



Submission on consultation document: *Have Your Say on Work Health and Safety*

Your name, email address, phone number and organisation

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Responses to consultation document questions

1. What is your name?
Carolyn Young
2. Are you submitting on behalf of an organisation, as a worker, as an employer, or in another capacity (please specify)?
On behalf of an organisation that represents New Zealand's retail sector
3. If you are submitting on behalf of an organisation, what is the name of that organisation?
Retail NZ
4. Please provide us with at least one method of contacting you, in case we need to discuss your submission further.
advocacy@retail.kiwi
5. What sector or industry does your submission most closely relate to?

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

6. Do you consider your sector/industry to be high-risk, medium-risk, or low-risk?

There is a wide range of risk across the retail sector. Some businesses may have significantly more risk than others because of the things they sell, their logistics arrangements or the equipment they use. For example:

- butchers may have meat slicers and knives
- bakeries may have mixing equipment or walk-in chillers
- hardware stores may have saws, lawnmowers, paint
- garden centres may have fertilisers and pesticides
- kitchen shops may sell sharp implements.

While many small stores would be low risk, larger retailers operate large warehouses across multiple sites where there are risks such as moving vehicles and operating at height. Some specialist retailers carry stocks of hazardous substances such as paint supplies or agricultural chemicals that can pose risks if not treated appropriately.

Retail crime also poses a considerable health & safety risk for all retail employers. Every day, retailers are dealing with threatening, violent or simply unpleasant members of the public who are trying to steal, assault staff, or damage their property. The consequences are serious risks to physical health, injuries and in the worst cases, death. There is also a major negative impact on the mental health and wellbeing of employees and business owners.

7. Where in New Zealand is your work located?

Nationally

8. How many employees does your business or organisation have?

- No employees
- 1 – 5

- 6 – 9
- 10 – 19
- 20 – 49
- 50 – 99
- 100 or more **The retail sector employs 230,000 people across Aotearoa New Zealand.**
- Unsure

Focus area one: businesses are best placed to understand and manage their risks

9. Thinking about just the key actions your business or organisation takes to manage health and safety risks:

a. what are these actions?

Retail NZ encourages members (retail employers) to take health and safety seriously. We provide advice and guides to retail businesses that sets out their key H&S obligations to:

- take all reasonably practicable steps to identify and eliminate health and safety risks in their business
- provide a safe and healthy environment for workers, including access to facilities
- provide the right information and training to all workers
- provide and allow for worker participation and engagement in health and safety matters
- notify all serious illnesses, injuries, death as a result of work or near misses to WorkSafe
- monitor workers' health and workplace conditions to prevent illness or injury

We advise that to comply with H&S requirements, retailers should:

- have a current 'Health & Safety Policy' and associated procedures, make sure these are communicated to, and understood by employees and contractors
- undertake a process to identify hazards in the workplace (and that this should be done with the involvement of employees)
- eliminate, isolate or minimise hazards, so far as is 'reasonably practicable'
- develop, implement and test (6 monthly) an emergency plan for each workplace
- provide an adequate and accessible first aid kit and access to an adequate number of trained first aiders
- seek employee participation and engagement by:
 - making employees aware of new hazards
 - raising health and safety as an agenda item regularly at staff meetings
 - making every new employee or contractor aware of health and safety procedures and complete a Health & Safety Induction when they begin working in the business.

b. why does it take these actions?

As noted above, retailers face a wide range of potential H&S risks, from low-risk operations through to medium-high risks when dealing with hazardous substances or moving vehicles, in addition to the risks involved in dealing with customers who may be aggressive or armed. Employers have a paramount responsibility to ensure that their employees and customers go home safely every day.

c. do you think these actions are reasonable? (Please explain your answer.)

Feedback from members consulted about current H&S settings did not raise concerns about the actions currently required to manage H&S risks.

One major retailer who operates on both sides of the Tasman observed that they follow Australian H&S legislation requirements, which they felt were at a higher standard than New Zealand. It would be of value for New Zealand officials to engage with their Australian counterparts to understand where the differences lie, and where New Zealand could improve.

d. do you think these actions are effective in managing health and safety risks? (Please explain your answer.)

Where the actions are followed by both employers and employees, they can work effectively for day-to-day operations. But the potential for employees to ignore Standard Operating Procedures (SOPs) and other H&S guidance always exists. There is still a view that 'it will never happen to me' or to cut corners in some sectors.

Continual discussion and oversight of H&S and risks is required to raise employee awareness and keep SOPs at front of mind.

The major area where retail employers find it difficult to manage risk is in dealing with threatening or violent customers and those committing theft. While large operators have the resources to employ security guards and/or use technology (such as body cameras and automatic doors) to mitigate this risk, these measures are a deterrent, rather than preventing retail crime. Smaller retailers without access to these crime deterrents are more exposed to offenders, particularly in sectors that are targeted by criminals, such as tobacco/vape sellers or liquor stores. In all cases, retail crime is a major challenge for employers to provide a safe workplace.

It is recognised that that mental stress can build up over time. One major retailer said: "I'm surprised our workers keep coming back. The abuse and threatening behaviour happens all the time, over and over".

10. How well does your business or organisation understand its work health and safety obligations?

As discussed above, there is a range of understanding of H&S obligations among retail employers. The retail sector comprises businesses of all sizes from owner-operators to large multi-national businesses. While large retailers have the resource to employ specialist H&S personnel, small businesses are juggling multiple responsibilities every day, including tax obligations, managing staff and meeting customer demands. H&S is one more responsibility they must be aware of but they may not have a deep understanding of the risks within their business.

a. If you answered, "not that well" or "not at all well", what do you think would help you to understand?

Education and easy to understand resources aimed at small business are always valuable.

Retail NZ offers retail-specific H&S guidance but this is necessarily at a high level. More capacity to work with individual SMEs, whether via Retail NZ or WorkSafe, to help them understand their risks and obligations would be valuable.

11. Thinking about just the key actions the business or organisation takes:

a. about how much would it cost per year to comply with your health and safety obligations? (If you are unable to estimate an annual cost, can you give some examples of spending to meet your obligations?)

Spend varies widely across the sector.

Large retailers' expenditure includes significant costs across all parts of their business whether it is in their distribution centre and ensuring that staff and equipment meet regulations, to the support/national office, to the shop floor. It is wide and varied and requires extensive thought across all areas of their businesses, which have quite diverse areas and staffing requirements.

They also need to spend on loss prevention staff and/or security guards, whether employed directly or contracted through a third party; HR personnel; safety equipment such as PPE, body cams, CCTV; store fit-out and signage; H&S training.

SMEs' expenditure would include more basic H&S equipment, crime deterrents such as fog cannons, etc.

b. how much time does your business or organisation spend on health and safety?

Varies widely across the retail sector.

c. for workers, how much time do you spend on health and safety?

12. Where your business has overlapping duties with other businesses, what has been your experience in working together to manage health and safety risks? Think about clarity of roles, how you share duties, what processes you put in place.

Feedback from Retail NZ members suggests that there can be some uncertainty over where responsibilities lie, particularly in situations like shopping malls where retailers may be sharing PCBU responsibilities with mall operators and landlords. It is not always straightforward to establish where responsibility lies in these situations, especially when each party may have varying SOPs or understanding of their H&S responsibilities.

Focus area two: the law is designed to balance flexibility and certainty

13. The HSW Act aims to balance flexibility and certainty. Thinking about the parts of the work health and safety law you frequently engage with, can you provide examples of:

a. requirements that are too detailed, strict, or inflexible to allow you to easily comply?

Feedback from Retail NZ members suggests that there are no significant issues with the current legislation. Retailers find the HSW Act offers the flexibility to respond appropriately to different situations and levels of risk, and is not too prescriptive.

Retailers do not want to be 'bogged down' by compliance – they value being able to put into practice the actions that are relevant to their business.

Feedback to Retail NZ suggests that the HSW Act is fundamentally fit for purpose and does not require significant change.

As noted previously, the main challenge for employers lies in ensuring that workers and contractors follow SOPs consistently.

b. where there is not enough detail or too much ambiguity in law or regulations to help you comply?

For SMEs, the definition of 'reasonably practicable' can provide challenges in interpretation. Retail NZ provides guidance and can offer non-binding advice on individual circumstances but the onus remains with the business owner to demonstrate that 'reasonably practicable' steps have been taken.

We are aware that some of WorkSafe's guidance documentation and Approved Codes of Practice need to be updated to reflect current legislation and the latest health and safety practices to support businesses in better protecting their workers. For example, ['Manual Handling' guidance](#) appears on the WorkSafe website with a note acknowledging that the guidance has not been updated to reflect current work health and safety legislation. It is difficult for employers to ensure they are complying with the legislation if the information provided by the regulator is not up to date.

c. requirements that are causing you problems?

d. requirements that are working well?

14. What sources of information or advice do you use to help you understand your responsibilities under the law and how to comply? Select all that apply:

- law or regulations
- guidance
- approved codes of practice (ACOPs)
- health and safety advisors or consultants
- the regulator (eg WorkSafe)
- third parties authorised by WorkSafe or the regulations (eg compliance certifiers or auditors)
- industry associations
- social media
- word of mouth
- none
- other (please specify): _____

15. For each of the sources of information or advice identified above that you use, please select all that apply:

Source one: law or regulations____

- the information or advice provides clarity about roles and responsibilities for health and safety in my workplace

- the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- the information or advice is relevant to my work
- the information or advice is consistent across sources
- the information or advice is easy to find
- the information or advice is easy to understand
- the information or advice is easy to apply

Source two: _the regulator (WorkSafe)___

- the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- the information or advice is relevant to my work
- the information or advice is consistent across sources
- the information or advice is easy to find
- the information or advice is easy to understand
- the information or advice is easy to apply

Source three: __guidance_____

- the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- the information or advice is relevant to my work
- the information or advice is consistent across sources
- the information or advice is easy to find
- the information or advice is easy to understand
- the information or advice is easy to apply

Source four: _____

- the information or advice provides clarity about roles and responsibilities for health and safety in my workplace
- the information or advice provides clarity on the actions necessary to keep people healthy and safe in my workplace
- the information or advice is relevant to my work
- the information or advice is consistent across sources
- the information or advice is easy to find
- the information or advice is easy to understand
- the information or advice is easy to apply

(Please add sources as necessary.)

a. Feel free to provide any further feedback about the sources of information or advice you use.

Note the above are sources used by Retail NZ to inform our members, not necessarily the sources that individual retailers would use.

16. Are you able to provide any examples of where you have difficulty complying with your legal requirements because of the overlap between work health and safety legislation and other requirements? Please specify the relevant regulatory systems (eg the building regulatory system) if you can.

As noted previously, retailers have a particular challenge in managing the H&S matters associated with retail crime, such as staff being threatened by customers and dealing with the stress created by retail crime. Although retail crime is primarily a matter for the Police and courts, its impacts on H&S requirements, particularly the obligation for an employer to provide a safe workplace, are not well recognised.

Focus area three: worker engagement and participation

17. Do you know whether your business or organisation has:

- elected health and safety representatives Yes No Don't know
- informal health and safety representatives or champions Yes No Don't know
- a health and safety committee Yes No Don't know
- a system for regular health and safety communications Yes No Don't know
- regular meetings where health and safety is discussed Yes No Don't know
- regular health and safety briefings, eg 'toolbox' meetings Yes No Don't know
- other worker engagement and participation practices (please specify): _____

18. From your experience, either for a business or as a worker, how effective do you think the worker engagement activities that your business or organisation uses are?

- very effective
- quite effective
- not that effective
- not at all effective

Please explain your answer, including providing any examples if you have them.

Retail NZ advises members to involve workers in health and safety matters, and to talk to them about health and safety in the workplace. We also advise of the specific legal requirements around employee engagement in health and safety, depending on the size of the organisation.

Feedback suggests that large retailers have active H&S procedures to engage staff.

19. From your experience, either as a business or as a worker, do you think workers are doing enough to keep themselves and their colleagues safe?

As previously noted, employers face ongoing challenges in ensuring that staff and contractors adhere to H&S procedures. There is still a view that 'it will never happen to me' and a willingness to cut corners in some sectors.

Continual discussion and oversight of H&S and risks is required to raise employee awareness and keep SOPs at front of mind.

Focus area four: an effective work health and safety system needs effective regulators

20. In what ways have you interacted with WorkSafe or another health and safety regulator?

- Education and training materials: Yes No
- Online and published information and resources: Yes No
- Workplace visits (eg inspections and follow up activity): Yes No
- Public campaigns (eg social media, appearance at events): Yes No
- Queries to the regulator: Yes No
- Applications for licences, certificates, or exemptions: Yes No
- Registering equipment: Yes No
- Notifications (eg of incidents or high-risk activities): Yes No
- Interaction with regulatory tools (eg safe work instruments online): Yes No

a. Thinking of each interaction you selected in question 20, did you get what you needed to comply with your health and safety obligations?

- Education and training materials:
- yes, completely
 - yes, partially
 - no
- Online and published information and resources:
- yes, completely
 - yes, partially
 - no
- Workplace visits (eg inspections and follow up activity):
- yes, completely
 - yes, partially
 - no
- Public campaigns (eg social media, appearance at events):
- yes, completely
 - yes, partially
 - no
- Queries to the regulator:
- yes, completely
 - yes, partially
 - no
- Applications for licences, certificates, or exemptions:
- yes, completely
 - yes, partially
 - no

Registering equipment:

- yes, completely
- yes, partially
- no

Notifications (eg of incidents or high-risk activities):

- yes, completely
- yes, partially
- no

Interaction with regulatory tools (eg safe work instruments online):

- yes, completely
- yes, partially
- no

Feel free to provide further information.

b. Would you describe your interactions with the regulator as useful, reasonable, and timely? Feel free to provide further information.

While some Retail NZ members have reported few issues with their interactions with WorkSafe, others say that the role of the regulator is unclear and ineffective, given that rates of workplace deaths have not decreased since WorkSafe's formation post Pike River. It needs considerable review and resourcing in the right areas.

We note that regulations and guidance documents are well out of date, and unhelpful. WorkSafe is slow to release new guidance, with only three pieces of guidance being released in two years according to their own media and update page.

There are no clear guides for what overlapping duties actually mean in practice.

Industry has had to step forward and create our own guidance, for example work done by Retail NZ to provide retail specific guidance. This is leaving good employers to independently create their own guidelines at significant expense or rely on advice provided by industry groups.

WorkSafe inspectors have inconsistent approaches, often are not well trained, do not provide advice and have an approach that is 'policing' workplaces rather than guiding improvement and coaching best practice. This is unhelpful for most workplaces who endeavour to do the right thing for their people and customers. Retail NZ has been told of inspectors going well beyond what is actually required in regulations or who have had to be corrected in their knowledge of the regulations by retail representatives. We are also aware of inconsistent approaches by inspectors across the regions, which is particularly noticeable across large retailers with multiple outlets across New Zealand.

21. Which third parties authorised by the regulator or regulations have you interacted with? Select all that apply:

- Licensing bodies (eg for scaffolders or mining)
- Auditors (eg of health and safety systems or processes)
- Compliance certifiers, assessors, or inspection personnel (eg for hazardous substances, pressure equipment)
- Other (please specify): _____

a. Thinking of your most recent interaction, did you get what you needed to comply with your health and safety obligations?

- yes, completely
- yes, partially
- no

Feel free to provide further information.

b. Would you describe your interactions with the third parties as useful, reasonable, and timely? Feel free to provide further information.

22. Do you know what consequences you would face for not complying with your health and safety obligations? Do you think these consequences are appropriately balanced and reasonable? Please explain your answer.

Focus area five: the objective of the work health and safety regulatory system

23. Do you think the threshold at which work-related risks need to be managed is:

- over-cautious?
- about right?
- under-cautious?

You can provide further information, including examples.

Retail NZ members have raised no significant issues with meeting their obligations under current legislation. Some concern was expressed that any review had the potential to dilute current standards to the point where they would become meaningless.

24. Do you think the work health and safety regulatory system is

clear?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

effective?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

flexible and durable?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

proportionate to the risks?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

balancing risks with costs?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

Is there any other feedback you would like to give us?

25. Is there anything else you want to say about your experience with the work health and safety system?

Essentially, Retail NZ believes that the Health and Safety at Work Act 2015 is fit for purpose to enable workplace safety and does not require significant change, beyond those areas mentioned above.

Retail NZ members have told us that compliance costs for monitoring, assurance, etc, (e.g. ISO 45001, As4048, Sitesafe) are incredibly onerous.