked at the All of Government Procurement providers list¹³ as a guide to other management consultancies providing governance advice (recognising that this list does not capture them all). The team notes that there are many, and most are not on our stakeholder list, which is one reason we continue to ask stakeholders to share our reports.

We note that there are a range of consultancies that provide advice on organisational operating models and structures. They have the ability to influence the structural positioning and operating model of those who lead health and safety within an organisation. Organisational design to support positive health and safety outcomes is a matter that was raised with the project team.

Law firms and lawyers, and accountancy firms and accountants

We know that governance advice, including health and safety governance advice, is provided by lawyers and accountants, who are often the primary or first advisors to businesses or organisations who do not have the resources to engage health and safety professionals or consultants. In the case of lawyers, this advice might sometimes come too late (i.e., after an incident).

The project has engaged with a number of law firms and lawyers as there are a number with a specific focus on health and safety. We have not engaged in the accounting community as it is not possible to identify those who might give advice about governance. We will seek to engage as the project progresses, recognising that the provision of governance advice, and health and safety advice, is not a formal part of an accountant's role. Where it is provided, we anticipate that it will likely come from a well-intentioned place of wanting to see their clients succeed.

¹³ <https://www.procurement.govt.nz/contracts/consultancy-services/consultancy-services-providers/>

Training organisations

In addition to the people and organisations identified elsewhere in this section, the project team sought to identify training organisations offering health and safety governance content. To provide us with some direction, we looked at a number of the *New Zealand Qualifications Authority (NZQA) Strategic Purpose Statements* for health and safety qualifications and a number of *Purpose Statements* for unit standards. We did not find any reference to health and safety governance in these statements, although we may not have identified all relevant courses and materials on the NZQA website. The courses we did find were offered by the governance organisations, sector and industry organisations, consultancies, or by health and safety-specific training organisations.

The project team contacted two universities offering Masters of Business Administration to understand the governance content of these courses. In the feedback we received from one, we heard that governance was not a focus as the course was designed to support the development of foundational business leadership skills.

Health and safety training organisations

The project team identified a number of health and safety training organisations. Many are well-known within Aotearoa. We also know that there will be others that might have a sector or industry focus that we have not been able to identify. As with others in the professional sector, the detail of their training materials is not publicly available as it represents their intellectual property. However, the team's impression from the organisations and courses identified is that few are targeting boards, officers and/or governance.



Software service providers

As part of our review, we have identified a range of software service providers offering services to businesses and organisations. This includes those offering board or leadership software, and those offering health and safety software. Most of these service providers are multi-national, operating in a range of countries including Aotearoa.

Most of the software service providers we identified have factsheets, blog posts, webinars and similar that give high level governance advice, including health and safety governance advice. Some target that advice based on the region, detected via the IP address or selected when entering the site.¹⁴ It is typically at a high-level and lacking detail. We reflect, however, that the way the software is designed and used could be seen as these providers providing implicit advice (i.e., requiring specific inputs and producing pre-defined reports).

Unions and kaimahi

The project team notes that unions would not be a traditional source of governance material, information or guidance. We wanted to include them in this list, however, as an important stakeholder and a source of information, guidance and advice for kaimahi, officers and leaders. Unions and kaimahi can be drivers of change and should be able to advise boards, officers and leaders.

¹⁴ For example, <https://www.safe365global.com/nz/case-study/health-and-safety-governance/>



Available health and safety governance materials

The project team looked at the websites of the people and organisations identified above, and undertook web searches, to review a range publicly available health and safety governance materials. The figure below gives a sense of the volume of information produced by these people and organisations.

Figure three: health and safety governance material produced by people and organisations

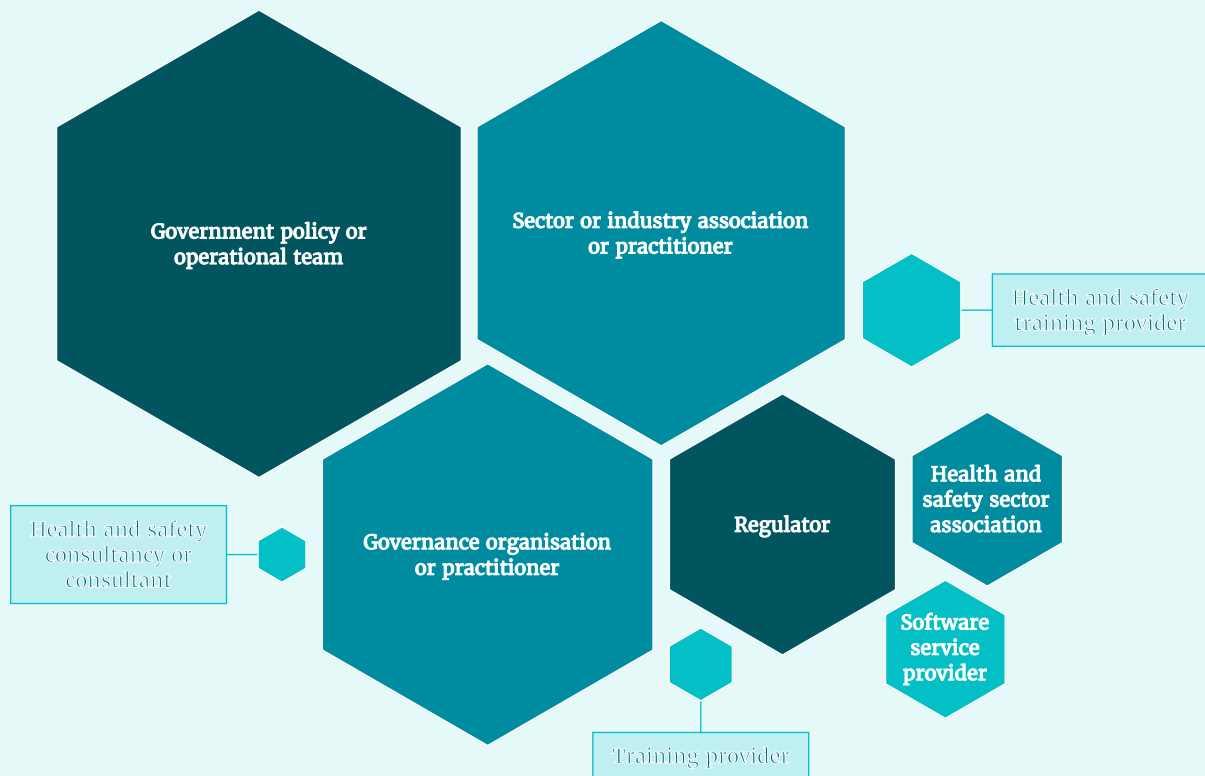


Figure three gives a rough picture. Not all the material we initially identified was relevant to this review exercise. Where it was not about health and safety governance, it has not been included. The exception to this is where the materials said they were for boards or officers (even where we found they were not). This has influenced the size of the “government policy or operational team” hexagon.

Overall, we found a lot of governance material. However, very little of it includes health and safety governance material and, where it does, it is not always adding material value. To determine this, we looked for some key themes that might be considered to provide a foundation for good health and safety governance. These included:

- **foundational information** about the HSWA, the officer due diligence duties within it, who comprises an officer, and health and safety governance generally. Approximately one-third of the material reviewed did not mention the HSWA or officer duties
- discussion of a **vision and values** to provide a foundation for health and safety governance. Very few of the materials review referenced establishing a vision generally or a specific vision to guide effective health and safety governance discussions and decisions
- the officer **mindsets** and **principles** that could drive good health and safety governance, and upon which boards and officers could act. None of the materials provide advice related to mindsets or principles that could support effective health and safety governance
- the **health and safety knowledge and experience**, and skills and competencies, that would benefit boards and officers in fulfilling their HSWA duties. We were not able to identify any governance materials that provided detailed advice on these matters
- specific advice on what enables **good health and safety governance**, as part of a board and officer's overall governance approach and practice. We found a few examples with high level, diagnostic questions and checklists
- detail about **the differences between "health" and "safety"**, and what that meant for boards and officers fulfilling their duties. We found very little work-related health and wellbeing-focused material targeted at governance level
- governance-level advice relating to **shared or overlapping duties** within a business or organisation, and across its supply chain. It is briefly touched on in the WorkSafe / IoD guidance and only one other piece of material we identified discusses it in any detail at all
- verifying **worker engagement, participation and representation** practices in an organisation. We found little mention of mahi and kaimahi in the materials we reviewed
- references to **Te Tiriti o Waitangi** or to **cultural competency** and **safety**. Outside of material produced by Te Puni Kokiri, we found just two references to Te Tiriti and there were no governance materials that provided advice on cultural competency and safety.

Foundational information about the HSWA, the officer duties and who comprises an officer

Approximately one-third of the governance material identified and reviewed did not mention the HSWA and officer duties at all. Where we did find references to health and safety governance, with some exceptions, the material tended to replicate or closely reference the relevant sections of the HSWA. It did not describe the duties in any detail nor did it clearly define to whom the duties applied. It was largely compliance-focused rather than strategic and purposeful.

We found a range of health and safety governance materials that confused or conflated the officers' "due diligence" duty with the PCBU's "so far as reasonably practicable" duty, and that confused or conflated governance and management roles and responsibilities. This was a particular feature of a range of materials identified in the education sector. For example, a page described as "required" reading for boards specifically stated that they held the legal responsibilities of a PCBU, not clarifying the officer duties and those of the PCBU.

Discussion of a vision and values to provide a foundation for health and safety governance

A vision is a key safety leadership criterion¹⁵ and one of the eight practices of a world class safety leader¹⁶

Fewer than ten of the materials reviewed mentioned the importance of boards having a vision to drive strategy, and even fewer mentioned having a vision and values that could provide a useful foundation for effective health and safety governance. This is despite the WorkSafe / IoD blue book outlining that officers' responsibilities include, "[T]o determine high level health and safety strategy and policy, including providing a statement of vision, beliefs and policy".¹⁷ The IoD's *The Four Pillars of Governance Best Practice* (the Four Pillars), outlines that a board has a critical role in setting and overseeing the strategic direction of an organisation, and that a vision is needed to do this.¹⁸

¹⁵ <https://www.forum.org.nz/assets/Uploads/Guides/Safety-Governance-2015.pdf>

¹⁶ <https://www.forum.org.nz/assets/Uploads/Guides/Safety-Leadership-CEO-Guide-2014.pdf>

¹⁷ A link to the blue book can be found here – <https://www.worksafe.govt.nz/laws-and-regulations/operational-policy-framework/worksafe-positions/officers-due-diligence>

¹⁸ <https://www.iod.org.nz/resources-and-insights/4-pillars-landing-page/#>

Mindsets and the principles that support health and safety discussions and decisions

The project team were interested in materials that set out any mindsets and principles for good health and safety governance. In our engagement, we described mindsets to be those things that determine how a person behaves when they're thinking about health and safety governance. Principles are things that businesses and organisations can act on, and see outcomes from their implementation. We only found two governance materials with any meaningful information and guidance on governance principles.

We did not find any materials providing information or guidance on boards setting, and then acting on, agreed health and safety governance principles. One piece of material mentioned that boards should establish whether their health and safety principles have been embedded into their organisation's culture.

Health and safety knowledge, experience, skills and competencies

Exercising care, due diligence, and skill is a core obligation of officers that applies to all governance discussions and decisions

The IoD states that board appointments should be based on experience, skill and merit. The *Four Pillars*, and a small number of the other governance materials we reviewed, make reference to the usefulness of a board skills matrix to assist with the recruitment and appointment process. Just one of these materials includes health and safety leadership as useful experience.

The WorkSafe / IoD blue book also makes reference to care, due diligence, and the skill that a reasonable director would exercise in the same circumstances. It notes that what is reasonable will depend on the nature of the organisation, and an officer's role and responsibilities. However, the project team was not able to identify any governance materials that provided detailed advice on the health and safety knowledge and experience, or skills and competencies, that would provide a foundation for any officer, or for officers tasked with specific health and safety governance roles and responsibilities.

Boards and officers are expected to need, and to take, advice. This includes health and safety governance advice from practitioners and technical experts. Where they choose to rely on advice, section 138 of the *Companies Act 1993* (the Companies Act) sets out the standard that applies. In summary, an officer must have reasonable grounds to believe the person giving advice is competent. The project team did not find any health and safety governance materials referencing the knowledge and experience, or skills and competencies, a board and officers should look for in those giving them advice. We are aware that some boards and officers are, however, seeking independent advice.

Specific advice on practices that support good health and safety governance

The project team reviewed the identified materials to ascertain if any described good health and safety governance practices or provided meaningful examples to guide board discussions and decisions towards achieving positive outcomes. We found very few examples and case studies, and quite a lot of diagnostic questions and checklists. In most cases, the questions and checklists were missing any complementary guidance that described leading practices or provided meaningful examples of how to improve outcomes. The *GHSL Health and Safety – A Good Practice Guide for Public Service Chief Executives and Officers* was an exception to this. It provided a range of examples of what a proactive and integrated approach to health and safety governance could look like.

The WorkSafe / IoD blue book includes a range of diagnostic questions, baseline actions for directors, recommended practice, and a “Director Health and Safety Checklist” which comprises a series of questions. We found it was too high level. For example, a health and safety policy template has been provided, and the checklist that follows ask yes / no questions about what the policy states. It does not ask any useful questions that might help a board understand how it has been implemented and if it is improving outcomes.

Detail about the differences between “health” and “safety”

Mental health and wellbeing are top of mind for many boards, officers and leaders, especially as a result of the pandemic

In our review of the governance materials, we were interested in how many addressed “health” as distinct from “safety”, and what content was available to boards, officers and leaders to help them understand the HSWA duties with regard to work-related health. We found very little work-related health-focused material targeted at the governance level, for boards and officers. We found a single reference to occupational health in one piece of material, and more detail in another guide targeted at the education sector. Most of the materials identified were targeted at PCBUs and focused on wellbeing rather than work-related health.

Governance-level advice on how to verify management of shared or overlapping duties

The project team was surprised at how few of the health and safety governance materials mentioned the issue of overlapping or shared duties of PCBU's given how important this is. Officers need to be assured that their organisation is cooperating and coordinating its activities with those it shares duties; right through the supply chain. This is briefly touched on in the WorkSafe / IoD blue book and only one other piece of material we identified discusses it in any detail.

Enabling worker engagement, participation and representation at a board-level

WEPR is a key part of the HSWA, and boards and officers need to verify that the PCBU they govern has effective WEPR processes and practices. However, most governance materials that we reviewed did not mention mahi or kaimahi in any detail, if mentioned at all. The few that did, did not provide meaningful advice about what a board or officer might look for in supporting WEPR in their organisation. The materials also provided very little guidance on what boards might expect to see or hear about from their leadership teams, or health and safety advisors, when seeking to verify how their PCBU is fulfilling its WEPR obligations. There was very little advice for boards or officers seeking to directly engage their kaimahi.

Of the approximately 20 information and guidance materials mentioning worker engagement, all but one contained only high-level references. There was some mention of health and safety policies and processes being developed with kaimahi, but little guidance about what that might look like or how it might be supported and/or verified by boards and officers, including how they might step out of the boardroom to better understand normal work in their organisation.

Te Tiriti o Waitangi, cultural competency and cultural safety

Despite its importance to Aotearoa, outside of materials produced by Te Puni Kokiri, the project team only identified two sources of governance material referring to Te Tiriti o Waitangi. Both were in the not-for-profit sector. We found just a few governance materials that referenced te ao Māori governance and Māori governance.¹⁹ We did not find any governance materials that provided advice on cultural competency and safety, or that connected these things to health and safety governance or practice.

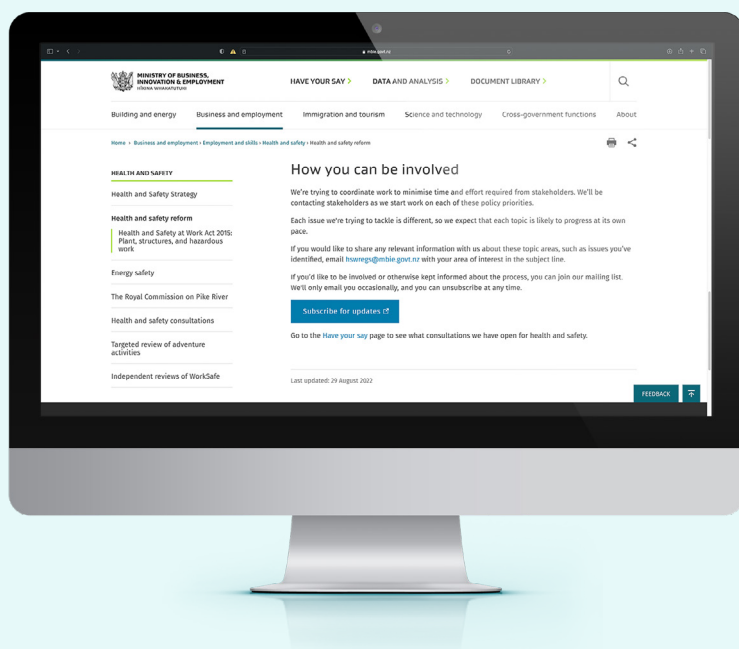
¹⁹ Te ao Māori is the Māori world comprising uara Māori – Māori values and tikanga Māori

Other influences on boards and officers

In our engagement to date, we have consistently heard about how busy boards are, and the complex and changing environment in which they operate. Acknowledging this, we sought to identify influences and potential concerns for boards and officers, and influences of board discussions and decisions that might connect to health and safety governance.

Legislation

The HSWA establishes the officer due diligence obligations, and the HSWA and associated regulations establishes the legal and operational framework for health and safety in Aotearoa. Obligations are placed on all stakeholders engaged in mahi, to the degree they can control and/or influence it, with a focus on managing the risks associated with mahi.



Stakeholders can subscribe to updates on the HSWA and regulatory reforms through the MBIE website²⁰

²⁰ <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/health-and-safety/health-and-safety-reform/>

Along with their HSWA obligations, there are a wide range of other legal obligations on boards, officers, and their organisations. They also need to horizon scan to understand what's coming up. Stakeholders told us about the complexity of the legal environment in which boards operate. It is not possible for the project team to list all the relevant legislation, but we note that boards and officers may have obligations that may relate to (in summary):

- governance and operations
- financial operations
- competition and consumer operations
- labour market, education, registration, training, and skills
- trade and international regulations and requirements
- land and buildings
- plant and transport
- hazardous substances
- emissions and waste
- product standards and safety
- digital environment and operations
- information management and reporting.

Of note are the foundational officer obligations in the Companies Act, which will soon be replicated in the *Incorporated Societies Act 2022* (the Incorporated Societies Act). These obligations require an officer to exercise care, diligence, and reasonable skill in performing their duties.

The Companies Act and Incorporated Societies Act obligations seem to work both for and against boards and officers in meeting their HSWA obligations. The due diligence obligations in these acts apply to all board discussions and decisions, across all the applicable legislation and obligations. Managing this demands time, creates tension, and requires trade-offs that have the potential to negatively impact health and safety governance. Not all obligations complement each other.

Labour market, education, registration, training and skills-related legislation should work for officers in meeting their HSWA obligations as they establish minimum standards for mahi and kaimahi. In this area, there has been an increased focus on modern slavery and worker exploitation, and chains of responsibility over recent years. Exploitation includes breaches of health and safety obligations and standards.

MBIE has recently completed consultation on proposals designed to reduce the opportunity for exploitation. They included proposals for a new due diligence obligation and for new responsibilities for organisations, across their operations and supply chains.²¹ If it proceeds, it may be an opportunity for boards and officers to better understand their organisation's mahi and kaimahi, and that of their partners.

²¹ <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/modern-slavery/>

New whistleblower legislation also came into effect from 1 July 2022. It is intended to make it easier for workers to raise concerns about serious workplace misconduct to an appropriate authority. Serious misconduct includes conduct that creates a serious health and safety risk.

Every public sector organisation must have appropriate internal procedures for protected disclosures. This is not required of private sector organisations. The project team does not know if the whistleblower legislation is on the agenda for boards and officers, or has been the subject of board discussions. Protected disclosures were mentioned to us by a single stakeholder during our engagement process.

Case law

Case law is one way in which we can interpret how legal obligations should be given effect. Given the officer duties were considered to be one of the key changes to the HSWA,²² the project team was interested whether prosecutions under section 44 HSWA, and their outcomes, might be influencing governance discussions and decisions. We were also interested in how the courts interpreted the officer duties, and whom they considered to be an officer.

Our interest in the case law stemmed from stakeholder feedback from some sectors that boards and officers were no longer concerned about the implications of the new duties and regulator investigations. They considered the risk of investigation, let alone prosecution, to be low.

Since the HSWA commenced on 4 April 2016, we identified 10 cases where charges had been laid under section 44 of the HSWA. They include:

- seven by WorkSafe with two ongoing, and two where charges were withdrawn
- two by Maritime NZ with one ongoing
- one by the CAA.

With the exception of the prosecution being taken against the Butties (the directors of Whakaari Management Ltd) which remains before the courts, a key feature of the WorkSafe prosecutions is that the section 44 charges have been brought against officers closely or directly involved in the day-to-day mahi of the PCBU. Their organisations were not large or complex in their governance / management structure or operations. The harm involved in the incidents leading to the charges has typically been significant.

In the outcomes of the prosecutions, the courts have made it clear that the officer duties are distinct to those of a PCBU and a kaimahi, and that a person may have multiple duties under the HSWA. In one case, involving Parker and Kimberley Tool and Design Ltd, the court commented that officers could no longer pass responsibility for their actions or inactions to the PCBU.

²² https://www.parliament.nz/en/pb/hansard-debates/rhr/document/51HansD_20150827_00000016/third-readings

In the case of *Director of Civil Aviation v Sarginson*, the court found that the officer due diligence obligation was contextual, and depended on the nature of the organisation, and the role and responsibilities of the officer. The court found that the legislature had clearly communicated that the obligation extended to officers who are both close to and removed from the day-to-day operations of a PCBU and that it extends within both flat and hierarchical organisations.

Regulators have not often sought to investigate or prosecute officers; prosecutions taken since the HSWA came into effect average just over one per year

Based on the small number of prosecutions taken since 2016, averaging just over one per year, the project team can understand the feedback we received; that officers were no longer concerned about investigations and prosecution. The regulators have not often sought to prosecute officers. In the Gibson and Ports of Auckland case taken by Maritime NZ, the former chief executive is the only officer being prosecuted. The other officers are not.

We note, however, the recent WorkSafe commentary on the need to engage actors at all levels in the health and safety system, and to evolve thinking to see health and safety as integral to the planning, set up and delivery of how mahi is done. Also, WorkSafe's support of, and interest in, this project as part of a renewed interest in health and safety governance. We cannot rely on legislation and regulation as the only lever for positive change and performance improvements but it will remain an important lever, especially in the case of blatant or recidivist failure.

Other influences

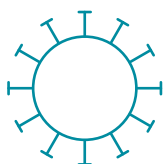
Along with the legislation and case law, the project team has sought to understand the other influences on board discussions and decisions in relation to health and safety. We gathered feedback and insights from our stakeholder engagements, and from our project Governance Group. The influences raised are discussed briefly below. We're sure that there are others and welcome ongoing feedback.

Accident Compensation Corporation levies, and insurance

None of our stakeholders mentioned *Accident Compensation Corporation* (ACC) levies or other insurance costs influencing their approach to health and safety governance, or health and safety more generally. We hear about the cost of ACC levies from time to time in the media, however, so know that they can be an organisational consideration.

We understand that some insurers might look at governance as part of the under-writing process. It is not clear how this might influence health and safety governance discussions or decisions (noting that directors and officers cannot insure themselves against fines).

The ongoing impact of COVID-19 changing the nature of mahi



Most stakeholders we spoke with mentioned changes to the nature of mahi and the expectations of kaimahi as a result of the pandemic. Mahi and wāhi mahi are being thought about differently, and mahi is being done in new ways, bucking established patterns that have been in place for decades. The changing nature of mahi provides both opportunities and challenges for boards and their leadership and management teams. This is especially so for those organisations where mahi can only be done in a specific wāhi mahi. As health and safety is an outcome of mahi and wāhi mahi, these changes will require boards, officers and leaders to understand and respond to new risks.

An increased awareness of the connection between mahi and mental health and wellbeing

In our engagements, the project team heard about an increased awareness of, and attention being given to, mental health and wellbeing. However, we found very little information and guidance targeted at the governance level. We did find a range of material for PCBUs.

In our *Stakeholder Engagement Report*, we commented that few stakeholders founded their thinking about mental health and wellbeing in the HSWA obligations to prevent harm; in relation to psychosocial hazards and the obligation to eliminate or minimise the risk of psychological harm caused by mahi. Similarly, few of the health and safety governance and PCBU materials we reviewed were grounded in the HSWA obligations. As noted earlier, there was a focus on wellbeing rather than work-related psychological health.

It is not a problem for boards and officers, and their organisations, to think about and act to support mental health and wellbeing in a way that extends beyond the HSWA; as long as those HSWA obligations are met. It may be problematic if there is a lack of understanding of HSWA obligations, and a broad approach to wellbeing is not supported by boards. This may result in obligations being unmet.

The ESG agenda

Many of the stakeholders we spoke to made reference to the environmental, social and corporate governance (ESG) agenda and the impact of ESG factors and reporting, and expectations of boards. A recent article from the IoD states that 87% of chief executives in Aotearoa, “believe major global and social challenges such as income inequality and climate change are a threat”.²³

We heard that there was a lack of clarity and certainty about the ESG agenda and its implications. This is supported by the findings of the IoD survey. It also noted that, regardless of this lack of clarity and certainty, organisations are seeing an increased demand for ESG reporting and transparency. This is also noted in a MBIE occasional paper from June 2021.²⁴ ESG reporting requirements may also be a lever to support positive change and performance improvements. They may also result in a form of “greenwashing” or a backwards step if reporting requirements focus on lag indicators only.

It is not clear what impact the ESG agenda might have on boards, officers, and their health and safety performance. It may support them to think about their organisation and its work with a long-term view towards sustainability and resilience. The MBIE occasional paper explores the concept of sustainable employment and what makes a “good job”. Health and safety are identified as a component of this and stakeholders referenced it as part of the “social” component of the ESG.

Social licence and the media

The ESG is one influence on social licence, which can influence and be influenced by the media. Public thinking about, and opinion on, health and safety can be a potential lever for change; especially where it is reinforced through media reporting. Sectors, industries, organisations and individuals generally do not want to be the subject of negative public opinion or media attention, although we note that some others appear not to care, and for some it does not matter as the public has little choice about whether and how to engage with them.

As noted in our Stakeholder Engagement Report, stakeholders from a range of sectors thought that more attention was given to health and safety when it was being discussed in the public domain, appearing in social media feedback, mentioned in newsletters and the likes. The media attention on forestry harm and port harm was discussed by some stakeholders, as an example of this. It was also noted that attention is generally given when harm has occurred.

²³ <https://www.iod.org.nz/news/articles/are-you-telling-the-full-story/#>

²⁴ <https://www.mbie.govt.nz/dmsdocument/15110-international-developments-in-sustainability-reporting-pdf>

Next steps for this phase of the project

This report is the second in phase one of the project, focused on discovery. We know that we will not have identified all the people and organisations giving advice, or all the governance materials available. We also acknowledge that not everyone will agree with our assessment of the materials, and the key themes that we looked for and considered to be important.

The project team continues to welcome feedback, insights and suggestions. As with our *Stakeholder Engagement Report*, this is one reason for sharing this report in draft. We are also happy for this report to be widely shared with others.

Please contact info@forum.org.nz with feedback and with additional stakeholders who could benefit from being part of the project.

The important, final part of this phase of the project is to take what has been learned, the insights gained, and suggestions received to develop a range of interventions that we anticipate will enable better health and safety governance. The interventions will be shared with stakeholders and then prioritised in the project team's report back to the IoD and WorkSafe. We hope to complete this part of the project in December 2022 through to the early new year.

The intention is to also share the project team's final report. We anticipate that the options for change we identify might seek to engage and involve a range of stakeholders across the health and safety system. We have heard that there is good will towards change and improving performance and we have had multiple offers of help. The project team will seek to leverage this into the future.

Kia ora (thank you) to all who have been, and continue to be, generous with their time.

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