

**Submission**

*By*



*to the*

**Strategic Review of the Workplace  
health and Safety System**

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## **STRATEGIC REVIEW of the WORKPLACE HEALTH and SAFETY SYSTEM**

### **Introduction**

As a representative business organisation, BusinessNZ is very concerned about workplace accident numbers in New Zealand and has an obvious interest in ensuring their reduction. While BusinessNZ, through its regional organisations, has always striven to promote best workplace practice, it is conscious that changing times, changes in the nature of work, as well as a greater recognition of accident causation have made it necessary to seek a new approach to reducing workplace accidents. Although, as the foreword to the consultation document acknowledges, many businesses, workers, unions and industry organisations, together with government, invest significantly in workplace health and safety unfortunately, as current injury statistics clearly indicate, more is required - notwithstanding the fact that since 2002 these have been trending downwards.<sup>1</sup>

### **Discussion**

In the view of BusinessNZ, there are five headings under which the question of how best to reduce workplace accidents should be addressed. Focusing on what is proposed under each of these headings would, in BusinessNZ's opinion, result in greatly improved health and safety outcomes - even though there is no system that is completely impervious to human error.

#### **1. Education**

While the need for education and training in matters directly related to health and safety is self-evident, the availability of training is another matter. The Health and Safety in Employment Act's (HSEA) current hazard-management

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<sup>1</sup> Statistics New Zealand, Injury Statistics – Work-related Claims 2011

procedures (identification, elimination and the like) require a considerable amount of knowledge on the part of the person or persons responsible and this cannot always be assumed. A greater emphasis on manager training is needed as well as on training for health and safety inspectors. Often, currently, businesses report that they find the latter have had little practical experience of the sector concerned, whereas hands-on knowledge allows for greater understanding and the provision of more relevant and effective advice.

Training in hazard recognition and management may be particularly essential where new forms of equipment are in use and for smaller businesses where there may be a lack of safety knowledge and expertise. Complex machinery, hazardous substances and the like all have to be properly handled, underlining the need for training to ensure there is a real recognition of where workplace hazards lie. This is likely also to include a need for practical training as it may not be possible to gain a true understanding of any dangers involved in the absence of practical demonstrations. Far better to provide and promote safety training than to penalise after an accident has happened. This is where practically-experienced health and safety inspectors could play an enhanced role.

But with the best of procedures in place it is not always recognised that these can be undermined by low levels of literacy and numeracy which, employee training notwithstanding, greatly impede the communication process. Nor will employees necessarily be prepared to admit when information and instructions provided have not been properly understood. This is a growing problem given the increasingly diverse nature of the workforce and can involve as well different attitudes to authority which may mean that questions which should be asked are not asked and so that misunderstandings are not resolved.

With respect to the literacy and numeracy issue, BusinessNZ supports the Workbase Education Trust submission which deals in more detail with the reasons why workplace literacy training is essential and is in need of greater support. This is not to lay blame for workplace accidents on employees but to

indicate the difficulty that organisations and businesses can have in ensuring their safety systems operate as they were intended to do.

## **2. Clearly defined responsibilities and accountabilities**

Associated with the need for more education and training (for employees and managers alike) is the need clearly to define workplace health and safety responsibilities and accountabilities. Under the HSEA responsibility lies primarily with the employer and the strict liability nature of many of the Act's offences provisions means employers can be found responsible for accidents that were not reasonably foreseeable and over which, as a consequence, they had little if any control. The Consultation Document notes that this regulatory system is based on the 1974 Robens' approach and considers the approach '... can create uncertainty in terms of what a regulated entity needs to do to comply with the law'.

But as the problems noted above indicate, safety systems notwithstanding, compliance with the law cannot necessarily be guaranteed. Although there are systems in place, these can be misunderstood or even disregarded, while the term 'employer' is inevitably too narrow (except in quite small workplaces) to encompass all those who need to be involved in health and safety management. Hence there is a real need to define more clearly the various levels of management where responsibility and accountability must lie. This is not, of course, what the Consultation Document is proposing. While it suggests extending accountability to designers, manufacturers, installers and sellers it does not propose further extending accountability to encompass managers and supervisors or, indeed, putting greater emphasis on employee accountability. However, even with primary responsibility resting on the employer or business owner, intermediate levels of responsibility would appear to make sense. A hierarchy of accountability could go some way to ensuring the need to comply with a health and safety system was better understood and better observed. Health and safety should be the responsibility of everyone in the workplace if accidents are to be reduced to a minimum.

By the same token, there is a need to clarify where, in varying situations, overall responsibility lies. The employment of contractors, for example, can give rise to considerable difficulty between the contractor and the principal, the more so in the case of self-employed contractors. This is another circumstance where greater clarity and the better education and training previously advocated are essential.

### **3. Directors' liability**

The HSEA itself already imposes liability on directors but otherwise provides no indication that here, too, there might be a need for training in health and safety matters. But directors of companies may have little practical experience of how an organisation works at 'factory' floor level being more concerned with administrative matters. For this reason they may well find themselves shouldering blame for the failure of systems and processes with which they are not properly acquainted because these have never been brought directly to their attention.

It is therefore important for health and safety legislation to require directors to undergo training in formal risk analysis and to be familiar with the risk management system (or systems) and programmes they must ensure are put in place. A clearer emphasis on director training would obviate any need to introduce a crime such as corporate manslaughter, which given that accidents are by their nature unintentional events, would be going too far towards imposing liability on persons who in the scheme of things, are likely to have had little or no chance of exercising control. Penalties that can be imposed under the HSEA are already reasonably severe; to impose further constraints could act simply to discourage participation in the director role. As a hindsight judgment, a punitive approach achieves very little and is also somewhat at variance with the ACC policy of no fault accidents. There is, in reality, a certain tension between the HSE and ACC philosophies, between the blame and the no blame approach. On this point, it may be of some interest that, it is understood, Auckland University research suggests the effect of the no fault

scheme may be to induce a degree of carelessness that makes its own contribution to the accident rate.

#### **4. Specific, identifiable regulator**

In order to tie the above proposals together, it is suggested that in New Zealand there should, for health and safety purposes, be a single point of contact in the form of a specific identifiable regulator. While the HSEA provides for the promulgation of health and safety regulations, there is also a range of agencies with responsibility for health and safety in various areas of the economy, resulting in a degree of confusion about who is responsible for what. By contrast, as the Consultation Document points out, countries with a single-focus regulator tend to have the lowest injury rates and this is something New Zealand might do well to bear in mind.

Providing a single point of contact would go a long way towards ensuring consistency of decision-making, whereas overlapping jurisdictions can lead to uncertainty. This is particularly so in relation to matters of interpretation with factors such as what might constitute an acceptable amount of risk and how words such as 'reasonably practicable' (Australia) or 'all practicable steps' (New Zealand) are to be interpreted (and whether or not there is a difference). A single-focus agency might also have the ability to determine when prosecutions should occur and when an educational approach would produce a better outcome.

A single regulator might encompass ACC as well, thereby helping to clarify the relationship between what are at present two distinct approaches to workplace accidents. On the other hand, the collection of injury statistics should be kept as an entirely separate function from injury prevention and rehabilitation, one better undertaken by Statistics New Zealand than by agencies directly involved in the health and safety process.

## **5. Serious harm**

The current definition of serious harm has long proved difficult to interpret making it hard for those responsible for reporting serious harm accidents to know when the reporting requirement should be exercised. As any failure to report an accident causing serious harm can result in a maximum fine of \$250,000, it is of some concern that reporting obligations should be more clearly identifiable than they are at present.

The development of a new definition of serious harm has been under consideration for quite some time and it is suggested that this process should be revisited and interested parties again asked to submit their views. The new draft definition can then be included in such legislative changes as might be contemplated and subject to further comment. The intention must be to produce a balanced definition which to the extent possible, ensures both under- and over-reporting are avoided. The reporting process could be assisted by developing clear and readily understandable reporting forms where necessary information is clearly set out. This would certainly go a long way towards simplifying the reporting process. Any new definition and the need to report serious harm accidents should subsequently be widely publicised since otherwise, in the nature of things, there will be situations where changes of this kind are not immediately recognised.

## APPENDIX

### Background Information on BusinessNZ

- 9.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association, Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), its 71 member Major Companies Group comprising New Zealand's largest businesses, and its 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is New Zealand's largest business advocacy body. BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.
- 9.2 In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 9.3 BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.