

Submission

by



to the

Strategic Review of Workplace Health and Safety

November 2012.

Private Bag 92066
Auckland 1142
Ph:

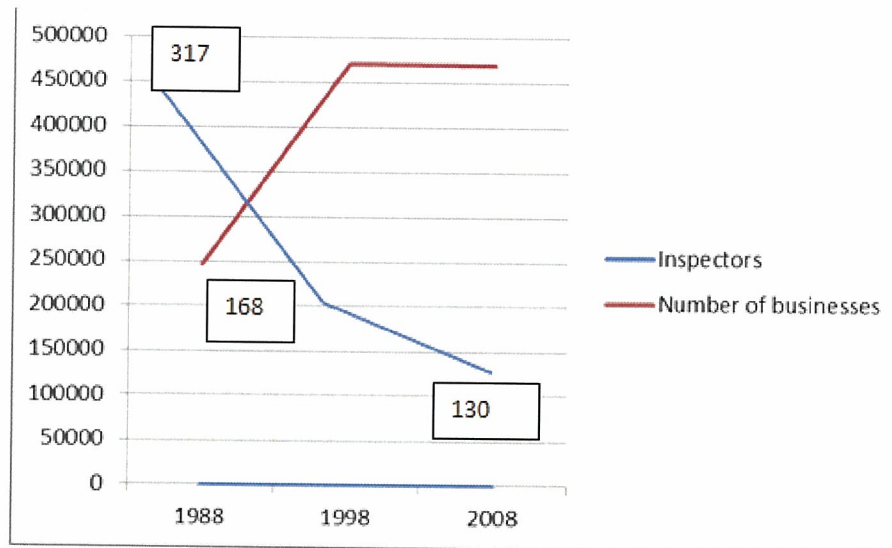
1. The Employers and Manufacturers Association (N) representatives well over 8000 members in a region that covers from the far north down to Lake Taupo. The membership covers all industry sectors and all business sizes. The EMA (N) has a duty to its members to keep them informed on what changes are being planned that will both positively and negatively alter the way they manage their business.
2. We welcome the opportunity to make submissions on these urgent issues.
3. EMA embarked on 2 road shows, holding numerous public meetings plus used a Survey Monkey tool to gain our members views. In all we spoke some 500 employers throughout our region.
4. The following submission highlights their responses and concerns that EMA has with regard to OH&S within the NZ context. We have made a second submission that only relates to the members comments.
5. It is noted that the NZ workplace accident and ill health record is poor.
6. It is also noted that simply doing the same thing will not alter the accident and ill health rates. What is needed is a paradigm shift. Other countries have been able to attain improving results over the last decade or so, so the solutions are available and not required to be invented here.
7. We must however be bold and move on evidence based solutions to attain the required injury reductions announced by the Minister.
8. We need a complete re think of how OH&S is taught, provided, administered, regulated and enforced by all stakeholders within the OH&S space. A band aid is the last thing NZ needs.
9. We note the Pike River Royal Commission report but will not make comment on it in this submission apart from endorsing recommendations;
 - a. The creation of a separate health and safety agency (1), and
 - b. Increasing the responsibilities of directors (5)

REGULATORY FRAMEWORK

10. The current model of MBIE is broken. It is simply out of date and out of touch with business. They are the invisible department.
11. The majority of interactions with business are reactive, i.e. following an event. The number of proactive visits by inspectors is very low to the point of being insignificant.
12. Employers speak of these proactive visits as likely to result in enforcement action. Thus any bridge that was formed has now collapsed.
13. The Roben's style of legislation is fit for purpose if it is supported by more Regulations and Codes of Practice. These must be sector specific and developed in conjunction with business.
14. There should be an evolutionary move towards introducing more Risk Based OH&S methodologies along with the current hazard based approach. Throwing the hazard system out completely would cause too much confusion in the market place.
15. All collateral material developed by MBIE and stakeholders must be easy to read and implement. Practical solutions and/ or examples could be used.
16. Designers, manufacturers, suppliers all need to be accountable for their products. Within the Regulations Sect 66/67/68 and 69 are found the requirements for this however there are very few prosecutions or indeed any other enforcement actions taken.
17. The above sections need to be expanded to include processes. Refer to the definition of "plant".
18. The definition and use of "all practicable steps" needs to be explained better and used by the courts to develop case law around what is meant by this term. The term is often used in relation to a single hazard, whereas within the operation of the plant hazards, very often are working simultaneously, sequentially or in a compounding effect.
19. There is a strong argument to create a single Injury Prevention Unit. See attached document. This unit would:
 - a. Reduce operating costs
 - b. Create a uniform language of health and safety
 - c. Develop across the sector interventions
 - d. Create economies of scale thus getting a better spend for the woeful dollars invested in injury and ill health prevention. Currently ACC has reduced its prevention budget by 49% since 2007/08: hardly committed to reducing injuries

- e. This unit would also assist in the inter agency collaboration and dialogue.
- 20. We recommend that all businesses register with MBIE (as they were required to do under previous legislation)
- 21. We recommend that MBIE undertakes a risk profile exercise against this register to identify which businesses need more or focused interventions. It is proposed that MBIE do some work around the ACC Industry Risk Groups system to align their industry risk profiles. Where there is a similarity then use if, if not MBIE could assign their own profile rating.
- 22. High risk operations would then be required to create a company "Safety Case". This document sets out the businesses actual defined interventions with regard to the known hazards and processes. It would then be easy for the inspectorate to assess how far through its own plan the business is. These plans would be required to be submitted on an annual basis. Continuous improvement would underpin these Safety Case documents. This would be especially helpful for occupational health exposures and interventions, e.g. noise.
- 23. We recommend strongly that MBIE continue along the path of a modern regulator. Businesses want MBIE to be mentors, helpful and coaches. There is a constant call for more proactive visits by the regulator and to build bridges. The "enforcement triangle" is used when dealing with businesses unwilling to take heed of advice.
- 24. We recommend that inspectors within MBIE come from the sectors they are working in. This "from the business" focus is important when talking with like employers/ staff. It was often mentioned that the inspector had no idea of what they were looking at or the knowledge of the plant and or process under question. Having theory with no practice makes the inspector vulnerable to be exposed as looking incompetent.
- 25. We strongly recommend that MBIE continues to discuss and create a HASPA body within the NZ external provider / education framework. This is overdue and the time is right now.
- 26. The number of inspectors is low compared to the ILO suggested establishment. Employers can simply apply a risk management approach knowing that being visited is highly unlikely. Using the ILO model 1:10,000 we would need 223.

27.



28. We strongly recommend that inspectors are trained beyond their warranted requirements. To this end, a second layer of compulsory OH&S training must be developed and provided. This could link into qualifications and professional CPD programmes as required by OH&S professional bodies.
29. We feel there is far too much emphasis put on plant at the expense of process. Finding small faults on small items of plant will do nothing to improve our statistics however looking at the entire process and all the emissions will overtime get results. This will only occur with better qualified inspectors who engage with business. It is almost impossible for any inspector to know all about every piece of plant and process within the modern workplace. Using key people within that business to build a good working relationship is the only long term successful answer.
30. The use of penalties is not seen as a major deterrent by employers. The average fine is \$16091.00, and for large employers simply absorbed. For SME's the fines are less but would hurt the business. The ability for representatives to be offset by insurance is seen as out of touch with the penalty regime. In the USA they still have the death penalty but this has not slowed their murder rates.
31. As seen in overseas countries as fines increase there is an equal increase in defended cases. Put simply it is both prudent and good business to defend high end cases. Often it's a no win situation except for the legal profession who are likely to support such defended cases.
32. MBIE needs to demonstrate leadership both at the top, regional and down to front line staff. It is often thought that staff are apologetic when saying who they work for. There is simply no or little pride within the staff. There needs to be a big rebranding of DoL out of and away from MBIE. See point 19 above.

33. We are supportive of the supply chain methodology. For this to operate central and local government must step up and be seen to lead the charge. Bigger businesses have the economies of scale to put pressure on suppliers, however SME's do not.
34. We note a major issue under the principle and contractor regime. Many terms and conditions are itemised within contracts in order to secure the contract. What is failing is that these terms and conditions are rarely checked or monitored to any degree of compliance. This makes a mockery of the contract.
35. In essence these terms and conditions are itemised to win the contract with little or no intention of them ever being fulfilled.
36. Other contractors report that they are missing out on tenders because they have itemised many OH&S criteria to find they have undercut by a lower price with no OH&S criteria at all being included in the tender document.

WORKPLACE ARRANGEMENTS

37. It is noted that work and employment of employees is and has changed. This is to react to market pressures and maintain businesses. These changes will continue well into the future. What is needed is some guidance, both for employers and employees to better understand the issues and then be able to put in place strategies to minimise all possible effects. Equally employees must take ownership of their health/ sleep patterns. We encourage training and awareness programmes that are based on evidence and practical solutions rather than pure science. Employers must also have better tools to measure and monitor work.
38. It is well documented that literacy, numeracy and comprehension programmes have real benefits. We encourage these programmes to become more available and accessible to employers.
39. As industry moves more and more to computer based systems computer literacy is also required.
40. Government should be leading the charge for the implementation of what is often called wellness programmes. If the cost to the country is \$3.5 billion dollars then a small investment could have some major returns. It is noted that short term strategies, e.g. less than 5 years duration, will fail. What is needed is long term planning and long term secure scheme funding. To do otherwise is simply playing with the problem.
41. It is interesting to note the differences between different agencies. LTNZ have education programmes about drink driving that are sometimes backed up by Roadng NZ who install median barriers to separate (isolate) vehicles from each other. These bodies are working with cohesion and consistency.

42. We have not seen a similar example under OH&S. What we do see is competing and often differing information by various agencies. One case in point is noise, MBIE does nothing and ACC tell employees to "move away from the noise" (plant) thus potentially raising an employment issue if followed! The current cost to ACC is around \$65million for NIHL claims and forecast to increase; yet nothing is done either by ACC or MBIE. There are available solutions in the market place. Engineers need to become part of the solution.
43. The ACC working on ladder advertising campaign was entirely about home injuries because that's where their claims cost were highlighting a need but this was a missed opportunity to co brand a broader campaign working at heights involving the workplace.

WORKER PARTICIPATION

44. Our evidence suggests that businesses have developed engagement systems for employees within the workplace (88%). OH&S representatives have been trained (90%) and that 75% found that that representative training was influential in helping the representative undertake their defined duties or functions.
45. We note that some 67000 representatives have been trained under this H&S engagement scheme. This is to the disadvantage of employer's/ managers and supervisors. We do not know the number of management that has also taken the representative training and accept that some may well have taken up that option. We see a huge information gap within the workplace and one that needs attention.
46. We strongly recommend that management also require OH&S training under a similar scheme to the OH&S representatives
47. We would recommend that OH&S representative training stage 1 is compulsory but from that point on, industry specific training is provided. We also suggest that this training come under NZQA so participants can gain credits. This may well incentivise them to continue further OH&S training.
48. Given this level of trained OH&S representatives out there have there been any actual improvements made. The accident statistics would indicate no.
49. We feel the evidence does not support the huge time and money investment at this time.
50. We feel a broader employer/ employee programme may be better.
51. The basis of the worker engagement system is for employees to be able to have input into issues that may or do affect them. We have no problem with that. We believe many companies have existing communications systems that

are working well that can and do allow for OH&S issues to be raised. Having H&S representatives we believe further stigmatizes OH&S as a special extraordinary function. This is we do not want; we do want OH&S to become mainstream and part of how we conduct business.

LEADERSHIP & GOVERNANCE

52. We strongly recommend that Directors and Boards accept more accountability and responsibility for the operation and implementation of OH&S systems within the businesses they oversee. 97% of our survey sought more training for directors.
53. We recommend that a guidance document be prepared outlining possible scopes and directions for directors.
54. We also note that under the HASE Act 1992, Section 56 there is already provision for directors to be held to account. We also note this has been rarely exercised.
55. We note the Business Leaders Forums work but would suggest a wider membership and one that is more operationally focused. Theory without evidence is not good, blind hope is also not good.
56. As noted in the discussion document these leaders had “lower levels of getting involved”. All the overseas research demonstrates that walking the talk is very beneficial rather than more lip service. There is recent research that clearly indicates many value added benefits of introducing and maintaining OH&S systems (happy to supply). It is this sort of information that management need to see.
57. As noted earlier MBIE and other government agencies need to step up and lead from the front. Businesses want and desire direction and practical tools. Merely stating this in legislation will never work. A central injury prevention unit could well champion this work.
58. We do not believe the introduction of corporate manslaughter will have much effect. Indeed the tools are already present within the Act Section 56. Overseas evidence suggests that very few cases have been taken because the level of evidence required is very onerous. Given MBIE and its predecessors have little appetite to prosecute if measured by the number of prosecutions, the chances for a corporate manslaughter charge is minimal. Also, having the tools already there and not being used raises issues about the difficulty of successfully making those charges apply.

OH&S CAPABILITY AND CAPACITY

59. Businesses strongly indicated (67%) that they felt they were under equipped to manage OH&S within the business, 85% responded that more OH&S capacity and capability was needed.
60. We strongly support the concept of high hazard workplaces or high risk profiles businesses having someone who is competent to oversee the OH&S issues of that business
61. High hazard workplaces should be required to have a dedicated OH&S professional, or have under contract a provider to advise the business on it OH&S issues.
62. We strongly recommend that external OH&S providers must be qualified and maintain a CPD portfolio. They also must be registered with a Practitioners Board.
63. We strongly recommend that a Register be developed and maintained by MBIE (or the new injury prevention unit) of those who are suitably qualified; this will allow businesses to pick providers from the list and have confidence that the provider is qualified and competent.
64. Tertiary education must involve OH&S especially the sciences and engineering. We advocate core competencies to encompass OH&S and risk management.
65. Safety through design is seen as an absolute minimum requirement for all engineering faculties. More use of the Professions Code of Ethic should be done. Engineers must be required to sign off that new or modified plant is safe. Techniques described below would be included in this sign off.

ANALYSIS TECHNIQUES

Traditional methods for safety analysis

- Failure modes and effects analysis
- Fault tree analysis
- Safety certification
- Preventing failure
- Safety and reliability
- Containing failure

Including: failure mode and effects analysis and fault tree analysis.
Assessment, Failure modes and effects analysis.

66. In Australia they have many educational documents used by engineering students. This is a topic on risk and safety. There is nothing similar used here.

67. Here is a typical document from Australia; we have never seen any such activity here in NZ. *Safe Design, Manufacture, Import and Supply of Plant: Work Safe Australia.*
68. Within the EU all plant is rigorously risk assessed and signed off before the client receives it. We have a huge problem with imported plant either new or often second hand. There appears to be a problem at the border with unsafe plant allowed entry.
69. It is common for SME's to purchase plant from residential/ domestic retailers with no or little quality control. This is often cost driven.

MAJOR HAZARDS

70. We support the introduction of the Major Hazards unit. We note that this must have long term funding to enable staff to maintain overseas standards and competencies. This unit must also offer training and educational services.
71. We suggest a lower level of High risk profile units be established, this could include but not be limited to the current sectors groups but also;
- a. Civil (tunneling) or major earth works.
 - b. High temperature workplaces (working around kilns, furnaces)
 - c. Electrical work
 - d. Diving
 - e. Confined space work
72. We would see these workplaces being required to complete a safety case for that work. There would also be the requirement that there must be a suitably qualified person to manage the work. The complexity of the interrelationship of a variety of hazards must be fully understood and comprehensively managed.
73. Health exposures are very often not controlled either by HSNO nor the HASE Act. Part of the safety case must involve occupational health exposures and control measures.
74. The notion of businesses being required to have a license has merit but this alone will do little. Comprehensive monitoring/ audits and inspections must be in place to support the license. Any repeated failings will close the plant. This includes PPE.

HEALTH & HAZARDOUS SUBSTANCES

75. There is real disconnect between the HSE and HSNO Acts. Other Acts would include the Land Transport rules etc.
76. Neither of them adequately manages occupational health exposures either separately or in conjunction with each other.
77. Businesses that have MSDS documents will often have no one experienced enough to make any sense of what is printed on them.
78. There is a huge variation on what is being taught under the Approved Handler requirements, anything from .5 day to 2 days for the same topic.

79. Many employers don't know they don't know. See Capacity and Capability section
80. MBIE must promulgate and provide collateral documentation about the WES standards. These are rarely mentioned or seen at workplaces.
81. Consideration should be given for a basic occupational hygiene course for chemical sector. This would be linked into company registrations as advocated in point 20. Existing or reviewed documents like;
 - a. *Management of Substances Hazardous to Health (MOSHH) - An Introduction to the Guidelines for Workplace Health Surveillance*
 - b. *Management of Substances Hazardous to Health (MOSHH) in the Place of Work*
 - c. the W.E.S booklet
82. Much of this information is available but it never been used.

SMALL TO MEDIUM SIZE ENTERPRISES (SME's)

83. SME's are often targeted with bad press as having all the accidents. Put simply we do not have the data to support this notion.
84. My research would indicate that larger employers have a higher incident rates to that of SME's or small employers.
85. What we do know, from research, is that they are a hard market to communicate with. This is a worldwide problem
86. We would suggest business groups, mentoring groups, and ITO's being involved.
87. Given the most common person a SME sees is their accountant perhaps some means to use this communication link maybe possible.

MEASUREMENT & DATA

88. It is noted that our data sets are poor and often not user friendly or compatible with other data sets.
89. We note work is under way with some data sets to improve their use.
90. We strongly recommend that an independent body collects all OH&S data information. This body must not have any financial interest to those providing the data. This creates a completely independent data collection service.
91. Those agencies requiring legislative reporting will continue to collect that data over and above the central data collection service.
92. We recommend that all government departments be required to actively participate in this process.

- 93. We also recommend that a national definition be defined as what is being measured. e.g. what is a lost time accident?
- 94. Many large companies have interesting divisions of accidents thus creating a record that looks good. This is smoke and mirrors and fools no one.

NZ's SAFETY CULTURE

- 95. Every business has a culture, the real question is it a healthy one.
- 96. There are many Culture related systems, documents, sets of language out in the market place all proclaiming to be the best or most innovative or researched based.
- 97. If one stands back for a moment and considers what is it we are trying to define and then modify the issue is huge and multi-faceted.
- 98. There can simply be no one intervention.
- 99. We need to use champions and mentors to effect change. Government departments plus local government must lead in all activities they undertake. it must become normal.
- 100. There is a great threat currently being addressed in the UK : safety madness. Care must be taken to carefully craft any interventions to create a win/ win situation to pull people over not to put them off.
- 101. It is very difficult to legislate for culture; some countries have tried this to their detriment.
- 102. We feel a slow steady journey is the only answer. We must define a small number of issues, agree on some common language, and agree on a communications strategy then simply just keep on saying it over and over again until the audience begins to use that language. At this point we lift the bar some more. Evolution not revolution.
- 103. There is also a notion that having a Policy and Procedure manual is all that is needed. This concept is compounded by the ACC WSMP audit scheme. It is possible to pass the audit while having workplaces deaths, MBIE prosecutions etc.
- 104. We feel much could be learned from the implementation of Quality management systems. They are in place and work well. They do not need a Quality representative nor external training. Put simply the company as a whole owns the solution and makes it happen. We make OH&S too difficult.

INCENTIVES

- 105. EMA supports the Experience Rating programme through ACC, but understands that the SME market will not and cannot be driven by this programme. General Practitioners can put an employee off work for 1 week with no recourse to the employer and that could lose the SME \$1000 in experience rating rebates.

- 106. For larger employers, where they are being compared with like business the rebates can be significant. This will drive injury prevention behaviours.
- 107. The WSMP audit process is old and needs an update. It is possible to pass the audit whilst still injuring and killing staff. There is no value within the audit on actual injury/ill-health records.
- 108. The evidence to date indicates that those under the WSMP programme have the same frequency and severity of accidents to the non WSMP employers. This is the same for employers under the ACC Accredited Employer Programme (self-managed and self-insured)
- 109. We feel the courts should consider more "the employees contribution" to the event when deciding any fines. We are not supporting a general dumbing down of employers roles and duties but rather trying to recognise that there are many cases where employees have had degrees of contribution to the event but this was not considered by the judge. If employees new they could be held more accountable they may well change their attitudes towards company driven OH&S programmes.

CONCLUDING COMMENTS

- 110. EMA feels that a strategic change takes place rather than more of the same.
- 111. There are many programmes that can be found overseas that could be investigated and customised to suit the NZ workplace .Wasting money re-inventing the well is what is not needed.
- 112. We feel strongly that government itself does really consider OH&S that important when compared to the MBIE budget and the total cost to NZ with the injury and illness burden.
- 113. We acknowledge that employers have a significant role in all matter concerning the workplace. What they need is clarity, sense of direction and above all consistence advice and tools.
- 114. We acknowledge that employees are often the people suffering injuries and occupational illnesses; however their individual role is as important to that of managers and line managers. We believe a degree of more accountability and responsibility be placed on employees in line with employment law.
- 115. EMA would welcome any discussion re this submission at a time convenient to your committee.

Yours Sincerely,

Paul Jarvie
Manager OH&S
EMA
Phone:
Email: