



Independent Taskforce
on Workplace Health and Safety

THE REPORT OF THE INDEPENDENT TASKFORCE ON

WORKPLACE HEALTH & SAFETY

HE KOROWAI WHAKARURUHAU

APRIL 2013

He Korowai Whakaruruhau

A protective cloak

He Whakatauki

“He korowai āta raranga

He korowai whakaruruhau,

Mō tātou katoa”

“A carefully woven cloak, is a protective cloak for us all.”

Karakia

“He Hōnore

He Korōria ki Te Atua

He maungarongo ki te whenua

He whakaaro pai

ki nga tāngata katoa

Haumie!

Hui e!

Taiki e!!”

“All Honour

And Glory to God

Peace on Earth

And Goodwill

to all peoples

Joined!

Gathered!

Entwined! 'Tis Proclaimed!!”

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Cover image acknowledgement:

The Taskforce gratefully acknowledges weaver Robin Hill for the use of her korowai or protective cloak on the front cover.

“This korowai is made of pheasant feathers, both male and female birds, which speaks to me of the inclusion of all people. The taniko (woven border) is designed with a family in mind. The marriage of two people and their respective families join to make one pattern. Although people belong together in society we are all individuals so there are individual bundles of feathers throughout the korowai body.” *Robin Hill*

Further copies

The Independent Taskforce on Workplace Health and Safety report is divided into three parts:

1. Workplace Health and Safety Executive Report
2. Workplace Health and Safety Report
3. Workplace Health and Safety Working Papers

Each of the above reports and papers can be found at: www.hstaskforce.govt.nz

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DISCLAIMER

The Independent Taskforce on Workplace Health and Safety was appointed by the Minister of Labour with the purpose of reviewing New Zealand's workplace health and safety systems and making recommendations based on its findings. This publication represents the collective view and recommendations of the Taskforce members; it is not Government policy. While every effort has been made to ensure that the information in this publication is correct, the Taskforce does not accept any responsibility for, or liability for, error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information or any reliance placed on it.

Contents

PART 1 – INTRODUCTION

Chair's foreword 4

INTRODUCTION..... 6

The inquiry 6

Structure of the report 6

Unreliable data on workplace fatalities..... 8

NEW ZEALAND HEALTH AND

SAFETY PERFORMANCE..... 11

A week in the life of New Zealand 11

Case study / Reflections from a wheelchair..... 14

Case study / A quad bike survivor 18

Why does New Zealand perform so poorly? 20

What are the key weaknesses of our system?..... 21

Case study /The grief of a Pike River mother..... 36

VISION..... 39

Prerequisites for a high-functioning system 39

THE HEALTH AND SAFETY SYSTEM..... 43

PART 2 – LEVERS FOR CHANGE

ACCOUNTABILITY LEVERS..... 46

Recommendations..... 47

A new workplace health and safety agency 49

A workplace health and safety Act 51

Worker participation..... 55

Case study / Respect for worker voice is critical 58

Performance of the regulatory agencies..... 63

Occupational health..... 67

Major hazard facilities are more
comprehensively regulated..... 70

MOTIVATING LEVERS 74

Recommendations..... 75

Case study / Leadership is paramount..... 76

Leadership 77

Case study / The challenge of rebuilding

Canterbury safely..... 79

Incentives 83

Penalties for doing the wrong thing 86

KNOWLEDGE LEVERS 93

Recommendations..... 94

Providing greater certainty 96

Case study / Literacy up-skilling supports

safety at Downer 99

Improving the quality and availability of data..... 102

Workforce development strategy 105

Resolving the root causes of harm 115

PART 3 – MAKING IT HAPPEN

COST-BENEFIT ANALYSIS..... 118

Modelling the costs of our recommendations..... 118

Benefits 125

Net cost-benefit analysis - discussion..... 126

IMPLEMENTATION PLAN..... 128

Implementation timetable 131

Case study / Nelson Pine Industries 132

Case study / Contract Coatings 134

PART 4 – APPENDICES

APPENDIX 1

Taskforce members 138

APPENDIX 2

Terms of reference..... 139

APPENDIX 3

Glossary of terms..... 142

APPENDIX 4

Acronyms 145

A message from the Taskforce

For the past 10 months Taskforce members have engaged in a rigorous process of consultation, discussion and analysis. This report contains an integrated package of measures that represent the first steps necessary to bring about the substantial changes that we believe are necessary for healthy and safe workplaces in New Zealand. These are our collective views and we all fully endorse the findings and recommendations. We have been privileged to be involved in such important and worthwhile work. It is our sincerest wish that our report contributes to fewer deaths and injuries in New Zealand workplaces.



ROB JAGER



PAULA ROSE qso



PAUL MACKAY



DR BILL ROSENBERG



MAVIS MULLINS MNZM



MIKE COSMAN

An aerial photograph of a dense forest of tall, thin evergreen trees. A dirt road winds through the trees from the upper right towards the center. The lighting is bright, suggesting a sunny day.

PART 1

An aerial view of a logging truck driving away on a dirt road. The truck is heavily loaded with cut logs. The road is surrounded by a forest, with some cleared areas visible on the right side.

INTRODUCTION

Chair's foreword

The New York Times recently reported that flying on a commercial jetliner is now so safe that a traveller could fly every day for 123,000 years before being involved in a fatal crash ('Airline industry at its safest since the dawn of the jet age', 11 February 2013).

The *NYT* went on to discuss the reasons for this astonishing feat: better regulation, less tolerance of accidents, a more open and tolerant culture for reporting near misses and better built-in safety aids for pilots.

It also talked about the galvanising effect of what the aviation industry calls maintaining "a state of chronic unease" – mindfulness, wariness – as a means of preventing and mitigating serious incidents.

In effect, the people who make up the aviation industry are tremendous worriers. They train, design, maintain, regulate, document, record and do lots of other things with the conviction that one day, no matter how hard they try, it could all still go disastrously wrong.

We need to cultivate and grow a state of 'chronic unease' in the New Zealand workplace.

No-one goes to work expecting to suffer injury or die, yet the grim truth is that far too many Kiwis experience harm – be it acute, chronic or catastrophic. While there is some confusion about the actual numbers of fatalities and serious workplace injuries in New Zealand each year, what we do know is that there are around 200,000 claims to ACC each year from people being harmed at work.

"No-one goes to work expecting to suffer injury or die, yet the grim truth is that far too many Kiwis experience harm."

Apart from the devastating emotional toll on families and communities, the economic, medical and social costs of work-related harms to our country are enormous, arguably two to four percent of GDP. This is more than sobering. Frankly, it is appalling, unacceptable and unsustainable.

How can this be? That's the question we've sought to answer in the past 10 months as the Taskforce has travelled the country, talking to workers, families of workers, employers, unions, industry groups, professional associations and health and safety experts, and in considering the 400-plus written submissions we received.

The degree of interest and involvement from so many people has been invaluable and humbling. Our sincere thanks go to all those who took the time and made the effort to engage with us and provide feedback, suggestions and ideas.

The Taskforce has found there is no single critical factor behind our poor health and safety record. Rather, our workplace health and safety system has a number of significant weaknesses that need to be addressed if we are to achieve the major step-change in performance that we as a nation should demand. Regrettably, there is no silver bullet and a piecemeal approach will not suffice. To the contrary, it is our firm conviction that the Government must adopt the full range of recommendations made in this report if we are to deliver the outcomes that all working New Zealanders deserve.

“Our vision is that within 10 years New Zealand will be among the best places in the world for people to go to work each day and come home safe and sound. We believe that this is absolutely possible, but it will require an urgent, broad-based step-change in approach and a seismic shift in attitude.”



A key challenge in addressing workplace health and safety is that it requires balancing the interests and needs of a number of participants, particularly employers and workers. We are starting with a 20-year-old system that did not find that balance, yet the task has become more rather than less complex over time. The Taskforce has discussed this at length, and looked at how countries with much better workplace health and safety records do it. In our view, we have found a good balance requiring compromise by all parties that will both improve outcomes substantially and respect all parties' needs. Make substantial changes to that balance and we will lose the vital support of some participants and significantly weaken the potential benefits.

We believe that the Government's target to achieve a 25 percent reduction by 2020 in workplace injuries and fatalities is realistic, but far from what we should aspire to. It would still mean that too many workers are killed and seriously injured.

Our vision is that within 10 years New Zealand will be among the best places in the world for people to go to work each day and come home safe and sound. We believe that this is absolutely possible, but it will require an urgent, broad-based step-change in approach and a seismic shift in attitude.

It will require strong top-down and bottom-up leadership. It will also require a fundamental change to the prevailing 'she'll be right' culture in New Zealand. She most clearly is not all right. Businesses, workers, unions, industry organisations and the Government all have vital and shared roles to play in achieving this vision. With the Canterbury rebuild underway, and the Pike River mine tragedy fresh in our minds, we all have a vested interest in its success.

A state of 'chronic unease' where accidents in our workplace (and beyond) are socially unacceptable should be the default setting in every New Zealand workplace. Nothing less will do.

To conclude, I would like to acknowledge and thank sincerely my fellow Taskforce members for their dedication, insightfulness, wisdom and passion for the cause. I would also like to acknowledge the skilful support, unwavering focus and commitment of our Secretariat members. As a Taskforce, we could not have achieved what we have without them. We, and indeed the country, owe them a debt of gratitude.

ROB JAGER

Chair

Introduction

The inquiry

1. The Independent Taskforce on Workplace Health and Safety was established by the Minister of Labour in June 2012 to research and evaluate critically the workplace health and safety system in New Zealand, and to recommend practical strategies for reducing the high rate of workplace fatalities and serious injuries by 2020.

Structure of the report

2. The Independent Taskforce on Workplace Health and Safety has produced its analysis, findings, recommendations and working papers through a set of three reports. These are:
 - a. **an Executive Report** – summarising the process of the review and its key findings and recommendations
 - b. **a main report** – outlining in detail the scope, process, findings and recommendations of the review
 - c. **working papers** – consultation reports and inputs into the review commissioned by the Taskforce.
3. This main report is made up of the following sections:

Chair's foreword

Part 1: Introduction

- a. The inquiry process
- b. **New Zealand's health and safety performance** – Description of New Zealand's workplace health and safety performance

- c. **Vision** – The Taskforce's vision for the future and discussion of prerequisites for a high-functioning system
- d. **The health and safety system** – The Taskforce's framework for understanding New Zealand's health and safety system.

Part 2: Levers for change

- f. **Accountability levers** – Issues and opportunities for the Government to address health and safety practice through legislation and regulation and empowering state agencies with the mandate and functions to ensure compliance
- g. **Motivating levers** – The role that the Government can play in providing positive incentives to encourage or reward desirable behaviours and negative incentives to discourage or sanction undesirable behaviours
- h. **Knowledge levers** – Opportunities for providing improved information to influence people's choices about how they behave, and ensuring that people have the knowledge, capacity and capabilities to make good decisions

Part 3: Making it happen

- i. Cost-benefit analysis
- j. Implementation plan

Part 4: Appendices

- k. Taskforce members
- l. Terms of reference
- m. Glossary of terms
- n. Acronyms

Inquiry process

4. During the 10 months leading up to the production of this report, the Taskforce and its Secretariat gathered and analysed information from a wide range of sources. These included:
 - a. a three-stage consultation process with key stakeholders, including the public, employer and worker representatives, health and safety experts and professionals
 - b. meeting with a number of government and non-government agencies and organisations working in the health and safety system
 - c. requesting and reviewing information from government organisations and international jurisdictions, and published literature
 - d. commissioning research to fill gaps in knowledge.

Public consultation

5. **Phase I** of the three-phase consultation process involved consulting expert reference groups to help identify and frame the issues pertaining to New Zealand's health and safety system prior to the release of a public consultation document. Members of the Taskforce and its Secretariat met with academics, union and worker representatives, employers and health and safety inspectors in four workshop meetings in August 2012.
6. **Phase II** involved the release of the *Safer Workplaces* consultation document in September 2012 and analysing responses through to November 2012. In total, 429 written submissions were received (248 from individuals and 181 from organisations) and more than 500 people attended 28 public meetings held throughout New Zealand (including open forums, hui, fono, workplace visits and business network meetings).
7. **Phase III** involved synthesising the Taskforce's thinking around the key issues and opportunities, and sharing a high-level discussion document with expert reference

groups for feedback. Approximately 100 people attended a two-day February 2013 conference, including academics, union representatives, employers, health and safety professionals and government agencies, including regulators and ACC (the Accident Compensation Corporation).

Meetings with regulatory and non-government bodies

8. The Taskforce met with a number of government agencies to discuss their respective roles in the health and safety regulatory and injury-prevention systems. Agencies included ACC, the Civil Aviation Authority (CAA), the Environmental Protection Authority (EPA), Maritime New Zealand (MNZ), the Ministry for the Environment (MfE), the Ministry of Business, Innovation and Employment (MBIE), the New Zealand Police Commercial Vehicle Inspection Unit, the NZ Transport Agency (NZTA) and the Transport Accident Investigation Commission (TAIC). The Taskforce also met with the New Zealand Council of Trade Unions.
9. Members of the Taskforce met with the Workplace Health and Safety Council, the Pike River Families Group Committee, the Small Business Advisory Group, the Business Leaders' Health and Safety Forum, the Institute of Directors (IoD), Standards New Zealand, the Chief Coroner, the Chief District Court Judge and the executive board Chair of the United Kingdom Health and Safety Executive.
10. The Taskforce Chair, during a visit to the UK, met with the UK Health and Safety Executive, the Confederation of British Industry and the Trades Union Congress (UK). We also met with Professor Ragnar Lofstedt, Director of the King's Centre for Risk Management; Lawrence Waterman, Olympic Delivery Authority Head of Health and Safety; and Professor David Walters, Professor of Work Environment and Director Cardiff Work Environment Research Centre, Cardiff University.

11. Members of the Taskforce also met with a number of other health and safety professionals and experts during the consultation period.

Requesting and reviewing information

12. In July 2012 the Taskforce was provided with a series of background papers to the strategic review by MBIE. From July 2012 to February 2013, additional information requests were made to key agencies, and information and published data from international jurisdictions were gathered to inform the ongoing analysis across key topics.

Commissioning research

13. To support its decision-making and to fill gaps in knowledge, the Taskforce commissioned three pieces of research in December 2012.
 - a. *Health and safety culture change.* This research identified and reviewed examples of successful national culture change initiatives, including the use of safety belts, anti-family violence and energy efficiency. The aim of the research project was to identify common themes and success factors in these programmes to help the Taskforce to formulate recommendations for how culture change initiatives might contribute to improving workplace health and safety outcomes.
 - b. *International injury and fatality rate comparisons.* This research reviewed international injury and fatality rates, and compared New Zealand's injury and fatality rates with those of other established market economies, adjusting for industry composition and noting limitations in interpreting the findings.

- c. *Assessing workplace capacity and capability for effective health and safety systems.* This project was informed by two sets of field work. Case studies were used to explore the operationalisation of health and safety systems in 11 firms varying in size, nature of industry and organisational form. In the case studies, particular attention was given to hazard identification and the extent and quality of worker participation in managing health and safety issues. Secondly, phone interviews were carried out with about 30 members of IoD to explore health and safety leadership in larger organisations, including the strategic direction and extent of prioritisation being set by boards of directors for their organisations.

Unreliable data on workplace fatalities

14. When the Independent Taskforce on Workplace Health and Safety was established in June 2012, the best available data on New Zealand's workplace injury, health and fatality rates were the Serious Injury Outcome Indicators 1994-2010 (SIOIs) published by Statistics New Zealand¹. They showed that:
 - a. there were on average 102 fatal work-related deaths between 2008 and 2010
 - b. New Zealand has a workplace fatality rate of around four deaths per 100,000 workers, with a rate of 4.1 fatalities per 100,000 workers in 2009.
15. On the basis of international comparisons using New Zealand's historical SIOIs and data from other jurisdictions provided to the International Labour Organisation (ILO), New Zealand was identified as having a high rate of deaths compared with many OECD (Organisation for Economic Co-operation and Development) countries. The data indicated that we perform particularly poorly compared with Western countries like Australia and the UK, which have similar market economies and Robens-based regulatory systems².

1. Statistics New Zealand (2011). Serious injury outcome indicators: 1994-2010, Table 7.

2. The 'Robens' regulatory framework, discussed later in this report, replaces prescriptive requirements with performance-based or outcome-focused standards. The model requires duty holders (those involved in the undertaking of work and providing the means for work to be undertaken) to achieve safe outcomes by the means that can be adopted, and are most appropriately adopted, in the circumstances of the particular business or work activities.

16. In reviewing the fatality figures we were struck by how little knowledge there was of how the headline numbers were derived and how unreliable they were. As a result, in our *Safer Workplaces* consultation document we reported that there is no comprehensive or reliable data set for monitoring workplace fatal injury rates in New Zealand.
17. In November 2012, Statistics New Zealand issued an official caution: “We have discovered some quality concerns with the work-related indicators and are working to fix them. By taking extra time to evaluate the information available, we will be able to provide a more accurate summary of the outcomes for serious work-related injury in New Zealand. We are working with other agencies that hold relevant data to improve these indicators... We recommend that no further use is made of the data on work-related injury in earlier publications until our review is complete”³.
18. Given the uncertainty, the Taskforce decided to commission its own research to compare more robustly outcomes across jurisdictions and to assess New Zealand’s relative performance. While this report reinforced to us that New Zealand’s comparative performance with OECD countries was not good, in light of the ongoing problems with New Zealand’s official injury statistics we have decided not to include the findings from the commissioned study, or any international comparisons, in this report. The University of Otago report is available, however, as a working paper⁴.
19. We understand that Statistics New Zealand will soon release modified work-related fatal and non-fatal SIOIs. The Taskforce is left with a profound unease about the quality of data in New Zealand and the fact that this had previously not been detected by the agencies responsible for the data. We are deeply concerned that we do not have a clear, reliable picture of New Zealand’s performance. Accordingly, as discussed in the body to this report, the Taskforce believes that data improvements, vital to advancing our understanding and targeting of issues and to monitoring and evaluating outcomes accurately, need to be addressed as a priority.
20. Irrespective of these data issues, the Taskforce is strongly of the view that all injuries and deaths in New Zealand workplaces are preventable, and any death in a workplace is unacceptable. Regardless of the emergent official toll, what is certain is that the number of people dying in New Zealand workplaces each year is a shameful tragedy.

3. http://www.stats.govt.nz/browse_for_stats/health/injuries/serious-injury-statistics-release-rescheduled-2012.aspx.

4. Lilley, R, Samaranayaka, A and Weis, P (2013). *International Comparison of Published Occupational Fatal Injury Rates: How does New Zealand compare internationally?*. Commissioned report for the Independent Taskforce on Workplace Health and Safety. Injury Prevention Unit, University of Otago. Comparative countries include the UK, Australia, Norway, Sweden, France, Finland, Spain and Canada.



New Zealand health and safety performance

A week in the life of New Zealand

21. In an average week in New Zealand, people are badly injured or die at work. We chose the first week of December 2012 – a purely random choice – and looked at the news stories of work-related accidents and deaths for that week.
22. On Saturday, 1 December, 21-year-old Opotiki farmer and father of one, Eion Murphy Gebert, was killed when the farm bike he was riding collided head-on with a car on State Highway 2 near Opotiki. It was 5am, and Mr Gebert was on his way to do the morning milking.
23. Things were quiet for a few days until Wednesday, 5 December. Mid-morning on State Highway 2, just north of Wairoa, a truck with 36 bulls on board crashed and rolled. The driver and a passenger were trapped and had to be freed by emergency rescue services. The passenger was moderately injured and six bulls had to be put down. In the early afternoon, a 70-year-old Tauranga man was injured after the bulldozer he was driving at a quarry rolled down a bank. The man was taken to hospital by ambulance with a head injury and multiple lacerations.
24. Also that day, a 63-year-old man was airlifted to hospital from a farm near Castlepoint in the Wairarapa. The man had struck his head on a digger bucket while building a woolshed. He sustained moderate head injuries.
25. Then Thursday, 6 December hit. There were two incidents down south. Waimate farm worker Richard Gordon Fairweather, 47, died after the tractor he was driving to spread urea on hilly farmland overturned. While the tractor had a roll cage, Mr Fairweather was thrown from the vehicle.
26. Emergency services were called to a gas leak at a fruit-packing cool store in Alexandra after contractors cut a gas pipe on a refrigeration unit that they believed had been isolated. People were evacuated and others told to stay indoors. Fortunately, things were soon brought under control.
27. In Auckland, a tornado struck in the afternoon. It swept through Hobsonville and Whenuapai, wreaking havoc. Two-hundred-plus houses were severely damaged and hundreds of residents left terrified. Three construction workers building a new secondary school were killed. Two died when the tornado tipped over 15-metre concrete tilt-slab walls, crushing them beneath. Four sub-contractors also suffered injuries. The men who died were Keith Robert James Langford, 60, who had become a great-grandfather the day before and was close to retirement, Brendon Johnson, 22, and Tom Stowers, 42, a father of four.
28. On the last day of the first week of December 2012, a 59-year-old man was airlifted to hospital after the quad bike he was riding rolled on a farm inland from Tolaga Bay. He suffered chest injuries and lacerations.
29. One week in the working life of New Zealand as reported in the news: five deaths, eight treated in hospital for injuries, six valuable livestock euthanised, and a potential gas explosion averted.

PLEASE NOTE: 'A week in the life of New Zealand' is based on public information gained from news articles published in the media.

30. These figures are repeated more or less every week of the year, year after year.
31. We read the headlines but often we don't give them a second thought. 'Bulldozer driver injured'. 'Tree falls on forestry worker'. 'Driver of milk tanker found dead'. They're often no more than news briefs, a few paragraphs long. Occasionally they're headline news but mostly they're not.
32. For the people involved, and their families, colleagues, neighbours and friends, the ripple effects are wide and deep. Fatherless children. Grief-stricken parents. Wives and fiancées left bereft. The permanently injured left to cope with chronic pain, wheelchairs or prosthetics, financial stress, and the loss of much or all of their independence and former ways of life.
33. As a family member of one of the men killed at work that week put it, "when your day starts with laughter and ends up in tears", it's as tough as it gets.
34. While sudden and serious injury incidents, often involving police, emergency rescue and ambulance services, are reported in our media, what goes unreported are the 500 to 800 people who die each year as a result of chronic diseases caused by workplace exposures. These are almost invisible in New Zealand's public discourse.
35. While we acknowledge that there are problems with the data, the fact is that a lot of bad things happen to people at work in New Zealand. Each year, around 1 in 10 workers is harmed, with about 200,000 claims being made by people to ACC for costs associated with work-related injuries and illnesses⁵. Of these, about 90 percent are medical fee expense claims, often involving only one or two visits to a health professional⁶. The remainder are more substantive *entitlement claims*, reflecting a more serious degree of harm, for which compensation and support beyond medical fees are required. These include payments for rehabilitation, weekly compensation and accidental death benefits. Approximately 26,000 workplace-related entitlement claims were approved by ACC for people being harmed at work in 2010⁷.
36. Workplace injuries and diseases caused by work-related exposures inflict an enormous emotional toll on individuals and their families. There are also significant economic and social costs to our nation. In 2010 these were estimated to be about \$3.5 billion a year⁸ – around two percent of gross domestic product (GDP) in today's terms⁹. This is the figure that MBIE accepts is the most reliable. However, costs have been estimated to be as high as \$15 billion a year¹⁰ and \$21 billion a year¹¹, depending on how the costs are measured and the extent to which indirect costs are included.

Some high-risk industries account for the majority of injuries

37. Several high-risk industries account for the bulk of serious injuries and fatalities. These are manufacturing, construction, agriculture, forestry and fishing. Together, these industries account for half (53 percent) of all entitlement claims for work-related injury and occupational illness. Further, these industries have the highest entitlement claim rates, ranging from 24 (manufacturing and construction) to 32 (agriculture, forestry and fishing) per 1,000 full-time-equivalent employees in 2010¹².

Work-related injuries are common

35. While we acknowledge that there are problems with the data, the fact is that a lot of bad things happen to people at work in New Zealand. Each year, around 1 in 10 workers is harmed, with about 200,000 claims being made by people to ACC for costs associated with work-related injuries and illnesses⁵. Of these, about

5. While the provisional number of workplace claims for injuries and occupational illnesses that occurred in 2011 has fallen below 200,000 for the first time in 10 years, the average number of claims for work-related injuries to ACC in 2006-2010 was 226,000, with 212,000 in 2010 (the most recent year with finalised data available).

6. Statistics New Zealand (2012). *Injury Statistics – Work-related claims: 2011. Provisional data.* http://www.stats.govt.nz/browse_for_stats/health/injuries/InjuryStatistics_HOTPI1.aspx.

7. Ibid.

8. MBIE – Labour (2012). *The State of Workplace Health and Safety in New Zealand.*

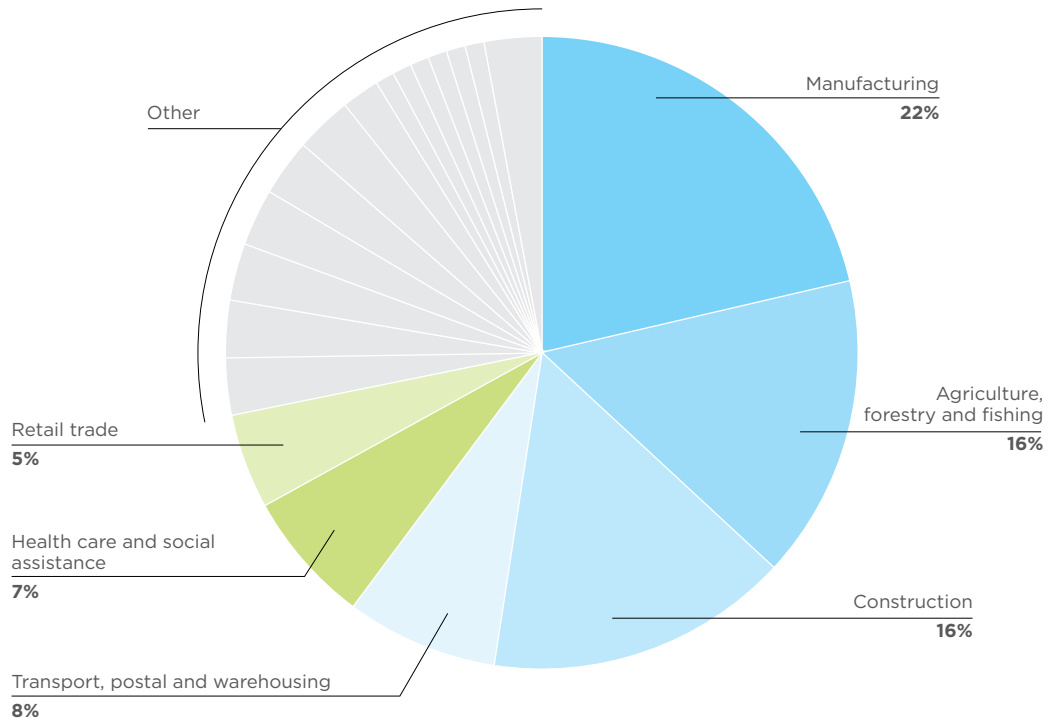
9. Calculation involves adjusting the 2010 cost estimate using the Reserve Bank's consumer price index calculator to control for inflation. GDP for the year ended September 2012 was \$208 billion. Exact proportion is 1.8% of GDP.

10. New Zealand Institute of Economic Research (2008). *Volume 1: Risk Landscape Workplace Health and Safety.* Report to the Department of Labour.

11. Access Economics. (2006). *The Economic and Social Costs of Occupational Disease and Injury in New Zealand.* National Occupational Health and Safety Advisory Committee Technical Report 4. Wellington.

12. Source: Based on ACC claims data to March 2012. *Entitlement payments* exclude medical fee-only claims and include death, weekly compensation, lump sum, and rehabilitation payments.

FIGURE 1: ACC work-related entitlement claims: Proportions by industry 2010



Some high-risk population groups are more likely to be harmed at work

38. Some groups of workers are also particularly vulnerable to injury and harm at work. Work-related injury claims¹³, occupational disease data and fatality figures show that:
- men are more likely to be injured or killed at work than women
 - older workers are more vulnerable than other age groups
 - Māori workers, Pacific workers and workers of other ethnicities¹⁴ are more likely to be seriously injured at work
 - self-employed workers are more likely to be injured at work than employees
 - many occupational diseases are known to affect particular populations disproportionately, such as men and older workers
- employees new to positions or engaged in temporary, casual or seasonal work may be particularly at risk.
 - Anecdotal evidence suggests that youth, and workers with low literacy and numeracy skills, are also at greater risk of injury.
 - At the same time, there is a lethal nexus between high-risk population groups and high-risk industries.
 - The differences in outcomes observed across the vulnerable demographic groups reflect to a large extent their higher rates of employment in industries and occupations that carry higher risks of injury. For example, Māori workers are overrepresented in high-risk industries such as forestry and construction. So too are male workers.
 - Other factors are likely to play a role too, including language barriers, lack of experience and natural aging processes.

13. Statistics New Zealand (2010). *Injury Statistics – Work Related Claims: 2010: Hot Off The Press*. http://www.stats.govt.nz/browse_for_stats/health/injuries/InjuryStatistics_HOTPI0.aspx.

14. The 'other' category includes Middle Eastern, Latin American, African and other ethnic groups.

REFLECTIONS FROM A WHEELCHAIR



“We have a responsibility to change the safety culture in the workplace. We need to inspire everyone at work to have the courage to speak up when things don’t seem right.”

WALLY NOBLE

In 2007, Auckland father-of-six Wally Noble became a paraplegic in a workplace accident.

Whangarei born and bred, Wally left school at age 16 with no qualifications, and started work as a scaffolding labourer at the Marsden Point oil refinery. For the next 23 years Wally literally climbed the ladder of the construction industry. By 2004 he had his own scaffold contracting business.

In March 2007 he was called to a job on an Auckland high-rise. It involved building a ‘hanging scaffold’ from the rooftop down three sides of the building. Wally arrived on site with three of his men the following Monday at 7.30am.

“As always on major construction sites, we had to go through an induction and, on this site, it was with the site supervisor.

“I’d been to hundreds of inductions and my attitude was, ‘I’ve seen it and heard it all before’. I didn’t give it my full attention. There was a lot going on in the background too, a lot of distraction. There were skill saws and nail guns going off, and other trades walking by. On reflection, the centre of a floor surrounded by activity was not the best place to perform a safety induction.

“The site supervisor showed a casual approach too. He would have performed this role many times without a hitch. At one point his mobile phone went off – and he answered it. That effectively ended the induction. I gestured at him, ‘That’s it?’ and he waved back, ‘Yes’.

“Unknown to me then, part of the induction was to inform us of a hole in the floor of the roof.”

Wally and his team were then escorted to the roof by the scaffolding supervisor. “It was quite messy.” Black polythene had been laid over the entire floor, and scaffolding and building materials were scattered on top. As Wally and his men followed the scaffolding supervisor to a corner of the rooftop, Wally veered away to look over the side.

The next thing he remembers is falling. Inadvertently, he had stepped through the thin polythene into a gap between the edge of the plywood and the large hole it was meant to cover, which had not been mentioned at the induction and was not barricaded. He fell 6.5 metres to the penthouse floor below and plywood came down on top of him.

In the fall, Wally broke his spinal cord at the lower chest level (paraplegia), punctured both lungs and had minor head injuries.

He spent three weeks in Auckland Hospital, followed by nearly two months in Middlemore Hospital. From there he was transferred to the Otago Spinal Unit, where he underwent more intensive rehabilitation. The care he received was “awesome” and he has nothing but praise for ACC.

Nevertheless, the adjustment to his new circumstances was massive. “Psychologically, it was a huge shock; you can’t process it at first.” The love and support of his family – his wife and six children, his parents and four brothers – friends and workmates kept him going.

However, soon after returning home he developed a pressure sore on his backside. It took three months to heal and required him to stay lying in bed for the duration.

“That was the start of an emotional journey that brought huge upheaval. I felt every emotion you can go through – depression, anxiety, hopelessness, anger, grief. I was angry at God, and at everything and everyone in between including the construction company. Unfortunately I took my frustrations out on the very people who supported and loved me, my family and whānau.

“I felt sorry for myself and angry at the world for at least a year and a half.” At that point, Wally’s wife walked out and Wally hit rock bottom.

“That was the catalyst for change for me. Her leaving felt worse than the accident.

“I still had my kids with me and I had to make some changes. First, I had to change my attitude and then I had to get myself healthy and as independent as possible.”

About that time he received a call from the Otago Spinal Unit. Could he share some positive experiences with a new paraplegic patient, a Māori man, who was severely depressed?

“Before I knew it I was saying, ‘Sure thing!’. I put down the phone and went, ‘S...t, what have I just agreed to? I am an emotional mess and they want my positive outlook on life after spinal cord injury?’.”

However, he went. “We clicked, this Māori guy and me, and we had a good yarn. I talked about the great services I’d had from ACC and the hospital staff.

“I left there feeling really satisfied. I realised that by helping somebody else I was actually helping myself also.”

That night he searched the internet for courses he might pursue. A social work degree course was starting in two weeks’ time at Manukau Institute of Technology, and despite his lack of qualifications he had plenty of ‘relevant life experience’, which was an alternative way in.

Three years later, in 2012, he graduated with a university degree – and a new outlook on life. “Being a student wasn’t easy. Just getting to lectures was a struggle; what takes an able-bodied person a half hour took me three hours.

“But I think I had this huge desire to improve myself. My attitude towards life had finally taken a turn for the better. I met some incredibly inspirational tutors and students, and I started to learn about the world in a different way.”

Wally began to reflect on his accident, and wondered if he might have prevented it if his attitude to safety had been different.

CONTINUED

“I realised that, absolutely, I could have changed the outcome. I could have challenged the site supervisor on a number of things, such as the location of the induction and him taking the call on his mobile. If I had been more proactive... my chances of falling that day would have been greatly reduced.”

What troubles him most is that his old attitude to safety is still prevalent today, and it's the one being passed on to the next generation.

“We have a responsibility to change the safety culture in the workplace. We need to inspire everyone at work to have the courage to speak up when things don't seem right.”

In March 2013 Wally began his first real job since the accident. He is a disability service facilitator with the Taikura Trust. He also presents to workplace groups, using his accident as a teaching tool to discuss how things could have been handled better.

“We have a responsibility to change the safety culture in the workplace. We need to inspire everyone at work to have the courage to speak up when things don't seem right.”

“I'm a better person now. In a way, I'm grateful for my experiences.

“I am passionate about health and safety, and 'giving back' in this way feels a lot better now that I understand the science behind adopting a good safety culture,” he explains.

The fact that his three eldest sons now work as scaffolders also motivates him.

Chronic occupational health issues present greater harm

43. There is a tragic paradox here too. While New Zealand's acute harm and workplace *safety* statistics are woeful and rightly attract considerable attention, the much more damaging occupational *health* impacts of the workplace go almost completely under the radar.
44. Occupational illnesses have significantly worse human and financial impacts than acute-harm incidents. This was confirmed in a recent study by University of Otago researchers, which showed that New Zealanders who fall ill experience considerably worse financial and work outcomes than those with comparable injuries¹⁵.
45. Occupational health impacts arise from a broad range of poorly managed hazards in the workplace. These result in gradual impairment or chronic harm conditions such as cancers and musculoskeletal disorders, and acute harms related to hazardous substance exposures such as poisoning from solvents and pesticides.
46. Currently, New Zealand does not collect reliable data on occupational illnesses and diseases. In part, this is due to the difficulties in measurement and attribution arising from long latency periods and conditions that can have multiple causes.
47. In the absence of reliable data, the National Occupational Health and Safety Advisory Committee (NOHSAC) in 2004 estimated that each year there are 17,000-20,000 new cases of occupational disease in New Zealand¹⁶.
48. In 2010 ACC approved 23,300 occupational-illness-related claims¹⁷. It is recognised that ACC has good coverage of some illnesses such as musculoskeletal conditions; however, others such as respiratory diseases and occupational cancers have low capture rates.

15. McAllister, S, Derrett, S, Audas, R, Herbison, P, and Paul, C. (2013). 'Do different types of financial support after illness or injury affect socio-economic outcomes? A natural experiment in New Zealand'. *Social Science & Medicine*, Vol. 85, pp 93-102.

16. Pearce, N, Dryson, E, Feyer, A-M, Gander, P, McCracken, S and Wagstaffe, M (2004). *The Burden of Occupational Disease and Injury in New Zealand: Report to the Associate Minister of Labour*. NOHSAC: Wellington.

17. Statistics New Zealand (2010).

49. In 2011 it was estimated that occupational illness cases result in 500-800 premature deaths a year¹⁸. The majority of premature deaths are from work-related diseases due to occupational cancer (in particular lung cancer) from exposure to hazardous substances such as asbestos and arsenic, and diseases of the respiratory system and ischaemic heart disease. Psychological and nervous system disorders, diseases of the digestive and genito-urinary system, and toxic poisoning are also prevalent¹⁹.
50. New Zealand is not alone in prioritising safety over health issues. Tackling health issues, and preventing work-related health problems more effectively, is an emerging priority area internationally.
51. In the European Union emerging priorities are work-related diseases, musculoskeletal disorders, psychosocial risks, the potential risks of new technologies such as nanotechnology, and making working life sustainable, particularly for growing numbers of at-risk older workers²⁰.

Catastrophic harm

52. In addition to acute harm and chronic harm issues, a third area needing greater attention in New Zealand is the potential for *catastrophic harm* as a result of ineffective oversight of major hazard facilities. These include extractive operations such as mining, and major chemical storage and processing facilities. The catastrophic consequences of the inadequate management of these facilities were brought into stark relief by the 2010 Pike River mine tragedy.
53. Progress has already been made in this area with the creation of the High Hazards Unit within MBIE, which provides an increased focus on major hazard industries. This work needs to go further.

Health and safety as an investment

54. There are a few myths surrounding health and safety. One is that occupational safety and health measures involve too heavy a financial burden for organisations. However, there is a growing body of evidence that suggests investments in health and safety by companies have significant pay-offs.
55. According to a 2011 European Commission study²¹, for every euro or dollar spent, the ratio of pay-off to investment ranges from 1.29 to 2.89, depending on the project. Benefits observed include:
 - a. reduced disease and injury
 - b. reduced employee turnover and absenteeism, and increased productivity
 - c. improved company image, market position and customer satisfaction.
56. The European Commission, which is well placed to reach its 2007-2012 target of a 25 percent reduction in workplace accidents²², strongly refutes the notion that competitiveness is undermined by investments in good health and safety practice or compliance with strong regulation.
57. The European Commission cited research from ILO²³, which indicated that countries with the safest working conditions often have the best competitiveness ratings. In part, this is attributed to the improvements in workforce commitment and productivity that thrive in high-quality working environments.

18. MBIE - Labour (2012).

19. Environmental Risk Management Authority, Ministry for the Environment and the Department of Labour (2005). *Hazardous Substances Compliance and Enforcement Project: Risk landscape and compliance assessment*.

20. Andor, L (2013). 'EU policy on health and safety at work: myths and facts'. European Commissioner responsible for Employment, Social Affairs and Inclusion, speech to the Institute of Occupational Safety and Health 2013 conference. London.

21. Discussed by Andor (2013).

22. Formal results are due in 2014.

23. Discussed by Andor (2013).

A QUAD BIKE SURVIVOR

By rights, Hawke's Bay farmer Bill Feetham should be dead. No-one expected him to survive the massive crush injuries he sustained in a quad bike accident in September 2000.

"My two children were overseas and they were summoned home after my accident, fully expecting to attend a funeral," Bill says matter-of-factly.

"But I'm still here, not quite as quick as I was, but alive!"

On 4 September 2000 Bill was a 52-year-old manager of a 580-hectare farm at Maraekakaho, which was a sheep- and beef-finishing operation for the farm plus two other properties. It was an intensely busy job with little let-up – one lot of well nourished stock would no sooner be off to the freezing works than another would arrive.

Early that afternoon Bill was on the quad bike mustering ewes and lambs when his four-wheeler flipped and bounced on top of him, breaking multiple ribs and crushing his lungs, liver, spleen and intestines, which caused internal bleeding.

"Like most people I wasn't paying enough attention. I was going somewhere I shouldn't have been. It was quite a steep hill. I had to drop about 25 to 30 centimetres over a ledge to a track below and there had been a shower of rain. I thought 'I don't want to go down there'. I tried to back out but it's difficult with those four wheelers," he recalls.

"I was doing too many things at once – driving the bike, watching the mustering and whistling for the dogs, when it happened. The bike popped over the rise then rolled forward, throwing me down the hill in front of it.

"The bull bar on the front of the bike whacked me on the left shoulder, forcing me under the bike."

Because of his broken ribs and crush injuries Bill had trouble breathing and was in and out of consciousness. But he could hear petrol dripping, and he was afraid that the vehicle might burst into flames. Incredibly, he managed to drag himself clear.

The accident happened about 1.20pm but people didn't come to look for him until 4.30pm. He was transferred by rescue helicopter to Hawke's Bay Hospital. For seven weeks he was in an induced coma while the doctors stabilised his condition.

"A lot of people don't treat those bikes properly. The bikes today are quicker and more powerful, and the expectations of farmers are much greater. We're all in a hurry. In earlier days you could fall off a bike and just push it off yourself, and carry on. But they're so much more lethal now."

During this period, he notes with some amazement, he received 32 units of blood, 64 X-rays and the input of seven medical specialists. After regaining consciousness he remained in hospital for a further five weeks.

"The doctors told me the only reasons I survived were that I didn't smoke and I was very fit."

It took another two years before he fully recovered – helped enormously by the fact that his wife is a nurse. Like many coma patients, he lost his memory. "It took ages – months – piecing it all together. They were hard times, very hard."

Today Bill is 65 and continuing to farm, but on a smaller scale and under less pressure. He operates a mixed breeding and finishing business on several leased properties. He still uses a quad bike, on average about three times a week.

He is a bit stiff in the body and gets sore and tired if he is doing physical work for too long.

“If I’m crutching lambs or standing drafting [animals], I have to take small breaks. I find it hard to stay in one position for too long. In winter I often have to have a hot bath at the end of the day because my body is sore.”

But he is not complaining. “I know I am very lucky to be alive.”

He hopes that hearing his story will prompt others to take more care.

“A lot of people don’t treat those bikes properly. The bikes today are quicker and more powerful, and the expectations of farmers are much greater. We’re all in a hurry. In earlier days you could fall off a bike and just push it off yourself, and carry on. But they’re so much more lethal now.”

“To this day I think how fortunate I have been. Hardly a week goes by when I read or hear about someone who has come to grief off a four-wheeler. Quad bike accidents cause immense upheaval to families. They have everlasting repercussions.”

Bill is a firm advocate of padded roll bars and safety helmets.

“I realise there are other issues when quad bikes go end to end, but 90 percent of rollovers on quad bikes are sideways. A padded roll bar will at least give you that triangle of protection. The quads of today are 300 kilograms in weight, which makes them virtually impossible to push off yourself.”

Bill says it’s easy to have an ‘it won’t happen to me’ attitude. “But as we all know, quad bike accidents are happening on a regular basis.

“Quad bikes are like life: push the boundaries and, believe me, they will bite you big time where it really hurts.”



“Quad bikes are like life: push the boundaries and, believe me, they will bite you big time where it really hurts...”

BILL FEETHAM

Why does New Zealand perform so poorly?

58. The Taskforce has found that there is no single critical factor behind New Zealand's poor workplace health and safety record. Instead, in our review of New Zealand's health and safety system, we have found a number of significant weaknesses across the full range of system components, coupled with the absence of a single strong element or set of elements to drive major improvements or to raise expectations.
59. This has created a combination of failings and circumstances that too often have resulted in a series of entirely preventable injuries, fatalities and disasters.
60. The fundamental issue is systemic. Patterns repeat, and common health and safety failings for which simple preventive measures can often be taken continue to contribute significantly to the toll. We all too often fail to learn from the experiences of major disasters, both at home and abroad.
61. It is the Taskforce's view that weaknesses across the system are the direct result of a fundamental failure to implement properly the Robens health and safety model in New Zealand (discussed below). The plethora of issues arising from this factor alone are, across the system, multiple, persistent and compounding.

Light implementation of the Robens model in New Zealand

62. There are many references to the Robens model in this report. The model is derived from the landmark 1972 Robens-led committee report on the UK health and safety system, which largely informed the model of occupational safety and health regulation adopted in New Zealand's Health and Safety in Employment Act (HSE Act) passed in 1992.
63. There was enthusiasm as well as trepidation about the implementation of the HSE Act. There was enthusiasm for the rationalisation of the plethora of highly prescriptive, sector-specific occupational safety and health legislation existing at the time (e.g. the Factories, Shop and Offices, and the Machinery Acts). These laws had grown over time in an ad-hoc manner, and were seen as complex, outdated and overly reliant on external inspections²⁴. The new single Act, by introducing performance-based standards (i.e. duties to do what is 'reasonably practicable' to achieve safe outcomes), provided comprehensive and standardised coverage of most places of work and hazards at work, whilst giving greater flexibility to workplaces for meeting their obligations.
64. Workers and unions were excited by the model because it advocated tripartism. Under tripartism, employers, the regulator and workers and their representatives each play interdependent roles in relation to the governance of the system and the management of health and safety issues in the workplace²⁵.
65. However, there was also trepidation. There was real concern about mining regulation being wrapped into a generic Act with less prescription. Unions were concerned that the tripartite model, as envisaged by the Robens committee and practised in the UK, would not be implemented in New Zealand. Workers and unions were also apprehensive about a possible reduction in inspectorate compliance-monitoring activity, and the erosion of standards. Employers, particularly from smaller businesses, were concerned about meeting their new obligations and the strengthening of fines for non-compliance.
66. Ultimately, New Zealand implemented a much lighter version of the Robens-based model and much later when compared with other countries such as the UK, Australia and Canada. The lighter version reflected a range of local and historical factors.

24. Martin, J (1996). *Holding the Balance: A history of New Zealand's Department of Labour (1891-1995)*. Canterbury University Press.

25. The principle of tripartism was set out in the 1998 discussion document. Advisory Council for Occupational Safety and Health (1988). *Public Discussion Paper, Occupational Safety and Health Reform*.

- a. *Resource constraints.* The late 1980s and 1990s were a period of fiscal discipline, frozen budgets and staff cuts across the public sector. No additional funding was made available to support a comprehensive implementation of the new Act, including the development of adequate levels of supporting regulations, approved codes of practice (ACoPs) and guidance, as well as inspectorate capabilities.
 - b. *Changing attitudes towards the roles of government and business.* The HSE Act was developed in an era of deregulation and a growing ethos of business self-regulation. This informed low levels of resourcing for and a light-handed approach to regulation, and high levels of reliance on businesses' capabilities and commitment.
 - c. *Liberalisation of the labour market and the weakening of union representation.* Labour market liberalisation in the 1980s and 1990s resulted in a sustained fall in union membership and growth in casual, part-time and short-term employment relationships. This has had enduring implications for the capacity of workers and representatives to engage with employers in managing workplace hazards, and presents ongoing challenges for the regulatory framework. It is likely that this factor influenced omissions from the HSE Act, including the failure to establish a tripartite body and to set obligations requiring employers to have formal worker-participation systems²⁶.
67. As a result of these factors, and wider organisational changes taking place around this time, the model of occupational health and safety regulation implemented through the HSE Act in the early 1990s may be seen as an object lesson in how not to implement legislation.

What are the key weaknesses of our system?

68. The Taskforce cannot point to one single critical component of the system that is responsible for New Zealand's poor workplace health and safety outcomes. Instead, we have identified a range of components of the workplace health and safety system in New Zealand that are not working well. These are discussed below.

Confusing regulation

69. New Zealand's health and safety law, and its implementation by the regulator, have failed to deliver the protection from workplace harms that New Zealanders can reasonably expect.
70. Good law makes clear the expectations of regulated entities and duty holders, and the regulator makes compliance easy for the vast majority who want to comply, and provides adequate sanctions for those who intentionally, or through neglect, break the law. We are currently failing on all three counts.
71. New Zealand's legislative environment is confusing. Multiple pieces of legislation, blending hazard- and risk-management specifications, fall across overlapping and ambiguous jurisdictional boundaries.
72. With a plethora of regulating agencies working in the injury-prevention and enforcement space, agencies lack co-ordination. There is a lack of accountability for delivering progressively better health and safety outcomes.
73. Further, there are a number of gaps in the legal framework. These include: the coverage of contractors and supply chains; directors' duties; the regulation of major hazard facilities; and enforcement tools for inspectors.
74. The performance-based Robens model for health and safety legislation, which underlies the existing legislation, is sound. The framework provides a flexible architecture for achieving and maintaining high standards of health

26. The requirement to have worker-participation systems was introduced 10 years later through the HSE Amendment Act (2002), while the tripartite Workplace Health and Safety Council was formed as late as 2007.

and safety performance without choking industry and innovation through high compliance costs. Under a Robens model, core principles should be set out in legislation, supported by more detailed regulation, ACoPs and guidance. Duty holders accept responsibility for health and safety in their spheres, with workers actively participating.

75. Tripartism, which involves representatives of employers and workers working alongside the regulator in all parts of the system, is fundamental.
76. Compared with the UK and Australia, however, New Zealand's implementation of the Robens model has been weak. Accountabilities are too often unclear, non-existent or not adhered to. It is widely recognised that the role and function of each component of the tripartite system (i.e. the regulator, employers and workers) have been weakly implemented, have performed poorly and need to be improved.

What people told us through the consultation process

77. Submitters to the Taskforce expressed deep-seated concerns about the performance of the workplace health and safety system. For many, the Pike River mine tragedy had brought this into sharp focus:
 - a. the legislative environment is complex and there are gaps in coverage
 - b. regulatory agencies are seen as overlapping, lacking in co-ordination and confusing
 - c. there needs to be a smarter, stronger and more visible regulator
 - d. there needs to be more engagement with industry by the regulator
 - e. there needs to be more effective oversight of the regulator
 - f. there is a lack of competence and commitment among key people in the system.
78. Submitters and meeting attendants largely agreed that the Robens model should be retained but strengthened.
79. Commitment to the Robens model came from recognition that, while a more active regulator was desired, a highly prescriptive 'one size fits all' model would not work for all types and sizes of business operating in a range of circumstances.
80. Flexibility was seen as an important component of the existing performance-based system that should, in principle, be retained.

A weak regulator

81. The primary regulator's ineffectiveness has also contributed to poor outcomes.
82. Despite efforts in specific areas, and the integrity and dedication of many staff in often difficult circumstances, the primary regulator has failed to deliver what the Taskforce considers are core responsibilities under the Robens model.
83. The primary regulator's failings were noted by the Royal Commission on the Pike River Coal Mine Tragedy ('Royal Commission'), which called the regulator "ineffective" and its strategic approach to health and safety in general terms as providing "cause for concern". It gave the following reasons:
 - a. *"a lack of national leadership which has damaged its credibility;*
 - b. *no shared responsibility at governance level, including the absence of an active tripartite body;*
 - c. *not following the expert advice from NOHSAC on, for example, the need for approved codes of practice; and*
 - d. *insufficient departmental focus and expertise regarding health and safety, especially at the senior management levels, caused by its multiple functions, its organisational structures and management groups, gaps in its multi-year strategies and planning, poor performance measures and infrequent self-review"*²⁷.

27. Royal Commission on the Pike River Coal Mine Tragedy (2012A). *Commission's Report - Volume 2, Part 2: Proposals for reform*, p 296.

84. The MBIE independent investigation into the role of the former Department of Labour (DoL) and the former Ministry of Economic Development in the Pike River mine tragedy found that “there were actions or more often inactions on the part of officials in both agencies that may have contributed to the tragedy”. However, it did not find evidence of “carelessness, incompetence or breach of policy” on the part of any staff. It further noted there were “systemic failures” in both agencies and that “DoL’s performance as a health and safety regulator was ‘dysfunctional and ineffectual’”²⁸.
85. The Taskforce considers that the overarching problem with the primary regulator has been a failure to provide the system with sufficient certainty.
86. Uncertainty arises for a number of reasons.
- a. There is a confusing legislative environment yet there is a lack of clear information, guidance and ACoPs for duty holders and regulated entities about how to comply and why compliance is important. Regulations and ACoPs have not been sufficiently developed and are often out of date.
 - b. Regulating agencies don’t collaborate or co-ordinate their harm-prevention efforts. This has resulted in missed opportunities, inconsistent advice and jurisdictional confusion.
 - c. The primary regulator lacks the capacity and capability to regulate efficiently and fairly. There are too few inspectors. Inspectors lack the capabilities to support businesses to manage their risks. Inspectors also lack the full range of tools to enforce compliance. Guidance and support for inspectors have been inadequate. This has meant they have been unable to provide clarity about what is required to protect participants appropriately and to provide a level playing field. This has led to a serious neglect of occupational health issues and high-hazard workplaces.
 - d. There has been significant under-resourcing by successive governments.
 - e. There has been a serious lack of oversight of the regulators’ performance.
 - f. Performance has not been driven by clear principles conducive to producing quality regulatory outcomes. The overall approach has been ‘light-handed’, inappropriately emphasising self-regulation. Given the lack of current and relevant guidance material and absence of consistent enforcement, self-regulation has failed to eventuate.
 - g. There has been inadequate engagement and partnership with industry bodies, employer groups, unions and other worker representative bodies to enhance the effectiveness of all parties.
- What people told us through the consultation process*
87. Submitters to the Taskforce made clear their view that the regulators are ineffective. There is a lack of clear information. Different standards are applied by the regulators. These factors, combined with a lack of co-ordination between the regulators, create an environment that is very confusing for participants. There is a tension between clarity and specificity, and too much prescription.
88. People believed there is a need for a new, independent Crown agency whose single regulatory focus is workplace health and safety.
89. People wanted to see this new agency have much higher visibility. They also wanted it to be more vigilant in monitoring the system, exercising leadership in harm prevention and effectively co-ordinating with other agencies. They wanted it to strengthen and develop new regulations, standards and guidelines, where needed, so that ambiguities in requirements are resolved.

28. MBIE media release, 10 April 2013, ‘Independent investigation report released’.

90. The regulators do not collaborate sufficiently with industry and unions. The Workplace Health and Safety Council is invisible and lacks impact. There was no clear theme in the public's view of a solution for this.
91. Regulators' capacity and capabilities are lacking. A number of reasons were given. Key reasons were long-term under-resourcing and continual restructuring, which have resulted in a low regulator presence. Inspector numbers need to be boosted, with more inspectors who specialise in high-risk industries. The inspectors should be highly trained and adequately remunerated, and the role professionalised with a clear competency framework, practising certificates and career pathways.
92. Participants told us there is a lack of strategic health and safety leadership at executive government, MBIE and policy levels, and a lack of consistency between the regulators. There is a need for strengthened regulatory practices and activities.

Poor worker engagement and representation

93. Worker involvement in workplace health and safety is a critical weak link. In the Robens model, effective worker participation is vital to managing health and safety issues successfully in the workplace. Yet it is an aspect of the New Zealand working environment that is too often ineffective and often virtually absent.
94. New Zealand falls well short of the strength of worker representative legislation and levels of engagement operating in comparable jurisdictions.
95. Workers have many rights and protections under New Zealand law. These include the right to raise health and safety issues in relation to their work, to have these addressed, and to refuse tasks where conditions remain unsafe. Formal mechanisms, including health and safety representatives and health and safety committees, are commonly used to support these protections. Evidence of agreed participation systems is also required from firms with 30 or more employees.
96. All too frequently, however, these mechanisms are poorly implemented, if at all. Or they are not fit for purpose given the increasing 'casualisation' of the modern workforce, i.e. the growth in self-employed, temporary, seasonal and part-time workers and contractors.
97. While some workplaces have highly effective mechanisms for employee participation, others do not. Consequently there is uneven ownership of the workplace health and safety system and of initiatives to improve outcomes.
98. There are a number of factors at play in this:
- there is limited support in the legislation for worker engagement, e.g. smaller firms are not required to have formal participation mechanisms such as health and safety representatives. Further, the law does not ensure that there is sufficient time for health and safety representatives to perform their functions
 - there is a lack of regulator enforcement of and guidance around the provisions, e.g. there are no ACoPs or support tools for small firms
 - employees often lack awareness of their rights and, if they are aware, fear reprisals if they exercise them
 - union density has fallen substantially, and there are increasing levels of unorganised, casual, contract and short-term labour in the workplace
 - many managers lack the awareness, motivation to engage and capabilities needed to respond effectively to workers raising health and safety issues
 - many businesses prioritise production targets over health and safety concerns.

What people told us through the consultation process

99. The Taskforce heard in meetings and submissions that there are low levels of employee participation in processes for identifying and managing workplace health and safety issues. There was a high degree of agreement that this essential component needs improving.
100. Management awareness and culture were identified as barriers to engagement. Many managers were also seen as uninterested in employees' input on health and safety practice. Employees complained about health and safety strategies and systems being absent, or run without adequate employee or representative consultation (e.g. management-heavy health and safety committees). Further, employees reported that management was frequently unresponsive or defensive when health and safety issues were raised directly with them. Some reported being fearful of recriminations through pay docking (e.g. if damaged machinery was reported) or losing their jobs. Seasonal, contractual and otherwise vulnerable workers were noted as particularly unlikely to report events.
101. Employees were characterised as commonly lacking awareness of their rights and responsibilities, and not ready to engage. They were sometimes described as "complacent" and "apathetic" about health and safety protocols, regarding them as "over the top" or "petty".
102. Submitters raised a number of concerns about the effectiveness of the health and safety representative role. These centred on: the appointment processes (representatives were sometimes appointed by management, which called their independence into question); low interest from employees in the representative role; and too weak powers and protections for representatives under the HSE Act. Many submitters argued for greater powers for representatives, as in the Australian Model Law²⁹. They also argued in favour of removing or revising the threshold whereby smaller businesses (with fewer than 30 employees) are required to develop employee participation systems.
103. There were mixed views on the effectiveness of health and safety representative training. Concerns were raised about funding cuts and the level of funding available now and in the future to deliver high-quality, up-to-date courses.
104. The Royal Commission made a number of general comments about worker participation, which have wider applications than just to underground coal mining³⁰:
- "The legislation on worker participation should be strengthened. Workers sometimes do not understand health and safety rules or ignore them to get the job done. They should be entitled to receive key information on health and safety risks without having to ask for it.*
- Trained worker health and safety representatives should have the power to carry out inspections...*
- The worker representatives... should have the power to stop operations if, and only if, workers are in immediate danger.*
- Finally, the regulator needs to better promote the advantages of worker participation to both employers and workers. An approved code of practice is required and need not wait for legislative change".*
- Inadequate leadership**
105. The Taskforce believes that little leadership is currently being shown by a large number of people and organisations who have influence in the workplace.
106. For New Zealand to have good workplace health and safety outcomes, all key influencers need to take greater responsibility. While the regulatory system has not provided the right incentives and enforcement measures to drive high standards of leadership, all influential stakeholders need to step up and be accountable for workplace health and safety.

29. The Australian Model Law refers to the Model Work Health and Safety Act. Finalised in 2011, this Act provides the basis for workplace health and safety Acts across Australian jurisdictions and enables harmonisation of work health and safety law nationally. <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/pages/model-whs-laws>

30. Royal Commission (2012B). *Volume 1 + Overview*, p 33. Note the Royal Commission recommendations also included union-appointed check inspectors for underground mining. More specific requirements for worker participation in major hazard industries are considered in the *Insufficient oversight of major hazard facilities* subsection of *Accountability levers*.

107. The Taskforce considers that government, industry bodies, pan-industry bodies, professional associations, unions, community-based organisations, the medical profession, other professions including media, health and safety representatives, other workers and, of course, employers (owners, directors, officers and managers) have roles to play.
108. A critical component of the Robens tripartite model, i.e. the regulator engaging and developing effective partnerships with business leaders, business networks, industry bodies, workers and unions, is lacking in New Zealand. In part this is due to limitations in the capacity and capability of the regulator, but it is also due to a shortage of large, private-sector employers to provide leadership and act as exemplars. Similarly, there are few committed leadership forums and organisational networks with which to partner.
109. While New Zealand business networks are a potentially valuable mechanism for sharing information and for cross-firm mentoring, these are underdeveloped compared with those in other countries. The primary regulator has sought to work with some business representative groups in some industries, but efforts appear to be in their infancy. Some bodies are defensive, and many managers and directors have yet to prioritise health and safety management. This hampers the regulator's ability to develop effective business and industry partnerships to promote good health and safety practice.
110. Further contributing factors to inadequate leadership are the generally low health and safety capabilities within many businesses, and the lack of external training, expertise and support available. Management awareness, capabilities and training in health and safety are limited and variable. The quality, consistency and availability of tertiary training courses in health and safety matters are weak. At the same time, access to specialists and advisers is challenging for many businesses because of the lack of suitably qualified or accredited professionals. This provides businesses with a poor basis for growing in-house expertise.
111. Leadership has also been hampered by the regulator's failure to engage with unions. While unions today are limited in their coverage, with the right support from the regulator and employers they can play a very positive role. This role includes: driving up health and safety standards; supporting worker participation; providing a safer channel for workers to report risks and incidents; contributing expertise; and building support for better health and safety practices. Unions' positive role was recognised in a recent government report³¹, which recommended "greater collaboration with unions on health and safety, who are seen as having a positive impact on health and safety practice", by the Royal Commission, and in international research. Unions' positive role is also recognised in international conventions ratified by New Zealand, and is seen as an important factor in more successful health and safety systems in other countries.

What people told us through the consultation process

112. A common although not universal sentiment was of board members, directors and senior managers not providing effective health and safety leadership or active governance. At best, the quality of leadership is variable. A number of reasons were offered in explanation.
- Inadequate levels of accountability for leaders.* Directors and managers are not sufficiently held to account for health and safety failings on their watch.
 - Marginalisation of health and safety responsibilities.* Directors and senior managers commonly delegate health and safety responsibilities to a single or small number of low-level manager/s or administrator/s.
 - Commercial pressures and productivity taking priority.* Health and safety

31. Department of Labour (2012). *In Harm's Way*.

- expenditure is too often seen as a short-term compliance cost. A number of common workplace patterns underline the clear precedence that bottom-line concerns take over health and safety: unrealistic targets and deadlines set, placing time pressures on workers to perform; low levels of supervision for new staff; staff working in dangerous environments; and long hours.
- d. *Low awareness of health and safety issues and how to manage them.* Managers and directors commonly lack health and safety expertise and competence.
 - e. *An information gap exists between operations and the boardroom.* Directors and senior managers are sometimes out of touch with the workplace. It was reported that lower-level managers sometimes discourage workers from reporting near misses, hazards and injuries, and do not pass this information up the hierarchy.
113. Concern was raised repeatedly regarding a common business practice, in both the public and private sectors, involving the selection of the cheapest tenders when hiring contractors to undertake short-term, project-specific or long-term contract work. This practice promotes a 'cut-throat' market that encourages people to take shortcuts. It also creates distance to the work being done and how it is managed. Issues were raised around the roles of principals and contractors in the supply chain, and how contractors can be managed well.
 114. Submitters recommended imposing stricter duties on principals to ensure a focus on health and safety during tendered or project work. Regulators should also provide greater vigilance and enforcement up the supply chain. Government could model good practice in this area, e.g. by pre-screening and publicly listing firms that meet agreed standards for inclusion in the tendering process. Many submitters said that government leadership in relation to supply chains is woefully inadequate.
 115. New Zealand business networks were seen as a potentially valuable mechanism for sharing information and for cross-firm mentoring. At present, this is underdeveloped compared with other countries. It was recommended that the regulator more actively support the development of industry bodies, including encouraging wider membership of organisations such as the Business Leaders' Health and Safety Forum.
- ### Capacity and capability shortcomings
116. Workplace health and safety is everyone's responsibility. We all need to be able to engage in safety discussions in an active and meaningful way. However, there are major capacity and capability constraints among workers, managers, health and safety practitioners, business leaders and the regulator that contribute significantly to New Zealand's poor workplace health and safety record. We need to build new skills in this area because there is a significant gap to fill. Current constraints include:
 - a. insufficient knowledge of workplace health and safety risks, including of specific hazards
 - b. insufficient knowledge of workplace health and safety regulatory requirements, including of rights and obligations
 - c. insufficient use of that knowledge.
 117. While there are individuals and organisations with good levels of knowledge, gaps in knowledge exist throughout the workplace health and safety system. This is due to a range of factors.
 - a. *Gaps in our education system.* Too little emphasis is placed on workplace health and safety in New Zealand's education and training system. This ranges from primary and secondary school to the vocational and tertiary sectors, and includes on-the-job training and continuing professional development (CPD).
 - b. *Inadequate and inaccessible advice and information.* Individuals and

organisations need advice and information that are reliable and fit for purpose to make good decisions about how to manage workplace health and safety risks. Currently information is expensive, particularly for small- and medium-sized enterprises (SMEs), and there is limited quality information available from the regulator.

- c. *Difficulties accessing professional advice.* It is challenging for firms to identify appropriately qualified workplace health and safety professionals. For SMEs, it is even more difficult to afford them.

What people told us through the consultation process

- 118. In the Taskforce's consultation and submissions process, a number of participants were identified as lacking in health and safety knowledge as well as poorly prepared to lead or support good workplace health and safety practices competently.
 - a. *Managers, supervisors and directors.* Managers, in particular, were often seen as inadequately prepared to manage workplace health and safety. Reasons given included a low focus on health and safety at secondary-school level and within tertiary-level professional degrees (e.g. commerce, engineering). Further, there are limited opportunities available for on-the-job health and safety training for managers.
 - b. *Workers.* Many submitters expressed a concern for the limited health and safety knowledge of many workers. The most vulnerable and at-risk groups include young workers, who frequently lack both risk awareness and management skills, and workers with low literacy and numeracy levels, including early school leavers and migrants with poor English language skills.
- 119. Concerns were raised about the quality and availability of external health and safety advice. There is a high degree of variability among consultants in terms of their approaches, methods, competence

levels and risk tolerances. It was noted that there is no standard competence level or qualification set required for consultants. Industry associations were seen as a source of useful information for businesses, but this capacity needs to be developed.

- 120. The availability and quality of health and safety training were widely judged to be inadequate. A number of reasons were given for this.
 - a. *No meaningful framework for health and safety training.* Industry training organisations (ITOs) and training providers were criticised for offering a plethora of courses of variable content to a range of quality standards.
 - b. *The growth of outsourcing and the decline of integrated health and safety teaching.* Concerns were raised about moves away from the traditional apprenticeship approach, where health and safety is a core, integrated component in trades training.
 - c. *Prohibitive costs.* In recent years the Tertiary Education Commission (TEC) has reduced funding for many health and safety courses, and there is limited support for smaller businesses to participate in training.

Inadequate incentives

- 121. New Zealand does not have the right mix and weightings of positive incentives and deterrents to drive compliance with minimum health and safety standards or to foster behaviours that lead to continual improvement.
- 122. With too many businesses failing to see meeting their obligations as a cost-effective investment, New Zealand falls well short of international best practice in establishing the conditions in the business operating environment that incentivise compliance and best practice.
- 123. Under the current regulatory regime, there is too low a likelihood of inspector site visits coupled with a low likelihood of prosecution or other action if a business is found to be significantly non-compliant. This creates an uneven playing field where

non-compliance is effectively rewarded. A key reason for the low threat of sanction is that regulators' resources are not applied optimally. The Taskforce also considers that penalties are far too low, and the range of tools available to inspectors is too limited.

124. Opportunities for reduced ACC and Health and Safety in Employment levies through investments in health and safety systems, or improved performance, are limited. While poor performers' levies continue to be subsidised by good performers, there is a need for more effective risk- and performance-rating regimes.
125. The opportunity to influence change directly through procurement policies that require good health and safety practices, or subsidies to enable action that might not otherwise be afforded, is being missed. Similarly, there is limited leverage of non-financial incentives, such as reputational loss or limiting access to work and contracts based on business performance.
126. In considering incentives, we need to be mindful of the case study research commissioned by the Taskforce, which suggests that the motivations for businesses to improve workplace health and safety performance are varied³².

"... for some a serious harm accident prompted a 'never again' heart felt commitment to doing what it takes even though they had thought their systems were robust. In others, leaders passionate about their business being the best in health and safety has usually gone hand in hand with those leaders playing a lead role in their industry. Some of the workplace leaders have come from overseas jurisdictions where they say regulatory requirements are stronger and that has motivated them to do better than the minimum. One feature that stands out amongst these firms is that by and large they have not put a cost on good systems - they are a non-negotiable. The lives, safety and wellbeing of their employees are paramount to the business."

What people told us through the consultation process

127. The Taskforce frequently heard from submitters and meeting participants that there are insufficient inducements to incentivise compliant or proactive health and safety actions, and penalties are inadequate to deter non-compliance. The incentive regime was characterised as "not working and possibly perverse".
128. In particular, the ACC schemes were criticised as not strongly enough connected to risk. Experience ratings were also seen as too focused on lag indicators, and concerns were raised about the perverse incentives these have for underreporting and, indeed, that they mask the exposure to potential harm. They simply don't capture the key ingredients of harm prevention. The Workplace Safety Management Practices system, and its associated audits, were criticised for encouraging paper-based compliance, not safer systems in practice. More robust auditing, increased levy reductions for good performers, greater support for smaller businesses, and regular reviews of all the ACC incentive schemes were recommended.
129. Many submitters said that the existing enforcement regime provides ineffective deterrence for non-compliance or poor performance. This was reportedly due to low levels of surveillance, little likelihood of being caught or prosecuted, and penalties, where applied, being too low. It was recommended that penalties be strengthened and new tools applied. Possible tools include enforceable undertakings, spot fines, director bans and corporate manslaughter charges ("less warning, more action").
130. Other financial and non-financial incentives were suggested to strengthen the system. These included: providing tax relief, substantive ACC levy reductions or government subsidies for good performance, investment in equipment, machinery or plant, and managers' and representatives' health and safety

32. Heathrose Research (2013). *Final Report: Case Study Policy Themes*, p 6.

training; charging companies for the costs of investigations or removing ACC cover if found to be non-compliant; building a publicly accessible list of company rankings on health and safety performance for reputational impacts; and disqualifications of directors.

Poor data and measurement

131. As previously indicated, New Zealand has unreliable data on workplace fatalities. More broadly, we also have poor information and intelligence on health and safety risk concentrations, causes of workplace injuries and illnesses, and the effectiveness of interventions to improve health and safety outcomes. As a result, we don't know the full extent of the issues or what to target. Further, while we may have a sense of who gets hurt and where, we often don't know why. There is insufficient detail to target effective interventions.
132. These observations are not new. Reviewers and committees, such as NOHSAC, have reported on the issues, but their recommendations have been largely ignored.
133. New Zealand has multiple data-collection mechanisms that capture workplace disease, illness and injury data. However, these have not been built with disease and injury monitoring purposes in mind. For example, ACC collects data to help with claim management, and the primary regulator collects data to help with case management. The establishment of Statistics New Zealand's Injury Information Manager role in 2002 significantly improved the availability and quality of workplace-related data for injury reporting purposes³³, and the ACC data set captures the vast majority of injury cases resulting in medical treatment. However, there are still issues with the quality and coverage of workplace injury data. These issues include substantive limitations in individual data-collection systems and fragmentation across those systems.
134. For occupational health data the situation is markedly worse. This is due to additional complexities in recognising particular

conditions as occupational illnesses, coupled with the absence of a credible principal data source.

135. The result is an absence of comprehensive, timely, accessible and information-rich sources of data on workplace injuries and occupational illnesses to inform the regulator's work. The system has not been performing at the level it needs to, in part because the regulator cannot reliably monitor high-level outcomes, undertake robust causative analysis, or develop and evaluate appropriately targeted, evidence-based interventions, especially for occupational health issues.
136. Accessible performance data and the publication of meaningful industry benchmarks are also limited. Further, there has been too little emphasis on the development of lead indicators. This has left industry bodies, businesses, unions and workers with inadequate information to compare prevention-management performance, identify weaknesses and develop appropriate interventions.

What people told us through the consultation process

137. Submitters and meeting participants expressed concern at the lack of reliable and comprehensive data about workplace health and safety outcomes, causes and practices in New Zealand. Their concerns focused on the following issues.
 - a. *Limited injury prevalence data.* Injury prevalence data collected by MBIE, ACC and other agencies was seen as limited and partial, with poor co-ordination between agencies. An issue of particular concern was that managers are often incentivised to discourage or misrepresent reporting to the regulator and ACC. This was seen as particularly perverse and problematic. Often demographic (e.g. industry, occupation), diagnostic and causal data is incompletely or, across organisations, inconsistently captured when injuries come to the regulator's attention.

33. In particular, the merging of ACC and Ministry of Health hospital admission data and the development of SIOIs.

- b. *Occupational health data problematic.* The collection of occupational health data is particularly challenging. Submitters pointed out that the Ministry of Health's (MoH's) intelligence and surveillance systems seriously under-record occupations, and general practitioners (GPs) are not adequately trained to identify occupational illnesses or incentivised to report them to the regulator. It was recommended that GPs be better trained and supported by appropriate assessment tools to recognise occupational health issues and record occupational histories in patient notes and, along with district health boards (DHBs), be required to report all cases of occupational illness to the regulator. The regulator should improve and maintain the Notifiable Occupational Disease System (NODS) database.
138. Another issue raised was the over-emphasis on collecting and reporting lag indicators. It was suggested that employers be supported to develop lead indicators (e.g. the proportion of management who have received training in health and safety). These could be regularly reported on and made available for industry benchmarking.
- A risk-tolerant culture**
139. New Zealand's national culture includes a high level of tolerance for risk, and negative perceptions of health and safety. There appear to be a number of prevailing values and norms that are at odds with a safety-conscious, harm-preventive and compliance-based workplace health and safety system. 'It's only minor', 'it won't happen to me' and 'it's all part of the work we do' are some phrases that aptly capture this.
140. Kiwi stoicism, deference to authority, laid-back complacency and suspicion of red tape all affect behaviour from the boardroom to the shop floor. Accordingly, if levels of recognition of and support for health and safety are low or intermittent, more businesses and workplaces are liable to develop, accept and defend low standards, dangerous practices and inadequate systems.
141. Cultural barriers to health and safety systems are not unique to New Zealand. For example, the Robens report noted that "public apathy" over work-related safety issues in the UK was a fundamental concern³⁴.
142. In this context it is understandable, if disappointing, that many workplace harm-prevention programmes have been ineffective in reducing harm outcomes. In part, this is because they have failed to gain widespread support from the public for improved outcomes or failed to change attitudes to health and safety. Typically these programmes:
- have focused on behaviours rather than the underlying reasons for the behaviours
 - have been treated with insufficient priority by the regulators
 - have not been individually comprehensive enough and have not collectively presented a compelling message about the overall change required
 - have not been sustained for sufficient time to make significant and enduring improvements in workplace health and safety
 - compare poorly with successful programmes such as those addressing safety-belt wearing, family violence and energy efficiency.
- What people told us through the consultation process**
143. New Zealand's culture is widely seen as a key contributor to New Zealand's poor health and safety performance. A number of features of our psyche and cultural landscape were identified by meeting attendants and in the written submissions. These clustered around distinct themes.
- Complacency.* Our 'laid back', 'she'll be right', 'won't happen to me' attitudes to health and safety reflect a general complacency.
 - Passivity.* We often think that others are responsible for health and safety

34. Robens (1972). *Report of the Committee on Health and Safety at Work. 1970-1972*, Her Majesty's Stationery Office, London

- we have low levels of individual self-responsibility.
- c. *Haste before care.* We have a productivity-focused 'number 8 wire', 'give it a go', 'get on with it' mentality. We will take shortcuts and adapt or use inappropriate equipment to get the job done quickly.
- d. *Distaste for red tape.* New Zealanders are resistant to regulations and can see health and safety requirements as an unnecessary compliance requirement.
- e. *Tall poppy.* We can be reluctant to stand out or ask questions. We have a tall poppy syndrome, fear putting our heads above the parapet and we 'don't want to seem stupid'.
- f. *Stoic.* We value stoic qualities and fear that talking about or asking for health and safety considerations may make us look like a 'sook' or that we need to 'harden up'.

Hidden occupational health

144. Our performance in occupational health is very poor. Unlike occupational injuries, the estimated 500 to 800 premature deaths a year from occupational ill-health receive little government, media and business attention.
145. Inadequate data systems and research levels mean that we do not know the scale and nature of the issue with any accuracy. Worse, the system is unresponsive to new and emerging risks. Activity is fragmented across multiple regulators, disciplines and sectors with no effective co-ordination or leadership. There are also scarce occupational health capacity and capabilities within the system to secure improvement. The social and economic burden of occupational ill-health remains private and largely hidden from public view. Occupational health has been left in the 'too-hard basket'.
146. The barriers to improved performance in occupational health in New Zealand have been known for years. Many recommendations for improvements have been made, yet there has been little Government leadership for change. The Taskforce considers that action must be taken now, and the occupational health burden addressed on an equal footing with other causes of harm.

What people told us through the consultation process

147. Despite the statistics, occupational health is under-emphasised by the regulator, the medical profession and businesses. The dominant paradigm that perceives workplace harm as predominantly acute and caused by accidents is seen as unhelpful. A greater recognition of occupational health issues is required among all players.
148. Low capacity in the occupational health field was a particular concern. GPs, the regulator and business managers were all seen as poorly equipped to identify and manage occupational health risks. Once again, the regulator was seen to lack capacity or expertise. Inspection, enforcement and surveillance need strengthening. There is also too little in the way of monitoring of exposures in New Zealand workplaces. It was recommended that the regulator invest more in capability-building, including the recruitment of specialist advisers and the provision of generic training in occupational health across the inspectorate. This would lead to more accessible, higher-quality information and guidance being available as well as more effective surveillance and stronger enforcement.
149. Further, there needs to be improved availability and accessibility of occupational health advisers and professionals for businesses. GPs need to be encouraged to record patients' occupational histories and be better trained to assess, diagnose, treat and report occupational diseases. Government funding for occupational health centres and better co-ordination with MoH to undertake periodic health checks with workers were recommended.

150. Legislation and advice surrounding the Hazardous Substances and New Organisms Act 1996 (HSNO Act), and the management of hazardous substances, were described as confusing and difficult for organisations to apply. In particular, SMEs found it hard to interpret and keep up with what was required. It was recommended that the regulatory framework be simplified and there be greater alignment across the HSE Act, HSNO Act and NZTA and MNZ, with requirements made into one set of rules. It was also recommended that the current certification model for hazardous substances be reviewed with a view to developing more robust assurance processes.
154. Prior to the Pike River disaster, the regulator had not effectively understood major hazards or promoted compliance with existing regulations. Major hazard industry awareness of the 1994 Code of Practice for Managing Hazards to Prevent Major Industrial Accidents was minimal, and there is little evidence of key players applying it.
155. The gaps in major hazard facility regulation reflect the gaps in knowledge about the major hazard facilities and their associated dangers. That is, the risk landscape in New Zealand is not understood.

What people told us through the consultation process

Insufficient oversight of major hazard facilities

151. The current regulatory framework for major hazard facilities has limited coverage. It focuses, for example, on the offshore petroleum industry, mining, geothermal energy and pipelines. However, there are other industries that have facilities with comparable dangers to people and the environment, e.g. chlorine storage. Those facilities are not subject to the same degree of oversight and regulation.
152. In general, the regulatory system for major hazard facilities has developed in an ad-hoc and reactive manner, often following disasters like the Pike River mine tragedy. This is a common pattern internationally, where major hazard facilities' regulation develops in response to specific incidents, and focuses on current, known major hazards. For example, elements of the Australian Major Hazards Facilities regulatory framework were developed in response to the Esso Longford gas explosion in Victoria on 25 September 1998, which killed two workers and injured eight.
153. However, not all major incidents, at home or abroad, result in sustained improvements to New Zealand's regulatory framework, as evidenced by the number of reviews of underground mining that have occurred.
156. Most submitters who commented on the current approach to regulating major hazard facilities stated that it is weak. Identified shortcomings were: a lack of guidance from, enforcement by and co-ordination among the regulators; and ambiguity, inconsistency and lack of prescription in the legislation.
157. Submitters made suggestions for a number of changes to the legislative terminology, scope, strength and underlying principles. These included a greater focus on risk assessment and management, extending the use of safety cases and some changes specific to the mining industry. Submitters also recommended some changes to the regulators' roles and responsibilities specifically in relation to major hazard workplaces.
158. The Royal Commission made 16 primary recommendations for improved practice in the mining industry supported, where necessary, with more detailed recommendations. The Commission noted that its recommendations may have wider relevance to other major hazard facilities. For example, Recommendation 2, that "an effective regulatory framework for underground coal mining should be established urgently", is equally applicable to other major hazard facilities.

Particular challenges to SMEs

159. Workplace health and safety presents challenges for SMEs that are different from those for other businesses. SMEs are traditionally characterised as³⁵:
- being managed by the owners in a personalised (non-formal) manner
 - having high resource constraints, operating under extreme financial pressure, and having a high potential for failure
 - having limited access to external sources of advice and support and to business information/expertise
 - lacking formal systems and processes that are fit for purpose and proportionate to the risks the SMEs face.
160. These features were reflected in the perceptions of SME owners and managers, in particular that workplace health and safety information and advice are not accessible or relevant to their businesses. For SMEs that do seek external expert advice, the variability of quality advice provided by health and safety professionals, which is not necessarily fit for purpose, and the prohibitive costs of that advice and health and safety investment, are barriers to improved performance.

What people told us through the consultation process

161. Self-employed and SME businesses were widely identified as particularly at-risk organisations. A variety of reasons were offered: a lack of management capacity; a lack of health and safety competence; low levels of awareness of or certainty about required standards; a lack of regulator vigilance; tight margins and the prohibitive costs of health and safety investment (e.g. in purchasing equipment, training and advice); and being exempt from the requirement to have health and safety representation unless it is requested.

162. The regulator was seen as providing an insufficient level of useful, relevant advice on how to manage particular risks and issues. SMEs, in particular, are dependent on regulator advice but, as mentioned earlier, this was thought to be mostly targeted at larger firms. Advice that is available was criticised as frequently out of date, difficult to access and interpret, and of limited relevance and applicability.
163. Owing to the range of issues concentrated in SMEs, small businesses were identified as requiring greater levels of support to achieve robust health and safety systems. The Government is encouraged to actively provide more, targeted assistance.

Particular populations are at great risk

164. As previously discussed in the *Some high-risk population groups are more likely to be harmed at work* section (paragraphs 38-42), there is a wealth of empirical evidence documenting poorer health and injury outcomes for particular groups of workers. The heightened vulnerability of particular populations reflects the propensity of these groups to be clustered in particular sectors of the economy (e.g. low-skilled work) and the particular challenges they may face (e.g. communication difficulties through low levels of literacy, and cavalier attitudes to health and safety). As many people told us during the public consultation process, there are numerous factors in the workplace that can raise the risk of harm.
165. Underlying factors are also likely to build on each other in some circumstances. For example, workers in short-term or contract work relying on English as a second language are at greater risk than recent migrants in permanent employment. If job opportunities available to them are limited to riskier sectors, this will compound the situation. This presents a particular challenge to policy-makers and regulators, as a one-size-fits-all response to population-specific outcomes, without a careful analysis of all underlying causes, may result in poorly targeted and ill-conceived interventions.

35. NOHSAC (2009). *Occupational Health and Safety in Small Businesses*. NOHSAC Technical Report 12, Wellington.

What people told us through the consultation process

166. Submitters and meeting participants expressed strong concern about the greater health and safety vulnerabilities of particular working populations. A number of causal factors were identified and some strategies suggested for reducing the population-specific risks.
- a. *Workers with low literacy levels.* Effective written and verbal communication skills are essential to ensure that health and safety messages are understood and workers have enough confidence to ask questions. It was recommended that the availability of literacy training be increased, and that employers and the new agency ensure that all health and safety-related communications are in plain and simple language(s).
 - b. *Migrants.* Many migrants are vulnerable because English may be their second or third language, they may have different attitudes towards health and safety, and they are unfamiliar with New Zealand's regulatory system and requirements. More pre-border education and simpler regulatory information were suggested.
 - c. *Workers working long hours.* Long hours contribute to fatigue and distraction issues. Fair and decent pay rates (removing the need to work double shifts, etc) and placing limits on the number of hours that workers can work in a given period were recommended.
 - d. *Workers in insecure employment relationships.* Casual workers, those on 90-day trials, short-term contractors and seasonal workers were all identified as less likely to report injuries or voice concerns for fear of not being re-employed in the future.
 - e. *Younger workers.* New, younger workers or 'greenhorns' were seen as lacking in the cognitive maturity, experience and general awareness of health and safety to make safe choices at work. Better supervision and training were recommended.
 - f. *Older workers.* Some older workers are vulnerable due to complacency, fatigue, general susceptibility or being set in their ways.
 - g. *Māori.* Many Māori workers are overrepresented in dangerous industries. It was also suggested that Māori workers may be less confident in speaking out about unsafe practices. Iwi were identified as having an important role in supporting and advocating for Māori workers and their whānau.
 - h. *Pacific peoples.* As above, Pacific workers are overrepresented in dangerous industries and often have literacy and communication issues. Cultural factors also play a part, with Pacific peoples identified as more trusting of and respectful towards authority figures. Signage and communication in languages other than English were recommended. The establishment of a Pacific advisory committee to represent Pacific workers, and government working more closely with Pacific community groups and churches to disseminate health and safety information, were recommended.
 - i. *Workers in remote locations.* These workers, including those engaged in farming and fishing, were identified as commonly working in rapidly changing physical environments, often alone or in isolation, and surrounded by hazards.
 - j. *Males.* Men are more likely to work in, and be accepted by society to be working in, dangerous, highly physical workplaces. Men are also subject to peer pressure to appear macho and more likely to take risks.

THE GRIEF OF A PIKE RIVER MOTHER



Carol Rose lost her only child, Stuart Mudge, 31, in the Pike River mine tragedy on 19 November 2010.

The loss of her son Stu, her role as secretary of the Pike River Families Committee, and the families' ongoing fight to retrieve their men from the mine have all taken an enormous toll.

"It's a situation that I can't liken to any other. Nothing could prepare you for it, nothing."

In 2010 Carol and her husband Steve owned and managed a number of West Coast rental properties, and were retail coal and firewood merchants in Greymouth. Up until the start of that year, Stu had worked for four and a half years in their coal and firewood business.

"We worked together six days a week. He was our right-hand man. We were very close."

Stu lived a "daredevil lifestyle" and a boyhood love of caving meant he was attracted to mining. He worked for four months as a driller's assistant for Valley Longwall International, a contractor to Pike River Coal, but he wanted to make mining his career.

"He loved mining; he loved the danger aspect but I don't know whether he realised the actual danger he was in. Anyway, he got a job as a trainee miner with Pike River Coal. He'd been in the job four or five months. We learned later from Doug White (mine General Manager) that Stu and Brendan Palmer had been chosen for fast-tracking up through the management. Stu would have been really into that.

"He went into mining to start a well paid career that would allow him to do the things in life that he wanted. He was cracking along very well."

Stu also loved the camaraderie of his fellow miners. "Because Stu was an only child, he saw his mining mates as his 'band of brothers'."

"It's a situation that I can't liken to any other. Nothing could prepare you for it, nothing."

CAROL ROSE

Born and raised in Whangarei, Carol has a background in personnel management. She worked for many years in the petrochemical industry in Australia.

“When we returned to New Zealand, we gradually moved further south.” The couple bought a lifestyle property between Nelson and Murchison, then the rental properties in Greymouth that they fixed up and let.

She never intended to be secretary of the families’ group, but nobody else put up their hand. It has been a hugely demanding role. She is the key contact person between the families and their legal team. She operates two databases: one with 109 immediate family and another with 162 general family members.

“Even if one family got their man back, we all would be over the moon for them.”

Carol remains quietly dispassionate as she talks through what she’s dealt with since 2010. Like others, for instance, she was not treated as next of kin for several weeks after the disaster began, because Stu had listed a former girlfriend on the form.

“The company failed desperately in establishing next of kin. Nobody would talk to me. It was just a terrible time. As far as the Police were aware, I was a remote family member. It took far too long to fix.”

The company also kept the families’ hopes up that the men were alive and could be rescued, until the second explosion on 24 November made it very clear that neither was possible.

Her central role in the families’ group meant that in addition to coping with her own loss, she became a counsellor and helpmate to dozens of other emotional, disbelieving, angry people.

“A lot of those first few months are a blur. After three months I absolutely fell apart. I realised I had been so busy helping everybody else that I hadn’t dealt with my own feelings. I needed to pull back, and that’s when I started dealing with my own grief.”

She understood that she needed to separate the two things: grieving for the loss of her son, and the business of trying to get the men’s bodies back.

“If you lose someone in a normal workplace accident, you retrieve the body, arrange a funeral, there’s a Department of Labour* investigation and possibly charges are laid and someone is held responsible. There’s a process and it’s fairly clear-cut.

“But with Pike River we’ve not had that. There are no bodies, and there is still a question mark over whether they can be brought out. There has been a real seesaw in the official position. All we’ve wanted is a simple yes or no.”

Carol is currently hopeful that rescue access to the ‘drift’ – the 2.4-kilometre tunnel that leads to the mine – will be made in the next six months. “It’s likely there were men in there. We don’t know which men – it won’t be Stu, we know he was at the top end of the mine.

“But even if one family got their man back, we all would be over the moon for them.”

There is also a lot of disquiet that without a corporate manslaughter penalty in New Zealand, it is unlikely that criminal charges can be made against Pike River Coal’s board of directors. The families believe that any charges laid by the health and safety regulator will be akin to “being slapped over the wrist with a wet bus ticket”.

CONTINUED

*The Department of Labour is now part of MBIE.

Carol remains stunned at the systemic failures that resulted in the tragedy – “still absolute disbelief” – and she has seen close-up the impacts on families.

“There have been so many estrangements. Families have broken up from the stress. Wives have become estranged from their lost husbands’ parents. A lot of the men who died were young and they left no wills, so there have been fights over assets and money. It’s been very messy. It’s been a real tangled web. There’s been so much heartache and grief.

“And it all comes back to health and safety. One company that seriously failed on a number of fronts, and a regulator that wasn’t doing its job, and the repercussions... the ripple effects just keep going on.

“It’s always the family that wears the consequences.”

“And it all comes back to health and safety. One company that seriously failed on a number of fronts, and a regulator that wasn’t doing its job, and the repercussions... the ripple effects just keep going on.

After two and a half years, Carol says she and Steve feel like they are just getting their lives back. “It’s not as raw as it used to be. We feel the grieving process is well underway.”

The couple is beginning a semi-retirement. They have bought a motorhome, and they travel frequently from their property in Nelson to the Coast and further afield. They keep in touch with Stu’s daughter, Tui Rose, now seven, who lives with her mother in Thames.

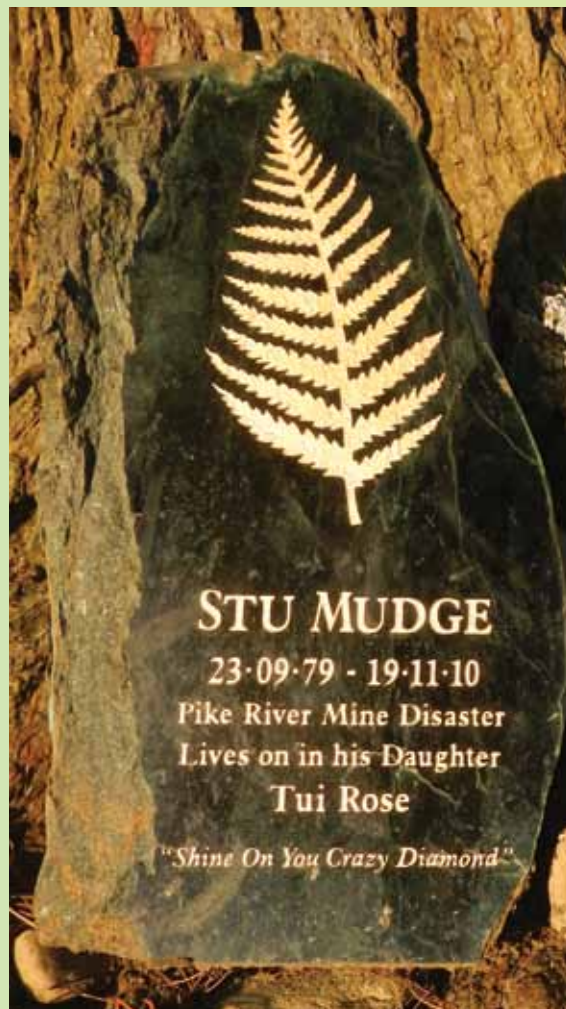
Carol is also treasurer and secretary of the new Pike River 29 Legacy Charitable Trust.

It will involve family members travelling the country giving talks about their experiences and the importance of health and safety in the workplace. “It’s still in its infancy and there’s quite a lot of work to do, but I feel very passionate about it.”

While Carol and Steve sold their business in January 2011 so that Carol could focus on her Pike River work, they remain drawn to the Coast.

“We can’t move too far from the Coast because Stu is there.

“I feel a real connection to the Coast. It’s home. It’s where my Pike River family is. My heart will always belong there.”



Vision

What is the Taskforce's vision for the future?

167. The Taskforce seeks an urgent, sustainable step-change in harm- prevention activity and a dramatic improvement in outcomes, to the point where New Zealand's workplace health and safety performance is recognised as among the best in the world in 10 years' time.
168. A number of critical changes and improvements, reflecting dual priorities around acute workplace injury and chronic health conditions, coupled with a seismic shift in attitude, will be needed across the health and safety system to create a robust, efficient and effective system.
169. At the very least, as required by the Government, the package of practical measures recommended in this report needs to result in at least a 25 percent reduction in the rate of fatalities and serious workplace injuries by 2020³⁶. We are confident that this modest target can and will be met, but only if the full package of recommendations is implemented in its entirety.
170. By 2023, if not earlier, the Taskforce wants New Zealand to be one of the best places in the world to go to work and to come home at the end of the day, every day, safe and sound.
171. To turn our vision into reality, we need all of the elements in place for a new, high-functioning system.

Prerequisites for a high-functioning system

172. We need a new, stand-alone, well resourced health and safety agency that is effective in its enforcement and its provision of advice, but this on its own will not be sufficient to ensure the level of change needed across the system. There needs to be a broad-based approach involving change on a number of fronts to help workplaces do the right thing yet hold outliers to account for evading their responsibilities. We need better law, a stronger regulatory toolkit, a lift in leadership, greater commitment and participation from everyone in the workplace, more robust research and data, more effective incentives, and information and guidance material that are fit for purpose. We also require working New Zealanders to shift their mind-sets and lift their game.
173. Following are our prerequisites for a high-functioning workplace health and safety regulatory system.

Good, workable law

174. Our vision is that the law makes clear to duty holders (those who create and/or are in the best position to manage risks to workplace health and safety) what their legal duties are and holds them to account for undertaking those duties. The law is comprehensive in its coverage to ensure there are no gaps. The law increases certainty by clarifying compliance requirements and the legal consequences of non-compliance.

36. The Taskforce's terms of reference are provided in Appendix 2.

An effective primary regulatory agency

175. Our vision is that the new agency has both the mandate and the resources to be a visible and effective best-practice regulator so that all participants in our nation's health and safety system know how to perform well, and are motivated and able to do so. The new agency requires a defined set of statutory functions, powers and accountability mechanisms for its activities. The new agency engages well with key stakeholders and has a commitment to effective tripartism in developing guidance and support to help all parties to comply with their duties under the law, and to deter non-compliance.

Strong, visible leadership

176. Our vision is that all people and organisations able to influence what happens in workplaces 'step up' to provide demonstrable leadership for better workplace health and safety outcomes. Leadership comes from the bottom up, and from the top down - from the Cabinet room and the boardroom to workers on the front line. At a day-to-day level, the chief executive and senior management team lead the way but are held to account by those above (the board) and below (workers) for their responsiveness to concerns and risks. Leadership is vital to creating a workplace culture in which health and safety automatically comes first.

A robust level of capacity and capability

177. Our vision is that safety is an integral part of everybody's personal and workplace values. Our education system (from school to the vocational and tertiary sectors) supports the development of higher levels of awareness of health and safety risks, rights and obligations, and how to manage risk safely. Different users have access to comprehensive, high-quality guidance and standards that are fit for purpose. Research helps us to monitor and enhance our understanding of workplace health and safety risks, and to improve responses to those risks. There is also easy access to quality specialist advisers, when required.

Tripartism throughout the system

178. Our vision is that tripartism is inculcated throughout the workplace health and safety system. Tripartism involves the government regulator, employers and unions working together to improve workplace health and safety outcomes. The UK has shown respect for tripartism for 40 years. Tripartism is also the dominant model in Australia. The Royal Commission found that a key reason for DoL being an ineffective regulatory body was that it had "no shared responsibility at governance level, including the absence of an active tripartite body"³⁷. Tripartism needs to be reflected in engagements between the Government and peak representatives of employers and workers, and in the governance of the regulators. Similarly, the implementation of the Robens model needs to be done on a tripartite basis, with representatives of employers and workers actively engaged in the development of regulations, ACoPs and guidance material.

Genuine and effective worker participation

179. Our vision is that worker participation is a valued part of the workplace health and safety system, and management is interested in and open and responsive to workers' health and safety concerns. 'Active worker participation' means that workers: are involved in developing, implementing and monitoring their workplaces' health and safety systems; can participate through a range of representation mechanisms, including unions; have the training, support and knowledge to enable them to participate without fear of possible repercussions; and can hold PCBUs to account for their responsibilities.

37. Royal Commission (2012A). p 296.

Incentives that are effective levers for good practice

180. Our vision is for a mix of positive incentives ('carrots') and deterrents ('sticks') to encourage better workplace health and safety outcomes. The carrots include risk- and performance-rated levies, and procurement policies that require good practice to act as levers for proactive behaviour. The sticks include significant financial and legal penalties and sanctions for poor performance. Importantly, the incentive regime is designed to overcome any potentially perverse effects, e.g. non-reporting or suppression of ACC claims to avoid the consequences of higher rates of harm.

High-quality data

181. Our vision is that there is a robust, comprehensive and integrated workplace injury and disease data-collection, -monitoring and -reporting system. An effective data-collection and -management system ensures the timely identification of signals and trends among the working population, and across types of work and workplace. Much better intelligence on health and safety risk concentrations, the causes of workplace injuries and illnesses, and the effectiveness of interventions will go a long way to informing the new agency's work, improving health and safety outcomes, and providing benchmarks to firms to understand their own performance in relation to that of others.

Occupational health is taken seriously

182. Our vision is that occupational health is front and centre of New Zealand's health and safety system. Strong government leadership sets ambitious targets and drives a programme of change to improve occupational health outcomes significantly. There are greater capabilities and awareness across government and business, in the health system and among the public to support the effective control of workplace exposures that cause high rates of occupational ill-health. In short, chronic harm prevention is treated with the same priority and commitment as acute harm prevention.

SMEs have easy access to useful information

183. Our vision is that health and safety information and advice are accessible and tailored to SMEs, which are the predominant business type in New Zealand. This information may be provided by the new workplace health and safety agency, by other businesses in their industries or with which they do business, and through trusted intermediaries such as accountants and industry associations. Regardless of source, it allows owners, managers and workers in SMEs to address workplace health and safety in a way that is fit for purpose and proportionate to the inherent risks in their workplaces.

High-risk population groups are targeted effectively

184. Our vision is that the new agency targets its activities towards the high-risk population groups that are overrepresented in injury, illness and fatality rates. These groups include workers in high-risk industries and occupations, males, older and younger workers, Māori, Pacific and other ethnic groups, recent migrants, people in casual and contract work and new on the job, and the self-employed. Further, there are targeted actions to changing unacceptable workplace health and safety practices and improving outcomes, e.g. literacy, language and communication skills training targeted to higher-risk workers with literacy skill gaps in firms in high-risk industries.

Major hazard facilities are effectively regulated

185. Our vision is that there is a comprehensive and systemic framework for managing workplace health and safety risks in major hazard facilities. This framework is future focused, and involves mapping major hazard facilities and prioritising them by risk. It also involves scanning the New Zealand and international environments to identify new and emerging potentially catastrophic risks, and responding appropriately to the implications of major incidents and international changes to major hazard facilities regulation. In particular, the

regulatory approach to major hazard chemical storage and processing facilities is updated. The general public has confidence that risks in major hazard facilities are managed appropriately.

A national culture that is more risk aware

186. Our vision is for our national culture to be intolerant of preventable harms and to have a positive view of health and safety. New Zealanders have a high awareness of potential risks at work and are proactive in managing them. This

involves New Zealanders being engaged in the campaign to improve workplace health and safety outcomes. It requires everyone to understand the key issues and be committed to solving them together. Ultimately, New Zealanders have a low tolerance for risky, unsafe and unhealthy work, and are personally proactive about good health and safety practice.



The health and safety system

187. The Taskforce's consultation document presented the workplace health and safety system in two contexts:
- a. the *workplace* context, which covered features that have impacts on health and safety outcomes within workplaces, that are related to work organisation, people in a workplace and workplace features³⁸
 - b. the *external* context, which makes up the workplace health and safety system and influences individual workers, employers and the self-employed in workplaces. This external context included³⁹:
 - i. the economic environment
 - ii. the socio-cultural environment
 - iii. knowledge systems
 - iv. regulatory systems.
188. During our consultation process we identified that medical aspects of the workplace health and safety system had not been explicitly addressed. This oversight downplayed the importance of occupational health and omitted to identify interactions by medical practitioners with the system's components and workplaces.
189. Medical practitioners, including occupational health specialists and GPs, are an important source of specialist knowledge, capacity and capability. The workplace health and safety system defines some specific roles for medical practitioners, e.g. GPs diagnosing occupational causes of illnesses, and occupational health specialists giving expert advice to workers and 'persons conducting businesses or undertakings' (PCBUs) on how to address occupational health issues.
190. The workplace health and safety system also relies on medical practitioners to inform the regulatory system. For example, this information ensures that good decisions can be made about occupational health requirements that are included in regulations, ACoPs and guidance material, and that can help the regulators to target their compliance activities.
191. The sections of the report that follow are structured to reflect the nature of the Government's role in influencing the workplace health and safety system. In essence, the Government has three broad levers it can pull to influence behaviour by workers, PCBUs and other participants in workplaces.
- a. *Accountability levers*. The Government can create accountabilities and set expectations through legislation, regulations or ACoPs, empowering state agencies by providing them with the mandate and functions to ensure compliance with legal requirements, and empowering individuals. The Taskforce's recommendations that involve the use of this lever are in the section headed *Accountability levers*.
 - b. *Motivating levers*. The Government can encourage behaviours. This involves providing positive incentives to encourage or reward desirable behaviours, and negative incentives to discourage or sanction undesirable behaviours. While many incentive programmes are established under legislative provisions, the common feature of incentive programmes is that they encourage rather than mandate behaviours. The Taskforce's recommendations that involve the use of this lever are in the section headed *Motivating levers*.

38. Independent Taskforce on Workplace Health and Safety (2012). *Safer Workplaces – Consultation document*, pp 5-6, paras 5-6 and Figure 1.

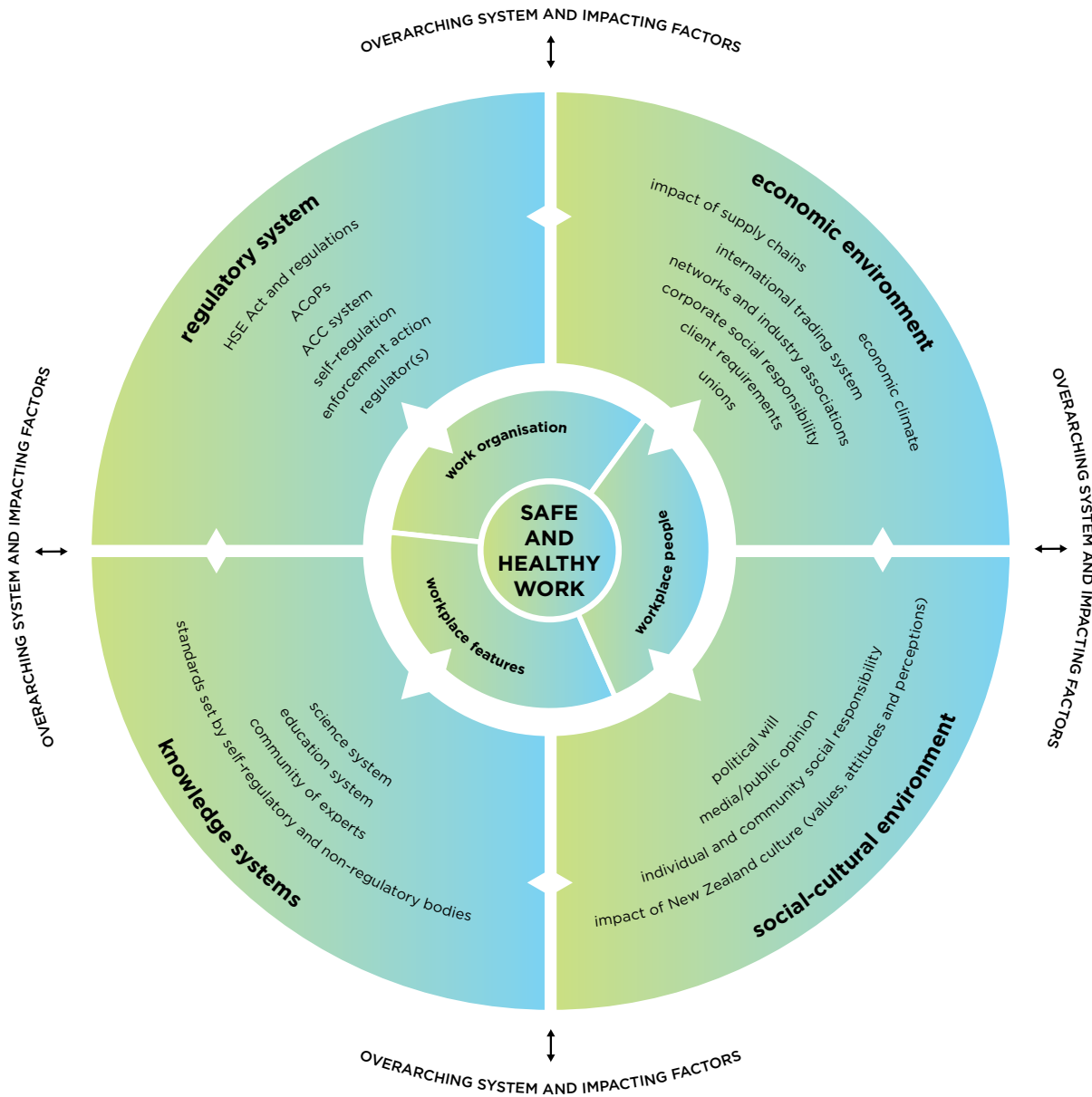
39. *Ibid*, pp 6-8, paras 7-14 and Figure 2.

c. *Knowledge levers.* The Government can influence behaviours. This involves providing information to influence people's choices about how they behave, and ensuring that people have the knowledge, capacity and capabilities to make good decisions. It also involves ensuring that the workplace health and safety system is supported by research and evaluation, and reinforces learning by participants in the workplace health

and safety system. The Taskforce's recommendations that involve the use of this lever are in the section headed *Knowledge levers.*

192. To help guide readers through this final report, the top sides of the pages in the 'Levers for change' sections of the report use different-coloured strips to identify whether they are discussing the accountability, motivating or knowledge levers.

FIGURE 2: System diagram



PART 2

LEVERS FOR CHANGE



ACCOUNTABILITY LEVERS

PART 2.1

Accountability levers

193. An effective workplace health and safety system requires that those who create risks, those who are best placed to manage those risks, and those who should be protected from harm are absolutely clear about their obligations and rights.
194. The Taskforce proposes a set of accountability mechanisms that will strengthen and clarify these rights and obligations in a new workplace health and safety law. Three key system participants are given particular attention. The first are those who have a duty to protect others from harm, specifically those who conduct or direct businesses or undertakings. The second are workers who have a right to be protected from harm.
195. The third is the new workplace health and safety agency, which will co-ordinate, facilitate, guide and, where necessary, direct and sanction, and be the hub for data and knowledge. The primary regulator has been a weak link in the system. The new accountability arrangements will establish the new agency as a critical partner, alongside duty holders and workers, in making the new system work.

Recommendations

(The recommendations below are listed in the Executive Report as Recommendations 1-8)

196. The Taskforce recommends that the Government:
- a. establish a new workplace health and safety agency with a clear identity and brand, and statutorily defined functions, including:
 - i. it should be a Crown agent

- ii. the new agency should be constituted on a tripartite basis, including an independent chair and members reflecting the interests of workers, unions, employers and iwi, as well as other parties interested in the workplace health and safety system
 - iii. the new agency should have primary responsibility for workplace harm prevention, including strategy and implementation
- b. enact a new workplace health and safety Act based on the Australian Model Law, including:
- i. the scope of the new Act should include acute, chronic and catastrophic harm
 - ii. an Object based on the Object in the Model Law
 - iii. duties should extend to all relationships between those in control of workplaces and those who are affected through adopting the Australian approach of PCBUs
 - iv. duties should extend to all those in governance roles through adopting the Australian approach of giving a due diligence obligation to officers of PCBUs
 - v. replacing the current 'all practicable steps' test with the Australian 'reasonably practicable' test
- c. strengthen the legal framework for worker participation, including through providing (based on the Model Law):
- i. specific obligations for PCBUs to support worker participation

- ii. expanded powers and responsibilities for worker health and safety representatives
- iii. stronger protections for workers who raise workplace health and safety matters
- d. ensure that the following actions occur to support effective worker participation:
 - i. the new agency should include in regulations, ACoPs and guidance material more specific requirements for how worker participation is expected to occur
 - ii. the new agency should provide increased support for worker participation, including increased support for:
 - worker health and safety representatives
 - workers who raise workplace health and safety matters, including either confidentially or anonymously
 - unions' existing rights of entry
- e. ensure a much stronger alignment and co-ordination of workplace health and safety activities through:
 - i. regulation of the use of hazardous substances in the workplace that are currently under the HSNO Act (although enforced by MBIE) moving to the new workplace health and safety legislation. This will make it easier for the new agency to provide guidance, co-ordinate and enforce the law, and reduce complexity and uncertainty for businesses
 - ii. a partnership between the new agency and ACC to oversee funding arrangements for the delivery of workplace injury prevention activities
- f. revise the workplace health and safety activities of transport regulatory agencies (CAA, MNZ, New Zealand Police and NZTA) to

- ensure that they:
- i. are led by the new agency through service-level agreements for specific health and safety services
 - ii. are strategically and operationally co-ordinated through a cross-agency oversight group to ensure:
 - effective targeting that takes a risk-based approach
 - common capabilities and warranting
 - the alignment of compliance strategies
 - effective co-ordination when dealing with accidents
 - stronger operational co-ordination while allowing for specialist expertise
 - g. significantly strengthen the regulation of occupational health by:
 - i. giving the new agency accountability and responsibility for leading strategic and operational occupational health activities in New Zealand
 - ii. establishing an occupational health unit within the new agency
 - h. strengthen the regulatory regime for managing the risks of major hazard facilities by:
 - i. mapping the risk landscape around potential catastrophic failure
 - ii. developing criteria and prioritising types of major hazard facility for inclusion in the major hazard facilities' regulatory framework
 - iii. ensuring that robust regulatory requirements apply to all priority facilities
 - iv. building capacity in the new agency to provide rigorous regulatory oversight and ensure compliance with the new regulatory framework.

A new workplace health and safety agency

197. A strong theme among submitters was that the current primary regulator does not provide adequate leadership within the workplace health and safety system. Duty holders were uncertain about what they needed to do to meet their obligations. Enforcement is weak, and there is inadequate investment in developing support systems, such as education and training provision and professional advisers.
198. To ensure an effective workplace health and safety system, the Taskforce believes it is vital for there to be a well resourced regulator that has a clear mandate to bring about change, and an ability to do so. This view of the importance of a strong regulator is consistent with international thinking on the role of government in securing important societal outcomes such as improved workplace health and safety⁴⁰ and a reduced risk of regulatory failure. It is reflected in recent decisions to strengthen other New Zealand regulatory regimes, e.g. the establishment of the Financial Markets Authority.
199. The regulator must be able to detect and penalise those who break the law. More importantly, the regulator must be able to inform, guide and direct as appropriate. To be effective as both enforcer and facilitator, the regulator must be seen to be credible – that it will keep its promises.
200. The regulator’s ability to maintain consistency and clarity of purpose will be enhanced if it has statutory independence. Consistent with the recommendation of the Royal Commission, the Taskforce considers that the regulator should be a Crown agent⁴¹.
201. The new agency’s governance arrangements should be reflective of stakeholders in the workplace health and safety system. To this end, the Taskforce recommends that the governance board of the new agency be constituted on a tripartite basis. That is, it includes an independent non-executive chair and has a minimum of two members representing workers, two members representing business and one member representing iwi.
202. The Taskforce also recommends that the board comprise eight to 10 people. They should be selected on the basis of their knowledge and experience in public sector governance, New Zealand’s health and safety environment and the perspectives of stakeholders, and the administration of risk-based workplace health and safety regimes. The chair should have mana with stakeholders as well as being independent and expert in the area of health and safety.
203. Representative bodies of workers and businesses should be able to make nominations and have these considered by the responsible Minister. The Taskforce does not consider that members should represent their nominating constituencies. While those constituencies bring unique, important and valuable perspectives, individuals have an overriding governance responsibility as board members. The Minister should, however, be required to put in place a process for selecting the board that gives confidence to stakeholders, in particular the most representative organisations of workers and employers.
204. A tripartite board constituted along the lines recommended by the Taskforce will, amongst other things, meet New Zealand’s ILO obligations and provide adequate scrutiny of the new agency’s performance. Therefore the Taskforce does not consider that there needs to be a separate tripartite group providing advice to the board. Nor do we support the alternative approach of an independent board that is not constituted on a tripartite basis but that is supported by a tripartite advisory group. The Royal Commission similarly concluded, “In summary, New Zealand lacked effective shared governance, despite its importance being recognised in the DoL 10-year strategy. As Robens concluded 40 years ago, advisory committees have little

40. Baldwin, R and Black, J (2008). Really Responsive Regulation, *The Modern Law Review*, 71(1), pp 59-94.

41. Royal Commission (2012A), pp 300-301, paras 17-23.

influence; an executive board is required if there is to be effective participation in decision-making"⁴².

205. Based on its recommendation that the board be constituted on a tripartite basis, the Taskforce recommends that the Workplace Health and Safety Council be disestablished.

Functions

206. The HSE Act does not set out the functions of the regulator. Modern legislative practice is that functions should be specified in the law. The Taskforce recommends that the new agency be given the legislative functions to:

- a. provide policy advice with regard to technical regulations
- b. develop technical regulations and make codes of practice, and monitor and enforce these to ensure effective compliance
- c. provide authoritative guidance, advice and information so as to improve certainty and predictability
- d. monitor and report on how the system is working in practice, and make recommendations for improvement, including advice on a national workplace health and safety strategy
- e. make recommendations to the Minister on the level and nature of any funding, including levies, fees or cost recovery, required to carry out its legislative functions effectively
- f. promote and support effective worker participation
- g. promote, support and co-ordinate workplace health and safety activities across appropriate government and non-government agencies
- h. conduct investigations and reviews that seek to understand the root causes of accidents with a view to avoiding similar occurrences in future
- i. collect, analyse and publish statistics relating to health and safety
- j. promote and support health and safety-related education and training

- k. promote and support research into health and safety
- l. promote access to competent advice
- m. encourage a whole-of-life view of health and safety through the good design of plant, buildings and equipment
- n. promote and support health and safety management systems, and control risks in high-risk industries and major hazard facilities to as low as reasonably practicable
- o. collaborate and co-ordinate with industries, unions, sectors and communities in engaging the whole system in harm-prevention efforts
- p. maintain active relationships with international counterparts and intergovernmental bodies
- q. co-operate and share information with other agencies.

207. The Taskforce has considered whether the new agency should be given a function of developing a national workplace health and safety strategy. We accept that the responsibility for endorsing such a strategy rests with the Government. The Taskforce has recommended that the new agency have a function of advising the Government on such a strategy. However, the Taskforce has a strong view that there should be a national strategy, and we recommend a duty in the new Act for the responsible Minister to produce one.

208. The Taskforce is also concerned not to lose sight of the lessons from the Pike River coal mine tragedy, and from the Taskforce's own inquiry process, about the need for regular, strategic assessments of the performance of the workplace health and safety system. Responsibility for these strategic assessments should rest with the Minister of Labour as the person ultimately accountable to New Zealanders for ensuring that the workplace health and safety system is performing effectively.

42. Royal Commission (2012A), p 292, para 27.

209. The Taskforce recommends that the new workplace health and safety legislation include a statutory responsibility for the Minister to report on a regular basis on the performance of the workplace health and safety system, including the adequacy of funding for the system. These strategic assessments should include contributions from MBIE, the new agency, other regulators and stakeholders, particularly the social partners, to reflect the tripartite nature of the workplace health and safety system.

Powers

210. The new agency must have some powers, such as information gathering, to enable it to carry out its functions. Regulators may also be given additional powers to enhance their effectiveness. Modern regulator practice is for regulators to have the ability to apply a range of approaches to ensuring compliance, depending on the circumstances⁴³. This suggests they should be given a comprehensive set of powers. Drawing on the Model Law, practice in other countries such as the UK, and New Zealand experience, the Taskforce recommends that the new agency have the legislative power to:

- a. gather information
- b. undertake investigations, audits and inspections
- c. undertake consenting and accreditation
- d. execute search warrants
- e. require warnings to be disclosed to affected workers
- f. enter enforceable undertakings
- g. issue improvement and prohibition notices
- h. issue infringement notices
- i. issue compliance orders or restoration orders
- j. recover its costs
- k. apply to the courts for adverse publicity orders.

Duties

211. Modern regulatory practice dictates that regulators be transparent in how they carry out their functions. They are also expected to draw on the best available information and advice through effective and inclusive engagement with experts, the regulated sector and the broader community⁴⁴. The Taskforce recommends that the new agency:

- a. publish its compliance strategy to make clear how it will strike a balance between information/guidance and enforcement, and how it will achieve certainty without being overly prescriptive and complicated
- b. publish its priorities for regulatory action
- c. in carrying out its functions, draw on the best available information and advice, including international experience and practice, assess the benefits, costs and risks, and consult widely, including applying the principle of tripartism.

A workplace health and safety Act

212. The Taskforce believes that the changes it is proposing require new legislation rather than simple amendments to the existing HSE Act. We recommend that the scope of the new Act extend to acute, chronic and catastrophic harm. We also recommend that the new Act be based on the Model Law and associated regulations while having regard to distinctive New Zealand conditions.

213. We have identified specific provisions in the Model Law that we consider should be replicated in the new Act. We are mindful that the alternative is to modify existing New Zealand law.

214. At a general level, the advantage of modifying current New Zealand law is that it will retain some familiarity to duty holders and others, thus reducing the costs, time and uncertainty associated with something completely new.

43. Ayres, I and Braithwaite, J (1992). *Responsive Regulation: Transcending the deregulation debate*. Oxford, Oxford University Press.

44. New Zealand Treasury (2002). *The Best Practice Regulation Model: Principles and assessments*.

Retrieved 19 April 2013 from: <http://www.treasury.govt.nz/economy/regulation/bestpractice/bpregmodel-jul12.pdf>.

215. The advantages of replicating the Australian provisions are fourfold:
- a. they are the most recent articulation of the Robens approach available to us. In developing the Model Law, Australia has been through an extensive modernisation process, drawing on both Australian and international experience. We have the opportunity to capitalise on that work
 - b. the Model Law is sufficiently novel that New Zealand duty holders and regulators can be under no illusion that there is a new regime that requires new behaviours
 - c. common trans-Tasman provisions will facilitate the use of Australian experience, jurisprudence and guidance material in New Zealand. This includes the implementation of the new regime. It will give us access to a comprehensive set of legislation, regulations and guidance, which means that we will not need to start from scratch
 - d. a consistent trans-Tasman approach will contribute to the Single Economic Market with Australia through reducing the transaction costs for firms and individuals operating in both markets.
216. While on balance the case for aligning New Zealand's new Act with the Model Law is stronger than the case for a modified status quo, we do not support replication without regard to New Zealand-specific conditions. Even within Australia, individual states and territories adapted some provisions of the Model Law in the course of enacting it within each sovereign territory. That being said, variations to the Model Law should be kept to a minimum and only made for good reason.
- A new 'Object'**
217. The Taskforce recommends that the new Object include the following elements:
- a. more positive language in relation to what is to be achieved. The current Object in the HSE Act is to *promote* the prevention of harm to all persons at work. The Taskforce proposes that in line with the Model Law, the Object in the new Act should be to *secure* the health and safety of workers and workplaces
 - b. greater clarity in terms of *who* will be protected and *how*. We need to adopt the language in the Model Law, which identifies "workers and other persons" who will be protected "through the elimination or minimisation of risks arising from work"
 - c. a principle to inform duty holders and regulators on the level of health and safety being sought. We need to adopt the principle in the Model Law that "workers should be given the *highest level of protection* against harm to their health, safety and welfare from hazards and risks arising from work [or from specified types of substance or plant] as is reasonably practicable".
218. Achieving the Object should:
- a. ensure compliance through effective enforcement
 - b. provide certainty and predictability in terms of the standards that duty holders must meet
 - c. reduce complexity and make compliance easier than non-compliance
 - d. promote tripartism
 - e. facilitate effective worker participation
 - f. ensure effective leadership at both board and management levels
 - g. promote a positive safety culture
 - h. promote continual improvement and best practice approaches to health and safety, benchmarked internationally
 - i. promote education and training in health and safety
 - j. ensure that health and safety is treated by firms as importantly as any other business objective
 - k. provide compliance with international obligations.

Duty holders

219. The Taskforce believes that the underlying foundation of the regulatory framework should be the allocation of duties to those who are in the best position to control workplace health and safety risks to keep them as low as is reasonably practicable. The workplace environment has changed since the HSE Act was enacted in 1992. In overseas jurisdictions, regulatory frameworks have been changed to expand the range of duty holders. As a result, the Taskforce considers that the current formulation of duties in the HSE Act is no longer fit for purpose or up to date.
220. The duties should:
- provide for the *coverage* necessary to ensure that those people who can prevent workplace harm have an explicit obligation to do so
 - assign the *appropriate duties* to the appropriate duty holders to ensure that their actions are directed at preventing the most workplace harm.
221. The Taskforce recommends that the current duties extend to:
- all upstream participants in the supply chain, drawing on the scope of the Model Law, e.g. designers, manufacturers, importers and suppliers of plant, substances and structures, and commissioners of plant and structures
 - adopt the concept of a PCBU as in the Model Law. This covers all relationships between those in control and those who are affected, recognising that the traditional employer-employee relationship is now only one way in which firms organise their workforces. In the Model Law, the PCBU is assigned the primary duty of care. A PCBU must “ensure that, as far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged by the person; and workers whose activities in carrying out work are influenced or directed by the person, and must also ensure that the health and safety of other persons is not put at risk from work carried out”. The PCBU role expands the primary duty holder to businesses that do not directly engage employees, such as taxi licence owners and franchisors⁴⁵.
222. The Taskforce also recommends that those in governance roles assume duties. We propose that, in line with the Model Law, a due diligence duty be created for officers of PCBUs to ensure that the people conducting the businesses comply with their duties or obligations. Officers include directors and people who participate in decision-making, e.g. chief executives. In terms of rationale, we do not consider that we can improve on the sentiment in the Robens report, on which the HSE Act is based:
- “Promotion of safety and health at work is an essential function of good management. We are not talking here about legal responsibilities. The job of a director or senior manager is to manage. The boardroom has the influence, power and resources to take initiatives and to set the pattern. So far as the first of our prerequisites is concerned—awareness—the cue will be taken from the top”⁴⁶.*
223. While Lord Robens rightfully associated the promotion of workplace health and safety with good management rather than legal compliance, we consider that the step-change required in New Zealand necessitates this ‘good management’ principle to be reinforced as a legal duty for those in governance roles. We believe strongly that directors’ duties in relation to workplace health and safety should be as strong as other fiduciary duties.
224. To support the establishment of a new Act that imposes a duty on those in governance roles, the Taskforce makes the following recommendations:
- that the new agency and IoD develop an ACoP and guidance to support directors’ new legal duties
 - that the new agency, IoD and other financial market actors, e.g. the New Zealand Stock Exchange, develop guidance for all companies (not just incorporated companies) for reporting on health and safety matters.

45. Given that the PCBUs have a broader scope than that of traditional employers, it can be expected that the scope of ‘employees’ will similarly expand. The Model Law uses the term “worker”, which includes employee, contractor, sub-contractor, self-employed person, outworker/homeworker, apprentice or trainee, work experience student, labour hire employee and volunteer.

46. Robens (1972) *Report of the Committee on Health and Safety at Work 1970-1972*, Her Majesty’s Stationery Office, London.

225. Guidance for directors in discharging their duties is important. In the UK, IoD and the Health and Safety Executive have produced guidance material for directors and senior leaders. This material identifies core actions for boards and individual directors that relate directly to their legal duties. The material also provides good-practice guidelines that set out ways to give the core actions practical effect. Subject to the nature of any new substantive duties on directors, this guidance material could form the basis for an ACoP or supporting guidance material.
226. The role of directors should also be supported by setting expectations or providing guidance for companies in reporting on health and safety matters. This should be done on the same basis that directors must sign off the annual reports for a company. In the UK, the Institution of Occupational Safety and Health has provided guidance on this matter⁴⁷, which could form the basis for similar guidance in New Zealand. The Taskforce has considered whether companies should be required to report on health and safety practices and performance, similar to requirements to report on financial performance. We are of the view that there should be such a requirement. We recommend that MBIE and the new agency investigate how a mandatory reporting regime could be implemented.

Duties

227. The Taskforce considers that the current 'all practicable steps' test should be changed to improve certainty, clarify that risk-based decision-making is required, and create a presumption in favour of health and safety.
228. We have considered the debate over whether the regulatory framework should be risk based or hazard based. We are aware that in overseas jurisdictions such as the UK and Australia, HSE regulatory frameworks are risk based. Risk-based regulation seems to be the norm in areas ranging from environmental to financial markets regulation. A number of submitters proposed that the New Zealand framework be risk based. Other submitters, however, argued strongly that we should retain a hazard-based approach.
229. The Taskforce suggests that the distinction between risk-based and hazard-based approaches may be overstated. At a simple level, hazards give rise to risk, and such risks should be controlled to as low a level as is reasonably practicable. In making risk-mitigation decisions, regard should be given to the likelihood and consequences of an adverse event occurring, and both the benefits and costs of mitigation. This calculation broadly describes risk-based regulation.
230. The Taskforce believes that the regulatory framework should be made explicitly risk based. In doing so, regard should be given to the following points:
- a. while a test (currently 'all practicable steps') should be retained in the new Act, it should be couched in terms that provide maximum certainty to those who have to apply it. It should also incorporate the concept of reasonableness based on a risk assessment and cost-benefit analysis. As knowledge changes over time, the test should make clear that ongoing assessments are required
 - b. the application of a new test that incorporates this concept of reasonableness must not provide an excuse to avoid health and safety responsibilities. On the contrary, our expectation is that it will create a presumption in favour of the highest level of protecting against harm.

47. Institution of Occupational Safety and Health (2011). *Reporting performance - Guidance on including health and safety performance in annual reports*. Retrieved 19 April 2013 from: http://www.iosh.co.uk/books_and_resources/guidance_and_tools.aspx

231. We consider that the test in the Model Law achieves these objectives. We therefore recommend that it be used as the basis for a new test in New Zealand law, as follows:

“Reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- a. *the likelihood of the hazard or the risk concerned occurring; and*
 - b. *the degree of harm that might result from the hazard or the risk; and*
 - c. *what the person concerned knows, or ought reasonably to know, about:*
 - i. *the hazard or the risk; and*
 - ii. *ways of eliminating or minimising the risk; and*
 - d. *the availability and suitability of ways to eliminate or minimise the risk; and*
 - e. *after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.”*
232. We are mindful that, if not managed carefully, the practical effects of the measures that we are proposing to create greater certainty (including a better-specified test and more technical regulations, ACoPs, guidance and advice) could lead to excessive prescription and complexity. The new agency must be effective in both facilitating compliance through better information and managing the risk of over-regulation. Enabling, flexible, helpful and easy to comply should be the traits that the new agency seeks to embody.

Worker participation

233. Internationally, the value of worker participation in workplace health and safety is acknowledged through conventions and directives by organisations like ILO⁴⁸ and the European Union⁴⁹. It is also reflected in UK research that finds “joint arrangements, through which workers are represented and consulted on their health and safety, are likely to have better outcomes than arrangements in which management acts without consultation”⁵⁰.
234. Our consultation process confirmed that worker participation in the management of workplace health and safety issues is not being effectively implemented. Improved engagement with workers is necessary. We consider that there needs to be a major ‘mind-shift’ in New Zealand society and in workplaces. This ‘mind-shift’ needs not only to lead to more opportunities for worker participation but also to set an expectation that everyone in the workplace is responsible for workplace health and safety. Everyone must feel empowered to intervene when they see an unsafe situation. However, we do not consider it appropriate to go as far as imposing a legal duty on everyone to intervene.
235. At a workplace level, the Taskforce considers it is important that each workplace is able to identify the approach to worker participation that is appropriate to its circumstances. Case study research commissioned by the Taskforce reinforced that worker participation arrangements are varied and “how they work in practice is somewhat different from that envisaged by the legislation”⁵¹.

48. ILO (1981). C155 - *Occupational Safety and Health Convention, 1981* (No. 155). Retrieved 22 March 2013 from: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312300.

49. European Agency for Safety and Health at Work (2002). *Directive 2002/14/EC - Establishing a general framework for informing and consulting employees in the European Community*. Retrieved 22 March 2013 from: <http://osha.europa.eu/en/legislation/directives/sector-specific-and-worker-related-provisions/osh-related-aspects/directive-2002-14-ec-establishing-a-general-framework-for-informing-and-consulting-employees-in-the-european-community>.

50. Walters, D, Nichols, T, Connor, J, Tasiran, A and Cam, S, (2005) *The Role and Effectiveness of Safety Representatives in Influencing Workplace Health and Safety*. [Prepared by Cardiff University for the Health and Safety Executive 2005, Research Report 363]. Retrieved 19 April 2013 from: <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>

51. Heathrose Research (2013). *Final Report: Case Study Policy Themes*, p 8.

236. While a one-size-fits-all approach to effective worker participation is not appropriate, PCBUs do need to ensure that they have effective systems for worker participation (preferably integrated into their workplace health and safety systems) that are fit for purpose for their individual workplaces.
237. The legal provisions for worker participation in the new workplace health and safety legislation should be a foundation for good workplace practices. They should be based on mandatory minimum rights, powers and responsibilities for worker representatives. International research suggests “where the active involvement of workers is underpinned by legal entitlements to perform occupational health and safety functions, and to receive training and information, that is most effective in improving OHS outcomes”⁵².
238. More customised expectations or guidance should be set out as part of industry- and situation-specific regulations, ACoPs and guidance material.
239. The Taskforce recommends that the Government strengthen the legal framework for worker participation, including through providing (based on the Model Law):
- stronger obligations on PCBUs to support worker participation
 - expanded powers and responsibilities for worker health and safety representatives
 - stronger protections for workers who raise workplace health and safety matters.
240. To support effective worker participation, we propose that the Government ensure that the following actions occur:
- the new agency includes in regulations, ACoPs and guidance material more specific requirements for how worker participation is expected to operate
 - the new agency provides increased support for worker participation including:
 - worker health and safety representatives
 - workers who raise workplace health and safety matters, including either confidentially or anonymously
 - workers who are hard to organise or to reach
 - unions’ existing rights of entry.
- Specific obligations on PCBUs to support worker participation**
241. The Taskforce considers that low levels of general and workplace-specific awareness may limit workers’ ability to participate in workplace health and safety matters, and to ensure their own safety, health and wellbeing. Raising general awareness is primarily the responsibility of the new agency. However, PCBUs should be responsible for lifting workplace-specific awareness as part of the expectation that PCBUs have fit-for-purpose health and safety management systems, including worker participation mechanisms.
242. Employers currently have specific obligations to provide health and safety representatives with paid leave to attend health and safety training (sections 19E and 19F of the HSE Act).
243. In addition to those existing responsibilities, we recommend that PCBUs have explicit legal responsibilities to:
- consult, as far as reasonably practicable, workers who are or are likely to be directly affected by matters relating to health and safety, and with health and safety representatives
 - have issue-resolution procedures where matters about work health and safety arise at workplaces and the matters are not resolved after discussions between parties
 - identify workplace-specific health and safety matters in employment agreements

52. Gunningham and Associates (2009). *Underground Mining Information: Contextual advice on international standards and literature review* (RFP 234) – Report for the Workplace Group of the Department of Labour, p 17; and Walters et al (2005).

- d. identify workplace-specific health and safety issues in induction processes, including inductions for new roles that cover the health and safety issues for the new roles.
244. The Taskforce considers that an obligation to consult workers, based on the Model Law, is appropriate. It would reinforce the expectation that everyone in the workplace is responsible for workplace health and safety. It would also build on and strengthen the current arrangements requiring reasonable opportunities for employees to participate effectively in ongoing processes for the improvement of health and safety (section 19B of the HSE Act).
245. The rationale for an obligation to consult workers is reinforced by international health and safety experts, Gunningham and Associates: *“There is considerable literature... which suggests that worker participation in the identification, assessment and control of workplace hazards, is fundamental to reducing work-related injury and disease. Workers have the most direct interest in OHS of any party; it is their lives and limbs that are at risk when things go wrong. Moreover, the hazards at work need to be identified and evaluated, and workers’ experience and knowledge are crucially important in successfully completing both of these tasks. Worker participation also has a number of other benefits”*⁵³.
246. The requirement for an issue-resolution procedure, based on the Model Law, would also lift expectations for PCBUs to respond to workers’ concerns about workplace health and safety matters. Currently there are procedures relating to employers responding to recommendations from health and safety representatives and committees (section 19B of the HSE Act). We consider that adopting the Model Law approach, which makes explicit the expectation that matters that cannot be resolved between parties in a workplace may be referred to the new agency, will legitimise the raising of issues by workers and workplace health and safety representatives and committees. The new agency should develop guidance on how it will respond to issues that are referred to it. This guidance should also set expectations of the reasonable efforts to resolve issues in workplaces, and signal how mediation can be used to support parties in resolving issues⁵⁴.
- Expanded powers and responsibilities for workplace health and safety representatives**
247. The HSE Act currently includes specific requirements for the development of an employee participation scheme, either on request or where an employer employs more than 30 employees (section 19C and Schedule 1A). The HSE Act was intended to be supplemented by an ACoP for worker participation. However, this has never been implemented. The HSE Act also specifies a number of rights, powers and functions for health and safety representatives. But less detail is provided than in other countries, such as in the Model Law.
248. The Taskforce is concerned that the current provisions do not provide sufficient clarity about the role of health and safety representatives (and committees), or expectations for employers’ interactions with health and safety representatives. The current default settings for the type of worker participation system that is required are inappropriate.
249. We recommend that the new workplace health and safety legislation provide workplace health and safety representatives and committees with sufficient powers, functions and rights to contribute effectively to addressing workplace health and safety matters. As a starting point, these powers, functions and rights should be based on those provided in the Model Law unless otherwise stated. In general, these make more explicit the powers that health and safety representatives would currently be expected to have in New Zealand. However, there would need to be a clear strengthening to allow:

53. Gunningham and Associates (2009), p 15.

54. Mediation is already available for any workplace health and safety matter that is an employment relationship problem, and dispute resolution services may be provided to parties in work-related relationships that are not employment relationships. However, mediation and dispute resolution services are utilised to a limited extent for workplace health and safety matters.

RESPECT FOR WORKER VOICE IMPORTANT AT FONTERRA

Employee participation in workplace health and safety is essential, and having a structured way to engage with management “is great for both of us”, says NZ Dairy Workers Union national organiser, Mark Apiata-Wade.

“It’s empowering for workers when there is a recognised forum and a structured approach for discussing health and safety issues,” says Mark. “It means that health and safety is taken seriously by everyone, and workers’ concerns are given the respect they deserve.”

Fonterra General Manager, Health and Safety, Terry Johnson, agrees that only with a consultative approach will a company get the best health and safety outcomes.

“The key to success is for all parties to have a say in how things operate, what you want to achieve and what the issues are in achieving them,” Terry says.

“The key to success is for all parties to have a say in how things operate, what you want to achieve and what the issues are in achieving them,” Terry says.

The Dairy Workers Union has a good relationship with dairy giant Fonterra. Some 5,000 of the union’s 7,000 members work for Fonterra, and the overwhelming majority of Fonterra’s waged employees are unionised.

About six years ago Fonterra and the union developed an agreement that forms the basis of their relationship on health and safety. Its formal title is ‘Worker Participation System Agreement’.

It seeks to improve health and safety by “promoting co-operation” between Fonterra, its workers and the union, and to ensure that all workers can “actively participate” in the

management and improvement of health and safety.

“It clearly outlines the rights and responsibilities of all parties, and the terms and systems of engagement,” says Mark.

“Having the agreement has forced us to have a structured way of interacting. It means that health and safety is not just an ‘add-on’ to the things we engage with Fonterra about. It doesn’t get crowded out by other priorities such as wage negotiations. It’s not a trade-off item.

“Now health and safety is seen as absolutely crucial regardless of whatever else is going on.”

There is a health and safety committee at each of Fonterra’s 30 manufacturing sites around New Zealand. This committee (as a minimum) is made up of an elected chair, a management representative, a health and safety adviser, a site (union) delegate, and representatives of different work teams. A union official also gets invited to attend meetings, which are generally held monthly.

“Now health and safety is seen as absolutely crucial regardless of whatever else is going on.”

“Terry and I then have quarterly catch-up meetings at a senior level to monitor developments and any issues of concern,” says Mark. “While obviously we disagree at times, this is generally about approach and alternatives, not the end goals.

“Both parties are genuinely committed to improving health and safety outcomes. This [agreement] is a living practical document, and it works.

“In my view, workers and managers have separate interests at times. If you are a manager,

you want your workers to be engaged, committed and hard working. But if you are a worker, you have to feel some sense of ownership and a genuine 'say' in how things work for you to feel engaged and happy.

"Without the agreement we would be raising issues without any certainty that they would be respected and responded to. The agreement legitimises workers' concerns."

Fonterra's Terry Johnson has experience as a safety consultant in Australia, India, the United States, Indonesia and Singapore.

"I've learned that the best outcomes arise from clear leadership, a clear goal of what you want to achieve and a clear plan for reaching that goal. You also need all staff in a workplace to have the opportunity to contribute, to voice their opinions. You need the 'we' word in there. 'How does everyone think we should proceed?'"

Fundamentally, involving staff in health and safety makes good business sense.



"You get the best results when people are informed and involved in decisions. And if your safety is good, generally other key business measures like quality and productivity are positive too." MARK APIATA-WADE

- a. workplace health and safety representatives to have the right to spend such time as, and such access to facilities that, are reasonably necessary to exercise their powers or perform their functions, and an entitlement to be paid for that time
- b. trained or competent workplace health and safety representatives to have the ability to:
 - i. issue provisional improvement notices (PINs), which should trigger the requirements for employers or PCBUs to make changes in response to the PINs or to seek reviews by the new agency of the PINs
 - ii. direct that dangerous work cease, subject to the same conditions for individuals to cease work, with processes to withdraw directions and the opportunity for the new agency to be invited to help the parties to resolve issues relating to the dangerous work.

250. We do not, however, consider that the following provisions of the Model Law are necessary or appropriate for a New Zealand context: the detailed provisions around different types of health and safety representative (e.g. provisions defining work groups and related to deputy health and safety representatives) and the provisions for workplace health and safety entry- permit holders. We also consider that the rights of workplace health and safety representatives to be present at interviews of workers or groups of workers by health and safety inspectors need to be more restricted than in the Model Law. Consideration needs to be given as to whether consent is required from both the worker and the inspector.

251. The new agency should develop guidelines on how it will undertake interviews that take into account the general protections of all people involved in criminal proceedings. These would clarify the operational processes around such interviews for the sake of all parties, and address any concerns about rights

to representation and exclusion. These guidelines should also address whether restrictions on an employer's right to have a representative present when workers are interviewed are needed.

Detailed requirements for worker participation should be developed

252. The Taskforce has recommended that the new workplace health and safety legislation include a requirement that PCBUs consult workers as far as is reasonably practicable. We have also recommended that all firms, as a matter of best practice, have fit-for-purpose health and safety management systems.

253. The Taskforce considers that worker participation, as an elaboration of the requirement to consult workers, must be an element of a fit-for-purpose health and safety management system. Both the New Zealand case study research and international research⁵⁵ support the need for worker participation arrangements to be customised to different workplaces. However, there are a number of principles of worker participation that should apply in any workplace.

254. These principles include:

- a. the workplace rather than the employment relationship should be the focus for workplace health and safety systems – so all workers present in a workplace are covered by the system, including temporary, casual and contract workers⁵⁶
- b. workers should actively participate in developing, implementing and monitoring the workplace health and safety system that is present in their workplace
- c. all workers have a right to participate through an independent range of representation mechanisms of their own choosing, including workplace health and safety representatives, committees and unions where they are present in a workplace
- d. workers should be encouraged to take active responsibility for their own

actions and those of co-workers

- e. workers should be provided with appropriate training, time, facilities and support to enable them to participate in the workplace health and safety system that is present in their workplace.

255. We recommend that the new agency develop a generic ACoP and/or guidance material for worker participation in health and safety. This should build on the above principles and cover procedural matters such as the appointment of representatives and committees. The new agency should also develop more detailed regulations, ACoPs and guidance material that elaborate on how worker participation is expected to occur in different industries, and in firms of different sizes and with different risk profiles (e.g. high-risk situations, major hazard situations and lower-risk situations). This could form part of the suite of regulations, ACoPs and guidance material that we have recommended be developed (see paragraphs 415 to 430 in *Knowledge levers*).

256. To reflect a tripartite approach at all levels of the workplace health and safety system, we recommend that regulations, ACoPs and industry-specific guidance be developed in consultation with worker representatives, including unions where present, and employers.

Protections for workers who raise workplace health and safety matters

257. There are existing mechanisms that should provide protection for workers who raise workplace health and safety matters. These include personal grievance provisions in employment law and whistle-blowing processes. However, the Taskforce is concerned that these mechanisms are not effective and that there are barriers to workers raising matters. Submitters told us that workers do not raise matters due to a lack of awareness of the existing mechanisms, a lack of responsiveness from management and a fear of adverse consequences.

55. Heathrose Research (2013), Gunningham and Associates (2009) and Walters et al (2005).

56. The workplace focus for participation would not preclude employers having arrangements at a higher level, such as regional or national committees.

258. Awareness of the existing mechanisms, and improving management responsiveness to concerns raised by workers, can both be addressed by the new agency. Its general awareness-raising role, and its provision of guidance material on how PCBUs should respond to workers' concerns, should achieve this.
259. In response to concerns that workers do not raise issues due to a fear of adverse consequences, a number of practice changes for the new agency are suggested in paragraphs 268 to 270 below. To support these practice changes, we recommend that more explicit protections against reprisal be included in the new health and safety legislation. They should ensure that workers who raise workplace health and safety matters are effectively protected. Explicit protections against reprisals of this nature are provided in the Australian Model Law, and are also present in Canada.
260. For employees and prospective employees, this would be a relatively minor addition to the existing provisions in the Employment Relations Act 2000 and Human Rights Act 1993. This should ensure that any negative employment consequences from raising a workplace health and safety matter are explicit grounds for raising a personal grievance or are prohibited grounds of discrimination.
261. Further consideration is needed for how protection could be provided to workers who are not employees. This is needed to ensure alignment with PCBUs' obligations to involve all workers in a workplace in managing workplace health and safety matters.
- b. workers who raise workplace health and safety matters either confidentially or anonymously
 - c. unions exercising existing rights of entry.

Increased support for workplace health and safety representatives

263. Health and safety representatives have an existing right to attend health and safety training (under sections 19E and 19F of the HSE Act). Since 2002, around 70,000 people have attended health and safety training.
264. However, submitters and meeting participants raised numerous concerns about the existing provisions for training, including:
- a. whether the current training available is effective and focused at the right level
 - b. the turnover or churn of representatives means that capabilities are not being built on
 - c. the lack of systemised connections to unit standards and qualifications for some training.
265. In part, these concerns will be addressed through our recommendation to develop a workforce development strategy (see paragraphs 448 to 500 in *Knowledge Levers*). This strategy can consider support for representative training in a broader context, including the overall adequacy of funding for training.
266. In addition, we recommend that the new agency provide greater support for representative training. At a minimum this would involve the new agency promoting industry-specific representative training in its interactions with representatives, employers and PCBUs. We consider that there is merit in the new agency promoting joint worker/employer health and safety training, although we also recognise that there will be some situations where training, or components of training, needs to be held separately.
262. The Taskforce considers that there are a number of areas where the new agency should provide increased support for worker participation⁵⁷:
- a. workplace health and safety representatives

57. The Taskforce has also recommended that the new agency ensure that its information and support services are effectively delivered to hard-to-reach groups, including hard-to-reach workers and employers in SMEs, and that the new agency consider establishing advocacy or advice services (potentially on a trial basis). See paragraphs 431 to 436 in *Knowledge Levers*.

267. We also recommend that the new agency be responsible for providing greater support for representatives after they have been trained. This must involve the new agency creating a central register of representatives, with acknowledgement of the levels of knowledge and skill they have attained. The new agency should also consider other supportive actions, such as creating an online platform to allow for up-skilling between courses, communications to representatives from the new agency, networking between representatives, or requiring (and potentially funding) follow-up activities from training providers.

Increased support for workers who raise workplace health and safety matters either confidentially or anonymously

268. Strengthened legal protections for workers who raise workplace health and safety concerns have been recommended in paragraphs 259 to 261 above. In addition, MBIE is able to treat complaints confidentially, although this may lead to some restrictions in how those complaints are handled.

269. The fact that submitters reported that workers do not raise matters for fear of adverse consequences suggests that the current procedures are not effective. For some situations, an anonymous rather than confidential process could help workers who may believe that raising confidential complaints will not protect them adequately from adverse consequences. One model for anonymous complaints is the Crimestoppers approach⁵⁸, which allows the public to provide information about any crime or criminal activity. The Crimestoppers approach does not currently focus explicitly on workplace health and safety matters.

270. The Taskforce recommends that the new agency provide increased support for workers who raise workplace health and safety matters either confidentially or anonymously.

To give effect to this recommendation, the new agency should:

- a. consider strengthening its processes for handling confidential complaints and better publicise those processes
- b. investigate introducing anonymous reporting procedures, drawing on the Crimestoppers approach, which would require the new agency to develop a systematic way of managing anonymous complaints.

Increased support for unions exercising existing rights of entry

271. Unions have existing rights of entry to workplaces under the Employment Relations Act, including for the purposes of addressing workplace health and safety matters. Concerns were raised that these rights of entry can restrict unions' ability to address health and safety matters given the need to get employer permission. Submitters proposed that the HSE Act be amended to address specifically union rights of entry for workplace health and safety matters. The Model Law adopts this approach, providing for workplace health and safety entry-permit holders.

272. The Taskforce considers that the existing rights of access for unions under the Employment Relations Act are adequate as long as these rights are not unreasonably withheld. In part, this will depend on unions challenging situations where these rights are unreasonably restricted, including seeking penalties from the Employment Relations Authority. The Taskforce also considers that MBIE's labour inspectors must have an active role in enforcing union access rights where these are unreasonably restricted.

273. However, we recommend that the new agency and MBIE continue to promote general awareness of unions' rights of entry for workplace health and safety purposes.

58. See <http://www.crimestoppers-nz.org> for more information about Crimestoppers.

Other practice changes from the new agency to support worker participation

274. MBIE has an expectation that its inspectors routinely engage with workplace health and safety representatives (and unions' representatives where present). However, MBIE acknowledges that this has not occurred in practice. Further, MBIE has not systematically promoted or enforced the requirements of the HSE Act that workplaces have worker participation mechanisms.
275. Given the fundamental importance of a tripartite approach in the effective management of workplace health and safety matters, the Taskforce considers that the new agency's interactions with workplaces must include meaningful engagement with workers and their representatives, including health and safety representatives, committees and unions, where present, as well as PCBUs.
276. At the Taskforce workshop considering possible options, concerns were raised that an absolute requirement to engage with workplace health and safety representatives would not be practicable for the new agency. The Model Law has a requirement that health and safety inspectors notify health and safety representatives when they enter workplaces. The functions of inspectors related to resolving issues at workplaces also imply engagement with workplace health and safety representatives.
277. The Taskforce recommends that the new agency:
- a. be required to consult, where appropriate, health and safety representatives and committees and unions, where present, in all interactions with workplaces, e.g. when undertaking investigations or assessments
 - b. be required to notify representatives and committees when issuing formal notices to PCBUs, advising of the outcomes of investigations and issuing proceedings against PCBUs
 - c. take a strong position in enforcing the requirements that workplaces have worker participation mechanisms, including the requirements specified in regulations and ACoPs
 - d. take a strong position in enforcing breaches of representatives' powers, functions and rights.

Performance of the regulatory agencies

Maintain the performance of the new agency over time

278. Ensuring that regulators perform adequately and sustain this over time involves a combination of clear expectations, performance monitoring and feedback mechanisms. Performance is likely to be further enhanced when it is open to public scrutiny.
279. Government agencies are already subject to external scrutiny of their performance as regulators, including through the Performance Improvement Framework⁵⁹ and the Treasury Regulatory Best Practice assessments⁶⁰. The board of the new agency, established on the basis of tripartism, will also provide effective scrutiny.
280. In addition to these mechanisms, the Taskforce considers that a mandatory ACoP for health and safety regulators could be introduced to provide clear performance expectations. This is an approach already used in the UK⁶¹. It would act as a benchmark against which performance can be measured. It also increases transparency and accountability and enables third-party scrutiny of performance.
281. Further, we consider that an independent regulatory challenge panel could provide the public with a mechanism for raising issues about regulatory performance, e.g. the ability to challenge the accuracy of guidance material or to challenge enforcement decisions. The panel could provide recommendations to the regulator with which it may not be required to comply but to which it should be required to respond.

59. State Services Commission (2013). *Performance Improvement Framework*. Retrieved 19 April 2013 from: <http://www.ssc.govt.nz/pif>

60. New Zealand Treasury (2002).

61. Department for Business, Enterprise & Regulatory Reform (2007). *Statutory Code of Practice for Regulators*. Department for Business, Enterprise & Regulatory Reform. Retrieved 19 April 2013 from: <http://www.berr.gov.uk/files/file45019.pdf>

Co-ordination and collaboration between agencies

282. Submitters were consistent in their view that the regulators do not collaborate effectively. They found the current division of regulatory activities confusing. They often received conflicting or duplicate messages from the agencies about how to manage risks and their relative priorities. This reflects overlapping mandates of multiple regulators.
283. Some of these issues can be resolved through giving the new agency a clear leadership role. The Taskforce therefore recommends that the new agency be accountable for all workplace harm prevention, including advising on strategy. This will reinforce the new agency's leadership and accountability settings, and will ensure that strategy is aligned. A single point of responsibility for workplace health and safety will reduce confusion for people seeking help, and will simplify notification and reporting requirements.
284. The new agency should provide leadership and actively work with other agencies, industries, unions, sectors and communities to engage the whole system in harm-prevention efforts. Gaining the support of these groups is a critical factor in the success of any harm-prevention efforts.
285. However, while giving the new agency a leadership role will help, we also consider that some changes are required to enhance both efficiency and effectiveness.
286. Specifically, we recommend that some of the regulation of hazardous substances that relate to use in the workplace transfer to the new Act, and that injury-prevention activities be delivered through a partnership between the new agency and ACC. This will enhance the new agency's ability to exercise leadership and to deliver a comprehensive and targeted health and safety awareness programme that is strongly linked to compliance activities. It will minimise the potential for conflicting or duplicated messages about how to manage risks and priorities. This will increase certainty for all participants.
287. Transferring the regulation of hazardous substances in workplaces (relevant provisions in the HSNO Act, including regulation-making powers) to the new Act will ensure that compliance strategies and policies for hazardous substances are integrated into the new agency's harm-prevention strategy. It will also provide for a single set of guidance and enforcement provisions in relation to the use of hazardous substances in the workplace. The responsibility for substance approval and the setting of general controls for use could remain with EPA.
288. Through a partnership arrangement and defined methodology, ACC's funding for workplace injury-prevention activities would move to the new agency, which would lead the delivery of workplace injury-prevention activities. These activities would need to demonstrate a reduction of workplace injury and claims on the ACC scheme as well as be consistent with the workplace health and safety and injury- prevention strategies.
289. Having the new agency lead engagements with sectors and provide guidance to individual firms will deliver a 'single place' and a 'common message' to businesses on workplace injury prevention.
290. In the transport area, it is more effective for sector agencies (e.g. NZTA, New Zealand Police, MNZ and CAA) to regulate workplace health and safety as they have the specialist capabilities and established links with regulated entities through their broader regulatory responsibilities. However, consistent with our view that there needs to be a primary regulator and an integrated approach to workplace health and safety, we believe that an effective co-ordination mechanism should be put in place.

291. We recommend that this mechanism also provide for the new agency to statutorily delegate functions to other agencies. This would be underpinned by a service-level agreement with each of the transport regulators. There should be clear expectations about how the delegations are delivered in terms of both activity and outcomes sought. The delegates' performance should be monitored by the new agency. This will result in better-aligned capability and compliance efforts between agencies, and ensure that compliance activities are mutually reinforcing.
292. The Taskforce prefers delegations through service-level agreements to designations so that the accountability and jurisdiction of the new agency are not limited. This will enhance the new agency's leadership and support of the delegated agencies. It will also ensure that there is a clear mandate for action by the new agency where any jurisdictional confusion arises, and minimise the likelihood of inaction. For example, months of inaction followed the crash of a military Iroquois helicopter on Anzac Day in 2010 when there was confusion between CAA, MBIE and the Defence Force around who should investigate⁶².
293. Service-level agreements would emphasise and support the role of the new agency in leading harm-prevention efforts, while ensuring that the specialist expertise of the transport regulators is maintained and applicable international regulatory obligations are met. Similar arrangements have succeeded elsewhere. For example, NZTA currently purchases road policing services from New Zealand Police as part of its implementation of the Government's National Land Transport Programme.
294. Cross-agency co-ordination arrangements could be put in place at chief executive level to ensure that the agencies develop and deliver a strategically and operationally co-ordinated approach to:
- effective targeting, taking a risk-based approach
 - common capabilities and warranting
 - the alignment of compliance strategies
 - effective co-ordination when dealing with incidents (underpinned by an ACoP)
 - stronger operational co-ordination while allowing for specialist expertise
 - common standards of regulatory practice.
- Providing support for victims and families**
295. The Taskforce heard from a number of families affected by workplace deaths who felt poorly supported during exceptionally difficult periods in their lives. In particular, they often did not understand the roles of the different agencies involved, were not always kept informed of significant developments, and were left for protracted periods with no contact.
296. Victim Support provides excellent services to victims of trauma, including emotional and practical support to some of those affected by workplace deaths and serious injuries.
297. The Taskforce firmly believes that the new agency should work with Victim Support and other similar bodies to identify best practice for providing information and support to victims and their families, and to embed this into their practice. Consideration should also be given to cultural practices.

62. State Services Commission (2012). *Review of Agency Health and Safety Roles and Functions in a Military Context*. Retrieved 19 April 2013 from: <http://www.ssc.govt.nz/sites/all/files/review-agency-health-safety-roles-military-context-pdf>



Occupational health

298. Occupational health issues, such as chronic harm resulting from the use of hazardous substances and the effects of fatigue and hours of work, can be a hidden feature of workplace health and safety. This is because the risks and/or effects may not be obvious until some time after the events that led to them. However, the Taskforce believes that it is an area where an investment in prevention can have a very significant benefit, both to affected individuals and their families and to society as a whole. The Taskforce considers that occupational health activities should be given the same priority and attention as occupational safety activities.
299. We therefore recommend that the new agency have accountability and responsibility for leading strategic and operational occupational health activities in New Zealand. We recommend that this be delivered through the establishment of an occupational health unit within the agency. The case for establishing a dedicated unit follows.
300. Occupational health is multidisciplinary and intersectoral. The effective prevention of occupational ill-health requires co-ordinated effort by the multiple stakeholders⁶³ within and external to the infrastructures for health and safety. Better occupational health outcomes will improve broader health outcomes in New Zealand and secure a productive workforce for the future. It is clear to the Taskforce that occupational health has not been a public or political priority for many years. We consider that the primary regulator does not currently co-ordinate or lead occupational health activities across industry or government effectively. We believe that the absence of Government leadership and co-ordination across the many disciplines and government agencies involved (MoH, EPA, Health Promotion Agency, MNZ, CAA) has paralysed progress.
301. We suggest that the occupational health unit within the new agency establish, develop and maintain partnerships with relevant government agencies in relation to occupational health activities. Such partnerships will secure the close integration of occupational health at the strategic level and within operational activities undertaken by all government agencies. The expertise within the occupational health unit will have the capability to leverage resources from the many disciplines involved to achieve a greater reach of occupational health activities.
302. We consider that the new agency will need to take responsibility for determining the detailed functions of the occupational health unit. We suggest the following functions for consideration:
- a. the development and leadership of New Zealand's occupational health strategy
 - b. the management of occupational health intelligence
 - c. research and evaluation
 - d. standard setting
 - e. the consultative development of health and safety guidance and tools
 - f. compliance activities in high-risk and complex industries
 - g. the development of incentive schemes to promote occupational health
 - h. the development of education guidance materials and programmes
 - i. the leadership and development of targeted occupational health communication and social media campaigns
 - j. the development and provision of occupational health training and support to the general inspectorate
 - k. support for frontline inspectors, including technical expertise to support enforcement.

63. World Health Organization (2010). *Healthy Workplace Framework and Model: Background document and supporting literature and practices*. Retrieved 19 April 2013 from: http://www.who.int/occupational_health/healthy_workplace_framework.pdf.

Improving the quality and availability of data

303. Our recommendation to establish a sector-leading research, evaluation and monitoring function within the new agency (refer Recommendation at paragraph 414b) includes a clear mandate to lead improvements in health and safety data collection across the health and safety system. Given the complexities of data collection, including the multiple points of data entry and competing priorities of agencies and organisations, a sufficiently strong mandate will be required to:

- a. develop and co-ordinate a collaborative, cross-government work programme to improve occupational health and injury data collection and monitoring
- b. influence and direct data-collection protocols across a range of agencies
- c. compile data from agencies, and develop and maintain an integrated occupational health and injury data set, to maximise the coverage and completeness of the available data.

304. The mandate to influence data collection should extend beyond central government agencies. The new agency will need to foster and build relationships with a range of non-government agencies to improve the availability and quality of data for research and, where applicable, administrative purposes. This will involve the new agency seeking to both *influence* and *direct*. In the case of GPs, the ability to *influence* networks and representative bodies is critical. Mechanisms for engaging with private partners, including medical providers, will also need to be developed.

305. Not all data sets would necessarily need to be held by the new agency. Existing relationships with universities should continue and be strengthened where possible. This includes the ongoing work with Massey University's Centre for Public Health Research, Auckland University of Technology's Centre for Occupational Health and Safety Research and the University of Otago Injury Prevention Unit.

Building an occupational health minimum data set

306. As a matter of urgency, the new agency needs to improve its intelligence on occupational health. It needs to build an occupational health, serious harm data set and facilitate the development of whole-of-life databases. GPs, DHBs and MoH, along with PCBUs, have been identified as key players who are critical to improving significantly the quality of the occupational health data available to the new agency. Priorities for the new agency include the following.

- a. *Work with health agencies and medical professionals to improve data collection practices.* NOHSAC⁶⁴ identified several areas for improvement in occupational health data capture. These included the recording of the occupations and industries of people presenting themselves to health professionals. Because many GPs work in privately run organisations, the new agency will need to build relationships and work with partners, such as MoH and the Royal New Zealand College of General Practitioners' Best Practice Advisory Group, to influence improvements in information collection across the board. Improved life history data, coupled with improvements in GP awareness of issues and symptoms, will result in more accurate diagnoses. A second area mooted for improvement is in modification of death certificates, the Births, Deaths and Marriages database, and other New Zealand Health Information Service databases as appropriate, to include medical practitioner opinions of the extent to which illnesses or health conditions are likely to have been due to work.
- b. *Identify gaps in data collections and develop strategies and mechanisms to address these gaps.* Only some cases of known occupational health conditions are currently identifiable through the range of data-collection mechanisms operating across the system. If a workplace-related illness

64. NOHSAC (2006). *Methods and Systems Used to Measure and Monitor Occupational Disease and Injury in New Zealand*. NOHSAC Technical Report 2 retrieved 19 April 2013 from: <http://www.dol.govt.nz/publications/NOHSAC/techreport2>

- does not result in a particular set of conditions (e.g. a hospital admission, a cancer diagnosis or a successful ACC claim), it is highly unlikely that it will be detected or recognised as workplace related⁶⁵. Gap analysis and the development of strategies for improving the scope and accuracy of existing data-collection systems should be undertaken as a matter of urgency. In the short to medium term, the rejuvenation of the current regulator's NODS database reporting system may be the most effective means to addressing shortcomings across the system (see below).
- c. *Ensure that PCBUs notify the new agency of any independent health monitoring results.* Ensuring that PCBUs report on the outcomes of independent health monitoring to the new agency, e.g. contact with particular chemicals and hazardous substances, or environmental conditions such as noise, would assist in the early identification of particular work-related conditions and the development of whole-of-life databases.
 - d. *Explore establishing an anonymous exposure data set for long-term trend analysis.* The new agency should work with a pool of providers, and the New Zealand Occupational Hygiene Society, to explore the feasibility of providing the agency with aggregated anonymous exposure data for trend analysis over time.
307. The Taskforce notes that the current regulator's voluntary NODS database system for recording notifiable occupational illnesses suffers from chronic underreporting. It constitutes a poor indicator of ill-health prevalence. There needs to be a significant investment in rebuilding and improving the NODS database system so that it is able to capture all or particular subsets of occupational health conditions. This will involve improvements across the board.
- a. *Raising awareness of the NODS database among GPs, unions and PCBUs.* To get GP buy-in and participation, a targeted information strategy for GPs needs to be developed and implemented. This should include information on: key health risks and associated symptoms (by industry/occupation); questions that they could ask their patients to help identify suspected cases; and the importance of the NODS database reporting system and GPs' critical role in supporting it.
 - b. *Clarifying criteria for reporting to the NODS database.* The definition of serious harm used by the current regulator is too narrow for effective occupational illness coverage. The list of conditions reportable to the new agency could and should be amended to include a wider range of chronic and long-latency conditions constituting serious harm that are suspected to have been caused by the workplaces or occupations of the affected people.
 - c. *Building agency capacity for following up on notifications.* The new agency's staff need to have the capacity to review notifications and follow up with patients, employers, employees and GPs, as appropriate. Notifying GPs should receive feedback on cases referred to the NODS database so they can be sure that their information is being followed up and the system gains their confidence. Case data should be expanded and updated following investigations.
308. Ultimately, the new agency would be responsible for developing criteria for reporting, improving and streamlining the processes for reporting, promoting reporting to GPs and monitoring their compliance. Strong relationships with health organisations such as the Royal New Zealand College of General Practitioners' Best Practice Advisory Group will be essential. The proposed occupational health unit could help to foster relationships and build confidence in the health community.

65. Ibid.

309. The Taskforce considers that the new agency needs a strong mandate to collect health-monitoring and exposure-monitoring data. Therefore we recommend that the new agency be given the authority to direct the collection of occupational health data from government agencies. It should also have the powers to require an employer or a medical provider to provide to it anonymised health-monitoring information on request.

310. We also recommend that this be supplemented with a requirement for mandatory reporting of exposures found to be over threshold limits. We consider that this requirement should be placed on employers and providers of the monitoring services. This requirement will provide the new agency with the ability to investigate problematic exposures, with a view to providing guidance to industry to ensure that action is taken to prevent harm.

Major hazard facilities are more comprehensively regulated

311. There are many work-related facilities in New Zealand that have a potential for catastrophic failure which, if it were to occur, would result in significant harm to many people and/or widespread damage to property and the environment. A number of these facilities are not currently covered by specific regulations or proactive regulatory activities. Currently, specific regulations beyond the HSE Act apply to mining, pipelines and petroleum and geothermal activities, and are enforced by the current regulator's recently developed High Hazards Unit.

312. The Taskforce recommends strengthening the regulatory regime for managing the risks of major hazard facilities by:

- a. mapping the risk landscape around potential catastrophic failure
- b. developing criteria and prioritising types of major hazard facility for inclusion in the major hazard facilities' regulatory framework

- c. ensuring that robust regulatory requirements, based on international best practice, apply to all priority facilities
- d. building the new agency's capacity to provide rigorous regulatory oversight and ensure compliance with the new regulatory framework.

Expanding the scope of regulation

313. Gaps in the coverage of New Zealand's major hazard facilities' regulation reflect the focus on particular high-risk major hazard facilities, such as mining, offshore petroleum production and pipelines. However, the concept should be extended to other types of activity where there is also potential for catastrophic outcomes. The internationally accepted principle is that where an activity can have catastrophic consequences, the regulatory focus should be on proactively managing the activity regardless of the likelihood. The management of facilities on the basis of probability of catastrophe alone may mean that the risks are not systematically addressed.

314. There are some obvious priorities for workplaces that should be covered by New Zealand's expanded major hazard facilities' regulation. The management of workplaces where there is a risk of catastrophic failure associated with the use and storage of chemicals and other hazardous substances is an obvious gap that is currently well covered by many international jurisdictions.

315. In September 2001 a fertilizer plant in Toulouse, France exploded, killing 30 people, critically wounding 50 people and injuring thousands more. The explosion tore a 200-metre-wide by 60-metre-deep hole in the ground. It blew out most of the windows in the city and left more than 4,000 residents homeless. By any measure, this was a catastrophic failure with impacts that extended far beyond the worksite.

316. In developing the risk map for major hazard activities, consideration needs to be given to the whole range of workplaces that also have the potential for catastrophic outcomes. Further examples of major hazard facilities presenting this risk, and not adequately covered under the existing legislative framework, include workplaces where: there are large amounts of stored (kinetic) energy (e.g. rollercoasters); there is a catastrophic explosion risk (e.g. timber or milk powder dust explosion); and there are biological risks (e.g. dangerous pathogen laboratories).
317. However, wider applications of stronger major hazard workplaces' regulations may be more contentious. In determining the scope of major hazard facilities to be included in the strengthened regulatory framework, there is a need to provide workplace health and safety and public safety assurances because of their off-site consequences. This is particularly so for leisure activities other than commercial adventure tourism, events where people gather in large numbers (e.g. concert venues), controls over genetically modified organisms in the workplace, and events where significant numbers of people could be affected by something going wrong (e.g. an incident involving mass transport).
318. While it is not the Taskforce's role to determine where the line should be drawn, it is expected that parameters for the new regulatory framework would fall out of a mapping and risk-prioritisation exercise. Once hazardous facilities are identified, the prioritisation for inclusion in the expanded regulatory framework should depend on the extent to which the risks are effectively covered off by existing regulations, and the nature of the jurisdictional boundaries operating between the new agency and other regulators. These may include New Zealand Police, the New Zealand Fire Service, environmental and health agencies, and local authorities.
319. The scope for identifying major hazard facilities for the regulatory framework could be scaled, depending on:
- a. whether the regulatory framework is intended to be future-proofed so that new major hazard facilities and emerging risks are covered
 - b. whether the new agency is and should be viewed as 'the regulator of last resort'.
320. The expanded set of major hazard facilities identified through the mapping and prioritisation exercise will likely require different regulatory responses. Existing regulations, ACoPs and guidance material will need to be reviewed and expanded to ensure that the regulatory framework is fit for purpose. The new agency will also need to ensure that it has the appropriate range of powers, including risk-specific controls and permitting authority, to manage those prioritised risks.
- Expanded responsibilities and resource needs for the new agency**
321. To manage major hazard facilities effectively, the new agency has a central and active role in developing and implementing an expanded regulatory framework. The existing High Hazards Unit has done a good job of building up mining, geothermal and petroleum expertise. However, there are many major hazard facilities not covered by the current regulator.
322. Therefore the Taskforce recommends that the new agency's expanded responsibilities include:
- a. mapping current major hazard facilities, defining the jurisdictional responsibilities of different regulators, and identifying any gaps in existing regulatory responsibilities – this will involve keeping an up-to-date overview of major hazard facilities so that the framework is current at any particular point in time
 - b. developing criteria for identifying and prioritising major hazard facilities and applying these to determine whether regulation is justified in specific circumstances
 - c. engaging at an early stage with businesses developing major hazard

- facilities, consistent with the Royal Commission recommendations
- d. engaging with territorial local authorities on the land use planning implications of the location and operation of new major hazard facilities, other developments in proximity to existing major hazard facilities and other new developments
 - e. developing regulations, including reviewing the ACoP for Managing Hazards to Prevent Major Industrial Accidents so that it is applicable to a broader range of businesses, and developing further ACoPs as required – and, further, all major hazard facilities should be required to:
 - i. undertake systematic identifications of risks and develop comprehensive mitigation measures using recognised techniques such as HAZOP (the Hazard and Operability method) and to submit these to the new agency
 - ii. develop and test robust emergency procedures and responses in conjunction with local emergency services and other authorities, and undertake major accident planning
 - iii. undertake regular internal and external audits and report outcomes to the new agency
 - iv. ensure that managers and workers involved in specific types of major hazard facility are appropriately qualified
 - v. have specific worker-participation mechanisms, with appropriately trained health and safety representatives and the right skills and expertise in members of health and safety committees
 - f. and the regulator should be responsible for:
 - i. providing guidance on the types of activity and industry that make up major hazard facilities so that businesses can self-assess whether they should be subject to the major hazard facilities' regulatory framework
 - ii. ensuring compliance with regulations and ACoPs and monitoring compliance with the regulatory framework
 - iii. scanning the New Zealand and international environments to identify new and emerging major hazard risks, and learning from responses to major incidents and/or changes in international approaches to regulating major hazard facilities
 - iv. reviewing regularly the risk landscape and the regulatory framework, including regulations and ACoPs for managing these risks, and the capacity of the new agency to enforce these regulations.
323. The new agency should also consider opportunities for aligning with the Australian regulations on major hazards. This could be a solid starting point, enabling quick wins. Further, by aligning our new major-hazard-management processes with Australia, there are improved opportunities for sharing resources and expertise.
324. The Taskforce also considers that the costs of regulating major hazard facilities should be separated out and (more) directly recovered from the operators of these major hazard facilities. We consider that mechanisms such as differentiated levies and direct charging for services are appropriate to reflect the disproportionate costs of providing regulatory oversight of major hazard facilities (see paragraph 362 in *Motivating levers*).



MOTIVATING LEVERS

PART 2.2

Motivating levers

325. The Taskforce proposes a package of measures that in combination should act as a strong motivating force for participants in the workplace health and safety system to aspire to and achieve better health and safety outcomes. These measures are found in: the section on accountability levers, which proposes a new law and stronger workplace health and safety agency; the section on knowledge levers, which seeks to provide all participants in the system with better information and data and better access to education and advice; and below in this section.
326. Some participants in the workplace health and safety system will respond positively to better information on workplace health and safety issues, and what can be done to improve current performance. They will also respond positively to leadership, human stories of the costs of poor health and safety, and what their peers are doing to improve performance. These participants will aim to do 'the right thing' because it is the right thing to do. Other participants are more likely to be motivated by self-interest. They will ask 'what's in it for me?', and if better workplace health and safety reduces their costs or creates more business opportunities they will be motivated to make improvements. Regrettably, others will only respond positively if they are compelled to do so. They calculate the likelihood of getting caught for having poor health and safety practices and the costs to them if they are caught. If they think they can get away with poor practices, they will.
327. *Motivating levers* must include strategies that address the characteristics of these different groups. Therefore this section has

a subsection on leadership, a subsection on incentives, and another subsection on initiatives that will increase the costs to those who through choice or neglect fail to meet adequate workplace health and safety standards.

Recommendations

(The recommendations below are listed in the Executive Report as Recommendations 9-11)

328. The Taskforce recommends that the Government:
- a. provide strong leadership and act as an exemplar of good health and safety practice, demonstrated by:
 - i. developing a comprehensive and targeted public health and safety awareness programme to change behaviours, norms, culture and tolerance of poor practice. This programme should be linked to a compliance strategy and specific compliance activity
 - ii. ensuring that excellent health and safety outcomes are achieved by its own agencies (e.g. ministries, departments, Crown entities, state-owned enterprises [SOEs])
 - iii. government procurement policies and practices that drive high standards of health and safety practice through the supply chain
 - iv. introducing an assessment of workplace health and safety impacts to all preliminary impact and risk assessments (PIRAs)
 - b. implement measures that:
 - i. reward businesses for better health and safety performance through a levy regime that:

LEADERSHIP IS PARAMOUNT

Health and safety is of paramount importance in any organisation and directors must show true leadership, says board director Joanna Perry*.

“You need more than a ‘stick’. The board needs to ensure that the organisation as a whole embraces health and safety so that the culture of the place means everybody automatically follows the rules.

“Having a board health and safety committee is not necessarily the right answer. It is much more than ticking boxes or saying we’ve done the right thing by creating a committee. It’s about the creation of a health and safety culture that everyone in the organisation lives and breathes.”

“In my opinion, health and safety has to be up there alongside financial and legal duties, even more so as it involves human life.”

How do you create the right culture?

“A commitment has to come from the top. It needs to be led primarily by the chief executive but the board directors must support and challenge the CEO too.

“There needs to be greater awareness – and the Pike River tragedy has raised people’s awareness – and an acceptance of the importance of health and safety.”

Joanna does not want to hold herself up as a paragon in health and safety but is committed to doing the right thing.

She is even prepared to tell a story against herself: she recently toured a workplace with a chief executive and came to a set of stairs with a sign that told people to hold the handrail.

When Joanna walked down the stairs without holding the rail, her chief executive challenged her – “Joanna, what are you doing? Can’t you read the sign?”.

“I was pleased and impressed. Here was a chief executive prepared to challenge one of his directors to follow the rules.

“Having regard to safety on site was an integral part of the culture in that organisation – and in a momentary lapse I wasn’t doing the right thing. But that’s often all that it takes for an accident to happen – a momentary lapse in someone’s attention.

“Health and safety is not ingrained enough in most of us.”

Directors, in her opinion, need to “step up”.

“Directors understand the importance of their financial and legal obligations. We have very clear duties with clear consequences if we get it wrong.

“In my opinion, health and safety has to be up there alongside financial and legal duties, even more so as it involves human life.”

Directors also need to know when they don’t know enough. A week after this interview Joanna was attending a health and safety-related seminar to improve her knowledge and understanding.

Joanna says IoD is also working hard to ensure that its members have access to the right information.

“It’s not about being an expert but about having the balls and enough knowledge to ask the right questions and to follow up and challenge where necessary.

“That to me is what real leadership is all about.”



“It’s not about being an expert but about having the balls and enough knowledge to ask the right questions and to follow up and challenge where necessary.”

JOANNA PERRY

**Joanna Perry, MNZM, is a professional non-executive director and chartered accountant with extensive governance experience. She is Deputy Chairman of Genesis Energy, an independent director of Kiwi Income Property Group, Trade Me, The Co-operative Bank, Partners Life, Sport NZ and New Zealand Rowing, and independent board adviser to Tainui Group Holdings. She has an MA in Economics from Cambridge University, England, and was a KPMG partner for 17 years until 2006.*

- more meaningfully differentiates based on risk, good and poor performance
 - is based on lead and lag indicators
 - is aligned to a business health and safety rating scheme
- ii. reflects the costs of regulatory activity inherent to the industry (e.g. major hazards)
- c. implement measures that increase the costs of poor health and safety performance, including:
 - i. extending the existing manslaughter offence to corporations and revising the corporate liability framework that applies to all offences (including manslaughter)
 - ii. stronger penalties and cost recovery
 - iii. visible and effective compliance activity.

Leadership

329. One of the most important components of the workplace health and safety system is leadership – from the Government, government agencies, industry bodies, pan-industry bodies, professional associations, employers, managers, people in governance roles, unions, community-based organisations, the medical profession, other professions, health and safety representatives and, of course, workers.
330. First and foremost, leadership needs to be strongly demonstrated from the top. The Government should provide strong leadership and act as an exemplar of good workplace health and safety practice. This can be demonstrated by: undertaking a comprehensive and targeted health and safety awareness programme to change behaviours, norms, culture and tolerance of poor practice; ensuring that excellent health and safety outcomes are achieved through its own agencies; strengthening

workplace health and safety requirements in government procurement policies and practices; and introducing an assessment of workplace health and safety impacts to all PIRAs. These initiatives are discussed further below.

331. However, active and visible participation by business and community leaders, as demonstrated by exemplar health and safety practices in their respective organisations, is also required if a truly national focus on improving health and safety is to be achieved.

Government leading by example

Public awareness

332. New Zealand's poor health and safety outcomes are exacerbated by society's attitudes, which tend to underplay both risks and consequences. Societal pressure can be a powerful influence and has the potential to help and hinder workplace health and safety efforts. Without widespread support from the public, the Taskforce's recommendations are unlikely to result in significant and enduring improvements in health and safety outcomes.
333. The public is receptive to the need for improvements in workplace health and safety. Recent events have primed public receptivity (particularly the tragedy at the Pike River coal mine). Public support must be maintained and built on so that the system can improve. This will require a significant investment and long-term commitment. Many of the changes that the Taskforce recommends will have impacts in the medium to long term. Public support will therefore need to be maintained for the same timeframe but with an expectation of visible improvements in health and safety practices and outcomes in that period.
334. In addition to building general support for improvements, the Government's health and safety public awareness programme must focus New Zealanders on resolving key health and safety issues. Individual programme components could focus on specific issues or audiences.
335. The Taskforce has reviewed successful programmes addressing safety-belt wearing, family violence and energy efficiency (see Martin Jenkins report in the working papers). These programmes have all built widespread public support that complements and reinforces regulatory efforts. Building public support should involve highly visible campaigns and partnerships with industries and communities, including iwi and other significant groups. The result should maximise voluntary compliance so that the regulator's compliance activities can be focused on where they are needed most.
336. The following additional critical success factors will also help to build public support.
- Educate the messengers.* There is an upfront investment in educating the messengers who will drive public discussions of the issues during campaigns, e.g. media commentators and spokespeople for government, industry and community organisations.
 - Understand the target audience.* This includes understanding why particular groups tolerate unsafe and unhealthy conditions, and any related barriers to changing those views.
 - Use existing networks.* There is co-ordination with and use made of the networks of communities, industries, unions and workplace health and safety practitioners. This will mean that the national workplace health and safety public awareness programme is supported by local actions. A greater collective impact can arise than would otherwise occur if the co-ordinated activities are mutually reinforcing.
 - Sequence and layer activities.* There is the right sequence and layering of programme activities so that each step is reinforced by past steps, and steps only occur once all prerequisite activities have succeeded in creating the right conditions.

THE CHALLENGE OF REBUILDING CANTERBURY SAFELY

The impacts on Canterbury of the 2010 and 2011 earthquake disasters have been huge, and the task of rebuilding Canterbury is greater still.

The repair bill is estimated to be in the order of \$30 billion to \$40 billion. It's predicted that it will take until 2016 to fix the horizontal infrastructure on which modern life depends (gas, power, wastewater, water, roads, bridges etc) and 2017 to rebuild or replace the 100,000 homes that were destroyed or damaged. Rebuilding the city itself will take about 20 years.

Keeping safe the thousands of tradespeople involved through the years of the rebuild is a significant challenge. While to date no-one has died in Christchurch's central business district cordon or residential red zone, there have been several recent fatalities and serious harm incidents in Christchurch, including:

- a demolition worker suffered a broken neck and head injuries when he fell while working between the 23rd and 24th floors of the Grand Chancellor building (January 2012)
- a drainage worker was killed after being crushed between two trucks in Woolston (July 2012)
- a 47-year-old man was hit and killed by a forklift at Busck Prestressed Concrete on Annex Road, Middleton (February 2013).

MBIE has estimated that if safety performance remains similar to current levels, then conservatively by 2018 in Christchurch there will have been 50 deaths from illnesses caused by exposure to workplace contaminants and hazards, one or two deaths every year of the rebuild from incidents such as falls from heights, \$80 million in ACC entitlement claims, and 600,000 working days lost due to workplace injuries and illnesses.

A number of key industry and government advocates are working hard to ensure that these projections never come to pass. But no-one underestimates the difficulties of achieving a zero-harm rebuild.

As MBIE's Canterbury Health and Safety Director, Kathryn Heiler, says, "It's challenging".

"The positive news is that we've got some very committed companies that are very keen to lift the standards. Things are definitely moving in the right direction."

While Kathryn believes that the 2012 London Olympics, which won accolades for being the safest Olympics construction project in recent memory, can be an inspiration for the Canterbury rebuild, they are not comparable.

"Canterbury is not one rebuild. It's much more complex than that."

The closest thing to the London Olympics project is the \$2 billion horizontal infrastructure rebuild being managed by SCIRT (the Stronger Christchurch Infrastructure Rebuild Team). This is an alliance between the Christchurch Earthquake Recovery Authority, Christchurch City Council, NZTA and the major contractors involved – City Care, Downer, Fletcher, Fulton Hogan and McConnell Dowell.

SCIRT General Manager Duncan Gibb is a 30-year veteran of the Australian construction industry, most recently as head of Fulton Hogan's Queensland operations. He is used to managing annual budgets of \$500 million-plus and he is used to extremely high safety standards – the norm in Australia.



DUNCAN GIBB

CONTINUED



From the start, SCIRT has locked in safety as part of the contractual agreements with partners. Alliance partners and delivery teams, and their sub-contractors and suppliers, are also locked in to a set of minimum standards, from mandatory personal protective equipment to daily pre-start meetings to identify site risks.

“We’ve used an alliance as our operating model because it aligns all partners in common goals and objectives,” says Duncan.

“It’s a proven way to deliver outstanding results because it encourages innovation and value for money. In this alliance, all delivery teams have shared goals including safety. If a team underperforms, it has less work allocated to it and that affects its profit recovery.”

Meanwhile, the SCIRT office provides overall co-ordination, including forward planning and critical risk identification. Duncan gives as an example SCIRT’s insistence on there being a combined geospatial information system for all of Christchurch’s utility services to prevent utility strikes (e.g. drainage contractors cutting in to buried power cables).

Further, SCIRT has a well resourced safety team that carries out safety inspections, training and inductions, and monitors and tracks alliance partners’ key performance indicators to ensure integrity.

Duncan’s main concern now is the attitude of the public moving through live sites.

“Christchurch residents are fed up with the constant road works, and we’ve had incidences of drivers ploughing through orange cones. We’re trying all sorts of ways to encourage positive behaviour, like handing out chocolate fish and thank-you notes at peak hours, acknowledging drivers for their co-operation and patience. It’s about getting people to associate road works with progress.”

The other current main activity covers residential repair. The Earthquake Commission (EQC) has contracted Fletcher Building to manage the repair of 91,000 damaged homes.

EQC Chief Operating Officer Bruce Emson says the scale of the residential rebuild alone is “extraordinary” and “unprecedented”.

**“Canterbury is not one rebuild.
It’s much more complex than that.”**

“It’s on a scale that has never been seen before in the world. We have completed the repairs to 35,000 homes – that’s equal to the entire city of Nelson – and we’re only a third of the way through,” says Bruce.

“At any point in time we have about 2,500 properties ‘under the hammer’. We reckon there are 8,000-9,000 tradespeople out there right now repairing homes.”

Fletcher Building’s Chief Executive, Construction, Graham Darlow, says the greatest impediment to a zero-harm rebuild is the sheer volume of small contractors and sub-contractors who have flocked to Christchurch for work.

Fletcher has accredited 1,134 contractors for the EQC residential repair work, of whom each must demonstrate competency in a range of areas including safety. If there are breaches, they are struck off.

“Our challenge is to persuade these small operators that they have a serious duty of care to the health and safety of their people,” says Graham.

“Some have bought in to the stronger safety culture, but many consider the stringent health and safety measures we impose on our sites as an unnecessary cost to their business. They find them annoying. They haven’t made the transition to equating good safety with good performance. It’s a serious weakness in the system.”

Graham says there are thousands more small contractors operating in the greater Canterbury area doing a wide range of private work, and this will increase as the new residential and commercial build work picks up.

Meanwhile, EQC and Fletcher are doing what they can to raise standards. They have recently collaborated on a safety campaign, safe6, and are rolling it out to thousands of people in their contracting stream.

safe6 identifies six key fatal risks to which contractors and staff may be exposed: falls from heights, confined spaces, electrical danger, motor vehicles, personal threats and asbestos exposure. It then offers some ‘rules to live by’ to manage these risks.

EQC’s Bruce Emson believes that tradespeople need to change the way they behave, and if they don’t people may die. “I simply don’t want any more tragedies as a result of the earthquakes.”

Another recent initiative to raise safety standards arose out of a Christchurch workshop in November 2012 led by Judith Hackett, Chair of the UK Health and Safety Executive.

“A lot of industry people came,” says MBIE’s Kathryn Heiler. “Out of that, a decision was made

to form a senior leaders’ group involving the chief executives or deputies of key construction companies in Canterbury.”

This senior leaders’ group has met regularly since November. Meetings are chaired by MBIE Deputy Chief Executive, Health and Safety, Lesley Haines, and are well attended.

“The focus is on health and safety, with the aim of lifting standards, coming up with initiatives and leaving a legacy. Its vision is good,” says Kathryn.

The group is currently working on establishing a charter that members and their contractors can sign up to. “The idea behind it is to establish a level playing field so that companies don’t compete with each other, and undercut each other, over safety. There is a genuine commitment to lift standards.”

“We reckon there are 8,000-9,000 tradespeople out there right now repairing homes.”

Fletcher’s Graham Darlow is pleased to see these initiatives underway. He believes there is such a strong commitment from key government and industry stakeholders to safety that “we will set a new standard for all of New Zealand in the future”.

“The standard is far higher in Canterbury than it ever used to be. We have a fantastic opportunity to set a much higher standard than ever before so that we hurt far, far fewer people than in the past.

“We have two large government agencies controlling the bulk of the work right now. Eventually as time goes on, this work will become more fragmented.

“So this is our golden opportunity time, and we need to make the most of it.”

- e. *Use incentives.* There are positive motivators for change for each step (see *Incentives*, paragraphs 346 to 368). Making people feel bad is ineffective and, without positive motivators, perceptions of burden will reduce the receptivity to change.
- f. *Monitor well.* There is an investment in ongoing monitoring, research and evaluation to understand the issues, inform the campaign design and learn from the campaign's effects.

Government as an employer

- 337. The Taskforce recommends that government agencies put their own houses in order as exemplars of workplace health and safety practice. This needs to be a first priority if the Government wants the rest of the nation's workplaces to lift their performance. The best way to do this is to set explicit expectations of government agency chief executives for the health and safety performance of their agencies.
- 338. Such expectations must include the impacts of government agencies' service delivery. Management is not just about focusing on employees; it includes taking responsibility for other people affected by the workplace (e.g. sub-contractors). Such expectations of government agency chief executives should be linked to their procurement practices (as discussed below) and extended to SOEs, DHBs and other Crown entities.
- 339. One way that the Government might set expectations of its agency chief executives is for the State Services Commission (SSC) to ensure that good workplace health and safety practices and outcomes are part of public-sector chief executives' performance agreements, and are assessed using lead and lag indicators. Such expectations should also be articulated in the departmental statements of intent and annual reports. Reporting against these expectations should be required, using lead and lag indicators.

Government as a purchaser

- 340. Government procurement policies that require sound workplace health and safety practices from suppliers to government agencies are an effective way to drive up standards in large sectors of the economy. They also offer potential suppliers the opportunity to learn from good practice in large firms that take health and safety seriously. The current requirement in government procurement guidelines that suppliers must comply with the law is insufficient to raise health and safety standards. It also represents a lost opportunity for the Government to leverage better outcomes through its purchasing clout. The Government is particularly well placed to make a real difference in the services area, such as construction services, because it is a major customer for many New Zealand suppliers. Mandatory rules, across-government policy and good-practice guides for government procurement in New Zealand currently make inadequate reference to the health and safety practices required from suppliers. This needs to change.
- 341. The Taskforce has a firm view that the public sector must demonstrate leadership in procurement practice, and should be subject to ongoing reviews in this matter by the SSC or other monitoring agencies. The Government should help this process by making more visible rules for the public and state services that require them to consider health and safety matters when procuring services. It can also help the process by making public and state services report on their health and safety outcomes for their contractors and sub-contractors, using lead and lag indicators.
- 342. One way that government agencies could assure themselves that suppliers have sound health and safety practices would be to require them to be pre-qualified in order to be eligible to tender for government work. There are existing accreditation schemes in New Zealand that could be used for this purpose.

Government as a regulator

343. The Government should require that an extra matter for assessment be added under 'Policy impacts' in the PIRA template. This should be: 'Will any policy options that may be considered, potentially: Detrimentially affect workplace health and safety outcomes?'
344. PIRAs are required when policy work is embarked on that has potential regulatory implications that will lead to the submission of a Cabinet paper. In this context, 'potential regulatory implications' means that it includes options that involve creating, amending or repealing primary legislation or regulations.
345. Asking whether there will be health and safety implications for workers or others at the PIRA stage will ensure that any potential impacts on workplace health and safety outcomes are addressed comprehensively as policy work proceeds.

Incentives

346. Incentives to encourage or support workplaces to do the right thing in workplace health and safety, or deter them from doing the wrong thing, are essential in the mix of levers used to stimulate desired workplace health and safety behaviour. Positive incentives need to be strong, visible and worth the effort of both the Government providing them and the businesses pursuing them. It is far better for workplaces to be stimulated to take voluntary steps to comply with the law than for a regulator to have to enforce action. There is also a need to have measures that act as deterrents. However, to be effective they need to be visible and provide certainty that poor performance will be punished. Importantly, the incentive regime should be designed to overcome any potentially perverse effects, e.g. non-reporting or suppression of ACC claims to avoid the consequences of higher rates of harm.

Rewards for doing the right thing

A business health and safety rating scheme

347. The Government should introduce a business health and safety rating scheme that is credible and offers value to both the businesses that go through its assessment process and the people who depend on its ratings.
348. The ratings assigned through the scheme should be useful for things like decisions on accepting employment, investment decisions, attracting quality directors, influencing procurement decisions and potentially reducing the requirement for inspections by the new agency.
349. Such a scheme should be voluntary, and have the following attributes and qualities:
- has complementarity and 'fit' with other government rating systems (e.g. fuel and electricity efficiency, vehicle safety)
 - is externally and independently assessed
 - uses a strong evidence base rather than merely observation
 - is robust in design and implementation
 - is well maintained and responsive to changes in assessment indicators
 - uses a combination of lead and lag indicators that are clearly aligned to measures of good performance adopted for the New Zealand health and safety system
 - uses an assessment methodology that is commensurate with the risk posed by the business activity
 - incurs costs commensurate with the risk posed by the business activity and the likely rewards from participation.
350. While a business health and safety rating scheme could be introduced based on existing performance measures, e.g. ACC levy discount schemes, this would pose risks for the Government, MBIE, ACC, the new agency and businesses, as the current discount programmes do not involve an in-depth review of a business' health and safety performance. The Taskforce

therefore considers that significant design work needs to be undertaken by MBIE, ACC and the new agency prior to the introduction of any such scheme. This would include carefully considering the relationship between the differentiated ACC levies and a performance-rating scheme, and determining whether the new agency or ACC should be responsible for auditing performance for the business health and safety rating scheme. We believe it should be the new agency (see paragraph 357).

A more effective ACC risk- and performance-rating levy regime

351. Businesses respond to a range of incentives to improve performance. For many it is the effect on the bottom line that makes the biggest difference. The Taskforce considers that there is greater potential to use ACC levies to incentivise good performance by introducing a greater differential between good and poor performers. The Taskforce notes that a review of ACC's rating system is underway. The Taskforce recommends that the new agency, MBIE and ACC be jointly mandated to provide advice to the Government on how the rating system can be used to better incentivise good performance.
352. Specifically, the Taskforce considers that stronger lead and lag indicators need to be developed and tested. Poorly performing and higher-risk employers should be subject to much higher levy loadings. These loadings should be relative to the average for their industries, with a broader range of differences between best and worst. Major hazard industries should also pay higher levies, even if the risk to people through those industries is considered low.
353. ACC data indicates that the worst one percent of employers may experience three or more times as many accidents as the majority of employers in their industries. However, the maximum loading on a poorly performing employer's levies from the current experience rating regime (relative to the average for the industry in which it operates) is 35 percent (10 percent for small employers).
354. For a business in a high-risk industry, the current experience rating regime can add one percent of payroll costs to its levy rate. Yet the worst-performing one percent of businesses in that industry may actually create costs equivalent to an additional six percent of payroll. The unsafe practices of some firms are therefore being subsidised by safer firms.
355. A more effective risk- and performance-rating levy regime can reduce such cross-subsidisation. Such a regime could be applied to higher-risk industries, with specific measures developed in co-operation with industries to counter any avoidance and evasion practices.
356. However, such a change would need to be complemented by a closely integrated and consistent approach between the new agency and ACC, so that different streams of data can be used to inform workplace and claimant interventions. To date there have been difficulties in this regard due to poor co-ordination, poor exchange and complementarity of data, and inconsistencies between health and safety audit and compliance requirements.
357. The Taskforce considers that ACC should be responsible for implementing the differentiated levies. However, the new agency should be responsible for auditing performance under a new risk- and performance-rating levy regime, as audits will involve engagements with individual firms and need to be consistent with the guidance provided by the new agency. This audit role is likely to be significantly more intensive than ACC's current audit processes⁶⁶. Consideration should also be given to the balance between self-auditing and auditing by the new agency, and whether cost recovery should apply.
358. In addition, careful consideration needs to be given to whether smaller employers are included in such a regime. The reasons for this include:

66. However, for simple no-claims type schemes, ACC could be better placed to continue to undertake any audits required.

- a. sufficient and robust statistical data at the individual business level would be necessary, and many small businesses have short lives or change rapidly
 - b. smaller employers can be hard to monitor in terms of evasion tactics
 - c. if small businesses are left out, riskier work may be sub-contracted to them and incentives to improve health and safety may remain weak.
359. Drawing on European experience, the Taskforce considers that specific requirements (e.g. industry-specific standards) should be developed for smaller employers in high-risk industries to allow them to avoid having to pay higher levy rates. These should be complemented by guidance to assist them in putting systems and equipment in place. Those who choose not to follow the specific requirements, or who are unable to follow them, would face levy loading. This would alter the cost-benefit calculations of businesses (e.g. when considering whether to purchase safer equipment).
360. The new agency should undertake research to determine the specific requirements that should be made of smaller employers in high-risk industries. Setting such requirements requires an ability to distinguish between appropriate mandatory standards and what would constitute best practice but may not be viable for all businesses in an industry. If the new agency inherits and strengthens the standard-setting function currently delivered by MBIE, it will be much better placed to have this ability than ACC.
361. In *Accountability levers*, the Taskforce recommends extending duties on PCBUs to clearly cover people in all kinds of working relationships. (In effect, this means adopting the Australian approach of PCBUs as the way forward for New Zealand.) The Government should consider how the new levy system could reflect the broader risk factors for which an employer or PCBU is responsible or over which they can exercise influence. Such consideration should include looking at:
- a. alternative means for setting levies to include measures such as exposure hours
 - b. how levies account for contract workers and casual employees
 - c. the extent to which levies address risks in work-related travel and risks to the public.
362. Finally, the Taskforce considers that there should be a provision for the recovery of the costs of regulatory activities in major hazard areas based on the costs of the services or activities that businesses require. It is possible that over time the new agency will consider how cost recovery can be applied to other high-risk businesses and industries.
- Benchmarking regulator, firm and industry performance**
363. Included in the recommendation to set up a research, monitoring and evaluation function within the new agency (see Recommendation at paragraph 414b) is a key responsibility to establish mechanisms for the ongoing capture and reporting of a suite of lead and lag indicators from across the workplace health and safety system.
364. These should expand on and improve existing performance monitors. They should also contribute to existing reporting mechanisms, including the *State of Workplace Health and Safety in New Zealand*⁶⁷ report and the new agency's statements of intent and annual reports. The purposes of the expanded reporting mechanism would be to:
- a. benchmark and monitor industry performance
 - b. benchmark and monitor the new agency's performance.
365. While the formats for reporting have yet to be determined and may take time to develop fully, reporting should be annual. Reports should also include a wider range of performance measures than are currently reported, including data from across the range of government

67. MBIE - Labour (2012).

administrative systems (e.g. regulatory health and safety audits) and data collected from other sources (e.g. firm and population surveys).

366. Over time, the improved access to data on outcomes (e.g. injuries and occupational health diagnoses) and preventive and resilience factors (e.g. risk-management strategies such as management and employee representative training) will enable firms, unions and employer-representative bodies to compare the performance of their firms or sectors across industries, regions and firm sizes. The availability of data on a range of lead and lag indicators will give immediate feedback to organisations on where their firms or sectors are doing well, and where they need to improve. Small firms in particular industries, for example, should be able to identify the prevalence of particular worker-participation or risk-mitigation practices operating among their peers.
367. Benchmarks will need to be relevant if they are to serve as guides and motivators for firm and industry improvement. While it is likely that the relevance of some lead indicators will vary across industries and business sizes, the right range of indicators and the best formats for producing this data will need to be determined by the new agency, in consultation with business- and employee-representative organisations.
368. It is also important to benchmark regulatory performance across health and safety agencies in New Zealand and internationally. This will improve the understanding of comparative performance and inform priorities for performance improvement.

Penalties for doing the wrong thing Offences

369. The Taskforce recommends extending the existing manslaughter offence to corporations and revising the corporate liability framework that applies to all offences (including manslaughter).
370. The possible introduction of an offence of corporate manslaughter was raised with the Royal Commission, and the topic is discussed in its final report. The Royal Commission noted that such an offence had been introduced in the UK. It allowed the prosecution of companies and organisations when serious management failures resulted in death, reflecting community outrage at serious health and safety failures by management. The Royal Commission said that the New Zealand regime should be reviewed and increased penalties for companies should be considered, “as should the introduction of an offence of corporate manslaughter”⁶⁸.
371. Following receipt of the Royal Commission’s report, the then Acting Minister of Labour, Christopher Finlayson, asked the Taskforce for its advice on “the merits or otherwise of introducing the offence of corporate manslaughter”. To develop its advice, the Taskforce, in turn, consulted the Ministry of Justice (MoJ), Crown Law and MBIE.
372. Having considered this matter at length, the Taskforce does not support the introduction of new law on corporate manslaughter. The reason for this is that other jurisdictions have had very limited success in establishing an effective approach to the offence.
373. For example, by 2005 in the UK there had been only 34 prosecutions for manslaughter brought against companies, with no convictions against companies of any size or complexity. In most cases the prosecution struggled to find a single person whose conduct was sufficiently culpable to support a manslaughter charge. Although no equivalent statistics

68. Royal Commission (2012A), p 310.

are available in New Zealand, as homicide does not apply to corporations, anecdotal evidence suggests there would likely be a similar picture here.

374. When the UK changed its law in 2007 so that corporate manslaughter offences were based on systemic or management failures, it appeared to make little difference to the success rate for prosecutions. As at December 2012 there had been only three successful prosecutions under the Corporate Manslaughter and Corporate Homicide Act 2007. All three prosecutions were against small companies, with only one prosecution going to trial.
375. Canada has had similarly disappointing outcomes from its legislation in relation to corporate liability and manslaughter. Since 2004 only one conviction for corporate criminal negligence resulting in death has been secured in Canada. This was Transpavé (a Québec manufacturer) being fined \$110,000 for criminal negligence in relation to a worker's death.
376. The Taskforce considers that New Zealand can do better than this. It recognises the benefits of substantially raising the profile of corporate offending. Accordingly, we recommend:
- a. strengthening occupational health and safety laws (including enhanced duties for individual decision-makers and revised offences for failures to comply with duties)
 - b. extending the existing manslaughter offence to corporations and revising the corporate liability framework that applies to all offences (including manslaughter).
377. At present corporations cannot be prosecuted for manslaughter but they can be prosecuted for other offences against a person, such as wounding and injuring with intent or with reckless disregard. There is no good reason for maintaining this distinction.
378. However, merely extending the existing manslaughter offence to corporations would have very little impact in practice. That is because it would be subject to existing corporate liability rules.
379. Those rules generally make it very difficult to convict a corporation for core Crimes Act offences. To give rise to liability, an act or omission constituting the offence must be committed by a single individual who is acting on behalf of the company and is its "directing mind and will" (that is, a senior executive or manager who is able to make significant decisions on the company's behalf). The acts or omissions of more than one individual cannot be aggregated to establish the necessary ingredients of the offence. Nor can the acts or omissions of other company employees give rise to corporate liability, even if they have resulted from a corporate ethos or from corporate system failures. In a larger corporation, where decision-making is generally diffused, it is very difficult to attribute the offence to the actions or omissions of any single individual who can be regarded as the company's "directing mind and will".
380. It would be possible to create a new offence of corporate manslaughter framed in such a way as to address these difficulties. We note that this has been done, for example, in the UK and the Australian Capital Territory (ACT). However, we do not favour such an approach. It would end up making it easier to convict a corporation of manslaughter than of some other offence against a person (such as wounding with reckless disregard) even when each offence resulted from the same type of conduct. That would simply replace one anomaly in the law with another.
381. In the Taskforce's view, therefore, the existing manslaughter offence should be extended to corporations, and the general rules relating to corporate liability should be revised at the same time. This would be the most effective way to maximise the denunciatory and deterrent effect of the criminal law in influencing the behaviour of

corporations. Without that more general revision of the law, little change is likely to result. The Canadian Criminal Code, as amended in 2003, revised its corporate liability rules and provides one useful model that might be considered.

382. The Taskforce notes that, in order to be effective, the revised law would need to address two issues. First, it would need to allow the attribution of criminal liability to a corporation as a result of the acts and omissions of a greater range of officers and employees within that corporation, provided they are acting within the scope of their authority. Second, it would need to provide that liability could be attributed to a corporation if two or more individuals of the required seniority within the company engaged in conduct that, if it had been the conduct of only one of them, would have made them personally liable for the offence. This would allow conduct and states of mind to be aggregated for the purposes of attributing corporate liability in a way not permitted under current New Zealand law.
383. The Taskforce considers that MoJ should begin policy work now to determine the range of options for a revised generic corporate-liability framework and to identify the preferred approach.

Penalties

384. The Taskforce recommends that the maximum penalty ceiling for offences be raised to be comparable with Australian levels, with a graduated penalty range.
385. At present in New Zealand, offences likely to cause serious harm incur fines of up to NZ\$500,000 or imprisonment for up to two years, or both. Under the Model Law, reckless conduct offences by individuals incur penalties of up to AUD\$600,000 or five years' imprisonment, or both, and by a body corporate up to AUD\$3 million.
386. However, fine ceilings do not necessarily reflect what actually happens in the courts. In their paper *An Empirical Analysis of Changing Guidelines for Health and Safety in Employment Sentences in New Zealand* (2013), Woodfield et al found, for example, that "the magnitude of discounts for the many permissible mitigating factors makes endpoint fines very much smaller than typical starting points"⁶⁹. Woodfield et al also found that "for offenders found to have financial limitations, the effect is to drive many fines to be a small proportion of their endpoints, let alone their starting points".
387. And as noted in MBIE's submission to the Taskforce:
- "Fines imposed in HSE Act prosecutions continue to be low. Fifty five percent of all fines imposed are less than \$30,001 (12% of the maximum set in the Act), and 92% of all fines imposed are less than \$50,001 (20% of the maximum). Low fine levels undermine the general deterrent effect intended by penalties, and send wider societal signals that offending of this type is less serious, or that workplace health and safety is not important."*⁷⁰
388. Woodfield et al also noted that judges seem averse to putting small businesses out of business through the size of the fines or the reparation orders they impose. They noted that "the judiciary also occasionally gives generous treatment to small, relatively impoverished employers on the grounds that their importance in small communities is such that their failure would cause excess social hardship".⁷¹
389. The Taskforce considers that it might be the best outcome if some firms are put out of business. Profit gained in the context of causing reasonably preventable harm to workers is ill-gotten gain. The Taskforce concurs with Woodfield et al's view that the generous treatment of small businesses in this context seems at odds with the dynamics of business life more generally, which mean that:

69. Woodfield, A, Hickson, S and Menclova, A (2013A). *An Empirical Analysis of Changing Guidelines for Health and Safety in Employment Sentencing in New Zealand*. Working Paper No. 14/2013, Department of Economics and Finance, University of Canterbury.

70. Supporting material for MBIE's presentation to the Independent Taskforce on Workplace Health and Safety. (2012), p40.

71. Woodfield et al, p 34.

“Many small enterprises fail because demand falls, costs increase, or expectations of their success are over-optimistic. Others move location, including offshore. But more importantly, the failure of a business for any reason does not destroy the physical resources invested, which can generally be purchased by others. Trading and employment may cease, but only temporarily”⁷².

390. Woodfield et al said that “one issue that may loom large [in the Taskforce’s work] is whether or not the severity of HSE sentences should be increased in order to provide greater incentives for workplace health and safety precautions”⁷³. The Taskforce’s response to that question is an emphatic ‘Yes’.
391. Woodfield et al also said that “it is clearly evident that the judiciary is willing to impose more severe sentences if provided with clearly structured criteria by higher courts”⁷⁴. If that is so, there should be no hesitation in the new agency making appeals to the High Court seeking increases in fine levels, where appropriate.
392. The Taskforce considers that the Government should introduce a hierarchy of offences and corresponding penalties of the same or a similar nature to those described under sections 31-33 in the Model Law. Like the Model Law, the offences should have three levels.
- a. *Reckless conduct* – where a person who has a health and safety duty without reasonable excuse engages in conduct that exposes an individual (to whom that duty is owed) to a risk of death or serious injury or illness, and the person is reckless as to the risk.
 - b. *Failure exposing to serious risk* – where a person fails to comply with their health and safety duty, and the failure exposes an individual to a risk of death or serious injury or illness.
 - c. *Failure* – where a person fails to comply with their health and safety duty.
393. The Taskforce recommends that consideration also be given to including a further category of serious offending with higher maximum penalties that would apply where death results. Care would need to be taken so that the inclusion of an additional category would not detract from how seriously the courts would treat the other offences.
394. The courts may not sentence a Crown organisation to pay a fine in respect of an offence (section 6 of the Crown Organisations [Criminal Liability] Act 2002). The Taskforce believes that government agencies should be subject to penalties for breaches of health and safety provisions in the health and safety legislation in the same way as any other PCBU in breach. While this may result in a Crown agency paying fines to the Crown, the imposition of a penalty provides real accountability on behalf of victims and their families.
- Enabling (but not compelling) judges to make adverse publicity orders**
395. Adverse publicity orders can involve publicity about an offender’s conviction to either a specific group of people or the general public. The UK Health and Safety Executive says that the orders:
- “... optimise the impact of adverse publicity by empowering judges to order companies to run newspaper advertisements, write to shareholders or put up billboard posters publicising their offending... publicity orders open up the possibility that the publicity given to conviction and sentencing is adequately transmitted and sufficiently condemning; enhancing their general deterrent effect and directing the collective consciousness towards the moral and emotional dimensions of health and safety offending”⁷⁵.*
396. The UK Health and Safety Executive notes that they “represent a potentially powerful means of reinforcing the normative basis of compliance with occupational health and safety regulation”⁷⁶.

72. Woodfield, A, Hickson, S, Menclova, A (2013B). *Forecasting Fines for Health and Safety in Employment Offences in New Zealand*, pp 16-17. Working Paper No. 15/2013. Department of Economics and Finance, University of Canterbury.

73. Woodfield et al (2013A), p 24.

74. Ibid.

75. Centre for Corporate Accountability, Health and Safety Executive (2007). *International Comparison of (a) Techniques used by State Bodies to Obtain Compliance with Health and Safety Law and Accountability for Administrative and Criminal Offences and (b) Sentences for Criminal Offences*, p 140.

76. Ibid, p 144.

397. The Taskforce considers that judges should be enabled to make such orders but not compelled to make them.

398. Avoiding the risk of reputational damage caused by publicity about any poor performance or negligence can also incentivise PCBUs to maintain good workplace health and safety systems. Adverse publicity orders provide this incentive.

Giving the regulator authority to publish information about its enforcement actions

399. Regulators should be given the authority to make information about their enforcement actions publicly available after the period for appeal has expired, but not be compelled to do so.

400. This would have a similar effect to adverse publicity orders in that it maximises the deterrent value of the enforcement, acts as an incentive to comply and is a source of information on health and safety performance for potential employees, purchasers of services and customers.

More effective enforcement

Improved compliance tools for addressing poor performance

401. Sustained or repeated poor performance is often not due to deliberate non-compliance. Businesses may want to perform well but find it challenging because of competition pressures that favour poor performers. This can be a serious obstacle to achieving widespread performance improvement and create a 'race to the bottom', particularly where small businesses are involved.

402. To motivate compliance and create a level playing field, the new agency and the other regulators need to make better use of their existing enforcement tools. They should also have an enhanced toolkit of effective sanctions, deterrents and remedies to ensure that the regulatory responses are proportionate to the breaches. An appropriate toolkit would include the following tools.

a. *Enforceable undertakings*, which should be introduced to provide an alternative to prosecution. An enforceable undertaking is a voluntary agreement reached between a PCBU and an inspector to put right an alleged breach to a required standard in a specified timeframe. If the PCBU fails to meet the agreement, it can be enforced through a compliance order in the District Court. This potentially avoids resource-intensive prosecution, which reduces costs for both the PCBU and the regulator.

b. *Civil procedures under the Criminal Proceeds (Recovery) Act 2009*, to address ill-gotten financial benefits from non-compliance with health and safety legislation.

c. *Improved prosecutorial processes generally*, in which a regulator takes a more strategic approach in its prosecutions to focus on more significant cases, and provides judges with generally higher-quality evidence of the breaches, the harms caused and the risks of probable harm as a result of systemic and persistent failures to comply. This should also include changes to the way the regulator lays charges so that both potential harm and actual harm are properly considered by courts of law. As noted in the submission from MBIE:

"[There is] a focus by the Courts on harm actually caused as a result of health and safety offending rather than the potential for harm, with the effect that starting points for fines are fixed too low. Further, Courts regularly apply heavy discounts to the starting points set. This approach does not fully recognise the preventative nature of the Act, and overlooks that harm suffered (or not) as a result of health and safety offending is often simply a matter of good or bad fortune. More work would need to be done to test how this approach fits with other sentencing criteria".

- d. *Infringement notices* in which the requirement for prior warning is removed and there are higher penalties⁷⁷. Section 56B(1)(b) of the HSE Act requires that a person has prior warning of an infringement offence in order for an infringement notice to be issued. Section 56C of the Act specifies the form that such prior warning can take. It appears to be well known by businesses that due to time constraints on health and safety inspectors, businesses are unlikely to be visited again for infringement offences to be issued. As noted by MBIE:
- “We do not consider that infringement notices are being used to their full effect. Immediate financial sanctions are known to be effective in motivating changes in behaviour. The current HSE Act provision for infringement notices requires that duty holders receive prior warning about a similar offence before a notice can be issued, meaning that repeat interactions or visits to the same workplace are necessary in order to use this enforcement tool. The need to visit at least twice before being able to take action is likely to have been a contributing factor in the extremely low number of infringement notices issued by inspectors since their introduction. Parallel legislation in Australian jurisdiction does not contain a prior warning requirement for the issue of ‘on-the-spot’ financial sanctions”.*
- e. *Compliance or restoration orders* to address the deficiencies of improvement notices, which resolve the causes but not the consequences of a failure, e.g. environmental damage, or unsafe plant that has already been sold.
- f. *Cost recovery mechanisms* would enable the regulators to recover their costs that directly relate to offending that has been proven beyond reasonable doubt, i.e. successfully prosecuted. This would help to ensure that the system is not supporting the poor performance of the worst offenders.
403. An essential feature of a fair regulatory system is transparency. Accordingly, the new agency and other regulators need to ensure that their compliance and enforcement practices are visible and understood. The regulators should ensure that their strategies, plans, policies and activities are published and accessible, including their enforcement policies and targeted sectors. By helping system participants to understand where harm-prevention priorities are within the system, they are able to focus their attention appropriately.
404. The regulators’ published strategies, plans and activities can motivate system participants. They accentuate the importance of the targeted issues, and provide assurances that they are being effectively resolved. Further, regular updates on the implementation of these strategies, and information about activities, can prompt those slow to act and the reluctant to improve or face clear consequences.
- A smaller group of judges hearing workplace health and safety cases in the Employment Court***
405. The Taskforce considers that there is a need to develop a specific health and safety capacity in the judiciary. One approach is a smaller group of judges who should hear workplace health and safety cases in the Employment Court, and for the Employment Court to have expanded functions so that it covers workplace health and safety. This would recognise that health and safety obligations are an intrinsic part of a good employment relationship. It would also have the advantage of establishing judicial expertise in health and safety matters.
406. As noted by MBIE:

“District Court judges do not deal with health and safety cases regularly enough in order to develop specialist knowledge in the area. Data from the last 20 years indicates that a judge will hear an average of fifteen HSE Act cases over that time. Thirty judges have only ever heard one HSE case, and 100 judges have heard fewer than ten. At the

77. The current maximum penalty for infringement notices is \$4,000. This has not been reviewed since its introduction in 2003. This level of fine is inadequate in many cases for mitigating the financial benefits of non-compliance, and it falls well short of the minimum claimable amount under the Criminal Proceeds (Recovery) Act 2009.

*other end of the spectrum, the two judges with the most HSE experience have presided over about 72 cases each*⁷⁸.

Using cross-agency business profiling

407. It is likely that a business weak in one area will be weak in others. A business is also most at risk of failing at critical development points, and thus would most benefit from support and reminders about health and safety and other duties at these times. The Government can therefore usefully pool information on wider compliance failures (e.g. late tax returns), firms reaching critical growth points (e.g. major resource consents) and when known risk factors are present (e.g. long work hours or failures to achieve profitability).

408. Health and safety information is dispersed between different regulators and ACC. The greater and more ‘real time’ the information-sharing is, the better informed and more effective that enforcement decisions will be. These could range from strategic decisions about where to focus resources to decisions on what to look for on particular worksites. ACC has and will continue to have good access to a broad range of data. Any data unit in the new agency would therefore need to work closely with ACC, and there should be no barriers to sharing information.



78. Supporting material for MBIE’s presentation to the Independent Taskforce on Workplace Health and Safety. MBIE footnote: “It should be noted, however, that we were unable to establish a prima facie correlation between the number of cases heard by a judge and a higher average level of fines awarded”.

KNOWLEDGE LEVERS

PART 2.3

Knowledge levers

409. An effective workplace health and safety system requires all participants to have high levels of knowledge of health and safety, and reinforces the value of that knowledge.
410. Knowledge levers are used to ensure that participants have sufficient information to understand their obligations and rights and how to achieve good workplace health and safety outcomes. Knowledge levers need to be supported by good information, e.g. data, research and evaluation about what works and what doesn't. At present, we don't know what the issues are or what to target. In the absence of good New Zealand information, there are many opportunities to adapt international good practice for New Zealand circumstances.
411. Knowledge levers need to ensure that learning from past incidents enables participants to focus on preventing harm in the future.
412. The improvements to knowledge levers that the Taskforce recommends are in response to concerns discussed in the introduction to this report. A particular priority is redressing the lack of certainty created by gaps in the regulator's provision of clear information and guidance for duty holders and regulated entities about how to comply and why compliance is important.
413. The implementation of our recommendations will provide participants with the necessary capacity and capabilities, and improve the education and training system so that it can support the ongoing development of participants' capabilities, to improve health and safety outcomes.

Recommendations

(The recommendations below are listed in the Executive Report as Recommendations 12-15)

414. The Taskforce recommends that the Government:
- a. ensure that the new agency implements a comprehensive set of regulations, ACoPs and guidance material that clarifies expectations of PCBUs, workers and other participants in the system.
 - i. Significant resourcing should be dedicated to this function of the new agency in the short term. The new agency should publish a timetable for the development and review of regulations, ACoPs and guidance material, and must ensure that these processes are undertaken on a tripartite basis. The new agency must consider what support is required for tripartite participation in the standard-setting process, including training and potentially funding for participation.
 - ii. The new agency must ensure that its information and support services are delivered effectively to hard-to-reach population groups and should consider establishing advocacy or advice services (potentially on a trial basis) to support this
 - b. improve the quality and availability of data and information on workplace injury and occupational health performance by establishing a sector-leading research, evaluation and monitoring function within the new agency:

- i. with the mandate to influence and direct the collection of occupational health and workplace injury administrative data across government regulatory, compensation and health agencies and to collate and integrate this data for research purposes
- ii. to commission and undertake research, monitoring and evaluation programmes, including the development of minimum data sets for workplace injuries and occupational illnesses and a system-wide suite of lead and lag performance indicators, to inform evidence-based regulatory and business practice
- iii. to publish and disseminate findings, including through annual reporting on system-wide performance measures, and to make monitoring data available to partner agencies and key stakeholders in appropriate formats
- c. require that the new agency lead the development and implementation of a workforce development strategy to identify and address capacity and capability gaps within the new agency as well as the workforce more generally, so that the workplace health and safety system functions effectively. Priority components for the new agency for inclusion in the workforce development strategy are:
 - i. developing specific workforce development plans for the new agency's staff generally and occupational health staff specifically
 - ii. information gathering to inform the strategy's content
 - iii. leadership from the new agency for the establishment of a health and safety professionals alliance (HaSPA), and the development of a pathway to the occupational regulation (registration) of health and safety professionals
 - iv. a comprehensive embedding of workplace health and safety into the education and training system at all levels to support up-skilling of the workforce generally
- d. ensure that the new agency's compliance activity is focused on harm prevention, with far greater emphasis placed on root-cause analyses in investigations. To support this, the Government should:
 - i. require that the new agency develop ACoPs or guidance material on how employers and PCBUs can implement no-blame, no-fault or even-handed culture models of managing workplace health and safety matters, and how to undertake root-cause analysis
 - ii. require that all investigations by the regulators examine the root causes of incidents, and that the regulators undertake more systemic reviews of root causes across groups of incidents
 - iii. extend the role and function of TAIC to allow it to undertake root-cause investigations of a broader range of workplace health and safety incidents.

Providing greater certainty

Quality information and advice

415. The Taskforce is concerned that low levels of general awareness of health and safety limit participants' (business owners', directors', managers' and workers') ability to participate in workplace health and safety matters. New Zealand's poor outcomes are exacerbated by society's high tolerance of risk and negative perceptions about health and safety, which means that these low levels of awareness are not seen as a significant issue.
416. For system-wide improvements to be realised, the Taskforce considers that system participants need to be able to recognise poor health and safety practices when they encounter them. Business owners, directors and managers need to know what their responsibilities are and how they can comply with those responsibilities. Workers need to know how they can ensure their own safety, health and wellbeing.
417. Information, guidance and publicity are useful tools for raising awareness. The Taskforce has separately recommended that the Government invest in a comprehensive and targeted health and safety public awareness programme (see paragraphs 332 to 336 in *Motivating levers*). However, raising awareness is not sufficient on its own. It needs to be complemented by widespread support and incentives, and targeted compliance activity.
418. The new agency must be a reliable source of timely, up-to-date, free and readily accessible guidance material, which includes practical strategies and solutions. This guidance material must be accessible for the range of audiences that rely on it, e.g. SMEs and different population groups. Language, literacy and numeracy (LLN) and cultural issues should be taken into consideration. It should promote certainty without being overly prescriptive or complicated.
419. To promote certainty of rights and obligations, where appropriate, the new agency should implement:
- regulations that set mandatory requirements in relation to the duties under the new workplace health and safety legislation
 - ACoPs that identify preferred ways of undertaking these duties.
420. The Taskforce recommends that the Government ensure that the new workplace health and safety agency implements a comprehensive set of regulations, ACoPs and guidance material that clarifies expectations of PCBUs, workers and other participants in the system. Significant resourcing should be dedicated to this function of the new agency in the short term (see paragraphs 541 to 543 regarding funding this function). We recommend that the new agency publish a timetable for the development and review of regulations, ACoPs and guidance material, and ensure that these processes are undertaken on a tripartite basis. We also recommend that the Government ensure that the new agency considers what support is required for tripartite participation in the standard-setting process, including training and potentially funding for participation.
421. With the proposed adoption of the Model Law, the Taskforce considers that there is an opportunity to adopt the best available material from Australia to speed up the development of supporting regulations, ACoPs and guidance material for New Zealand. The new agency should also look to other comparable jurisdictions, including the UK and Canada, to identify good practice in regulations, ACoPs and guidance material.
422. The Taskforce considers that the best material available internationally should be adopted unless there is good reason not to. Where adaptations are necessary for New Zealand conditions, these should be made. In time, the material could be reviewed to improve its suitability further for New Zealand, if needed. However, reviewing and improving the regulations,

ACoPs and guidance material are of secondary importance and should not delay the gaps being filled.

423. The Taskforce considers that the following principles should guide the new agency in implementing the Taskforce's recommendation:
- a. when filling the gaps in regulations, ACoPs and guidance, the new agency should prioritise its efforts in accordance with the Government's harm-prevention strategy. However, this should not result in substantial gaps that are easy to fill being overlooked
 - b. when reviewing the need for or developing industry-specific guidance and information, the new agency should collaborate with industries and unions, where possible, to promote tripartism
 - c. competency requirements arising from ACoPs and guidance should be clear and aligned with recognised industry qualifications and standards, where appropriate
 - d. ACoPs and guidance about an issue should interweave messages about worker participation, and also about the responsibilities of managers and supervisors
 - e. where the new agency refers to technical documents such as New Zealand Standards when clarifying compliance requirements, the necessary information must also be free and accessible to all. This may require the new agency to provide free access to an entire standard or to the relevant parts of a standard within its publications.
424. Areas where the Taskforce considers that specific regulations, ACoPs or guidance material are needed include:
- a. promoting and supporting health and safety management systems, including risk assessments, accident investigations and the roles of managers and supervisors in health and safety management (discussed below)
 - b. obtaining competent advice and selecting a health and safety practitioner (paragraphs 469 to 472)
 - c. worker participation (see paragraphs 252 to 256 in *Accountability levers*)
 - d. addressing occupational health issues, see paragraphs 429-430
 - e. major hazard facilities (see paragraphs 320 to 323 in *Accountability levers*).

Promoting and supporting health and safety management systems

425. The Taskforce proposes that the new agency have specific functions associated with promoting and supporting health and safety management systems. We consider that all firms, as a matter of best practice, should have fit-for-purpose health and safety management systems. We do not recommend a legislative requirement that firms have documented health and safety management systems. We are concerned that this would lead to a one-size-fits-all mentality and a focus on the documentation rather than the outcomes and the important role of leadership in achieving them. In this context, it is important to be mindful that what is fit for purpose for SMEs and low-risk industries is likely to be at a much lower level of formality than what is fit for purpose for larger businesses and high-risk industries.
426. However, the Taskforce does consider that there should be regulation-making powers that provide for mandatory health and safety management systems, such as in high-risk areas. The Taskforce also considers that the new agency needs to develop regulations, ACoPs and guidance material for SMEs and low-risk industries on how to implement a fit-for-purpose health and safety management system. These should also address how PCBUs should fulfil their risk management obligations, including how PCBUs take into account the risks associated with their workforces and the characteristics of the work they control. For example, the regulations, ACoPs and guidance material could highlight the need for PCBUs to address the risks associated with:

- a. young and old workers, workers who are new to roles, and temporary, casual and seasonal workers
 - b. fatigue generally, and long hours of work leading to fatigue specifically
 - c. workers with LLN issues
 - d. the use of performance pay systems
 - e. the financial condition of a company or the competitive environment that a company faces
 - f. new and emerging technologies.
427. The Taskforce is also concerned that there is a lack of clarity about how accident investigations should be undertaken, and there are inconsistent practices across firms as a result. We consider that there would be value in the new agency setting out expectations for accident investigations, through either an ACoP or guidance material.
428. Managers and supervisors have a central role to play in implementing health and safety management systems. However, concerns have been raised about the capacity and capabilities of managers and supervisors to meet the legal expectations currently placed on them. Our recommendations for the new workplace health and safety legislation would strengthen these expectations (see paragraphs 490 to 492 below). In order to provide clarity on the expectations of managers and supervisors, the Taskforce considers that the new agency should:
- a. develop a stand-alone ACoP or guidance material that clarifies the general expectations of how managers and supervisors should fulfil their duties
 - b. include content in broader ACoPs and guidance material for high-risk industries and specific high-risk situations, which clarifies more specific expectations of managers and supervisors in fulfilling their duties in a high-risk context.

Support for addressing occupational health issues

429. The Taskforce considers that regulations, ACoPs and guidance material on health and safety management systems should address *health* risks and hazards in a similar manner to *safety* risks and hazards. Whilst specialist knowledge or expertise may be required to identify and address many health risks and hazards successfully, this is not the case in all situations. There needs to be a focus by the new agency and PCBUs on the monitoring of exposures to identified health risks and hazards. This will ensure that PCBUs manage their risks and evaluate the effectiveness of their management techniques. This focus on lead indicators will also enable PCBUs to take early action to protect workers' health.
430. The Taskforce considers that the new agency should support PCBUs by including content in regulations, ACoPs and guidance material on health and safety management systems about how to deal with common occupational health risks and hazards.

The new agency's effectiveness and reach

431. The Taskforce has separately recommended that the new agency has processes to evaluate its own performance and its contribution to the performance of the workplace health and safety system (see paragraphs 278 to 281 in *Accountability levers*).
432. We consider that it will be particularly important for the new agency to assess its performance critically in supporting and informing all workers and businesses of the requirements of the workplace health and safety system, their rights and obligations, and what good practice is.

LITERACY UP-SKILLING SUPPORTS SAFETY AT DOWNER

Major infrastructure services company Downer has invested in workplace literacy training to support its 'zero harm' health and safety goal.

It has run the largest workplace literacy training initiative to date in New Zealand – 2,500 of Downer's 4,700 employees have taken part in the programme since 2007.

This training covers reading, writing, maths and effective communication skills.

Executive General Manager Chris Meade says the benefits to the company are profound, and range from improved leadership and critical-thinking skills to big reductions in medical treatments, lost-time injuries and the company's accident insurance claims.

The benefits to individual employees are often profound too, and have broad ripple effects for their families and local communities.

"We see ourselves as a trailblazer in this area. We believe that this programme has allowed many of our employees to reach their true potential," says Chris.

Research shows that close to half of New Zealand's workers have literacy and numeracy gaps, and these gaps affect people's ability to manage the more complex demands of the workplace, including health and safety.

When workplace literacy is delivered with a health and safety focus, the benefits can be literally lifesaving.

A LEARNING ORGANISATION

The Downer business works across five sectors – transportation, telecommunications, energy, water and facilities' management.

The work associated with these sectors is often seen as being undertaken by a low-skilled workforce, but Downer does not share that view, says Chris.

"In today's world our people need to be confident and competent in making on-site decisions and handling sophisticated machinery. They have to follow rigorous safety procedures and work productively to provide high-quality products and services.



"We know that we must concentrate on our critical risks, even if our injury statistics tell us we are doing very well compared with our peers."

CHRIS MEADE

CONTINUED

“It’s a very high-risk industry where safety is critical, not only for employees but often for the travelling public moving through live worksites.”

Downer prides itself on being ‘a learning organisation’ in its efforts to achieve zero-harm outcomes.

About 30 percent of Downer’s people are Māori and Pacific Islanders. Some of these and other employees left school with low skills and little confidence in their abilities. For many of the more recent employees, English is not their first language.

“We have a very strong stake in their capabilities.”

“Employees can expect that when they come into our business, they are going to be involved in workplace learning. Where they haven’t got the relevant foundation skills, we’ll help them get what they need.

“We have a very strong stake in their capabilities.”

Chris says Downer’s improving safety record is testament to the value of literacy training.

The company’s initial needs analysis indicated that supervisors and foremen needed to improve critical-thinking and communication skills to help drive the health and safety requirements.

“A large proportion of our staff members have now been up-skilled in health and safety training. We believe this gives us a valuable point of difference when it comes to tendering for and undertaking our contracts.

“Many of our customers demand recognised safety qualifications.”

Downer kicked off its literacy training in 2007 with a programme called TeamWorks, with funding support provided by TEC. Training was

offered to 800 team leaders and foremen at 23 regional branches across the country.

More than 600 participants went on to achieve unit standards within the National Certificate for Civil Infrastructure. The business worked with training partner The Learning Wave, which trained each of Downer’s 11 regional facilitators in foundation skills to ensure consistency and quality of delivery across all sites.

The result has been an improvement in leadership skills as workers gain unit standards. In turn, this has improved performance and productivity, and helped Downer to cope with a national skill shortage.

A follow-up programme, Way2Work, gave 1,000 frontline employees an opportunity to boost their reading, writing, maths and communication skills, and to gain the skills needed to get health and safety qualifications, including the National Certificate in Infrastructure level 2.

The results have been impressive. In the past four years there has been a significant reduction in the number of injuries and accidents occurring in Downer. Medical treatment costs are down 66 percent, lost-time injuries down 67 percent and motor vehicle claims down 72 percent in the four years. Not only does this represent a safer work environment, it has resulted in millions of dollars of saved costs.

In 2008 Team Up to Safety was set up to support the company’s overall zero-harm philosophy. This behaviour-change programme empowers people to step up and take personal responsibility for their safety.

Downer employees receive coaching from colleagues to identify and discuss safety issues on site, using a process called Look, Tell, Talk. Senior managers now have up to 30 percent of their personal performance criteria linked to safety outcomes.

“Everyone in Downer is empowered to stop a job if they think it may be unsafe. Taking personal responsibility for workplace safety is possible when people have good communication skills,” says Chris.

“They know what they can do and they are confident enough to ask questions.”

ONGOING LITERACY SUPPORT

Downer now operates what it calls the Nuts and Bolts programme, which features literacy champions trained to provide ongoing literacy support in the workplace.

All champions are widely respected within Downer for their skills in the civil infrastructure industry. They have also completed the National Certificate in Adult Literacy and Numeracy Education (Vocational) – a level 5 qualification that is recognised by the New Zealand Qualifications Authority (NZQA). At least one of these champions took part in Downer’s initial workplace literacy training in 2007.

“It’s their job to identify skill gaps and work alongside employees to close those gaps. We’re also developing job guides that can be read and understood by everyone in our organisation.”

NOT RESTING ON LAURELS

While its injury statistics show that Downer compares extremely well with the industry norm, there have been two fatalities on Downer sites in New Zealand in the past 18 months. One involved a reversing vehicle on a road maintenance site. In the other, an experienced drilling operator was struck by a clamp from a compressed air hose while clearing a major slip in Fiordland.

Chris says the company was devastated by these tragic events and is working hard to ensure they are not repeated.

“We know that we must concentrate on our critical risks, even if our injury statistics tell us we are doing very well compared with our peers.”

The company investigated both incidents and comprehensively reviewed its work systems and practices. It has since put in place several initiatives, including producing a set of lifesaving rules – its ‘10 Cardinal Rules’ – that provide direction to employees regarding critical risks on Downer worksites.

Because of Downer’s sustained investment in literacy, the company is confident they are rules that employees can read, understand and follow.



433. The changing nature of work arrangements and a reduction in union membership have contributed to a growing number of workers who are hard to organise and reach over health and safety matters. These trends are not the only reasons for workers not having access to information and support. Many workers in SMEs and remote locations will not necessarily have access to support about workplace health and safety matters.
434. The former DoL and MBIE have long had contact centres and websites that provide access to information on workplace health and safety matters, and have run campaigns targeting particular population groups including SMEs. Health and safety inspectors also have an explicit function of providing information and education.
435. Submissions supporting initiatives such as roving health and safety representatives, regional health and safety advice centres, and targeted advice services for workers (and PCBU) in SMEs suggest that the current services are not meeting expectations.
436. The Taskforce recommends that the new agency:
- a. ensure that its information and support services are effectively delivered to hard-to-reach groups, with consideration given to establishing regional support centres
 - b. consider establishing advocacy or advice services, potentially on a trial basis. This may involve contracting the delivery of these services to create separation from the new agency's compliance and enforcement operations.
437. New Zealand has incomplete and poorly integrated intelligence on workplace health and safety risk concentrations, the causes of workplace injuries and illnesses, and the prevalence of good preventive practice. Occupational health data is particularly poor. As a result, it is not possible to reliably monitor high-level outcomes, undertake robust causative analysis or develop and evaluate appropriately targeted, evidence-based interventions. It also means that industry bodies, businesses, unions and workers have inadequate information and are unable to compare their prevention-management performance meaningfully against that of their peers. This reduces their ability to identify weaknesses and develop appropriate interventions.
438. The Taskforce recommends that the Government improve the quality and availability of data and information on workplace injury and occupational health performance by establishing a sector-leading research, evaluation and monitoring function within the new agency:
- a. with the mandate to influence and direct the collection of occupational health and workplace injury administrative data across government regulatory, compensation and health agencies and to collate and integrate this data for research purposes
 - b. to commission and undertake research, monitoring and evaluation programmes, including the development of minimum data sets for workplace injuries and occupational illnesses and a system-wide suite of lead and lag performance indicators, to inform evidence-based regulatory and business practice
 - c. to publish and disseminate findings, including through annual reporting on system-wide performance measures, and to make monitoring data available to partner agencies and key stakeholders in appropriate formats.
439. A sector-leading, single-focus workplace health and safety research, evaluation and monitoring function will lead to a fundamental shift in the comprehensiveness and quality of workplace health and safety data captured, analysed and reported. Improvements in information on workplace practices and outcomes will be of enormous benefit

Improving the quality and availability of data

to the new agency, PCBUs, workers, employers' organisations and unions. It will enable the new agency to build robust intelligence systems, allowing it to better detect trends and variations and to understand causal mechanisms, and to develop, implement and enforce responsive injury- and illness-prevention policies and practices. Industry bodies will be able to use the information to identify good practice and to compare firm and industry practice and performance across industries and organisational types.

Improving data collection and building integrated data-management systems

440. Improvements in the data-collection protocols of all partner agencies will be required to optimise the quality and coverage of data collected through administrative systems. In the absence of clear, effective leadership in the sector to date, the Taskforce considers that the new agency is best placed to determine its information needs, to identify the best data sets for meeting those needs, and to ensure that the agencies involved are collecting the right information at the right time.
441. The new agency will need to develop its own data-collection procedures. It will also need to improve the quality and coverage of data above what is currently being collected. Both the underreporting of notifiable incidences of serious harm and the quality of data captured by frontline staff need to be addressed as a matter of urgency. To aid this, a new definition of serious harm needs to be developed to ensure that the types of serious harm of greatest concern are captured. The new agency will need the regulation-making powers necessary to specify what must be notifiable.
442. Further, the data-recording systems used by inspectors need to be reviewed and, depending on the review outcome, amended or replaced. The review should cover the processes used by inspectors to capture information on incidents as well as the technology supporting them. The outcome of the review needs to ensure that the right data – including meaningful causation and key demographics – is captured at the right time. The reporting of serious harm, including to the NODS database, similarly requires a fundamental review.
443. Improvements across data collections should be purpose driven and geared to enhancing the new agency's capacity to monitor trends, identify causes and inform evidence-based practice. There should be an equal emphasis on workplace injury and occupational health. Data sets should use common, standardised data definitions, be consistent with international standards and conventions, and be straightforward for the people doing the reporting and recording to use. There should be incentives for system participants to report, no 'wrong doors' for reporting and no unnecessary duplication in data gathering.
444. The Taskforce considers that the new agency should take responsibility for maintaining a high-quality data system. This will involve: determining the organisational structures needed to best support its information leadership function; identifying its information needs; developing strategies for improving data collection; co-ordinating a collaborative work programme; and establishing co-ordination and integration mechanisms. Maintaining a high-quality data system is a highly complex task requiring continual refinement. Accordingly, we believe that consideration should be given to the NOHSAC⁷⁹ recommendation that an independent epidemiological unit, free from political influence and budgetary uncertainty and supported by a panel of experts, be created to develop, integrate and report on purpose-driven minimum data sets.
445. A clear leadership mandate will enable the new agency to improve the quality and accessibility of injury and occupational health administrative data. The Taskforce

79. Kendall, N (2005) *International Review of Methods and Systems Used to Measure and Monitor Occupational Disease and Injury*. NOHSAC Technical Report 3: Wellington.

considers that the new agency should also lead improvements to the health and safety knowledge system through the following activities:

- a. *actively monitoring and reporting on trends in administrative data*
- b. *commissioning and undertaking wider research, evaluation and monitoring projects.* Improved administrative data collected across agencies will not, on its own, provide sufficient intelligence for an optimally informed regulator or for key stakeholders such as firms, business representatives, consultants and unions. In key areas, additional research, evaluation and monitoring activity will be required. These include causal investigations and problem definitions, intervention evaluations, and the ongoing development and collection of system-wide lead and lag indicators
- c. *developing an overview of the capacity and capability of the research system.* The new agency will need to work with the research community to ensure that adequate workplace health and safety research is occurring in priority areas. Substantial amounts of research are currently being done within or have been commissioned by the regulators and ACC, or funded through the health system and within academic institutions, firms and industry organisations. Ensuring sufficient quantities of researchers, and that practising researchers are of the right calibre, is a key plank of the workforce development strategy (see paragraphs 448 to 456)
- d. *publishing and disseminating research findings widely.* The new agency will be responsible for analysing the data collected and collated and publishing, disseminating and promoting findings to diverse populations (e.g. business leader forums, inspectors) through a range of formats as appropriate to the audiences
- e. *making available monitoring information wherever possible.* The new agency should also make available lead

and lag data it collects to researchers and agencies working in the injury-prevention area, business and worker representative bodies, and individual firms (e.g. an online data repository) to compare firm and sector performance.

Improvements in occupational health research and data

446. Low levels of awareness and knowledge of occupational health, combined with ineffective data and information systems, hinder our ability to identify and manage existing and new and emerging risks. Whilst the health effects of exposure to some substances and factors are well known, other substances and factors are introduced to the workplace on a frequent basis. These may have the same or similar health effects as existing known health hazards but may not be identified as requiring management with the same degree of care. For example, it has been suggested that some nanomaterials may have similar properties to asbestos, and tablet computers may cause musculoskeletal effects similar to those caused by traditional computers. The Taskforce believes that research activity is primarily focused on occupational *safety*, and that funding for research reflects this.
447. The Taskforce considers that the new agency must be responsible for investing in occupational health research, and it needs to take a leadership role to improve occupational health data- management systems. The new agency should ensure that New Zealand participates in international occupational health research programmes to supplement current national occupational health research. This will enable the provision of information and guidance to the regulated sector, raise awareness of the relevant diseases and exposures and help to identify occupational health trends and evaluate risks (existing and new). Ultimately, this will lead to a more informed and responsive sector.

Workforce development strategy

448. The Taskforce's consultation confirmed that knowledge of health and safety is insufficient. We consider that there is a need to lift the capacity, capabilities and general awareness of the entire workplace health and safety system, including workers, supervisors, managers and directors. The new agency should have a direct role in this by providing information, guidance and support. It will therefore need to partner with a wide range of stakeholders in industry and in different sectors, including education-sector stakeholders and health and safety professionals, to identify where improvements are needed and to develop actions to achieve those improvements.
449. The Taskforce recommends that the Government require the new agency to lead the development and implementation of a workforce development strategy to identify and address capacity and capability gaps within the new agency as well as the workforce more generally, so that the workplace health and safety system functions effectively.
450. An ambitious but realistic timetable needs to be set to develop this workforce development strategy. The strategy should be developed by the end of 2014 to allow for the establishment of the new agency and consultation with industry and sector stakeholders. All key actions identified by the Taskforce should be completed by the end of 2018. The strategy should be reviewed, in consultation with stakeholders, once the key actions have been completed.
451. The Taskforce recommends that the priority components of the workforce development strategy be:
- a. developing specific workforce development plans for the new agency's staff generally and occupational health staff specifically
 - b. information gathering to inform the strategy's content
 - c. leadership from the new agency for the establishment of a HaSPA and
 - d. the development of a pathway to the occupational regulation (registration) of health and safety professionals
 - e. a comprehensive embedding of workplace health and safety into the education and training system at all levels to support the up-skilling of the workforce generally.
- Components of a workplace health and safety workforce development strategy**
452. The Taskforce considers that the workforce development strategy should present an integrated picture of the capacity, capabilities and knowledge improvements needed for, for example:
- a. health and safety practitioners, including occupational health practitioners and medical providers
 - b. professionals with specific workplace health and safety duties, e.g. architects
 - c. workers in higher-risk or major hazard working situations
 - d. supervisors, managers and directors
 - e. workplace health and safety representatives
 - f. members of the research and evaluation community that supports the workplace health and safety system.
453. In developing a workforce development strategy, the new agency could:
- a. undertake a risk analysis of the system's capacity to grow at the speed required to achieve improvements, particularly for niche areas, e.g. occupational hygienists
 - b. consider a range of options to address system capacity constraints, e.g. training, immigration and changes to how international qualifications or accreditations are recognised in New Zealand
 - c. provide guidance on the outcomes and components of an effective workforce development strategy for specific professions, industries and sectors, and how individual PCBUs can contribute
 - d. address the balance between generic and specialist knowledge and skills for specific professions, industries and sectors.

454. The new agency should also identify as part of a workforce development strategy:
- a. who should be responsible for addressing specific workforce development issues (e.g. which actions are led by the Government, the new agency, another government agency, a sector or an industry organisation), who should contribute to those actions, and which actions should be left to individual PCBUs
 - b. the costs and benefits of options to address specific workforce development issues, including:
 - i. how any costs should be funded, e.g. what the balance is between Government funding (in the broadest sense), funding on a sector or industry basis, and funding by individual PCBUs
 - ii. what groups, industries and sectors would benefit from each option, e.g. whether SMEs or specific population groups would obtain particular benefits from an option
 - c. the timeframes and relative priority of options to address specific workforce development issues, including identifying the priority areas for Government funding
 - d. the implementation issues that would need to be addressed relative to specific workforce development issues
 - e. where training is recommended as an option to address a specific workforce development issue, whether that training should be required to be on the New Zealand Qualifications Framework (NZQF) or whether training on the NZQF should be prioritised.
455. Recent examples of workforce development strategies in New Zealand are in:
- a. the health sector, where Health Workforce New Zealand was set up in 2009 to provide national leadership on the development of the country's health and disability workforce⁸⁰
 - b. the social work sector, where the *White Paper for Vulnerable Children* and Children's Action Plan include workforce development actions to "provide a safe and competent children's workforce that takes a child-centred approach"⁸¹.
456. A number of supporting actions are recommended below. These respond to specific areas where the Taskforce considers there is sufficient evidence of the need for action now. However, collecting and analysing the information needed to develop more concrete actions and to identify any other actions for the broader workforce must be a priority for the new agency, in collaboration with other government agencies and stakeholders.
- Improving the regulators' general capacity and capabilities**
457. Submitters consistently told the Taskforce that the regulators lack sufficient capacity and capabilities across all their current functions. Regulators do not provide sufficient support or clarity about how to perform well. This makes it challenging for firms to understand the standards expected of them or the means by which they can improve. This is particularly true of SMEs. The regulators' compliance activities and incentives approaches are also inadequate to support improvements in performance.

80. See <http://www.healthworkforce.govt.nz/about-health-workforce-nz/terms-of-reference-0> for Health Workforce New Zealand's terms of reference

81. See <http://www.childrensactionplan.govt.nz/the-white-paper/professionals-helping-children> and <http://www.childrensactionplan.govt.nz/children-s-action-plan/professionals-helping-children>



458. The Taskforce considers that the new agency's capacity and capabilities, and those of the other regulators, will need to improve significantly. The extent of improvement is determined to a large extent by the functions recommended for the new agency (see paragraphs 206 to 209 in *Accountability levers*). In particular, there need to be improvements in capacity and capabilities so that the new agency can:

- a. improve health and safety outcomes in critical high-risk sectors
- b. address the lack of essential guidance for firms (see paragraphs 415 to 430)
- c. remedy the significant under-investment in occupational health (discussed in paragraphs 461 to 462)
- d. provide for a comprehensive system of regulation for major hazard facilities (discussed in paragraphs 311 to 323 in *Accountability levers*).

459. Given the magnitude of the additional investment in the new agency's capacity and capabilities, the Taskforce considers that the new agency should develop and monitor progress against a specific workforce development plan for its staff and monitor progress against that plan.

460. The Taskforce also considers that the new agency should lead, through the expectations it sets for its own staff's capabilities, the shift in standards for workplace health and safety practitioners that will make possible the occupational regulation or voluntary registration of health and safety practitioners (see paragraphs 473 to 476 below).

Improving the capacity and capabilities of the regulator to focus on chronic harm

461. The Taskforce has recommended that the new agency be accountable for improvements in occupational health outcomes, with a dedicated unit to deliver on this accountability. To meet this recommendation, the new agency's occupational health capacity and capabilities will need to be augmented

with technical expertise from the range of occupational health-related disciplines. Examples of the technical capabilities required include disciplines with expertise in:

- a. health monitoring
- b. exposure monitoring
- c. toxicology
- d. medical and clinical assessments and research
- e. health research and evaluations
- f. evaluations of the incidence, distribution and control of disease
- g. human factors.

462. The capabilities within the occupational health unit need to support the general inspectorate in managing occupational health issues. They also need to lead and co-ordinate occupational health activities, and improve occupational health capacity and capability throughout the health, safety and medical systems. This is likely to involve the establishment of cross-disciplinary and multi-agency partnerships. Given the current limited occupational health capacity and capabilities in MBIE, the Taskforce recommends that the new agency develop a specific workforce development plan to lift occupational health capacity and capabilities, and monitor progress against that plan.

Information gathering to support content of workforce development strategy

463. To develop the workforce development strategy, the new agency will need to collate information on the current capacity and capabilities, identify the desired future state and undertake a gap analysis. The new agency will therefore need to identify the areas where it considers more information is required, and seek that information from education agencies and providers, and industry and sector stakeholders.

464. The Taskforce considers that some or all of the following actions may help the new agency in its information gathering:

- a. requesting that NZQA undertake a quality review of the provision and assessment of workplace health and safety standards, and what is needed to support improvements (the new agency would need to agree funding arrangements with NZQA)
- b. engaging with boards of trustees to identify how they can better link their legal responsibilities as employers to manage workplace health and safety in schools with their responsibilities for achieving good education outcomes
- c. surveying members of professional bodies, particularly recent graduates, to scope the current capacity and capabilities to address workplace health and safety matters, and what is needed to support improvements
- d. engaging with professional bodies to assess how well they ensure that their members have the capacity and capabilities to address workplace health and safety matters, undertake CPD and are held to account for non-performance and breaches of expected professional standards
- e. surveying managers and supervisors to identify their current capacity and capabilities to address workplace health and safety matters and what is needed to support improvements (any survey of managers and supervisors should ensure that it identifies whether managers and supervisors in SMEs have different needs from managers and supervisors in larger firms)
- f. engaging with professional bodies, industry organisations and unions to identify the reasons for existing training not meeting expectations, and any barriers to the uptake of training.

Leadership for a professionals alliance and pathways to regulation

465. Access to internal health and safety expertise, and cost-effective external expertise from health and safety practitioners, was raised as a concern through the consultation process. The 2009 review of the Workplace Health and Safety Strategy concluded that there was a lack of reliable competency standards for health and safety consultants and intermediaries in New Zealand. The Workplace Health and Safety Strategy's National Action Agenda committed to establishing a HaSPA, a network of qualified, accessible practitioners in New Zealand, based on an Australian model. However, this has not occurred.
466. The Taskforce recommends that the new agency take a leadership role in establishing the HaSPA. Prior to the establishment of the new agency, MBIE should take on this leadership role so that the establishment of the HaSPA is not delayed. The new agency should aim to complete establishing the HaSPA by the end of 2014.
467. Consistent with the Taskforce's principle that New Zealand should 'steal with pride' from international regulatory approaches, the establishment of the HaSPA should draw on overseas approaches for assessing the competence of health and safety practitioners. These could include:
 - a. the development of the Victorian code of ethics and minimum service standards for professional members of OHS associations⁸²
 - b. the development in Australia of an extensive OHS body of knowledge and learning outcomes⁸³
 - c. the accreditation approaches of:
 - i. the Safety Institute of Australia, which is overseen by the Australian OHS Education Accreditation Board
 - ii. the Institute for Safety and Health Management in the United States

82. FT:HaSPA (2009) *Victorian Code of Ethics and Minimum Service Standards for Professional Members of Occupational Health and Safety (OHS) Associations (2nd edition)*, available at: <http://www.worksafe.vic.gov.au/forms-and-publications/forms-and-publications/?a=22827>

83. See also Health and Safety Professionals Alliance (2012). *The Core Body of Knowledge for Generalist OSH Professionals*, available at <http://www.ohsbok.org.au/downloads/3%20The%20generalist%20OHS%20professional%20with%20Appendix.pdf>.

- iii. the Institution of Occupational Safety and Health and the International Institute of Risk and Safety Management in the UK.
468. The Taskforce considers that establishing the HaSPA is part of improving access to health and safety expertise. However, other actions need to be considered as well. There needs to be a lift in the standards expected of the new agency's staff too.
469. The duties in the HSE Act already implicitly require that employers have access to expert advice. An expectation that high-quality advice is used could be further supported by explicit requirements to seek professional or competent advice (internally or externally). This was the case in Victoria and Queensland prior to the Model Law, although this has been removed in favour of an implicit requirement. Alternatively, employers could be required to have access to professional or competent advice.
470. On balance, and consistent with our recommendation that the new health and safety legislation be based on the Model Law, the Taskforce does not recommend an explicit requirement of PCBUs to seek professional or competent advice. This is due to:
- a concern that the market for health and safety practitioners in New Zealand is currently not sufficiently developed to provide that advice
 - a preference for the new agency to develop regulations, ACoPs and guidance material that address the most common and highest-priority situations where advice may be appropriate (see paragraphs 415 to 430 above), prior to introducing a general requirement to seek professional or competent advice.
471. In the short term, the Taskforce considers that the new agency should develop guidance material with the aim of encouraging employer demand for professional and competent advice. This guidance material should be developed in consultation with the HaSPA and other interested stakeholders, including SME representatives, to ensure that the material meets their needs and covers:
- how an employer can ensure they are obtaining competent advice
 - how to select a health and safety practitioner.
472. This guidance material could draw on an international example from Victoria, Australia⁸⁴.
473. The quality of professional advice could also be lifted by having voluntary schemes (e.g. the UK Occupational Safety and Health Consultants Register⁸⁵) or occupational regulation of workplace health and safety practitioners.
474. The Taskforce considers that workplace health and safety practitioners are, in principle, comparable to financial advisers, who are subject to occupational regulation under the Financial Advisers Act 2008. This includes oversight by the Financial Markets Authority and comes with a range of obligations, including registration, depending on the nature of the services offered⁸⁶.
475. While regulation (which could include compulsory registration, accreditation or licensing) could lift the quality of workplace health and safety practitioners' advice, the Taskforce is not convinced that the practitioners' industry is currently mature enough to operate under an occupational regulation scheme (except where they currently exist). Rather, we consider that an objective of the workforce development strategy should be to develop the capacity and capabilities of the health and safety professional sector so that in the longer term some form of occupational regulation or the promotion of a register of practitioners is feasible.

84. See WorkSafe Victoria (2008). *Employing or Engaging Suitably Qualified Persons to Provide Health and Safety Advice*. Available at http://www.worksafe.vic.gov.au/__data/assets/pdf_file/0006/13992/WorkSafe_Position.pdf.

85. See United Kingdom Health and Safety Executive. *The Occupational Safety and Health Consultants Register (OSHCR)*. Available at <http://www.hse.gov.uk/oshcr>.

86. For more information, see <http://www.fma.govt.nz/help-me-comply/financial-advisers/your-obligations>.

476. The Taskforce recommends that the new agency develop a pathway to occupational regulation or voluntary registration of workplace health and safety practitioners by the end of 2018. This timeframe should allow sufficient time for the practitioners' industry to reach a greater level of maturity, for the number of practitioners to increase and for the overall quality of advice to improve. The development of a pathway should include an assessment of the costs and benefits of the different forms of occupational regulation or voluntary registration.
- b. collaborates with professional registration bodies and professional associations to ensure that university-level qualifications and professional standard processes support their members' capability to address workplace health, safety and risk matters
 - c. collaborates with professional bodies, industry organisations and unions to ensure that general management training better addresses workplace health and safety matters
 - d. engages with trade certification bodies to ensure that workplace health and safety matters are mandatory elements of certification.

Embedding health and safety in the education and training system at all levels

477. The Taskforce's consultation paper sought views on how effective New Zealand's education and training system was in developing workplace health and safety capacity, capabilities and knowledge. Feedback was that improvements are possible throughout the education and training system.
478. The Taskforce recommends that the workforce development strategy identify, prioritise and implement actions that result in a comprehensive embedding of workplace health and safety into the education and training system at all levels. The new agency will need to work with education-sector stakeholders to deliver on this recommendation. It should work towards priority actions being completed by the end of 2018.
479. The aim of embedding workplace health and safety into the education and training system should be to create an understanding of workplace health and safety risks and how to identify and manage these in a fit-for-purpose and proportionate manner. The Taskforce recommends that the new agency deliver the following priority actions:
- a. takes a leadership role to ensure that workplace health and safety standards are embedded in all academic and vocational training at levels 1-6 on the NZQF
480. The rationale for each of these priority actions, and matters that we consider the new agency and stakeholders should consider in addressing these actions, are addressed in more detail below.
481. The Taskforce also believes that two additional issues related to the education and training system require further consideration:
- a. the new agency should consider what priority should be given to activities that support students learning about general safety and risk awareness at the early childhood education (ECE) and primary school levels
 - b. the new agency and other stakeholders should consider their further respective roles in relation to the development of unit standards.

Contribution of tertiary education levels 1-6

482. There are currently a significant number of standards and at least 11 qualifications at levels 1-6 of the NZQF that relate to workplace health and safety. The Taskforce considers that workplace health and safety standards should be embedded in all vocational training at levels 1-6. This may require enhancing some existing standards, using a wider range of standards or creating new standards. This could occur through NZQA's regular process for reapproving qualifications.

483. Concerns were raised in submissions that embedding is not currently occurring on a uniform and effective basis. Submitters asserted there is a need for greater industry-specific knowledge on workplace health and safety issues.

484. A mandatory NZQA-targeted review of workplace health and safety qualifications has been underway since 2012. The review has to ensure that qualifications are fit for purpose and to reduce the number of qualifications. It is due to conclude after the Government responds to the Taskforce's recommendations. This review should lead to clarification of when general workplace health and safety standards and qualifications should be applied in an industry-specific context, and when industry-specific workplace health and safety qualifications need to be developed, i.e. when general standards or qualifications are not sufficient.

485. Submitters also raised concerns that some trade certification processes do not require the completion of workplace health and safety unit standards. If trade certification requirements set lower expectations than the NZQF, this raises questions about both the adequacy of the trade certification process and the appropriateness or necessity of workplace health and safety standards. The Taskforce considers that, unless clear reasons demonstrate otherwise, workplace health and safety standards should be mandatory components of trade certification processes and CPD requirements.

486. The Taskforce recommends that the new agency take a strong leadership role to ensure that workplace health and safety standards are embedded in all academic and vocational training at levels 1-6 on the NZQF, and are mandatory in trade certification processes. The new agency should work collaboratively on this with education-sector agencies, training providers, industry organisations and unions. The Minister for Tertiary

Education, Skills and Employment could reinforce the Government's expectations for embedding workplace health and safety standards into qualifications by including those expectations in the Tertiary Education Strategy, which is to be renewed in 2013. The new agency should also explore with TEC opportunities for TEC's funding arrangements to directly set expectations for workplace health and safety components to be embedded in qualifications at levels 1-6 on the NZQF.

Contribution of tertiary education levels 7-10

487. Some universities include workplace health and safety components in professional degrees, e.g. engineering, architecture, management and medicine. Some universities also offer qualifications that specialise in workplace health and safety, e.g. ergonomics and human factors. The key influencers of the content of these qualifications are the professional bodies to which graduates become affiliated, e.g. the Institution of Professional Engineers New Zealand.

488. The Taskforce recommends that the new agency collaborate with relevant professional registration bodies and professional associations to ensure that their members have the capacity and capabilities to address workplace health and safety matters⁸⁷. The Taskforce has separately recommended changes to the duties of some professionals e.g. professionals in design roles. Together, these recommendations should create incentives to address workplace health and safety matters, including risk management in university-level qualifications, CPD requirements and professional standards.

489. The new agency should also explore with TEC opportunities for TEC's funding arrangements to influence more directly expectations for workplace health and safety components to be embedded in qualifications at levels 7-10 on the NZQF.

87. This could also involve the new agency:

- a. working with New Zealand education agencies (e.g. NZQA and the Ministry of Education) and international qualifications bodies to ensure that international workplace health and safety qualifications and standards can be recognised in New Zealand
- b. ensuring that guidance is available for employers on the comparability of international qualifications and standards with New Zealand qualifications and standards.

Managers' and supervisors' capacity, capabilities and knowledge

490. There was a consensus among submitters that managers and supervisors have inconsistent levels of capacity, capability and knowledge to address workplace health and safety matters. Shortages in training opportunities for managers and supervisors in workplace health and safety matters were previously identified in the 2009 review of the Workplace Health and Safety Strategy for New Zealand to 2015.
491. The Taskforce is concerned that not all employers and supervisors (as employers' representatives) have the capacity, capabilities and knowledge to discharge the general duties that the HSE Act imposes on them, in particular the duty to provide training or supervision to staff.
492. We are also concerned that there is an inadequate focus on how to manage a safe working environment that balances accountability in a fair, reasonable and proportionate manner. We have separately recommended the development of ACoPs and guidance material on the roles of managers and supervisors. In addition, we recommend that the new agency work with professional bodies (e.g. the New Zealand Institute of Management), industry organisations and unions to influence the content of general management training, both at degree level and through more targeted, short training courses.

Contribution of the ECE and school system

493. There was also broad consensus among submitters that the school system can contribute more to ensuring that students enter the workforce with a basic understanding of workplace health and safety matters. The ECE sector has some activities related to giving children a general awareness of safety matters. Workplace health and safety is covered to a limited extent in relation to health, physical education and technology courses. There are also anecdotal examples

of good performance in schools, such as the Passport to Safety initiative⁸⁸ and the development of material for teachers on workplace health and safety by the forest industry training and education council (FITEC) and extractive industries' training organisation (EXITO).

494. The Taskforce considers that the new agency should have a youth focus to its public education function. This should aim to ensure that workplace health and safety is better integrated into the ECE and school systems. Improvements from investing in the ECE and school systems are likely to be achieved in the longer term.
495. While the new agency might consider undertaking cost-effective activities that support students learning about general safety and risk awareness at the ECE and primary school levels, which could leverage off other safety promotion activities, the Taskforce does not consider these a priority for the new agency. In the short to medium term, we consider that the greatest gains can be achieved from the new agency focusing its efforts on levels 1-10 of the NZQF, and improving workplace health and safety and risk awareness at the secondary-school level.
496. Based on European Union experience⁸⁹, and comparable initiatives focused on road safety in New Zealand, the Taskforce considers that any additional workplace health and safety messages targeted at the ECE and primary school levels should be embedded in the existing education framework. This recognises the outcomes-based approach of the New Zealand Curriculum, which has limited compulsory content. This approach could include providing guidelines and resources to support teachers, integrating workplace health and safety messages into teacher training, undertaking promotional campaigns and networking activities, and engaging with boards of trustees⁹⁰.

88. Passport to Safety is a Canadian-based health and safety educational programme that introduces secondary students to workplace health and safety issues. A similar programme has been run in New Zealand from 2004.

89. See European Agency for Safety and Health at Work (2009). *OSH in the School Curriculum: Requirements and activities in the EU Member States*. Available at <https://osha.europa.eu/en/publications/reports/TE3008521ENC>.

90. This approach could draw upon European examples – see European Agency for Safety and Health at Work (2011) *Training Teachers to Deliver Risk Education – Examples of mainstreaming OSH into teacher training programmes*. Available at https://osha.europa.eu/en/publications/reports/teachers-training-risk-education_TE3111358ENN



497. To support the new agency in determining the extent to which activities involving embedding workplace health and safety content at the ECE and primary school levels should be prioritised, the new agency could consider:
- a survey of schools and teachers to identify demand for this content and barriers to the use of existing content, and to determine what content could be developed in the future and how barriers to its use could be removed
 - commissioning project teams of teachers to develop new content, including resources that embed workplace health and safety into other elements of learning, either separately or in combination with LLN
 - engaging with the Teachers Council, as the setter of professional standards, and teacher trainers to gain support for the use of this content
 - approaching the Education Review Office to undertake a special review of how effectively existing content is being used and what barriers exist to the use of the existing content – this could combine with observations of existing practices to support the self-reporting survey.

The relationship between the regulatory system and NZQF standard setting

498. Submitters raised the question of who should be the standard-setting body (SSB) for generic workplace health and safety standards under the NZQF. Currently, this role is fulfilled by the New Zealand Industry Training Organisation (NZITO). However, NZITO is not formally gazetted by TEC to undertake this role.
499. Our recommendations around expanding the role of industry-specific regulations, ACoPs and guidance material provide an opportunity to look more strategically at how unit standards can support or complement these regulations, ACoPs and guidance material. Any additional expectations that workers, managers and supervisors have specific capabilities or knowledge could imply the need for unit standards to be developed.
500. The new agency, together with education agencies and existing SSBs, needs to define further the relative roles and responsibilities for generic workplace health and safety unit standards under the NZQF. Should the new agency commission or develop workplace health and safety unit standards? Should it have a consultation or veto right over workplace health and safety unit standards? Under any approach, ideally, the new agency would set principles that individual ITOs could implement when developing workplace health and safety unit standards. The new agency could also consider commissioning the development of workplace health and safety unit standards when it is developing regulations, ACoPs and guidance material, to make explicit the linkages to any unit standards.

Resolving the root causes of harm

Knowledge levers need to ensure that lessons from past incidents prevent future harms

501. The Taskforce is concerned that too often the response to workplace health and safety incidents is to seek and blame an immediate cause or responsible person. This is generally the case for investigations in workplaces and in other locations by other regulators. Going beyond the immediate cause or responsible person to undertake a root-cause analysis⁹¹ is the exception rather than the norm.
502. As a consequence, the workplace health and safety system does not learn adequately from workplace health and safety incidents. If a 'just culture' (no-blame) approach were taken more often, focusing on what went wrong and how similar incidents could be avoided, this would lead to greater co-operation from people who may have contributed to the

91. A root-cause analysis is a way of looking at accidents (or errors and faults in general) in which a deeper view of their causation is taken. This provides an approach for resolving systemic issues that enabled the accidents to occur, and provides an effective methodology for preventing further accidents.

failures. Just-culture approaches tend to lead to more reporting of incidents, including near misses. This provides an important opportunity to fix problems for the future.

503. The Taskforce considers that far greater emphasis should be placed on root-cause analysis and just culture in investigations so that the knowledge levers for change use the lessons from past incidents to prevent future harms.

504. The Taskforce believes there is significant value in the no-blame investigations that TAIC undertakes in relation to the transport sector. Its investigations focus on identifying what went wrong and how similar incidents can be avoided, not who is responsible (no-blame). This approach is especially useful where there are patterns of failure or significant events. Such investigations may run in parallel with compliance activities by transport regulators.

505. Like the Coroner, TAIC can make recommendations to all involved parties, including the regulators. The outcomes of TAIC's no-blame investigations provide useful lessons for PCBUs, workers, unions,

industry bodies and the regulators, and are there to actively inform the joint development of guidance and compliance activities.

506. The Taskforce recommends that the Government ensure that the new agency's compliance activity is focused on harm prevention, with far greater emphasis placed on root-cause analysis in investigations. To support this, the Government should:

- a. require that the new agency develop ACoPs and guidance material on how employers and PCBUs can implement no-blame, no-fault or even-handed culture models of managing workplace health and safety matters, and how to undertake root-cause analysis
- b. require that all investigations by the regulators examine the root causes of incidents, and that the regulators undertake more systemic reviews of root causes across groups of incidents
- c. extend the role and function of TAIC to allow it to undertake root-cause investigations of a broader range of workplace health and safety incidents.



PART 3

MAKING IT HAPPEN

Cost-benefit analysis

507. The Taskforce’s terms of reference require that we identify the net and gross fiscal and economic costs and benefits of our recommendations and, if applicable, how they should be financed. This section addresses this requirement.

508. In developing this section, we drew on:
- a. modelling by Ernst & Young of some of the costs of our recommendations – this analysis is presented in paragraphs 509 to 516
 - b. advice from the New Zealand Institute of Economic Research on the broader costs and benefits of our recommendations – this analysis is presented in paragraphs 557 to 569.

Modelling the costs of our recommendations

509. The Taskforce commissioned Ernst & Young to provide advice on some of the costs of our recommendations. This work built upon work that Ernst & Young was undertaking for MBIE on the costs of a workplace health and safety agency. Both of these estimates are based on a steady-state costing. We consider that these steady-state costs are appropriate estimates of the costs of the new agency once it has scaled up to implement our recommendations fully.

510. The methodology for this work is reflected in Figure 3 below.

511. For the purposes of the cost-benefit analysis, the relevant incremental costs are identified by boxes B and C.

Summary of costs of our recommendations

512. We have been advised by MBIE that the level of funding currently available for the existing functions of the workplace health and safety regulator within MBIE is \$53.675 million for 2013/14, rising to \$53.975 million for 2014/15 and out-years (excluding the costs of energy-safety functions).

513. Ernst & Young’s estimate of the steady-state costs of the new agency is that it would require funding of approximately \$100 million per annum to fully implement our recommendations, including the costs of having a stand-alone workplace health and safety agency. This would involve additional funding of approximately \$32 million per annum, when offsetting transfers of funding are taken into account (as discussed in paragraphs 534 and 536 below).

FIGURE 3: COSTS OF GROWTH IN SCALE AND SCOPE ENVISAGED BY TASKFORCE



514. For the purposes of assessing the overall incremental costs of our recommendations, we have made a number of assumptions about the timing for reaching this steady-state level of costs, which are reflected in the annual total costs in Table 1 below.
515. The above increases in funding make no explicit allowances for cost pressures, such as the impacts of inflation and labour market cost pressures. The new agency would need to make a case for additional funding for these cost pressures through the normal appropriations processes. The Taskforce considers that funding will need to be monitored carefully over time to ensure that it remains adequate. Account should also be taken of the fact that the Health and Safety in Employment levy revenue received by the Crown will increase in line with growth in leviable earnings.
516. While the above figures are presented as annual funding allocations, we are also concerned that this model of funding is not appropriate for the new agency. We recommend that the Government consider providing the new agency with a three-year rolling appropriation. This would provide the new agency with greater certainty and stability of funding.
517. The majority of the additional fiscal costs of our recommendations would be invested in increasing the capacity and capability of the new agency. This investment is required to ensure that the agency is able to deliver the broader range of functions we recommend (see paragraphs 206 to 207 in *Accountability levers*). Most of the additional capacity and capability would be focused at the front line to deliver a more visible presence for the new agency than health and safety inspectors have had in either DoL or MBIE in recent years.
518. International and New Zealand research⁹² reinforces the importance of workplace health and safety regulators having a visible presence – it is the most effective way of improving workplace health and safety outcomes. Visible and effective compliance activity is a core element of our recommendation that there be a greater emphasis on measures that increase the costs of poor health and safety performance for PCBUs.
519. We consider, however, that while increased frontline resources may mean an increased number of inspectors, the new agency needs to focus on providing services that support business compliance with workplace health and safety requirements. This requires an increasing emphasis on support and guidance (reflected in paragraphs 415 to 430). Where necessary, there must also be an increase in inspection and enforcement.
520. Increases in frontline capacity also need to be accompanied by greater technical support and expertise. The need to provide funding for this expertise was highlighted in the independent employment investigation following the Pike River mine tragedy. The investigation report identified

Analysis of the modelling of the costs of our recommendations

Lifting frontline capacity and capability

517. The majority of the additional fiscal costs of our recommendations would be invested in increasing the capacity and capability of the new agency. This

TABLE 1: Annual increases in funding for the new agency

	2013/14	2014/15	2015/16	2016/17	2017/18
A: current costs	\$53.675m	\$53.975m	\$53.975m	\$53.975m	\$53.975m
B: stand-alone agency and C: additional scale and scope	\$33.870m	\$40.524m	\$44.709m	\$46.422m	\$46.422m
Total costs	\$87.555m	\$94.499m	\$98.684m	\$100.397m	\$100.397m
Net costs	\$19.970m	\$26.624m	\$30.809m	\$32.522m	\$32.522m

92. New Zealand Institute of Economic Research (2008). *Volume II: Workplace Health and Safety – Interventions and evaluation – Report to Department of Labour*, p vi; and Levine, DI and Toffel, MS (2012). Randomized government safety inspections reduce worker injuries with no detectable job loss. *Science*, 336(6083), 907-911

the need for “inspectors... to have the option of commissioning an expert to provide advice or opinion in order to fully assess the proposal being made by the company, and to provide the regulator with confidence that ‘all practicable steps’ were being taken...”⁹³

- 521. The Taskforce recognises that the Government has increased funding for frontline workplace health and safety inspectors in Budget 2012, so that the number of inspectors could increase from approximately 148 in 2012 to approximately 180 by 2014/15⁹⁴. We do not, however, consider that this number of inspectors is sufficient to achieve the significant and sustained improvements in workplace health and safety that are sought.
- 522. Table 2 below compares the ratios of workplace health and safety inspectors in New Zealand (currently and under increased funding due through to 2014/15) with Australian benchmarks.

- 523. We recommend that the Government increase funding for frontline inspectors so that a ratio of 1.07 inspectors per 10,000 workers can be achieved by 2015/16, based on the mean number of inspectors in Australia. This timeframe recognises that the recruitment of additional inspectors will take time and should build on the already agreed increases in resources. We consider that this level of inspectorate resourcing should be sufficient to deliver the new agency’s functions in relation to general workplace compliance activity, including compliance activity for hazardous substances.
- 524. In addition to this increase in frontline resources, we recommend that two areas be given specific attention and additional dedicated resources:
 - a. the regulation of major hazard facilities
 - b. occupational health.

TABLE 2: Ratios of workplace health and safety inspectors

Country	Inspector ratio - number of inspectors per 10,000 workers	Number of inspectors required to match ratio ⁹⁵
New Zealand (current)	0.84	153
Victoria	1.01	183
New Zealand (2014/15 forecast)	1.00	182
New South Wales	1.02	185
Queensland	1.17	212
South Australia	1.31	238
Western Australia	0.96	175
Northern Territories	1.06	193
Mean Australia ⁹⁶	1.07	194

93. Shanks, D and Meares, J (2013). *Pike River Tragedy - Report of the Independent Investigation to the Chief Executive of the Ministry of Business, Innovation and Employment*, pp 34-35, paras 175-183.

94. Minister of Labour (2012). *Proposal to Increase Investment in Safe and Skilled Workplaces Using Unallocated Revenue for the Health and Safety in Employment Act Levy*, para 77.

95. The number of inspectors required has been updated based on increases in total employment from June 2009 to December 2012, as measured by the Household Labour Force Survey.

96. Excludes ACT and Tasmania as outliers based on small size of state economy.

Regulation of major hazard facilities

525. Our recommendation that the regulatory regime for managing the risks of major hazard facilities be strengthened (see paragraphs 311 to 324 in *Accountability levers*) will require a significant boost to resourcing for the regulation of major hazard facilities.
526. Internationally, the regulation of major hazard facilities often has dedicated resourcing, separate from general workplace health and safety regulation. In Australia, Queensland, New South Wales and Western Australia have stand-alone regulations for a range of major hazard industries. We consider that the number of inspectors for the regulation of major hazard facilities in New Zealand should be separated out and additional to the general increase in resources for inspectors discussed in paragraph 523.
527. MBIE has advised the Taskforce that currently there are eight high-hazard inspectors. It has further advised that to have a separate group of inspectors responsible for a broader range of major hazard facilities would require 22 inspectors. We consider that this scale of inspectorate is reasonable for the early-stage implementation of our recommendation, during which the mapping of major hazard facilities is undertaken. The level of resourcing for this function should, however, be kept under review. It is highly likely that a greater level of resourcing will be needed for a fully functioning regulatory system for major hazard facilities.
528. We also consider that the costs of regulating major hazard facilities should be separated out and (more) directly recovered from the operators of those facilities. We consider that mechanisms such as differentiated levies or direct charging for services are appropriate to reflect the disproportionate costs of providing regulatory oversight of major hazard facilities (see paragraph 362 in *Motivating levers*).

Occupational health

529. There is a significant need for investment in increased capacity and capability to address occupational health matters. Within MBIE currently (and likewise with other international workplace health and safety regulators), occupational health is allocated a minimal proportion of overall resourcing; MBIE has advised that dedicated occupational health resourcing is approximately five percent of overall inspectorate resourcing.
530. We consider that this level of resourcing is hugely disproportionate to the financial impacts of occupational health harms, particularly when compared with acute harm, which gets most of the attention, effort and funding. Internationally, in recent years, there have been increases in the emphasis placed on occupational health, although discussions with overseas regulators, including the UK Health and Safety Executive, have confirmed that generally they still feel that occupational health is not receiving enough attention or resourcing.
531. We recommend an immediate step-change increase in the resourcing provided for occupational health to 20 percent of the core inspectorate resourcing. This additional resourcing for occupational health matters needs to be deployed in a different manner from resourcing for the general inspectorate. Far greater emphasis needs to be placed on specialist expertise to identify causes of occupational health harms, providing guidance (including to frontline staff) on how to manage those harms, and monitoring programmes to assess trends.
532. As more evidence is gathered on the causes of occupational health harms, the business case for redeploying or increasing the resources of the new agency should be reviewed to give greater prominence to occupational health harms. We expect that spending on occupational health is likely to need to grow materially in the future, above the initial step-change in funding. However, in the longer term this will lead to significant savings for the health system.

Changes in responsibilities of agencies

533. We have recommended that:

- a. the regulation of the use of hazardous substances in the workplace under the HSNO Act, transfer to the new Act (see paragraphs 286 to 287 in *Accountability levers*)
- b. there be a partnership between the new agency and ACC to oversee funding arrangements for the delivery of workplace injury-prevention activities (see paragraphs 288 to 289 in *Accountability levers*).

534. If the Government accepts these recommendations, consequential funding allocations or transfers will be needed. Our funding analysis in Table 1 on page 119, treats these amounts as an offset, reducing the net increase in funding required for the new agency.

535. In relation to the use of hazardous substances in the workplace, the new agency would need to be funded for a range of regulatory functions. These include: developing regulations on the use of hazardous substances; providing guidance on the controls underpinning those regulations; monitoring compliance with the controls; determining the effectiveness of the controls; and enforcing the controls. While MBIE currently has funding for some of these, an increase in funding will be required for other functions as well to ensure that the new agency's compliance functions are delivered effectively. We have presumed that existing funding for these functions can transfer from EPA or be offset by savings in the funding required for EPA.

536. Under the recommended partnership between the new agency and ACC to oversee funding arrangements for the delivery of workplace injury-prevention activities, ACC's funding for workplace

injury-prevention activities would move to the new agency. In turn, the new agency would lead the delivery of workplace injury-prevention activities. This would offset the increase in funding required by the new agency, so it would be fiscally neutral overall. As an alternative, funding for these injury-prevention activities could be included in the new agency's funding, with corresponding reductions in ACC's funding.

537. The Taskforce does not consider that ACC's current levels of injury-prevention activity in the workplace are necessarily sufficient. ACC has been decreasing funding for these activities over time. ACC, MBIE and the new agency should review the current activity levels and identify whether further injury-prevention activities in the workplace are appropriate, how they should be funded, and who should deliver them.

538. Funding will also be necessary for monitoring our recommended mechanism under which the new agency would statutorily delegate functions to other agencies and the associated service-level agreements (see paragraphs 291 to 294 in *Accountability levers*).

Expanded TAIC functions

539. We have recommended that the Government extend the role and function of TAIC to allow it to undertake root-cause investigations of a broader range of workplace health and safety matters (see paragraphs 504 to 506 in *Knowledge levers*).

540. We consider that the expansion in TAIC's role and functions is likely to be incremental to the costs of TAIC's current investigation functions. However, this is still likely to be in the order of \$500,000 per annum. This additional funding is not included in Table 1 on page 119.

Providing and maintaining a comprehensive set of regulations, ACoPs and guidance material

541. We have recommended that the Government ensure that the new agency implements a comprehensive set of regulations, ACoPs and guidance material that clarify expectations of PCBUs, workers and other participants in the system (see paragraphs 415 to 430 in *Knowledge levers*).
542. MBIE has advised us that, in the five years to the end of June 2012, it issued one ACoP, 43 fact sheets and 33 guidelines as well as 23 joint publications with other agencies and industry groups. Seven further ACoPs are described as having been completed for Ministerial sign-off or are in the final stages of consultation. MBIE has also advised that it intends to develop additional resources to ensure that “a core set of credible and up-to-date guidance is in place” and that “the process for ensuring the Ministry has a complete set of up-to-date information is likely to take several years”⁹⁷.
543. We recommend that significant resourcing be dedicated to this function of the new agency for the short term. This function needs to rebuild the framework of regulations and supporting ACoPs and guidance material, and requires significantly more resourcing than has been provided within DoL and MBIE in the past. In addition, we consider that this function will need to be maintained over time to ensure that the regulations, ACoPs and guidance material do not become out of date in the future. The new agency will also need to consider what support is required for tripartite participation in the standard-setting process, including training and potentially funding for participation.

Investing in the long term in awareness raising and behaviour change

544. The Taskforce has recommended that the Government provide strong leadership and act as an exemplar of good health

and safety practice. This would be demonstrated by a comprehensive and targeted health and safety public awareness programme to change behaviours, norms, culture and tolerance of poor practice. This programme should be linked to a compliance strategy and specific compliance activities (see paragraphs 332 to 336 in *Motivating levers*).

545. While MBIE has previously undertaken some targeted harm-reduction programmes seeking to achieve behavioural change in different industries, these have been of a modest scale. They have not been linked to a comprehensive national behavioural change programme.
546. We recommend that the new agency be funded both to build general support for improvements in workplace health and safety and to undertake targeted health and safety awareness programmes focused on specific issues and audiences.

Implementing a more effective ACC risk- and performance-rating levy regime for businesses

547. We have recommended that the new agency, MBIE and ACC be jointly mandated to provide advice to the Government on how the ACC levy regime can differentiate more effectively on risk, and good and bad performance (as well as on the design of a business health and safety rating scheme). We have also recommended that ACC’s funding for workplace injury-prevention activities move to the new agency, which should lead the delivery of workplace injury- prevention activities (see paragraphs 288 to 289 in *Accountability levers* and paragraphs 347 to 361 in *Motivating levers*).
548. To implement these recommendations in a co-ordinated manner, we consider that ACC should be responsible for implementing the differentiated levies. However, the new agency should be responsible for auditing performance under a new risk- and performance-rating levy regime. This is because audits will

97. MBIE (2013). *Request for Additional Information*, pp 32-36.

involve engagements with individual firms and will need to be consistent with the guidance provided by the new agency. This audit role is likely to be significantly more intensive than ACC's current audit processes⁹⁸. Consideration should also be given to the balance between self-auditing and auditing by the new agency, and whether cost recovery should apply.

Research, evaluation and operational data analysis

549. We have recommended that the Government improve the quality and availability of data and information on workplace injury and occupational health performance by establishing a sector-leading research, evaluation and monitoring function in the new agency (see paragraphs 437 to 447 in *Knowledge levers*). In addition, the new agency needs to have a greater focus on operational intelligence and data analysis to target activities to areas with the greatest risks and most significant potential to improve outcomes.

550. To support this, we recommend that adequate funding be provided for research, evaluation and operational data analysis.

Training, including workplace health and safety representative training

551. The Taskforce considers that greater funding is required for the training of workplace health and safety representatives, particularly given the increased expectations of representatives (discussed in paragraphs 247 to 251 under the functions, powers and rights of representatives in *Accountability levers*). We consider, however, that funding for representatives should be considered in the context of funding for workplace health and safety training more generally.

552. Currently, there is a mix of funding sources for workplace health and safety training. The Government provides significant contributions to general training that is registered on the NZQF. Private contributions are also made to general training by trainees and employers. For workplace health and safety training, there is a mix of funding from employers⁹⁹, ACC and the employment relations education contestable fund administered by MBIE. The ACC and employment relations education funding has been provided to ensure that adequate levels of representative training occur, and to target groups that would not receive training without government funding.

553. As part of our broader identification of priority funding areas under the workforce development strategy, we recommend that the new agency review the level of funding it provides for workplace health and safety representative training to ensure that adequate training occurs.

Funding sources for our recommendations

554. Implementing our recommendations would require a significant lift in funding for the new agency. We have identified that the costs of regulating major hazard facilities should be separated out and (more) directly recovered from PCBUs in those industries and operators of major hazard facilities (see paragraph 528). We have also identified transfers of funding (associated with transfers of functions) from EPA and ACC to the new agency (see paragraphs 534 to 536).

555. We consider that the net additional costs of implementing our recommendations should continue to be recovered by way of a generally applied workplace health and safety levy for all PCBUs (other than operators of major hazard facilities). MBIE and the new agency will need to determine the precise level of levy required and how this should be implemented to apply to all PCBUs.

98. However, for simple no-claims-type schemes, ACC could be better placed to continue undertaking any audits required.

99. Employer-funded training includes training that is fully funded by employers, as well as training that is subsidised by various government funding sources.

556. We also note that these net additional costs do not take into account any broader use of cost recovery for the services of the new agency, or an increase in penalties received by the Crown from HSE offences.

Other costs – firm level

557. In addition to the costs of the new agency, our recommendations will result in increased costs for businesses and other participants in the workplace health and safety system. This is because there will be a more active and visible workplace health and safety agency. We consider that a reasonable proxy for these costs is an increase in the level of compliance costs. The two New Zealand estimates of compliance costs¹⁰⁰ are somewhat dated. Nevertheless, they are based on real costs reported by real businesses so, with reasonable assumptions, this data can be used as the basis for the estimation of compliance costs.

558. We consider that a moderate increase in compliance costs is the most probable outcome of our recommendations. This is because the new agency's activities will be targeted according to risk, and additional costs will arise for firms from incremental changes they will be required to make to comply with the revised regulatory framework. Based on assumptions about the incremental increase in compliance costs, allowances for cost changes and increases in employment, we consider that an estimate of \$24 million¹⁰¹ for the total likely increase in firm-level compliance costs is reasonable.

559. This figure is approximate and its accuracy depends, inter alia, on the factors explicitly mentioned above, as well as the extent to which the underlying data is representative of today's business and regulatory conditions. Moreover, it is expected that as the new regime is bedded in, the total compliance costs will reduce. This would have two main causes: first, firms

becoming more efficient at responding to the new workplace health and safety expectations; and second, the new agency becoming more accurately focused on the firms where the risk is greatest and the changed expectations need the most reinforcing.

560. We note that the *Business Operations Survey: 2012* recently released by Statistics New Zealand found that while the type of regulation on which businesses spent the most time was workplace safety regulation, this was also the type of regulation that most enhanced businesses' performance. Some 19 percent of businesses reported having enhanced performance from workplace safety regulation. This reinforces the relationship between investment and reward – that while our recommendations will lead to higher compliance costs, these costs can lead to benefits for some firms¹⁰².

Benefits

561. The full set of social benefits from implementing our recommendations will arise from their effects on the three levers for change (accountability levers, motivating levers, knowledge levers) and the behaviour changes that follow. These behaviour changes will have positive effects in their own right in various ways that are hard to quantify. Indeed, there is a view that an improved climate for workplace health and safety is a contributor to productivity¹⁰³.

562. Most importantly though, there is likely to be an indirect but significant effect on the workplace health and safety toll. While the data on workplace fatalities is unreliable, there are a significant number of workplace deaths and a substantial number of serious injuries to workers every year. Implementing our recommendations is expected to have an effect on these numbers. In addition, there are a greater number of people whose health is

100. KPMG (2008). *Summary Report of the Business NZ – KPMG Compliance Cost Survey*: Alexander, WRJ, Bell, JF and Knowles, S (2004). *Quantifying Compliance Costs of Small Businesses in New Zealand*. University of Otago Economics Discussion Papers No. 0406.

101. KPMG found that 'employment-related' compliance costs averaged \$188 per full-time-equivalent employee (FTE) in 2008. Alexander, Bell and Knowles' (2004) greater detail suggests that health and safety was less demanding than other aspects of employment compliance; it was taken as 30 percent. The average increase of costs from the new regime was taken as 20 percent. December 2012 Statistics New Zealand figures were used for employment and price movements. Taking 20 percent of a base that is 30 percent of \$188 (plus 9.05 percent inflation) applied over 1.951 million FTEs results in a total estimate of \$24 million.

102. Statistics New Zealand (2013). *Business Operations Survey: 2012*, pp 5-7.

103. Andor, L (2013).

impaired by work-related causes. Again, our recommendations are expected to make some impact on these outcomes over time.

563. The resulting lowered incidence of death and injury damage has a social value as an avoided cost. This can be assessed using a concept called the 'value of statistical life'. It is an empirical parameter derived from survey responses to questions about spending on risk reduction. It is kept current by the Ministry of Transport, which uses it for policy purposes¹⁰⁴: "The updated value of statistical life is \$3.77 million per fatality, at June 2012 prices. This gives an updated average social cost per fatality of \$3,797,600. For non-fatal injuries, the updated average social cost is estimated at \$401,100 per serious injury and \$21,300 per minor injury"¹⁰⁵.
564. The benefits from our recommendations therefore can be summed up as: the reduction in deaths and injuries; any productivity effects that eventuate; the impacts on occupational health effects; and the general improvement in workplaces.
565. To turn the quantified portion of these into a single numerical value, data on likely volumes of results is needed. In particular, what reduction in deaths and injuries can be expected as a result of implementing our recommendations? This is not a question to which there is a clear answer.
566. Instead, an assessment might be made by asking, given the cost of implementing the improved system, what annual reduction in the work toll would be needed to offset the costs, and is that reduction a likely outcome?

Net cost-benefit analysis – discussion

567. Based on an assumption that the steady-state incremental administrative costs to the new agency of implementing our recommendations is about \$32 million per annum (see paragraph 513 and Table 1), the total additional social costs would be around \$56 million per annum. Social annual expenditure on that scale would justify itself if the social benefits were sufficient to offset it. One way in which that might occur is if the employment-related annual death toll fell by 14. Obviously if there were an accompanying reduction in serious and minor injuries, and an improvement in occupational health outcomes, the reduction in deaths required to reach 'break-even' would be less.
568. How likely is such an eventuality? We have designed our recommendations as an integrated programme to achieve a step-change improvement in health and safety performance in New Zealand workplaces. The Government has set a target of reducing workplace deaths by 25 percent, with corresponding reductions in injuries. The precise impacts will depend on the revised fatality figures issued by Statistics New Zealand.
569. We consider that these benefits are likely to be confirmed once the revised Statistics New Zealand fatality figures are released. Even if our recommendations did not have the full impacts expected, or took a period of time to reach their maximum effects, as long as the results were broadly along the lines expected, we have no doubt there would be a positive social benefit.

104. See Ministry of Transport (2012). *The Social Cost of Road Crashes and Injuries June 2012 Update*, at <http://www.transport.govt.nz/ourwork/Land/landsafety/Documents/Social-cost-June-2012-update.pdf>.

105. Ministry of Transport (2012), if the social value of a typical death is the value of statistical life, the social value of a serious injury is 10 percent of that of death, and for a minor injury 0.4 percent of the value of statistical life.



Implementation plan

570. The Taskforce's terms of reference require us to identify the policy, legislative, regulatory and/or administrative changes needed to implement our recommendations, and a proposed timetable for implementation. This report has identified the changes that are needed. This section addresses the requirement to provide a proposed timetable for implementation.

571. Our recommendations can be grouped under seven broad headings for implementation purposes, as shown in the timetable on page 131.

572. The Government should:

- a. establish a new stand-alone workplace health and safety agency
- b. enact a new Act
- c. promulgate supporting regulations
- d. implement administrative actions
- e. develop and implement rewards for doing the right thing.

573. MoJ should review the corporate liability framework.

574. The new agency should complete operational actions.

Establish the new agency

575. The Government has already announced that it will establish a new stand-alone agency, with legislation expected to be introduced to Parliament in June and the new agency expected to be in place by December 2013.

Enact a new Act

576. Ten of our recommendations would require legislative change (Recommendations 2, 3, 5, 6, 7, 8, 9, 10, 11 and 13). In addition to the primary recommendation that a new Act

be introduced, and based on the Model Law, legislative change will be required to:

- a. strengthen the legal framework for worker participation
- b. address changes in accountabilities for the regulation of the use of hazardous substances and workplace injury-prevention activities
- c. modify accountability arrangements between workplace health and safety agencies
- d. strengthen the regulation of occupational health
- e. strengthen the regulatory requirements for managing the risks of major hazard facilities
- f. provide a framework for more effectively differentiating ACC levies based on risk, and good and bad performance
- g. provide for penalties to be imposed against government agencies for breaches of provisions in the health and safety legislation in the same way as they would be imposed against any other PCBU in breach
- h. strengthen the penalties that can be imposed for breaches of the new Act
- i. provide the new agency with the mandate to influence and direct data collection
- j. strengthen the emphasis placed on root-cause analysis in investigations throughout the workplace health and safety system.

577. We recognise that the Government will need to consider our recommendations. A new Act is likely to be introduced in late 2013. We therefore consider that the passage of the legislative changes should be completed by the middle of 2014.

Promulgate supporting regulations

578. In addition to the enactment of the new Act based on the Model Law, we have recommended that the Government introduce associated regulations based on the Australian Model Regulations ('Model Regulations'). These would include regulations addressing the detail of how worker participation is expected to occur in different industries and in firms of different sizes and with different risk profiles. A review would be needed of the detail of the Model Regulations to determine which regulations should be adopted immediately when the new Act comes into force, and which regulations should be considered as part of the comprehensive set of regulations, ACoPs and guidance material that the new agency will be responsible for developing.
579. We consider that any regulations that can be adopted immediately should be introduced alongside the new Act as exposure draft regulations. This would mean that those regulations can be promptly promulgated once the new Act comes into force.

Implement administrative actions by the Government

580. We have recommended a number of administrative actions for the Government, including to provide strong leadership and to act as an exemplar of good health and safety practice. The Government should implement these as part of its response to our report. Explicit expectations of government agency chief executives for the health and safety performance of their agencies can be set with immediate effect by the Government and reinforced through the normal accountability processes for government agencies. Requirements that workplace health and safety impacts be assessed in relation to all government regulatory processes can also be implemented immediately.
581. We recognise that further work will be needed to implement changes to government procurement processes. We consider that this policy work should be completed as a priority by

early 2014, given the significant impacts that improvements in how government procurement practices assess workplace health and safety could have on outcomes.

582. The final action included under this heading is the development of a national workplace health and safety strategy. We have recommended that the responsible Minister have a statutory duty to produce a national workplace health and safety strategy. The development of this strategy (which should replace the existing non-statutory workplace health and safety strategy) will guide the new agency in exercising its functions, as well as setting expectations for other parties in the workplace health and safety system. We consider that the development of this strategy should be a priority for the Minister, once the new Act has been enacted, and that a goal of completing the strategy by the end of 2014 should be set.

Develop and implement rewards for doing the right thing

583. We have recommended that the Government allow for greater differentiation in ACC levies based on risk, and good and poor performance, and that a business health and safety rating scheme be introduced. Changes to legislation will be needed to allow for the greater differentiation in ACC levies, and the associated allocations of responsibility between the new agency and ACC. Once these legislative changes have occurred, we recognise that a policy process will be required to design the detail of how differentiation in ACC levies should operate. We consider that this detailed policy work should be given priority, with a goal of completing this work by mid-2014, so that it can be implemented for the 2015/16 ACC levy round.
584. A business health and safety rating scheme could be introduced based on existing performance measures, e.g. ACC levy discount schemes. However, this would pose risks for the Government, MBIE, ACC, the new agency and businesses, as the current discount programmes do not involve in-depth reviews of businesses' health and safety performance. We

therefore consider that significant design work needs to be undertaken by MBIE, ACC and the new agency prior to introducing any such scheme. This would include considering carefully the relationship between the differentiated ACC levies and a performance-rating scheme, and determining whether the new agency or ACC should be responsible for auditing performance for the business health and safety rating scheme. It is our view that the new agency should be responsible for these audits.

Review the corporate liability framework

585. We have recommended that MoJ begin policy work now to determine the range of options for a revised generic corporate liability framework and to identify the preferred approach (Recommendation 11). We recognise that this policy process may take some time, but we consider that it should aim to result in the introduction of legislative amendments by mid-2014 at the latest.

Operational actions by the new agency

586. We have recommended that the new agency be responsible for a range of operational actions to build on and support the full set of the Taskforce's recommendations (Recommendations 4, 9, 11, 12, 14 and 15). These actions will require that the new agency develop and implement the following work plans, programmes and strategies:

- a. regulations, ACoPs and guidance material work plan
- b. major hazards work plan
- c. occupational health work plan
- d. compliance strategy
- e. comprehensive and targeted health and safety awareness programme
- f. data, research and evaluation work plan
- g. workforce development strategy.

587. These work plans, programmes and strategies will be the foundation of the new agency's ongoing activity, and must be a priority for the new agency to develop and publish. While the new agency will be able to build on existing work plans, programmes and strategies, we consider that the scale and scope of the functions that we have recommended for the new agency mean that it will need to revise substantially existing work plans, programmes and strategies.

588. For example, we have recommended that significant resourcing be dedicated in the short term to the new agency's function of implementing a comprehensive set of regulations, ACoPs and guidance material to clarify expectations of PCBUs, workers and other participants in the system (see paragraphs 541 to 543 regarding funding this function). We have also recommended that the new agency publish a timetable for the development and review of regulations, ACoPs and guidance material, and that it ensure that these processes are undertaken on a tripartite basis.

589. This function needs to rebuild the regulatory framework and supporting ACoPs and guidance material. It requires significantly more resourcing than has been provided within DoL or MBIE in the past. This is materially different from the current approach to developing regulations, ACoPs and guidance material, meaning that MBIE's existing work plan for this function would not be sufficient to deliver on the new agency's functions.

590. The other work plans, programmes and strategies represent similar expansions in scale and scope for the new agency's functions. We consider that the new agency should be able to develop work plans, programmes and strategies by early 2014, so that it can complete consultation on these work plans, programmes and strategies around the time that the new Act comes into force. The new agency should then be in a position to implement these work plans, programmes and strategies as soon as it is given expanded functions by the new Act.

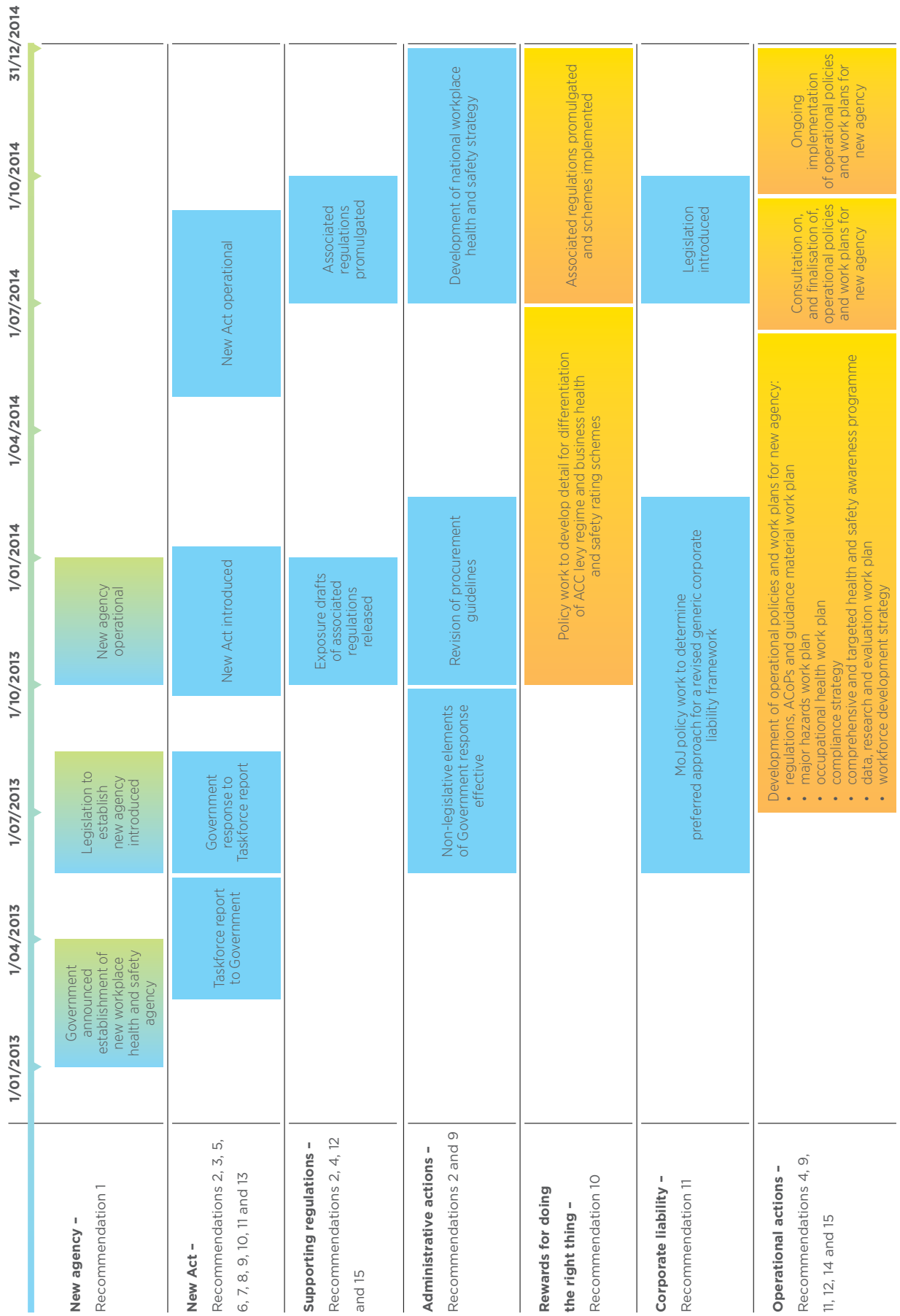


FIGURE 4: Implementation timeframes for the Taskforce's recommendations

NELSON PINE INDUSTRIES / CASE STUDY A FOCUS ON WORKER PARTICIPATION AT NELSON PINE INDUSTRIES

ABOUT NELSON PINE

Nelson Pine Industries is a timber manufacturing company in Nelson. It produces GoldenEdge MDF (medium-density fibreboard) and NelsonPine LVL (laminated veneer lumber) from radiate pine timber. It is a wholly owned subsidiary of Sumitomo Corporation, and employs 250 people. The company has a full-time dedicated health and safety staff member plus an externally contracted occupational health nurse.

WHAT WORKS WELL AT NELSON PINE?

Nelson Pine has an extremely high standard of practice in health and safety management. Particular areas that stand out are the operation of the health and safety representative system, and the in-depth attention that is given to embedding principles of behavioural safety.

HEALTH AND SAFETY MANAGEMENT SYSTEMS

The health and safety management system in operation at Nelson Pine was driven by the desire to comply with AS/NZS 4801 for occupational health and safety management systems. Accreditation was achieved in 2012. Nelson Pine is also accredited under ACC's Workplace Safety Management Practices programme.

The health and safety policy was last reviewed in 2012, with sign-off at the Managing Director level. The policy consists of nine key points that set out the company's commitment, including the following three points:

- involve employees and other interested parties in health and safety management
- ensure that good health and safety practices are understood and become an integral part of employee work practices
- expect that all employees, managers, contractors and other stakeholders recognise and meet their health and safety responsibilities.

Health and safety management is characterised by a strong systems approach, which is supported by a robust database (the 'Impac Risk Manager' system) that has been customised for Nelson Pine.

HAZARD IDENTIFICATION AND CONTROL

Managers consult regularly with employees and/or health and safety representatives in identifying hazards. One of the health and safety representatives maintains control of the hazard register, reviews it regularly and seeks action by managers if prompt action on a hazard is not taken.

The immediate reporting of all new hazards is encouraged so that they can be eliminated as early as possible. Even if quick elimination is possible, reporting is still encouraged so that underlying causes can be identified.

Over time, health and safety representatives have come to be viewed as essential to the process, and adding a high degree of value.

TRAINING

Training at Nelson Pine is conducted in a systematic manner. It includes induction and job competency training, which includes attention being given to safe working practices training and specialist health and safety training. All training is assessed against competencies and recorded on the employees' personal files.

Induction spills over into initial on-job training and is conducted over a period of time to avoid 'information overload'. In several areas managers have developed competency checklists for specific role elements and for use of equipment. These must be signed off by the trainer and trainee before the employee is authorised to use that equipment or carry out that task unsupervised.

In addition to the on-job training required to ensure that an employee has the competence to carry out a particular job function and to do it safely, Nelson Pine actively enrolls employees

NOTE: The Nelson Pine and Contract Coating case studies are shortened versions of fuller case studies prepared by Heathrose Research. They are examples of companies that take health and safety seriously. See the full list of Heathrose case studies in the Taskforce working papers.

in training courses offered through the forest industry training organisation, FITEC.

Employee participation

Nelson Pine has a well established system for ensuring employee participation in health and safety management. This was first agreed in 2003 with the Engineering, Printing and Manufacturing Union (EPMU) and the National Distribution Union (NDU), and is reviewed every two years.

A network of 14 health and safety representatives is in place across all parts of the manufacturing operation, with 12 representing functional areas and two being union health and safety representatives (one each from EPMU and NDU). Many of these employees have been health and safety representatives for many years, and observe that the approach to health and safety has changed from a “rip s**t or bust” one in previous years to one that is based on the twin pillars of good systems and good attitudes.

All health and safety representatives are fully trained to level 3 and participate in training alongside supervisory and management staff. This is felt to be important in ensuring that all staff have a common approach to hazard management and continual improvement.

The specific roles of health and safety representatives are to:

- foster positive safety practices throughout the company
- be a communication link between interested parties to help resolve issues in a co-operative manner
- identify hazards that have not been satisfactorily addressed by normal processes and help to develop solutions to them
- participate in hazard surveys and other hazard-management processes
- be informed of incidents and accidents, and participate as appropriate in reviews to identify preventive actions
- meet with and help in the safe induction of new employees to the workplace
- promote the safe and early return of injured employees to work.

Relationships between managers and health and safety representatives are positive at all levels. Managers note that health and safety representatives are increasingly asking to participate to a greater extent in health and safety activities. This includes undertaking full reviews of all hazards, participating fully in investigations and taking a greater role in encouraging compliance with behavioural safety principles.

HEALTH AND SAFETY CULTURE

The embedded nature of good health and safety practices is clear at Nelson Pine. Health and safety representatives report that supervisors take their health and safety responsibilities extremely seriously.

Further, there is an evident commitment to improved health and safety led by senior managers and the board. Health and safety is discussed at every board meeting and any accidents are discussed at this level. Senior managers report that good health and safety is an integral part of Nelson Pine’s general strategy for improving business performance.

The commitment to improving health and safety at Nelson Pine is reflected in health and safety outcomes. Lost-time injuries in 2011 and 2012 were two and three, a significant reduction since 2005 when the number stood at more than 30.

Health monitoring undertaken by a specialist occupational health medical practice in 2012 also showed positive trends. The occupational health nurse has noted some significant improvements in general health as a result of referrals to GPs and other medical professionals. These have been made through general screening programmes conducted at work, such as the ‘heart check’ (waist measurement, blood pressure and smoking status) and fitness testing.

CONTRACT COATINGS / CASE STUDY A FOCUS ON HEALTH AND SAFETY IN A CONTRACTING ENVIRONMENT

ABOUT CONTRACT COATINGS

Contract Coatings is a commercial and residential painting contractor in Glenfield, Auckland. It is a private business run by the owner, and governed by a board of three employees and an independent adviser. It employs 32 people plus labour hire staff as required. Contract Coatings employs a part-time (three days a week) Health and Safety Co-ordinator who reports to the Commercial Manager.

WHAT IS WORKING WELL AT CONTRACT COATINGS?

Contract Coatings has a very high standard of practice in health and safety management. Particular areas that stand out are management leadership, the dedicated role of the Health and Safety Co-ordinator, the very specific task analysis that includes a detailed approach to hazard identification, and control at the sites where Contract Coatings is working. It is also apparent that the workers understand they have a responsibility for health and safety in their workplace, and they own that.

BACKGROUND AND CONTEXT

Contract Coatings has its own health and safety management systems but, as a sub-contractor to large firms, also needs to comply with the systems set down by those companies.

Contract Coatings is required, as part of its tender process, to state how it will manage health and safety. The company also conforms with the main contractors' health and safety policies and practices once on site. While Contract Coatings has to take into consideration the work that is going on around its teams, it also has to manage other site workers in the Contract Coatings environment.

The Managing Director believes that the attention Contract Coatings pays to health and safety gives his business a commercial advantage. But the primary reason for the priority the company gives to it is that it does not want people to hurt themselves while at work.

HEALTH AND SAFETY MANAGEMENT SYSTEMS

The health and safety practices and procedures at Contract Coatings are documented in a comprehensive health and safety manual. Over time the systems have been developed in line with Site Safe. The manual is reviewed annually by the health and safety committee.

A part-time Health and Safety Co-ordinator, who reports to the Commercial Manager, oversees health and safety at Contract Coatings. Her role is to document the systems, develop site-specific safety plans for new sites, and conduct fortnightly site audits to ensure that the plans are being followed.

While the Health and Safety Co-ordinator manages the operational side of health and safety, the Managing Director takes a very hands-on approach too.

In addition to Contract Coatings' site audits, Site Safe conducts an audit every two years. In the alternate year, an ACC Workplace Safety Management Practices programme audit is conducted, with Contract Coatings continuing to hold tertiary-level accreditation.

HAZARD IDENTIFICATION AND CONTROL

The process for hazard identification is detailed in the health and safety manual. The Health and Safety Co-ordinator believes that the most important aspects of the health and safety system are the task analysis that asks "how are you going to do your job and control hazards along the way?", and the follow-up site inspections that incorporate observing and talking to the workers and checking their personal protective equipment and the paperwork.

INCIDENT/ACCIDENT REPORTING

Staff are clear about the processes that are used for reporting health and safety issues. They comment that the company takes it very seriously. The company keeps a record of accidents, incidents and near misses, and

compares this with previous records annually. The summary report for 2012 shows that while there were very few incidents, these resulted in lost-time days, especially for two workers, of whom one injured himself when he slipped and fell, and then re-injured his back pouring paint into a tray.

One large construction company that conducts post-construction evaluations has given Contract Coatings a 98.5 percent safety rating on a major project.

Contract Coatings has a documented process for conducting investigations that are carried out by the Health and Safety Co-ordinator. The process follows the ACC guidelines and is documented in the health and safety manual. Contract Coatings also calls on the help of a Site Safe adviser if it feels it needs to.

TRAINING

Workers at Contract Coatings are introduced to the health and safety systems at induction, when they are given the main points of the company's health and safety practices and the site-specific safety measures. This is followed by a visit from the Health and Safety Co-ordinator a month later, when she checks that they have understood and are using safe practices. Both the workers and the Co-ordinator sign forms attesting to this.

Employees of Contract Coatings hold Site Safe commercial passports, with leading hands attending advanced passport courses and supervisors attending gold card courses. Employees are trained in workplace first aid, and complete the 'working at heights' unit 15757 and Hire Industry Association of New Zealand silver operators' course for various elevated work platforms. The Health and Safety Co-ordinator has been trained to Site Safe gold card level, which includes how to conduct an accident investigation.

EMPLOYEE PARTICIPATION

Toolbox meetings provide the main opportunity for all workers to engage in discussions about health and safety. Employees also have the opportunity to be part of the formal health and safety committee.

The committee meets four times a year and two guests (staff members) are invited to meetings. Staff members are given paid work time to attend. The meetings can also include external guests who are invited to talk on specialist topics or give demonstrations.

Health and safety culture

The health and safety culture at Contract Coatings is driven from the top. The Managing Director says, "Health and safety isn't contestable but we are mindful that we are in a competitive environment. [However], the bottom line is that no-one takes risks." A worker comments, "If you're not going to [take notice] of health and safety then there is no job for you. It is paramount that we all stay safe... We take it very seriously, look after our mates. We want to go home at the end of the day."

The safety culture is further exemplified by workers feeling free to speak up about issues. As sub-contractors they sometimes have to talk to other workers on site about issues. Examples include scaffolding that is not securely fastened and holes not covered over. They also have the opportunity to talk about health and safety at toolbox meetings, and with their foreman, supervisor and the Health and Safety Co-ordinator.

The practice of health and safety at the operational level is supported by the well documented systems put into place by the Health and Safety Co-ordinator and her ongoing connection with the painters through her visits to worksites.



PART 4

APPENDICES

APPENDIX 1

Taskforce members



Rob Jager is Chairman of the Shell companies in New Zealand and General Manager, Shell Todd Services. Rob has over 30 years' experience in the oil and gas industry in a variety of technical, project, operational, business, management, and governance roles locally and overseas. In his role at Shell, Rob addresses issues of both personal and process safety and has been providing visible leadership in these critical areas. In addition, Rob is Chair of the Business Leaders' Health and Safety Forum and is a non-executive Director of Air New Zealand.



Paula Rose QSO is a consultant whose experience in health and safety includes more than four years as the Police lead on road safety. Paula has held leadership roles within the Police, worked with partner agencies, reviewed the previous Road Safety Strategy to 2010, and developed and implemented Safer Journeys New Zealand's Road Safety Strategy 2010-2020, as well as the Safer Journeys Action Plan. She is currently working as Executive Advisor to the Hon Paula Bennett, Minister of Social Development and is focused on the implementation of the Children's Action Plan for Vulnerable Children.



Mike Cosman has worked in the health and safety field for 33 years here and internationally, the majority of which has been in a regulatory role. This includes 25 years in operational, managerial and strategic roles with the Health and Safety Executive (UK) and three years with the Department of Labour as National Operations Manager and Chief Advisor. He is Managing Director of Impac Services and works as a consultant in the private sector.



Paul Mackay is Manager Employment Relations Policy at Business New Zealand, following nearly 30 years in employment relations roles for Carter Holt Harvey, Transpower, the State Services Commission and Ministry of Agriculture and Forestry.



Mavis Mullins MNZM is Director of Paewai Mullins Shearing, where she is involved in health and safety issues in the workplace, strategic planning and new business development. Mavis has strong connections in rural and farming communities, and is currently involved in hands-on roles both in farming operations and in providing governance for rural and farming organisations.



Dr Bill Rosenberg is Policy Director/Economist at the New Zealand Council of Trade Unions (NZCTU). Bill reflects the perspectives of employees and of the NZCTU and its affiliates, which represent 340,000 workers, in relation to both policy and practice regarding health and safety.

APPENDIX 2

Terms of reference

For the Independent Taskforce undertaking the Strategic Review of the Workplace Health and Safety System

Background

1. On 16 April 2012 Cabinet agreed to the establishment of an Independent Taskforce to undertake a strategic review of whether the New Zealand workplace health and safety system remains fit for purpose (the strategic review) [CAB Min (12) 12/14].
2. The strategic review is timely as it has been 20 years since the enactment of the Health and Safety in Employment Act 1992 and 10 years since the last significant review of the regulatory framework.
3. New Zealand has relatively poor rates of work-related fatality when compared to other countries with similar health and safety frameworks, notably Australia and the United Kingdom, and the trends in our official rates of fatality and serious injury are not improving.
4. Work-related fatalities and serious injuries are a tragedy for New Zealand's workforce and have high financial costs. Direct costs, such as employers' short-term production disturbance costs and human capital costs of fatal injuries, were conservatively estimated at approximately \$1 billion in a 2010 cost of injury estimate prepared for the New Zealand Injury Prevention Strategy (NZIPS).¹⁰⁶ Even a one percent reduction would equate to about \$10 million p.a. in reduced economic costs.

Objectives of the review

5. The Taskforce are to undertake the strategic review to:
 - a. identify whether the overall workplace health and safety system remains fit for purpose
 - b. recommend a package of practical measures that would be expected to result in at least a 25 per cent reduction in the rate of fatalities and serious injuries by 2020.
6. The workplace health and safety system can be defined as being made up of a number of complex factors:
 - a. the system is comprised of and underpinned by the legislation, regulation, standards, guidance documents and codes of practice relating to workplace health and safety. It is impacted by a number of influences, including the levels of regulatory compliance, enforcement policies, financial and other incentives, workplace culture, leadership and worker engagement
 - b. within the system there a number of key players, including the Department of Labour, professional bodies, unions, duty holder, employees and training organisations. The interactions between these actors influences how the system works and how effective it is
 - c. the effectiveness of the system can be measured by outcome indicators which include: improvements in industry and employee engagement in workplaces; and improved responsiveness to government activity; the work-toll -rates of fatality, injury and disease; the social and economic costs of the work-toll.

106. *New Zealand Estimates of the Total Social and Economic Cost of "All Injuries"*: O'Dea D and Wren J (2010), technical report prepared for NZIPS evaluation (total costs - \$1.3b in 2010 dollars). Other estimates of the costs of work-related injury, fatalities and disease are New Zealand Institute of Economic Research (NZIER) (2008) *Volume 1: Risk Landscape*, Report to the Department (total costs - \$16b, in 2008 dollars); and *The Economic and Social Costs of Occupational Disease and Injury in New Zealand*: Access Economics (2006), National Occupational Safety and Health Advisory Committee (NOHSAC) Technical Report (total costs - \$21b, in 2006 dollars).

Scope of issues to be considered in the review

7. The Taskforce will:
 - a. provide an assessment of the current performance of the workplace health and safety system
 - b. recommend a package of practical measures that would be expected to reduce the rate of fatalities and serious injuries by at least 25 percent by 2020. In developing this package of measures the Taskforce may explore the workplace health and safety system from a number of perspectives including (but not limited to):
 - i. what changes are required to the current workplace health and safety legislative and regulatory framework (and supporting guidance material) to ensure that it remains fit for purpose
 - ii. how culture change initiatives can be extended to a broader range of businesses, including through greater support of small to medium sized enterprises (SMEs)
 - iii. whether and how economic and other incentives can better influence workplace health and safety outcomes (eg the HSE levy, enforcement actions, penalty levels)
 - iv. how worker participation and engagement should be supported to ensure that the workplace health and safety legislative and regulatory framework is effective, and workers' perspectives are taken into account in identifying ways to improve workplace health and safety
 - v. whether and how improved government agency collaboration, co-operation and data-sharing can better influence workplace health and safety outcomes
 - vi. whether and how supply chains be better used to influence workplace health and safety outcomes (e.g. through procurement practices, business and Government leadership)
 - c. in respect of the package of measures to improve workplace health and safety outcomes, identify:
 - i. the net and gross fiscal and economic cost and benefit of the measures and (if applicable) how they should be financed
 - ii. the policy, legislative, regulatory, and/or administrative changes required to implement the measures, and a proposed timetable for implementation
 - iii. how the impact of the measures should be monitored and evaluated
 - iv. what impact the measures would be expected to have on sectors and firms at the highest risk of fatalities and serious injuries, and workers and firms with different characteristics, such as SMEs
 - d. consider how a successor to the Workplace Health and Safety Strategy (2005-2015), the National Action Agenda (2010-2013), Sector Actions Plans and the Occupational Health Action Plan can contribute more to improving workplace health and safety outcomes.
8. In identifying a package of measures under paragraph 7, the Taskforce will:
 - a. identify linkages to other issues that have the potential to impact on the workplace health and safety system; including matters relating to workplace exposures to hazardous substances that result in occupational ill-health and disease
 - b. consider the following aspects of the role of ACC that impact on health and safety outcomes:
 - i. The incentives provided to the health and safety system by the existing accident compensation system and the ACC
 - ii. ACC's role in workplace injury prevention and rehabilitation (return to work outcomes)
 - iii. How ACC supports the NZ Injury Prevention Strategy

- iv. How ACC engages with the Ministry of Business, Innovation and Employment's health and safety inspectorate and other government agencies.
 - c. consider aspects of the work-related road toll and public safety arising directly out of work activities, insofar as these issues arise from an examination of the systems and processes in workplaces that impact on fatalities and injuries in those areas.
 - d. consider international best practice in regards to workplace health and safety
 - e. be mindful of the findings of the Pike River Royal Commission and the Government's response, which will have impact in the area of workplace health and safety beyond the mining sector alone
 - f. generate bold and innovative thinking, and not to be otherwise constrained in its recommendations (other than by the matters outside of the scope of the strategic review, as indicated below)
9. The following are outside of the scope of the strategic review:
- a. recommendations related to policy changes about providing more choice for employers in ACC (the Minister for ACC has a separate decision making process for that area)
 - b. changes to the no-fault nature of New Zealand's accident compensation system
 - c. issues related to public safety (other than those outlined in paragraph 8 (c) above)
 - d. matters related to the administration of the Hazardous Substances and New Organisms Act 1996 (other than those outlined in paragraph 8 (a) above).
10. In relation to the exclusions in paragraph 9c and d, the Government is mindful of the need to improve outcomes in these areas as well. The Government proposes to specifically look at these areas in early 2013, drawing from the recommendations and findings of this Taskforce.

Process

- 11. The Taskforce will proceed as it thinks fit to obtain relevant information, including the engagement of expert services to assist it to examine issues covered by the review.
- 12. The Taskforce are expected to make recommendations to the Minister of Labour by consensus, but where consensus is not possible may include minority recommendations.
- 13. Appointees are expected to take a broad and fresh approach rather than representing an organisation's current or previous position.
- 14. The Taskforce will be provided with administrative and secretariat support coordinated by the Ministry of Business, Innovation and Employment.

Deliverables

- 15. The specific deliverables of the Taskforce are for the Taskforce to determine but should include:
 - a. an initial report to the Minister of Labour by the end of July 2012 on the significant issues of the strategic review and the proposed approach to public consultation
 - b. by mid-September 2012 the Taskforce will produce a public document for consultation and submissions from the public
 - c. the delivery of a recommendations report to the Minister of Labour by 30 April 2013, which provides detailed information on the Taskforce's recommendations.

APPENDIX 3

Glossary of terms

TERM	MEANING
Acute harm	A condition or set of conditions with a rapid onset (e.g. injury or sudden infection) and/or of short duration.
Advice (from the regulator)	Information provided on a case-by-case basis by the regulator to duty holders and other parties on which they can rely. (New Zealand case law suggests, however, that receiving advice, even from apparently competent advisers, will not necessarily absolve a duty holder of responsibility.)
Approved code of practice	A statement of preferred work practices or arrangements. Codes can also be developed for aims or principles that relate to work, substances, the design of plant and protective equipment, and employee participation.
Australian Model Law	The Model Work Health and Safety Act, finalised following considerable national consultation in 2011, provides the basis for workplace health and safety Acts across Australian jurisdictions and enables harmonisation of work health and safety law nationally.
Capability	The power or ability or expertise to do something.
Capacity	In the context of an organisation or system, it often refers to having the amount of a resource that is necessary to do something adequately or well, i.e. having sufficient capable resources.
Catastrophic harm	The high degree of individual losses suffered by a large number of individuals, businesses and entities of all kinds, including environmental and community, usually in response to an unlikely accident or unforeseen, low-frequency event.
Certainty (regulatory)	When people know what is expected of them and can predict the consequences of non-compliance.
Chronic harm	A condition or set of conditions that develops or becomes apparent only over the longer term, e.g. cancer and gradual hearing loss.
Compliance	Meeting the requirements of the law. Regulators seek to facilitate compliance by duty holders using a range of activities, from the provision of information to imposing sanctions.
Crimestoppers	An independent New Zealand charity aiming to reduce victimisation and prevent and solve crime through anonymous reporting mechanisms and close working relationships with New Zealand Police. Crime reporting mechanisms include a 24/7 free telephone number and a secure online Giving Information Form. (Crimestoppers exists elsewhere, e.g. the UK.)
Deterrent	A sanction, or punishment, for non-compliance that motivates duty holders to perform well and consequently avoid the sanction or punishment associated with non-compliance.
Downstream parties	Participants in an organisation's supply chain that are affected by that organisation's health and safety-related actions, e.g. those that handle, use, implement, incorporate, store, decommission, dismantle or dispose of goods, plant and/or substances.
Enforcement	Obtaining compliance with a law or regulation, or the carrying out of an executive or judicial order, with sanctions for non-compliance.
Enforcement agency	An agency with the legal mandate to enforce compliance with a law or regulation.
Entitlement claims	The Accident Compensation Act 2001 provides for a range of entitlements to help people recover from work-related harm and injury. Work-related claims can be distinguished between medical fee-only expense claims and more substantial <i>entitlement claims</i> , which include accidental death benefits and weekly compensation, lump sum, and rehabilitation payments.
Executive government	The Prime Minister, Cabinet and the public sector (which includes the state sector plus local government organisations). The executive conducts the government, deciding on policy and administering legislation.
Guidance (from the regulator)	A regulator may issue guidance materials. Such guidance is only a guide, and if used, does not relieve any person of the obligation to consider other material matters to which that information relates. It is likely that if a person were meeting the regulator's guidance, then prosecuted, that would be a mitigating factor.

TERM	MEANING
Harm	Physical injury or actual or potential ill effect or danger. (See also serious harm.)
Hazardous substance	Any substance that has one or more 'hazardous properties' including explosiveness, flammability, human toxicity, corrosiveness and eco-toxicity, or otherwise causes harm to people or the environment on exposure.
High hazard	A type of work, industry or area where there is a low probability of failure or adverse event but high or catastrophic consequences should one occur.
High risk	The high probability of a serious adverse event.
Incentive	A reward or relief that serves to motivate compliance.
Industry	The productive enterprises in a particular field, country, region or economy viewed collectively, or one of these individually. A single industry is often named after its principal product, such as the agriculture or timber industry. An industry includes all persons associated with it, including employers, workers and worker representatives.
Industry body	An organisation that has a mandate to represent the interests of businesses or workers within a particular industry, e.g. Motor Industry Association of New Zealand, the New Zealand Taxi Federation.
Jurisdiction	The official power to make legal decisions and judgments; or the territory or sphere of activity over which the legal authority of a court or other institution extends.
Just culture	A culture where transparent and fair communication forms a foundation for building relationships. A sense of safety and a comfort level with interpersonal interaction characterise a workplace that has developed a just, no-blame culture.
Level playing field (even playing field)	A market or system where the participants (players) all play by the same set of rules. The concept is based on a principle of fairness, and not that each player has an equal chance to succeed.
Levy	A type of tax or fee.
Major hazard	Any source of potentially significant damage, harm or adverse health effects on people or organisations in the form of property or equipment loss.
Major hazard facilities	Workplaces that store, handle or process large quantities of hazardous material, with the potential for significant adverse consequences for people or the environment that extend beyond the workplaces. Common examples are mining, offshore petroleum production, pipelines and chemical plants.
Occupational health	Deals with all aspects of health and safety in the workplace and has a strong focus on the primary prevention of harm. Workers' health has several determinants. These include risk factors at work leading to cancers, accidents, a variety of diseases including musculoskeletal, respiratory, circulatory and communicable diseases, hearing loss, stress-related disorders and others. Other important determinants relate to general employment and working conditions in the formal and informal economy, including working hours, salary, workplace policies concerning parental leave, health promotion and protection provisions, etc.
Oversight	The act of monitoring or auditing compliance with the law and/or performance of the regulatory system.
Participant	A person who has a role or function in the system or is able to otherwise influence the health and safety of people in workplaces.
Perverse incentive	An incentive that has an effect contrary to the intention of the incentive maker due to the actions being taken to receive the incentive.
Primary regulator	The Government's lead agency mandated to promote, support and enforce the regulation of workplace health and safety, the new Crown agency from 2014.

TERM	MEANING
Professional association	Usually a non-profit organisation seeking to further a particular profession, the interests of individuals engaged in that profession, and the public interest, e.g. New Zealand Nurses Organisation, New Zealand Law Society.
Regulation	May refer to a rule or directive made and maintained by an authority, or the action or process of regulating or being regulated.
Regulator	A person or body that has regulatory oversight of a particular industry or business activity.
Regulatory framework or system	The legal framework and the statutory mechanisms and agencies put in place to achieve compliance with the law.
Risk landscape	The totality of risks faced by a community. For the purposes of this report, workplace-based or work activity-related risks are the unit of analysis and the community includes workers, the public and the natural environment.
Root-cause analysis	A method of problem solving that identifies the root causes of faults or problems that cause operating events. By focusing corrections on root causes, problem recurrence can be prevented.
Sector	A part of the economy of a country. For example, the private sector is made up of the corporate sector (firms owned by private shareholders), the personal sector (individuals and their income and expenditure), and the financial sector (banks and other institutions dealing in money).
Serious harm	Under the HSE Act, 'serious harm' is defined as including: <ul style="list-style-type: none"> • conditions that involve permanent loss of, or temporary severe loss of, bodily function, e.g. from respiratory disease, cancer, poisoning, bone fracture, laceration, crushing etc • amputation of a body part • burns requiring specialist medical care • loss of consciousness or acute illness from lack of oxygen or ingestion of any substance • any harm that causes the person harmed to be hospitalised for 48 hours or more within seven days of the harm occurring.
Standards	Rules, guidelines or characteristics for products or processes that are issued by a recognised body, and with which compliance is voluntary. In a New Zealand health and safety context, standards are generally approved by the Standards Council in accordance with the Standards Act 1988.
Technical regulations	Specific rules with which compliance is mandatory in relation to the characteristics of goods and services, including related processes and production methods, and packaging, marking and labelling requirements.
Tripartism	The internationally recognised model of engagement for workplace health and safety that is at the heart of the 'Robens' model described in a landmark 1972 British report by Lord Robens. Tripartism involves three key parties – employers, workers and the regulator – each playing critical, interdependent roles and assuming particular responsibilities in relation to each other.
Tripartite basis	A basis of working involving government and the representatives of workers and employers. This does not preclude the involvement of other interested parties.
Upstream parties	Participants in an organisation's supply chain whose actions affect that organisation's health and safety-related outcomes, e.g. importers, suppliers, designers and manufacturers of goods, plant and substances.
Victim Support	A community organisation that provides emotional and practical support to people hurt by crime and other trauma.
Worker participation	The effective participation of workers, through formal and informal mechanisms, in the management of health and safety systems and culture in the workplace.
Workplace health and safety	The mechanisms, systems and parties involved in achieving and maintaining a state of health and safety in the workplace. It involves recognising and minimising potential harms, including the risk of injuries and illnesses, and having workplace systems in place to review and audit ongoing risks of harm.
Zero harm	A commitment to reduce the incidence of injury and illness within a workplace to zero, or near zero.

APPENDIX 4

Acronyms

ACC	Accident Compensation Corporation	MNZ	Maritime New Zealand
ACoP	Approved code of practice	MoH	Ministry of Health
CAA	Civil Aviation Authority	MoJ	Ministry of Justice
CPD	Continuing professional development	NDU	National Distribution Union
DHB	District health board	NODS	Notifiable Occupational Disease System database
DoL	Department of Labour	NOHSAC	National Occupational Health and Safety Advisory Committee
ECE	Early childhood education	NZITO	New Zealand Industry Training Organisation
EPA	Environmental Protection Authority	NZQA	New Zealand Qualifications Authority
EPMU	Engineering, Printing and Manufacturing Union	NZQF	New Zealand Qualifications Framework
EQC	Earthquake Commission	NZTA	NZ Transport Agency
EXITO	Extractive industries training organisation	OECD	Organisation for Economic Co-operation and Development
FITEC	Forest Industries Training and Education Council	OHS	Occupational health and safety
GDP	Gross domestic product	PCBU	Person conducting a business or undertaking
GP	General practitioner (medical doctor)	PIN	Provisional improvement notice
HaSPA	Health and Safety Professionals Alliance	PIRA	Preliminary impact and risk assessment
HSE	Health and safety in employment	SIOI	Serious injury outcome indicator
HSE Act	Health and Safety in Employment Act 1992	SME	Small and medium-sized enterprise
HSNO Act	Hazardous Substances and New Organisms Act 1996	SOE	State-owned enterprise
ILO	International Labour Organisation	SSB	Standard-setting body
IoD	Institute of Directors	SSC	State Services Commission
ITO	Industry training organisation	TAIC	Transport Accident Investigation Commission
LLN	Literacy, language and numeracy	TEC	Tertiary Education Commission
MBIE	Ministry of Business, Innovation and Employment	UK	United Kingdom



He Whakatauki

“He korowai āta raranga
He korowai whakaruruhau,
Mō tātou katoa”

“A carefully woven cloak, is a protective cloak for us all.”



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