



# Strategic Review of the Workplace Health and Safety System

## Submission template

This template can be used to make a submission to the Independent Taskforce on Workplace Health and Safety. The template does not limit the length of your answers, and you can attach documents to supplement your answers if you wish. Alternatively, you can use the on-line questionnaire to make a submission, which can be found at [www.hstaskforce.govt.nz](http://www.hstaskforce.govt.nz). The on-line questionnaire restricts the length of your answers to about 300 words per question.

Please refer to the taskforce's consultation document, *Safer Workplaces* before completing this template. The consultation document can be found at [www.hstaskforce.govt.nz](http://www.hstaskforce.govt.nz)

### About you

\* Indicates mandatory questions

#### 1. \*Your full name:

Edward Barron

#### 2. \*Is this submission on behalf of an individual or an organisation?

☒ Individual ☐ Organisation

Name of organisation:

#### 3. \*Region

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Northland            | <input type="checkbox"/> Whangarei     | <input type="checkbox"/> Auckland          |
| <input type="checkbox"/> Waikato              | <input type="checkbox"/> Bay of Plenty | <input type="checkbox"/> Gisborne          |
| <input type="checkbox"/> Hawke's Bay          | <input type="checkbox"/> Taranaki      | <input type="checkbox"/> Manawatu-Wanganui |
| <input type="checkbox"/> Wellington           | <input type="checkbox"/> Marlborough   | <input type="checkbox"/> Nelson            |
| <input type="checkbox"/> West Coast           | <input type="checkbox"/> Canterbury    | <input type="checkbox"/> Otago             |
| <input checked="" type="checkbox"/> Southland | <input type="checkbox"/> Overseas      |  |

#### 4. \*Respondent category

- |  |   |
|--|---|
| <input type="checkbox"/> Employer                | <input type="checkbox"/> Not in paid employment         |
| <input checked="" type="checkbox"/> Manager      | <input type="checkbox"/> Occupational health nurse      |
| <input type="checkbox"/> Employee                | <input type="checkbox"/> Health and safety practitioner |
| <input type="checkbox"/> Self-employed           | <input type="checkbox"/> Other:                         |
| <input type="checkbox"/> Employee representative |   |

#### 5. \*Which type of industry do you manage, own a business in, or work in?

- ☐ Agriculture
- ☐ Forestry
- ☐ Fishing
- ☐ Mining
- ☒ Manufacturing
- ☐ Electricity, Gas, Water and Waste Services
- ☐ Construction
- ☐ Wholesale Trade
- ☐ Retail Trade
- ☐ Accommodation and Food Services
- ☐ Transport, Postal and Warehousing
- ☐ Information Media and Telecommunications
- ☐ Financial and Insurance Services
- ☐ Rental, Hiring and Real Estate Services
- ☐ Professional, Scientific and Technical Services
- ☐ Administrative and Support Services
- ☐ Public Administration and Safety
- ☐ Education and Training
- ☐ Health Care and Social Assistance
- ☐ Arts and Recreation Services
- ☐ Other Services

#### 6. \*Size of business that you own / manage or work for?

- |  |  |
|--|--|
| <input type="checkbox"/> Self employed   | <input type="checkbox"/> 20-49 employees           |
| <input type="checkbox"/> 1-5 employees   | <input type="checkbox"/> 50-99 employees           |
| <input type="checkbox"/> 6-9 employees   | <input checked="" type="checkbox"/> 100+ employees |
| <input type="checkbox"/> 10-19 employees |  |

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### 7. Gender

☒ Male ☐ Female ☐ Other

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### 8. Age

- |                                |   |
|--------------------------------|---|
| <input type="checkbox"/> 15–24 | <input checked="" type="checkbox"/> 45–54 |
| <input type="checkbox"/> 25–34 | <input type="checkbox"/> 55–64            |
| <input type="checkbox"/> 35–44 | <input type="checkbox"/> 65+              |

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### 9. Ethnicity

- |   |  |
|---|--|
| <input type="checkbox"/> NZ Maori       | <input type="checkbox"/> Asian                                 |
| <input type="checkbox"/> European       | <input type="checkbox"/> Middle Eastern/Latin American/African |
| <input type="checkbox"/> Pacific Island | <input checked="" type="checkbox"/> Other ethnic group         |
| <input type="checkbox"/> Other European | <input type="checkbox"/> Do not wish to indicate               |

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### 10. Your contact details

Phone number(s)

Email address:

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#### Please tick the boxes below as appropriate

- ☒ I consent to my submission being placed on the Independent Taskforce on Workplace Health and Safety website
- ☐ I would like my name withheld from publication (submissions from individuals only)

Please note that your name and contact information, including any personal information, is being collected so that the Independent Taskforce on Workplace Health and Safety can publish the names of people and organisations who or that made submissions, follow up with a respondent if any submission needs clarification, and for the general purposes of the Strategic Review of the Workplace Health and Safety System. The Independent Taskforce on Workplace Health and Safety is the intended recipient and holder of the information and can be contacted at PO Box 3705, Wellington, New Zealand. In accordance with Privacy Principle 7, you have the right to access and correct any personal information you provide.



## Submission template questions

Please answer the following questions and feel free to attach any supporting documents.

**If you are completing the template on paper**, please feel free to add other pages but make clear which questions your answers refer to. **If you are completing the template electronically** and need more space for any of your answers, please write the rest of your answer into another document, making clear which question your answer refers to, and attach it when you send your completed submission template to us. The answer fields below hold approximately 430 words.

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### Who gets hurt, killed or suffers from ill-health or disease as a result of work?

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

I do believe agriculture is over represented in Harm statistics and this may point to our "She'll be right attitude" of owner operators. I do wonder if there is a reluctance to engage with this group because they have a very strong political lobby and they often opt out of legislation when it has a perceived cost of compliance, e.g. transport regs, ETS, environmental compliance etc.

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



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## Regulatory framework

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

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

Old school regulations

In the dim dark days of yore, legislation was a list of what you must do and what you mustn't do. The mines act, factories act etc. had quite specific regulations and standards, in the same way the electricity act still does.

To my mind there is a place for these prescriptive regulations. They were there to cover a large majority of circumstances. In most cases the hazards presented on many differing sights are similar, and while there may be different specific hazards the controls will often be the same. The hazard presented by a confined space may depend on the gasses that could be present but the controls are generally similar. I'm not advocating doing away with employer responsibility to identify and control specific hazards but I think we threw the baby out with the bathwater. We went from a 100% regulatory approach, which had its own failings, to an open slather do what you like but don't hurt anyone approach.

Unfortunately we didn't change the people, who relied on the regulations to give them clearly defined boundaries that could easily be inspected and audited.

I wonder if the intention was that the old specific regulations would be replaced with codes of practice but unfortunately the roll out of these codes has been very slow and they were prioritised to the areas of most need.

Recommendations

By using the collaborative approach ((see below) OSH would be able to address 90% of common hazards with standard 'Minimum' controls. This would not absolve the employer of identifying where these minimum controls are not sufficient for their circumstance. Sure it may have its failings and may not cover every circumstance but it might catch 80% which is better than doing nothing. So often we try to reach the perfect solution in one step and when we can't reach it we just do nothing in the meantime.



## Regulators' roles and responsibilities

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

OSH no accountability approach.

Under the new style legislation in many areas of the law there has been a concerted effort to remove any actual or perceived accountability from government departments and local authorities. In the case of H&S it is fair that accountability rests principally with the employer. However I feel that the policies that are formulated to reduce accountability are counterproductive to the main aim which is to reduce accidents.

We have an OSH department that is so concerned by not taking accountability that they are paralysed into not making any kind of decision or opinion. In 17 years with my current employer I have never seen an OSH person come to our site other than as a direct investigation after an incident. I once made the mistake of asking an OSH representative what they would advise to address a particular noise issue and that didn't go well.

In the majority of serious incidents OSH are able to quickly find some failing by the employer in process or practice. Yet if they came before the incident and used the same critical eye would they be able to see the obvious failings and hence prevent the incident from ever happening?

It would seem to me they do not take this very obvious step because to do so could be construed in law as offering a professional opinion and therefore take some accountability should an incident occur in the future. Having industry essentially support a plethora of private industry safety consultants is inefficient and leads to a variety of competencies and outcomes as well as being financially out of reach for smaller employers. Like OSH they are also trying to protect themselves from accountability. Ultimately of course the employer is left solely accountable, which is a very lonely place to be. It seems inequitable that they cannot get any support to help them make the everyday decisions on what constitutes practicable steps.

From time to time OSH will roll out partnership programs but this is quite cynical in my view. In no way can OSH be construed as a partner to a business. They take no share of the workload, offer no advice, take no accountability and then are first on the scene to apportion blame and take prosecution after an incident. I don't see how this adversarial role is consistent with getting good H&S outcomes.

#### Recommendation

Allow OSH to act as an independent advisor and give them resources to do so. We know how good OSH is at spotting deficiencies because of their near perfect success in taking prosecutions. Allow them to make recommendations but still protect them from prosecution. Why not have OSH take the role of advisor and mentor. They would be able to combine and consolidate experiences and recommendations from the whole of industry rather than having it fragmented. The service should be free to industry (paid for by a per employee levy) meaning the same expert advice is available to the small employer or the large.

Are we about protecting our backsides and apportioning blame or saving lives?

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

#### OSH and ACC duplication

Essentially the two organisations have similar aims for different reasons. ACC is trying to reduce accidents to reduce cost of rehabilitation and compensation. OSH is tasked to reduce accidents by legislation simply as an end in itself, to reduce the social cost.

There are mixed approaches to prevention leading to duplication of administration but also of compliance cost to businesses.

#### Recommendation

Combine to one organisation with departments for Prevention, Rehabilitation, Recovery of costs and Prosecution. While ACC has reduced the ability for an injured party to sue for personal accident damages there is no reason why ACC shouldn't be able to sue on their behalf to recover rehabilitation or compensation costs. There is no need for the separate Fines and Prosecution approach of OSH. If ACC/OSH can prove culpability, which they seem to be able to do in many cases, then there is no reason why the business shouldn't cover all the ACC costs.

The business should be able to take private insurance for this and as such their premiums will be directly associated to their specific loss history as well as that of the industry as with other insurances. This will act as a deterrent for both individual companies and industry organisations and get them looking at prevention programs.

In most cases criminal prosecution would not be necessary as a deterrent, but can still be taken by the Police in the case of gross criminal negligence.



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## **New Zealand's changing workforce and work arrangements**

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

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



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**Worker participation and engagement**

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

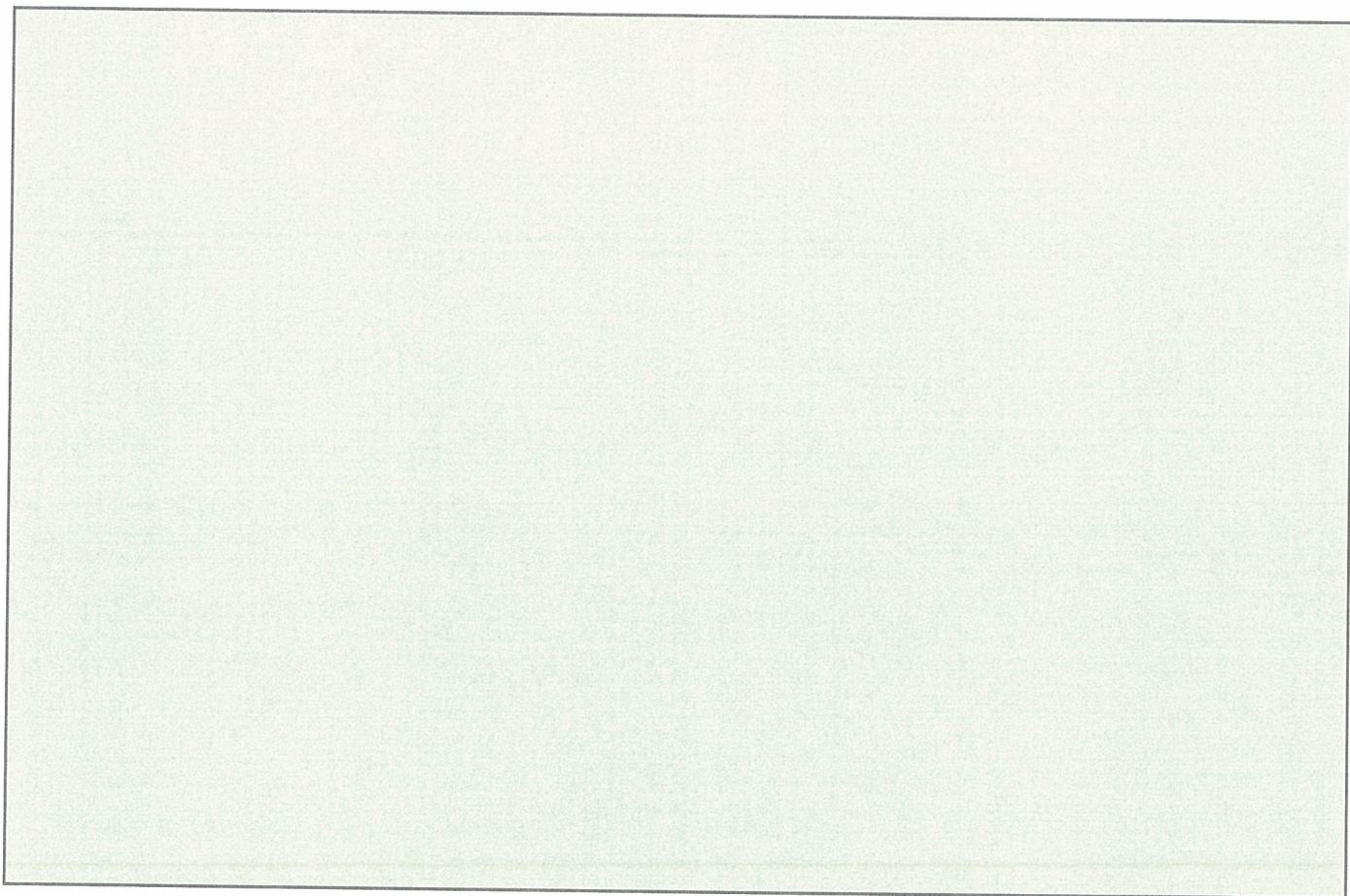
10. What improvements can be made to worker participation in workplace health and safety so as to get better workplace health and safety outcomes?



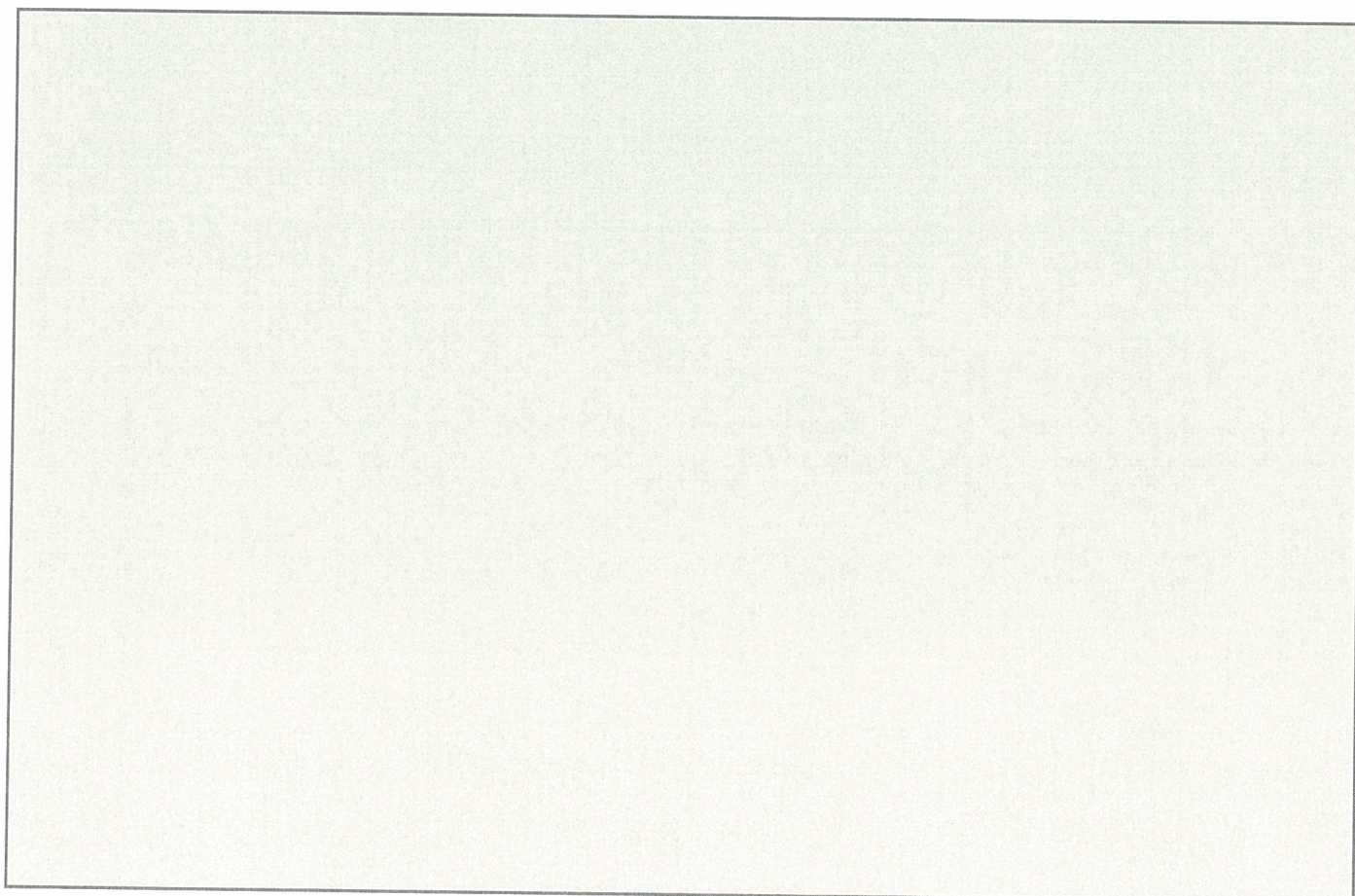
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**Leadership and governance**

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



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





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## Capacity and capability of the workplace health and safety system

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

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

Compliance or commitment or both

I would like to understand what percentage of a company's H&S budget and processes are about proving compliance and how much is about actually reducing hazards.

Larger companies now know that if there is a serious incident they will be prosecuted and they will be found guilty. It is a simple matter of definition – if you hurt someone then you can't have been taking all practicable steps. Now it has become more about mitigating that fact, reducing the sentence by developing systems and processes that will satisfy the Judge that you have taken at least some steps.

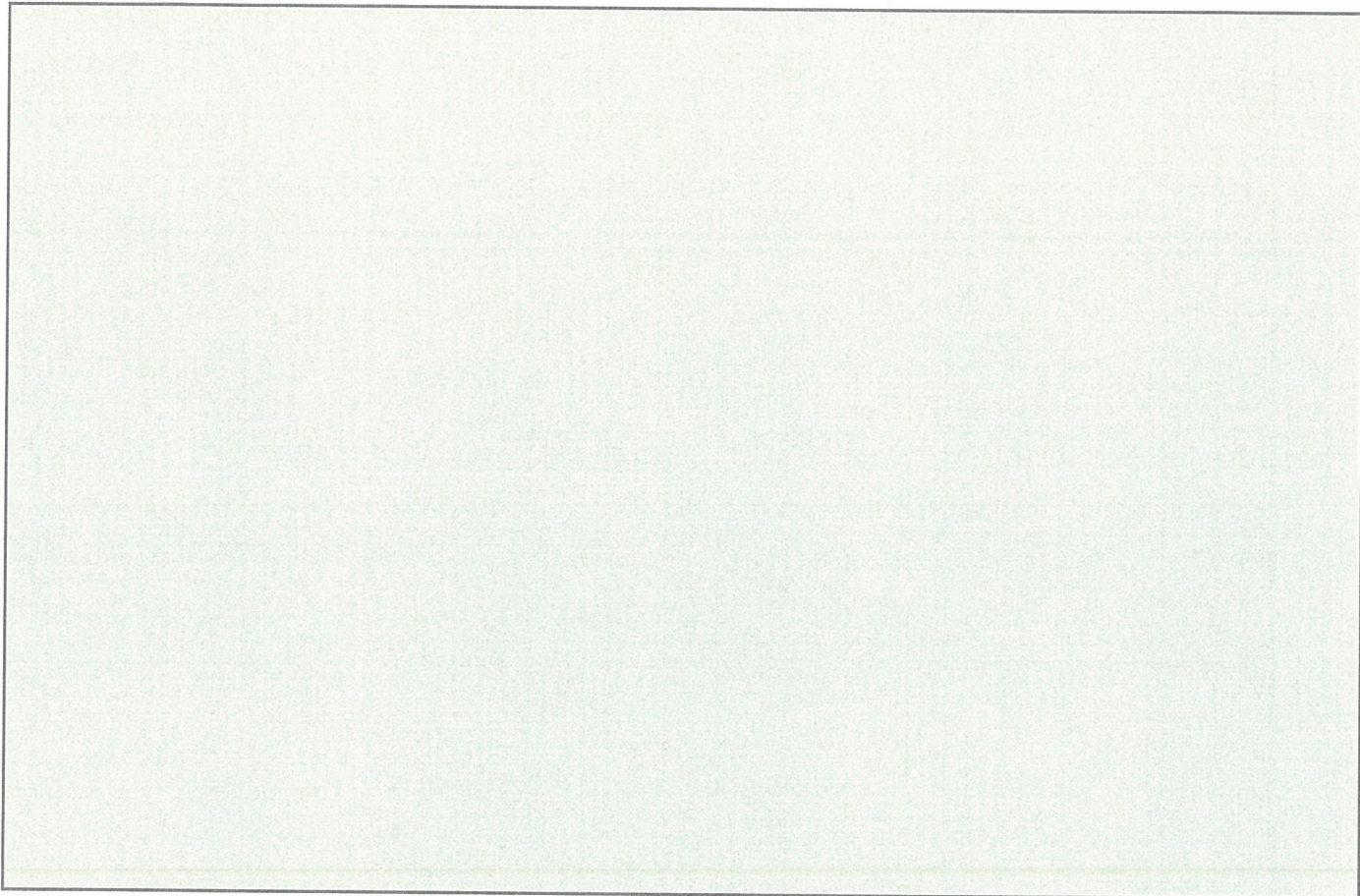
Sometimes in external H&S audits we were told that we have the processes and there is anecdotal evidence that we are doing them but we are not recording it, so we couldn't prove we were doing it. I worry that there is a great deal of our limited resources going into pure compliance and if that same energy was applied to making the workplace actually safer we may have a better outcome. In other words are we doing the right work for the right reasons?



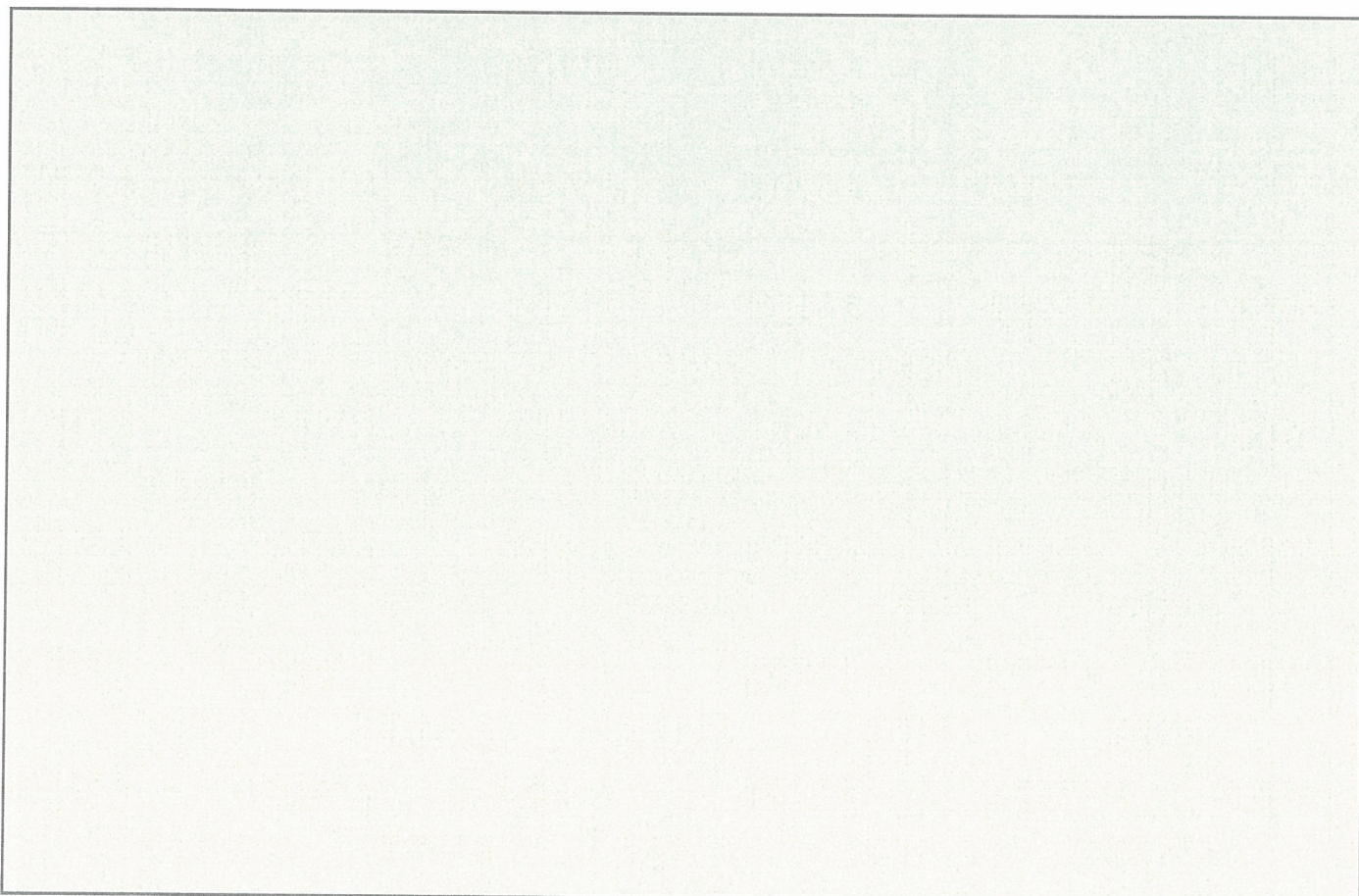
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## Incentives

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



16. How could incentives be better used to improve workplace health and safety outcomes?





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**Influencing health and safety outcomes beyond one's own workplace**

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

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



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## Major hazards

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

### Practicable

Did one word ever cause so much trouble (and cost)? What we have done here is taken two highly subjective adjectives Possible and Practical and made a third which is therefore completely subjective and, as such, near useless.

It is unfortunate to link such a poorly defined word to the serious and exacting business of hazard management and mitigation. It is so poorly defined that a large percentage of court time is taken determining its meaning in each specific and unique circumstance. If two lawyers and a Judge can't work it out after the fact, what is the chance of a non-expert employer doing so, before the fact?

So much NZ legislation these days includes words that we leave to case law to define and set precedents for future interpretations. Relying on case law is acceptable in many circumstances, think of 'fair and reasonable' or 'customary rights'. However, when we consider that in order for many of these OSH cases to be tested in law someone has had to forfeit their life, I am not convinced that we couldn't have done a better job in defining when a hazard needs to be addressed and when it doesn't.

Words like this are deliberately included to give a certain amount of leeway (wiggle room) but they also lead to uncertainty in the minds of the user and the regulator.

Unfortunately the alternative to inventing, what we in industry call, 'weasel' words is to come up with a robust definition based on concrete evidence. In the case of hazard mitigation this inevitably comes down to applying a cost/benefit test to an evaluated risk. This in turn leads us to put a tangible value on death or disability which we are culturally unprepared to do, notwithstanding that this is routine practice in some other areas such as road improvements and the private litigation industry in other countries.

### Recommendation

I really don't have an answer to this one other than do something better than 'Practicable', it's killing us. Perhaps the taskforce can think of something.

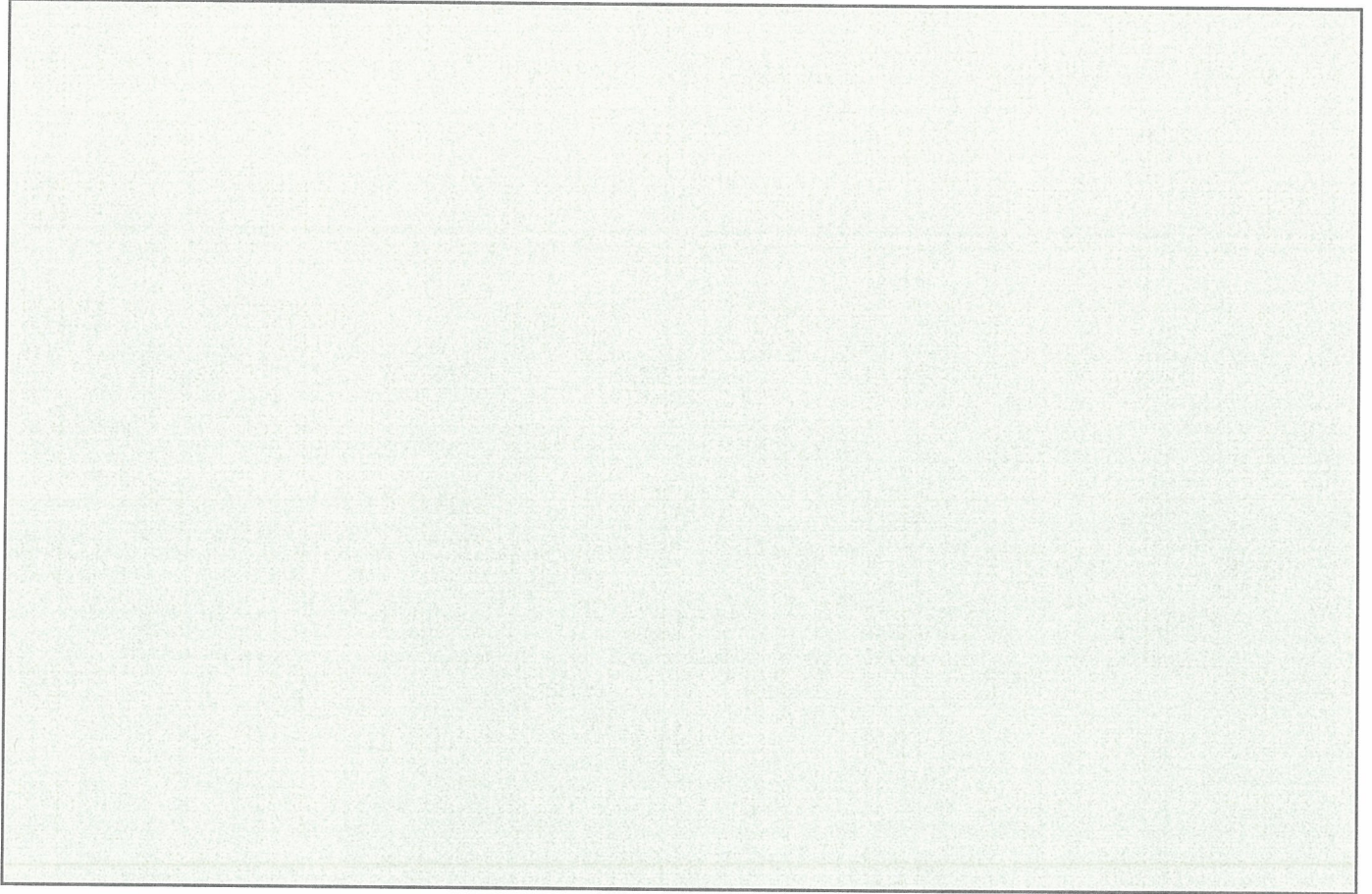
20. What improvements to the regulation of major hazards would lead to better health and safety outcomes?



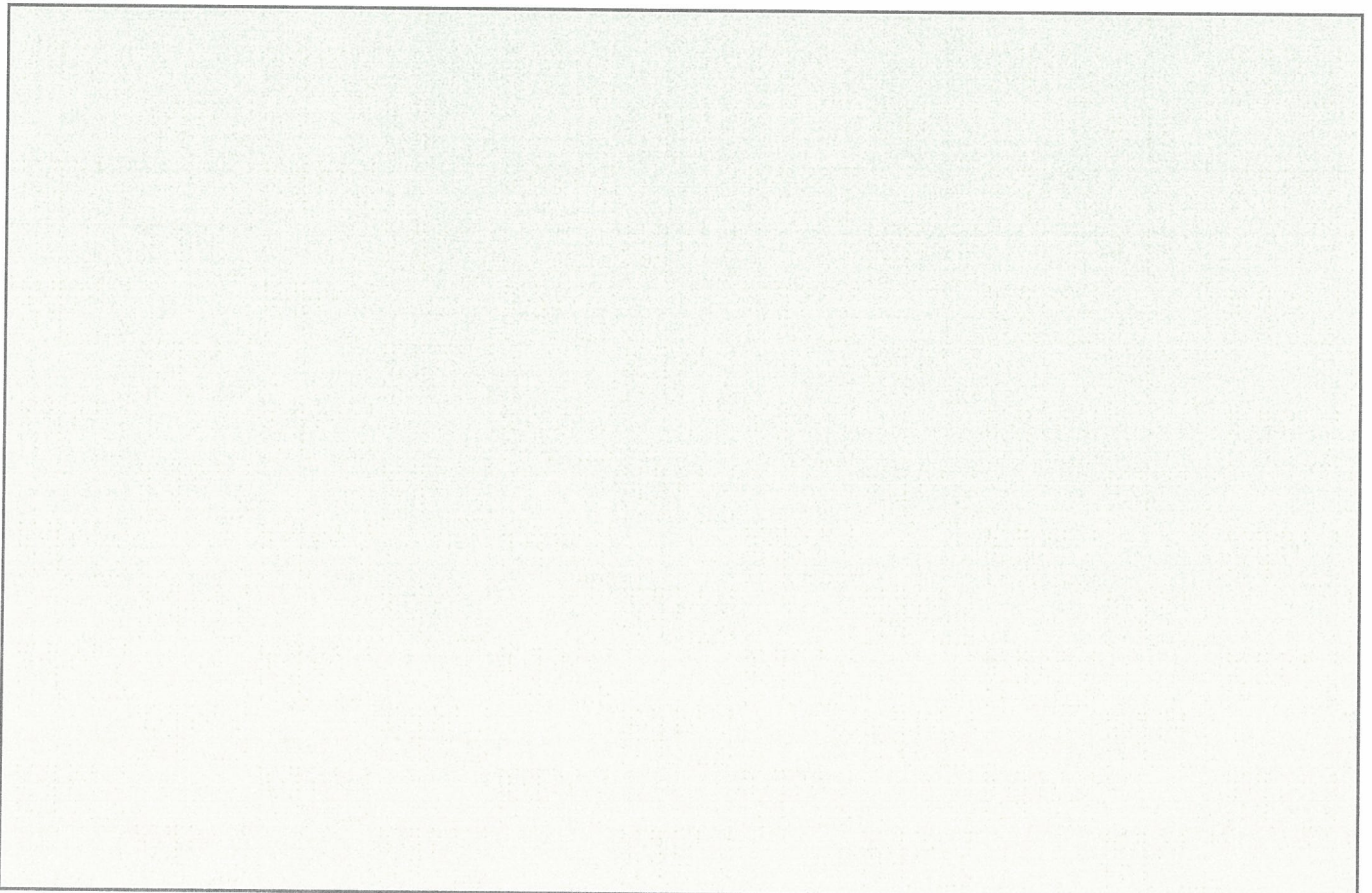
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## Health and hazardous substances

21. What are the most significant challenges to managing occupational health risks and exposure to hazardous substances?



22. What changes could be made to the existing health and safety framework to reduce the harm caused by occupational disease and ill-health?





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## Small to medium-sized enterprises

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

### Collaboration not Legislation

Every business is meant to have a hazard register but I still see case after case where employers have not had an adequate hazard management program. So why doesn't OSH just create one for the top ten hazards and give it to every business. There's nothing like an example for people to understand what they are meant to be doing and to build on that.

There is no linkage between becoming an employer and understanding your responsibilities under the OSH act, ER act and other laws. Many business that employ small numbers just evolve from owner/operators, the onus is on the directors to learn and implement all this stuff, but no one actually tells them this.

There is ignorance out there, it's no excuse, but it does exist and it's hurting people. Knowing that they are wrong and you are right within the law doesn't actually help, we need to deal with the problem.

### Recommendation

You need to look at it from their point of view and work out how do we reach these people and how do we help them? If you offer them a free service that is useful you will get more uptake than waving the big stick, and by the way a web site is not a service.

Go out and talk to these people. If you don't know who they are look at the companies register. Everyone listed as a director should have done some form of legislative and OSH training by 1 year of becoming one.

In my opinion education and publicity programs will not get you far addressing the OSH ignorance issue. Ninety nine per cent of smokers know that it will kill them, drink drivers know it's dangerous, telling them again and again isn't working, or if it is, it's very slow.

I would say that even in the most cowboy employers mind is the knowledge that they are meant to be doing something about safety, so why don't they? Too busy running a business? We would say that safety is part of running a business but they probably have more pressing and immediate issues like the bank and creditors wanting to be paid. In their mind they are the 'good guys', the ones making employment, keeping NZ working and OSH are the ones to make that harder to do. You can only solve that by talking to them and not lecturing to them.

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



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**Measurement and data**

25. To what extent are New Zealand's workplace injury and occupational disease data collection mechanisms conducive to robust monitoring, investigation and comparative analysis?

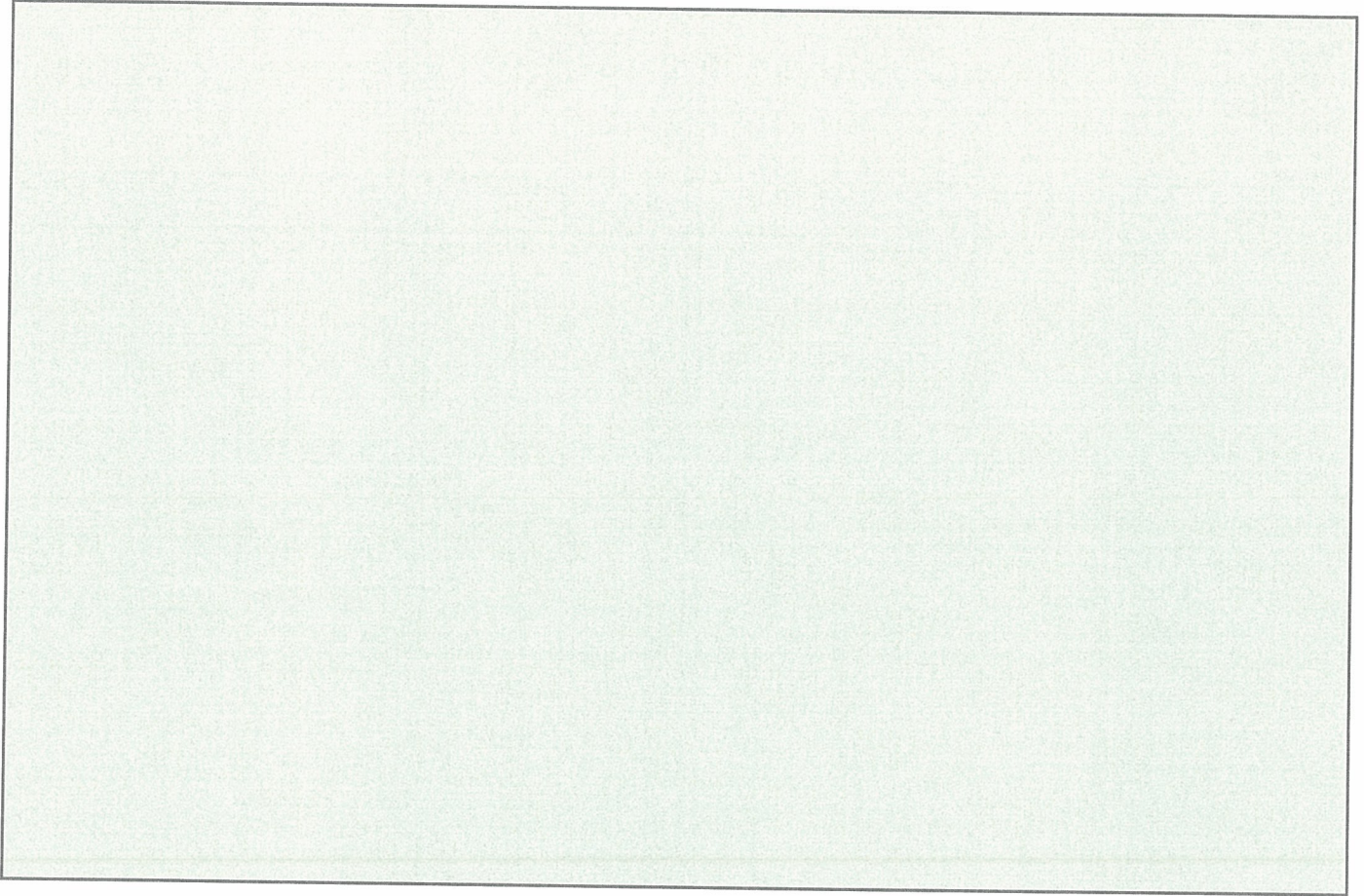
26. What opportunities are there for improving data collection, integration and reporting?



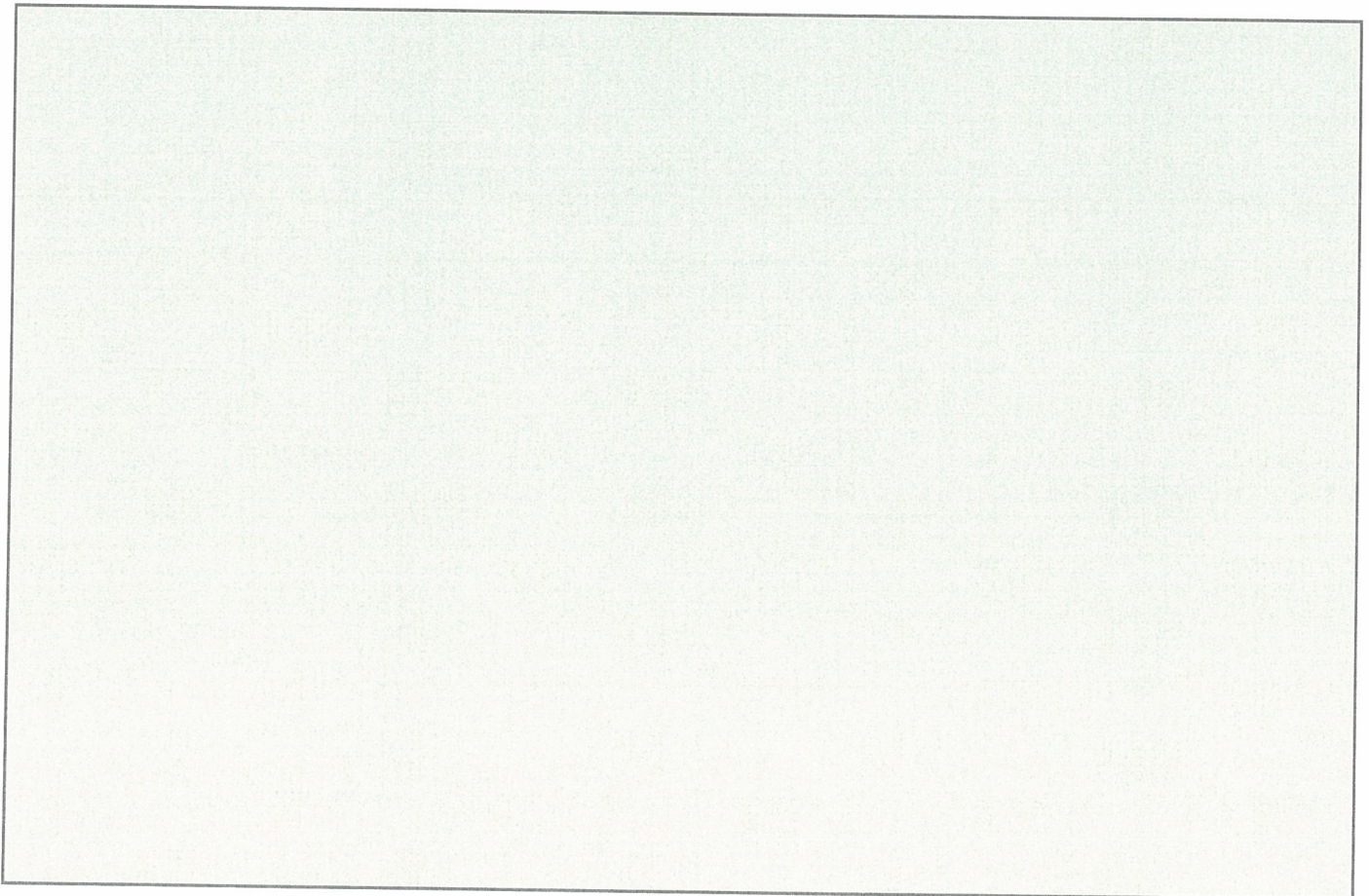
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**Our national culture and societal expectations**

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



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





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**Other factors**

29. Are there any other factors (not already covered) that influence workplace health and safety outcomes in New Zealand?

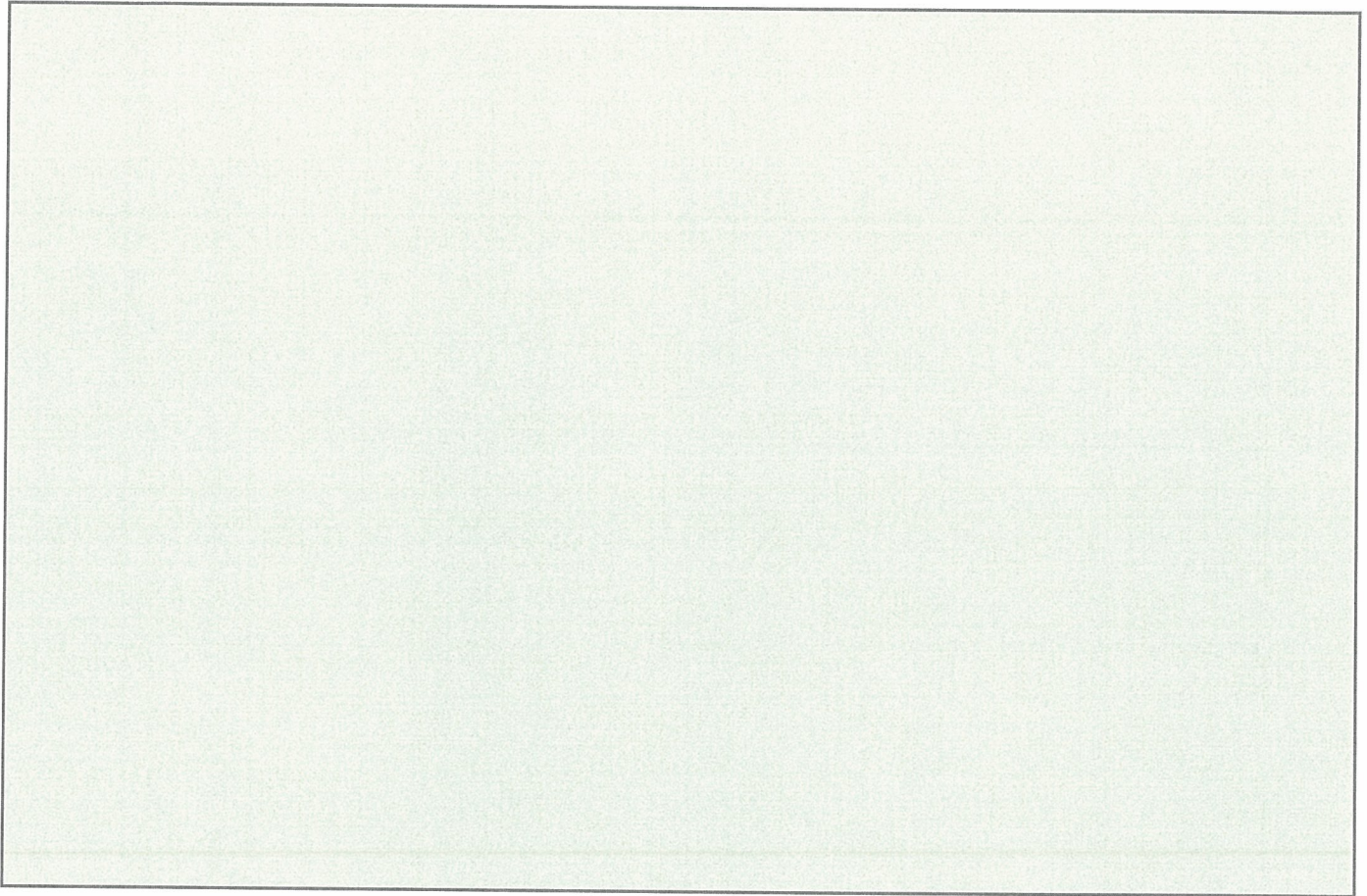
30. Do you have any other suggestions for how to improve workplace health and safety outcomes in New Zealand?



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## Other comments

31. Are there any other comments that you would like to make?



Please send your completed submission to [secretariat@hstaskforce.govt.nz](mailto:secretariat@hstaskforce.govt.nz) (preferred) or post it to: Submissions, Independent Taskforce on Workplace Health and Safety, PO Box 3705, Wellington 6140. We would appreciate it if you could get your submission to us as early as possible, but at the latest, you must get your submission to us by **5pm, Friday 16 November 2012**. If you are sending your submission to us by mail, you should put it into the post by 5pm, Wednesday 14 November 2012.