



Review of the Workplace Health and Safety Strategy for New Zealand to 2015

WORKING PAPER: REVIEW OF THE WORKPLACE HEALTH AND SAFETY COUNCIL – SUMMARY OF INTERVIEWS
JUNE 2009

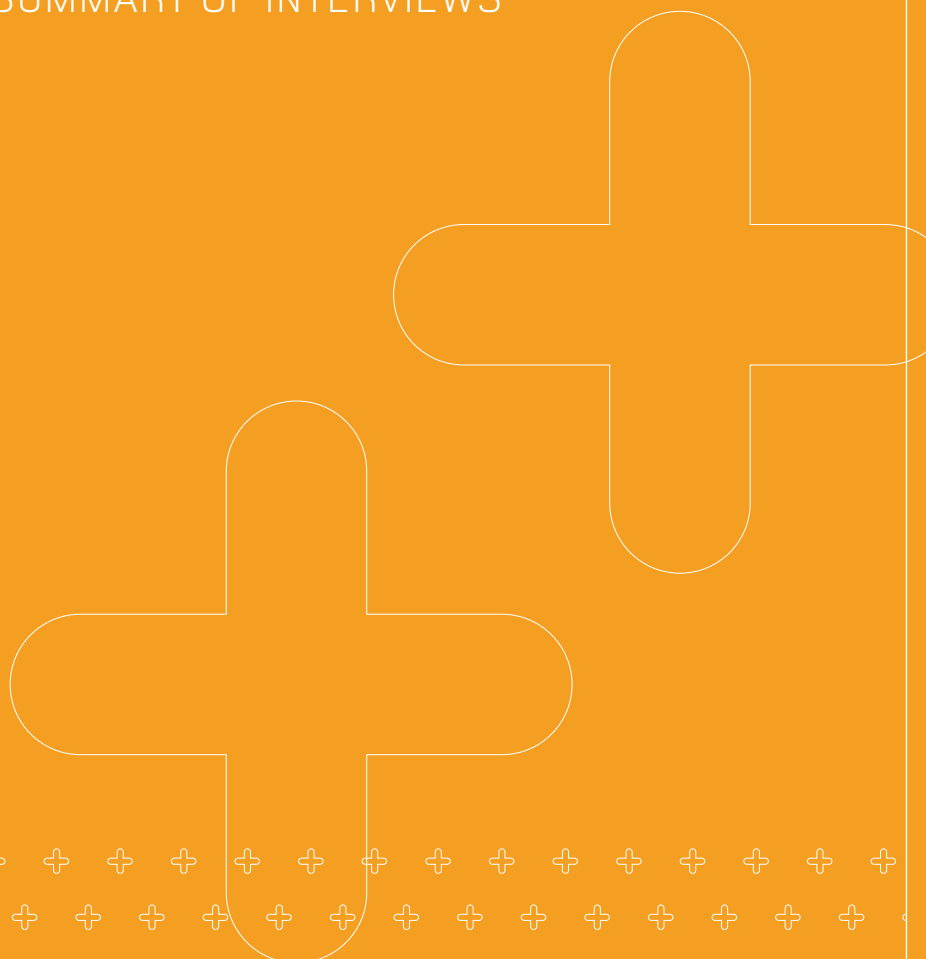


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1 EXECUTIVE SUMMARY

Report Purpose

This report summarises a series of interviews with Workplace Health and Safety Council (the Council) members and government officials about their view of the governance, accountabilities and delivery of the Council, and the best structure and arrangements for the Council into the future. The interview findings contribute to a wider review of the Workplace Health and Safety Strategy for New Zealand to 2015 (the Strategy).

The Workplace Health and Safety Council

The Council was established in 2007 to advise government on workplace health and safety matters. The Council provides leadership and co-ordination in health and safety, and advice on relevant legislation, standards and policies. The Council is a high-level tripartite body with government, employer and employee representatives.

Membership of the Council includes the Ministers of Labour and ACC, the President of the Council of Trade Unions and the Chief Executive of Business New Zealand. A further four representatives, two business and two employees, make up the eight appointments. The Council has met eight times.

Interview methodology

Twelve interviews were undertaken over a period of two weeks in April 2009. Those interviewed included seven government officials, four Council members and one non-member who provided a Business New Zealand perspective. The questions explored the governance, accountabilities and delivery of the Council.

Interview findings

All of those interviewed had observations and suggestions for how the Council's governance, accountability and delivery could be improved.

- There was general support for the Council to continue, and to develop in its role, recognising it is still at a fairly new stage of delivery. It was pointed out that the Council is now at a critical point and needs to know what is expected of it and how this will reflect in future support.
- Participants agreed that Council oversight of the Strategy is a key issue and should be well worked through as part of the review of the Strategy.

- Some participants sought a better match between the current Council terms of reference and what the Council does. Some activities referred to in the terms of reference have not been regularly undertaken. These include:
 - commenting on strategic accountability documents of government agencies delivering services or outputs in the workplace health and safety area
 - being consulted on draft Cabinet papers relating to matters of strategic national or international importance for workplace health and safety
 - preparing an annual report on the Council's activities and summarising its key findings and recommendations.
- Some participants questioned whether the Government should be represented at the Council by the responsible Ministers of Labour and ACC or whether it should be represented instead by the relevant senior officials, such as the Secretary of Labour, and the Chief Executive of ACC.
- The Department performs a number of roles in relation to the Council; from Council secretariat and analytical resource, to provision of advice about the Department's activities, to lead government agency for the Strategy. Some participants felt any changes to the Council will need to be carefully considered to ensure that no conflicts of interest arise for the Department.
- The leadership role by the ACC in workplace injury prevention is being reassessed by Government and any implications of this for the role of the Council will need to be considered as part of the Strategy review.
- Some participants felt that employer and employee representation is suitable as far as it currently extends, while others questioned whether it provides sufficient coverage of the health and safety sector in New Zealand.

Key issues raised

A number of key issues for further discussion were raised as part of the interviews. These key issues relate to:

Governance arrangements of the Council

- The Ministers' role
- The Department's role
- Conflicting interests and the provision of advice
- The Council's high level strategic focus and relationship with other advisory groups.

Role of the Council

- Needing further clarity around the core role and key priorities of the Council
- The connection that the Council has with workplaces and constituents
- The part that the Strategy plays in the Council's role.

Council's functions and capabilities

- The Council's ability to continue work between meetings and to set its work programme
- Development of a set of specific priorities in a work programme.

Conclusions

The Council has been in place for two years and in this time has established itself and brought its knowledge and working practices to the level required of such a body. However, there are clear indications from those interviewed, the Department and Council members themselves that the Council needs to take the next step and become an actively engaged peak body in the workplace health and safety area.

The following general conclusions have been drawn from the interview analysis and are recommended for further consideration during the review process:

Governance arrangements of the Council

- The high-level tripartite governance structure of the Council is generally supported.
- There is also support for maintaining the high level strategic focus of the Council, recognising there may also be potential to expand the Council's ability and resources to convene specific issue or subject focused sub-groups.
- The Department's various roles in relation to the Council, needs further thought and articulation to avoid conflicts of interest and to ensure effective support is provided to the Council.

Role of the Council

- There is a need to more clearly define the role of the Council as a basis for focusing future activity. This is illustrated by the discrepancy between current Council activities and the wider range of activities provided for in the Council terms of reference.
- Further work is also needed to broaden and improve the networks of employers, employees and government agencies that the Council members are involved in.

Council functions and capabilities

- The arrangements of the Council secretariat and levels of resourcing need re-examining to establish whether further analytical capacity could enable the Council to develop its work programme, work between meetings, and engage with the Strategy more effectively.

This report has identified some key areas in which the Council needs to take action, and some key resources that the Council will need to be able to undertake its role effectively into the future. The following recommendations reaffirm the role of the Council as a high-level tripartite body and outline a process for updating the Council terms of reference, identifying a number of matters for

further consideration. These recommendations have been forwarded for inclusion in the review of the Workplace Health and Safety Strategy. The recommendations are to:

1. Continue the Workplace Health and Safety Council as a high-level tripartite body with strategic oversight of workplace health and safety in New Zealand
2. Review and readjust the Council terms of reference by December 2009.

Matters requiring further consideration in the review of the terms of reference include:

- government's role on the Council
- the Council's role in relation to the Strategy
- the range of activities undertaken by the Council
- resourcing and support for the Council
- the relationship of the Council to other advisory groups
- strengthening the networks of employers, employees and government agencies that the Council members are involved in.

2 REVIEW OF THE WORKPLACE HEALTH AND SAFETY COUNCIL

2.1 Report purpose

This report summarises a series of interviews in May 2009 with The Workplace Health and Safety Council (“the Council”) members and government officials about their views of the governance, accountabilities and delivery of the Council and the best structure and arrangements for the Council into the future.

The interview findings contribute to a wider review of the Workplace Health and Safety Strategy for New Zealand to 2015 (the Strategy). The Council has a leadership role in the implementation of the Strategy and as such it has been considered appropriate for the Council to be reviewed as part of the broader Strategy review.

2.2 The Workplace Health and Safety Council

The Council was established in 2007 to advise government on workplace health and safety matters. The Council provides leadership and co-ordination, and advice on relevant legislation, standards and policies.¹ In particular, the Council focuses on the best ways to make progress with the Strategy. For the Strategy to work, government, industry and employers, and individual workplaces and employees must all play a part in reaching its vision, ‘Healthy people in safe and productive workplaces’.

The Council is a high level tripartite body with government, employer and employee representatives. The Council complies with the requirements of the International Labour Organization convention 155, Article 15 (2), which identifies the need for a central body to be established to assist in ensuring the coherence of policy on workplace health and safety at a national level.²

Membership of the Council includes the Ministers of Labour and ACC, the President of the Council of Trade Unions and the Chief Executive of Business New Zealand. A further four representatives, two from the business sector and two employee representatives, make up the eight appointments. The Council has met eight times since it was set up.

2.3 Background

The Council was established as a tripartite peak body of government, employer and employee representatives to provide a co-ordinated approach to workplace health and safety standards and policies.

This tripartite approach is a central feature of a number of overseas health and safety and workers compensation regimes, similar to the New Zealand model, for

¹ See Council Terms of Reference – Appendix C.

² For more information about Article 155 see

<http://www.ilo.org/public/english/protection/safework/cis/oshworld/ilostd/c155.htm>

example the Health and Safety Commission (UK) and the SafeWork SA Advisory Committee (South Australia).

Such tripartite bodies are established in recognition that the negotiation of workplace health and safety standards involves a social process, which whilst being informed by expert advice, should properly involve the representatives of employers, employees and government. Moreover, such bodies provide opportunities for positive collaboration by the tripartite partners in providing leadership, broadening consensus and improving the coordination of government agencies, industry groups and employee networks involved in workplace health and safety.

The establishment of the Council was intended to:

- provide a strategic advisory function to the Government and particularly to the Ministers responsible for workplace health and safety, being the Minister of Labour and the Minister for ACC (the Ministers)
- provide an effective oversight body for the Strategy, without diminishing Government's overall responsibility for the implementation of the Strategy
- provide a central body that can assist government agencies³ to co-ordinate an effective joint health and safety and workplace injury prevention programme with an industry focus and maximum employer and employee participation
- constitute a positive step towards satisfying Article 15 of Convention 155, and thereby remove one of the obstacles to future ratification.⁴

2.4 Methodology

The interviews were conducted in two ways. Key government officials were interviewed separately and specifically on the review of the Council. The Council member interviews took place as part of informant interviews being undertaken for the Strategy review. These interviews considered issues specific to the Council as a part of a shorter module of questions at the end of the informant interview.

Twelve interviews were undertaken over a period of two weeks in April 2009. Those interviewed included:

Department of Labour:

1. Craig Armitage, Deputy Secretary, Workplace
2. Paul Barker, Group Manager, Workplace Policy
3. Jim Murphy, Manager, Health and Safety Policy
4. Dave Spence, Manager, ACC Policy

Accident Compensation Corporation:

5. Katie Sadleir, General Manager, Injury Prevention

Statistics New Zealand:

6. Ingrid Jaegers, Subject Programme Manager,

National Occupational Health and Safety Advisory Committee:

7. Mark Wagstaffe, Programme Manager NOHSAC Secretariat

Workplace Health and Safety Council:

8. Helen Kelly, Ex Officio member and President, Council of Trade Unions
9. Andrew Casidy, member, representative of employees
10. Paul Jarvie, member, representative of business
11. Panu Raea, member, representative of business
12. Paul Mackay, non-member, responding on behalf of Business New Zealand

3 FINDINGS

3.1 Key themes from interviews

This section outlines the key themes of discussion and key points made during the key informant interviews for the review. All of those interviewed had observations and suggestions for how the Council's governance, accountability and delivery could be improved.

In summary, all of those interviewed had observations and suggestions for how the Council's governance, accountability and delivery could be improved.

Support for the Council to continue and develop

Participants indicated that the concept of the Council is sound. They noted that it was set up to address compliance with ILO Convention 155 and to provide tripartite leadership for the Strategy.

One respondent noted that the Council is an end in its own right and a means to an end. Through its existence the Council is improving tripartite approaches to health and safety; it also provides the means for specific approaches to improve health and safety to be considered.

Another respondent commented that the level to which the Council drives its own priorities needs to be considered further. Should the Council have a specific work programme? Should they influence the Department's workplace health and safety work programme?

Several participants were of the view that if the Council is going to pick up additional roles, or increase its current roles the secretariat will need to be augmented. This might be augmented administrative support or it might include analytical support. It could be either of these as long as the boundaries, roles and responsibilities are clearly set out.

Many participants agreed the Council is a good model; however, one commented that there remains a need to gauge the level of ongoing commitment to the

Council, the Strategy and the tripartite approach in general at the government level. This will be part of the purpose of the broader review of the Strategy.

One respondent commented that the Council has been familiarising itself with these issues and has been conducting a largely introductory overview of health and safety in New Zealand. One respondent commented that there is now an opportunity for the Council to move on from 'noting mode' and set a new agenda as part of the Strategy and Council reviews. Others noted the Council has now heard from all the key government agencies in the health and safety area (Department of Labour, Accident Compensation Corporation, Environmental Risk Management Authority, Civil Aviation Authority, Maritime New Zealand, and Statistics New Zealand). The Council is now in a position to go to the next stage, to distil and analyse information, to identify areas of focus and to provide advice to government. The next question is how they achieve this.

Council role needs to be clear

It was noted by many participants that Council leadership of the Strategy is a key issue. Some felt that the Council needs to be able to drive things in a practical direction, while others felt that activity should be focused at a high and strategic level. The Strategy is currently focused at broad level, and the Council may be in a position to provide a more action-based focus to the Strategy.

Participants suggested it would be useful to ensure that the Council has a clear role in terms of overseeing the coherence of policy around public sector activities in the workplace health and safety field. The Council might have a legitimate role around departmental output agreements – this would be an opportunity for the Council to know what agencies are doing and being able to comment on health and safety in the output agreements between the departmental chief executives and the responsible Ministers. One respondent was of the view that this would give some transparency around the policy work programme and would retain the relationship between the Department and the Minister without making the Department answerable in any way to the Council.

Respondents felt the Council's future role should be well worked through relative to the reviewed Strategy. One participant said the Council should provide a conduit from government to the workplace and the workplace to the government via the employer and employee networks.

One participant expressed the view that there is a role for the Council - particularly the social partners - and also the government, to build capability – so that the Strategy actually *lives* out in workplaces and the community.

Governance and structure of the Council

One participant questioned whether the government should be represented at the Council by the responsible Ministers of Labour and ACC or whether it should be represented instead by a the relevant senior official, such as the Secretary of Labour, and the chief executive of ACC. They referred to The terms of reference that provide for Ministers to be the government representatives on the Council. This presents an unusual position where the Council can make recommendations

to the Government where the Ministers who are most likely to consider the recommendations are also part of the Council.

Those interviewed felt that the role Ministers play is important. However, some felt that this high-level ministerial commitment could be maintained if Ministers were regularly invited to attend Council meetings, rather than having them as part of the Council.

The general composition of the Council is a wider issue. Some felt employer and employee representation is suitable as far as it currently extends, while others questioned whether it provides sufficient coverage of the health and safety sector in New Zealand in terms of the scope of the Council and the depth of the social partners' networks.

Overall participants felt that the construction, composition and purpose of the Council needed further thinking about and discussion.

Department of Labour performing several roles

Participants pointed to the number of roles the Department performs in relation to the Council, from Council Secretariat and analytical resource, to provision of advice about the Department's activities to lead government agency for the Strategy. Some participants felt that any changes to the Council will need to be carefully considered to ensure that no conflicts of interest arise for the Department.

It was noted that currently the Department is clearly the secretariat, not having an executive function on the Council. Any change to this arrangement would affect the dynamics of the Council.

The Council terms of reference state clearly state that the direction of officials in government departments is outside the scope of the Council. Were the Secretary of Labour to be the government representative this would still leave scope for there to be a conflict of interest if the Council chose to provide advice contrary to the Department's policy or practices.

The Department also leads the Strategy, and while the issue of several roles might be challenging for the Department respondents felt that any issues arising were not insurmountable.

Accountabilities and work programme

Some participants sought a better match between the activities the Council may perform³ and what the Council does. Activities not undertaken regularly but that are included in the terms of reference include:

- commenting on strategic accountability documents of government agencies delivering services or outputs in the workplace health and safety area

³ Section 21 Council Terms of Reference

- being consulted on draft Cabinet papers relating to matters of strategic national or international importance for workplace health and safety
- preparing an annual report on the Council's activities and summarising its key findings and recommendations.

One participant observed "*either we need to change what the Council does or change the terms of reference!*"

Participants noted that the Council could, and maybe should, have a work programme beyond meetings. Council members who were interviewed particularly noted the need for a work programme beyond the meetings; they also noted the need for further meetings with a longer notice period for meetings to allow effective engagement with the social partners' networks to take place.

Some felt the Department could think about ways in which it could assist the Council to do this, such as through forward agendas, independent work by the Council or the development of subcommittees to deal with specific pieces of work. The Department might need to consider ways that it could manage the Council's involvement in a work programme.

Some also noted that the Department has provided the secretariat for the Council, and has done so effectively for a Council which does all its work within its meetings. Some consideration is needed of how the secretariat role might need to be adjusted if the Council's role is broadened or its work programme increases.

Interview participants noted that there are opportunities for the Council to identify a limited set of priorities and focus action on those. It was also noted that there needs to be more clarity around what the Council's aims are and how it engages most effectively with its networks. They also suggested that how meetings are structured and driven and what the Council does between meetings could be considered further. One respondent also said the question of what the Council is trying to achieve, and how the Council might move beyond individual views to a group view is important.

Connections with ACC and workplace injury prevention

Participants pointed out that Government is reassessing ACC's leadership role in workplace injury prevention and any implications of this for the Council will need to be factored into the Council and Strategy reviews.

It was further noted by one participant that the Council is placed within a broader injury prevention space as the Strategy sits under the umbrella of the New Zealand Injury Prevention Strategy (NZIPS). This connects with both ACC's work around injury prevention at work and Statistics New Zealand's work around the Official Injury Information Programme, particularly in relation to the Injury Information Manager. It is important to step back and take a look at the whole of the health and safety and injury prevention horizon. Until now ACC has taken a leadership role in workplace injury prevention, but these priorities are being reassessed. This means that the injury prevention focus is changing and

working through the implications of the workplace health and safety and injury prevention interface in a changed environment will be important.

Relationship with other advisory groups

Participants were questioned about the Council's relationship with advisory groups operating in the health and safety and injury prevention space.⁴ Some felt the Council might be in a position to have a more formal role - operating technical subcommittees, thus providing the necessary expertise and technical consideration of issues under the auspices of the Council rather than through a broader range of advisory groups.

Participants felt that the membership of the Council after the review may well determine whether there are any residual functions from other advisory groups the Council could pick up. One participant commented that if there was no additional resourcing then it would be better not to pick up any residual functions

Engaging with the Strategy

Interview participants felt that the Council's role in relation to the Strategy has not yet been fully realised. Some thought this may, in part, be due to the fact that the Council has been set up more recently than the Strategy and has been coming up to speed on the Strategy and the health and safety issues that it covers. They felt that the Council needs to have a stronger relationship with the Strategy, having now had the time and opportunity to become familiar with the Strategy.

One respondent commented that it was not clear whether the Council sees itself as a monitor - monitoring government's performance on the Strategy; or a driver - using its networks to engage its constituents around the Strategy and driving the community and industry outcome areas.

Engaging with the broader health and safety sector

One participant considered Council now also needs to identify how it can best engage with the broader health and safety sector. This might involve the Council members using their networks to bring health and safety issues to the fore, and allowing them to lead their work rather than responding to Department led programmes.

It was further noted that the Council provides a good conduit between government and workplaces (businesses and unions) for health and safety. This is facilitated by having Ministers and senior representatives from NZCTU and Business NZ there. It provides a forum for dialogue and pursuing common interests within a social dialogue model.

Others noted there is a focus in the terms of reference on the BNZ and CTU networks and how they bring in engagement and representation. One participant commented that there doesn't appear to have been much consideration of how to

⁴ Related advisory groups are discussed in the Council terms of reference - paragraphs 22-28. See Appendix C

bring in the government network side of the tripartite arrangement questioning how the government members could best engage with the government agency networks.

One respondent also thought it would be useful to consider how the Council should be involved with achieving the goals and aims of the New Zealand Injury Prevention Strategy. This is not explicitly addressed in the current terms of reference.

3.2 Interview findings

In summary, all of those interviewed had observations and suggestions for how the Council's governance, accountability and delivery could be improved. From the discussion of key themes there was a general level of agreement about the following matters:

- There was general support for the Council to continue, and develop in its role, recognising it is still at a fairly new stage of delivery. The Council is now at a critical point and it is timely to review the Government expectations of the Council and consider how this will be reflected in future support.

Participants agreed that Council oversight of the Strategy is a key issue and should be well worked through as part of the review of the Strategy.

- Some participants sought a better match between the current Council terms of reference and what the Council does. Activities not regularly undertaken but that are listed in the terms of reference include:
 - commenting on strategic accountability documents of government agencies delivering services or outputs in the workplace health and safety area
 - being consulted on draft Cabinet papers relating to matters of strategic national or international importance for workplace health and safety
 - preparing an annual report on the Council's activities and summarising its key findings and recommendations.
- Some participants questioned whether the government should be represented at the Council by the responsible Ministers of Labour and ACC or whether it should be represented instead by the relevant senior official; such as the Secretary of Labour, and the Chief Executive of ACC.
- The Department performs a number of roles in relation to the Council, from Council secretariat and analytical resource, to provision of advice about the Department's activities, to lead government agency for the Strategy. Some participants felt that any changes to the Council will need to be carefully considered to ensure that no conflicts of interest arise for the Department.
- Government is reassessing ACC's leadership role in workplace injury prevention and any implications of this for the role of the Council will need to be considered as part of the Council and Strategy reviews.

- Some felt employer and employee representation is suitable as far as it currently extends, while others questioned whether it provides sufficient coverage of the health and safety sector in New Zealand.

4 DISCUSSION

4.1 Key issues raised

A number of key issues were raised as part of the interviews. These key issues mainly cover issues relating to the:

- governance arrangements of the Council
- role of the Council
- Council's functions and capabilities
- Connections with the other workplace health and safety and injury prevention advisory groups

Governance arrangements

The issue of the Council's governance has been identified as a key area for the review. The specific aspects identified include:

- the Ministers' role
- the Department's role
- conflicting interests and the provision of advice
- high level strategic focus and relationship with other advisory groups

Ministers' role

Ministers currently attend Council meetings as the member representing the government. Ministerial representation provides for a high-level of government leadership for the Council. The employer and employee members are also high level representatives, provides opportunity for employer and employee representatives to engage with Ministers on workplace health and safety issues regularly.

There are issues relating to the provision of advice by the Council to Ministers if Ministers are part of the Council. It leaves the Council in a situation where it is unable to give independent advice as the Ministers receiving the advice are involved in developing the advice. However, this is not a significant issue as the Council is not expected to be an independent entity and therefore the provision of advice from the Council to Ministers will have been developed in conjunction with government as is appropriate for a tripartite organisation.

In practice Ministers only tend to attend part of the Council's meetings, leaving a Department of Labour senior official as the government nominee for the remainder of Council meetings. This does provide the employer and employee representatives with both face to face time with Ministers and an opportunity to

engage with government officials on the detail of workplace health and safety issues.

Currently the government representation on the Council is almost a de facto hybrid of Ministers and senior officials, providing the employer and employee representatives with a broader focus for engagement, and it also allows for detailed discussion of a wider range of issues on a range of levels. The key to making this work is less likely to lie with the role of the Ministers on the Council as with clearly defining the role of the Department of Labour on the Council, both as secretariat and as an executive or de facto executive member.

The Department's role

The Department has a number of roles in relation to the Council. These include:

- as the secretariat
- as provider of advice about the Department's activities
- as a de facto executive member
- in terms of the Department's workplace health and safety work programme, as the agency responsible for the Strategy.

The Department currently provides the Council with an efficient and sound secretariat service. The Department does not currently provide any independent analytical support to the Council; this is seen by some as a limitation. Currently the Council is not funded for analytical resource.

Having analytical capacity available to the Council would allow the Council to develop its work programme further, focus on a number of key issues and engage with the Strategy more effectively. Having a secretariat with independent analytical capacity to progress Council work between meetings, would provide the Council with a wider scope within which to be effective. Ways of providing analytical support to the Council could be considered further.

The Secretary of Labour or the Deputy Secretary Workplace attend Council meetings and take the place of Ministers as the government's representative when Ministers are not in attendance. This provides the Department with a de facto executive member status; however, there may be a lack of clarity around the Department's status at Council meetings. It may be necessary to clarify and formalise the Department's status when attending.

The Department's workplace health and safety work programme and its responsibility for the Strategy are of some interest to the Council. The alignment of the Council's work programme with the Department's workplace health and safety work is important, particularly as the Council has a leadership role with respect to the Strategy. It would be useful to align these areas of work more closely, providing the Council with more of a role in terms of the Department's work in the area.

Conflicting interests and provision of advice

The role of the Council in providing advice to Ministers, whilst having Ministers as members, appears to cause a conflict of interests – the Ministers are effectively providing advice to themselves. . It may be necessary to clarify the role of the Council in providing advice, and the role of Ministers in receiving that advice. However, it is unlikely that this situation causes any real practical problems and this is unlikely to be a matter of concern for how the Council’s governance should be organised.

High-level strategic focus and relationship with other advisory groups

Consistent with its leadership role, the Council has a high-level strategic understanding of workplace health and safety issues; however, it does not have a comprehensive understanding of all facets of workplace health and safety.

The relationship of the Council to other advisory groups in injury prevention is set out in the terms of reference as complementary, avoiding duplication of activity while having scope to comment on the outputs of other advisory groups.⁵

The other workplace health and safety and injury prevention advisory groups have provided the comprehensive understanding of specific issues and areas of knowledge, at a detailed knowledge and operational level.

The National Occupational Health and Safety Committee (NOHSAC) has provided independent assessment to the Minister of Labour on the major occupational health and safety issues and advice on measures to provide the greatest benefit for the prevention of occupational injury and disease.

The Workplace Related Gradual Process Disease and Illness Panel (WRGPDI) is a statutory body established under the Injury Prevention and Rehabilitation and Compensation Act and has provided independent advice to the Minister of ACC on any matter relating to work related gradual process, disease or infection.

The Injury Statistics Ministerial Advisory Panel (ISMAP) has provided the government with advice on workplace injury statistics and information.

These advisory groups have been operating for several years providing these specific areas of detailed advice to the government; however, they are all currently being reviewed. This leads to the question of whether the Council might take on a more comprehensive role in terms of specific workplace health and safety knowledge and expertise, picking up any residual functions should these advisory groups cease.

Were the Council to pick up residual functions from other advisory groups it could do so in one of two ways. The Council could either; *a) broaden its expertise, research and academic; or b) give itself the ability (and resources) to convene*

⁵ Paragraphs 22-28 of the Council terms of reference outline the relationship with other advisory groups.

specific issue or subject focused sub-groups. This would largely depend on the extent to which the government may want the Council as a source of independent advice. The Council could also be used as a clearing house for research commissioned by the Department or similar.

In relation to option *a) broadening its expertise,,* the Council's membership is based on the ILO model of social partnership, which includes government, employer and employee representation. ILO Convention 155 requires member countries to establish a central body to assist in ensuring the coherence of policy on workplace health and safety at a national level. While the structure of this central body is not further stipulated, consideration of any changes to widen the role of the Council would also need to ensure alignment with Convention 155.

There is general support, from officials and Council members interviewed, for the Council's current high level strategic role to continue. Maintaining the Council's current role ensures that the tripartite representative nature of the Council is not diluted. Widening the scope of the Council beyond this is unlikely to provide any additional benefit and runs the risk of making the Council too focused on detail to provide a high-level strategic view of workplace health and safety.

In relation to option *b) give the Council the ability (and resources) to convene specific issue or subject focused sub-groups,* the Council terms of reference currently provide the Council with scope to co-opt up to two persons for short periods to provide specific expertise essential to the Council's work programme. The Council is able to establish sub-groups for whatever purpose it feels necessary, subject to budget constraints.

Role of the Council

There are a number of issues in terms of the role of the Council that need further discussion. These include:

- Needing further clarity around the core role and key priorities of the Council
- The connection that the Council has with workplaces and constituents
- The part that the Strategy plays in the Council's role – in particular the leadership role that the Council has.

Clarity around core role and key priorities

The Council's terms of reference allow the Council a broad focus to its considerations and activities and it has been receiving briefings on a wide range of workplace health and safety matters.

The participants interviewed consistently raised the Council's broad focus and need to set priorities or targets as an important issue. It seems that the Council has not clarified its core roles or key priorities as yet; however, now the Council has been fully briefed on workplace health and safety there is an opportunity for it to set some priorities.

This links closely to the development of a work programme for the Council. In its terms of reference the Council is able to produce an annual report. This provides a vehicle for outlining and reporting on the Council's work programme and key priorities.

Connection to workplaces and constituents

A key role of the Council is to provide a conduit from workplaces to government and back again; this role was raised as being very important by a number of interview participants.

The Council is represented by representatives of the three key groups interested in workplace health and safety. Business New Zealand represents employer interests, the NZ Council of Trade Unions represents employee interests and the Minister of Labour represents the government. However, Business NZ and the NZCTU only directly represent small proportions of employers and employees. There is a need for each of these organisations to further develop their connections and networks with workplaces, employers and employees. The importance of these connections and networks to the Council's success as a peak body are high. The more that the Council knows about what is happening around health and safety in New Zealand workplaces, and the more they are able to disseminate information and action amongst these workplaces the better the Council will be able to drive the Strategy and to support improvements in workplace health and safety. Significant improvements could be made if the Council identifies this as a key priority for the next year.

Additionally the connections that the government representatives have across government could also be improved. In terms of representing workplace health and safety issues to the Council, the government networks are working well; however, in terms of disseminating workplace health and safety information and action to government workplaces, particularly in relation to the Strategy, practices could be improved. This is an area that the Department may want to consider further.

Monitoring or driving the Strategy?

The leadership role will be determined largely by how well the Council can organise its work programme and set its key priorities, and by how well connected the Council is with its particular networks.

But there is a need to more clearly define the role of the Council. It is not clear whether the Council, in its leadership role, sees itself primarily as a "monitor", monitoring the performance of the Strategy, or "driver", using its various networks to engage with constituents around the Strategy.

Work Programme

The Council has not yet identified specific priorities or developed a work programme. Those interviewed raised the need for these enabling the Council to

engage effectively with networks, undertake work between meetings, and engage in more informed, structured discussions. Work programme development should be undertaken by the Council as soon as is practicable

Functions and capabilities

The actual functions and capabilities of the Council include a number of areas where further discussion is required. These include:

- The Council's ability to continue work between meetings and to set its work programme
- Development of a set of specific priorities in terms of work programme.

The Council between meetings

The Council has been resourced for approximately four meetings a year. This year the Council has begun to work between meetings in some capacity. After the April 2009 meeting one of the Council members set up a wiki page so that the Council could continue discussions of workplace health and safety between meetings.

Council members expressed a desire to work more effectively between meetings and this has been echoed by some of the participants interviewed. If the Council is to be effective in driving the Strategy and in engaging with its networks the capacity to work between meetings is likely to be important. The Council's work engaging with its networks between meetings is particularly important.

There are two factors that could be improved to assist the Council in working between meetings. The first is in terms of forward planning; if Council meetings are set and planned for early on this allows the Council to engage with its networks more effectively. This would be further served by having an established work programme and set of key priorities; if the Council's forward work plan is established early in the year the Council members will be able to engage with their networks on the work programme well in advance of meetings. The second is in terms of secretariat support being made available to the Council; currently the secretariat support provided by the Department relates to the organisation and running of meetings. If the Department was able to provide or align some analytical resource to the Council work programme and key priorities between meetings this would significantly increase the Council's capability to work effectively between meetings.

5 CONCLUSIONS

The Council has worked well to date and has built up its knowledge of the workplace health and safety area and has developed strong working relationships and understandings of its role. The Council has been in place for two years and in this time has established itself and brought its knowledge and working

practices to the level required of such a body. However, there were clear indications from interview participants, the Department and Council members themselves that the Council needs to take the next step and become an actively engaged peak body in workplace health and safety.

Both the Council and Strategy reviews offer a good opportunity for the Council to make this next step.

The following general conclusions have been drawn from the interview analysis and are recommended for further consideration during the review process:

Governance arrangements of the Council

- The high level tripartite governance structure of the Council is generally supported.
- There is also support for maintaining the high-level strategic focus of the Council, recognising there may also be potential to expand the Council's ability, and resources, to convene specific issue or subject focused sub-groups.
- The Department of Labour's various roles in relation to the Council need further thought and articulation to ensure conflicts of interest are avoided and effective support is provided to the Council.

Role of the Council

- There is a need to more clearly define the role of the Council as a basis for focusing future activity. This is illustrated by the discrepancy between current Council activities, and the wider range of activities provided for in the Council terms of reference.
- Further work is also needed to broaden and improve the networks of employers, employees and government agencies that the Council members are involved in.

Council functions and capabilities

- The arrangements of the Council secretariat and levels of resourcing need re-examining to establish whether further analytical capacity could enable the Council to develop its work programme, work between meetings, and engage with the Strategy more effectively.

6 RECOMMENDATIONS

This report has identified some key areas in which the Council needs to take action, and some key resources that the Council will need to be able to undertake its role effectively into the future. The following recommendations reaffirm the role of the Council as a high-level tripartite body and outline a process for updating the Council terms of reference, identifying a number of matters for further consideration. These recommendations have been forwarded for inclusion into the review of the Strategy

The recommendations are to:

1. Continue the Council as a high-level tripartite body with strategic oversight of workplace health and safety in New Zealand
2. Review and readjust the Council terms of reference by December 2009.

Matters requiring further consideration in the review of the terms of reference include:

- government's role on the Council
- the Council's role in relation to the Strategy
- the range of activities undertaken by the Council
- resourcing and support for the Council
- the relationship of the Council to other advisory groups
- strengthening the networks of employers, employees and government agencies that the Council members are involved in.

APPENDICES

A – Council review questions – government officials

B – Council review questions – questions for Council members as part of extended review of the Strategy

C – Council terms of reference

APPENDIX A

Council review questions – government officials

The review questions will focus on the three areas that the review covers: governance, accountabilities and delivery. The questions will be organised under these headings and a fourth section will allow, or provide opportunity for the interviewee to provide any additional comment. The questions that are highlighted will also be used in the interviews of Council members (not including Ministerial members).

Part 1: Governance

How do you think the current governance arrangements have worked for the Council? Are the governance arrangements suitable for the ongoing work of the Council?

What is the Council's relationship with the Strategy?

Should it retain a leadership role with regard to the Strategy? What would a leadership role look like and how would this be demonstrated?

Part 2: Accountabilities

What do you see as being the most important roles and accountabilities of the Council?

Do you see the roles and accountabilities of the Council as being appropriate? Are they too wide? Too narrow? Is there scope for the Council to expand its roles and accountabilities?

How is the relationship between the Council and the other ministerial advisory groups in the health and safety space? Does it need to be developed? How might this be done?

The Council is able to be consulted on Cabinet Papers; is this a useful forum to achieve this? Could this role be met more effectively through social partners' consultation process?

Part 3: Delivery

What processes and resourcing does the Council need to analyse and articulate its advice effectively?

Does the Council meet its function of representing and informing its networks? How well? Are there any constraints to this? Are there any particular factors that facilitate this?

The Council is able to seek expert opinion to inform its work; is this a useful function? Could this be expanded further?

The Council has an ability to do an annual report; would this be a useful product? If so, who would produce or fund this?

Part 4: Further comment

Do you have any further comments on the Council?

APPENDIX B

Questions for Council members as part of extended review of the Strategy

The review questions will focus on the three areas that the review covers: governance, accountabilities and delivery. The questions will be organised under these headings and a fourth section will provide the interviewee with an opportunity to provide any additional comment.

Part 1: Governance

How do you think the current governance arrangements have worked for the Council? Are the governance arrangements suitable for the ongoing work of the Council?

What is the Council's relationship with the Strategy?

Part 2: Accountabilities

What do you see as being the most important roles and accountabilities of the Council?

Do you see the roles and accountabilities of the Council as being appropriate? Are they too wide? Too narrow? Is there scope for the Council to expand its roles and accountabilities?

Part 3: Delivery

What processes and resourcing does the Council need to analyse and articulate its advice effectively?

Does the Council meet its function of representing and informing its networks? How well? Are there any constraints to this? Are there any particular factors that facilitate this?

Part 4: Further comment

Do you have any further comments on the Council?

APPENDIX C

Workplace Health and Safety Council

Terms of Reference & Protocols

Context

1. The Workplace Health and Safety Strategy (the Strategy) aims to lift New Zealand's workplace health and safety performance. This will enhance the productivity of New Zealand businesses, and reduce New Zealand's work toll.
2. The Strategy is a framework for action intended to:
 - Raise awareness about workplace health and safety
 - Coordinate and prioritise workplace health and safety activities across stakeholders
 - Improve the infrastructure that supports workplace health and safety.
3. The Workplace Health and Safety Council (the Council) is to be established as a tripartite forum that will support improved workplace health and safety outcomes by building consensus and providing advice on the Strategy and on health and safety matters of national or international significance to the Ministers responsible for workplace health and safety⁶ (the Ministers).
4. The term "workplace health and safety" is intended to encompass activities associated with the Health and Safety in Employment Act 1992, and workplace injury prevention activities under the Injury Prevention, Rehabilitation and Compensation Act 2001.
5. The term also encompasses the Department of Labour's enforcement responsibilities under section 97 of the Hazardous Substances and New Organisms Act 1996 (HSNO), however, responsibility for the development and maintenance of the policy, legislation and controls rests with the Minister for the Environment and the Environmental Risk Management Authority (ERMA New Zealand).

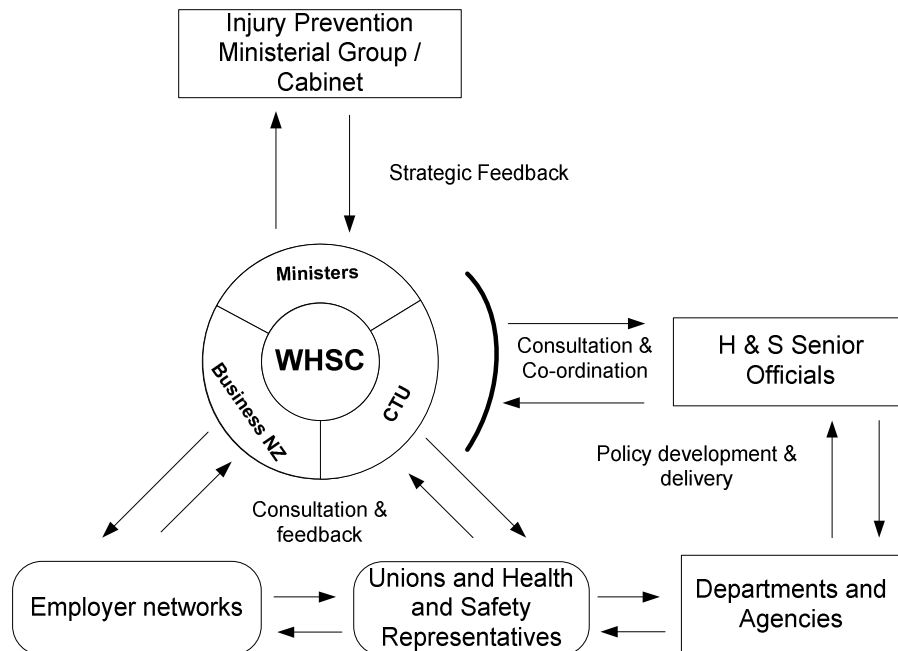
Purpose and objectives

6. The purpose of the Council is to build consensus and provide advice to the Ministers on workplace health and safety matters. This includes:
 - Advice on ways to progress the outcomes of the Workplace Health and Safety Strategy

⁶ As at June 2006 this is deemed to be the Minister of Labour and the Minister for ACC.

- Advice on the medium to long-term implementation opportunities and challenges for the Strategy across agency or sector boundaries
 - Advice on the different support requirements and interests within and across stakeholder representatives with regard to the Strategy
 - Advice on workplace health and safety matters of national or international significance.
7. The following are deemed outside the scope of the Council:
- The making of decisions which are binding on either the Ministers, Cabinet or the Social Partners
 - The direction of officials in government departments
8. Key objectives of the Council are
- To provide leadership and advice in relation to the implementation of the Strategy and on an ongoing basis in the area of workplace health and safety
 - To build and broaden consensus between the stakeholder representatives and with government (through engagement with Ministers and officials)
 - To assist government agencies to co-ordinate an effective joint health and safety and workplace injury prevention programme with an industry focus and maximum employer and worker participation.

Role



9. The Council is expected to fulfil the following roles, as reflected in the above diagram.

Engagement within the Council

10. Discuss matters of strategic and medium term significance to the improvement of workplace health and safety outcomes in New Zealand.
11. Provide independent perspective on strategic health and safety issues and priorities for future action based on individual expertise and the views and feedback from business and employee networks.
12. Develop consensus and provide advice on what government must focus on to lift New Zealand's workplace health and safety performance and significantly reduce New Zealand's workplace injuries and illnesses.
13. Where consensus is unable to be reached, provide advice on any diversity of opinion within the Council.

Engagement with government, business and employee stakeholders

14. The Ministers will provide strategic advice to Government via the Injury Prevention Ministerial Group and/or Cabinet at the Ministers' discretion.
15. The Social Partners will consult and provide feedback to business and employee stakeholders, this will primarily be through engagement with their existing networks and constituencies.
16. Consult networks on strategic health and safety issues and future priorities for the public sector, businesses and employees.
17. Develop appropriate methods of communicating and consulting stakeholders. This may include establishing industry or issue based working groups, hosting workshops and meetings.

Engagement with health and safety officials⁷

18. Identify, articulate and provide feedback on strategic health and safety issues in respect of both government and private sector activities.
19. Act as a sounding board for policy groups charged with the ongoing development and implementation of the Strategy and ensure consistency of short-term initiatives with long-term goals.

⁷ Core officials will include the Secretary of Labour, the Deputy Secretary Workplace Group of the Department of Labour, the Chair of the Board and the CEO of ACC, and senior officials from Maritime New Zealand and the Civil Aviation Authority. Depending on the issues to be discussed, senior officials from Ministry for the Environment, Ministry of Health or ERMA New Zealand may attend by invitation.

20. Provide advice on proposed government actions and reports, including commenting on the work programme of government agencies in the health and safety/injury prevention area.

Activities

21. Subject to the purpose and objectives of the Council and subject to consideration of their strategic significance and without limiting the role of the Council, activities of the Council may include:
 - a. Examining, seeking expert opinion, reviewing and making recommendations to the Ministers on strategic issues relating to
 - i. the design or implementation of legislation in the workplace health and safety area
 - ii. the design or implementation of regulations in the workplace health and safety area.
 - b. Commenting on existing and draft Approved Codes of Practice of strategic national significance.
 - c. Commenting on existing and draft government information or guidance of strategic national significance.
 - d. Commenting on strategic accountability documents of government agencies delivering services or outputs in the workplace health and safety area.
 - e. Being consulted on draft Cabinet papers relating to matters of strategic national or international importance for workplace health and safety.
 - f. Identifying and recommending areas of research and/or evaluation for workplace health and safety.
 - g. Preparing an Annual report on the Council's activities and summarising its key findings and recommendations.

Relationship with other advisory groups

22. The Council will have a close working relationship with a number of existing Ministerial advisory groups. For the purpose of ensuring clear boundaries, the Council should avoid duplicating the work of the following groups, but at the relevant Minister's discretion may be requested to comment on their outputs.
23. **National Occupational Health and Safety Advisory Committee** – NOHSAC is a Ministerial advisory group established by Cabinet mandate to provide independent assessment to the Minister [of Labour] on the major occupational health and safety issues and advice on measures to deliver the greatest benefit for the prevention of occupational injury and disease.

24. NOHSAC is focused on providing evidence based advice from the perspective of medical and occupational health specialists and academics, it does not provide the business-employee perspective and social process provided by the Council.
25. **ACC Ministerial Advisory Group** – ACCMAG is an advisory group established to provide the Minister for ACC with independent advice from a stakeholder perspective on the operation of the Accident Compensation Corporation and the ACC scheme.
26. The Council’s purpose of providing advice on workplace health and safety is intended to include strategic advice on the interaction between the health and safety activities of the Department of Labour and the workplace injury prevention activities of ACC. The Council’s purpose does not include advising on workers compensation and rehabilitation arrangements, as this function is performed by the ACCMAG.
27. **Injury Surveillance Ministerial Advisory Panel** – ISMAP is a statutory body established under the Injury Prevention, Rehabilitation and Compensation Act 2001 (IPRC). ISMAP’s objective is to provide independent advice to the Minister of Statistics and the Minister for ACC from the perspective of stakeholder representatives. The substance of this advice is the direction and strategy taken or to be taken by the Information Manager in relation to Part 8 of the IPRC Act.
28. **Work Related Gradual Process, Disease and Injury Panel** - WRGPDI Panel is a statutory body established under the IPRC to provide independent and specialist advice to the Minister for ACC on any matter relating to work-related gradual process, disease, or infection.

Accountability and reporting

29. The Council is a non-legislative group. It is a tripartite forum for building consensus and providing advice to the Ministers. Government will consider all findings and recommendations of the Council and act on these as it considers appropriate.
30. The Council will meet with Senior H&S Officials at least twice a year.
31. The Council will normally meet up to four times a year. Additional meetings may be held as required by consensus, subject to budgetary constraints.
32. The Council will be supported by a secretariat based at the Department of Labour, with involvement from other departments as appropriate.
33. Information held by the Council will be deemed to be information held by the Minister of Labour for the purposes of the Official Information Act 1982, Privacy Act 1993 and Ombudsmen Act 1975.

Composition and Membership

34. The Council's ability to provide valuable advice will depend on the seniority, commitment, experience and openness to constructive dialogue of members. Members must bring an ability to work collectively, with the Ministers and with the public sector.
35. Members of the Council will have experience in health and safety matters and will be drawn from business and employee representatives. The members should be also able to represent health and safety issues facing SMEs, women, and Māori and Pacific peoples.
36. The Minister of Labour will be responsible for the appointment of members and will make appointments in accordance with State Services Commission guidance and Cabinet Appointment and Honours Committee processes.
37. There will be 7-8 permanent appointments (including the Ministers⁸).
38. Member numbers will provide a balanced representation of employer and employee interests. The following ex officio appointments will be made:
 - a. The Ministers responsible for workplace health and safety
 - b. The President of the New Zealand Council of Trade Unions; and
 - c. The Chief Executive of Business New Zealand
39. A further two representatives of employees will be appointed by the Minister of Labour following nomination by the President of the New Zealand Council of Trade Unions.
40. A further two representatives of business will be appointed by the Minister of Labour following nomination by the Chief Executive of Business New Zealand.
41. With the exception of ex-officio members, members will be appointed for terms of up to 3 years. Terms may be extended by mutual agreement. Membership terms will be staggered so there is experience and continuity at any time going forwards.
42. The Council will have delegated authority to co-opt up to two persons for short periods to provide specific expertise essential to the Council's work programme. The Council is able to establish sub-groups for whatever purpose it feels necessary, subject to budget constraints.
43. Council members may receive fees and allowances in accordance with Government guidelines provided they are not already being paid to represent the interests of any stakeholder group. Council members may be

⁸ The Ministerial portfolios are currently held jointly by one person, but in future may be held separately or by an Associate Minister.

required to contribute up to 2 days a month of their time to their role on the Council.

Administration support

44. The Department of Labour will provide administrative support services for meetings of the Council (e.g. circulating background papers and agendas, preparing minutes of meetings, drafting of the annual report).
45. The Department of Labour will meet the costs of arranging and holding meetings, refreshments as may be appropriate to the timing of the meetings and the photocopying/distribution of documents to Members.

Protocols

Joint statement of expectations

46. The Council will agree an annual statement of expectations for the Council which sets out the terms of reference, the protocols, a work programme and any other relevant expectations of members.

Chairperson

47. The Council will be chaired on a rotating basis by the Minister of Labour, the President of the Council of Trade Unions and the Chief Executive of Business New Zealand.

Alternates

48. Alternates for the Minister of Labour, the President of the Council of Trade Unions and the Chief Executive of Business New Zealand are acceptable, as long as this doesn't clash with the rotating chair role in para 47 above. The Secretary of Labour will act as alternate for the Minister of Labour.

Quorum

49. 5 or 7 members including the Ministers (or their representative) and equal numbers of business and employee representatives will represent a quorum.

Council process

50. Meetings will follow an agenda, which will be circulated in draft to members for their consideration and comment in advance of the relevant meeting.
51. All members will hold equal voting rights. Minutes will be taken and will be distributed to members as soon as practicable after the meeting.
52. In the eventuality of a deadlock in votes between business and employee representatives the chair will not have a casting vote.
53. Members will act in good faith and work constructively to reach a consensus view on advice where possible; however, where necessary the Council can provide advice that reflects diverse opinions.
54. Meetings will be generally held in Wellington.

Conflicts of interest

55. Any information that affects the member's ability to perform in this role, including conflicts of interest, must be identified and an appropriate regime for managing this put in place.

Publication of advice

56. The Council may not publish the advice it gives to the Ministers or officials. However, the Ministers may, from time to time, agree to publish reports or advice produced by the Council.
57. Council members will need to be able to offer free and frank advice to the Ministers and officials while maintaining discretion about that advice in wider circles.

Review of Councils performance

58. The performance and functioning of the Council will be reviewed by the Minister of Labour from time to time.



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