Independent Taskforce
on Workplace Health and Safety

14 September 2012

Key issues and themes arising from the Reference Group meetings

Introduction

Purpose

1. Phase one of the Taskforce for Health and Safety's three-phase consultation process consists of consulting with expert reference groups. This is intended to help with the identification and framing of issues pertaining to problems and solutions to New Zealand's health and safety system. This paper
   - identifies themes, or commonalities in issues, identified across the groups
   - summarises the key points and issues raised from each reference group.

Method

2. Semi-structured group meetings were held with four groups representing four communities of interest. Discussions lasted for three hours. The stakeholder groups comprised of:
   - Academics (20 August 2012)
   - Employers (22 August 2012)
   - Employee representatives (consisting of union representatives and one employee legal representative) (24 August 2012)
   - Health and Safety Inspectors (31 August 2012).

3. Questions raised for each of the reference groups were:
   - What do you think the key causes are of the workplace health and safety problems New Zealand faces?
   - What do you consider to be the priorities for intervention in the health and safety system?
   - Is there anything else you would like to say about the workplace health and safety problems New Zealand faces?

Overarching themes

4. A number of issues and points arose during the meetings that were converged upon by other groups. While not all participants or groups necessarily agreed with these points, cross reference group themes are presented below.

The Robens based legislative framework is sound but implementation is poor

5. Participants across the groups agreed with the continued use of the Robens model as an appropriate basis for health and safety legislation in New Zealand. A number of weaknesses and imbalances in implementation were observed which needed to be addressed or strengthened. These tended to focus around the need for:

    - Greater visibility and tougher enforcement of non-compliance from the regulator
    - More prescription, improved information and guidance and greater clarity of all practicable steps
    - Improved mechanisms for employee engagement
    - Actual self-regulation
    - Clearer accountability
    - Quality data collection.

The regulator is not seen as credible

6. Government is seen as half committed only, providing inadequate resourcing to the regulators. MBIE specifically, is not seen as a credible enforcement agency. It needs to be a bolder regulator:

    - MBIE Health and Safety Inspectorate is inadequately resourced. Particularly for smaller businesses, the service lacks visibility. There is a concern that with DoL merging into MBIE, further dilution of inspectorate presence and regulatory focus will occur
    - Many inspectors lack the expertise and competence required to be effective. Practices vary by inspector. Inspectors need better training (e.g. root cause analysis). Currently there is too much emphasis on hazards. Audits and investigations need to focus on systems as much as hazards
    - The focus on supporting firms and educating them through guidelines and advice is important and should continue. The availability of guidance material is inadequate and frequently out of date
    - Firms particularly SMEs need greater prescription. There should be greater prescription and certainty based on risk
    - Tougher enforcement is required. Firms do not fail to comply simply due to ignorance. Tougher penalties (e.g. steeper fines for larger businesses) and greater use of enforceable undertakings is needed. Managers, business owners etc. need to feel the heat as well as 'see the light'
    - MBIE needs to work smarter with other agencies. In particular interagency operational cooperation is lacking

- Occupational health is too frequently conflated with safety issues. It needs to be treated separately with appropriate, skilled regulators.

The existing regulatory environment is out of step with the contemporary workplace

7. There have been many changes to the workplace, working arrangements and workforce participation since the initial development of the Robens model. These raise particular issues which need new or revised mechanisms to successfully address them. Issues include:

    - A more diverse, causal, "precariously" employed and predominantly non-unionised workforce. This increasingly separates workers, breaking down traditional practices like buddy systems, and raises in particular issues around representation – a key component of the HSE Act. Employee representation and participation, as envisaged in the HSE legislation is identified as a non-reality. Employees are not empowered to raise workplace issues and do not want to be seen to be causing problems for the workplace/not safe to speak out. Employee representation processes can be undermined and discouraged by employers
    - Growth in use of elaborate supply chains and sub-contracting arrangements. This raises issues and confusion as to who to hold to account for health and safety. Principals are nominated as the key point of responsibility
    - Effective prevention requires more focus on design and standards for the supply of machinery and plant. Imported equipment often fails to meet safety standards. There is a lack of compliance activity at the border.

Health and safety is not a priority for sector and firm leadership

8. Low levels of leadership is observed to be coming from industry (as well as from Government). Health and safety is a low priority for many businesses, with health and safety requirements often delegated to administration. Change needs to begin at the top with CEOs and in the boardroom. Leaders should be held to account so they will hire the right people to ensure health and safety is managed seriously. Accountability needs to be upheld on all levels. Corporate manslaughter should be considered where failure to manage health and safety issues has been identified. Negligent bosses should be held to account – and not be able to practice again. The onus should be one boards etc. to prove they have taken all practicable steps.

9. Employers are not prioritising and resourcing health and safety planning. Firms frequently put profit over health and safety:

    - Some employers expect workers to produce and meet targets without a fuss. Obliging, motivated and conscientious workers are frequently the ones who sustain injuries trying to help production.

- Procurement processes and equipment purchases focus on bottom line, with health and safety cost frequently the first costs to be cut. SMEs are particularly vulnerable to other firms undercutting them on health and safety costs.
- Employees need to have access to fit for purpose safety gear, equipment and well-designed machinery. Machines are too often designed cheaply, with health and safety factors often removed from the equation to save on costs. Supervisors can turn a blind eye in the name of production.

10. For more effective self-regulation, firms need a clear business case for investing in health and safety, which is often currently missing. There is a market failure surrounding health and safety investment in the workplace, which may be contributing to low investment. Because it hides the true cost of injury, ACC reduces incentives for employers to invest in health and safety adequately. A convincing business case will encourage employers to manage risks up front, rather than through mitigation mode.

11. Industry bodies and groups do want to participate in the development of guidelines, ACOPs and regulations, but may need additional assistance to show leadership across sectors.

Firms often lack the capacity to manage health and safety issues themselves and there are challenges in accessing quality advice

12. Employers and managers are not adequately trained to manage health and safety issues in their professional training/education. Greater inclusion of health and safety into the training of a range of professionals will improve the capacity of organisations to manage health and safety issues. Managers in particular need better health and safety training included in their qualifications, as do apprentices and certified professions.

13. Health and safety consultants providing advice to firms are frequently not qualified or competent enough to provide high quality advice. There is no requirement for companies to have competent, qualified consultants. Many are neither. There is a need for competency training and certification for health and safety professionals.

Smaller businesses have particular needs

14. SME's are a particularly challenged population. Due to low capacity and tight margins, access to concrete guidelines, good practice examples and competent expertise is particularly important as is the visibility of enforcement. Penalties for SMEs need to be more flexible and considered given their ability to pay large fines.

New Zealand culture contributes to heightened risk

15. There is a wide ranging sense that New Zealanders are generally tolerant of risk and do not share a common perception of health and safety issues in the

workplace. Features include a 'number 8 wire', 'give it a go' mentality coupled with a lack of awareness of responsibilities or safety opportunities in the workplace. This could be addressed through:

- generic health and safety education starting at school, promoting safety as a community responsibility
- improved and broadened access to workplace focused health and safety training post school
- social marketing; NZTA social marketing around safer driving is seen as a success story which could be emulated.

The regulator and firms do not collect good quality data

16. Groups noted that the lack of reliable, comprehensive data available for monitoring outcomes seriously limits the capacity of Government to develop appropriate, evidence based policies and to engage in robust programme evaluation. In particular causation data needs to be better captured for problem definition, statistics need to be more comprehensive (e.g. capturing occupational disease) and the availability of lead indicators need to be improved.

17. Firms too do not capture strategic data nor use it well to pinpoint risk. When data is collected there is a reliance on lag measures, informing reactive rather than proactive responses.

Summary of key issues by reference group

Academics reference group

18. The Health, Safety and Employment legislation in New Zealand, reflecting the sound Roben's model applied in the UK, is not being implemented effectively, lacking balance, in New Zealand. In particular:

- Self-regulation, a fundamental concept, is not happening sufficiently as employers frequently lack the will (and capability, discussed below) to effectively self -regulate. More visible surveillance and enforcement of non-compliance is required. ACC's no fault approach to compensation may be masking the true cost of injury for employers.
- The HSE Act was set up for a relatively homogenous workforce. Increased use of sub-contracting, low rates of unionisation, changing nature of work (e.g. work hours and number of jobs worked) increasing diversification of the workforce and the precariousness of work all increases the fragmentation and security of workers. This impacts on worker confidence and effectiveness in identifying, raising and managing health and safety risks. Increasing reliance on vulnerable workers such as youth or migrants (who sometimes work illegally), brings additional risks. New ways of engaging the workforce are required.

- The business environment has also changed. Responsibility becomes diluted among supply chains and elaborate contracting arrangements. The relationships between principle and contractors need to be strengthened.

19. Managers and employers do not have the health and safety skills needed to effectively identify and manage health and safety risks.
    - There is no requirement to demonstrate an understanding of safety obligations when setting up businesses.
    - Training in health and safety opportunities for managers is limited (see below)
    - Companies tend to have piecemeal approaches to health and safety rather than formal, coordinated systems. For example, there is little in the way of systematic identification of hazards, leaving many inadequately controlled. Further there is a reliance on minimisation strategies and not elimination of source strategies.

20. Government sends mixed signals regarding health and safety, with past recommendations for improvement ignored (e.g. NOHSAC reports) and on-going issues of underfunding. There is concern that MBIE's business facing stance will compromise the agency's health and safety regulatory capacity. A standalone agency, solely focused on health and safety, but separate from ACC, with critical mass of expertise, supported by independent, well-funded and transparent research is recommended.

21. Regulator capacity is under-resourced:
    - Inspectors lack important technical skills and influence capability. Many are inept and lack awareness of systemic issues. For example inspectors often focus on immediate and technical causes of incidents, and do not take a strategic view. They do not apply established principles of human behaviour to change firms. They need to be able to motivate businesses to change their practice (not just inform them)
    - Information, standards and guidance material is often not fit for purpose. These are frequently confusing and contradictory. Standard setting is problematic, sometimes captured by or ignored by industry, and frequently standards set do not match with the law or are ineffective
    - There is not enough attention on occupational health – which requires specialist attention.

22. New Zealand culture lacks awareness of and is tolerant of risk.
    - Workers lack awareness of basic health and safety issues and responsibilities. There is too much focus on victims rather than systemic or process causes in our thinking. In part this may be due to the cost of injury being hidden through ACC

- In businesses, reflecting this level of tolerance, health and safety is the poor cousin, under-invested in compared to other professions, with boardrooms frequently delegating responsibilities to administrators
- Secondary education and mass marketing campaigns (e.g. "make it click'), and tougher more visible regulation, can all improve the national culture.

23. There are insufficient training opportunities in New Zealand.
    - There is a lack of focus on health and safety in management training. Coupled with the decline of traditional apprenticeships, health and safety issues are poorly covered for many modern professions' and workers training
    - There is a lack of training opportunities for health and safety professionals, with many advisors operating without qualifications and the right skills. Competency based training and certification would help.

24. SME's are particularly challenged population. They have difficulties interpreting legislation and minimum requirements, and in identifying hazards. Health and safety training is (too) expensive. More guidance for SMEs is required and this is resource intensive. An agency focused on supporting small business, as in the UK and Australia, is recommended. SME's are particularly vulnerable to non-compliant competitors undermining them on cost.

25. There is a lack of available, integrated and up to date data on health and safety performance.
    - In part this is due to fragmented Government agencies working in an uncoordinated way
    - A well-resourced single agency overseeing and coordinating research and data collection could improve the quality and timeliness of information, including the building of evidence into what works or not. A lot of our preventative practice is not evidence based. New Zealand needs to builds it evidence base for health effects and efficacy of interventions
    - Firms collect limited amounts of lag data, and seldom strategic, lead data. There is little monitoring of exposures from business. Also many OHS manager lack the capacity to analyse it and pinpoint (and act on) risk.

Employers reference group

26. The growth of procurement and contracting out services presents new health and safety risks. A focus on tendering for the cheapest service or product is an issue, with incentives for unsafe work filtering down. The regulator needs to start at the beginning of the chains of influence, with Principals, and hold accountability there. The CPNZ system is a good example that should be bolstered and promoted.

27. Strict liability, a concept in the UK health and safety legislation New Zeeland's HSE Act is based on, was removed before being introduced due to ACC coverage. The review should consider if *strict liability* is required (e.g. director's liability and the onus placed on firms to prove 'all practicable steps' have been taken rather than the regulator to prove otherwise).

28. Small and medium sized businesses have particular barriers. Smaller firms need assistance regarding access to health and safety knowledge and expectations. Further it's important to have a level playing field firmly regulated for SMES to discourage the competitive advantage achieved through short cutting health and safety costs. ACC Discount programmes are seen as more effective for larger firms than smaller firms,

29. Regulator presence and stance is weak. Greater, tougher regulation is needed:

    - More resourcing is required for more staff, better training, better pay and more specialist industry knowledge - enabling the inspectorate to be more effective
    - There is currently too much focus on hazards – not on systems or risks. Auditable safety plans would be a useful requirement
    - Increased prescriptive, standards based regulation is needed in more than the narrow 'high hazards' sectors. A flexible, graduated response based on risk is best
    - Stronger standards are required for imported equipment to ensure is fit for purpose. It's too easy to source cheap ill-suited equipment
    - Tougher penalties are required in many circumstances. However;
        - Fines are less effective for larger firms so more thinking is required (e.g. restorative justice). Consider also use of enforceable undertakings.
        - Prosecutions through the courts need to be carefully considered. NZTA's move to a quality investigation without searching for culpability is seen as valuable for improving industry learning
    - Educational and guidance role remains important. This too should be strengthened with greater clarity of responsibilities in the provision of codes of practice and guidance material
    - The move from OSH was associated with a drop in health and safety marketing and the loss of an effective brand. This may get worse under MBIE.

30. Leadership is lacking in New Zealand and needs to be demonstrated at all levels.

- NZIPS cross agency/cross Ministers strategy is a good start but more needs to be done to achieve greater synergies and focus across all players
- MBIE needs to show greater leadership as lead regulator. Needs more resourcing however to be effective
- Industry bodies need to identify and spread good practice across businesses
- Businesses need to focus on health and safety. It's too often a low priority for leaders and is delegated to administrators with little funding to support it. Sometimes low competent people placed in key role. Needs to begin with CEOs and boardroom taking ownership. These should be held to account and expected to demonstrate responsiveness through resource commitments.

31. New Zealand has significant injury and occupational disease data limitations. Data is inconsistent, too focused on lag indicators and poorly able to identify causes and risk areas and populations.

32. Employee engagement is limited. Staff frequently feels fearful of speaking out. The fall in unionisation needs to be taken into account. Legislation could be strengthened to force employers to engage more meaningfully with employees.

33. Capacity and capability of middle level managers and supervisors is low and needs improvement. General management training needs more health and safety components. Health and safety should be 'mainstreamed' in professional certifications and tertiary qualifications to build capacity. Standards for HS managers and professional HS consultants are too low.

34. A change in culture overall is needed as workplace changes will lack buy in and 'nanny state' suspicion. The secondary education system general should focus more on health and safety.

Employee's representatives reference group

35. The health and safety representative system is not working. Representatives generally receive good training and have the right attitudes and knowledge to make a difference, but once back in the workplace employers do not engage with representatives through a partnership model. One reason is a top-down industrial management culture operating in New Zealand which puts profits before people , cost reduction before protection and views workplace health and safety regulation as part of the "nanny state".
    - The management approach expects workers lucky enough to have a job to simply "get the job done". Working at speed to meet production targets often has safety as a trade-off

- Representatives are seen as naggers and can feel threatened in their employment if they do act assertively (e.g. very unlikely to issue a hazard notice)
- Employers can and do undermine representative election processes and shoulder-tap preferred candidates.

New models to support employee representation were suggested including a return to roving health and safety representatives (operating in Victoria, Scandinavia), independent health and safety centres (previously operated in NZ and funded by government) and also a return to compulsory unionism.

36. A changing, casual workforce relying on contractors and temporary workers to save money fragments workers and many traditional health and safety processes. Examples include buddy systems, fear of not being rehired in the future if temporary workers complain or report a work related injury and shortened induction processes.

37. Zero harm targets and performance measures and days without accidents messaging are counterproductive. These encourage workers to under-report incidents and attribute workplace injuries to the home. ACC incentives are seen as contributing to this masking of the issue. Many workers "soldier on" rather than report an injury in this context, sometimes reducing hours in the process, which can have later impacts on reduced ACC entitlements.

38. Design of machinery and availability of workable protection gear are problems. Workers frequently complete tasks without the right tools or the means to being able following the formally documented procedures. Examples include workers not wearing protective gear that does not fit or is not fit for purpose and of people moving heavy loads without the required mechanisms to move them.

39. Self-regulation does not work. Softly softly approach is ineffective, particularly in context of "all practicable steps". Greater prescription and guidelines are required. Spot fines would be effective. Needs to be backed up by credible enforcement. Small businesses are particularly likely to avoid complying with regulation as they know they are very unlikely to be visited by the Health and Safety inspectorate. Health and safety costs are among the first to be cut when SMEs are squeezed on contracting prices.

40. Wide ranging improvements in workforce capacity to manage health and safety could be made through:
    - inclusion of health and safety awareness in secondary school education
    - expanding health and safety requirements in trade licensing regimes.

Health and Safety inspectors reference group

41. MBIE is too risk adverse, enforcing legislation too timidly. It has no presence, compared to OSH. Fines are too small for large businesses.

42. The system is cumbersome and inefficient:
    - Inspectors' role is widget based and predominantly reactive. Target numbers creates perverse incentives to focus on easy hits, not necessarily address the bigger risks
    - MBIE lacks capacity to run projects effectively
    - MBIE overly bureaucratic and time inefficient when looking for a legal prosecution
    - HSE act is hazard focused, there no room for challenging systems. There is ambiguity over role (e.g. auditor, investigator and hazard spotter)
    - Inspectorate needs better mix of general and specialist inspector skills to be effective
    - Interagency operational coordination is weak and should be improved.

43. Occupational health is not able to be adequately addressed currently, and is ignored by the media, yet should be a national priority. This is best managed through specific, resourced project work with dedicated occupation health nurses or experts working in the area, rather than through current inspectorate which lacks the expertise and time.

44. New Zealand has a "she'll be right" psyche, representing a cultural barrier to health and safety thinking. People can know a hazard and do dangerous actions anyway. Young people need early education around health and safety issues. Mass marketing campaigns can improve attitudes to safety e.g. NZTA seat belts, safer journeys.

45. Businesses need to change. Currently too production focussed. Too often health and safety motivated or effectively trained individuals lose the health and safety motivation once immersed back in the business - where managers lack the capacity and motivation to manage health and safety effectively. Well-meaning and able employees have accidents trying to meet production goals.

46. There needs to be greater individual boss accountability. Responsibility needs to be placed at top of supply chain, at head office and local workplace. Corporate manslaughter charges should be considered.

47. Low rates of unionism is an issue, with employee participation, especially in SMEs, non-reality.

48. Many health and safety consultants are not competent, often giving poor advice to SMEs in particular. A requirement or standard for registration or licensing would be good.

49. SMEs carry further, specific issues. They often don't understand the HSE Act, see the business case for investment and are unlikely to see an inspector.

- There is a lack of guidance or prescriptive advice available to reach performance goal. Codes are out of date. More prescription is needed for correct balance in HSE
- Firms need to be better motivated to put effort and resources into health and safety. For example there is widespread use of sub optimal machinery or poor fit for purpose safety equipment
- The current range of tools to gain compliance is too limited to be effective with SMEs. There is a gap of options between improvement notices and prosecution. For example, instant smaller fines, or threats there- of, without having to go to court to enforce them, would be effective. Tax incentives may help also up- front investment.

50. Causes of injury are not well understood or recorded:

- Firms seldom look at root causes of issues, and tend to mitigate post event with window dressing
- There is no data base capturing causality effectively from the inspectorate or anywhere in New Zealand. This limits identifying opportunities for intervention.

ENDS