

Health and safety governance advisors, advice and influences

SUMMARY

The **Better Governance**
Report Series

Introduction to the *Better Governance* project

Health and safety are generally on the agenda for boards and officers but performance in Aotearoa New Zealand has stalled against some measures and, in some cases, is getting worse. Kaimahi (workers) are still being killed and harmed at mahi (work). The agenda is not driving the needed change. The *Better Governance* project (the project) was initiated in this context, and in the context of the renewed focus by *Mahi Haumaru Aotearoa – WorkSafe New Zealand* (WorkSafe).

Governance has also been identified as an area of improvement by a number of health and safety leadership organisations and professionals. This is why the project is being 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 representation from the *Institute of Directors* (IoD) and WorkSafe, and is WorkSafe funded. The team and its resources are small, but it has a big ambition and a project vision of:

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

Background to the review

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

We reviewed over 200 governance materials, including:

information and
guidance

templates and
checklists

questions
and answers
documents

training course
outlines and
workbooks

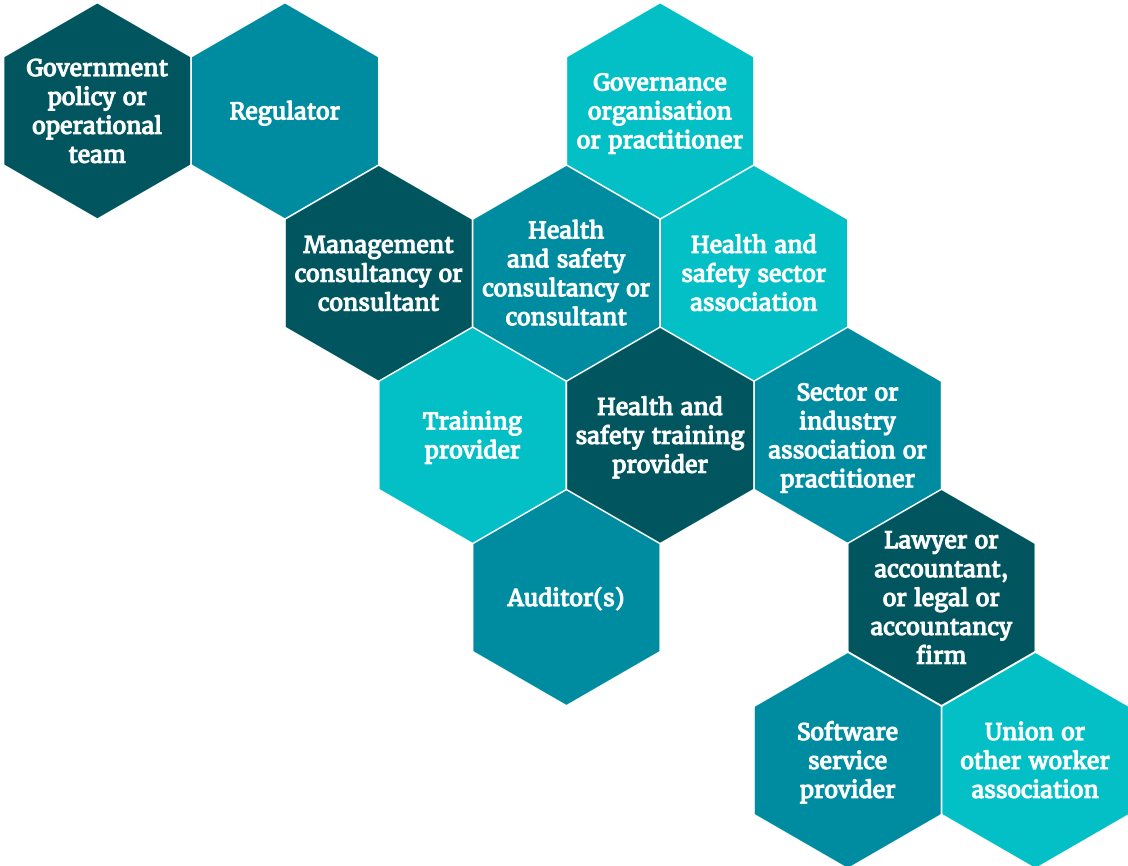
Our review was done on the basis that the material appeared or purported to be about governance generally or health and safety governance specifically. Of note, a fair amount of the material was about neither and much confused governance with management and operations.

The project team also sought to identify other influences and potential concerns for boards and officers, and influences of board discussions and decisions. Many of these matters were raised in our stakeholder engagements and included legislation and case law, COVID-19, mental health and wellbeing, the environmental, social and governance (“ESG”) agenda, and social licence.

Summary of the people and organisations providing health and safety governance advice

The people and organisations represented in the figure below are those we’ve identified who provide general and specific governance advice, information and guidance, and the provision of training and/or qualifications. Some of their general governance, and health and safety-specific governance, 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.

Figure one: People and organisations that provide governance advice



We identified two main governance organisations in Aotearoa; the IoD, which has a focus on boards and officers, and *Governance New Zealand*, 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. *Governance New Zealand* has no health and safety governance materials. *Community Governance* is a new organisation with a focus on the not-for-profit sector. It has not yet produced health and safety governance material.

We found a lot of governance material produced by the public sector but little with a focus on health and safety governance. Some of the material was hard to search and navigate. In some cases, it incorrectly defined an officer and confused their duties under the HSWA. We also found materials with links to guidance developed under the previous legislation, and with broken links.

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, while a useful starting point, is due for a refresh. The *Civil Aviation Authority* has a single factsheet setting out who duty holders are under the HSWA, but it does not set out what the duties are or how they apply in the sector. *Maritime New Zealand* has a factsheet setting who comprises an officer and their duties.

The project team looked for health and safety governance materials across Aotearoa's health and safety sector bodies, and found their mahi was focused on practitioners in their sectors. We did find that the public sector *Government Health and Safety Lead* has produced one of the better guidance documents, the '*Health and Safety – A Good Practice Guide for Public Service Chief Executives and Officers*'.¹ The *New Zealand Institute of Safety Management* has a new governance initiative.

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 their scope or quality.

We looked at a number of the *New Zealand Qualifications Authority* purpose statements. We did not find any reference to health and safety governance, although we may not have identified all relevant courses and materials. The courses we did find were offered by the governance organisations, sector and industry organisations, and consultancies, or by health and safety-specific training organisations but it does not appear that health and safety governance is a focus for many.

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

¹ <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/>

The project team identified a range of software service providers with fact sheets, blog posts, webinars and similar, that give high level governance advice, including health and safety governance advice. We reflect that the way the software is designed and used could be seen as these providers providing implicit advice (e.g., requiring specific inputs and producing pre-defined reports).

The project team notes that unions would not be a traditional source of governance material, information or guidance. We wanted to include them, however, as important stakeholders and a source of information, guidance and advice for kaimahi, officers and leaders.

Available health and safety governance material

The project team has sought to map the health and safety governance materials publicly available to boards and officers. Some key people and organisations also provided their materials, in confidence, for the project team to review. We'd like to thank them.

Overall, we found a lot of governance material. However, very little of it includes health and safety-specific governance material and, where it does, it is not always adding value. Most of it was compliance-focused, not strategic and purposeful. 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 *Health and Safety at Work Act 2015 (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 and/or officer duties. The materials that did were pitched at a high level and did not provide detailed guidance
- 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** that could drive good health and safety governance, and the **principles** 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 discussions and decisions
- the **health and safety knowledge and experience**, and skills and competencies, that would benefit boards and officers in fulfilling their HSWA duties. The project team was not able to identify any governance materials that provided detailed advice on desirable health and safety governance-specific knowledge and experience, or skills and competencies
- 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 that generally did not help build understanding of leading or good practice

- **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 the management of **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
- information on understanding ‘*mahi-as-done*’ or learning from kaimahi. There was no information on what officers should look for to verify their organisation had **worker engagement, participation and representation**, and little mention of mahi and kaimahi
- references to **Te Tiriti o Waitangi** – The Treaty of Waitangi, or to **cultural competency and cultural 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, or that connected these things to health and safety governance or practice.

Other influences and potential concerns

Stakeholders told us about the complexity of the legal environment in which boards operate. We identified a wide range of legislation – in addition to the HSWA – with which officers and organisations need to comply. Not all of it is well understood. Managing this demands time, it creates tension, and requires trade-offs, which can ultimately impact the quality of governance discussions.

We looked at the available case law. A key feature of the WorkSafe prosecutions under section 44 of the HSWA is that they have been brought against officers closely or directly involved in the day-to-day mahi of the organisation they govern. Based on the small number of prosecutions taken since 2016, averaging just over one per year, the project team can understand the feedback that officers are no longer concerned about investigations and prosecution. Regulators have not often sought to investigate or prosecute officers.

Along with the complex legislative environment, most stakeholders we spoke with mentioned changes to the nature of mahi and the expectations of kaimahi as a result of the pandemic. This represents as both an opportunity and a challenge for officers and organisations. Mental health and wellbeing likewise pose an opportunity and a challenge, but we found very little information and guidance on this targeted at governance level.

We heard about potential impacts of ESG factors and reporting, and a lack of clarity and certainty about the ESG agenda and its implications for boards, officers and organisations. Health and safety are identified as a part of the “social” component of the ESG agenda. The social component may influence social licence, which can in turn influence, and be influenced by, the media. Public thinking about, and opinion on, health and safety may influence governance discussions and decisions. As noted in our *Stakeholder Engagement Report*, stakeholders thought more attention was given to health and safety when it was being discussed in the public domain.

Next steps

This report comprises the second part of the discovery and options identification phase of the project. The team continues to welcome feedback, insights and suggestions. Please contact info@forum.org.nz with your thoughts and to be further involved. We also invite you to share this report and provide feedback. We will take what has been learned, the insights and suggestions and develop a range of interventions that will help improve health and safety governance. We hope to complete this part of the project early in new year.

We have heard that there is good will towards change and improving performance and we continue to receive 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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Prepared for	Better Governance – Governance Group Better Governance – Stakeholders
Date	20221209
Version	V3.1
Status	Final