

# **Regulatory Impact Statement**

## **Improving New Zealand's Workplace Health and Safety System**

### **Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment. It considers options to strengthen New Zealand's workplace health and safety system. The options respond to recommendations of the Independent Taskforce on Workplace Health and Safety aimed at achieving the Government's target of a 25 percent reduction in serious injuries and fatalities in the workplace by 2020.

The Taskforce identified systemic problems with New Zealand's workplace health and safety system. Changes to all parts of the system are considered necessary to achieve the 2020 target. It is proposed that the Government accept most but not all of the Taskforce's recommendations. Where there is divergence, the Taskforce's aim is intended to be implemented in a different way.

The Regulatory Impact Statement concentrates on legislative changes, but a number of non-legislative changes have also been proposed, some of which have been included in the overall summary of impacts but not in the options analysis.

The RIS has gaps in relation to quantification of costs and benefits.

The Taskforce commissioned a cost-benefit analysis of its entire package of recommendations and concluded that government costs passed on through levies were likely to be around \$32 million, and firm level compliance costs were likely to be around \$24 million per annum.

We have not carried out a fresh cost benefit analysis of the package of changes proposed in response to the Taskforce report, or of the narrower set of proposals discussed in this RIS. We note, however, that using a figure of \$3.5 billion per year as an estimate of the total social and economic cost to the New Zealand economy of work-related injury and occupational disease, the additional costs of the Taskforce's package would be more than offset if it resulted in a 1.7 percent reduction in workplace injuries, disease and death.

The RIS presents the proposals as a package rather than a menu. This reflects the Taskforce's view of its recommendations, and while the package diverges in some matters of detail from the Taskforce's recommendations, we agree that it is generally impractical to choose to implement some proposals and not others.

The options analysis essentially discounts the status quo as a viable option for achieving the Government's objectives. It adopts the Taskforce's view that a step-change in system performance is necessary and intervention is necessary.

The analysis notes gaps in data, such as a lack of reliable data on occupational illnesses and diseases. These data gaps make it hard to obtain a complete picture of our current problem, but should not prevent us from taking steps to improve workplace safety and health.

An assumption underlying this analysis is that the New Zealand and Australian contexts are sufficiently similar that it will be relatively straightforward to adopt and adapt the Australian Model Law to a New Zealand context. Basing the new regulatory regime on the Australian Model Law has significant advantages as it will reduce the risk, time and resource required to update our legislation, and will offer stakeholders greater certainty. Modifications to the

Australian Model Law are proposed where they are considered necessary to fit with New Zealand's circumstances.

The success of the proposed package of changes is dependent on its implementation. The Regulatory Impact Statement highlights risks of the challenging timeframe and the need to build capacity and capability within the regulator to ensure effective implementation.

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## Executive Summary

- 1 The tragedy at the Pike River mine in November 2010 highlighted significant issues with New Zealand's workplace health and safety system.
- 2 The Government has set a target of reducing the incidence of harm in New Zealand workplaces so that by 2020 the annual rate of fatalities and serious injuries is at least 25 percent lower than it is today. New Zealand's rates of workplace harm are not declining rapidly enough to meet the Government's target. A step-change in system performance is required and intervention is necessary.
- 3 In June 2012, the Government established an Independent Taskforce to undertake a strategic review of whether New Zealand's workplace health and safety system remains fit for purpose and to recommend practical strategies achieving the Government's objective.
- 4 In its April 2013 report, the Taskforce called for "an urgent, sustainable step-change in harm prevention activity and a dramatic improvement in outcomes".<sup>1</sup> Its recommendations encompass acute, chronic (including occupational health) and catastrophic harm, and the management of hazardous substances and major hazard facilities. The Taskforce recommended a fundamental reform of the New Zealand system including the creation of a new Crown Agency and the enactment of a new workplace health and safety Act based on the Australian Model Work Health and Safety Law (the Model Law).
- 5 Although international comparisons are complicated by different approaches to definition and data collection, New Zealand's rate of work-related fatal injury appears higher than many of the jurisdictions we compare ourselves against. Further, our rates are generally static, while Australian and UK rates are showing steady decreases.
- 6 Overall, around 1 in 10 workers are harmed in accidents each year in New Zealand, with about 200,000 claims being made to ACC for costs associated with work-related injuries and illnesses. There are approximately 30,000 non-fatal cases of work-related disease and illness each year, and an estimated 600-900 deaths. In addition, one or two people die in traumatic accidents at work each week.
- 7 Workplace injuries, diseases and death inflict an enormous emotional toll on the people affected, and significant financial costs on New Zealand's economy. In 2012, the costs were conservatively estimated at \$3.5 billion a year (almost two percent of GDP).
- 8 A range of problems contributes to New Zealand's poor workplace health and safety outcomes:
  - the regulatory framework has struggled to keep pace with the changing nature of workplaces and working arrangements, and increasing complexity of supply chains
  - there is a lack of leadership, alignment and coordination of workplace health and safety activities
  - there are capacity and capability shortcomings across the system

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<sup>1</sup> Executive Report of the Independent Taskforce on Workplace Health and Safety. (2013) page 3

- there is incomplete and poorly integrated intelligence on workplace health and safety, particularly in relation to occupational health
  - there is insufficient oversight of major hazard facilities
  - the regime for managing hazardous substances is performing poorly
  - there is an inadequate focus on occupational health, including both acute and chronic harm caused by health hazards
  - worker participation in workplace health and safety is inadequate
  - there are inadequate incentives to comply with obligations and improve workplace health and safety.
- 9 Because of the inter-connected nature of the workplace health and safety system, government's policy response must work together as a system. As a result, there are few, if any, opportunities to mix and match particular policy options.
- 10 Options have been compared against criteria of transparency and certainty, cost effectiveness, flexibility and durability, proportionality and effectiveness. The preferred package of options is:
- *Regulatory framework:* Adopt Australian Model Law with adaptations as necessary to fit with the New Zealand context. Along with revisions, use Australian Model regulations and ACoPs to support implementation where practical
  - *Strategy, leadership and coordination - general:* Legislative backing for Minister of Labour to produce and regularly update and report on a workplace health and safety strategy, and legislative requirement for ACC's workplace injury prevention priorities and WHS strategy to take account of each other
  - *Strategy, leadership and coordination - injury prevention:* WorkSafe NZ and ACC required to develop a joint work programme of activities, largely drawing on ACC Work Account funds but with a contribution from HSE levy funding
  - *Major hazard facility regulation:* Regulation of facilities where very large quantities of hazardous substances are stored, used, or handled. These regulations will mainly apply to facilities in the chemical and downstream petroleum sectors
  - *Hazardous substances:* 'Transfer' regulation of hazardous substances in workplaces to WHS legislative regime and make operational and legislative improvements to HSNO. HSNO regime continues to regulate hazardous substances that affect the environment; and the generally safe use of hazardous substances that affect human health and safety. WHS legislation regulates hazardous substances affecting human health and safety where use exceeds thresholds (quantity or classification) for generally safe use
  - *Worker participation:* Adopt Australian Model Law approach but with changes - e.g. omitting workplace entry permits, mandatory issue resolution process and designated work groups
  - *Financial incentive programmes:* Increase flexibility in Accident Compensation Act with respect to incentive programmes by replacing prescription in the Act with principles, develop re-vamped Safety Star Rating scheme; and review role of existing incentive programmes
- 11 Impacts of the package of changes will be felt by:

- *The Government:* Government will face additional costs to support the transition to the new system, and on-going costs such as greater monitoring and enforcement. Some of these costs will be passed on to businesses through increases to the HSE levy. Adopting the Australian Model Law will significantly reduce the legislative and regulatory “design-burden” on New Zealand policy agencies with workplace health and safety responsibilities and allow government resources to be directed towards other critical elements of the system.
- *Business and employers:* Overall, there is likely to be a moderate increase in compliance costs for business due to the proposal. Some businesses will be affected more than others:
  - small businesses and self-employed workers will need to engage more actively with health and safety requirements than they perhaps did under the HSE Act
  - high-risk businesses will need to make an initial investment to ensure that they comply with the new regulations
  - operators of major hazard facilities (proposed and existing) are expected to incur additional costs associated with the preparation of safety cases.
- *Workers:* Workers will be required to take a reasonable degree of responsibility for their own health and safety and for the health and safety of those they work with. There will likely be a period of uncertainty as workers come to understand their new roles, rights and responsibilities.

## Background

- 12 The tragedy at the Pike River mine in November 2010 highlighted significant issues with New Zealand's workplace health and safety system.
- 13 In December 2010, the Government established a Royal Commission to report on what had happened at Pike River and to make recommendations on what was needed to prevent similar disasters in the future.
- 14 In June 2012, the Government established an Independent Taskforce to undertake a strategic review of whether New Zealand's workplace health and safety system remains fit for purpose and to recommend practical strategies for reducing the rate of workplace fatalities and serious injuries. The Taskforce was asked to propose a package of measures to achieve the Government's goal of a 25 percent reduction in workplace fatality and serious injury rates by 2020.
- 15 The Royal Commission and the Independent Taskforce submitted their reports to Government in October 2012 and April 2013 respectively. Both reports express serious concerns with the legislative and regulatory framework governing workplace health and safety in New Zealand.
- 16 The Government accepted the findings and 16 primary recommendations of the Royal Commission, and committed to implementing them by the end of 2013.
- 17 The Taskforce called for "an urgent, sustainable step-change in harm prevention activity and a dramatic improvement in outcomes".<sup>2</sup> Its recommendations encompass acute, chronic (including occupational disease) and catastrophic harm, and the management of hazardous substances and major hazard facilities.
- 18 The Taskforce recommended fundamental reform of the New Zealand workplace health and safety system. Key elements of the Taskforce's recommendations include the creation of a new Crown Agency (the Royal Commission also recommended this) and the adoption of the Australian Model Work Health and Safety Law (the Model Law), adapted to New Zealand conditions.
- 19 On 21 February 2013 the Minister of Labour announced that the Government would establish a new health and safety regulator in the form of a stand-alone Crown Agent, which is expected to be in place by December 2013. Government subsequently decided that the new regulator would be called WorkSafe New Zealand.
- 20 The workplace health and safety functions currently sitting within the Ministry of Business, Innovation and Employment (MBIE) will transfer to WorkSafe NZ and will sit alongside a suite of additional functions intended to improve strategic and operational coordination, increase the quality of monitoring and reporting, and enhance the effectiveness of the compliance system. Designated agencies will continue to undertake workplace health and safety regulatory functions in their specialised areas, with corollary changes from this package of measures.
- 21 This regulatory impact statement is heavily informed by the Taskforce's work and recommendations, and summarises the analysis of additional and supporting options for achieving the Government's target for workplace harm reduction.

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<sup>2</sup> Executive Report of the Independent Taskforce on Workplace Health and Safety. (2013) page 3

## **A. Status quo and problems**

- 22 The New Zealand workplace health and safety system has a number of components:
- the regulatory framework, including the Health and Safety in Employment Act 1992 (HSE Act) and associated regulations, approved codes of practice and guidance
  - the leadership, strategy and coordination system, including the health and safety regulator and other agencies
  - the regime for regulating major hazard facilities, such as mines and oil platforms
  - the system for regulating hazardous substances, including the interface between the general health and safety system and the Hazardous Substances and New Organisms Act 1996
  - mechanisms for ensuring occupational health is given sufficient prominence, including monitoring and interface with the health system
  - worker participation system, including the appointment, training and powers of health and safety representatives, and protections for workers who raise health and safety issues
  - incentives to comply with obligations and compliance tools, including differential levies to reflect performance and risk, and regulator and court powers.
- 23 This section describes these components, how they currently operate and the problems that have been identified with them.

### **The regulatory framework**

- 24 The HSE Act provides the regulatory basis for New Zealand's workplace health and safety system and follows a format commonly known as the Robens approach.
- 25 The Robens approach seeks to increase awareness, knowledge and competence in managing workplace health and safety, rather than rely on prescriptive requirements focusing on a narrow range of workplace hazards. Performance-based general duties ensure broad coverage of work and workplaces. Advantages of the all-encompassing nature of these general duties are that they do not quickly date, support innovation and provide flexibility. The duties are underpinned by industry or hazard-specific regulations, approved codes or guidance where further clarity is required.
- 26 The duties in the HSE Act are focussed on the employer/employee (or principal and contractor) relationship and duty-holders are required to take "all practicable steps" to "promote" the prevention of harm in the workplace.
- 27 Some industry and hazard-specific regulations have been made under the HSE Act, but these are not comprehensive when compared to other jurisdictions that adopted the Robens approach (e.g. United Kingdom and Australia). Some of the regulations have become outdated (e.g. they refer to dated technology or ways of working).
- 28 The HSE Act is supported by some Approved Codes of Practice (ACoPs), which give duty-holders clarity about how duties can be complied with in practice. Again, the number of ACoPs are limited compared to other jurisdictions and some are outdated.
- 29 The problem is that the HSE Act and its implementation has struggled to keep pace with changing nature of workplaces and working arrangements, and increasing complexity of supply.

- 30 This problem has a number of components described by the Taskforce, which have been previously raised by businesses and others.
- Duty-holders have difficulty knowing what to do in order to meet their duties or knowing whether they have done enough. This can result in duty-holders not doing enough or focusing on the wrong things.
  - The concept of taking “all practicable steps” is not well understood by the regulated community. It is seen as vague and difficult to apply.
  - The duties do not effectively accommodate the changes in working arrangements (such as an increase in contracting arrangements). This can lead to a focus on who has the HSE duty, rather than the safety of workers and others.
  - The HSE Act does not explicitly require positive action by directors and senior managers of duty-holders in relation to the health and safety. It effectively rewards directors who avoid involvement in matters affecting health and safety.
  - There are gaps in coverage in relation to some upstream duty-holders (designers, manufacturers, installers etc), who have a profound influence on the health and safety risks present in the workplace.
  - Some of the language in the HSE Act is seen as weak compared to other jurisdictions. For example the HSE Act seeks to “promote the prevention of harm” to people, whereas the object of the Australian Model Law is to “secure” the health and safety of workers.
  - The compliance and enforcement tools for the regulator are in some places not sufficiently flexible to enable the regulator to promote compliance.
  - The penalties in the HSE Act, and as applied in practice by the Courts, are not providing an incentive for businesses to comply with the Act.

### **Leadership, strategy and coordination**

- 31 Various government agencies are currently involved in health and safety. As well as MBIE’s main responsibility for administering and enforcing the HSE Act, the Civil Aviation Authority and Maritime NZ have been designated to administer the HSE Act within aircraft and ships. The NZ Transport Agency has responsibilities under the Land Transport Act and the Railways Act for road and rail transport compliance, and the NZ Police enforces regulations for commercial and heavy vehicles on public roads.
- 32 The creation of WorkSafe NZ is expected to improve leadership in workplace health and safety but problems remain:
- *There is a lack of alignment and coordination of workplace health and safety activities.* There is currently a workplace health and safety Strategy that maps activities. However, the current Strategy does not include clear targets that can be evaluated and does not have statutory recognition. There has been limited buy-in across the system to the priorities and the need for change.
  - *There is incomplete and poorly integrated intelligence on workplace health and safety, particularly in relation to occupational health.* This results in government, industry bodies, business, unions and workers having inadequate information to be able to compare prevention and management performance meaningfully over time and against their peers. This reduces the ability to identify weaknesses and develop appropriate interventions.
  - *There are capacity and capability shortcomings across the system.* Both the Royal Commission and the Taskforce identified concerns about capacity and capability



within various parts of the system, including within the regulator, health and safety professionals and firms or organisations. In addition, the health and safety training system was not seen as fit for purpose.

- *The Government is not using all its tools.* The Government has some levers available to it as an employer and a purchaser. These are not currently being used to incentivise better health and safety outcomes.

### **Oversight of major hazard facilities**

- 33 Major hazard facilities store and process large quantities of dangerous substances having the potential to cause a major accident. They typically include chemical manufacturing sites, oil refineries, gas processing plants, liquid petroleum gas facilities, and other manufacturing and storage depots. Major accidents at such facilities are broadly described as being high consequence and low frequency events having the potential to cause multiple injuries and fatalities to members of the workforce on-site and members of the public in surrounding areas, as well as substantial economic, property, and environmental damage.
- 34 Accidents at facilities in Australia and the UK in recent years have reinforced the need for effective regulatory oversight of major hazard facilities. For example, the explosion at the Esso Longford gas plant in Victoria on 25 September 1998, resulted in the loss of two lives and eight serious injuries, a fire that lasted for two days, and the gas supply to south-eastern Australia being cut off for almost three weeks. The cost to the Victorian economy was estimated to be more than \$1 billion.
- 35 Similarly, recent events in New Zealand (e.g. Tamahere coolstore explosion) and internationally (e.g. Texas fertiliser plant explosion) have also demonstrated a need to reconsider the approach to regulating facilities with large amounts of chemicals where a catastrophic event could occur (causing large scale harm to workers, the public and the environment).
- 36 Unlike most countries we compare ourselves with, there are no specific health and safety regulations relating to major hazard facilities in New Zealand. New Zealand does have a generic ACoP *Managing Hazards to Prevent Major Industrial Accidents*, published in 1994 and more detailed regulations relating to mining, pipelines and petroleum and geothermal activities.
- 37 This regime provides *insufficient oversight of major hazard facilities*. New petroleum regulations were made in May 2013 and the mining regulations are currently under review. However, the ACoP and other regulations are older and likely to be out of date. In addition to the age and generic nature of the relevant regulation, there is no register of major hazard facilities in New Zealand. The risk, likelihood and implications of a major accident in New Zealand is relatively unknown.

### **Hazardous substances management**

- 38 Hazardous substances in the workplace are regulated by two legislative regimes. The Hazardous Substances and New Organisms Act 1996 (HSNO) is concerned with human and environmental protection. It takes a substance centric and complete life-cycle approach to management of hazardous substances, regardless of where they are used. The HSE Act is concerned with the health and safety of persons at work and other persons in the vicinity of the workplace.

- 39 The Ministry for the Environment administers HSNO, including setting default controls on hazardous substances in regulations. The Environmental Protection Authority considers applications for individual hazardous substances, identifies their hazardous properties, sets controls as conditions to approval and produces guidance. MBIE administers the HSE Act and is responsible for both compliance and enforcement relating to the use of hazardous substances in the workplace (including compliance and enforcement of HSNO controls). Maritime NZ, the Civil Aviation Authority, NZ Transport Agency and the NZ Police enforce HSNO controls in their respective areas of responsibility.
- 40 The problem is that *the regime for managing hazardous substances is complex and performing poorly*. Evidence suggests that HSNO controls generally cover the right types of hazards and have the appropriate protections. However, there is significant non-compliance, with 75 percent of a sample of New Zealand businesses not fully complying with HSNO's key risk management controls. Low compliance is likely to be due to:
- the complexity of the HSNO regime, its slowness to adapt legislation to reflect changes in best practice, and difficulty for duty holders in understanding how it interfaces with the HSE regime
  - a lack of adequate education and guidance for end users
  - a general lack of capability at all levels (the regulator, firms, workers' representatives, workers)
  - low frequency of inspections and monitoring
  - a lack of adequate and graduated enforcement tools
  - a lack of targeted prevention activities and incentives.

### **Occupational health**

- 41 Like many countries' workplace health and safety systems, New Zealand's tends to prioritise the more visible safety-related issues over health-related issues. Infection or disease as a result of exposure to hazards in the work environment or as a result of the type of work undertaken cannot always be easily identified or attributed to the workplace.
- 42 These challenges lead to the problem of *inadequate focus on occupational health*. Key components of this problem have been identified in the Occupational Health Action Plan to 2013 and through submissions received by the Taskforce:
- lack of government leadership and resource given to occupational health
  - difficulties with reporting that lead to under-reporting and data issues
  - lack of effective monitoring of workplace exposure and enforcement by regulators
  - difficulties in accessing advice and guidance on occupational health issues with a resulting lack of knowledge about occupational health risks
  - lack of capacity in the occupational health field including in the health sector, the regulator and with businesses
  - complexities and inconsistencies in the legislation and because multiple agencies are concerned with workplace health and safety
  - low risk of prosecution as it is difficult to attribute disease to the workplace or long latency means the employer is no longer operating and cannot be held to account.

- 43 Solving this problem does not require particular legislative change, but in designing the regime, occupational health issues must be kept in front of mind.

### **Worker participation**

- 44 Worker participation in health and safety matters in the workplace has been associated with better health and safety performance. Under the HSE Act businesses with fewer than 30 employees are excluded from the requirement to have a worker participation system, unless one is requested by a worker or union. While there is a general obligation for employers to provide reasonable opportunities to participate, smaller businesses are not required to actively consult and involve workers. Even where participation systems are required, there are inadequate incentives to comply with obligations, due in large part to an ineffective compliance system.
- 45 The current regime leads to a problem that *worker participation in workplace health and safety is inadequate* so that businesses and workers miss out on the benefits of having workers fully involved in health and safety matters that directly affect them. This problem has the following key components:
- there is a focus on “employee” rather than “worker” participation, which does not encourage the establishment of efficient worker participation systems in multi-employer environments<sup>3</sup>
  - when compared with other jurisdictions, there is less support for health and safety representatives or explicit protections for workers who raise health and safety issues.<sup>4</sup>

### **Incentives to comply with requirements and compliance tools**

- 46 Under the current system, in most cases employers are substantially shielded from the direct costs of workplace harm. The universal coverage of worker compensation provided by the ACC scheme tends to make the costs of workplace harm opaque to the individual employer. With weaker individual financial incentives to invest in injury and disease prevention methods, these methods may be overlooked (intentionally or unintentionally), resulting in workplace injury and ill health.
- 47 The problem with the current regime is that it creates inadequate incentives to comply with obligations and improve their workplace health and safety.
- 48 There are opportunities to receive discounts on ACC levies through programmes such as the Accredited Employers Programme and experience rating. The experience rating adjusts levies based on a firm’s performance relative to similar firms. While the programme is likely to reduce claims it is not clear whether this is from a reduction in injury or an increase in claims management (e.g. employers compensating workers instead of them make a claim which would impact significantly on their premium). There is evidence to support the view that both are taking place.
- 49 The HSE levy is currently collected from businesses at a rate of 5 cents per \$100 of liable earnings. The HSE levy is very small (the average ACC levy is \$1.15 per \$100 of liable earnings) and not tied to risk.

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<sup>3</sup> For example, on offshore petroleum installations, where there may be several groups of employees, or contractors and employees. These workers report on a day-to-day basis to an installation manager, but their actual employers or principals are onshore.

<sup>4</sup> This problem is mitigated between employers and employees by the personal grievance provisions in the Employment Relations Act, which apply to employees who raise health and safety issues.

- 50 Penalties under the New Zealand system are significantly lower than in Australia and fines imposed in HSE Act prosecutions continue to be low.<sup>5</sup> Low fine levels undermine the general deterrent effect and send signals that offending or non-compliance in this area is less serious, or that workplace health and safety is not important. In comparison, the Australian Model Law provides for a new tiered approach to penalties, with higher maximum penalties than the HSE Act.
- 51 In addition, the HSE Act is missing some key regulatory tools that could provide additional incentives to comply with duties or to protect workers and others from future offending. These missing regulatory tools include:
- powers to accept enforceable undertakings from duty holders given in connection with a contravention or alleged contravention
  - the ability to issue infringement notices without the need to first give a warning
  - enabling judges to make adverse publicity orders at the time of conviction
  - provide for compliance or restoration orders that resolve the consequences of a failure not just the cause
  - providing for a court to order the payment of a penalty for breaches of the new Act representing the commercial gain or loss avoided through the contravention, based on provisions in other laws
  - providing for court-ordered management bans for repeat offenders, based on the management banning provisions in analogous New Zealand laws.
- 52 All but the last two tools are contained in the Australian Model Law. The last two would be adaptations for New Zealand conditions, as they would align regulatory tools in other analogous New Zealand laws, including the Fair Trading Act 1986, as proposed to be amended by the Consumer Law Reform Bill.

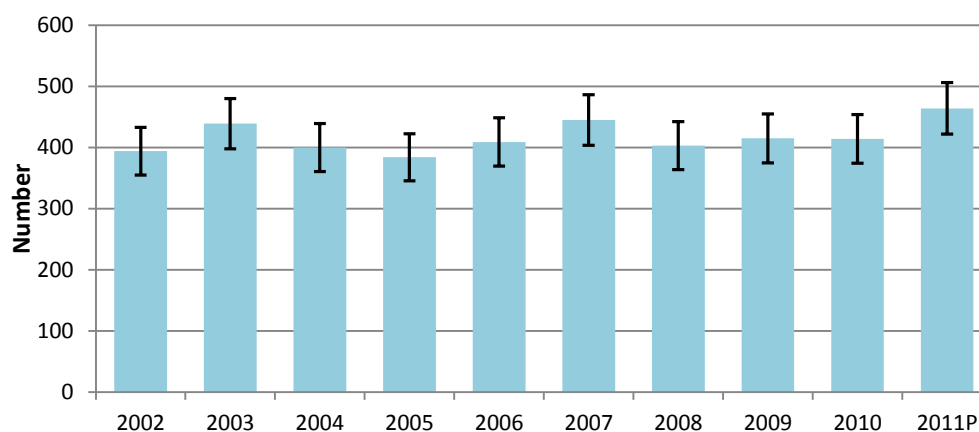
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<sup>5</sup> 55% of all fines imposed are less than \$30,000 (12% of the maximum set in the Act) and 92% are less than \$50,000 (20% of the maximum). The average (mean) value of the 2,438 fines meted out by the courts since 1992 is \$8,275.00.

## B. Effect of problems on workplace health and safety outcomes

- 53 New Zealand's rates of workplace harm are not declining rapidly enough to meet the Government's target of at least a 25 percent reduction by 2020. *Figure 1* shows that the number of serious work related injury has varied around a reasonably static mean over the past decade.

**Figure 1: Serious (fatal and non-fatal) work-related injury  
Number of injuries  
2002-11**



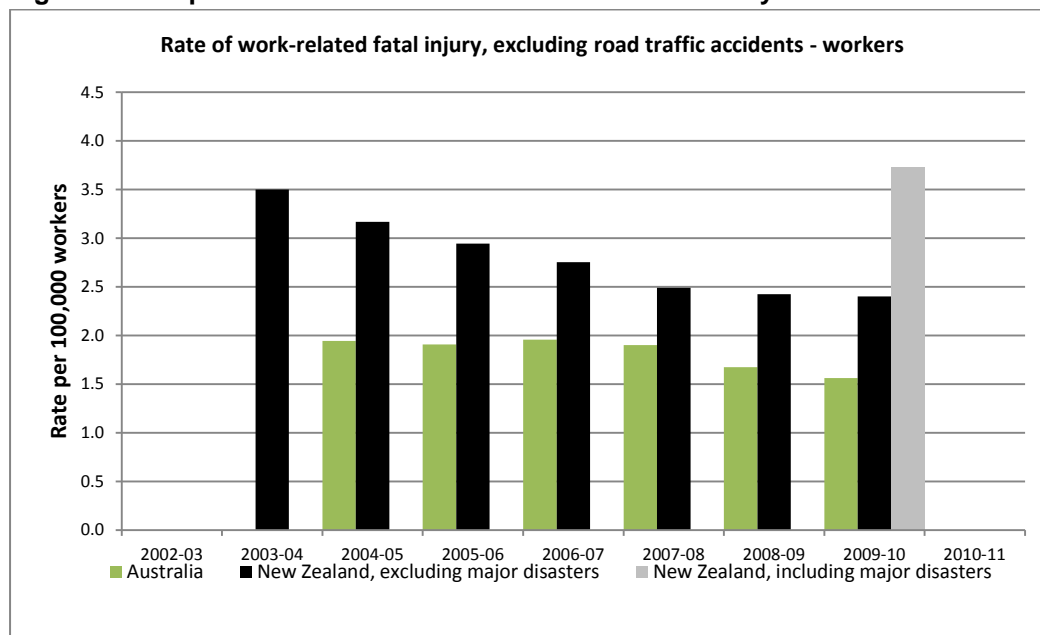
Source: Statistics New Zealand (2013) *Serious Injury Outcome Indicators: 2000-11*. Statistics New Zealand, Wellington.<sup>6</sup>

- 54 Overall, around 1 in 10 workers are harmed in accidents each year in New Zealand, with about 200,000 claims being made to ACC for costs associated with work-related injuries and illnesses. Of these, about 90 percent are medical fee expense claims, often involving only one or two visits to a health professional. The remainder are more substantive entitlement claims, reflecting a more serious degree of harm, for which compensation and support beyond medical fees are required.
- 55 Statistics New Zealand data for work-related serious injury outcome indicators relating to the 2002-2011 period indicate that around 75 workers are killed and 360 seriously injured each year. The latest (provisional) data indicate that 4.0 workers per 100,000 were killed in 2010 and 16.1 workers per 100,000 were seriously injured in 2011.

<sup>6</sup> The error bars take account of the random nature of injury and provide an indication of reliability. Data for 2011 are provisional. Because of the impact of privatisation of ACC data the indicators are presented from 2002 onwards.

- 56 Although international comparisons are complicated by different approaches to definition and data collection, New Zealand's rate of work-related fatal injury appears to be higher than Australia's. The gap was narrowing until 2008/09, when Australia's rates began to fall and New Zealand's rates plateaued. In 2009/10 (the latest year for which we have data) New Zealand rates were much higher than Australia. Even after removing fatalities from recent major disasters in New Zealand, Australia performs better than New Zealand.<sup>7</sup>
- 57 *Figure 2* compares Australia and New Zealand fatality rates with road traffic accidents removed. Removing road traffic accidents creates a more robust measure between countries as there is a considerable difference in how road fatalities are recorded.

**Figure 2: Comparison of New Zealand and Australian fatality rates**



- 58 Workplace injuries, diseases and death inflict an enormous emotional toll on the people affected, and significant financial costs on New Zealand economy. In a 2012 study commissioned by ACC on behalf of NZIPS the total social and economic cost of work-related injury and occupational disease was conservatively estimated to be \$3.5 billion a year (almost two percent of GDP).<sup>8</sup>
- 59 The \$3.5 billion per year number is based on the cost estimate contained in Appendix B of the report. It is higher than the cost estimate in the main body of the report (\$1 billion) because it is adjusted to better capture the costs of occupational disease.<sup>9</sup> The estimate is made up of \$1 billion of direct costs (such as employers' short-term production disturbance costs and human capital costs) and \$2.5 billion of indirect costs (such as emotional costs).

<sup>7</sup> 'Major disasters' refer to the 2010 Pike Rive Coal Mine Disaster and work-related fatal injury during the 2011 Canterbury earthquake. The comparison with Australia uses a three year moving average. As a result, the 2009/10 rate is an average for the period 2008/09 to 2010/11, a time period which includes these major disasters

<sup>8</sup> O'Dea D. and Wren J. (2012): New Zealand Estimates of the Total Social and Economic Cost of Injuries. For All Injuries, and the Six Priority Areas. For Each of Years 2007 to 2010, At June 2010 prices. Report to New Zealand Injury Prevention Strategy. Wellington, New Zealand.

<sup>9</sup> The main body of the report uses a methodology designed to compare injury costs across the NZIPS priority areas. However that approach is thought to underestimate the costs of occupational disease

- 60 There are other estimates of the economic and social cost of workplace harm, one of which put the cost as high as \$21 billion per annum.<sup>10</sup> These vast differences in quantification result from variations in how costs are measured and the assumptions used regarding the extent of indirect costs.
- 61 There is no reliable data for monitoring occupational illnesses and diseases in New Zealand, due partly to the difficulties in measurement and attribution arising from long latency periods and conditions that can have multiple causes. We do know, however, that in 2010 ACC accepted 24,000 claims for work-related disease, including 6,000 entitlement claims, representing more serious cases.
- 62 It is also possible to pinpoint particular issues with the effectiveness of the system for preventing harm to human health arising from hazardous substances. It has been estimated that acute exposures to chemicals result in 15 to 60 unintentional deaths and 1,200-2,500 unintentional hospitalisations every year (although note that a number of these are non-work related). The costs associated with these are estimated to be between \$45 and \$170 million.<sup>11</sup> In addition, it has been estimated that chronic occupational exposures to hazardous substances result in 438-675 deaths every year. The majority of these were attributed to cancer, with associated costs of between \$876 million and \$1.3 billion per annum.<sup>12</sup>

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<sup>10</sup> Access Economics (2006). *The Economic and Social Costs of Occupational Disease and Injury in New Zealand*. National Occupational Health and Safety Advisory Committee Technical Report 4. Wellington.

<sup>11</sup> Collins, (2005) Hazardous substances compliance and enforcement project: Risk landscape and compliance assessment. Multi-agency report

<sup>12</sup> Ibid.

## C. Analysis of options against objectives

- 63 The elements of the workplace health and safety system are interconnected. Consequently, the policy response in each aspect of the system has implications for the other aspects of the system. The policy proposals therefore need to make targeted changes to address specific problems, but must also work together as a package to achieve the Government's objective.
- 64 The tables in this section identify and analyse options for each element of the system against the objectives identified below. Each table analyses three options.
- 65 The first option in each is the status quo, which envisages continuation of improvements over the base line that are underway, including establishing WorkSafe NZ and filling out and updating the stock of regulations. The other two options reflect the Taskforce's recommendations (e.g. adopt and adapt the Australian Model Law) and an alternative that seeks to achieve the Taskforce's objective in a different way (e.g. revise the HSE Act).
- 66 A preferred option is identified in each case, which together make up a package of proposals. The tables identify the option recommended by the Taskforce where that differs from the preferred option.
- 67 The subsequent sections discuss the risks and system-wide impacts that are expected to flow from the preferred package of proposals.

### Objectives

- 68 The Government has set a target of reducing the incidence of harm in New Zealand workplaces so that by 2020 the annual rate of fatalities and serious injuries is 25 percent lower than it is today.
- 69 In order to achieve this target, a policy approach to addressing problems with New Zealand's workplace health and safety system will need to meet the following criteria:
- **Transparency and certainty:** the duties, obligations and rights of employers and workers are clearly set out and complied with, and the responsibilities and accountabilities of regulatory agencies are clear and understood by both agencies and duty holders
  - **Cost effectiveness:** compliance and transitional costs are minimised
  - **Flexibility and durability:** the regulatory regime is flexible and adaptive so that it can readily accommodate change and operate effectively in a dynamic context; and incentives are in place to encourage compliance with regulatory requirements
  - **Proportionality:** the degree of regulation and regulator's actions are commensurate with risk
  - **Effectiveness:** contribution to achievement of the Government's target.



## Regulatory framework options

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<p><b>Option One - Status Quo</b> - continue with existing regulatory framework while continuing to build capacity of WorkSafe NZ to deliver system improvements</p>	<ul style="list-style-type: none"> <li>Duty holders unclear of what their obligations are and what is required to comply.</li> <li>Uncertainty in the application to modern workplace relationships.</li> <li>Multiple pieces of legislation with different approaches causing confusion.</li> </ul>	<p>Is lowest cost for implementation option, though will not be getting most value from current spend given continuing system deficiencies.</p>	<ul style="list-style-type: none"> <li>Does not address current inflexibility of law in relation to modern workplace relationships.</li> <li>Defined groups of duty-holders in legislation will not improve durability.</li> </ul>	<ul style="list-style-type: none"> <li>There are areas where duty is not proportionate to risk of activity – e.g. upstream duty-holders who have ability to influence health and safety outcomes.</li> <li>Penalties are not proportionate.</li> </ul>	<p>Will not help address continuing low performance of system in terms of health and safety outcomes.</p>	<p>Does not effectively meet objectives for the system.</p>
<p><b>Option Two - targeted regulatory changes</b> - Make targeted revisions to the HSE Act in response to specific issues. This could draw on lessons learnt through recent reviews of legislation in peer countries. Along with revisions, develop regulations and ACoPs to support implementation</p>	<ul style="list-style-type: none"> <li>Changes to duties and scope could address some current uncertainties.</li> <li>Uncertainty and costs connected with a change to a new, untested and unique law.</li> <li>Focus on particular duty-holder relationships will still cause confusion as to who fits where.</li> <li>Regulations and ACoPs will increase clarity for businesses and workers.</li> </ul>	<ul style="list-style-type: none"> <li>Development and maintenance of legislation and regulations/ACOPS will incur some additional cost to government and business through levy increases and costs of learning new regime.</li> <li>Will impose costs on business and other participants as they seek advice and make changes to comply with the new law.</li> </ul>	<p>Changes would address some of the current inflexibility of the HSE Act, however, durability will be limited by specifically defining the duty holders.</p>	<p>Changes would address the current lack of proportionality in the Act.</p>	<p>Changes would make regulatory system more effective at targeting and addressing activity and risk that can lead to workplace harm.</p>	<p>Could meet objectives for the system, but carries implementation costs and risks that are mitigated under option three.</p>
<p><b>Option Three - adopt Australian Model Law (preferred option)</b> - Adopt Australian Model Law with adaptations as necessary to fit with the New Zealand context. Along with revisions, use Australian Model regulations and ACOPS to support implementation where practical</p>	<ul style="list-style-type: none"> <li>Changes to duties and scope can address current uncertainties.</li> <li>Uncertainty connected with change to new law mitigated by use of Australian precedents (although the Australian law is itself relatively new).</li> <li>Regulations and ACOPS will increase clarity for business and workers.</li> <li>There will still need to be a significant communications campaign to provide clarity for NZ duty holders - they will not necessarily know anything about the Australian law.</li> </ul>	<ul style="list-style-type: none"> <li>Development and maintenance of legislation and regulations/ACOPS will incur some additional cost to government and business through levy increases and costs of learning new regime.</li> <li>Use of Australian legislation/regulations/ACoPs will make costs to government and business lower overall than if unique approach taken.</li> </ul>	<p>Changes would address the current inflexibility of the HSE Act and make it more durable.</p>	<p>Changes would address the current lack of proportionality in the HSE Act.</p>	<p>Changes would make regulatory system more effective at targeting and addressing activity and risk that can lead to workplace harm.</p>	<p>Likely to result in highest positive net impact. Meets objectives of the system in most effective, cost-efficient way. While initial costs will be higher than under the other two options, the long-run costs will be lower.</p>

## Strategy, leadership and coordination options - general

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<p><b>Option one - Status Quo</b> - Unclear leadership, limited strategy with no mandate, lack of focussed and coordinated activity, lack of capability in workforce, incomplete information on performance of system</p>	<ul style="list-style-type: none"> <li>System is opaque, no consistency of priorities, compliance and enforcement, decision-making not based on consistent or quality data.</li> <li>System creates uncertainty for businesses and workers.</li> </ul>	<p>Limited ability to assess whether spend on health and safety by government and businesses is effective. Lack of information/data on performance affects the efficiency of spend.</p>	<ul style="list-style-type: none"> <li>Lack of regulatory or other mandate for system-wide activity provides high flexibility.</li> <li>Durability of system is affected by inability to properly target and understand its effectiveness.</li> </ul>	<ul style="list-style-type: none"> <li>Lack of coherence within the system has potential to lead to compliance and enforcement outcomes that are not proportionate – there is no system to give assurance of proportionality.</li> <li>Lack of quality data affects ability to monitor for proportionate outcomes.</li> </ul>	<p>Is unlikely to address continuing low performance of system in terms of health and safety outcomes.</p>	<p>Does not effectively meet objectives for the system.</p>
<p><b>Option two - system wide changes</b> - Clear leadership role for WorkSafe NZ, development and implementation of sector-wide strategy with mechanisms for coordination with key regulatory agencies. Better coordination of higher-quality data, establishment of a workforce development strategy.</p>	<ul style="list-style-type: none"> <li>Provides clarity of priorities for areas of focus, compliance and enforcement across the sector.</li> <li>Provides greater clarity about performance of system and certainty about effectiveness of interventions.</li> </ul>	<ul style="list-style-type: none"> <li>Requires greater role for regulator, with associated cost to businesses (through levy increases).</li> <li>The regulator, businesses, workers and the government are better placed to measure effectiveness of interventions, resulting in efficiencies in health and safety spend.</li> </ul>	<ul style="list-style-type: none"> <li>Less flexibility than under status quo – though strategies and coordination mechanisms can be revised as needed.</li> <li>A clearer and more focussed system with measurable impacts is likely to be more durable.</li> </ul>	<p>As system will be more clearly and consistently focussed on measurable priority areas, regulatory actions more likely to be proportionate than under status quo.</p>	<ul style="list-style-type: none"> <li>The overall strategy for the system will be clearer, with consistent goals for all parties with control over workplace outcomes.</li> <li>Interventions will be better able to be measured.</li> <li>The health and safety workforce will be able to build capability to support desired system outcomes.</li> </ul>	<p>Could effectively meet objectives for the system.</p>
<p><b>Option three - system wide changes as with option two, with minor regulatory changes (preferred option)</b> - Legislative backing for Minister of Labour to produce and regularly update and report on workplace health and safety strategy</p> <p>Legislative requirement for ACC's workplace injury prevention priorities and WHS strategy must take account of each other</p>	<ul style="list-style-type: none"> <li>Provides clarity of priorities for areas of focus, compliance and enforcement across the sector.</li> <li>Provides greater clarity about performance of system and certainty about effectiveness of interventions.</li> <li>Legislative backing for the Strategy gives greater certainty that it will be clearly followed by regulatory agencies.</li> </ul>	<ul style="list-style-type: none"> <li>Requires greater role for regulator, with associated cost to businesses (through levy increases).</li> <li>The regulator, businesses, workers and the Government are better placed to measure effectiveness of interventions, resulting in efficiencies in health and safety spend.</li> </ul>	<ul style="list-style-type: none"> <li>Less flexibility than under status quo – though strategies and coordination mechanisms can be revised as needed. Legislative backing for strategy could make it less flexible.</li> <li>A clearer and more focussed system with measurable impacts is likely to be more durable.</li> </ul>	<p>As system will be more clearly and consistently focussed on measurable priority areas, regulatory actions more likely to be proportionate than under status quo.</p>	<ul style="list-style-type: none"> <li>The overall strategy for the system will be clearer, with consistent goals for all parties with control over workplace outcomes. Legislative backing for the Strategy gives greater certainty that it will be effectively developed and implemented.</li> <li>Interventions will be better able to be measured.</li> <li>The health and safety workforce will be able to build capability to support desired system outcomes.</li> </ul>	<p>Could effectively meet objectives for the system.</p>

## Strategy, leadership and coordination options - injury prevention

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<p><b>Option 1 - Status Quo</b>  <b>WorkSafe NZ and ACC cooperate at operational level to align their workplace injury prevention (IP) activities</b></p>	<p>Mixed messages to businesses about IP in the workplace.</p>	<p>Risk of duplication of effort, wasting resources.</p>	<ul style="list-style-type: none"> <li>Flexible – each agency can invest in IP as they see fit.</li> <li>Durability threatened by risk of misalignment and inefficiency.</li> </ul>	<p>In the past, efforts to cooperate at the operational level have not been sufficient to achieve a coherent package of workplace IP activities.</p>	<ul style="list-style-type: none"> <li>This approach has not proved to be effective in the past.</li> <li>Current IP investment has tended to focus on the lower risk/high volume areas that impact heavily on the levy account, rather areas of high risk where serious harm is likely to result.</li> </ul>	<p>Not effective; in the past has led to disjointed approach; not recommended.</p>
<p><b>Option two - ACC's funding for workplace IP activities would move to WorkSafe NZ, which would lead the delivery of workplace IP activities (Taskforce option)</b></p>	<ul style="list-style-type: none"> <li>Clear in that there would be only one agency delivering workplace IP activities, but could lead to disjoints with wider IP strategies and approaches (e.g. in cross-cutting areas like falls prevention).</li> <li>ACC Levy-payers would lack visibility on how their money is being spent.</li> </ul>	<p>Removes ACC's ability to influence cost drivers in the Work Account, which could lead to preventable increases in Work Account costs.</p>	<ul style="list-style-type: none"> <li>ACC does not have levers to influence cost drivers in the Work Account – this is not sustainable.</li> <li>Does not allow for situations where ACC is the best agency to deliver an IP activity - lack of flexibility for WorkSafe NZ and ACC to play to their strengths.</li> </ul>	<p>Restricts ACC's ability to carry out its statutory responsibilities.</p>	<ul style="list-style-type: none"> <li>Giving WorkSafe NZ access to a new source of funding for workplace IP activities would allow WorkSafe NZ to increase its activity while ensuring better connections between IP, enforcement and education.</li> <li>Creates risks from substantially reducing ACC's role in both delivery and influence over how money is spent.</li> <li>Does not promote better coherence and cooperation.</li> </ul>	<p>Not as effective as it could be and poses risks.</p>
<p><b>Option three - WorkSafe NZ and ACC required to develop a joint work programme of IP activities, largely drawing on ACC Work Account funds but with a contribution from HSE levy funding (preferred option)</b></p>	<ul style="list-style-type: none"> <li>Requirement to develop a joint work programme including all workplace IP activities carried out individually or jointly by the two agencies increases transparency of IP activities.</li> <li>Three-yearly timeframe promotes certainty.</li> <li>Increased cooperation promotes consistency of messages to business.</li> <li>Joint branding of activities allows levy-payers to see how Work Account funds are being used.</li> </ul>	<ul style="list-style-type: none"> <li>Could involve some duplication of administrative function in the two agencies but reduces risk of programmes that duplicate one another.</li> <li>Requirement for business cases and evaluations promotes cost-effectiveness.</li> <li>Risk of high transaction costs if agreement difficult to achieve, which could be offset by a multi-tiered delivery model that was both transparent and met the needs of both agencies.</li> </ul>	<ul style="list-style-type: none"> <li>Allows agencies to play to their strengths.</li> <li>Permits shift in delivery and funding over time (e.g. over time WorkSafe NZ likely to take on a bigger role in workplace IP but this can happen gradually) as appropriate to circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>High-level requirements in legislation to develop a work programme, but the detail of how this is done is left to the Boards of WorkSafe NZ and ACC - appropriate to the Crown Agent status of the two agencies.</li> <li>Ministers can influence the agencies through the usual accountability processes.</li> </ul>	<ul style="list-style-type: none"> <li>The most effective option.</li> <li>Promotes greater coherence of workplace IP activities through requirement that WHS Strategy and ACC's IP priorities must align and requirement that agencies cooperate to jointly agree a work programme.</li> <li>Introduces more rigour into selection and evaluation of IP activities.</li> </ul>	<p>The most effective option; promotes a cooperative approach and good use of resources – recommended.</p>

## Major hazard facility regulation options

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<p><b>Option one - status quo</b> - Regulations set requirements for mining, upstream petroleum and geothermal sectors only</p>	<ul style="list-style-type: none"> <li>Does not provide certainty for operators of facilities in the chemical and downstream petroleum sectors (or other facilities where very large quantities of hazardous substances are used) in relation to the effective management of hazards having the potential to cause a major accident.</li> <li>Does not provide workers or others in the vicinity of these 'major hazard facilities' with assurance that the risks are being adequately controlled by operators.</li> </ul>	<ul style="list-style-type: none"> <li>Lack of clarity about role of regulator in sectors not covered by regulations means lower attention to those areas and lower cost to government and levy-payers.</li> <li>Lack of clarity about what is required could be leading to over-investment in harm prevention by some within high hazard sector.</li> </ul>	<ul style="list-style-type: none"> <li>The primary legislation sets general duties that provide facility operators with flexibility in meeting their high-level obligations.</li> <li>The primary legislation does not set more targeted obligations on facility operators to ensure the effective management of hazards having the potential to cause a major accident.</li> <li>Regulatory system that does not have effective mechanisms for identifying and regulating major hazard facilities and is unlikely to be durable over time, particularly if a major accident occurs.</li> </ul>	<ul style="list-style-type: none"> <li>Major hazard facilities should be subject to more stringent requirements than the majority of workplaces with no major accident potential.</li> <li>Reliance on the general duties in the primary legislation is not appropriate.</li> <li>Operators in other high-hazard sectors (e.g. upstream petroleum) are already subject to more stringent requirements set out in sector-specific regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Current system is likely to be effective for upstream petroleum drilling rigs and production facilities, and potentially for mining and geothermal operations (noting that revised mining regulations are likely to be implemented by the end of 2013).</li> <li>System is unlikely to be effective in addressing risk associated with major hazard facilities outside of the upstream petroleum, mining and geothermal sectors.</li> </ul>	<ul style="list-style-type: none"> <li>The status quo does not meet the objectives for the system – maintaining this approach does not give assurance that the system effectively monitors and addresses risks in high-hazard sectors outside of the three that are currently subject to specific regulation.</li> </ul>
<p><b>Option two – extend sector specific regulation to other high-hazard sectors</b>, i.e. chemical and downstream petroleum sectors</p>	<ul style="list-style-type: none"> <li>Will provide certainty for operators of facilities in the chemical and downstream petroleum sectors (but not outside these sectors) in relation to the effective management of hazards having the potential to cause a major accident.</li> <li>Will provide workers and others in the vicinity of these 'major hazard facilities' with assurance that the risks are being adequately controlled by operators.</li> </ul>	<ul style="list-style-type: none"> <li>Development of regulations for all sectors will be an increased cost to the Government, to the regulator (and businesses through an increased levy) and to sectors which would need to be involved.</li> <li>Resulting clarity of requirements could lead to more optimum levels of investment in health and safety by businesses.</li> </ul>	<ul style="list-style-type: none"> <li>Developing further sector-specific regulations will provide less flexibility than the status quo but will improve the durability of the regulatory system.</li> <li>Sector-specific regulations have limited durability – they become outdated as work practices change and may need to be expanded as new sectors develop.</li> </ul>	<ul style="list-style-type: none"> <li>Would be more proportionate than status quo – regulations will be developed in consistent way reflecting nature of risks in different sectors.</li> <li>Over time could become less proportionate as work practices and sectors evolve.</li> </ul>	<ul style="list-style-type: none"> <li>System likely to be generally effective, though it will not capture all major hazard facilities and long-term effectiveness will require continued investment in the development and evolution of sector-based regulations.</li> <li>Effectiveness of the option is also dependent on the focus and resourcing of the regulator to be active with participants in the sector.</li> </ul>	<ul style="list-style-type: none"> <li>Could partially meet the objectives for the system, particularly in short-medium term – less likely to be durable than option 3.</li> </ul>
<p><b>Option three – regulation of facilities where very large quantities of hazardous substances are stored, used, or handled (Major Hazard Facilities) (preferred option)</b> – These regulations will mainly apply to facilities in the chemical and downstream petroleum sectors</p>	<ul style="list-style-type: none"> <li>Will provide certainty for operators of facilities in the chemical and downstream petroleum sectors (or other facilities where very large quantities of hazardous substances are used) in relation to the effective management of hazards having the potential to cause a major accident.</li> <li>Will provide the public or workers (in the vicinity of these 'major hazard facilities') with assurance that the risks associated with these facilities are being adequately controlled by operators.</li> </ul>	<ul style="list-style-type: none"> <li>Development of regulations for more sectors, and generic high-hazard facilities, will be an increased cost to the Government, to the regulator (and businesses through an increased levy) and to sectors which would need to be involved.</li> <li>Resulting clarity of requirements could lead to more optimum levels of investment in health and safety by businesses.</li> </ul>	<ul style="list-style-type: none"> <li>Major hazard facility regulations will provide less flexibility than the status quo, but will provide more flexibility than sector-specific regulation.</li> <li>The generic provisions based on risk/potential harm will ensure the high-hazard regulatory system is more durable over time.</li> </ul>	<ul style="list-style-type: none"> <li>Would be more proportionate than status quo – regulations will be developed in consistent way reflecting nature of risks arising from major hazard facilities.</li> <li>Over time sector-specific regulations could become less proportionate as work practices evolve.</li> </ul>	<ul style="list-style-type: none"> <li>System likely to be effective in addressing risk in all facilities/workplaces having the potential to cause a major accident. Long-term effectiveness will still require continued investment in the development and evolution of the sector-based regulations.</li> <li>Effectiveness of the option is also dependent on the focus and resourcing of the regulator to be active with participants in the sector.</li> </ul>	<ul style="list-style-type: none"> <li>Likely to meet the objectives for the system – captures facilities that could not be captured through sector-specific regulation and is more durable than option 2.</li> </ul>

## Hazardous substances options

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<p><b>Option one - Status Quo (i.e. same institutional and legislative settings) plus current work on HSNO-Workplace operational improvements and HSNO regulatory reform (e.g. simplify controls) -</b></p> <p>HSNO controls set by MFE and EPA, enforced in workplaces by WorkSafe NZ.</p> <p>HSE Act duties also apply.</p> <p>Rely on current efforts to improve HSNO in workplaces.</p>	<ul style="list-style-type: none"> <li>Controls and requirements are unclear for businesses – rules are complex and difficult to comply with. Some improvements would be gained by simplifying existing HSNO controls, but these will be limited, and take 2-5 years to achieve.</li> <li>Retains overlap and complexity arising from the two overlapping and differently focused regulatory regimes.</li> </ul>	<ul style="list-style-type: none"> <li>Less government and regulator resource required than for other options, but additional funding would still be required to address historical under-resourcing of this activity.</li> <li>Lack of certainty about requirements could be leading to business over or under investment in management of hazardous substances in the workplace.</li> </ul>	<ul style="list-style-type: none"> <li>Current controls and guidance incomplete and not integrated for workplaces - this potentially gives a reasonable degree of flexibility to business in some areas about how they will comply with requirements.</li> <li>The lack of clarity and certainty about how to comply with current requirements means they are unlikely to be durable over time.</li> </ul>	<p>Complexity of current system means all businesses require same investment to comply – for smaller businesses with moderate levels of hazardous substances, this compliance cost may be disproportionate to the benefits of the regulation.</p>	<ul style="list-style-type: none"> <li>High levels of non-compliance with HSNO controls in workplaces: demonstrating lack of effectiveness, which may lead to harm from exposure to hazardous substances.</li> <li>Inhibits integration of management of hazardous substances and health and safety (by both business and the regulator).</li> </ul>	<ul style="list-style-type: none"> <li>The status quo is not achieving the objectives for the system, even with planned operational and HSNO legislative improvements.</li> </ul>
<p><b>Option two - 'Transfer' regulation of hazardous substances in workplaces to WHS legislative regime (preferred option) and make operational and legislative improvements to HSNO -</b></p> <p>HSNO regime continues to regulate:</p> <ul style="list-style-type: none"> <li>hazardous substances that affect the environment; and</li> <li>the generally safe use of hazardous substances that affect human health and safety.</li> </ul> <p>WHS legislation regulates hazardous substances affecting human health and safety <i>where use exceeds thresholds (quantity or classification) for generally safe use</i></p>	<ul style="list-style-type: none"> <li>Provides greater certainty and clarity for users.</li> <li>Businesses and workers would have one set of guidance and requirements for their workplace.</li> <li>Significant work still required to simplify and clarify hazardous substances controls.</li> <li>Effective enforcement of HSNO environmental controls remain an issue to be resolved.</li> </ul>	<p>Minimises duplication and gaps by:</p> <ul style="list-style-type: none"> <li>keeping the overarching responsibilities for hazardous substances with EPA, the agency most capable of identifying hazardous properties and determining the controls for their general use</li> <li>giving responsibility for determining the appropriate management of the risks associated with workplace hazardous substances to WorkSafe NZ, the agency most capable of implementing workplace health and safety and already responsible for enforcing hazardous substances in the workplace.</li> </ul>	<ul style="list-style-type: none"> <li>WorkSafe NZ is more closely involved setting as well as enforcing regulation, which is likely to be more durable than the current split.</li> <li>Regulations, ACoPs and guidance focus more on outcomes, with technical detail minimised.</li> </ul>	<ul style="list-style-type: none"> <li>Ensures the degree of regulation and regulator's actions are commensurate with risk.</li> <li>Regulations, ACoPs and guidance 'workplace centric' (i.e., appropriate to particular workplace circumstance).</li> <li>Businesses investment to comply should become more proportionate to level of risk in their workplace.</li> </ul>	<ul style="list-style-type: none"> <li>Ensures a stronger alignment and co-ordination of workplace health and safety activities, making it easier for WorkSafe NZ to integrate hazardous substances into its functions (e.g., guidance, compliance strategies, preventative measures).</li> <li>Employers better incentivised to comply with legal requirements (through incentive schemes and better enforcement of the total and integrated workplace health and safety regime).</li> </ul>	<p>Most likely to achieve objectives, but significant work required to improve the status quo.</p>
<p><b>Option three - Wider transfer of hazardous substances functions to WHS legislation -</b></p> <p>Transfer broader range of hazardous substance functions to WHS regulatory regime – could involve locating all regulatory oversight of hazardous substances (workplace, non-workplace and environmental) under WorkSafe NZ</p>	<p>Single regulator and single source of guidance could provide greater certainty for users about requirements and deal with one regulator.</p>	<p>Single regulator may be more cost effective.</p>	<p>Option would be flexible and durable, but WorkSafe NZ would have functions relating to environmental protection and domestic use of chemicals, which is outside core competence and could lead to a lack of focus.</p>	<p>As WorkSafe NZ will be concerned with workplace risk, its requirements may not be suitable or proportionate to risk of hazardous substances outside of workplaces.</p>	<p>WorkSafe New Zealand would have functions outside of its core responsibility, which could dilute its focus and effectiveness in reducing workplace harm.</p>	<p>Contrary to recommendation of Pike River Royal Commission and the Taskforce that a new Crown Agent <i>focusing solely on workplace health and safety</i> should be established to improve New Zealand's poor performance in this area and puts new regulator's ability to improve performance at risk.</p>

## Worker participation options

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<b>Option one - status quo - legislation requires system for workplaces with over 30 employees</b>	<ul style="list-style-type: none"> <li>Uncertainty about some expectations, for example health and safety representatives' powers are subject to negotiation with employers.</li> <li>Lack of supporting guidance.</li> </ul>	A lack of guidance and support for businesses on how to consult and involve their workers means it is harder than it needs to be for businesses to comply with the law.	The HSE Act permits some variety in employee participation systems, but does not envisage systems involving non-employees.	<ul style="list-style-type: none"> <li>The HSE Act does not encourage optimum worker participation. More is needed to encourage businesses to develop and maintain effective worker participation systems.</li> <li>The 30-employee threshold is an arbitrary cut-off that excludes the majority of New Zealand businesses.</li> </ul>	The HSE Act does not: <ul style="list-style-type: none"> <li>put strong obligations on employers to consult and involve workers</li> <li>cover non-employees</li> <li>give health and safety representatives all the necessary powers and functions</li> <li>give workers sufficient protection from discrimination for raising HSE issues, leading to concerns not being addressed.</li> </ul>	Change is needed if we are to achieve a significant improvement in health and safety in New Zealand workplaces.
<b>Option two – adopt Australian Model Law approach but with changes - e.g. omitting workplace entry permits, mandatory issue resolution process and designated work groups (preferred option)</b>	<ul style="list-style-type: none"> <li>Greater clarity in law about expectations e.g. powers and functions of health and safety representatives are more explicit than in existing law.</li> <li>Law backed up with regulations, ACOPs and guidance to give more support to businesses of different sizes and types.</li> </ul>	<ul style="list-style-type: none"> <li>In some respects compliance costs will increase compared to the status quo – for example firms will be expected to pay for training for health and safety representatives if requested by the representative.</li> <li>Better guidance and support for firms will help them comply with the law more easily.</li> </ul>	<ul style="list-style-type: none"> <li>This option allows for worker participation systems that suit the needs of different firms, tempered with protection of workers' right to influence how they are involved in health and safety issues at their workplace – e.g. if the workers want to have a health and safety representative, the PCBU must allow and support this.</li> <li>This option is organised around PCBUs and workers, allowing for systems that involve non-employees – including in multi-employer workplaces.</li> </ul>	<ul style="list-style-type: none"> <li>This option increases the expectations on PCBUs to consult and involve their workers.</li> <li>This is appropriate given that worker participation is an important component of an effective workplace health and safety system.</li> </ul>	<ul style="list-style-type: none"> <li>This option requires all firms to consult and involve their workers and will be more explicit about how this can be done – while leaving some flexibility for businesses to develop systems appropriate to them.</li> <li>Increased powers and functions for health and safety representatives will boost their effectiveness.</li> <li>Greater protections for workers who raise health and safety concerns will encourage them to raise health and safety issues so that they can be resolved.</li> </ul>	<ul style="list-style-type: none"> <li>This option strikes the right balance between appropriately increasing obligations on firms without burdening them with compliance costs.</li> <li>It omits elements judged not suitable for the New Zealand context such as a system of workplace entry permits.</li> </ul>
<b>Option Three – adopt Australian Model Law approach in full</b>	Some procedural aspects of the Australian Model Law (e.g. designated work groups) are too detailed for New Zealand conditions and distract from the core obligations to consult and involve workers.	<ul style="list-style-type: none"> <li>Increased compliance costs including having to negotiate and agree designated work groups and a requirement to have a formal issue resolution procedure.</li> <li>Better guidance and support for firms will help them comply with the law.</li> </ul>	Additional prescription on elements such as designated work groups.	Would increase the expectations on PCBUs to consult and involve their workers but also would impose additional costs.	<ul style="list-style-type: none"> <li>Would be effective in increasing the obligations on PCBUs to consult and involve their workers, but goes too far in prescriptive detail.</li> <li>Existing powers of union access under the Employment Relations Act would be more effective in a New Zealand context.</li> </ul>	Would increase obligations on PCBUs to consult and involve their workers and would ensure consistency with Australian Model Law approach, but includes elements not suitable for the New Zealand context that impose additional costs.



## Financial incentives programme options <sup>13</sup>

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
<p><b>Option one - Status Quo – ACC's existing incentive programmes continue</b> - Safety Star Rating programme developed within existing legislative parameters (no change to Accident Compensation Act)</p>	<ul style="list-style-type: none"> <li>Businesses' feedback about the design of the Safety Star Rating scheme is not addressed, reducing the credibility of the scheme.</li> <li>More likely that a business will be judged to have met all the necessary requirements under an ACC incentive programme but later be found to be deficient by the health and safety regulator – confusing for business.</li> </ul>	<p>Safety Star Rating scheme has design flaws that threaten take-up by businesses, meaning resources put into the scheme are wasted.</p>	<ul style="list-style-type: none"> <li>Prescriptive legislation limits flexibility.</li> <li>Programmes cannot easily be modified to respond to changing circumstances.</li> </ul>	<p>Legislation is overly prescriptive.</p>	<ul style="list-style-type: none"> <li>Incentive programmes, including Safety Star Rating, do not measure all the things that matter in influencing a business's health and safety.</li> <li>Safety Star Rating scheme not robust and unlikely to succeed.</li> </ul>	<ul style="list-style-type: none"> <li>Safety Star Rating does not respond to business concerns, risking a lack of credibility and meaning scheme is unlikely to succeed.</li> <li>Continuing mixed messages to business.</li> <li>Not recommended.</li> </ul>
<p><b>Option Two – Increase flexibility in AC Act with respect to incentive programmes by replacing prescription in the Act with principles</b> - develop re-vamped Safety Star Rating scheme; review role of existing incentive programmes (<b>preferred option</b>)</p>	<ul style="list-style-type: none"> <li>New Safety Star Rating scheme responds to feedback from businesses.</li> <li>Assessment of firm's health and safety gives a more complete picture, taking account of health and safety and ACC requirements and systems as well as outcomes.</li> </ul>	<p>New Safety Star Rating scheme requires significant design work by ACC and WorkSafe NZ, requiring additional resources, but the resulting product is likely to be more robust and credible with businesses.</p>	<ul style="list-style-type: none"> <li>Incentive programmes including a new Safety Star Rating scheme are able to base a levy discount on factors other than a firm's safety management practices – for example, return-to-work outcomes.</li> <li>Principles-based legislation allows flexibility to adapt incentive programmes in future to take account of emerging customer needs.</li> </ul>	<ul style="list-style-type: none"> <li>Principles-based legislation allows ACC and WorkSafe NZ flexibility to introduce and adapt incentive programmes but preserves checks and balances.</li> <li>A principles-based approach is appropriate because incentive programmes are voluntary – no employer is forced to participate and standard ACC cover remains available.</li> </ul>	<ul style="list-style-type: none"> <li>New Safety Star Rating scheme better incentivises good practices in businesses and is more robust.</li> <li>Better alignment between health and safety and ACC regimes.</li> <li>Role of existing programmes reviewed given the introduction of Safety Star Rating; if necessary discontinued or amended so that there is a sensible package of programmes.</li> </ul>	<p>Requires investment of resources but likely to result in significantly better outcomes: recommended.</p>

<sup>13</sup> Penalties and regulatory tools to promote compliance are part of the regulatory framework

## **D. Key risks of preferred package and mitigation strategy**

- 70 The package of proposals is intended to change behaviour throughout the system. It is predicted that increasing the profile of health and safety issues and sharing responsibility amongst a broader range of participants, together with better leadership and incentives and the other changes, will lead to better health and safety outcomes.
- 71 There is a risk of the predicted improvements falling short of the Government's 25 percent reduction target. This could arise if there is poor implementation or inadequate resourcing of the change. A key determinant of the success or failure of the package is whether business and the community are convinced that improving workplace health and safety makes good sense.
- 72 The Independent Taskforce envisaged that the new workplace health and safety law would be operational from mid-2014 and regulations made by the end of that year.
- 73 This is an extremely challenging timeframe and may ultimately prove to be unachievable. Hastily conceived and drafted legislation risks errors and increases the risk of unintended consequences or perverse outcomes such as inconsistency between the Australian Model Law and New Zealand's legislative framework.
- 74 If the new laws diverge significantly from the Australian model we could lose both the experience working under the HSE Act and may also not be able to rely on the Australian experience. Adopting and adapting the Australian law will also result in a need to continue to keep abreast of changes to the model in Australia and decisions of the Australian courts. The Australian Model Law is itself new and will need to be reviewed and adjusted, but it is based on concepts that existed in Australian states prior to harmonisation.
- 75 Moving too quickly risks creating unnecessary compliance costs and uncertainty for business and other duty holders as they scramble to keep up with changes to their obligations. Uncertainty could give rise to concerns that the new regime goes too far.
- 76 The process will also require significant engagement from businesses, other agencies and the public. This could lead to consultation fatigue and loss of support for reform.
- 77 The speed of change could mean that the necessary supporting regulations, ACoPs and guidance material are not in place at the time of transition to new system. Similarly, the regulators may not have sufficient time or resource to put the necessary capacity and capability in place to ensure effective implementation. A poorly timed programme of implementation would have significant implications for the effectiveness of the change programme, for instance:
- increasing the number of inspectors and emphasising enforcement activities will be costly and ineffective (i.e. it will generate resistance) unless it is complemented by the timely provision of user-friendly guidance material and the use of new enforcement tools that provide for graduated sanctions
  - investment in the development of guidance, ACoPs and regulations will be slow to have an effect if they are out of step with education, training programmes, monitoring, reporting and enforcement programmes.



- 78 Benefits from improvements to the integration and cooperation between regulators and regimes could be lost if implementation is not well planned and phased. Poor implementation could also negatively affect business-as-usual for the regulators during the transition period.
- 79 The key to mitigating these risks is the implementation programme. Under that programme, the Government proposes to:
- seek to bring duty-holders and the public along with the reforms by being open, prepared to listen and willing to spend time to work through the issues
  - consider publicly releasing an ‘exposure draft’ of a Health and Safety at Work Bill in October 2013 (timeframes permitting) to generate feedback that would help refine the proposals and the wording of the Bill prior to the Parliamentary process
  - introduce the Bill around December 2013 and enable appropriate consideration by a select committee and Parliament (which could result in enactment later in 2014)
  - ensure the Health and Safety at Work Bill only diverges from the Australian Model Law where a change is consciously required for New Zealand conditions
  - develop and maintain a close working relationship with Australian regulators and policymakers to ensure the regime keeps abreast with developments in Australia
  - ensure that the Bill is accompanied by explanatory material that explains the scope of the duties and its impacts
  - develop draft regulations, ACoPs and guidance in parallel to the Bill, making maximum use of the best New Zealand examples, as well as the Australian model regulations, ACoPs and guidance
  - provide an implementation window that allows time after enactment to ensure that the final details of the systems, processes, communications and related material can be confirmed to align to all aspects of the new Act.
  - expedite the development of a communications, training and education programme and ensure that it is in place in time to support implementation of the changes
  - integrate this programme with the work of the establishment team for WorkSafe NZ to capitalise on the momentum created by the ‘lifting our game’ programme
  - phase the development of an overarching strategy and the transfer of functions to WorkSafe NZ so that the initial emphasis is on building the capacity and capability of the new regulator and allowing it to focus on ‘getting up to speed’.

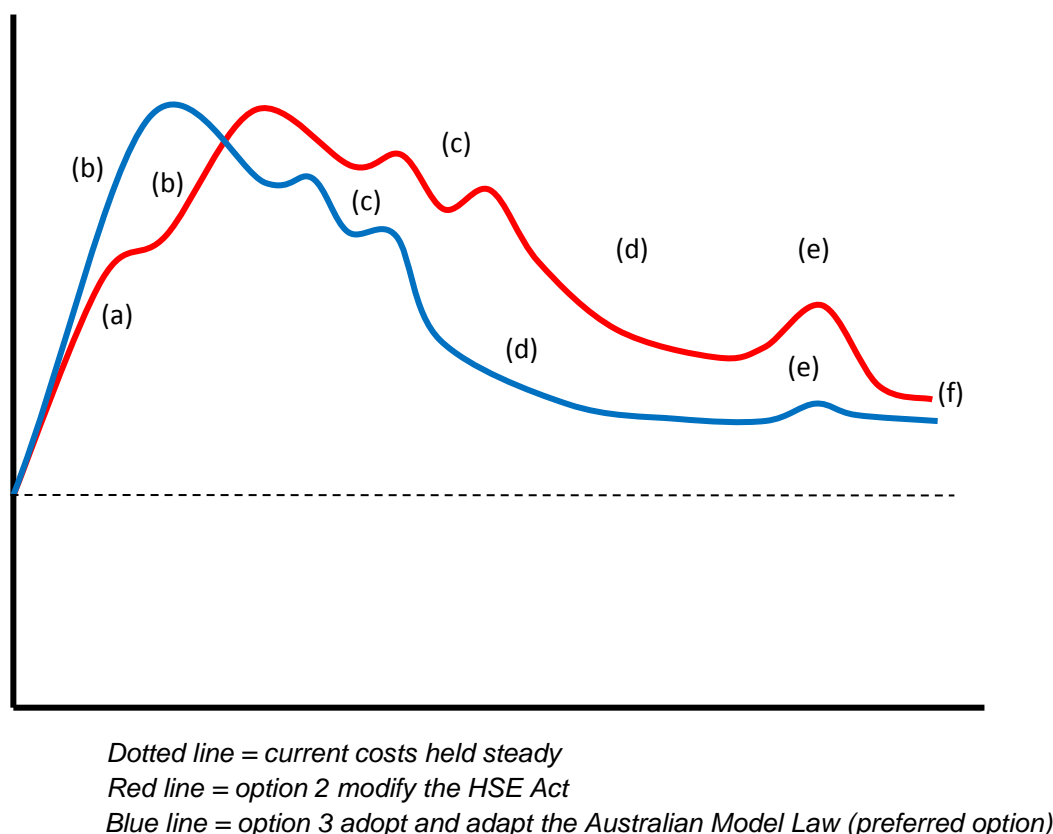
## **E. Impacts of preferred package by group**

### **Impacts on Government**

- 80 The Government will face a number of additional costs during the transition to the new system and these will be passed on to businesses through increases to the HSE levy.
- 81 The proposed package is likely to lead to a marginal reduction in operational costs over the long term and make it easier (faster and less expensive) for the Government to update regulations, ACoPs, guidance and controls to keep the system current and fit for purpose.
- 82 Adopting the Australian Model Law will significantly reduce the legislative and regulatory “design-burden” on New Zealand policy agencies with workplace health and safety responsibilities and allow government resources to be directed towards other critical elements of the system, including expediting the process of developing/adapting supporting regulations and ACoPs etc, training front-line staff, enhancing monitoring and compliance activities, and identifying upcoming risks and developing options to address them prior to them becoming issues.
- 83 There will be some establishment and on-going costs for government arising, for example, from the need to increase resources devoted to monitoring and enforcement (including increasing the number of inspections). Government will also need to invest in developing and maintaining systems for acquiring and managing the information necessary to support the efficient and effective functioning of the system. There will also be costs and other resource implications for other regulators regarding their implementation of the wider package of proposed changes to the workplace health and safety system.
- 84 Adequately undertaking responsibilities related to hazardous substances is likely to add to costs. This includes implementing the proposed improvements to the existing legislative arrangements concerning simplification of legislation and enhanced inspection, monitoring and enforcement roles.
- 85 The Government will face transitional costs as it identifies which components of existing HSNO Act instruments will sit under health and safety legislation and will be administered by MBIE rather than the EPA. In the longer term, there is likely to be a marginal reduction in operational costs as WorkSafe NZ integrates hazardous substances into its functions (e.g. guidance, compliance strategies, preventative measures, etc.).
- 86 At the same time, the integrated, life-cycle approach to hazardous substances is maintained, ensuring EPA continues to protect New Zealand by approving all hazardous substances, identifying their hazardous properties, and determining the most appropriate controls for managing those properties for environmentally harmful substances and for general use of substances hazardous to human health and safety.
- 87 The development of an overarching workplace health and safety strategy is intended to facilitate the adoption of common systems and terminology across government and enable information sharing where possible. This will assist in data capture, data-sharing and the ability to measure outcomes, and will support inter-agency projects and activities.

- 88 The complementary establishment of a research, evaluation and monitoring function in WorkSafe NZ will mean there is a direct and sustained focus on quality workplace health and safety information and analysis. A more coordinated approach to information management has the potential to aid both risk-profiling and targeting of proactive injury prevention activities, and the accumulation of evidence for enforcement purposes, both of which should ensure that government activities (and expenditure) is more effectively targeted.

**Figure 3: Comparative cost curves showing indicative impact on government of modifying the HSE Act or adopting and adapting the Australian Model Law**



- 89 *Figure 3* reflects that:

- At point (a) the initial cost of establishing the new agency is the same for both options. Costs of option 2 (modifying the HSE Act) drop off for a short time while the policy direction shifts away from option 3 (adopt the Australian Model Law) then pick up again once the new direction is confirmed.
- At point (b) costs are incurred under option 2 as weaknesses in the current system are identified and changes are proposed to address them, and under option 3 as the Australian Model Law is adapted to the New Zealand context and moved through the legislative process.
- At point (c) both options anticipate an initial period of intense activity to complete and bring New Zealand's stock of regulations, guidance and accepted codes of practice up to standard. The costs of doing so under option 3 are lower as this allows for the more efficient adoption of Australian material.
- At point (d), option 3 is quicker to reach a steady operational state as the adoption of the Australian Model Law allows the regulator to take advantage of the Australian jurisprudence and operational experience.

- At point (e), refinements are made to the system – cost increases are likely to occur under both options as refinements are made to take account of new information etc., although the costs under Option 3 are likely to be lower due to the ability to share costs with (or free-ride on) Australia.
  - At point (f), option 3 is likely to be marginally less expensive to maintain due to the synergies arising from adopting and adapting the Australian system (avoided costs of having to design regulations etc. from scratch and/or continually adapt other jurisdictions' regulations etc. to the idiosyncratic New Zealand framework).
- 90 Once established, WorkSafe NZ will need to have access to a suitable level of funding in order to build capacity and to ensure that it is able to perform its functions from the outset. There are high public expectations of WorkSafe NZ and insufficient or delayed funding would hamper its ability perform, which could have significant and long lasting implications for its credibility.
- 91 A key plank of the preferred package is the proposal to support effective transition and implementation through the development of standards, regulation, ACoPs, and guidance material that provides more detail about what duties apply in particular circumstances and how they can be met.
- 92 Based on the Australian experience, we can anticipate that up to 15 sets of regulations will need to be in place before the new Act comes into effect. Of these, it is likely that three should be brought over from the existing HSE framework, essentially as is. A further 10 can be adopted from Australian Model Regulations and adapted for New Zealand conditions through consultation. Some regulations are likely to need to be developed from scratch (e.g. geothermal and, potentially, fishing).
- 93 WorkSafe NZ will need to dedicate resource to the development and maintenance of ACoPs and guidance on an ongoing basis. It will also need to have the mechanisms and resource to contribute to stakeholder participation in their development.

*Government costs recovered through HSE levy*

- 94 The level of funding currently available for the existing functions of the workplace health and safety regulator within MBIE is \$53.7 million for 2013/14 and out-years (excluding the costs of energy-safety functions).
- 95 The appendix attached to the overview Cabinet paper *Improving Health and Safety at Work* estimates additional costs to achieve the Government's objective for improving workplace health and safety. It includes, but is not limited to, costs of the preferred package discussed in this RIS.
- 96 For 2014/15, additional funding of \$26m is sought. By 2017/18 additional funding requested is \$26.7 million, increasing the total funding for the provision of health and safety regulatory functions to approximately \$80m per annum.
- 97 This additional funding will be recovered via the HSE levy, which is paid by employers and collected by ACC. This levy is currently set at 5 cents per \$100 of wages but will need to increase to 9 cents per \$100 of wages in order to provide sufficient funding to enable WorkSafe NZ to perform its role.

## Impacts on business and employers

- 98 A key part of the preferred package is to adopt and adapt the Australian Model Law to New Zealand. This will significantly reduce the inevitable uncertainty created by a transition to a new system while at the same time supporting the development of a Single Economic Market with Australia by reducing transaction costs for firms and individuals operating in both markets. Duty holders should be able to look to the experience of their counterparts in Australia for practical examples of what their duties are and what is required to comply with them.
- 99 The adoption of the Australian Model Law will require New Zealand business and professionals to engage with some new concepts. Under the Australian model the primary duty holder is the person conducting a business or undertaking (PCBU), which covers employees, contractors and those who are self-employed. The PCBU approach extends the primary duty holder to include businesses who do not directly engage employees, such as license owners and franchisors:
- The PCBU has a general duty to ensure the health and safety of workers “as far as is reasonably practicable” given the circumstances.
  - Upstream duty holders include designers, manufacturers, importers and suppliers of plans, substances or structures, as well as the installers, constructors or commissioners of plant or structures. Specific duties for each type of upstream duty holder are specified at a greater level of detail than the general duty.
  - Officers of duty-holding organisations (including directors and people who participate in decision-making e.g. CEs and CFOs) have a positive duty to exercise due diligence to ensure that the PCBU complies with its duty.
  - Workers and others at a workplace must take reasonable care for their own health and safety and that of others.
- 100 The regulations can provide exclusions from these duties. This safety valve ensures that the concept can be drawn widely to ensure there are no gaps, while providing a flexible method of excluding circumstances where the costs of regulation outweigh the benefits.
- 101 The proposals seek to improve health and safety outcomes by making it more clear to duty holders what their legal duties are and holding them to account for undertaking those duties. The new law seeks to be more comprehensive in its coverage and seeks to ensure that there are no gaps. It seeks to promote compliance with the duties by clarifying the requirements and the consequences of non-compliance.
- 102 The new regime creates a system of overlapping duties, in which each PCBU cooperates and contributes to improving workplace safety according to its own ability. The first question a business will need to ask itself is what *it* can reasonably do to ensure the health and safety of workers and others affected by its business.
- 103 This change in focus of the duty puts the duty on those who are in the best position to control workplace health and safety risks to keep them as low as reasonably practicable. By requiring those in governance roles to have a due diligence duty to ensure the business complies with its duties, the law will make it clear that the health and safety of workers is part of governance.

- 104 These proposals are intended to change behaviour of dutyholders. As noted above, it is predicted that increasing the profile of health and safety issues and creating a shared responsibility amongst participants in the system, together with the other aspects of the proposals such as leadership and incentives, will lead to better health and safety outcomes.
- 105 It is anticipated that the adoption of the Australian Model Law is more likely to lead to positive change compared to the other regulatory framework options and that it will have the highest positive benefit. The approach to duties, obligations and rights that underpins the Australian Model Law is sufficiently different to the status quo in New Zealand and duty-holders will be clearly aware that new behaviours are required. This will have the benefit of prompting duty-holders to engage with the change to establish what their responsibilities are. These responsibilities should be clearer under the new system and supported by a comprehensive and “road-tested” suite of regulations, ACoPs and guidance.
- 106 Improved workplace health and safety can have direct economic benefits and a poorly functioning workplace health and safety system can also be seen as an opportunity cost for our economy. According to a 2011 European Commission study<sup>14</sup>, for every euro or dollar spent on improving workplace health and safety, the ratio of pay-off to investment ranges from 1.29 to 2.98, depending on the project. Benefits observed include:
- reduced disease and injury
  - reduced employee turnover and absenteeism, and increased productivity
  - improved company image, market position and customer satisfaction.
- 107 Research undertaken by Massey University for the Department of Labour in 2007<sup>15</sup> confirmed these findings in the New Zealand context and identified what the researchers considered to be compelling evidence of the links between health, safety and productivity in New Zealand businesses.
- 108 Like the HSE Act, the duties extend wider than profit-making businesses to include the Crown, NGOs, and not for profit service providers. These entities will also face costs associated with the changes, which will have funding implications to the extent that those costs cannot be passed on. WorkSafe NZ will need to work closely with peak bodies to develop targeted guidance material to minimise these costs.
- 109 The proposal to better integrate HSNO-related requirements into the workplace health and safety system will provide users with greater certainty and clarity. Businesses and workers would have a more integrated set of guidance and requirements, resulting in a better understanding of how to manage hazardous substances as part of their total workplace health and safety management, saving them time and cost. Employers would also be better incentivised to comply with legal requirements. More even compliance will also promote a more level playing field for competing businesses.

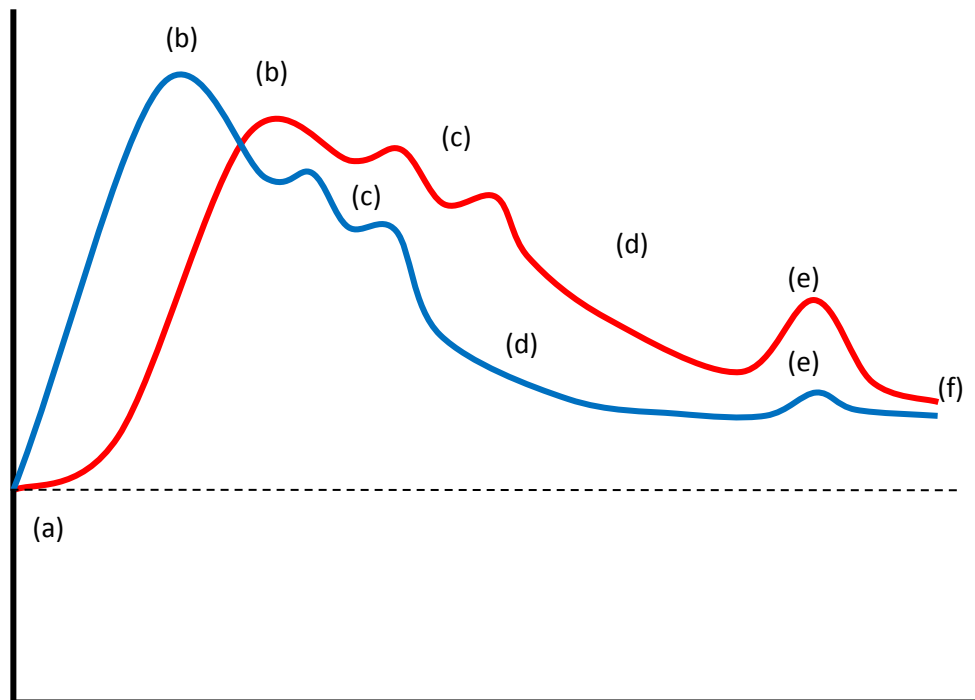
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<sup>14</sup> Andor, L (2013). *‘EU policy on health and safety at work: myths and facts’*. European Commissioner responsible for Employment, Social Affairs and Inclusion, speech to the Institute of Occupational Safety and Health 2013 conference. London.

<sup>15</sup> New Zealand Centre for Small and Medium Enterprise Research, Massey University (2007) *How health and safety makes good business sense..* Department of Labour. Wellington.

- 110 Business owners are likely to incur some cost as workers are given more influence over determining their surrounding environment. All duty-holders will be required to have worker participation practices that are appropriate to the workplace. This is a change from the current requirements where only workplaces with more than 30 employees, or where a worker or union has requested it, have to have worker participation systems. Businesses will have to support worker participation, including by funding training of health and safety representatives.
- 111 Approved Codes of Practice and regulations will be developed to provide certainty for representatives, committees and PCBUs about how the worker participation provisions apply to them. These will include materials targeted at smaller workplaces – small firms are less likely to have representatives or committees for workplace health and safety and will need to consult and involve their workers in other more informal ways.
- 112 There will inevitably be costs associated with transitioning to the new regime. Some businesses will be affected more than others:
- small businesses and self-employed workers will need to engage more actively with health and safety requirements than they perhaps did under the HSE Act
  - high-risk businesses will need to make an initial investment to ensure that they comply with the new regulations.
- 113 While any increase to the HSE levy increases the cost of compliance for businesses, it represents an investment in ensuring that duty-holders fulfil their responsibilities. The implication of a poorly functioning system that tolerates low levels of compliance is higher incidences of workplace harm, the costs of which are in large part borne directly by businesses (through productivity and reputational loss) and indirectly by the taxpayer and ACC levy payer.
- 114 As noted above, the HSE levy will increase for businesses from 5 cents to 9 cents per \$100 of liable earnings. A portion of this increase is required to implement the proposed package.
- 115 The change to the HSE levy is not expected to have any impact on behaviour of businesses. The proposed increase to the HSE levy is an order of magnitude lower than likely reductions in ACC Work Account levies. The total ACC levy income is predicted to fall by around \$300m in 2014/15 and \$1b in 2015/2016 across ACC's Earners', Motor Vehicle and Work Accounts. By way of comparison, the ACC levy reductions of \$630m in 2012/13 involved a drop in average ACC Work Account levies of 32 cents per \$100 of liable earnings for businesses.
- 116 Overall, there is likely to be a moderate increase in compliance costs for business due to the proposal. A cost benefit analysis of the Taskforce's recommendations, which are substantially similar to the proposals in this package, concluded that businesses would be required to make incremental rather than substantial changes to comply with the revised regulatory framework. Based on assumptions about the incremental increase in compliance costs, allowances for cost changes and increases in employment, Ernst & Young considered that a reasonable estimate of the increase in firm-level compliance would be approximately \$24 million but that these costs would decline over time as the changes bedded in and as businesses became more familiar with the new operating environment.

**Figure 4: Comparative cost curves showing indicative impact on duty holders of modifying the HSE Act or adopting and adapting the Australian Model Law**



*Dotted line = current costs held steady*

*Red line = option 2 modify the HSE Act*

*Blue line = option 3 adopt and adapt the Australian Model Law (preferred option)*

117 Figure 4 reflects that:

- At point (a) there is an initial delay in business costs under option 2 as it will take government longer to modify the HSE Act than it would to adopt and adapt the Australian Model Law.
- At point (b) costs for both options pick up and reach almost the same level as users have to invest in learning how to operate under the new regime. There is a lower cost associated with option 2 as users will be more familiar with a system based on the status quo.
- At point (c) both options anticipate an initial period of intense activity to bring New Zealand's stock of regulations, guidance and accepted codes of practice up to standard. The costs of doing so under (option 3) are lower as this allows for businesses to take advantage of Australian jurisprudence and operational experience.
- At point (d), option 3 is quicker to reach a steady operational state as the adoption of the Australian Model Law allows the regulator to take advantage of the Australian jurisprudence and operational experience.
- At point (e) refinements are made to the system – costs are likely to be incurred under both options as refinements are made to take account of new information etc., and as businesses learn what is required of them and come up to speed with new guidance. The costs under option 3 are likely to be lower due to the ability to learn from the experience of Australian firms.
- At point (f), over time the costs of both options will come together as the new regimes bed in, as firms become accustomed to operating within changed



expectations and as the new regulator becomes more efficient. Option 3 has the potential to be marginally less expensive as there may be cost savings to the regulator of operating a system that is harmonised with the Australian one – these savings will be passed on to businesses through a lower HSE levy, as differentiated levies are introduced, and as the regulator focuses its attention on areas where risk is greatest and there is the greatest need for behaviour change.

- 118 The Taskforce estimated firm level costs from its proposed package of measures, using estimated increases in compliance costs as a proxy from increased costs on businesses and other participants in the workplace health and safety system. It estimated that there was likely to be a moderate increase in firm-level compliance costs of \$24 million per annum, which would decrease as the new regime beds in.

### **Operators of major hazard facilities**

- 119 Major hazard facilities and industries have particular attributes and face particular constraints, and as such they demand a specific regulatory response. The response needs to sit effectively within the broader regime in a way that promotes overall equity – fees and levies should be proportional to risk and impact, and should incentivise good practice and compliance.
- 120 Once a facility (or proposed facility) is classified as a major hazard facility, the operator of the facility would be required to:
- a) prepare a safety case (containing details of the dangerous substances, the facility, the management system, the potential for major accidents, and the measures to be taken to prevent, control and mitigate the effects of major accidents) and submit it to the regulator for assessment;
  - b) prepare and implement an emergency response plan, in consultation with emergency services and the relevant territorial authority;
  - c) investigate any dangerous occurrence (an incident that could be regarded as a 'near miss' for a major accident) and report to the regulator on the outcome of the investigation; and
  - d) involve members of the workforce in: the preparation and review of the safety case, safety management system, and emergency response plan.
- 121 WorkSafe NZ would be given powers to prohibit the operation or bringing into operation of a major hazard facility (or any part of a major hazard facility) where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient.
- 122 The proposals will result in stronger management of hazards at major hazard facilities throughout New Zealand and improved regulatory oversight, thereby reducing the likelihood of a major accident occurring. This will provide benefits to government and facility operators in terms of avoided costs associated with a major accident. For example, costs associated with fatalities and serious injuries, costs incurred by emergency services, costs associated with any resulting Commission of Inquiry, costs needed to repair or rebuild the facility and recommence operations, costs needed to repair and/or rebuild property and infrastructure surrounding the facility, costs associated with remediating any damage to the environment, and costs associated with lost production. This will also provide benefits in relation to preventing disruption to economic activity.

- 123 Operators of major hazard facilities (proposed and existing) are expected to incur additional costs associated with the preparation of safety cases. For proposed facilities, the safety case process will enable risks to be eliminated at source during the design stage and prevent costly retrospective or mitigating action to minimise the risks once the facility is built.
- 124 Operators of existing major hazard facilities, who already have effective controls (plant, equipment, safety management systems, procedures, and people) in place to prevent the occurrence of a major accident are expected to incur marginal compliance costs as a result of this proposal. Alternatively, operators of existing major hazard facilities that may need to carry out significant remedial work to improve the effectiveness of their controls are expected to incur more significant costs.
- 125 The proposals are intended to enable the costs associated with regulating major hazard facilities to be separated out and (more) directly recovered from the facility operators. Use of differentiated levies and/or direct charging for services, i.e. safety case assessment, are considered appropriate to recover the disproportionate cost of providing regulatory oversight of major hazard facilities.
- 126 The proportion of operators in each group will be determined by the mapping of the risk landscape. As this exercise has not yet been completed it is not possible to estimate the impact of this proposal with certainty at this stage. An initial assessment of facilities, however, suggests there may be 60 higher-risk major hazard facilities in New Zealand and 200 lower-risk major hazard facilities.

## **Workers**

- 127 Under the proposed package, workers will be required to take a reasonable degree of responsibility for their own health and safety and for the health and safety of those they work with. The term 'worker' is broad and includes employees, contractors, sub-contractors, self-employed people, outworkers, apprentices or trainees, students undertaking work experience, labour hire employees and volunteers.
- 128 These proposals will result in increased expectations on PCBUs to consult and involve workers, along with more clarity about how effective worker participation systems can be developed and maintained within different workplaces. For workplaces with worker representatives and committees, those representatives and committees will have greater powers and responsibilities. There will also be stronger protections for workers (including non-employees) who raise health and safety concerns. Worker participation systems will look different depending on the size and type of business – one size will not fit all. There will likely be a period of uncertainty as workers come to understand their new roles, rights and responsibilities.
- 129 This will mean that for all workplaces:
- if the workers want to have health and safety representative/s, the duty-holder must consult the representative/s, allow them time off for training, pay for training, provide time and resources to perform their role, and give them information
  - the legislation will specify powers and functions for representatives and committees, including the powers for trained health and safety representatives to direct unsafe work to cease (balanced by safeguards against improper use) and issue a Provisional Improvement Notice to an employer requiring them to address a health and safety concern in the workplace
  - if the workers and/or PCBU want to have a health and safety committee, workers must make up at least half of the committee, the PCBU must consult the

committee, the PCBU must allow the committee time to perform its role and the PCBU must give the committee information.

### **Quantification of costs and benefits**

- 130 The Taskforce commissioned a cost-benefit analysis of its recommendations. This analysis estimated that around \$32 million of additional government expenditure per annum would be needed to implement them. An appendix to the Cabinet paper *Improving Health and Safety at Work: Overview* gives a revised estimate of additional funding required to implement the Government's proposals, starting with \$17.7 million in 2013/14 and building to \$25.3 million per annum in 2017/18.
- 131 The Taskforce estimated that there was likely to be a moderate increase in firm-level compliance costs from its recommendations of \$24 million per annum, which would decrease as the new regime beds in. It combined this amount with its estimate of the increase in government expenditure, to find total additional social costs of around \$56 million per annum. We have not attempted to replicate the Taskforce's analysis of firm level costs, but the regulatory impact statement discusses effects on business in section E.
- 132 The Taskforce used a value of statistical life of \$3.77 million per fatality (at June 2012 prices) and \$401,100 per serious injury and \$21,300 per minor injury, relying on Ministry of Transport data. Using these numbers, the Taskforce noted that its proposals would have a net benefit if the employment-related death toll fell by 14 per annum (from around 75).
- 133 A fresh cost-benefit analysis on the total package of measures has not been carried out. However, an alternative measure could be to use a 2012 study commissioned by ACC on behalf of NZIPS. That study conservatively estimated the total social and economic cost to the New Zealand economy of work-related injury and occupational disease to be \$3.5 billion per year. Using that figure, the additional costs of the package would be more than offset if the package of proposals resulted in a 1.7 percent reduction in workplace injuries, disease and death.

## **F. Consultation**

- 134 Both the Royal Commission on the Pike River Coal Mine Tragedy and the Independent Taskforce on Workplace Health and Safety consulted widely on the issues they were tasked with investigating and the problems they identified.
- 135 The Royal Commission undertook extensive inquiries in an effort to identify not only the immediate cause of the disaster, but the systemic problems lying behind the tragedy. This required it to gather both written and oral evidence from a large number of sources over an extended period of investigation.
- 136 The scope of the Taskforce's work was broad and it undertook an extensive consultation process that included a series of stakeholder and public meetings, and the opportunity for members of the public to make submissions on the Taskforce's consultation paper. Public submissions informed the development of draft options that were further refined following a two-day workshop with sector experts and stakeholders prior to the Taskforce finalising its recommendations.
- 137 Alongside these two investigations, MBIE have been working jointly with the MfE, EPA, ACC and Transport agencies (including the Ministry of Transport, Maritime New Zealand, the Civil Aviation Authority, New Zealand Transport Agency and New Zealand Police) to brief the Commissioners and Taskforce, and to evaluate and provide advice to government on the practical implications and workability of their recommendations.
- 138 The preferred package is within the scope of and consistent with the options consulted on and recommended by the Royal Commission and Taskforce.
- 139 Submitters to the Taskforce identified a number of challenges specific to the management of occupational health risks and exposures to hazardous substances. These concerns were generally consistent with the findings of an Industry Advisory Group established by MfE in 2008/09 to undertake a review of the HSNO test certifier regime.
- 140 A suite of four Cabinet papers that collectively provide the Government's response to the Taskforce's report was circulated for comment to the following agencies: Treasury, State Services Commission, Ministry of Health, Ministry of Justice, ACC, Ministry of Transport, Civil Aviation Authority, Maritime NZ, NZ Police, NZTA, TAIC, TEC, NZQA, Ministry of Education, Ministry of Women's Affairs, Te Puni Kokiri, Ministry of Pacific Island Affairs, New Zealand Defence Force, Department of Internal Affairs, Ministry of Foreign Affairs, Ministry of Primary Industries, EPA and Ministry for the Environment.
- 141 If time permits, an exposure draft would be released for public comment prior to a Bill being introduced to Parliament.

## **G. Monitoring, evaluation and review**

- 142 Since 2008 there has been an increased focus on improving the breadth and reliability of the information base relating to workplace health and safety. This will be enhanced by the establishment of WorkSafe NZ, which will have the explicit function of bringing together the current disparate streams of monitoring, information gathering and reporting so that we have a coordinated and reliable base of information that can be used to audit performance and support informed decision-making.
- 143 WorkSafe NZ, as a Crown entity, will be subject to oversight of a department, the responsible Minister and Parliament. It will be subject to the usual oversight mechanisms, including the requirement to have a statement of intent and other accountability documents against which its performance will be assessed.
- 144 This information will allow more effective monitoring and evaluation of the performance of the overall workplace health and safety system.
- 145 The proposal includes the development of an overarching workplace health and safety strategy. The Minister of Labour will be required by law to lead the development of the strategy. The strategy will identify and define objectives and targets against which WorkSafe NZ performance and the contributions of other agencies with regulatory functions in this area will be assessed.