

IMPROVEMENT NOTICE

**This notice is issued pursuant to sections 101 and 116 of the
health and Safety at Work Act 2015**

Notice issued to: Kylie Fletcher – (Arise Board Chairperson)

Address: PO Box 38228, Wellington Mail Centre, Lower Hutt

Date of issue: Tuesday, 02 Aug 2022

Time: 11:54 am

Details of person notice left with:

Name: Israel Cooper

Position: Arise Trustee

Address: PO Box 38228, Te Puni Mail Centre, Petone 5045, NZ

I, Jennifer Broughton O'Donnell

Being an inspector appointed under section 163(1) of the Health and Safety at Work Act 2015 (the Act) reasonably believe that you,

☒ * are contravening a provision of the Act or regulations made under the Act, or

☐ ~~* are likely to contravene a provision of the Act or regulations made under the Act~~ (* tick as appropriate)

And require you to remedy this actual or likely contravention, or the things or activities causing or likely to cause a contravention.

Legislative provision being or likely to be contravened:

Health and Safety at Work Act 2015, Section 44(1)

How the legislative provision is being, or is likely to be, contravened:

Conclusion after inquiry that Kylie Fletcher, Chairperson of the Board and officer of Arise, is not exercising due diligence as an officer to ensure that Arise is complying with its duties under the Health and Safety at Work Act 2015. In particular adequate steps were not taken to acquire and keep up to date with health and safety matters and ensure the business has processes, and also implements processes for complying with its duties under HSWA. Inquiries included meeting with Arise Board members Graeme Kirkwood, Israel Cooper, Alice Hunt; operational manager Abby Ayling; receiving health & safety documentation as requested from Israel Cooper and assessing board meeting minutes since 2018.

Recommended prevention or remedial measures:

Establish and implement an effective process to exercise due diligence obligations as an officer to ensure the business has and implements processes for Chairperson of the Board Kylie Fletcher to ensure she:

- acquire and keep up-to-date knowledge of work health and safety matters
- gain an understanding of the nature of the operations of the business and generally of the hazards and risks associated with those operations
- ensure the business has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety
- ensure the business has appropriate processes for receiving, considering, and responding in a timely way to information regarding incidents, hazards, and risks
- ensure the business has, and implements processes for complying with its duties under HSWA
- verify the provision and use of resources and processes.

Provide evidence (which may include supporting documentation) that the above systems and processes have been implemented.

Full requirements of the due diligence required for officers can be found in section 44(4) of the Act.

See also: <https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/introduction-hswa-special-guide/>

<https://www.worksafe.govt.nz/managing-health-and-safety/businesses/guidance-for-business-leaders>

WorkSafe's Position on Officers Due Diligence

Remedy required within period beginning on date of issue and ending on: 9/12/2022

Postal address: PO Box 165, Wellington 6140

Inspector's signature:

Contact email: jennifer.odonnell@worksafe.govt.nz



A PERSON ISSUED WITH THIS NOTICE WHO FAILS TO COMPLY WITHIN THE PERIOD SPECIFIED COMMITS AN OFFENCE. A COPY OF THIS NOTICE MUST, AS SOON AS PRACTICABLE, BE DISPLAYED IN A PROMINENT PLACE AT OR NEAR THE WORKPLACE, OR PART OF THE WORKPLACE, AT WHICH WORK IS BEING CARRIED OUT THAT IS AFFECTED BY THE NOTICE. IT IS AN OFFENCE NOT TO DO SO, AND/OR TO INTENTIONALLY REMOVE, DESTROY, DAMAGE OR DEFACE THIS IMPROVEMENT NOTICE WHILE IT IS IN FORCE.

Information: If you wish to discuss the circumstances giving rise to this notice, in the first instance please contact the Inspector who issued the notice. It is important that you do this well before the end date of the compliance period stated above, if there are circumstances preventing you from complying with the notice as the failure to comply may result in prosecution. Any other queries or correspondence related to this notice should be addressed to the manager at the address shown above.

Review and Appeal Rights

A person affected by the decision of the inspector to issue this notice (or their representative) may apply to WorkSafe for internal review of the decision within the period specified for compliance with the notice, or 14 days after the day on which the decision first came to their notice, whichever is the lesser. The decision to issue the notice may also be appealed to a District Court on the grounds it is unreasonable, but only if it has first been reviewed by WorkSafe and WorkSafe has made a decision on the review.

If there is anything you do not understand about your review and appeal rights, you should consult a lawyer.

SUMMARY OF KEY PROVISIONS IN THE HEALTH AND SAFETY AT WORK ACT 2015

SECTION 101 POWER TO ISSUE IMPROVEMENT NOTICES

An inspector, who reasonably believes that any person is contravening, or is likely to contravene a provision of the Act or regulations, may issue a written notice requiring the person to remedy the contravention.

SECTION 103 COMPLIANCE WITH IMPROVEMENT NOTICES

It is an offence not to comply with this notice within the specified time frame. The penalty is a maximum fine upon conviction of \$50,000 for an individual and \$250,000 for any other person. However, it is not an offence to fail to comply with recommendations in an improvement notice.

SECTION 104 EXTENSION OF TIME FOR COMPLIANCE WITH AN IMPROVEMENT NOTICE

An inspector may, by written notice, extend the compliance period for the improvement notice. The inspector may extend the compliance period only if that period has not ended.

SECTION 114 WORKSAFE MAY VARY OR CANCEL NOTICE

Other than minor changes, a notice issued by an inspector may be varied or cancelled only by WorkSafe, not the inspector.

SECTION 117 DISPLAY OF NOTICE AT WORKPLACE BY PERSON ISSUED WITH NOTICE

A person to whom a notice is issued must, as soon as practicable, display a copy of that notice at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice. It is an offence to fail to comply with this requirement, or to intentionally remove, destroy, damage, or deface a displayed notice while it is in force. The penalty is a maximum fine upon conviction of \$5,000 for an individual and \$25,000 for any other person.

SECTION 118 INSPECTOR MAY DISPLAY NOTICE

An inspector who issues this notice may, either before or after issuing the notice, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

SECTION 131 APPLICATION FOR INTERNAL REVIEW

Any person affected by an inspector's decision to issue an improvement notice or to extend the time to comply with it may, within the period specified in the notice for compliance or 14 days, whichever is the lesser, apply to WorkSafe for a review of the decision. The application must be made in the manner and form required by WorkSafe.

SECTION 134 STAY OF A REVIEWABLE DECISION ON INTERNAL REVIEW

If an application is made to WorkSafe for an internal review of a decision, WorkSafe may stay the operation of the decision at its own initiative or on application from the person that has applied for the review. If WorkSafe has not made a decision within 3 working days of receiving an application for a stay then WorkSafe is to be treated as having made a decision to grant the stay.

SECTION 135 APPLICATION FOR APPEAL

A person affected by an inspector's decision to issue a notice or to extend the time to comply with it may, if that decision has been reviewed by WorkSafe, appeal to a District Court against the decision on the grounds that it is unreasonable. The appeal must be lodged within 14 days after the day on which WorkSafe's decision on the review first came to the person's notice.

If WorkSafe varies or cancels the notice, a person affected by that decision may appeal to the District Court against it on the grounds that it is unreasonable. The appeal must be lodged within 14 days after the day on which WorkSafe's decision first came to the person's notice.

Note:

This notice does not exempt or temporarily relieve you from your legal obligations under the Health and Safety at Work Act 2015.