



TERTIARY EDUCATION UNION
Te Hautū Kahurangi o Aotearoa

Submission

of the

Tertiary Education Union (TEU) *Te Hautū Kahurangi o Aotearoa*

to the

Independent Taskforce on Workplace Health and Safety

on the

Strategic Review of the Workplace Health and Safety System

23 November 2012

For further information please contact:

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Organiser

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REVIEW RESPONSE FORM

Please email your submission to secretariat@hstaskforce.govt.nz (preferred) or post it to:

Submissions
Independent Taskforce on Workplace Health and Safety
PO Box 3705
Wellington 6140

Please see <http://hstaskforce.govt.nz/> for further information.

Organisational information

1. Your full name: Megan Morris - Organiser

2. Name of your business or organisation (if applicable): The Tertiary Education Union (TEU)
Te Hautū Kahurangi o Aotearoa

3. Region: TEU is a national union and professional association representing tertiary education institutions across the country from Northland down to Southland.

4. Respondent category: Employee Representative

5. Type of industry: Education and training is the area we (TEU) work in

6. Size of business/organisation: Approximately 10,500 FTE members

10. Phone number(s):

CELL:

Email:

YES, I consent to our submission being placed on the Independent Taskforce on Workplace Health and Safety website.

1. Introduction

The New Zealand Tertiary Education Union (TEU) Te Hautū Kahurangi o Aotearoa is the largest tertiary sector union in this country. Our membership currently sits at approximately 10,500 members, covering all types of TEOs in the sector.

The key driver for workplace health and safety in New Zealand is, and should always remain, as being the reduction in the number of workplace fatalities and serious injuries in our workplaces including all occupational health illnesses which workers may contract over a long period of time in particular types of employment or industries.

It is vitally important that New Zealand continues to build on and support the development and education of elected Health and Safety Representatives in our workplaces. This enables the development of a positive and meaningful workplace culture to be built and increases the skill pool in relation to health and safety in our workplaces.

TEU is fully supportive of the submission made by the Council of Trade Unions in that it provides a clear and comprehensive consideration of all the relevant issues associated with the focus of the Taskforce's review.

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

- 2.1 New Zealand continues to have a poor record in workplace fatalities, despite a number of successful initiatives over the last 10 years to attempt to address the concerns.
- 2.2 Workers in 'high-risk' industries continue to be over-represented in our statistics for a variety of reasons which include mixed commitment to health & safety at the workplace level, lack of understanding of the hazards associated with a particular type of work, lack of engagement with the Health and Safety Inspectorate (formerly OSH) and often a lack of enforcement and penalties for employers who are 'non-compliant' with the legislative and regulatory framework.
- 2.3. Any preventative strategy that is developed needs to focus on the underlying work systems in an organisation and not just on making workers and employers aware of risk.
- 2.4 A basic level of safety needs to be imposed by legislation on all enterprises not just for legal reasons but for economic and social ones also.
- 2.5 There is concern that to date the law has been enforced in a lax manner – please note this is not a comment about competency of the inspectorate, more about the resourcing and ability of the inspectorate to do their jobs as they would like to. It is our view that this has undermined those employers who do responsibly abide by the minimum legal standards. The law should be adequately, uniformly and equitably enforced through a system of inspection with penalties for those employers who are not compliant or in contravention of the law.

- 2.6 We firmly believe that the ultimate responsibility for the provision of a safe and healthy workplace rests with the employer and their management team, but that worker involvement in a collective approach to the application and maintenance of safe and healthy workplace conditions, and 'best practice' in workplaces will assist in the development of a health and safe workplace culture thereby going some way to ensuring a reduction in incidents and accidents in workplaces.

3. Regulatory Framework

- 3.1 That a new Crown Entity with a tripartite (unions, employers and government) governance structure is created, as a specialist agency with the sole focus on the development, administration and enforcement of the HSE Act, and the workplace enforcement of the Hazardous Substances and New Organisms Act 1996.
- 3.2 That specialist, stand-alone Health and Safety Centres be created/introduced, to be Government funded yet wholly independent of the government. They would report to the Workplace Health and Safety Council. The Council of Trade Unions has the capacity, integrity and reputation to co-ordinate and run said centres nationally, with regional centres as required.
- 3.3 ILO Convention 155 – in addition to our domestic law regime, New Zealand has international obligations in the regulation of health and safety in employment through the International Labour Organisation Convention 155, which was ratified in New Zealand in June 2007. This convention outlines a number of principles for national policies on occupational safety and health in addition to outlining how to operationalize these policies at various levels. Some of the most important principles in this ILO Convention include:
- Ensuring that at the governmental level there is national policy on occupational health and safety, and a working environment that is developed in consultation with worker and employer representatives;
 - Ensuring there are adequate and appropriate systems in place to facilitate the inspection and enforcement aspects of the law, and that there is appropriate and adequate penalties for imposing if breaches occur;
 - The unassailable right for workers to refuse undertaking unsafe work;
 - Ensuring that workplace systems are in place which provide for safe work, and prevent unsafe exposure to hazards (including those of a biological or chemical nature); and
 - Ensuring that workers and their representatives are fully consulted about their workplace health and safety including full disclosure and information about hazards at their particular place of work.
- 3.4 The introduction of a corporate manslaughter criminal offence into New Zealand law, similar to the UK Corporate Manslaughter and Corporate Homicide Act 2007. This [UK] Act clarifies the criminal liabilities of companies where serious failures in health and safety management result in a workplace fatality.

3.5 That “Hazard” remains the primary basis to the HSE Act and the attending duties to eliminate, isolate and minimize those hazards and serious harm definitions need to be reinforced in the legislation.

3.6 Higher penalties need to be considered to enforce the punitive nature of the penalties particularly if following a workplace fatality.

3.7 That the HSE Act takes precedence over all legislation if a legislative clash occurs in a workplace.

4. *Regulators’ roles and responsibilities*

4.1 The Pike River tragedy in 2010, and subsequently the evidence presented to the Royal Commission have highlighted for all New Zealanders a number of systemic issues and taken our confidence in an already under-resourced and under-funded inspectorate to a very low point. There is very real concern in the community about the ability of the inspectorate to continue to provide specialist advice and support when they clearly don’t have the ability currently to do that effectively nationwide. Consequently, very serious consideration must be given by the Taskforce as to how best to fund, resource and support an institutional (i.e. government) body which can provide the necessary elements of a health and safety inspectorate.

4.2 There is further concern that the newly established mega-ministry, Ministry of Business Innovation and Employment (MBIE) currently has all the functions of the ‘old’ Department of Labour resident within it. We do not believe it is appropriate to subsume a specialist health and safety function within a ministry whose primary focus is the promotion of business and economic growth. There is an inherent contradiction with health and safety in the workplace and production needs which was amply demonstrated by the Pike River tragedy.

4.3 It has been difficult enough over the years to gain some traction with health and safety issues when there was a specialist group in a small ministry, it is now viewed very poorly and as a unit of MBIE they are scarcely visible which does not promote confidence in the ability of the unit to deliver any meaningful change in the high rate of injury, incident and death in our workplaces.

5. *Worker Participation and Engagement*

5.1 Since the introduction of the Trained Health and Safety Representative system into the legislation in 2003 which further supported the employee participation provisions in place in Part 2A of the Health and Safety in Employment Act 1992, there has been little support or enforcement by the then Department of Labour to ensure that employers were in fact engaging with their workers on health and safety

issues, and ensuring that effective democratic practices were in place to aid worker participation.

- 5.2 Despite that many organisations have managed to comply in an effective manner with the employee participation requirements of the Act, and have aided democratic processes in the workplace to ensure fair and equitable representation for workers.
- 5.3 The current system of training Health and Safety Representatives (as defined by the legislation) needs additional, secure funding and support for workers to ensure that they can continue to access relevant and affordable training.
- 5.4 Additionally a further stage four course needs to be developed and introduced which will provide a higher level, and continuation of the structure currently in place which has been developed by the Council of Trade Unions. We support the continuation of these training courses being run by the CTU given their experience and breadth of coverage in our workplaces.
- 5.5 Health and Safety Representative powers need to be strengthened and protected in the Health and Safety Regulations, particularly in relation to the issue of Hazard Notices, and with additional consideration given to the ability of an appropriately trained Health and Safety Representative able to issue a prohibition notice which could trigger an automatic visit by an Inspector to investigate the issue.