Independent Taskforce
on Workplace Health and Safety

REPORT ON ANALYSIS OF CONSULTATION MEETINGS

28 January 2013

1. This report provides an analysis of the input from the consultation meetings that were part of the consultation process carried out by the Independent Taskforce on Workplace Health and Safety (the Taskforce) in late 2012.

Background

Consultation process and reports overview

2. The Safer Workplaces consultation document was released by the Taskforce on 17 September 2012. The document described and sought feedback on a range of concerns with the workplace health and safety system, and also sought suggestions for what New Zealand can do to improve workplace health and safety outcomes. Feedback from the public was sought through written submissions and face to face meetings.

3. Two other reports on the consultation process are available:
   - a report on an analysis of the written submissions, and
   - a combined high-level summary of the analysis of the written submissions and the face to face meetings.

Public meetings process

4. Thirty-two consultation meetings were held between 9 October and 30 November 2012. The meetings comprised of:
   - Nine public meetings (Whangarei, Auckland Central (2), Manakau, Hamilton, Havelock North, Wellington, Christchurch and Dunedin)
   - Five hui (Hamilton, Rotorua, Hastings, Lower Hutt and Christchurch); one fono in Porirua; and one joint hui and fono in South Auckland)
   - Five network meetings (Auckland, New Plymouth, Tapawera, Christchurch and Invercargill)
   - Four focus groups (with recent migrants, construction health and safety representatives, Canterbury rebuild construction leaders, and young workers)
   - Two shop floor meetings (with a forestry pruning crew and meat processing plant health and safety representatives), and
   - Five targeted interviews with key people from the agriculture and fisheries industries (Nelson).

5. The public meetings, hui, fono, network meetings and focus groups were generally for two hours and were semi-structured. The shop floor meetings and interviews

took between 40 minutes to one and a half hours and were less structured. For all of the meetings, focus groups and interviews, however, the underlying lines of enquiry were:

- What are the problems in the current workplace health & safety system as you see them? and
- What are some options for change?

Response to the consultation meetings and method for analysing meeting inputs

6. Approximately 650 people participated in the consultation meetings. The secretariat for the Taskforce took notes and collected self-recorded break-out group notes at the consultation meetings and analysed those for themes.

Note on the findings in this report

7. Because of the high number of people and organisations participating in the consultation process, the findings discussed in this report are necessarily high-level. The Taskforce recognises that this report does not reflect the strength of feeling people sometimes expressed about particular issues or the full range of issues identified.

Key findings

8. A number of issues arose across multiple meetings. While not all participants or groups necessarily agreed with each point raised, common themes are presented below.

Regulatory system and the regulator

Stronger regulation is needed

9. Many participants thought self-regulation had, in many instances, failed. Participants identified that there were a large number of firms or operators that routinely did not meet basic or required safety standards. The hands off performance based approach "hasn't worked for a lot of companies". It was felt that government needed to overcome its reluctance to regulate and "stymie innovation" and that a "fundamental shift", with "sweeping changes" and "more powerful legislation" is needed to ensure an effective health and safety system. A range of areas were suggested as requiring strengthening. These included:

- clearer legal obligations and additional duties for directors and senior managers
- tighter design standards and tighter restrictions on the import and use of industrial machinery from overseas
- more prescriptive, enforceable standards (e.g. tree felling rules, minimum distance between workers with sharp instruments on an assembly line; number of hours workers can work per day/week – "hours of work and stress levels should be more clearly regulated")
- tougher enforcement tools (e.g. higher fines, stopping a business from operating)

- tougher penalties imposed through the courts (e.g. prison sentences, banning negligent directors from future practice)
- introduction of a regular health and safety warrant of fitness requirement of businesses (e.g. every 5 years).

10. Not everyone thought there needed to be more regulation. While a wide range of parties thought there was not enough regulation and prescription, and that, for example, the level of prescription seen in high hazard industries and for the management of hazardous substances should be extended to other industries, others disagreed. These parties raised concerns around a "one size fits all" model not working for everyone, valuing "flexibility" as an important component to the existing performance based system. Relatedly, it was argued that the legislative system was skewed towards hazard identification and management over risk management and preventative systems.

11. Beside a desire for a tougher legislative environment, it was widely expressed that MBIE needs to be a more vigilant, firmer regulator (a "stronger watchdog") to ensure regulations are being correctly implemented. While it was acknowledged that there are resource constraints (see below) it was suggested in one meeting that temporary staff be recruited to assess the health and safety systems of every business in NZ within the next three years. Businesses without adequate systems should be issued with improvement notices.

12. Some participants thought that the regulator focussed on businesses and holding business owners to account too much, when workers were frequently to blame for taking risks or not following safety instructions. Employee's duties should be more strongly enforced by the regulator it was proposed, with negligent individuals held to account for violating safety rules.

The legislative environment is complex and confusing

13. Some participants thought the legislative environment was confusing, with a "plethora of regulations", that were inconsistent. While HSNO rules tended to be highly prescriptive, other elements of the system (e.g. the HSE (1992) Act's "all practical steps") are less clear in what is required. A simpler, more comprehensive framework was seen as desirable, and clearer plain speak information on the system and legal obligations was needed, so that everyone, including migrants, could better understand what was expected of them and what their obligations were. Health and safety booklets are "written for lawyers, not the lay person".

Regulatory agencies are seen as overlapping, lacking in coordination and confusing

14. Multiple agencies were seen as confusing for the public. Functions of MBIE and ACC were commonly seen as overlapping and lacking in coordination and in the case of audits and recommended practices, inconsistent what was an acceptable standard. ACC strategic priorities were seen as too short sighted, with its focus on rapid financial return and its paper based audits were further seen as non-robust, compared to MBIE's, providing a "false rubber stamp". It was recommended that greater consistency was needed for audits and greater alignment for strategic goals between ACC and MBIE.

15. Similarly Maritime NZ and MBIE were seen as having an inconsistent approach to health and safety and differing tolerance for risk. ACC audits and Maritime NZ audits were also seen as inconsistent. Food hygiene regulations and aquaculture health and safety regulations were seen as poorly coordinated, particularly in the context of international obligations.

16. Constant restructuring of government departments responsible for workplace health and safety was criticised for reducing the visibility and clarity of vision for the regulator. It was unclear to many who was currently responsible for workplace health and safety – MBIE, the Department of Labour or OSH. It was recommended that a single, constant brand was required, with OSH frequently seen as a powerful brand name that should be retained.

17. It was widely recommended that the regulatory bodies be merged into a single, recognisable agency to maximise synergies, clarity of focus and visibility.

Under-resourcing and low regulator presence

18. MBIE, the primary or lead enforcement agency of HSE legislation is widely seen as under-resourced and requiring significant additional financial input to provide effective deterrence and to help build firm capacity. MBIE is seen as lacking in credibility and visibility. In part this was due to:

    - too few health and safety inspectors to visit and engage workplaces effectively (particularly in rural or provincial areas). Many participants said they had never received a visit and those that had said it was typically in response to an incident. A lack of presence was seen as a lack of enforcement
    - variable competence levels for inspectors. Better pay, conditions and career paths were seen as being needed to attract and retain competent staff able to effectively engage businesses. Industry specific knowledge and expertise in occupational health were seen as particular areas in need of development.

19. Inspections need to be targeted to risk but also need to include unannounced, random visits it was suggested by participants. This feature, coupled with an increase in the number of audits carried out annually, were thought to be an effective means to getting firms to prepare in advance and to establish robust health and safety systems before an event transpired.

20. It was suggested by several participants that the regulator could improve funding through fees charged when someone starts a business or through cost recovery when a business is found non-compliant.

The regulator does not provide enough guidance on how firms can meet their obligations

21. Businesses want to know what they need to do to comply with the legislation. It was widely expressed, though not universally agreed (see paragraph 10 above), that MBIE needs to provide more guidelines, codes of practice and certainty to support business compliance and the raising of standards. While some parties wanted flexibility, many argued that “all practicable steps” was too ambiguous and that there is not enough industry specific prescription and guidance material available. What is available was often criticised as not being fit for purpose – because it was too expensive to access, presented at too high a level, was out of date and/or was too crudely borrowed from overseas to be readily applicable. Further, getting clarity from MBIE on good or acceptable practice on a case by case basis was characterised

as difficult. MBIE is sometimes seen as unresponsive, reluctant to commit to particular standards and having advisors of variable competencies. Maritime NZ was also criticised for not providing enough guidance in the fishing sector.

22. Clearer standards and the provision of more practice guidelines and codes of practice were seen as key inputs into establishing clearer expectations and a level playing field across industries. "What does good look like? Standardised, absolute, requirements by industry". Examples were provided including a roofing company that stated that prior to codes of practice and guidelines coming out they could not afford to install scaffolding as they could not compete for jobs with companies that would operate at lower levels of safety. It was suggested that MBIE needed to work more effectively with industry bodies to develop tailored guidelines.

Ineffective regulator enforcement tools

23. It was also reported that the range of tools available to Health and Safety Inspectors to deter non-compliance is too narrow and applicable penalties too low. Immediate actions available to the health and safety inspectors are limited by the requirement for "prior warning" before substantive penalties can be imposed. This was seen to delay penalty and encourage superficial responses or minimal compliance steps after an incident (to avoid or reduce penalties). Harsher penalties, including heftier fines and the capacity to immediately shut down an unsafe business upon identification of serious risk (as in the UK) were suggested to help address the issue. New tools for holding firms and negligent managers and directors to account were also suggested (e.g. charge for corporate manslaughter and banning directors from practicing again, as in the UK.). "A strong enforcement approach to enable a level playing field".

Regulatory role is skewed towards reactive enforcement with too little focus on pro-active, educational or preventative activities

24. MBIE is viewed as prioritising enforcement over education, with its contact with workplaces perceived to be predominantly reactive – through investigation following an incident. There is a perception of the regulator's inspectors as being "more like a traffic warden than a helper". To enable companies to buy in to health and safety and to lift their performance, MBIE and its inspectors were identified as needing to prioritise proactive audits and educational information and coaching visits over enforcement activities. These would better ensure robust practices are in place to prevent an event happening – not "the ambulance at the bottom of the cliff". In particular:

    - more, robust, hands on visits by competent inspectors able to give practical advice is required. Currently *audits* are seen as being of limited value. ACC audits are seen as paper-based, compliance exercises that do not contribute to robust systems in operation. They are "performance based not systems based"
    - information campaigns should continue. These need to be targeted to particular populations and communicated through a variety of mechanisms (e.g. farmer field days, television advertising, internet, newspapers) as appropriate.

25. Because inspectors can penalise firms, the inspectorate's capability to engage firms and get genuine buy-in was identified as being compromised. It was suggested that some or all inspectors should be rebranded as *health and safety advisors* or *prevention advisors* - to better reflect the educational responsibility and to avoid

being perceived as a police officer. Alternatively a separate educational arm to the regulator, operating within Government or operating as an external third party, could focus on education, information and advice. It was suggested that this organisation could be responsible for workplace audits also.

There is insufficient collaboration with industry

26. Meeting participants frequently reported that, while industry bodies and firms have been keen to develop clear industry standards and practice guidelines for its member organisations, support or engagement from MBIE has in many instances not been forthcoming. MBIE is perceived as not listening or open to good, workable standards where these have been suggested. Further, where industry firms and bodies have expressed an interest in developing agreed upon standards, but need assistance to achieve this goal, MBIE has not been interested in or able to provide the support required. Maritime NZ was seen as actively engaged with the successful Fishsafe programme. However once the regulator stopped supporting the programme, standards have reportedly fallen.

27. A lack of an engaged regulator has reduced the development of industry wide standards or, where standards are produced from the regulator, buy in from firms and businesses in the industry. Participants indicated that there are many inconsistent standards operating across industries. Clear standards are seen as critical for raising the level of awareness and quality of practice across industries and contribute to the establishment of level playing fields. It was suggested that MBIE needs to become more approachable to firms/sector groups and more responsive to firm requests for assistance.

Industry Leadership and Governance

28. A common sentiment expressed across the meetings was one of board members, directors and senior managers not providing effective leadership and active health and safety governance. While instances of good health and safety leadership were identified, these were commonly attributed to individuals with a particular passion for the area. True leaders in the health and safety space were seen more as an exception rather than the rule. While there was often talk about the importance of health and safety coming from leaders, this sometimes rang hollow with many CEOs and senior managers seen as failing to “walk the talk”. Networks were sometimes characterised as suffering from a “leadership void”.

29. It was expressed that health and safety needs to be driven from the top, with energy or passion coming from the heart, not from a compliance, “box ticking” mentality. “It’s easy to tick boxes for compliance by paying for a tool box of product on the internet but this does not change practice”. Unfortunately many leaders do not “get it”. True commitment, it was suggested, can and should be demonstrated through the setting of health related KPIs and prioritisation in annual reporting. Leadership could also be seen through inclusion of health and safety in job descriptions, the making of public pledges and the provision of coaching support for other, typically, smaller businesses in the sector. At the shop floor level leadership can be demonstrated through regular health and safety meetings or through having a regular health and safety item in team meetings. Where these were in operation, these were identified as working well by meeting participants.

30. Inadequate levels of interest in, commitment to or governance of health and safety issues from directors and senior managers were attributed to a number of factors (discussed below).

Inadequate levels of accountability for leaders

31. Directors and managers were identified as not being held sufficiently to account for health and safety failings on their watch. The regulator's root cause analysis all too frequently stopped short of governance factors and the "buck stops nowhere". Stronger regulations, clearer health and safety duties and tougher enforcement, were required to hold senior managers and directors to account. Suggestions included introducing corporate manslaughter charges, not allowing negligent directors to practice again, prosecuting directors even where companies have been dissolved and naming and shaming publically culpable individuals and firms.

Marginalisation of health and safety responsibilities

32. Directors and senior managers in many businesses were characterised as commonly delegating health and safety responsibilities to a single or small number of, low level manager(s) or administrator(s). This had the effect of isolating and marginalising health and safety, where it was commonly seen as a 'clipped on paper exercise", rather than integrating it into a core, shared component of the business. It was recommended that responsibilities should be delegated widely and included in every manager's job description. Also, where an individual is delegated primary responsibility, this should be at a senior level – "high enough to have impact".

Commercial pressures and the prioritisation of productivity over staff wellbeing

"It's not about making a profit – it's about how we make a profit"

33. Business financial constraints and the tendency to look at health and safety through a "financial lens" was identified as restraining investment in health and safety for many businesses. Health and safety expenditure is too frequently seen as short term *compliance costs,* to be minimised, rather than as an *investment* that would yield returns in the longer term and protect staff's wellbeing. Businesses identified the costs of investing in safer machinery and training, maintaining equipment and purchasing the right personal protection gear as being prohibitive, given their tight business margins. "You can't drain the swamp when you are up to your ass in alligators". Smaller firms were particularly at risk in this respect. It was recommended that there should be government subsidisation or improved incentivisation of proactive investment in health and safety practices, possibly through ACC levies or tax rebates.

34. Accentuating concern for the bottom line and the relative neglect of health and safety was an uneven playing field identified as operating in many industries. This leads to firms and, in particular, contractors under-cutting each other on price. Health and safety was widely identified as one of the first priorities to be cut for businesses in highly competitive environments. Concern for the bottom line was seen to manifest in:

    - *Unrealistic targets* and deadlines being set for workers and organisations, placing time pressures on workers to perform under duress. This was identified a leading to fatigue and distraction and the taking of shortcuts and unnecessary risks. In several circumstances presented, when targets were not met workers

would lose pay and companies would be penalised. Management setting realistic targets was seen as an important step in the health and safety environment for workers. One work group working with dangerous equipment in steep terrain claimed targets were unrealistic around one third of the time

- *Low levels of supervision* for staff working in dangerous environments. For young and new recruits this was seen as an especially serious concern, particularly when working under tight time frames. Supervisors were identified as turning a blind eye to poor health and safety practices (e.g. removing a machine guard or not requiring a particular qualification to operate machinery or enter a site), particularly under tight time frames or when performance targets were under threat
- Workers *working long hours* were also seen to contribute to risk, via fatigue and distraction. Many workers reported working long days, including 12 hour and double shifts as standard practice in dangerous industries. “Falling asleep at the lunch or break table is a sign of fatigue and danger”. Low pay rates were seen as a primary reason why many workers chose to work long or additional hours. Fair pay rates, work life balance and a living wage, were recommended as one way to reduce workplace injuries. The Government should “put its money where its mouth is” and support the living wage pay packet, as overseas jurisdictions have done
- *Low levels of training in health and safety across the organisation* (see capacity and capability section, below).

Lack of management awareness of health and safety issues and how to manage them

35. Managers and directors were identified as commonly lacking in health and safety expertise and competence and sometimes as possessing negative attitudes towards health and safety. This was attributed to low levels of health and safety training and education for managers (including in secondary schools, tertiary degrees and on-going professional development) as well as production pressures, zero harm targets (see below) and, at times, elitist attitudes towards workers. As a result many supervisors, managers and directors were seen as unable to appreciate health and safety issues, to value input from staff on health and safety concerns and to intervene effectively.

36. To build competence and responsiveness, it was recommended that education in health and safety needs to begin from an early age, through school and tertiary education and mass media campaigns. Further businesses should be incentivised to ensure managers and directors with health and safety accountabilities receive appropriate training and refresher training in health and safety (e.g. through ACC levies , training subsidies, or sticks like regulation or bank conditions for loans when starting a business). It was suggested by several participants that business managers should train along-side health and safety representatives during their ‘rep training’. Senior managers and directors too should include health and safety as a stock item in meetings.

An information gap exists between operations and the board room

37. Lower level managers were also subject to criticism from meeting attendants. Some were identified to be discouraging workers from reporting near misses and hazards, such as faulty machinery or dangerous conditions. Some workers interviewed

reported that they would be blamed for faulty equipment and made to pay for it or for workers to experience some other retribution (e.g. losing their jobs) for being trouble makers. Health and safety outcome 'targets' (e.g. "zero incidence targets") and performance targets for managers (e.g. fewer 'lost days due to injuries') were also seen as contributing to a gap between operational hazards and senior level awareness. Managers wanted to meet these targets and would reportedly pressure staff to this end. Examples were given of injured staff being required to attend work so that there were no lost days due to injury that month. Employees were "battered down" and told not to say anything in the event of an incident. Recommendations for improving the information gap included establishing an anonymous reporting line to senior management from workers.

38. Changes in management attitude (as well as behaviour), so that health and safety came from the 'heart', were also required for information to be passed on. .Managers need to value employee input, and to take seriously concerns over health and safety. They need to build a "just culture" (as distinct from a blame culture) where reporting is safe and responsive. To be effective visible prioritisation and commitment from senior leaders and directors was required to motivate managers and encourage workers to participate more actively in maintaining a safe work environment.

Tender processes and contracting arrangements encourage health and safety shortcuts

39. The drive to maximise productivity and to minimise costs was commonly identified as a key factor inhibiting investment in health and safety in both the public and private sectors. Further, it was frequently observed that its standard businesses practice across both sectors to select the cheapest tender when hiring contractors to undertake short term or project specific work. This principle promotes a "cut throat" market that encourages short cuts, where health and safety costs are often the first costs to be cut. Further, the (sub) contracting process creates distance or alienation by the provider to the work being undertaken and how this is being managed. It was recommended that principals need to take greater responsibility for how the work is being managed to help ensure that contractors lift their standards. Suggestions included:

    - stricter duties on principals
    - holding principals firmly to account for all contracting and sub-contracting arrangements
    - principals requiring tender documents to be explicit about health and safety costs and how health and safety practices a factored into the proposal
    - regulators providing greater vigilance and enforcement
    - Government taking leadership and setting benchmark criteria that restricts awarding contracts to a preselected suite of firms, firms who meet good employment (including health and safety) criteria only. This list could also be used for promotional purposes.

Variations in industry standards

40. A common complaint arising in the meetings was the lack of or variable standards operating in particular sectors. This situation was seen as accentuating the unsafe

undercutting and undermining the operation of a safe level playing field inherent in the cost-focussed tender process. The regulator and industry bodies are seen as playing key roles in the development of meaningful and workable standards which could help to raise standards and promote a level playing field. Participants noted that industry leadership or capability was often lacking and that it was a challenging process for industry bodies to develop consistent standards for an industry. Many had tried. It was suggested that the regulator has a key role to play in this arena, with practical and financial support, but as noted above, has not been sufficiently effective in this regard.

Employee participation

41. It was reported across a range of meetings that employees are currently not participating sufficiently in the identification and management of workplace health and safety issues. This was acknowledged as contributing to increasing workplace risk. A number of reasons were given for this.

Management culture can be a barrier to engagement

42. Managers were portrayed at times as not being particularly interested in employee's views, including on health and safety. Some were characterised as being "arrogant" in this respect. For example, workplace changes, including the introduction of health and safety strategies or new machinery, were identified as sometimes being implemented without genuine consultation or engagement with employees. Further, participants reported that management were frequently un-responsive or defensive when health and safety issues were raised by them, so did not bother anymore as "nothing will happen". Financial considerations were frequently given as reasons for not taking on board employees concerns or suggestions.

43. Some employees also reported being fearful of reporting health and safety incidents to supervisors and managers. Sometimes they reported receiving explicit threats; "Do it or you are down the road". Fear of recrimination through pay docking if equipment was damaged or fear of losing one's job if one spoke out about hazards or questioned the safety of practices was also reported. This resulted in some workers routinely working around hazards and damaged equipment. Seasonal, contractual and otherwise vulnerable workers (including employees on 90 day trials or low literacy skills) were noted as particularly less likely to report events: "Never bite the hand that feeds you". Similarly, employees were sometimes identified as unwilling to speak out because they feared that their workmates and colleagues would be punished for unsafe practices. They did not want to "dob in their mates".

44. It was recommended that many managers need to move away from a "defensive", "blame", "bully" culture to build a "culture of engagement". Further, it was suggested that penalties should be imposed on employers who do not sufficiently engage their workforce on health and safety issues and unions should be empowered to better support workers who do raise issues or question practices.

45. The regulator was also identified as needing to provide greater protection to employees and workers who raise issues. "Government needs to back up the people". Further, an anonymous information line to the regulator was recommended as one means to protecting employees whilst enabling them to be heard. It was also suggested that anonymous reporting could be to a third party outside the organisation (like in the UK) could help. This third party could investigate and

mediate issues arising. If the problem persists this could then be referred to the regulator.

Employees are not ready to engage effectively

46. Employees were characterised as commonly lacking in awareness of their rights and responsibilities. The decline of unionism, particularly in high risk industries, was lamented in this respect as unions were seen as providing a useful mechanism for dissemination of health and safety information and for empowering employees.

47. Workers were also characterised as complacent and apathetic about health and safety protocols, frequently seeing them as "over the top". Some employers complained about employees' resistant or slack attitudes to health and safety being a key problem for the organisation. Examples were given where-in workers were identified as breaking rules (for example removing a safety guard) even when explicitly told not to.

48. It was recommended that there be an educational campaign to raise workers' awareness of their rights (e.g. to say no to unsafe work) and responsibilities (i.e. duties), to empower them to participate more effectively. As discussed in the regulator section, employers thought that the regulator needs to do more to hold to individual employees to account, where they have been found to be breaking the rules.

49. Reporting events was seen as overly bureaucratic, with time consuming, laborious form filling a major deterrent for many employees. Some businesses had developed quicker, less cumbersome reporting systems to better engage employee reporting (e.g. near miss register) and recommended that simpler, user friendly reporting protocols be incorporated more widely.

The health and safety representation mechanism is seen as valuable but of variable effectiveness

50. Some health and safety representatives reported that they had good, constructive relationships with managers, while others found managers non-responsive. A number of issues emerged during the consultation process regarding the effectiveness of the health and safety representative role. These centred around:

- concern over appointment processes. It was commonly reported that representatives were sometimes appointed by management, challenging their independence, while others were appointed (typically the most recent employee) because no-one else wanted to take the role
- low interest from employees in the role. The role is seen as of low status, requiring hard work for little thanks, on top of existing duties. There is no extra pay and little mana attached to the role. More kudos is needed. It was thought employers should be required to pay health and safety representatives for their additional duties, and that these should be recognised and spelt out in employment agreements
- health and safety representatives working in isolation. The role was a difficult in part one because of the location of key responsibilities lying with one person (and not everyone). It was hard to motivate complacent, older workers in particular. It was thought that enhanced connections with other health and

safety representatives outside the organisation and with the regulator could help improve their effectiveness

- concern that smaller businesses were not required to have health and safety representatives. It was recommended the exemption be removed.

51. There were mixed views on the efficacy of the representative training. While some participants thought the content and delivery was very good, particularly at stage one, others had mixed experiences and wondered if it was optimally effective across all providers and stages. Their expense was seen as prohibitive, particularly for smaller businesses, where cost barriers were seen as reducing the likelihood that businesses send employees on basic and refresher training courses. Some participants thought that managers would benefit from attending health and safety representative training, alongside (and through mock interactions with) the representatives.

52. A review of training content and delivery, and additional government funding for courses to increase availability, were recommended.

Incentives and disincentives

53. It was widely expressed by meeting participants that there were not enough inducements in the system to incentivise compliant or proactive health and safety actions, and concomitantly, enough penalties to deter non-compliance. “There are inadequate rewards for compliance”; “The balance of incentives results in production pressures overriding safety”; they are “not working and possibly perverse”. This concern arose through a number of reasons (discussed below).

ACC masks the true costs of injury and scheme incentives are inadequate

54. ACC was identified as masking the costs of injuries and shielding businesses from paying the true costs of poor performance in their workplaces. Universal cover was thought to contribute to complacency in businesses, at least until a serious injury happens, because “it’s cheaper to kill someone than it is to perform well”. The overall scheme may be providing a disincentive to invest in health and safety.

55. Particular ACC scheme incentives are seen as inadequate relative to the costs of running a business, providing only a marginal financial incentive to lift performance. Further they are not strongly enough connected to risk. Risk ratings were seen as a weak reflection of health and safety capacity while the WSMP system, and its associated audits, was criticised for encouraging paper based compliance not safer systems in practice. It was also noted that there is a lack of awareness of ACC incentive schemes, with experience rating and the Partnership Programme seen as poorly promoted and under-utilised.

Regulatory enforcement provides inadequate deterrence:

56. As previously discussed it was widely felt that regulation and enforcement does not provide effective deterrence for non-compliance or poor performance. This is due to high level managers and directors not being held to account and penalties being inadequate in volume and insufficient in magnitude. Warnings (only) are too common and fines, when given, are too low, particularly for large businesses that can write or brush it off as a relatively low business expense (compared to investment in health and safety). “What impact would substantial fines have e.g.

$500k, 1m? Compare the incentives of these with manslaughter sentences for road accidents, which can compare to a number of years".

Rejigging the balance of incentives and penalties

57. It was widely recommended that there needs to be more effective incentives and punishments -better sticks and carrots. A number of suggestions were made. It was suggested that better *rewarding of compliance* was needed. "More carrots" could be enhanced through:

- providing tax relief, substantive ACC levy reductions, or Government subsidies, for good performance, investment in equipment, machinery or plant, and managers' health and safety training attendance
- increasing ACC incentives for good performance
- linking ACC Levies to credible audits (not paper based ones)
- building a "leadership board" – a publically accessible list of company rankings on health and safety performance. Rankings, it was suggested, could be provided by audit or grade from a health and safety inspector. Star rankings could be used for publicity purposes (but also for shaming – see below).

58. *Penalties* for non-compliance could be increased through:

- More prosecutions and higher fining of companies and businesses in breach of regulations ("less warning, more action"). This should be accompanied by giving more discretion and leeway to inspectors to determine the appropriate level of fine (e.g. flexibility to impact on smaller businesses without putting them out of business; to seriously impact on larger businesses, up to a maximum of 10% of annual turnover)
- Reputational impact. Naming and shaming, including:
  - Publishing 'dirty firms'' failings and prosecutions in newspapers
  - Making publically available results, or selected sections, from the *leadership board* discussed above
- Charging companies for the costs of an investigation if found to be non-compliant (as in the UK)
- Removing ACC cover if a business is found to be in breach of health and safety obligations
- Disqualification of directors and introduction of corporate manslaughter charges.

Capacity and capability of players in the system

59. In discussions of the system, and the capability of key players in it, a number of parties were identified as lacking in health and safety knowledge and being inadequately prepared to competently lead or support good workplace health and safety practices.

Managers, supervisors and directors lack health and safety awareness and competence

60. As discussed in the leadership section above managers were often seen as inadequately able to manage health and safety issues in the workplace. One key reason provided for this is the extent of health and safety focused training and

education managers typically receive either prior to or during their tenure as managers or directors. “None”, “Sweet FA” or very little training was the general assessment. Tertiary education degrees and diplomas were frequently singled out as providing inadequate grounding for managers. Further, opportunities for health and safety training for managers on the job are limited in availability and can be inaccessible to firms due to time and financial costs (especially SMEs). It was recommended that:

- business degrees and diplomas should include workplace health and safety components
- short, sharp courses in health and safety for supervisors, managers and directors be established, from fundamental responsibilities through to on-going professional development. These should be supported by TEC, Government and employers
- current managers and directors be required (through legislation or incentives such as ACC) to attend health and safety focused training courses
- new businesses be required to demonstrate health and safety competence in order to operate (e.g. to register, receive a bank loan or get a GST number).

Workers have variable health and safety competence

61. The health and safety knowledge and competence of workers was a concern expressed by many participants. Young workers in particular were seen as vulnerable when starting work - lacking in risk consciousness and awareness of their employment rights and responsibilities. In part this was attributed to “wrapping children in cotton wool” during their youth, so they do not develop a self-responsible attitude to health and safety and the absence of education on workplace health and safety during school. It was noted that currently young people are reliant on their first employers for setting their attitudes to health and safety, not only for their first job but frequently for life.

62. Workers with low literacy and numeracy levels, including early school leavers and migrants, were also identified as being at particular risk. Many students who left school early were identified as more likely to enter dangerous work. If workers could not read a hazard notice board, for example, this placed them and others at a higher level of risk. Further, new staff are all too frequently simply “just chucked in jobs”. It was recommended that:

- schools prepare students for the world of work. While some participants thought this should begin at pre-school and primary school (and be seamless through to tertiary training), others suggested beginning health and safety education at secondary school, at around years 11-13. Regardless of when to start the “get them while they are young” sentiment was widely expressed
- public awareness campaigns be used to raise consciousness of health and safety in the public generally. These should be multi-media and engaging. The use of celebrities, like John Kirwain in the depression campaign, was suggested to get buy-in or interest from workers. Induction and recruitment processes for new employees mandatorily emphasise health and safety. New employees could be required by law to receive intensive workplace specific health and safety training during the job induction and be required to sign up to job

descriptions where they agree to undertake particular responsibilities (e.g. compulsory training and retraining, reporting hazards, following health and safety protocols)

- greater levels of hazard signage on dangerous equipment or in dangerous work spaces be used. Communications in pictures and simple messages is vital, and these should be available in a range of languages where workers come from different backgrounds
- job inductions, and employment agreements, be required to include health and safety training and clarity of roles and responsibilities
- employees be provided with refresher-training or re-training in health and safety at regular intervals.

The quality and availability of health and safety advice is variable

63. Under the HSE Act, employers noted that they were responsible for getting health and safety expert advice as required to manage "all practicable steps". Employers and other meeting attendants however complained about the quality of health and safety advice available to them, and the ambiguity of what 'expert' advice meant.

64. The availability and quality of health and safety professionals in New Zealand was questioned. It was stated that there is an inadequate supply of competent health and safety professionals in New Zealand. Further the profession was seen as undervalued and lacking in credibility, making it less attractive to qualified, competent professionals. Consultants were seen as inconsistent in their approaches, methods, competence levels and risk tolerance. It was noted there was no standard, competence level or qualification set required for them to operate, nor enough support for on-going professional development. It was recommended that a licensing system or register for qualified, competent health and safety professionals be established. This would improve employers' confidence in accessing competent advice.

65. The regulator, with the former department of Labour or MBIE being frequently singled out, was seen as providing an insufficient level of useful, relevant advice on how to manage particular risks and issues. Advice that is available through the MBIE web site was criticised as frequently being out of date, difficult to interpret or of limited relevance or applicability (e.g. when imported from overseas or at too high a level for a particular industry). Further MBIE was seen as inaccessible, or "impossible" to get "clear advice" or clarification of standards from. The regulator's inspectors were seen as variable in the knowledge and capacity to assist businesses with relevant, industry specific, clear advice. MBIE's managers were seen as lacking in health and safety knowledge also. MBIE's occupational health expertise and advice was considered particularly inadequate. It was recommended that MBIE needs to develop its information and education capability. This could include:

    - investing in or create a specialist education arm to engage with and provide clear information to support businesses. Information should be industry relevant, simple, accessible and up to date
    - supporting third parties to educate and support businesses (as in the UK)
    - developing career paths and improve pay conditions for inspectors and advisors (to attract and retain competent front line staff)

- building up occupational health expertise in-house (through creating and recruiting staff into new specialist roles).

Training opportunities for building workplace health and safety capacity are limited and of variable quality.

66. The availability and quality of health and safety training is widely judged to be inadequate, with the training system "not fit for purpose". A lack of any meaningful competency framework for health and safety training was noted and ITOs were identified as being "more focussed on getting bums on seats" than delivering skills. A number of factors are seen to contribute to this picture:

    - *Growth of outsourcing and the decline of traditional forms of teaching.* Participants in the meetings lamented the good old days "as they had 30 years ago" when health and safety training, tool maintenance and higher levels of supervision were built into trades training, apprenticeships and farm work. Today, in contrast, young workers are frequently left on their own and expected to deliver based on a few courses. It was recommended that the Government bring back traditional apprenticeships and trades training and make compulsory a significant focus on health and safety in any basic trades training
    - *Prohibitive costs*. Participants pointed out that TEC has reduced funding for many health and safety courses (e.g. TEC has stopped funding for 'safety compliance' unit standards). Because the costs of training makes courses less accessible, especially for smaller businesses, it was recommended that TEC increase its funding availability for health and safety courses and for Government to provide subsidies for smaller businesses to encourage participation
    - *Quality assurance for courses is lacking*. Training in many instances is allegedly "dumbed down" so that workers with low levels of educational attainment can succeed. Success in a course clearly does not equate to health and safety competence on the worksite. The quality of courses is further compromised by TEC funding the cheapest tender or course provider, regardless of quality. Further, some training programmes are provided by industry, so there is a perverse incentive to help participants to pass courses that are allegedly not worth the paper they are written on. It was recommended that TEC review and improve its quality assurance/ provider selection processes and for the regulator keep a publically available list of *quality* health and safety course providers and programmes
    - *Ambiguities across training organisations in course offerings*. There was a concern that titles, content and availability of courses vary widely across regions and providers and change in title and content too frequently, making it difficult to determine what is included in particular courses and for firms to determine which courses are appropriate for them. ITOs and NZQA need to consolidate courses, making short sharp courses for managers available and deliver common, understandable and accessible unit standards for trainees.

National culture

67. New Zealand culture is widely seen as a key contributor to New Zealand's poor health and safety performance. A number of features to our psyche and cultural landscape were identified:

- Our "laid back", "she'll be right", "won't happen to me" attitudes to health and safety reflects a general complacency
- We often think that others are responsible for health and safety – we have low levels of individual self-responsibility
- We have "a number 8 wire", "give it a go", "get on with it "to get the job done" mentality. We will take shortcuts or use inappropriate equipment to get around regulations or if to get the job done faster
- We see health and safety as a "drag", with "heavy" connotations that we would prefer not to think about
- New Zealanders can be reluctant ask questions ("don't want to seem stupid")
- We fear that asking for health and safety considerations may make us look like a "sook", needing to "harden up"
- New Zealanders tend to see health and safety as an unnecessary compliance issue, rather than a health issue.

68. Several factors were seen as contributing to these risky characteristics, including an historic "pioneer attitude", ACC's no fault system masking the cost and responsibilities for injury, valuing production over people and New Zealand children being bought up in "cotton wool".

69. Mass, multi-media campaigns and in-school education modules focused on risk assessment were recommended to help shift New Zealanders attitudes. It was recognised that desired outcomes would only be achieved over the medium to longer term. Media campaigns, it was suggested, should focus on;

- positive messaging (e.g. "it's a good thing to report incidents"). This would help to remove a "heavy" stigma surrounding health and safety
- promoting health and safety as being everyone's responsibility. It applies to everyone
- Promoting health and safety in the context of safety for life –not just as a workplace issue. Consistent messages about personal responsibility applying at home and at work are required
- Lower level industry specific stories (not just the big ticket items which don't apply to many people)
- encouraging people to think about the "roll-on effects" of their injuries or illness, should this occur. For example the impacts on family of not coming home from work. It was noted that people may be more responsive to thinking about these effects, than of harm to themselves.

Occupational health

70. Occupational health issues were raised in approximately half of the meetings. Where the issue was discussed, an overarching theme was one of occupational health suffering from an "under emphasis", being the poor cousin to safety, despite the statistics suggesting the latter is the larger issue. The "mono-causal" approach to workplace harm was seen as unhelpful and greater recognition, inspector training in, surveillance, and treatment of occupational health was required.

71. While a range of occupational health issues arose in discussions (e.g. gradual onset conditions such as asthma and hearing loss, and environmental hazards such as asbestos and nano technologies), psychosocial issues such as stress, bullying and fatigue were frequently identified as modern health issues receiving too little attention.

72. Low capacity in the area was identified as a concern. GPs, the regulator and business management were all identified as poorly equipped to identify and manage these health risks. GPs were seen to be poorly trained in the area, and as a result making misdiagnoses and devising inappropriate treatment plans.

73. The issue of drugs in workplaces and drug testing were also commonly raised as health and/or hazard issues, and debated. While employers and many workers thought that drug testing practices were an important part of keeping workplaces safe, particularly in a team environment, other workers and some union representatives expressed concerns. The debate centred on testing regimes and penalties arising. Opponents expressed a concern that drug tests do not measure *impairment* (a hazard) per se, so much as *illegality* (a legal condition). There was also a fear that drug tests could be applied inconsistently (e.g. managers not being tested for alcohol abuse). One organisation thought the regulator needed to produce clearer guidelines on what is reasonable and fair regarding drugs and alcohol testing.

74. It was suggested that there is fragmentation in New Zealand's health system, and that occupational health issues can fall through the cracks. Government funding for occupational health centres and better coordination with the Ministry of Health to undertake periodic health checks with workers were recommended as means to developing a more responsive occupational health awareness, surveillance and intervention system.

At-risk populations

75. Particular populations were identified by participants as being more vulnerable to injury and harm in the workplace than other demographics. These populations included:

- *Workers with low literacy levels*, as effective written and verbal communication are essential to successful communication (e.g. understanding responsibilities, asking questions or reading a hazard board). It was recognised that many workers in high risk industries had left school early
- *Migrants* were also vulnerable, due to struggling with English as a second language and also having different attitudes towards health and safety. Business owners from overseas, from source countries with relatively limited health and safety systems, were seen as being dangerous employers, arriving

with little knowledge or understanding of the New Zealand regulatory system, including duties for employers. More pre-border education, and making simpler regulatory information, was suggested

- *Workers working long hours*, due to fatigue and distraction issues. As discussed previously, low pay rates were seen as driving workers 'choosing' to work long hours. Fair or decent pay rates were identified as crucial to reducing injury rates. Limits on the number of hours workers can work in a given period should be considered also
- *Workers in vulnerable employment relationships* (e.g. 90 day trials, casual employees), short term contractors and seasonal workers were all identified as less likely to report injuries or voice concerns for fear of non-reemployment. Casuals, shift workers and part time employees were also identified as less likely to buy-in to health and safety practice (e.g. read messages) and more likely to be "treated as second class citizens", missing out on health and safety training opportunities (e.g. practice drills)
- *Younger workers*. New, younger workers or "greenhorns" were seen as lacking in the cognitive maturity, experience and general awareness of health and safety to make safe choices in their work. Supervision of younger workers was also identified as lacking in the modern workplace, with training outsourced and inexperienced workers often given dangerous work to do without adequate guidance and oversight
- *Older workers*, due to complacency, fatigue, being set in their ways and thinking their bodies can still do what they used to be able to do (when they can't)
- *Maori*, due to over representation in dangerous industries. It was also suggested that Maori workers may be less confident in speaking out about unsafe practices. This may be attributed to lower levels of education and job security for many Maori. Iwi were identified as having an important role in supporting or advocating for Maori workers and their whanau
- *Pacific people*, in part because of literacy and communication issues. Signage and communications in languages other than English were recommended. Cultural factors also play a part, with Pacific peoples identified as more trusting of and respectful towards authority figures, including their employers and managers. As a result Pacific people may be less likely to question or challenge unsafe practices in the workplace, or to join a union when the employer opposed them. The establishment of a Pacific Advisory Committee to represent Pacific workers, and Government working with churches to disseminate information, was recommended
- *Workers in remote locations*, including farmers and fishermen. These workers were identified as working in changing physical environments, often in isolation, surrounded by hazards. "In farming, you could kill yourself every day". Further these population were more likely to be "gun-ho" and to break health and safety rules ("rules are made to be broken").

76. Small businesses were widely identified as at-risk organisations, due to a several reasons discussed in various sections to this paper. These include lack of management competence, lack of awareness and certainty around standards, lack of

regulator vigilance, prohibitive costs of health and safety investment and not being required to have health and safety representation (unless it is requested). Small businesses were identified as requiring greater levels of support to achieve robust health and safety systems. It was recommended that Government subsidises (or provides tax breaks) for health and safety training for managers and provide greater levels of advice and prescription to clarify minimum obligations. It was also suggested that new businesses should be required to demonstrate health and safety competence prior to registration or licensing.

Data and measurement

77. Participants expressed concern that there was a lack of useful data about workplace health and safety outcomes, causes and practices.

    - Outcome and causation data collected by the regulator and ACC was seen as partial and biased. Mainly this was due to organisational constraints and attempts to make the organisation look better in its health and safety performance than it really was. Managers were said to discourage reporting to the regulator and ACC. Workers were less likely to report events and near misses due to fear of retribution and a desire to get on with the work. It was recommended that no blame reporting systems are needed and systems to incentivise or encourage near miss reporting within organisations (coupled with constructive management responsiveness) was critical for reducing injury rates
    - What data there is available is characterised as unreliable and focussed on lag rather than lead indicators. Currently it is difficult to see who is doing what to protect workers or for firms to compare or benchmark their performance against others.

78. Occupational health data was identified as particularly problematic. As discussed in the occupational health section regular, workplace centred health check-ups were identified as one way of improving occupational monitoring and causation data.