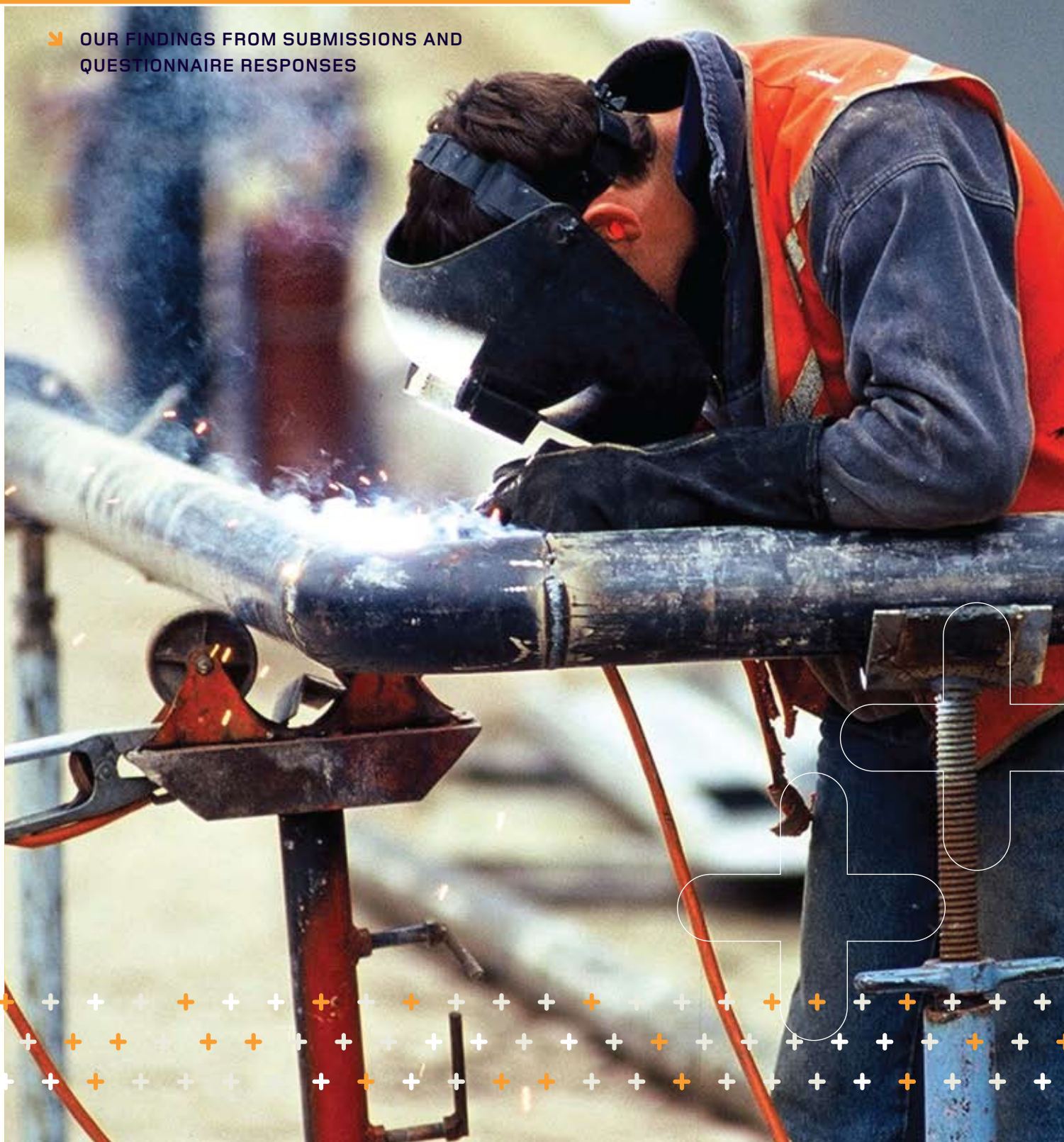


The HSE/HSNO/IPRC Acts Interface Project

OUR FINDINGS FROM SUBMISSIONS AND
QUESTIONNAIRE RESPONSES





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📖 About the interface project

The Government is carrying out a review of regulatory frameworks to check whether compliance requirements are unnecessarily getting in the way of businesses doing business.

As part of this broad review, the Minister of Commerce and for Small Business, Hon Lianne Dalziel, singled out for special attention the need to improve the interface between three pieces of legislation:

- the **Health and Safety in Employment Act 1992** (the HSE Act)
- the **Hazardous Substances and New Organisms Act 1996** (the HSNO Act)
- the **Injury Prevention, Rehabilitation, and Compensation Act 2001** (the IPRC Act).

The Department of Labour, the Accident Compensation Corporation (ACC), ERMA New Zealand, the Ministry for the Environment, and more recently the Civil Aviation Authority and Maritime New Zealand have taken up this project. Our aim is to make practical improvements, in the short to medium term, to the way the three Acts are implemented.

A project team sought feedback from various businesses and industry organisations about compliance with health and safety legislation. This report summarises the feedback we received and identifies the key compliance issues. It also sets out some proposals for improving government responses to these issues.

Consultation with businesses and stakeholders is ongoing, and the list of possible solutions may be expanded. We are happy to receive any further feedback on the identified issues and proposed solutions.



✎ Getting your views

A key consideration for us has been to hear and understand your needs as business people, with particular attention to smaller businesses. We have also been keen to hear any suggestions you have for improvements.

We collected your views in three ways, by:

- putting out a questionnaire and a general call for submissions from businesses and industry groups
- meeting with specific industry reference groups
- seeking input from other forms of consultation contributing to the Review of Regulatory Frameworks, such as sector studies and the Quality Regulation website.

We also sought input from our own staff, and used the findings of reviews of our existing processes.

✎ What you told us

The feedback you gave us highlights that your key concerns are about the administration of health and safety legislation, rather than the legislation itself. Three broad complaints emerged.

1. Information is hard to get and hard to follow, particularly for small businesses

Anecdotally, it seems that compliance is low where the risk of enforcement action is seen as low, and where compliance is seen to be complicated or difficult.

'We all break the law but often do not realise it. It is not blatant law-breaking but the fact is that rules are not always clear, apparent, or publicised. We do have a concern that some of the laws are for the sake of it rather than for good reason.'



Several reasons were observed for businesses not complying with the three pieces of health and safety legislation:

- they don't have clear, concise information about what the law requires
- they aren't motivated to seek information, because they think an enforcement officer is unlikely to visit
- they don't belong to an industry association that could provide information on the law and how to comply with it
- they are more worried about business survival than setting up the systematic health and safety practices required.

'... when developing manuals and procedures it's difficult to get hold of information or someone from DoL to test our procedures and get advice on what else we need to put in place.'

'...health and safety information is difficult to understand, and time could be saved if it were simplified and a more commonsense approach to health and safety adopted.'

'... ACC's hardcopy and online accounts are difficult to understand and ... ACC's requirements are not explained well.'

'... better information-sharing was needed and we should not have to learn about compliance requirements from media reporting.'

The situation is not helped when misleading or incorrect information circulated by lobby groups, consultants and others gives the impression that compliance is 'too hard' or 'too costly'.

Even when businesses know what the three pieces of legislation require, some may not comply because of the time and money needed to:

- identify and assess hazards, and find practical control methods (or pay a consultant to do this)
- put the control methods in place.

'...health and safety compliance regimes are well intended but not very practical. Setup costs to the company were around \$4,000 and involved 3 or 4 staff days.'



2. The requirements for managing particular hazards are numerous and complex

Several businesses told us that the requirements for individual pieces of legislation are difficult to manage.

'... difficulty in understanding health and safety requirements and whether requirements are being met. The complexity means it takes a long time to become familiar.'

It is made more difficult where there is a tension between the coverage of the HSE Act and the HSNO Act in a particular situation. The design and use of fuel storage on farms and the control of airborne substances were highlighted as specific examples.

Some businesses, when putting hazard management and other processes in place to meet ACC incentive programmes, are unclear about whether they have met, exceeded, or even in some cases not met, the requirements of the Health and Safety in Employment Act.

'ACC needs to be better integrated with health and safety law.'

3. Agencies don't co-ordinate how they deal with businesses

You told us that compliance is made more difficult by agencies not co-ordinating activities or not setting consistent requirements.

'A staff member spent 9 hours with the auditor, who gave the impression that he was more interested in explaining how he could help the business rather than saying how it could comply.'

Smaller businesses in particular reported situations where they are unclear about:

- which agency they should be dealing with
- what a person they are dealing with is there to do
- the effect of what they are doing under one law on what they need to do under another
- the distinction between things they must do under the law, and things they can choose to do or not do
- the role and credentials of an increasing number of consultants, auditors and others advising on health and safety.

Respondents also felt that it was important that we evaluate the effectiveness of inspection, auditing, information and other programmes, and identify any alternatives.

What you want us to do

From what you told us, it appears that what you're looking for is a co-ordinated and comprehensive response that encourages you to comply with the law where necessary, but also allows you to improve your business profitability at the same time.

We have taken three key directions from the consultation.



1. Make all guidance material user-friendly

'... once the information is located there can be an 'overload' ... more targeted information should be provided ...'

Businesses need clear, concise information that is easy to read and easy to understand.

User-friendly information could include:

- information targeting particular types of business, explaining concisely what they need to do and how to do it
- short brochures in plain English aimed at specific types of workers
- consistent terminology when describing requirements under the different pieces of legislation.

2. Provide comprehensive information on all compliance requirements

Guidance information needs to cover not just individual pieces of legislation, but also the relationship between all relevant pieces of legislation for a particular business type or industry. For example, guidance information should:

'Legislation should not be so intense or complex that responsible companies cannot comply with it without employing external consultants.'

- clarify HSNO and HSE Act requirements for the management of substances in particular situations, e.g. fuel storage on farms, airborne substances (including dusts), and hazards where outdated regulations still apply



- clarify the roles and interaction of auditors, inspectors, and others either representing agencies or performing functions under the legislation agencies administer
- include information about and coordinated guidance to all three Acts (IPRC, HSE and HSNO) where appropriate.

We need to increase the level of co-ordination and collaboration by:

- improving information-sharing between agencies, particularly in the areas of field staff training, customer management processes, and website and call centre linkages
- better aligning accident and incident reporting and notification requirements
- increasing the role of employee representatives in health and safety management and return-to-work programmes.

Tapping into existing industry or business networks could also be a useful way of reducing misinformation. We need to identify issues that will help improve the service and accountability of health and safety consultants, auditors and others in the marketplace.

3. Be more customer-focused

'... We did not get a proactive 'What do you want-how can we help?' approach from government agencies. Our company would prefer to be treated as a customer-in partnership rather than having to respond to threats of prosecution for infringements.'

'... we sought help from DoL, which was very helpful and provided guidelines, but then found that ACC said it wanted the same information presented in a different manner...'

As much as possible, we need to help businesses effectively and efficiently achieve compliance, by:

- delivering easily accessible compliance information to businesses by making information available from a single point of contact, or through mentoring or coaching programmes
- where possible, advising businesses about whether their involvement in one injury prevention programme will mean they will meet legislative requirements
- enabling increased advice for businesses on identifying and managing health and safety hazards.

📌 We will respond in two stages

After initial consultation, at the end of 2006, we divided the improvements we would like to make into two categories:

- initiatives that we could begin straight away
- longer-term solutions that we need to consider for our ongoing work programmes

📌 Initiatives under way

The following initiatives are underway and will be in place by the end of June 2007:

- Developing an on-line **hazard self assessment tool** for SMEs with content that assists businesses to start managing their health and safety and helps them meet the ACC Workplace Safety Discount programme where they are eligible (DoL).
- Investigating options to deliver co-ordinated health and safety advice and information through business **mentoring and coaching programmes** (DoL/ACC/MfE/ERMA).
- Aligning enforcement responsibilities for **aerodromes** under both the HSNO and HSE Acts so businesses deal with a single enforcement agency (MfE/DoL/CAA).
- Review **auditing methods** used for ACC's Partnership Programme (ACC by January 2008).
- Develop an updated **transparent enforcement policy** for DoL health and safety inspectors. It will describe how the health and safety inspectorate interact with businesses and other government agencies.
- Developing information and tools to assist HSNO compliance in the **farming, embalming and paint industries and for service stations.**





Longer-term solutions that we will implement progressively

The table below lists ways that we have identified to improve the interface between the three pieces of legislation and how agencies work together to help businesses achieve compliance.

We encourage you to review the table and provide us with your feedback. One way you can provide feedback is by **ticking any solutions** you agree with and providing comments where you would like.

| Solution | Ways this could happen | Your comments |
|---|--|---------------|
| <p>Make joint guidance information, simple, short and easy to understand through it being:</p> <ul style="list-style-type: none"> targeted to types of workplace and their needs on “what you need to do” and “how to do it”; short workplace-level documents in Plain English. | <ul style="list-style-type: none"> Simplifying material wherever possible Issuing joint guides where appropriate Using approaches that are consistent across different industries and legislation Adopting a tiered approach to information from “quick guide” up to industry guidelines or Codes/ACOP Working with industry to develop the best approach for each sector Reviewing guidance materials to identify opportunities to use consistent terminology for guidance across different legislation | |
| <p>Investigate ways to make information on compliance more accessible to businesses - particularly SMEs.</p> | <ul style="list-style-type: none"> Improving the linkages between different agencies’ call centres Adopting a policy of “no wrong door”/ pass-ons for call centres, web-sites and other sources of information Supporting mentoring or coaching programmes, and other advisory services by sector groups and others Improving the sharing of information between transport and energy legislation and agencies and ERMA, ACC and DoL, particularly as required by the HSE Act and other legislation Maintaining co-operative working relationships with agencies, industry and worker groups to develop strategies, priorities and plans that will enable compliance outcomes to be achieved Examining “safe harbour” concepts and how they may be applied to NZ businesses in the management of workplace health and safety Clarifying the role of Standards in setting requirements under health and safety legislation | |

| Solution | Ways this could happen | Your comments |
|---|--|---------------|
| <p>Include information and provide co-ordinated guidance to all three pieces of legislation (IPRC/HSE/HSNO) where appropriate.</p> | <ul style="list-style-type: none"> • Continual release of user-friendly compliance information for high-risk sectors • Revising the Guidelines for the Management of Substances Hazardous to Health (MOSHH) | |
| <p>Provide additional information to address particular misconceptions around the interface of the three pieces of legislation.</p> | <ul style="list-style-type: none"> • Researching common misconceptions from the submissions received and discussions initiated for the Quality Regulation Review • Developing shared guidance material that will help address misconceptions • Addressing misconceptions and their sources with targeted information as soon as possible | |
| <p>Improve information sharing between agencies with responsibility for health and safety legislation – particularly for field staff.</p> | <ul style="list-style-type: none"> • Developing policies to improve communication linkages, referrals and information sharing between agencies • Regular meetings between agencies where each agency updates the others on relevant changes, new information and policies • Holding regular interagency workshops to up-skill field staff and others providing information • Developing relationships between agencies to encourage the flow of information • Investigating opportunities to better align accident and incident reporting and notification requirements for the three pieces of legislation | |



| Solution | Ways this could happen | Your comments |
|---|---|---------------|
| <p>Clarify HSNO and HSE Act requirements for the management of substances in particular situations.</p> | <ul style="list-style-type: none"> • Clarifying requirements for the management and control of noxious substances, spray coating, lead process, abrasive blasting, electroplating and first-aid facilities currently covered by outdated regulations • Clarifying requirements for fuel storage on farms • Better aligning the requirements for airborne substances (including dusts) • Updating guidelines that cover HSE Act and HSNO Act regarding best practice for on-farm storage • Improving the ability of one inspector, in one site visit, to carry out compliance and enforcement activity at a firm level under HSNO and HSE Act. | |
| <p>Improve collaboration between agencies to get the best possible alignment between agency programmes and legislative frameworks</p> | <ul style="list-style-type: none"> • Reviewing methods used in auditing programmes and how these activities interact with business and other government agencies • Clarifying for business how the roles of auditors, inspectors and others are different and how they interact • Developing transparent enforcement policies • Reviewing what scope there is for combined audits and site visits by agencies (e.g. ACC workplace incentive programmes, MAF food export/manufacturing, Ministry of Health, HSNO, local authority compliance audits) • Developing a joint ACC/DoL study of the incidence and prevalence of workplace hazards • Maintaining the joint ACC/DoL noise programme | |

| Solution | Ways this could happen | Your comments |
|---|--|---------------|
| <p>Identify issues that will help improve the standard of service and accountability of health and safety consultants, auditors and others in the marketplace.</p> | <ul style="list-style-type: none"> • Reviewing the current frameworks for accreditation and registration of health and safety professionals, and the suitability of/access to available courses for health and safety practitioners • Working with other agencies to better align existing approval/registration frameworks • Developing additional guidance for businesses on choosing a health and safety consultant or engaging different types of health and safety expertise | |
| <p>Investigate ways of increasing the role of employee health and safety representatives in businesses' health and safety management and return to work programmes.</p> | <ul style="list-style-type: none"> • Developing an approved code of practice for employee participation in occupational health and safety • Further promoting the training of health and safety representatives • Reviewing ACC's Partnership Programme to determine the degree of specification required for employee participation programmes. | |

