



# Submission on the Strategic Review of the Workplace Health and Safety System

**15 November 2012**





## **Introduction**

Maritime New Zealand is the Crown agent responsible for promoting maritime safety and marine environment protection under the Maritime Transport Act 1994. In 2002, Maritime New Zealand's health and safety functions under the MTA were repealed and transferred into the Health and Safety in Employment Act 1992 (HSE Act). Subsequently, in 2003, Maritime New Zealand was designated under the HSE Act the responsibility for administering that Act, for work on board ships and for ships as places of work.

Maritime New Zealand's vision is "A vibrant, viable maritime community that works and plays safely and securely on clean waters". Our mission is "Working together to provide inspirational leadership, guidance and support to the maritime community". As this implies, we work with industry and other agencies to achieve shared safety objectives.

This submission is intended to assist the taskforce by sharing our experience of the matters raised in the consultation document. We also take the opportunity to add a few comments on the findings of the Royal Commission on the Pike River Coal Mine Tragedy (the Royal Commission).

## **Who gets hurt, killed or suffers from ill-health or disease as a result of work?**

### **Current state**

In the maritime industry the Fishing Sector suffers the highest level of harms on an annual basis of the top five most hazardous industries. Many of the injuries occur in circumstances and as the result of factors that are present in other industries. However they are exacerbated by the inherent platform instability of a vessel at sea. An example of this is falls from heights. Currently there appear to be differing levels of understanding within the Fishing Sector that a fall from one deck to another, via an open or unguarded hatchway, has the same (if not worse) consequences as a fall from scaffolding on land. Guidelines exist, as do fall arrest systems and other physical or behavioral measures yet the incidents have continued.

So too a factory operation on board a vessel is foremost a factory, with all the inherent hazards of machinery operation, but taking place on a rolling vessel. Added to the physical hazards, fishermen and processors are subject to fatigue, seasickness and psychosocial factors. This may be exacerbated by the fact that often ships operate at sea for longer periods and fishermen are unable to go home after work.

Another area of focus for Maritime New Zealand relates to the risks in adventure activities. There are two reasons that the adventure activities are particularly challenging. One is that the financial rewards are high and the sector attracts operators who do not necessarily have a high degree of maritime skill and knowledge. The second is that the pursuits are by definition risky, and equipment and safety solutions are often novel and largely untested. An example of this is the lack of definitive guidance on seat construction for high speed vessels. In recent years a number of accidents have occurred where passengers have suffered severe spinal injuries. These accidents have financial, economic and reputational impacts on New Zealand that are disproportionately significant when compared to other industry injuries and accidents. Maritime New Zealand has approached this challenge in a number of ways, including increasing regulatory oversight and successfully prosecuting operators on a number of occasions resulting in significant penalties and reparation orders.

Another challenging area in the maritime environment is the risk posed to workers and other people who are not mariners, but have to interact with vessels in the course of their normal duties or for recreation. Examples of these are stevedores, crane operators, workers contracted to assist with the packing and removal of fish in port, customs and fisheries officers and passengers. The variability of the knowledge of these people of the risks posed by ships increases the need for an integrated, seamless maritime regulatory regime that ensures a systemic approach to workplace safety.

## **Drivers for differences in the sector**

Experience suggests that within the fishing sector there still prevail pockets of an attitude of inevitability tinged by a degree of belief in being bullet-proof. Education and understanding of risk coupled with an appreciation of how to realistically manage such risks is key focus for Maritime New Zealand to combat this phenomenon.

The maritime work environment is varied, unpredictable and unforgiving and requires a degree of specialised knowledge to undertake each activity safely. Operators in this sector (whether in fishing or adventure activities) must ensure that in addition to the qualifications that may be prescribed by maritime rules, masters and crews of ships have specialised maritime knowledge to manage health and safety risks in this unique and unpredictable working environment. At the same time, compliance strategies need to often take account of sector specific, cultural practices and beliefs, and social interactions that influence the behavior of individuals and shipboard social groups.

## **Changes needed to improve outcomes**

Industry-led initiatives that incentivise operators to improve the health and safety workplace tend to demonstrate a higher degree of success in changing outcomes than regulatory interventions on their own. A number of years ago Maritime New Zealand launched a programme in association with the industry and the Accident Compensation Corporation (ACC), called FishSAFE. The programme incentivised fishing operators and fishers to attend industry-led workshops that focused on the prevention of accidents and injuries in the workplace by providing a 10% discount on the ACC levy. Successful attendance at such workshops was followed by mentoring to implement strategies to adopt learnings from the programme in the workplace. The programme was very successful as mentors were industry participants who were able to relate to their sector peers more readily than non-industry people.

The programme highlighted the importance of cooperation between public sector agencies that share a common objective in reducing workplace accidents and incidents. Such cooperation is necessary across the board to enable meaningful improvements in outcomes.

Information sharing across such agencies is an example of an area that needs change to make this happen. Currently Maritime New Zealand does not have access to ACC data to assist it in assessing risks and this minimises the effectiveness of its current risk profiling capability. Likewise the sharing of information between Maritime New Zealand and the Ministry of Business, Innovation and Employment (MBIE) is limited by what legal and privacy restraints allow. Legislative authorisation of such information sharing for the discrete and singular purpose of workplace safety management is considered necessary to facilitate improved safety and health outcomes.

Another area that requires attention to improve outcomes is the establishment of common, robust training modules for Health and Safety in Employment (HSE) inspectors. Maritime New Zealand is currently investing heavily in HSE and Hazardous Substances and New Organisms Act (HSNO) training for personnel to specifically drive the HSE effort. However as it is dependent on very limited current HSE levy resource, there are restrictions on its ability to develop such training. Generic training offered by MBIE provides some assistance in this respect, but the specialised knowledge required to address health and safety risks in the maritime environment requires an added investment by Maritime New Zealand. Access to appropriate funding to resource such activity would make a significant difference.

## **Challenges with the current health and safety regulatory framework**

### **Key challenges to the current framework**

In our experience the key challenges to the current regulatory framework include:

- The need for improved role clarity for regulatory agencies involved in the oversight of health and safety in the workplace.

- Improved integration of regulatory tools to ensure a seamless model for interventions and oversight. This requires the adoption of a modern compliance strategy that is intelligence led and risk based.
- The need for greater investment in building capacity and capability of regulatory agencies (addressed above)
- The legal limitations restricting the application of the framework to persons who are employers
- Striking the appropriate balance between prescription and performance-based regulatory approaches.

### *Role clarity*

In relation to the first bullet point, Maritime New Zealand is of the view that role clarity associated with clear integration of regulatory and compliance functions is a key factor in ensuring that there is appropriate specialised attention of sectors that require it (as is the case in the maritime sector)<sup>1</sup>. In this respect Maritime New Zealand notes the views expressed recently by the Royal Commission about the value of a single organisation concentrating exclusively on health and safety. These comments by the Royal Commission draw on the 1972 Robens Committee report which stressed the need for the outcomes based legislative framework to be supported with appropriate implementation. Maritime New Zealand is of the view that the three key aspects of implementation<sup>2</sup> make an important distinction between regulatory design and effective operational execution<sup>3</sup>. In that respect Maritime New Zealand has practical experience as a Crown Entity with a statutory office bearer in the form of the Director of Maritime New Zealand, who is vested with independence in the execution of key safety regulatory functions and decisions. This singular focus provides improved role clarity and Maritime New Zealand can therefore attest to its merits.

That said, Maritime New Zealand is of the view that even if a single regulator for health and safety was considered, this should not necessarily exclude the designation for health and safety oversight by specialist agencies such as Maritime New Zealand and the Civil Aviation Authority.

### *Modern Compliance Strategy*

In relation to the second bullet point, Maritime New Zealand notes that the Royal Commission report indicates that “The new regulator will need a modern and effective compliance strategy...”<sup>4</sup> It refers to the best-practice approach for public sector agencies in New Zealand as set out in “*Achieving Compliance: A Guide for Compliance Agencies in New Zealand*” published in June 2011. The document was produced by the central government’s Compliance Common Capability Programme Steering Group and sponsored by the Department of Internal Affairs.

Maritime New Zealand is currently refreshing its compliance strategy in accordance with this guide. Should all agencies with HSE responsibilities follow this approach, improved integration and a more seamless model of compliance with emerge.

### *Investment in capacity and capability of regulatory agencies*

In relation to the third bullet, Maritime New Zealand notes that the adoption of a modern compliance strategy requires investment to ensure capacity and capability of the regulator. This includes people and resource capability and capacity that is sustainable.

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<sup>1</sup> The recently announced State Services Commission review in relation to the application of the Health and Safety in Employment regime relating to military workplaces highlights the need for role clarity.

<sup>2</sup> Noted in paragraphs 19-21 at page 251, Chapter 18 of the Royal Commission’s report.

<sup>3</sup> Maritime New Zealand considers it important that more work is undertaken to clarify this distinction because traditional terminology such as “regulatory regimes”, “regulation” and “regulatory interventions” tend to conflate the policy and legislative design functions with operational execution which involves practical steps required to ensure compliance.

<sup>4</sup> See paragraph 24, Chapter 25 of the Royal Commission report.

## *Legal Limitations*

In relation to the fourth bullet, Maritime New Zealand submits that the range of persons with obligations under the HSE Act should be broadened. The current emphasis placing obligations on employers is limiting and has on occasion proved to be a barrier to appropriate health and safety interventions. The approach in Australia to expand it to “a person conducting a business or undertaking” would provide a more seamless integration with the maritime safety regulatory regime that focuses on persons who exercise control over maritime operations.

### Balancing prescription with performance-based regulation

In relation to the last bullet, Maritime New Zealand submits that there is always a challenge in striking the balance between prescriptive and performance-based rules.

This may involve a trade-off between certainty (using prescriptive requirements) and discretion (as to how outcomes are to be achieved). However, Maritime New Zealand’s experience shows that both approaches can be used simultaneously.

The full range of approaches needed and the determination of which should apply is a matter for policy consideration depending on the circumstances. Important factors to consider include the maturity of relevant technologies (relevant to adventure activities in particular), other incentives that encourage or undermine safety (such as insurance or reputational considerations), and the capacity of policymakers, compared to operators, to identify the relevant hazards and the best way to mitigate risk. Prescription of low-cost, widely agreed measures, such as minimum stability requirements, is likely to continue to be the preferred and acceptable option for the operation of vessels in the maritime sector. Importantly, in practice, prescriptive requirements tend to evolve over time through the development of widely accepted ways of achieving desired outcomes.

Recent events (including Pike River) have once again prompted discussion around the distinction between prescriptive legislation and the performance-based nature of the Health and Safety in Employment Act (HSE Act). Maritime New Zealand already deals with this distinction in the two primary legislative frameworks the Maritime Transport Act (MTA) and HSE Act, which are respectively predominantly prescriptive and predominantly performance-based.

In that respect the maritime rules (made under the MTA) have very specific requirements for the construction and design of vessels, the training and certification of seafarers, operators and surveyors, and the limits that apply to areas of operation and crewing. These tend to be in areas where there is broad agreement among industry experts. For example, vessels must meet prescribed levels of stability.

In contrast, maritime “operations” are extremely varied and there is a need for flexibility to design safety systems or plans that are relevant and appropriate. This flexibility focuses responsibility for safety on those exercising control over the workplace and operations. Maritime New Zealand uses this approach for a wide range of maritime operations. For example, jet-boating and rafting operations must have a Safe Operating Plan, which is a relatively brief documented plan setting out the safety systems underpinning those operations. These plans are required before a licence to operate can be issued and they are routinely monitored by Maritime New Zealand to ensure continued safe compliance. On the other hand, large ship operations must have a comprehensive safety system before they may be granted a licence to operate.

## **Codes of Practice can be used to cross the gap between prescription and performance**

It is apparent that many of the major components needed to effect ongoing improvement to workplace health and safety is already in place. We note in particular that in some sub-sectors the value of Approved Codes of Practice (ACoPs) is that these form the basis for positive guidance of responsibilities. It is suggested that in some workplace environments the delivery of information can be improved, by not merely providing the information, but by actively ensuring that the information can be fully utilized and understood. So, in this respect, there is not so much a problem with the structure

of the current health and safety regulatory framework, but perhaps a need for refinement of delivery that is specific to the needs of individual operators.

Many maritime sector employees and some operators find the processing of written information challenging for a range of reasons, including language barriers. It is suggested that all agencies can improve uptake of information by programmes to actively ensure that relevant information is fully accessible, by way of targeted education delivered to individuals or small groups of duty holders and employers. This requires more regular face-to-face education initiatives where individuals are encouraged to demonstrate understanding.

The Labour group of MBIE currently has numerous codes of practice that are already used extensively within the maritime sector. However ongoing work is required to modify these to accommodate the specialised needs of the sector. Once again, these are better used as a part of active compliance visits and interventions, than purely as a passive information source.

## **Effective use of resources and compliance personnel**

The implications of the above are that improved compliance requires regular face-to-face contact between frontline compliance officers and workers. Intelligence-led intervention activities will only succeed with the deployment of well-trained frontline staff, who have a comprehensive working knowledge of the various sectors and sub-sectors within which they operate. These officers need to be equipped to provide relevant guidance training and materials to workplaces, as well as having the skills to gather the fundamental data that can best be utilized to plan and design large scale intervention programs.

Consistent call cycles, with robust recording of information, will identify those employers that repeatedly offend; those that attempt to comply but require assistance in the form of education; and those who fastidiously comply. It must be emphasised that while large-scale sector-based programmes have their place, they cannot replace direct frontline contact. A mechanism needs to be in place to empower compliance officers to conduct quality inspections and interventions. Inspectors are often assigned a particular number of inspections, and there is a risk that inspectors will be driven to achieve call numbers at the expense of quality.

Improving information sources about operators, coupled with shared resources across agencies who interface with the workplaces, should improve the ability to assess and determine the risk and level of intervention required in any workplace. We acknowledge the value of proactive inspections by inspectors that are well informed and able to provide meaningful and targeted interventions. This is an increasing priority for Maritime New Zealand which has historically relied mainly upon reactive investigations after the fact. Maritime New Zealand supports the empowerment of inspectors to act proactively and especially to provide relevant information and guidance to duty holders via the full range of compliance tools available. Maritime New Zealand Compliance team structures have recently been reviewed with the purpose of supporting and facilitating this approach.

## **Jurisdiction**

Jurisdictional issues need to be considered more rigorously. While the jurisdictional definitions are secondary to achieving a positive outcome, the agency staff who arrive first on the scene of an accident or incident should be empowered to take action and make decisions to prevent loss of evidence or further harm, and then decide jurisdiction.

From a Maritime New Zealand point of view, jurisdictional constraints can on occasion limit the effective enforcement of the HSE Act. For example, under current law, Maritime New Zealand inspectors lack access to s16 of the HSE Act by virtue of s3B. Often harms originate as the result of activities on board ships as a place of work but affect people outside of the place of work. An example of this is the loading and unloading of cargo. Should a stevedore be harmed on the wharf as a result of shipboard activities, the jurisdiction resides with MBIE. Unfortunately, persons in the workplace (i.e on the ship) while it is at sea are not afforded the same protection under s16 because of an express exclusion. This exclusion has resulted in unintended consequences and should be rectified. Access to s16 would give Maritime New Zealand the power to address harms to fare-paying passengers as well as giving Maritime New Zealand far wider powers regarding harms and potential harms to

participants in adventure tourism. There is thus good reason to consider the repeal of the exclusion under s3B.

There are also jurisdictional constraints regarding stevedores depending on whether they are harmed on a vessel that is or is not a New Zealand ship. Again, there appears to be merit in considering whether the exclusion of certain foreign ships under s3B still is necessary. Some workers are contracted or employed to work predominantly on shore side facilities, but enter vessels from time to time, for example, to remove fish from holds. Often companies that operate in this interface may have had warning or prosecutions from MBIE. Greater inter-agency discussion is essential in order to inform Maritime New Zealand of the severity of previous offending as well as information flow issues that would otherwise prevent Maritime New Zealand from handling these incidents efficiently and effectively.

## **Risks when delegating regulatory functions**

Private providers of regulatory services are often thought to offer advantages in terms of efficiency and responsiveness. However, Maritime New Zealand's experience shows that there are risks in frameworks that delegate regulatory functions to industry organisations or other private providers.

Such a model is provided for under the current maritime rules relating to Safe Ship Management. It is the framework for domestic commercial shipping operations (including fishing operations) and requires "ships" to subscribe to the safe ship management system of an approved industry organisation, which must then survey the ships and audit compliance with the safety system. This function has mostly been taken up by competing private companies with mixed incentives, resulting in mixed outcomes and duplication of effort. The deficiencies of the framework were the subject of a number of high profile maritime accidents resulting in fatalities and subsequent reports.<sup>5</sup> In addition to not delivering the intended safety systems and outcomes, the flow of information about operations to Maritime New Zealand has been limited by this framework.

## **Regulators roles and responsibilities**

Recent events such as the Pike River coal mine tragedy have taught us that here is a danger in considering that all sectors are inherently the same. While there are commonalities across sectors, there are also very real technical challenges in certain industries and sectors. Maritime New Zealand is well placed to operate within the very complex maritime environment due to its specialist knowledge and expertise. The focus of the organisation is safe vessel operation. This extends naturally to the safety of individuals. Maritime New Zealand has not experienced any practical issues in relation to the boundary between its area of designation and that of other agencies.

At a strategic level the Maritime New Zealand objective is to ensure a seamless integration of agencies with clarity about roles and functions. The historical approach of entering into a Memorandum of Understanding (MOU) with an underlying operational agreement has met this objective reasonably well. At an operational level the agreements have allowed inspectors from respective agencies to cooperate and agree on remit and jurisdiction. The only challenge for a small agency such as Maritime New Zealand to a cooperative approach like this is the need for clarity and certainty around resourcing. Maritime New Zealand depends entirely on the limited HSE levy amount granted to it annually to perform these functions. Increased cooperation and integration requires an appropriately proportionate allocation of resource to fund the efforts.

In this context, Maritime New Zealand has redoubled efforts to train inspection staff as well as to increase the educational outreach into industry. To this effect HSE/HSNO experts have been employed to drive training, as well as specialised industry liaison staff. This approach is considered sensible to ensure that the specialist inspectorate is maintained.

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<sup>5</sup> See: Loss of the Rigid Inflatable *Mugwop* 28 October 2008, Transport Accident Commission Report 08-209; 6-metre workboat *Shikari* collision with moored vessel Waikawa Bay, 20 June 2008, Transport Accident Commission Report 08-204; Fishing vessel *Kotuku* capsized, Foveaux Strait 13 May 2006 Transport Accident Commission Report 06-204.

As noted above, there is considerable merit in maintaining devolved responsibility to agencies with specialised knowledge and expertise such as Maritime New Zealand. This allows sector based initiatives (such as FishSAFE) which are less likely to receive the same attention in a large single overarching workplace regulator. The synergies between the objectives of the maritime safety regulatory regime under the MTA and the health and safety objectives under the HSE Act are also a relevant factor in maintaining the designation to specialized agencies such as MNZ. There is therefore a good argument to be made for Maritime New Zealand to lighten the burden of other agencies by being legislatively empowered to take a more sector based approach and apply specialised maritime knowledge to the health and safety aspects of port and harbour operations and even shipyards. This devolution complements and supplements the primary workplace regulator.

In this respect, it is pointed out that the statement made on page 54 of the Consultation document (paragraph 232), suggesting that the focus of the regulatory regimes of specialist agencies such as Maritime New Zealand is primarily on passengers and community safety, is incorrect. In addition, the safety regulatory focus of Maritime New Zealand under the MTA is far reaching. Maritime New Zealand is very actively engaged in applying the HSE Act to protect workers in the commercial maritime sector.

## **New Zealand's changing workforce and work arrangements**

In the maritime sector perceptions of the workforce and workplace have changed in the last decade. While the use of foreign vessels under charter to conduct fishing operations is longstanding, the issues surrounding the use of such vessels and the challenges associated with such workplaces were well documented in the recent ministerial inquiry. The use of foreign crew brings specific cultural challenges which, if not appropriately regulated, results in degraded work practices.

As a consequence, compliance agencies have to become far more sensitive to the cultural diversity within the workplace and how this has potential to impact on health and safety outcomes. Also, all enforcement agencies need to better understand immigration issues and become more sensitive to the activities and programmes run by sister agencies.

Due to complex international law rules relating to foreign flagged ships, the ministerial inquiry into foreign chartered fishing vessels resulted in a Government decision to require reflagging. This removes the immediate barriers to oversight and regulation of those ships as workplaces under the existing New Zealand regulatory framework. Its introduction is expected to make a marked difference to the working conditions of crew on those ships, once Maritime New Zealand is able to apply the HSE Act to these vessels.

## **Participation and engagement**

Participation by employees in decision making is still challenging in the maritime sector, which is typified by hierarchy and a chain of command. Increasing emphasis in core maritime regulatory arrangements on organizational systems approaches is intended to minimize the negative impacts of such hierarchical approaches, while maintaining those features necessary for successful decision making on board ships

In some areas of the maritime industry, such as coastal shipping (ferries), there is a good uptake of the principle of employee participation and the overall reported harms are relatively low.

## **Leadership and governance**

Senior management responsibility under the HSE Act has correlations to the obligations placed on operators under the maritime rules. The legacy challenge that exists in some parts of the maritime sector relates to complex charter arrangements which are structured in a way that may inappropriately remove directors or senior leaders from taking responsibility for workplace health and safety.

There is a positive trend in some parts of the maritime sector, especially the larger fishing companies, to employ specialised health and safety advisors. Maritime New Zealand maintains a close association with these advisors and there is a growing understanding of the need to act proactively in order to ensure employee safety as well as regular requests for guidance material.

So too, coastal shipping operators (ferries) are retaining staff that provide specialised health and safety support. The trend towards taking more corporate responsibility is encouraging, although it is currently not possible to draw definitive conclusions about the impact of these initiatives on outcomes as there is insufficient time series data.

As noted earlier, one step to improve accountability of leaders in industry is to expand the jurisdiction of the current regime to “persons conducting a business or undertaking”. In this respect, we note that much will depend on the clout given to company HSE advisors. In the international shipping safety management system there is a requirement of a link between those on board a ship and a “designated person ashore”. This person must have direct access to the highest level of management to ensure that adequate resources and shore based support is available to those managing hazards on the ship.

## **Capacity and capability of the workplace health and safety system**

In our experience, there is a variable ability in the maritime industry to deal with workplace risks. Maritime New Zealand has experienced a similar challenge in the ability of operators to manage compliance with the maritime safety regulatory requirements. Where the rules and obligations provide a scalable intervention model, the rates of compliance are improved. To that end, the maritime rules provide for simple safety cases in smaller enterprises, safe operating plans for medium enterprise and safety management systems for large enterprise. This approach is predicated on the need to mirror the complexity of the regulatory requirements to the complexity of the operation, and the likely increased risks it presents.

Industry led initiatives are worthy of support, particularly in sectors that consider themselves capable of delivery of outcomes. In the maritime industry, this has occurred across a number of sectors both small and large. Notably in smaller industries, public sector support is more likely to be needed to achieve meaningful results.

## **Influencing health and safety outcomes beyond one’s own workplace**

Because of the structure of particularly the domestic fishing sector, it is essential the large operators take responsibility for ensuring that their contractors are compliant with HSE Act requirements. There is also much to be said for the use of supply chain considerations in order to incentivise suppliers to be HSE compliant.

Maritime New Zealand and other enforcement agencies have statutory powers under the HSE Act to drive the first point, but the second relies upon cooperation between companies. As noted above in relation to the FishSAFE programme, the involvement of other public agencies such as the ACC plays a role in delivering outcomes when provided as an incentive to reduce costs.

## **Major hazards**

There is a risk in any sector that we address the issues that are highly visible via the media, whilst forgoing oversight of occupational health issues. Maritime New Zealand administers the health and safety regime over ships which, if not properly maintained, could be hazardous or fatal to crew and passengers. Trends in some sectors may significantly outweigh the outcomes of high profile events and should not be overlooked. That said, the relevance of managing high hazard industries is that the consequence of failure can be significant. As mentioned above, in the maritime sector risks are reduced and managed by ensuring entry controls are prescribed and met before operations can begin. Ongoing oversight of operations is maintained through a mixture of regulatory currency requirements (such as vessel maintenance under a safety system or ongoing crew competency requirements) and audits and monitoring undertaken by Maritime New Zealand. The latter efforts are integrated with oversight by inspectors under the HSE Act in an effort to achieve safety and health outcomes.

There is still a varied understanding of the application of risk management principles across agencies. Advanced risk management strategies predicated upon good intelligence will not only lead to better outcomes but financial savings and better use of limited resources. Sharing of data, information, expertise and methodologies is likely to be the best way in which this can be achieved. This is further reinforced by the fact that some hazards are common across industry sectors and despite the value of

sector specialisation there is a need to balance this with hazard specific approaches that are common (such as the fall hazards mentioned at the beginning of this submission).

## **Measurement and data**

Access to reliable data sets and sharing of these is a key to achieving improved outcomes. This can be achieved in a number of ways which includes specific legislative mandate to share information supported by operational cooperation. For example, some regulatory agencies are necessarily engaging with certain sectors (eg. Fisheries officers observing fishing activities and Maritime New Zealand officers inspecting and auditing maritime operators). These engagements provide a significant wealth of information relating to those workplaces. However, currently, information cannot be readily shared in all respects.

By contrast, MBIE Inspectors have very little access, even to New Zealand flagged vessels at sea. This begs the point as to whether Maritime New Zealand inspectors could provide MBIE leads regarding potential breaches surrounding employment conditions. Similarly, Ministry of Primary Industries (MPI) observers are far better equipped to monitor factory operations on board ships at sea, and to make this information available to their Maritime New Zealand counterparts. The latter often only see the vessels in port after the factory operations have been shut down. These are just two of many possible scenarios where various agencies may share information aimed at achieving improved risk profiling with a view to reaching better outcomes.

## **Information and resource sharing**

A great deal of quality information flow may be facilitated by closer cooperation between compliance agencies both at high level planning stages, but especially at frontline level. A formal structure may need to be negotiated that reinforces the very effective cooperative arrangements that are already in place in some areas. There is a very real spirit of cooperation from Maritime New Zealand to participate in the activities of other agencies, and a number of Maritime New Zealand inspectors regularly consult with colleagues from other agencies. There are other examples of cooperation already in place, such as the Hazardous Substances Technical Liaison Committees (HSTLC) facilitated by the NZ Fire Service throughout NZ.

In addition, statistics and data from ACC and the Ministry of Health is likely to be helpful if it were more readily available to support Maritime New Zealand's risk profiling framework. Currently, such an exchange of information is constrained by the Privacy Act or perceptions about its application. Express authority for appropriate exchange of information aimed at public interest objectives such as Workplace Health and Safety may be the way to improve such information sharing.

That said, it is important to emphasise a single, integrated data set. This is because currently when data is available across agencies, it is often of reduced utility due to difference in the way data is gathered, classified and coded. There is a very real case to be made for critical and urgent thinking to be applied in order to make data more useful and useable over a wider area.

A simple example of this challenge is the distinctions in definitions between various regulatory regimes. For example, under the Maritime Transport Act the words "accident", "incident" and "mishap" are specifically defined (with the first and last including harm). Under the HSE Act the word "accident" is defined differently and other definitions such as "hazard" and "harm" are used. Comparing data sets in such definitional distinctions is unnecessarily complex and prone to inaccuracy. This in turn impacts the ability to accurately measure outcomes and target interventions

## **National culture and societal expectations**

As noted above, the domestic maritime sector in part reflects the "she'll be alright" attitude of the composite New Zealand workplace. The propensity to take risks is particularly evident in the fishing sector where smaller owner-operators fish to a time limited quota, for seasonal resource. The demarcation between profit and loss is very narrow, and harvesting opportunities need to be maximised irrespective of risk. Employees are subject to psychosocial stressors due to the need to perform intensely over particular demarcated periods.

Added to this, the working hours are longer than a typical eight hour day in other sectors. It could take six hours to sail to the fishing grounds, followed by six hours of fishing and another six hours to return. The fatigue inherent in such long days is exacerbated by uncontrolled environmental aspects and cold induced fatigue. The use of stimulants and drugs is common in order to overcome the physical stresses.

## Conclusion

While a number of agencies currently administer the HSE Act, Maritime New Zealand believes outcomes can be improved by making certain systemic changes. In particular:

1. Maritime New Zealand acknowledges the benefits of focused attention on health and safety vested in a single agency or sector specific agencies such as safety regulators like Maritime New Zealand. This contributes to role clarity and clarity of purpose in executing regulatory functions.
2. Whatever structural changes are ultimately put in place, agencies involved in health and safety regulation across the public sector must be assisted to share information and integrate efforts under an agreed modern compliance strategy.
3. Associated with the adoption of a modern compliance strategy, is the need for appropriate investment in capacity and capability of regulatory agencies.
4. Commonality in training of field staff so that each speak a common language and are able to work together on common compliance projects is desirable, as are shared exercises.
5. There is evidently merit in developing an agreed distinction between regulatory design (which includes policy and legislative development) and the process of implementing such law through compliance activities.
6. The more complex the work environment (such as the maritime, mining or geothermal/extractives) the more likely specialist oversight is warranted, which supports the argument for designated agencies to monitor and enforce in those areas of health and safety.
7. In addition to sharing of information, there is merit in seeking to adopt a common format for data definitions and descriptions to ensure reliable reporting of statistics such that these may be utilised by agencies to assess risks and determine appropriate interventions.
8. Maritime New Zealand supports the notion of striking the appropriate balance between prescription and performance based regulation.
9. Finally, while the current legislative framework is generally sound, Maritime New Zealand believes some minor legislative amendments can be made to improve the reach of the principles that underpin the regime.