Independent Taskforce
on Workplace Health and Safety

Safer Workplaces Consultation

Summary of submissions

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Prepared for the Independent Taskforce on Workplace Health and Safety by Counterbalance Research and Evaluation

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Executive summary

The 'Safer Workplaces' consultation document was released by the Independent Taskforce on Workplace Health and Safety on 17 September, 2012. The document described a range of issues with workplace health and safety in New Zealand, and sought feedback on those issues and suggestions for what New Zealand could do to improve workplace health and safety outcomes.

In total, 430 submissions were received in response to the consultation document, including 248 from individuals, and 182 on behalf of organisations. This report describes the results of the consultation, analysing the characteristics of submitters, and coding submitters' responses into themes.[1]

Characteristics of the submissions from organisations

- Of the submissions from organisations, almost half were from employers or industry/professional representative bodies (62 and 26 submissions, respectively). Other types of submitters included providers of health and safety products or services (24 submitters), unions or employee representative bodies (20 submitters), health providers or health advocacy organisations (14 submitters), professional associations or fora with a health and safety focus (12 submitters), regulatory agencies (8 submitters), and other organisations (14 submitters).
- Small to medium enterprises (SMEs) were not well represented in the submissions: 49 of the 62 submissions from employers were from employers with more than 100 staff.
- The higher risk industries: fishing, forestry, mining, agriculture, construction and manufacturing were all represented in the submissions, although representation of fishing was low, with only four submissions received from this sector.

Characteristics of the submissions from individuals

- A significant number of the individual submissions were from people working in the health and safety profession, including health and safety practitioners, occupational health nurses, health and safety consultants, and employees, managers or owners of businesses that provide health and safety products and services.

[1] The analysis excludes one submission, made on behalf of an organisation, that was received too late for inclusion in the report. This submission was considered separately.

Cross-cutting themes

In addition to the detailed comments that submitters made in response to the questions in the consultation document, some major themes emerged that cut across all of the questions.

- Submitters overwhelmingly identified that there is a problem, and that New Zealand's workplace health and safety performance is unacceptable
- Many of the problems identified by submitters are multi-faceted, and there was a reasonable consensus that there will be no 'silver bullet'. Submitters pointed out that many of the problems with workplace health and safety need to be considered within the context of wider regulatory, macroeconomic and societal factors.
- Submitters observed that there has been a dearth of leadership in health and safety in New Zealand, and that this has been a driver of our poor health and safety record. They indicated that New Zealand lacks national goals and strategies, and does not have a visible 'brand' for health and safety. As a result:
  - the regulators are under-resourced and have insufficient expertise
  - the legislation is complicated and sometimes inconsistent
  - there is confusion about the roles of different regulatory agencies
  - New Zealand lacks a comprehensive set of Codes of Practice underpinning the legislation
  - occupational health has received less attention than workplace safety.
- There is a feeling that health and safety initiatives are often compliance-driven, rather than driven by a genuine commitment to health and safety. Submitters identified three issues that contribute to this problem.
  - There is a lack of understanding of overly-complicated regulations.
  - There is a lack of access to high quality advice, standards and codes of practice.
  - The hazards management approach encourages a focus on hazards that cause accidents at a high frequency, but with relatively insignificant consequences, and diverts attention away from low probability events that could have very significant consequences.

Responses to questions

Submitters made many detailed comments and recommendations relating to the 14 themes highlighted by the consultation document. The following points provide a very high-level summary of responses, by theme.

Demographic, industry and occupational groups with higher than average rates of occupational injury and ill-health

- Submitters commented that demographic differences in injury rates are affected by education and literacy levels, health factors, personal attitudes and awareness, differences in socio-economic status across groups, differences in work type, and differences in industry and employer characteristics.

- Recommendations included specific initiatives to target higher-risk groups, as well as less targeted initiatives, that when implemented across the system, would lift health and safety outcomes for higher risk groups.

The regulatory framework

- Many submitters stated that the regulatory framework is too complicated, suffers from inconsistent implementation, and is insufficiently underpinned by prescriptive guidance on how to achieve good health and safety.
- Submitters recommended improving the linkages across different health and safety-related regulations, and developing better clarity and more prescriptiveness in relation to specific aspects of the legislation.
- Some submitters (29) recommended shifting the balance of the principles underpinning the legislation towards a risk management approach, while a smaller number (4) favoured retaining the current hazards-based approach.

Regulators' roles and responsibilities

- Regarding the level of regulator effectiveness, most of the submitters who gave an opinion stated that the regulators are not effective in influencing health and safety (72 out of 89 submitters). While some good initiatives were described, many stated that the regulatory agencies are reactive rather than proactive, only intervening after an accident has happened. This is thought to encourage a compliance focus in workplaces, where avoiding prosecution, rather than improving health and safety practices, becomes the primary goal.
- Submitters stated that regulator effectiveness had been hindered by a lack of strategic leadership and cross-government coordination, and insufficient regulator resourcing, capacity, and capability.
- Submitters recommended better government leadership and cross-agency coordination, and there was strong support for setting up a single-focus organisation for workplace health and safety.

New Zealand's changing workforce and work arrangements

- Submitters described a number of ways in which the workforce and the nature of work has changed, including an increase in service industries and sedentary work, an increase in casual work and contracting arrangements, increasing working hours, changes to legislation that have reduced worker protection, declining union membership, demographic changes, macroeconomic changes such as globalisation and the recession, changes in population health, and changes in personal values, skills and awareness.
- Submitters recommended regulatory changes and initiatives to address issues with fatigue and longer working hours, issues with casual and contract workers, issues with remote and home-based workers, issues with precarious work, and issues arising from technological change.

Worker participation and engagement

- Worker participation was thought to be important or essential for good health and safety outcomes by most submitters who provided an opinion on it (102 out of 105 submitters). However, many also stated that worker

participation in New Zealand is inadequate, needs improvement, or is variable across workplaces.

- Factors identified as compromising the effectiveness of worker participation include: legislative provisions in the HSE Act that provide insufficient employee protection or encourage adversarial employer-employee interactions, infrequent exercise of employee rights under the HSE Act, and variable effectiveness of, and support for health and safety representatives.
- Submitters recommended reviewing legislation, in relation to the powers and protection of health and safety representatives and other employees (including those in non-traditional work arrangements). They suggested that the monitoring and enforcement of worker participation provisions in the HSE Act should be improved, that worker involvement in standard-setting processes and other higher level bodies should be facilitated, that better training, advice and support should be made available for health and safety representatives and employees, and that the role of unions should be clarified or supported.

Leadership and governance

- All of the 69 submitters who commented on the importance of leadership in health and safety said that the role of leaders is important or crucial. However, many also said that health and safety leadership and governance in New Zealand is inadequate, needs improvement, or is variable (116 out of 130 submitters).
- Submitters described a number of factors that influence the effectiveness of health and safety leadership, including shareholder engagement with health and safety, leaders' engagement with their workforces, leaders' competencies in health and safety, generic leadership skills, whether leaders have a genuine concern for health and safety, whether effective health and safety indicators and reporting mechanisms are used, budgetary and production pressures, and the clarity and effectiveness of the regulatory framework in holding leaders to account.
- To improve health and safety leadership, submitters recommended initiatives to improve health and safety leadership capacity, to improve leaders' knowledge and skills, to increase the visibility and transparency of health and safety performance, to promote health and safety leadership, and to review leaders' responsibilities and accountabilities under legislation.

Capacity and capability of the workplace health and safety system

- Most of the submitters who commented on the level of capacity and capability said that capacity and capability are variable across workplaces (86 out of 133 submitters).
- Submitters described a number of factors that influence the level of capacity and capability, including firm size, aspects of the education and training system, an insufficiency of practical advice and guidance from government and other sources, and variability in the quality and accessibility of advice from health and safety professionals.
- Submitters recommended a large number of changes to address capacity and capability issues, including improving the uptake, oversight, quality

and content of health and safety education and training, improving the content of and access to advice and guidance, and developing the health and safety profession, for example by introducing competency standards and accreditation.

Incentives

- Submitters identified a number of shortcomings with existing incentive schemes for workplace health and safety, and some made general comments on factors that hinder the effectiveness of incentives. These factors included the observations that many incentives do not directly influence employee behaviour, that incentives based on lagging indicators of accident rates are poor indicators of overall risk and can drive perverse behaviours, and that the level of enforcement has been insufficient to drive change.
- Submitters recommended a number of changes to existing incentive schemes and enforcement mechanisms, suggested new subsidies for health and safety advice and training, and suggested new financial incentives and new non-financial incentives (such as workplace reporting and rating systems).

Influencing health and safety through supply chains and other indirect mechanisms

- Most of the submitters who commented on the effectiveness of government agencies in influencing health and safety pointed to a lack of influence, leadership, consistency and coordination. Some industry-led initiatives for improving industry-wide health and safety were described by submitters. Procurement and supply chain processes were thought to hold potential as a means for influencing health and safety, and examples were given of supply chain processes with positive impacts (e.g. requiring safe practices from contractors), and with negative impacts (e.g. lowest-price tendering). Suppliers can, in some cases, also influence health and safety practices, e.g. by refusing to supply to non-compliant sites.
- Submitters suggested a number of actions for government, including incorporating health and safety requirements consistently into procurement processes. It was suggested that industry bodies could also take a lead in producing guidance on procurement and other processes that can promote good health and safety practices.

Major hazards

- Most of the submitters who commented on the strength of the current approach to regulating major hazards stated that the approach is weak (42 out of 56 submitters).
- Shortcomings of the current approach that were identified by submitters include a lack of guidance from, enforcement by, and coordination among the regulators, and ambiguity, inconsistencies, and a lack of prescription in the legislation.
- Submitters suggested a number of changes to legislative terminology, scope, strength, and underlying principles, including a greater focus on risk assessment and management, extending the use of safety cases, and some changes specific to the mining industry. Submitters also

recommended some changes to the regulators' roles and responsibilities, specifically in relation to high hazard workplaces.

Health and hazardous substances

- Submitters identified a number of challenges in managing occupational health risks and exposures to hazardous substances, including complexities and inconsistencies with the HSNO legislation and its relationship to other legislation, a lack of government leadership and resourcing for occupational health protection, difficulties with occupational health reporting (leading to under-reporting of harm), a lack of effective monitoring and enforcement by regulators, difficulties in accessing advice and guidance, and general issues with workers and employers being complacent and lacking knowledge about occupational health risks and hazardous substances.
- Submitters' recommendations included reviewing, simplifying and better coordinating the existing legislation, clarifying the roles of, and increasing the capacities and capabilities of the regulators, improving occupational health reporting and research, becoming more proactive in identifying new hazards, improving access to advice and education, promoting awareness, and introducing incentives and subsidies to promote better occupational health.

Small to medium-sized enterprises (SMEs)

- Submitters described a number of factors that present safety challenges for SMEs, including resource constraints that make it difficult for them to keep up to date with best practices and access training and advice, competitive pressures that make SMEs more likely to cut back on safety in order to win contracts, and regulatory requirements, incentives, and enforcement mechanisms that have been designed for larger businesses, and are not workable for SMEs.
- Submitters made a number of recommendations for ways to assist SMEs, including simplifying and clarifying the regulatory framework, providing advice and guidance tailored to SME needs, developing industry-based advice and support initiatives for SMEs, improving procurement practices, and developing interventions, incentives and subsidies targeted to SMEs.

Measurement and data

- Submitters comments on aspects of the adequacy of the current workplace injury and occupational disease data collection mechanisms, and identified a number of data quality and under-reporting issues, some data gaps, and some issues with fragmented data collection mechanisms across government agencies.
- Submitters' recommendations included improving data collection by District Health Boards and medical practitioners, improving data collection at the level of employers, improving consistency and data matching across government agencies, making data from government agencies more available, and improving the surveillance of occupational disease.

New Zealand's national culture and expectations

- Most submitters who commented on whether national culture and expectations influence health and safety outcomes said that New Zealand culture is an important factor in influencing outcomes (186 out of 204 submitters).
- Aspects of culture and expectations that submitters mentioned as important include attitudes to authority, attitudes to regulation and personal freedom, attitudes to risk, aspects of how New Zealanders interact socially, and the relative values that are assigned to 'getting the job done', versus doing things healthily and safely.
- Submitters' recommendations for improving our culture relating to workplace health and safety included suggestions for social marketing initiatives, and incorporation of health and safety into school-level education.

Contents

1. Introduction

The 'Safer Workplaces' consultation document was released by the Independent Taskforce on Workplace Health and Safety on 17 September, 2012. The document described a range of issues with workplace health and safety in New Zealand, and sought feedback on the issues and suggestions for what New Zealand can do to improve workplace health and safety outcomes.

Submitters could provide detailed feedback by e-mail or post, or they could use an online form to provide short answers to the questions. Submissions were received during the 10 week period from 17 September to 26 November.

While the scope of the consultation was wide, covering all aspects of workplace health and safety, the consultation document asked submitters to focus on, and answer questions related to 14 areas:

- demographic, industry and occupational groups with higher than average rates of occupational injury and ill-health
- the regulatory framework
- regulators' roles and responsibilities
- New Zealand's changing workforce and work arrangements
- worker participation and engagement
- leadership and governance
- capacity and capability of the workplace health and safety system
- incentives
- influencing health and safety through supply chains and other indirect mechanisms
- major hazards
- health and hazardous substances
- small to medium-sized enterprises (SMEs)
- measurement and data
- New Zealand's national culture and expectations.

This report describes the results of the thematic analysis of submitters' responses to the consultation document, using the 14 areas above as a framework for this analysis.

2. Numbers and sources of submissions

In total, 430 submissions were received, 248 from individuals, and 182 on behalf of organisations. One of the organisational submissions was received after the analysis in this report was completed, and was considered separately. The remainder of this report therefore includes 181 of the 182 submissions from organisations, and 429 submissions in-total. The 248 individual submissions included two different types of form letters, one of the letters accounted for 12 of the submissions, the other accounted for 8. Unless they contained extra comment, these form letters were treated as one submission in the thematic analysis.

2.1. Characteristics of the submissions from organisations

Figure 1 shows the types of organisations that were represented by the submissions on behalf of organisations. Almost half (88) of the 181 submissions were from employers or industry or professional representative bodies.

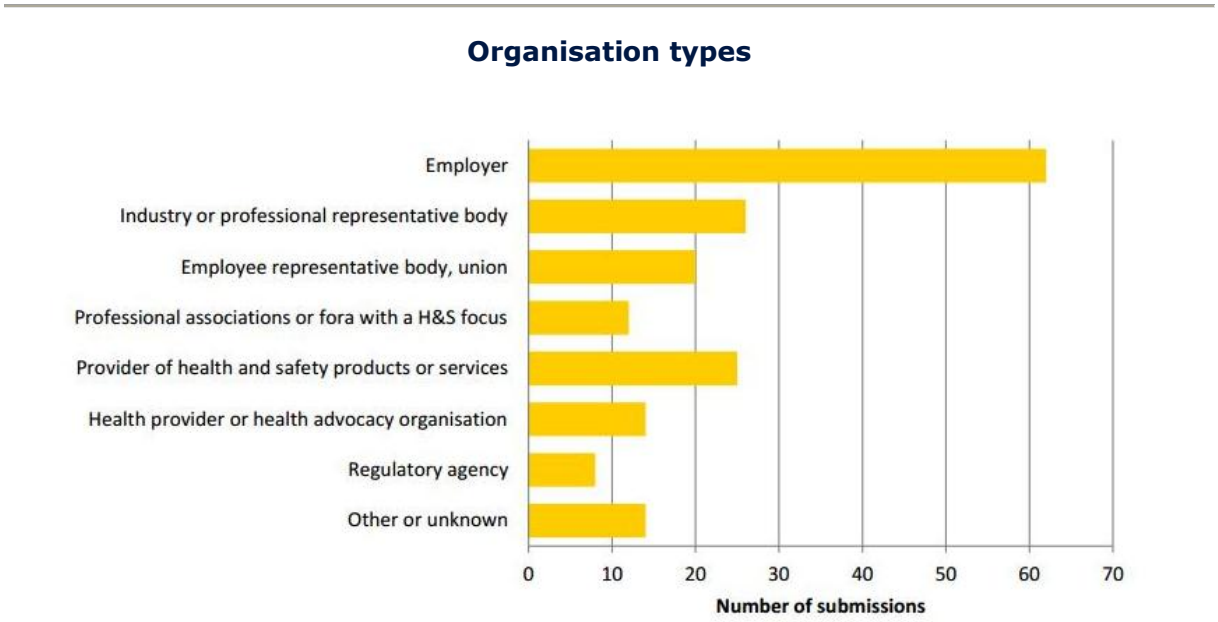

Figure 1. *The number of submissions on behalf of organisations, by type of organisation. The categories of organisation are mutually exclusive, so note that: the 'employer' category does not include employers who were also unions, professional or industry associations, providers of health and safety products and services, health providers, or regulatory agencies. The 'Industry or professional representative body' category does not include those professional or industry associations that have a specific health and safety focus.*

Tables 1a and 1b show the business sizes represented by the submissions, both for employers that were not providers of health and safety products and services (Table 1a), and for businesses that were providers of health and safety products and services (Table 1b). While most of the 24 providers of health and safety products and services were small businesses or self-employed, most of the other employers were large, with over 100 employees. Therefore, SMEs are not well represented by the submissions.

Employer size

Table 1a. Employers who are not providers of health and safety products or services

Business size	# submissions
1-5 employees	2
6-9 employees	1
10-19 employees	2
20-49 employees	6
50-99 employees	2
100+ employees	49

Table 1b. Providers of health and safety products and services

Business size	# submissions
self-employed	6
1-5 employees	6
6-9 employees	0
10-19 employees	1
20-49 employees	1
50-99 employees	2
100+ employees	2
not specified	7

Figure 2 shows the industry sectors represented by the submissions from organisations. 'Manufacturing', 'Electricity Gas Water and Waste Services', 'Construction', and 'Transport Postal and Warehousing', were the most well-represented, with 20-35 submissions from each of these sectors. There was also representation of 'Forestry', 'Agriculture' and 'Mining', with around 10 submissions from each sector. Sectors focusing on professional services and education were also well represented; submitters in those sectors were often providers of health and safety products or services.

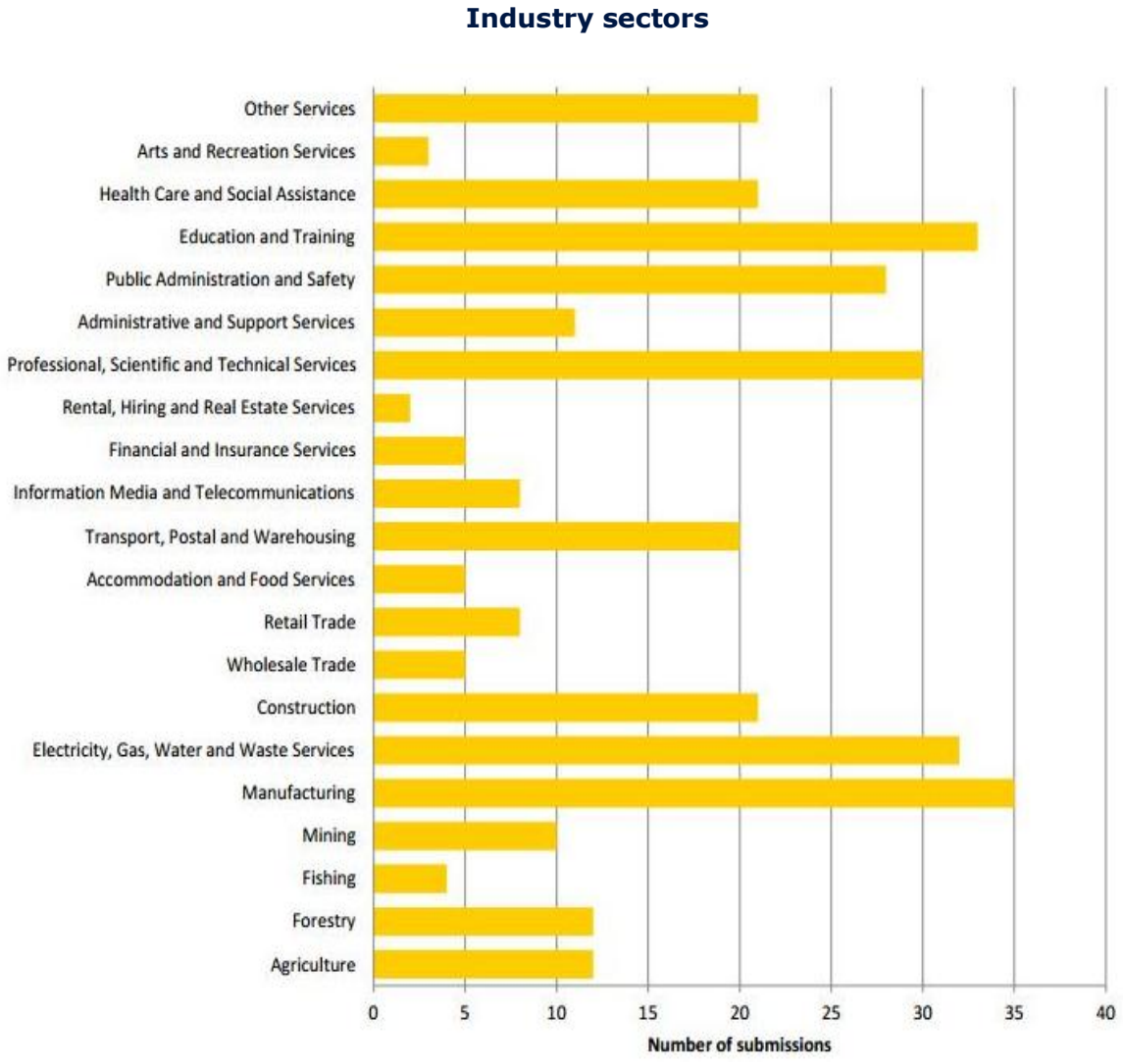

Figure 2. *Submissions from organisations, by industry sector. Some submitters chose more than one sector, so the submissions by sector sum to more than the total number of submissions from organisations. Note also that there was not a specific sector for providers of health and safety products and services, so these submitters are spread across several categories, including 'other services, 'education and training', 'public administration and safety', and 'professional, scientific and technical services'.*

Figure 3 shows the geographic regions that the submitting organisations were from. Just under 80 of the 181 organisations were national organisations, working across all New Zealand regions. For organisations that were regional in nature, the spread across regions roughly reflects overall population statistics. Seventeen of the submissions were from organisations that had overseas operations, usually in addition to their New Zealand operations.

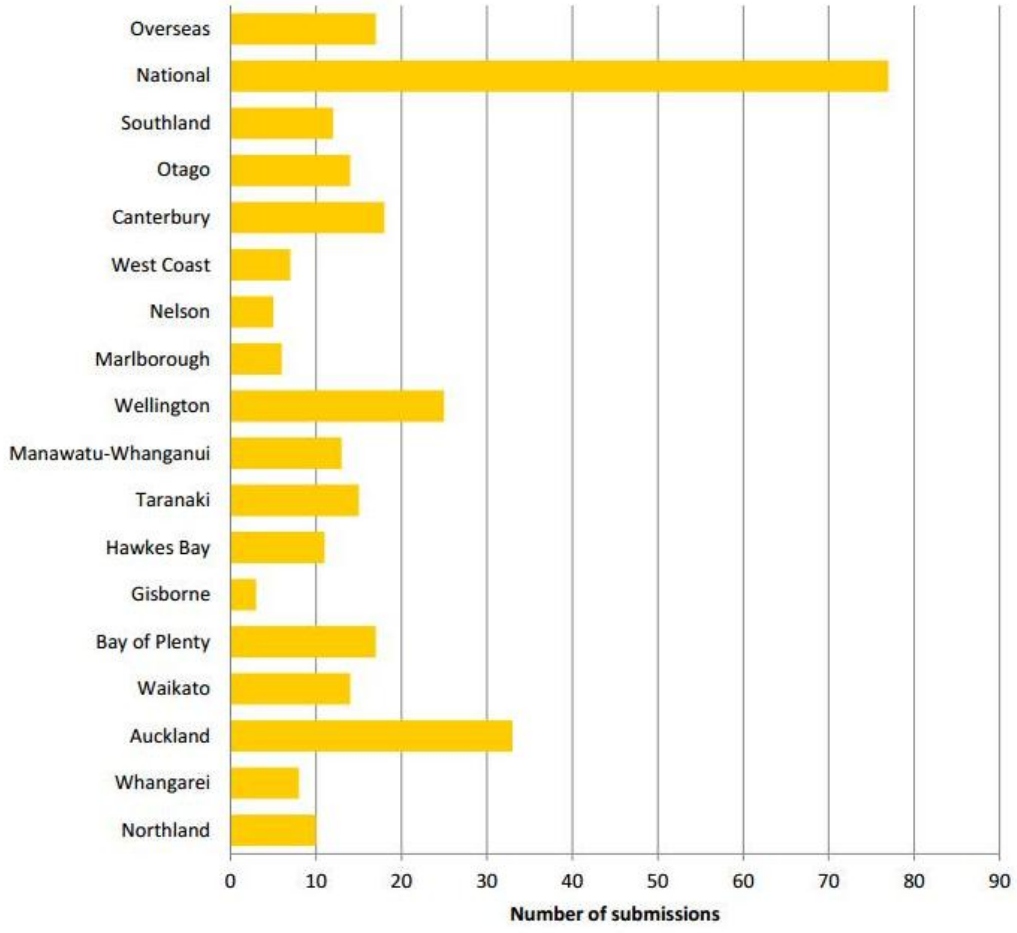

Figure 3. *Submissions from organisations, by region. National organisations worked across all New Zealand regions, and overseas organisations worked in New Zealand as well as in other countries. Some submitters worked across multiple regions, so the submissions by region sum to greater than the total number of submissions from organisations.*

2.2. Characteristics of the submissions from individuals

A significant number of the submissions from individuals were from people working in the health and safety profession. The data did not always allow determination of whether or not this was the case, but as far as is possible, Table 2 categorises individual submissions by whether or not the submitters were health and safety professionals.

Table 2. Individual submissions from health and safety professionals

	# submissions
Health and safety professionals*	81
Not health and safety professionals	37
Unknown	130
Total	*248*

* This category includes health and safety practitioners, occupational health nurses, health and safety consultants, and employees, managers or owners of businesses that provide health and safety products and services

Figure 4 shows the industry sectors represented by the submissions from individuals. 'Manufacturing', 'Electricity Gas Water and Waste Services', and 'Construction' were the most well-represented, with 20-30 submissions from each of these sectors. There was also reasonable representation of 'Transport Postal and Warehousing', 'Agriculture' and 'Mining', with 8-15 submissions from each sector. Sectors focusing on professional services and education were also well represented; submitters in those sectors were often providers of health and safety products or services.

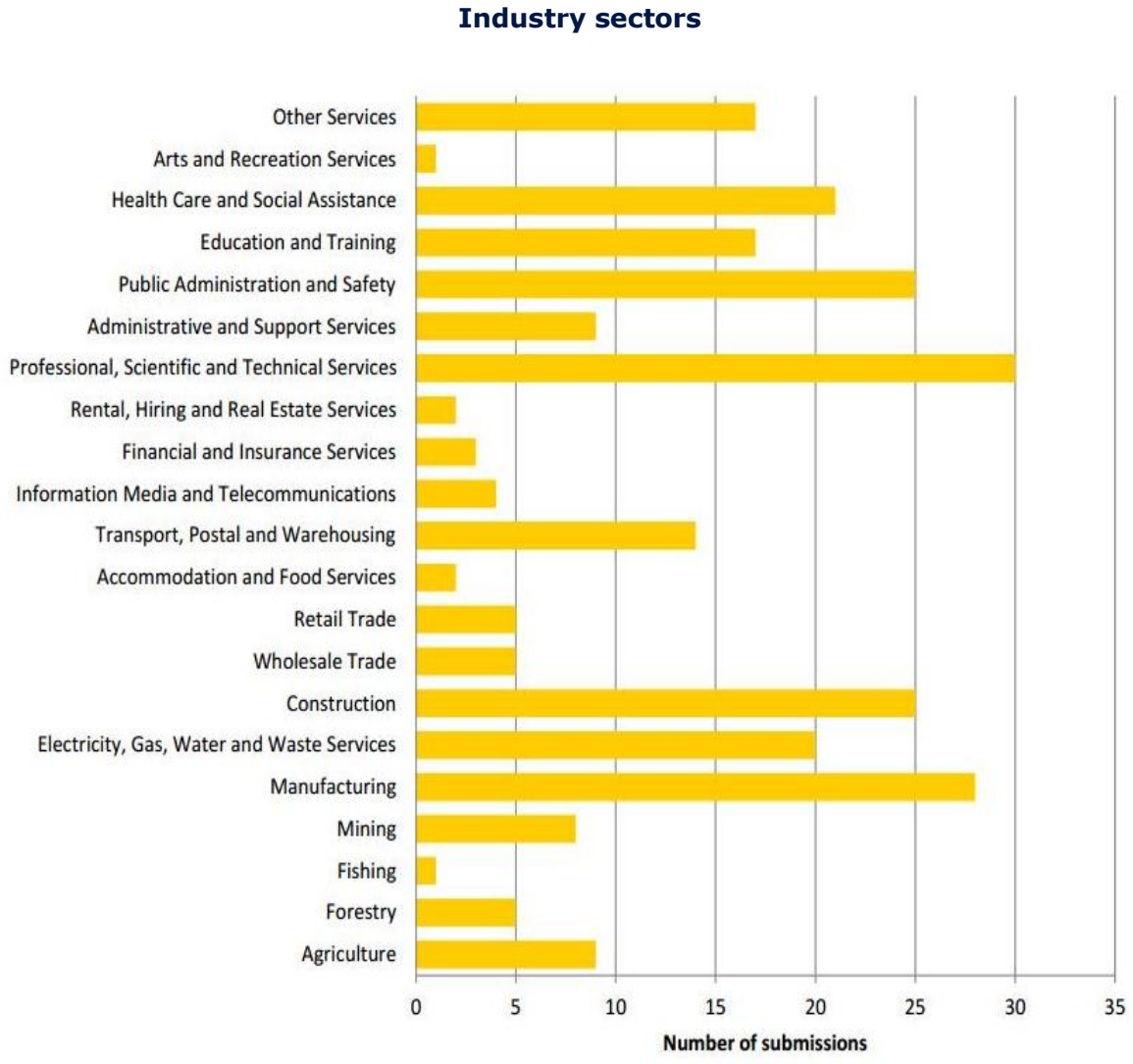

Figure 4. *Submissions from individuals, by industry sector. Some submitters chose more than one sector, so the submissions by sector sum to more than the total number of submissions from individuals. Note also that there was not a specific sector for providers of health and safety products and services, so these submitters are spread across several categories, including 'other services, 'education and training', 'public administration and safety', and 'professional, scientific and technical services'.*

Figure 5 shows the geographic regions that the submitting individuals were from. The spread across regions roughly reflects overall population statistics.

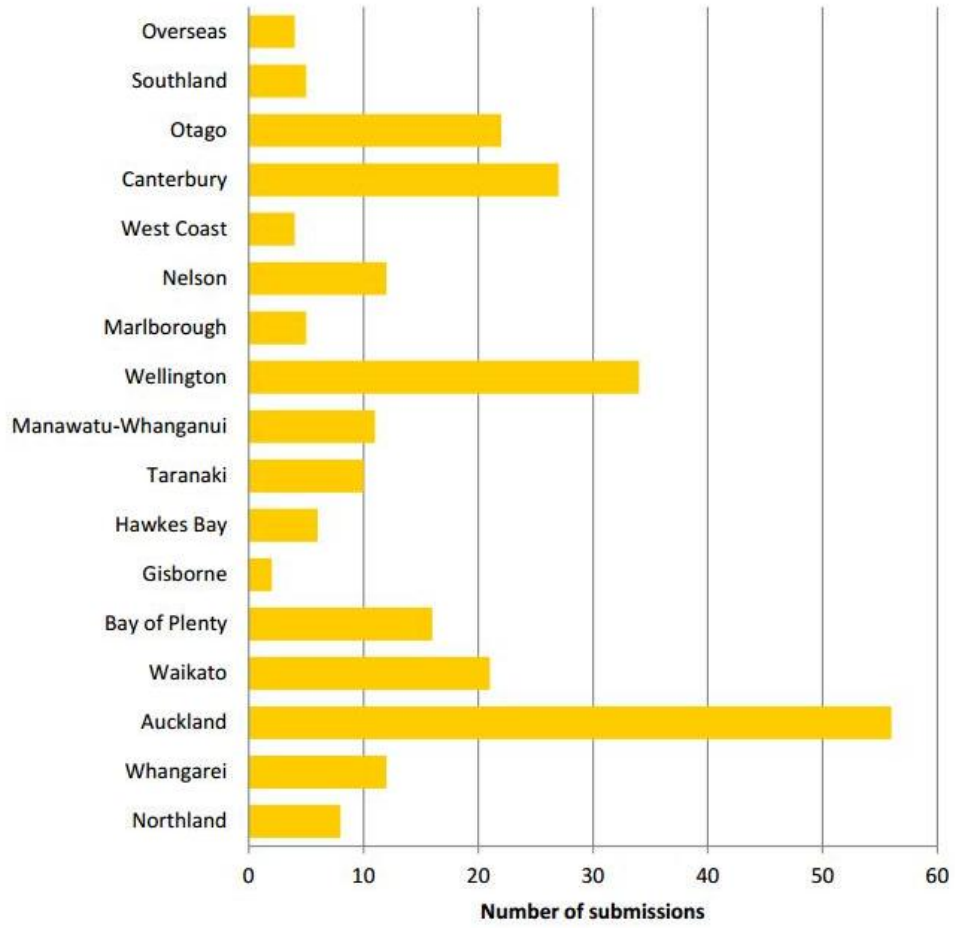

Figure 5. *Submissions from individuals, by region. Some submitters chose multiple regions, so the submissions by region sum to greater than the total number of submissions from individuals.*

3. Overarching tenor of the submissions

Section 4 of this report summarises, in detail, submitters' responses to the questions in the consultation document. In addition to this detailed comment, some major themes emerged that cut across all of the questions

Submitters overwhelmingly identified that there is a problem. They felt that New Zealand's health and safety performance is unacceptable, and their feedback should be viewed as a strong call-to-action for New Zealand.

Many of the problems identified by submitters are multi-faceted. There are many areas in which recommendations for change were made, and there was a reasonable consensus that there will be no 'silver bullet'. Submitters pointed out that many of the problems with workplace health and safety need to be considered within the context of wider regulatory, macroeconomic and societal factors that have driven workplace health and safety to be side-lined in favour of production goals and 'getting on with the job'.

In observing that there will be no 'silver bullet' submitters did not mean that leadership and an overarching direction for health and safety in New Zealand is not needed, or is not possible. Submitters observed that there has been a dearth of leadership in health and safety in New Zealand, and that this has been a driver of our poor health and safety record. Overall, they indicated that New Zealand lacks national goals, national strategies, and a visible 'brand' for health and safety. They suggested that health and safety has not been a political priority, and as a result, resourcing has been inadequate. They pointed to the following tangible consequences of this lack of leadership.

- The regulators are under-resourced, and lack the expertise that they need to function well.
- There are many different agencies tasked with regulating different areas of workplace health and safety, and there are inconsistencies, gaps and duplications in their functions.
- There are many different Acts covering different aspects of workplace health and safety; the Acts are complicated, not well understood, and in places, they conflict with one another.
- The Robens model, on which the New Zealand regulatory approach is based, requires the legislation to have a comprehensive underpinning set of Approved Codes of Practice (COPs) so as to provide more prescription on what practices are acceptable. This aspect of the model has been significantly under-resourced; COPs are in many cases absent, or too out of date to be useful.
- Occupational health has received less attention than workplace safety, and is under-resourced as a result.

Submissions indicated that, in workplaces, there is a feeling that health and safety is compliance-driven, with a lack of genuine commitment to healthy and safe practices. Workers may view health and safety as a 'joke': a set of rules that are imposed by management who are only seeking to protect themselves from legal liabilities. This compliance focus means that scant attention is paid to the effects of the rules that are imposed, or the likelihood that the rules will actually be complied with. Submitters identified three issues that contribute to, this problem.

- There is insufficient understanding of overly-complicated regulations.
- There is a lack of access to high quality advice, standards and COPs.

- The hazards management approach encourages a focus on hazards that cause accidents at a high frequency, but with relatively insignificant consequences (for example, tripping hazards), and diverts attention away from low probability events that could have very significant consequences (for example, industrial explosions).

A very large number of recommended actions emerged from the submissions, and these are described in detail in section 4. In relation to the overarching issues described above, submitters frequently made suggestions in the following areas.

- Government needs to provide much better leadership, resourcing and coordination of workplace health and safety. A single focus agency could be an effective part of this solution.
- The absence of standards, guidelines and COPs is a significant gap that should be addressed.
- Better access to high quality advice on practical strategies for how workplaces can improve their health and safety is needed. This may involve changing the functions of regulatory agencies to include advisory roles, as well as developing the health and safety profession, for example through an accreditation scheme.
- Consideration should be given to shifting legislation and practices towards a risk management approach, where more attention is paid to the severity of the consequences of potential accidents.

4. Summary of submissions by question

The discussion document 'Safer Workplaces' included questions that sought feedback on various aspects of the health and safety system and how it could be improved.

The following sections describe submitters' responses, organised by the questions in the discussion document. The number of submitters who made each point is given in parentheses, after each bullet point.

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

The consultation document outlined current knowledge of the differences between demographic groups' rates of occupational injury, illness and fatality, and asked submitters to comment on the drivers of the differences, and to make suggestions for ways to improve outcomes for groups with higher than average rates.

Question 1. What do you think is driving the differences in workplace health and safety outcomes for different demographic groups?

Submitters made the following comments on factors that may be driving demographic differences in workplace health and safety.

Education, literacy, and language

- Education levels and literacy levels vary across demographic groups; low literacy and education is associated with poorer health and safety outcomes (58)
  - While low education and literacy can compromise safety directly, some submitters pointed out that lower education levels, low literacy, or low language skills can lead workers to lower paid, generally more physical, riskier occupations (13)
- Health and safety messages are not often delivered in a suitable manner for workers with low literacy (4)
- Language barriers affect outcomes for some demographic groups (38)
- There are differences in levels of workplace health and safety training across different demographic groups (24)
  - Rural workplaces may not have good access to health and safety information, may be far from training centres and may find that cost is a barrier to bringing training in, or sending employees to train elsewhere (2)
  - There is variable access to health and safety training across demographic groups (due to work type, learning styles, affordability, industry attitudes to workers) (11)
  - Inconsistencies in training across a large number of providers, and a lack of common assessment standards, cause variable outcomes by region (1)
  - Young workers are at more risk due to lower levels of experience or training (5)

Health factors

- Existing health conditions can contribute to accidents, and are associated with higher rates of workplace injury (4)
- Older workers affected by slower reaction times (2)
- Older workers are more at risk due to declining cognitive function (2)
- Older workers are more susceptible to fatigue, less able to cope with physically demanding work (3)
- Older workers are more susceptible to injury and illness, and can recover more slowly (16)
- Older workers are more likely to suffer the effects of gradual process injury occupational illness, or to have pre-existing injuries (14)

Personal attitudes and awareness

- Attitudes to and awareness of health and safety are driving some demographic differences (48)

Ethnic differences in attitudes and awareness

- Immigrant employers and workers may not be familiar with NZ health and safety requirements and rights, and may have worse outcomes if they're from countries with lower standards (13)
- Some cultures are less likely to speak out, more likely to follow orders without question, and may be reluctant to report hazards and injuries (9)

Gender differences in attitudes and awareness

- Men are more likely to take risks, have a 'she'll be right' or machismo attitude (12)
- There are societal expectations that men will be willing to work in hazardous conditions (2)

Age differences in attitudes and awareness

- Older workers are more likely to take risks, or to have a 'bullet-proof', 'she'll be right' attitude (9)
- Older workers entered the workforce when there was less attention to safety (1)
- Older workers can be more reluctant to accept change (14)
- Younger employees may be trying to impress and may take greater risks or feel under greater pressure to work beyond their limits (4)
- Younger people have a lower perception of risk, an attitude of 'invincibility', or less experience of risk (12)

Socio-economic status

- Vulnerable workers (low income, unskilled, insecure employment) will accept riskier work and be less likely to speak up for fear of losing their job (22)
- The necessity to work several jobs or overtime, to make ends meet, can result in fatigue (3)
- Some demographic or job-type groups have more control over their workplace environment than others (11)
    - There is a perception that only 'educated' people are capable or empowered to make health and safety decisions (2)

    - Workers in high risk industries can be less able to challenge management (1)
- Some socio-economic and ethnic groups have poorer access to medical advice leading to poorer outcomes (2)

Work type, industry and employer characteristics

Business size

- Larger workplaces have procedures in place that minimise demographic differences in health and safety practices (2)

Factors associated with differences in risk across industries

- Drug and alcohol abuse is a factor in some industries (9)
- Exposure to poorly designed, old machinery is a factor (1)
- Fatigue due to being pushed to work longer hours with limited breaks in some industries is a factor (5)
- Industries with boom and bust cycles lose health and safety skills during a downturn, and then face skills shortages during a boom (4)
- Outdoor workers are at increased risk of skin cancer (7)
- There are poorly developed health and safety practices, health and safety guidance, and availability of regulators in some industries (16)
- There is pressure to be more productive, to do more work, and to work faster in some industries (6)
- Some industries are in more competitive cost-cutting environments, and health and safety gets cut back (9)
- Sector-specific comment
    - Farm conditions present challenges to health and safety including long hours of work, isolation, fatigue, weather conditions, challenging terrain (4)
    - Fishing sector conditions present challenges including the inherent instability of a vessel at sea, sea-sickness, fatigue due to long days and cold conditions, and psychosocial factors as workers cannot go home at the end of the day (1)
    - Workplace violence is a factor in the health sector (1)

Pressures on self-employed workers and SMEs

- Self-employed workers do not have capacity to keep up to date with changing regulations and guidelines (2)
- Self-employed workers and SMEs are under greater economic pressure (13)
- Self-employed workers and SMEs are less likely to have well developed health and safety systems and training (17)
- Self-employed workers may not be able to source relief cover, exacerbating injuries (1)
- Self-employed workers are subject to less regulatory oversight (1)
- Self-employed workers will take more risks because it is their company (2)
- Self-employed workers work longer hours on average (1)
- People working alone may be at more risk of injury (2)

Demographic representation in higher risk jobs

- Rates of employment in higher risk jobs account for some or all of the demographic differences. Some jobs or workplaces are inherently riskier, involve more dangerous work (56)

  - Māori are more likely to be involved in risky work (14)
  - Men are exposed to more risky work (11)
  - Pacific Islanders more likely to be involved in risky work (7)
  - Self-employed workers are over-represented in more risky industries (1)

Other comments

- More research or better data is needed to understand the factors behind demographic differences (12)
  - Ill health from hazardous substances is more difficult to detect. Demographic statistics may be skewed by higher relative reporting of physical injury (1)
  - New Zealand's relatively high levels of employment in higher risk sectors may affect our high fatality statistics relative to other countries, therefore we should find out how NZ accident rates compare, by sector, with other countries (2)
- A few submitters said that they had not observed demographic differences in outcomes within workplaces (4)

Question 2. What changes are needed to the workplace health and safety framework to improve outcomes for demographic groups with higher than average rates of injury and illness?

Submitters made the following suggestions for changes that would improve outcomes for demographic groups with higher rates of injury and illness.

Legislation is not the issue

- In response to this question, a few submitters commented that legislation, or the health and safety framework is not the key factor for addressing these problems. For example, some felt that it was more important to address wider socio-economic issues (5)

Suggestions involving targeting particular groups

- Put resources towards improving the health and safety of specific groups (65)
- If a single focus health and safety agency is established, it should designate roles for working with high risk groups (2)
- Develop or improve injury prevention campaigns targeting high risk demographics (5)
- Develop government supported programmes that target high risk demographics (5)
- Support employers with resources to enable them to recognise and deal with issues with different demographic groups (2)

Targeting younger workers

- Target resources or strategies to young people (6)

Targeting migrant workers

- Target resources or strategies to the migrant workforce (20)

- Require immigrants who wish to work in NZ to undergo health and safety training (1)
- Develop health and safety induction or training resources for migrant workers, e.g. in their native languages (9)
- Require high risk industries to recognise and address the hazards associated with employing workers from different cultural and language backgrounds (1)
- Require employers who import immigrant labour to demonstrate fair rates of pay, appropriate training, adequate supervision (2)
- Require employers to provide signage and training in employees' native languages (2)
- Provide guidance for employers and people working alongside migrant groups, on ways to mitigate the risks associated with migrant employment, e.g. develop Codes of Practice covering migrant health and safety management (1)
- Improve data collection and the research base on new migrant exposures to health and safety risks (1)
- Immigration NZ should screen immigrants for previous accident history (2)
- Ensure that migrant workers have access to Language Line and other support services (2)

Targeting older workers

- Target resources or strategies to the aging workforce (9)
  - Support retirement planning education to address the economic factors that lead older workers to stay in the workforce longer (1)
  - Subsidise retraining for older workers so they can move to less physical work (1)
  - Review New Zealand's retirement legislation (1)
  - Conduct research on effective policy interventions for older workers (1)
  - Assist employers with guidance for managing issues with older employees (3)

Targeting high risk industries

- High risk industries should receive targeted attention from the regulator (11)
  - Mandate or in other ways increase the use of drug and alcohol testing for high risk industries (7)
  - High risk industries should be required to have accredited health and safety management systems in place (1)

Address low literacy

- Address low literacy (21)
  - Increase access to, and resources for literacy development (15)
  - Health and safety information from government should be appropriate to the audience, e.g. use plain English, reduce legalese (5)
  - Obtain specialist input to develop effective solutions for engaging with workers with low literacy levels (1)

Suggestions for ways to ensure effective targeting

- Use training and communication methods that are tailored to particular groups, e.g. address gender issues, use workers' native languages, and deal effectively with literacy barriers (19)

- Take account of industry-specific practices, beliefs, social interactions, work practices and environments (3)
- Consider the types of work that the different groups are concentrated in, and address the specific risks associated with those arrangements (2)
- Use champions, from the relevant demographic groups, to deliver safety messages (3)
- Develop cultural competence (9)
    - Work with the relevant communities to develop effective ways of engaging their workers (6)
    - Explore the whānau ora approach for engaging Māori in workplace health and safety (1)
- Improve the information base (15)
    - Improve our understanding of why some groups are more accident prone than others, e.g. look at underlying behavioural factors (10)
    - Obtain better demographic data on workplace injury and illness (4)
    - Develop a New Zealand register of employees exposed to carcinogens (1)

Suggestions for processes within workplaces that could be adopted to mitigate the risks for particular groups

- Employers should do better assessment of employees' and prospective employees' health and safety awareness and competencies (4)
- Employers need to have a greater ability to identify people pre-disposed to workplace injuries (8)
    - Support screening and assessment for older workers (4)
    - Reassess equal opportunities requirements, so that employers can take account of different demographic or pre-existing condition risks (2)
- UVR management practices should be adopted for outdoor workers, e.g. Sunsmart (5)
- Improve the training and supervision of younger or new employees (6)
- Mobility and warm-up training can be used to reduce injury, assist older workers (1)
- Literacy should be assessed as part of workplaces' health and safety training (1)

Suggestions relating to other areas of the consultation document

- A large number of suggestions were made that related to other areas of the consultation document. Many submitters felt that addressing issues for the wider population would have flow-on benefits for the demographic groups who are most at risk. (152)
    - Improve workplace health and safety education, see q14 (40)
    - Address issues with SMEs and the self-employed, see q24 (9)
    - Address regulators' roles and responsibilities, see q6 (13)
    - Modify the legislative framework, see q4 (21)
    - Improve leadership, see q12 (11)
    - Better use of supply chains to influence health and safety, see q18 (3)
    - Review incentives and enforcement, see q16 (31)
    - Address New Zealand's health and safety culture, see q28 (31)
    - Improve health and safety capability, see q14 (22)
    - Address issues with health and hazardous substances, see q22 (1)
    - Improve employee participation, see q10 (23)

4.2. Regulatory framework

The consultation document described New Zealand's current regulatory framework and several overseas examples of regulatory frameworks, and asked submitters to comment on the challenges with New Zealand's regulatory framework, and to suggest ways to improve the framework.

Question 3. What do you think the challenges are with the current workplace health and safety regulatory framework?

Submitters made the following comments about the regulatory framework.

Overarching issues

- The Robens Model has not been implemented in its entirety, resulting in deficiencies in the regulatory framework (15)
  - The worker representative role has not been adequately addressed (2)
  - Inherent in the Robens Model are supporting regulations, approved codes of practice and guidelines. These are lacking. (14)
- The regulatory framework has become too complicated. This is the result of the number of acts and the hierarchy of acts, regulations, codes of practice and guidelines. It's a struggle for workplaces without a health and safety resource (16)
  - A consequence of the complicated regulatory framework is a 'tick box' approach to health and safety i.e. 'Sign the form and she'll be right' (1)
- There is a lack of prescription and guidance about health and safety obligations due to a lack of regulations, codes of practice and guidelines. Where they exist, they are piecemeal and often outdated (24)
- There is a lack of consistent government policy and approaches to workplace accidents, injury, occupational risks and injury prevention (5)
- While the HSE Act encourages lateral and wider thinking, other regulatory documents are prescriptive and encourage a limited and generic approach (1)

Principles and assumptions underpinning the current regulatory framework that need to be reviewed

- There is an assumption that the employer has the power to control employee behaviour (1)
- There is an assumption that the employee needs to be protected from the employer (1)
- The 'one size fits all' regulatory approach. There is a growing recognition that high hazard workplaces (i.e. those where there is a risk of low frequency high impact events) require different control measures (5)
- The current focus is on personal safety, while process safety receives minimal attention (1)
- The 'all practicable steps' test has been interpreted in a manner that weighs the expected cost and probability of damage against the expected cost of preventing it, and gives too much weight to cost when determining employer compliance (1)
- Risk management is less developed in the HSE Act than in Australian legislation (2)

- Legislation focusses on discrete events such as injuries or exposure to dangerous substances. There is a lack of emphasis on health and wellbeing in the workplace (3)
- Focus on hazards identification and management (10)
- Emphasis is on compliance and mitigation, rather than prevention (1)

Comments on specific regulations and inconsistencies between them

Inconsistencies in the standards and requirements between Acts

- There is a lack of clarity about obligations for health and safety under the HSE Act, HSNO Act, and other legislation (16)
    - There are inconsistencies between the HSE Act and the ACC Act, e.g. differing definitions of serious harm, significant workplace hazards under the HSE Act (such as UV radiation) that are not covered by ACC (3)
    - There are inconsistencies between the HSE Act and the HSNO Act, e.g. the HSE Act focuses on eliminating, isolating, or minimising hazards, while HSNO requires identification of hazards and controls. The relationship between the two Acts is not clear (4)
    - There are inconsistencies in inspectors' powers under the HSE Act, the Machinery Act, and the HSNO Act: e.g. inspectors have the power to compel employers to make a statement under the Machinery Act, but not under the HSE Act; they may issue search warrants under the HSNO Act, but not under the HSE Act (1)
    - The inter-relationships between the HSE Act, the Human Rights Act, the Employment Relations Act, and New Zealand Standard 4801 for workplace health and safety, are not clear (no specific details provided) (2)
    - There is inconsistency between the HSE Act and the Building Act: unsafely built structures, even if non-compliant with the Building Act, will not be investigated under the HSE Act unless someone is injured (1)

HSE Act

- There is a lack of clarity for health and safety in contracting relationships, in spite of provisions in the HSE Act (1)
- Duties of those in a governance capacity need to be improved (2)
- There is insufficient 'how to' for high hazard industries. The performance based nature of the HSE Act is fine for lower risk industries, but high risk needs easily enforceable requirements (1)

<u>Issues with specific sections of the HSE Act</u>

- Issues with the worker participation provisions
    - Worker participation and consultative provisions are not well developed (1)
    - Clauses 19C and schedule 1A regarding employee participation systems are not being implemented as intended (1)
- The current statute of limitation of six months in the HSE Act is too short (2)
- Duty holders are obliged to provide a report under Section 25 of the Act, but legally advised under Section 31(6) to withhold any explanation that implicates their failing (1)

<u>Issues with definitions of terms</u>

- A number of submitters made detailed comment about specific definitions of terms in the HSE Act.

- The term: 'serious harm', is currently open to differences in interpretation; the definition is complicated and out of date. The promised revision to this definition has not occurred (17)
    - Relating to the definition of 'serious harm', the term: 'temporary severe loss of bodily function' is not defined and it is unclear what it means (4)
- The definition of 'significant hazard is unclear and open to interpretation (3)
- The term: 'Employer' is too narrow, and does not cover all of the parties that need to be responsible for workplace health and safety (2)
- The accountabilities of 'Principals' and 'Contractors' are not well defined (1)
- There is ambiguity as to what the term: 'all practicable steps' means in practice; it is open to differences in interpretation (14)
- There is currently no distinction between 'practicable' and 'reasonably practicable' (1)
- The words 'Reasonable' and 'may' are used in relation to the regulator's roles under the Act, and imply that a lower level of care is required. This has allowed a stripping back of regulator roles and expertise (1)

HSNO Act (See also q19)

- The HSNO Act is too complicated making it unworkable (4)
- The HSNO Act fragments enforcement responsibilities across multiple agencies. It needs to be explicit about where leadership for enforcement activity lies (2)
- Sections 7-10 do not direct focus on the degree of harm that might result from the hazard or the risk. (1)

Land Transport Act

- Work time and logbook requirements are unwieldy to investigate and impossible to prove (1)

Gaps in the current regulatory framework and emerging issues that require inclusion in the regulatory framework

- There is a lack of clarity about responsibility for health and safety in contracting relationships and where there are multiple parties working on a project or a worksite (7)
- There is a lack of explicit legal obligation on architects, engineers, and designers to ensure their designs are capable of being built, operated and maintained safely (5)
- There is no mandatory requirement for any person who is providing health and safety services to hold a minimum level of competency before setting up in business (1)
- There are insufficient obligations on manufacturers for product safety (2)
- There is a lack of coverage of new and emergent risks, including hazardous substances (including nanomaterials) and psychosocial risks (2)
- The health and safety obligations of community-based organisers of events and volunteers are not clear (2)

Challenges for employers and workplaces using the regulatory framework

- Performance-based legislation is preferable to prescription-based but is difficult to apply consistently across workplaces of different sizes (2)
- It is difficult for workplaces to keep up to date with changes in the regulatory framework (1)

- The regulations are too descriptive and ambiguous (2)
- Legislation is biased towards the employer. The employees' accountabilities and responsibilities are neglected (3)
    - Court decisions reinforce the view that health and safety is the employers' responsibility only (2)
- It can be difficult to balance the needs of the specific business with the requirements under the law (1)
- There is a perception in some workplaces that codes of practice and guidelines are 'optional' (1)

Question 4. How do you think the workplace health and safety regulatory framework could be improved?

Submitters made the following suggestions for improvements to the regulatory framework. Note that the scope of this question was very broad, and submitters covered a number of issues that are also discussed in more detail under other questions. Where this occurred, the issues are summarised here, and a reference is provided to the question in which they are discussed in more detail.

Recommendations for new or revised principles to underpin the health and safety regulatory framework

- The regulatory framework should incorporate occupational health, safety, injury management and wellbeing (1)
- Use 'Health and wellbeing' rather than 'safety' (1)
- Risk assessment and management should become the basis of the Health and Safety Act (29)
- Hazard identification should be maintained as the basis of the Health and Safety Act (4)
- 'An abiding concern with failure' should replace 'zero harm' (1)
- Introduce 'Avoidance of doubt' (1)
- Introduce and regulate for a co-regulation approach to workplace health and safety (2)
- Introduce a presumption of worker safety (3)
- Introduce the principle that workers should be given the highest level of protection (3)
- Retain the performance-based approach (5)

Improved linkages across health and safety legislation

- Develop greater clarity about the relationship between the HSE Act and related Acts e.g. ACC Act, HSNO Act (5)
    - Clarify the relationship between the HSE Act and legislation applying to government agencies responsible for transport e.g. the HSE Act and the Land Transport Act in respect of accidents by long distance drivers caused by fatigue (1)
    - Make the HSE Act take precedence over all other legislation if a legislative clash occurs in a workplace (2)
- Create better linkages across legislation. Align terms. Remove inconsistent or conflicting information (10)

- Align the Land Transport Act fatigue management legislation to reflect some of the provisions in Health and Safety in Employment Act 1992 (1)
- The health and safety regulatory framework should be consistent with other regulatory frameworks such as animal welfare, food safety, biosecurity that take an outcomes-based and risk-based approach to regulation and compliance (1)

Other legislation

- The Crown Organisations (Criminal Liability) Act should be repealed to allow HSE prosecutions under all sections of the Act. Government bodies and territorial authorities currently transfer responsibilities as a principal to the contractor (1)

Government agencies

- Develop greater clarity about the mandates, roles and responsibilities of MBIE, ACC, and other regulators and enforcers e.g. MAF, Maritime NZ, MfE, NZTA, Police (see q6) (12)
  - Address the inconsistency in Maritime NZ and MBIE's approach to incident investigation and risk assessment (1)
  - The investigation by Police of motor vehicle incidents which occur in the course of working needs to be reviewed to determine whether it would be more appropriate for MBIE to undertake this role (1)
  - Better integrate the work of ACC and MBIE so the prevention and enforcement arms are working together with the same values and mission (1)
- Develop cross-government evidence-based planning, policies and strategies to ensure consistent, transparent health and safety standards and data collection (4)
  - Economic regulators should be required to consult on their regulation with the objective of avoiding adverse effects on the performance of safety (1)
  - The health and safety regulator needs to build a closer relationship with Standards New Zealand and commit to taking a more active role in the development of national Standards and the revision of existing national Standards (1)
  - There needs to be consistent policy direction from MBIE and ACC on injury prevention (1)

Level of, type of, and approach to prescription

- A more prescriptive approach may be needed initially because of the number of SMEs, but over time there should be more industry self-governance (3)
- Strike an appropriate balance between outcome-based and prescriptive requirements that is scalable and adaptive to change, especially in technology driven industries (1)
- Improve prescription but not to the extent that it fosters a compliance-driven approach at the expense of fostering a health and safety culture (1)
- More regulations are required. They should clearly set out minimum requirements (4)
- Introduce more regulations rather than codes of practice (2)
- Regulations, codes of practice and guidelines should be developed and kept up-to-date with industry and union involvement to improve guidance to workplaces about their obligations (see q14) (34)

  - Best practice guidelines should be developed by all industries to which they will apply. 'Work at Heights' was written by the building industry without recognition of other industries who work at height and who use different but safe ways (2)
  - Professional bodies should continue to play a key role in assisting the regulators with best practice guidance (1)
  - Resourcing needs to be made available to industry and unions to develop codes of practice and guidelines (4)
- Legislation, codes of practice and guidelines should be simplified and written in a clear and understandable way to enable workplaces to understand their obligations (17)
- Have a tiered approach in the legislation for small, medium and large workplaces. Adopt a graduated approach to compliance within the regulatory framework (3)
- Do not increase prescriptiveness e.g. do not make the same mistake as the UK where there has been a backlash to overly bureaucratic regimes (6)
- The level and amount of regulations should be based on the assessed risk of the particular industry sector, with factors such as intrinsic hazard levels and historical injury rates being considered (8)

Amendments to the HSE Act

Revise or clarify terms and definitions

- Clarify what 'all practicable steps' means in practice. E.g. adopt the Australian interpretation of the term, introducing a presumption of safety ahead of cost; replace "all practicable steps" with standards or defined minimum requirements; give industry codes and practices more prominence in relation to 'all practicable steps; consider using the term 'all reasonably practicable steps' (17)
- Broaden the definition of the primary duty holder from 'Employer', e.g. change it to 'a person conducting a business or undertaking' (9)
- Better define 'serious harm', e.g. complete the promised review of the definition, replace 'temporary and severe loss of bodily function with the threshold of incapacity to perform normal duties for a specified period of time (11)
- Better define 'significant hazard', e.g. include an assessment of the risks associated with the hazard (3)
- Add a requirement that a 'competent person' be employed to assess hazards (2)
- Define the terms 'risk' and 'threat' (1)

Introduce new terms or provisions

- Introduce 'enforceable undertakings': actions that the regulator can require employers to take (3)
- Substitute the 'at work' definition for 'as a result of their work' (1)
- Increase the current HSE Act statute of limitation (2)
- Limit the maximum number of hours to be worked (1)
  - Rather than implement maximum hours legislation, the regulator should focus on how employers manage fatigue within the requirements of their specific industry (1)
- Provide stronger and clearer requirements for the reporting of incidents (3)
  - Introduce mandatory reporting of' serious near miss' incidents (1)

Amend specific sections of the Act

- Amend the objects of the Act (s5 and 7), e.g. to encourage workplace health and safety as a genuine priority; to refer to compliance with international Labour Conventions; to refer specifically to a documented systems-based approach (2)
- Remove the three metre rule (regulation 21 of the HSE Act) as it conflicts with s6 and with the 'Working at Heights' Guidelines (3)
- Address some gaps in relation to persons with control of places of work (s16), e.g. coverage of children accompanying parents at workplaces, coverage of volunteer workers (1)
- Address the ambiguities with regards to principal and contracted companies' responsibilities, s18 (1)
- The duties of employees under s19 are complicated in cases of employee directors of small companies. Include a separate provision creating a new duty where a person operates in a governance capacity (1)
- Require formal, written risk assessment and management programmes as a "practicable step" under s6 (1)
- Require the identification of hazards, under s7, to be made in writing (1)
- Remove the exemptions for the agricultural sector under ss 19, 21, 61 (1)
- Dispense with the ability for duty holders undergoing prosecution to withhold any explanation that implicated their failing. This is allowed under Section 31(6) (2)
- With s50 offences, the onus of proof is on the prosecution. Consider an approach where it is incumbent on the informant to prove the facts constituting the offence beyond a reasonable doubt and thereafter shift the onus to the defendant, to establish on the balance of probabilities, that all practicable steps were taken (1)
- Under offences and penalties, ss 49-51A, restore the power to award reparation to injured workers for the difference between weekly compensation capped at 80%, and full loss of wages (1)

Recommendations for new or changed requirements in the regulatory framework

About company directors (See also q12)

- Review the duties and requirements for competencies, of directors for health and safety (see q12) (11)
- Expand and provide greater clarity about duty of care to cover those in a governance capacity and other appropriate parties (14)

About employers and their workplaces

- Clarify how and when it is appropriate for employers, or principal contractors to conduct alcohol and drug testing (3)
- Every organisation should be required to have a risk and control register (not just a hazard register). This should identify the risks to safety and how the organisation will control those risks of injury (1)
- Introduce a health and safety certificate that companies are required to update (2)
- Introduce a 'licence to operate' (2)
- Measuring workplaces' health and safety compliance
    - Introduce a 1-5 compliance rating system for workplaces, similar to the one being introduced to the transport industry (1)
    - Require businesses to have a health and safety audit, WOF check every five years (2)
- Require a company to obtain competent advice on health and safety issues (1)

- Safety critical and trade-related occupational groups which require a licence to work must ensure training and competency frameworks include health and safety rights and duties (1)

About occupational health and safety practitioners, including private consultants

- Introduce minimum practitioner standards, competency frameworks, registration or accreditation (see q14) (8)

About health and safety representatives (see also q10)

- Introduce a Code of Practice for elected health and safety representatives (1)
- Introduce a requirement for the regulator to engage with the health and safety representative in the workplace. Require annual elections of health and safety representatives (2)
- All organisations with 10 employees or more should be required to have health and safety representatives (1)
- Introduce whistle blowing provisions (2)
- Strengthen health and safety representatives' responsibilities, e.g. add responsibilities such as issuing of hazard and improvement notices, and PIN notices if they consider the legislation is being breached (5)
- There should be penalties for obstructing a health and safety representative who is carrying out their duties (2)

About unions (see also q10)

- Include unions as a 'duty holder' (1)
- Develop legislative rights for unions representing workers (1)
- Allow union officials to issue hazard notices to employers as they would have no fear of retribution (1)
- Unions' involvement in investigation stage and allowed to submit on the regulator's decision whether or not to prosecute (1)
- When a worker is being interviewed during an investigation either by the employer or by the regulator they should be advised of their right to be legally represented independently of the employers legal representative (1)

About workers (see also q10)

- An accessible nationwide legal advice service on health and safety should be available for employees. It should be independent of the regulator (1)
- Current legislation makes no specific reference to provisions for the older worker. International employment legislation does make provisions for the older worker (1)
- Employees performing specified work must hold a certificate of competence (1)
- Add a greater emphasis and more explicit statements about the accountability of individual employees (5)
- Implement mandatory health checks, e.g. for workers working in hazardous industries. (2)
- Mental health is not adequately covered and needs a more robust preventative approach (1)
- Require workers to have a 'licence to work' comprising basic education in risk assessment and management (4)
- Specific reference needs to be made to employee health screening, health monitoring or individual post-exposure requirements (1)
- Strengthen the requirements regarding employee participation. Develop a code of practice covering employees' participation (10)

- A single minimum standards document for health and safety should be promulgated to enable employees to find out about their rights in one single document, as well as to assist employers to understand their obligations (1)

Clarification of accountabilities

- Clarify health and safety obligations in respect of situations of contract and supply. This includes designers, architects and manufacturers. Also in the situation of multiple parties working on the same worksite (12)
    - Make 'Safety in Design' a legal requirement as it is in other countries because of its proactive approach to improving safety on construction sites (1)

Governance

- Establish a Tripartite Commission consisting of unions, employers and government with responsibility for developing and implementing policies to ensure a safe and healthy work environment (2)

Investigations

- Investigations into breaches of the Act should allow workers to be interviewed without the company's solicitor being present (2)
- Currently, accident investigations focus on blame. They don't ask the 'why' questions e.g. "why did the deceased linesman undertake an operation he knew was unsafe?" Investigations need to refocus on learning so the learning potential is not lost (1)

Prosecutions

- Private prosecutions must be permitted when the regulator chooses not to prosecute a party to a matter. Unions should be given the opportunity to submit on the regulator's decision whether or not to prosecute (1)

Penalties (See also q16, and q12 for the responsibilities of leaders)

- Fines and penalties need to better align to the seriousness of the infringement (16)
    - See q12 for submitters' opinions on the introduction of 'corporate manslaughter'
    - The introduction of a due diligence declaration reporting requirement is an alternative to the concept of corporate manslaughter (1)
- For penalties for non-compliance, criminal sanctions should only come into play where knowing or grossly negligent conduct leads to serious harm (1)
- Remove actual harm as a factor in setting fines for health and safety offences, and focus solely on potential for harm instead (1)
- Develop an effective way of raising the maximum penalty ceiling for offences - possibly by fixing fines for health and safety offending on the basis of an offender's turnover, or by removing the ceiling altogether (1)

The Judiciary

- Have HSE Act cases heard by a smaller group of judges e.g. creating a health and safety warrant for District Court Judges as part of wider judiciary reforms; or by reserving cases to a specialist Court such as the Employment Court (1)
- Change judicial sentencing practice by proposing that the Sentencing Council promulgate a revised framework for health and safety sentencing. Alternatively,

by requesting that the Chief District Court Judge provide practice direction for judges presiding (1)

- The framework would be improved if exclusive jurisdiction to determine breaches of the HSE Act was provided to the Employment Relations Authority, with an opportunity for de novo challenge or appeal to the Employment Court. (1)

Mediation

- Provision should be made in the Act to enable mediation to occur around collective health and safety matters. Mediation is encouraged for personal grievances, but there is no readily available route towards mediation for health and safety matters (1)
- There should be a binding obligation on the employer, or receiving employer, to go to mediation after a hazard notice has been issued (1)

4.3. Regulators' roles and responsibilities

The consultation document described the roles and responsibilities of the different government agencies that are involved in regulating workplace health and safety, and invited submitters to comment on the effectiveness of the regulators, and to suggest ways to improve their effectiveness.

Question 5. How effective are the regulators in influencing workplace health and safety outcomes?

Submitters made the following comments about the effectiveness of the regulators.

Level of effectiveness of regulators in influencing workplace health and safety outcomes

- The regulators are very effective (6)
- The regulators are effective (11)
- The regulators are not effective (72)

ACC

- ACC's no fault system encourages risk taking by workers because they know they will get compensation (2)
- ACC's contribution to health and safety improvements
  - ACC has had a limited role in workplace health and safety because the Department of Labour has been the lead agency in respect of workplace injury prevention (1)
  - ACC is the only agency that exposes firms to audits. But ACC's influence is limited because small businesses are not captured as they are not part of the incentive scheme, (1)
- The Accredited Employers Programme (AEP) gives employers discounts on their ACC levies in exchange for taking responsibility for their employees' work injury claims. There are currently no reliable statistics available on the effect of this on safety in the workplaces of accredited employers (1)

- The AEP process places greater importance on injury management and does not test the effectiveness of health and safety management systems (2)

Workplace Health and Safety Council

- The Workplace Health and Safety Council is invisible and lacks impact (10)

Factors that hinder the effectiveness of the regulators

- There is a lack of strategic health and safety leadership at government, MBIE and policy levels (9)
- There is an absence of an active tripartite body (2)
- There is no organisation that promotes sharing of up to date health and safety research and knowledge (2)
- There is no monitoring or oversight of the regulators' effectiveness (1)
- There is complication and confusion caused by multiple agencies having responsibility for the HSE Act (9)
- Differences among the regulators leave firms confused (22)
  - The regulators are fragmented and have different requirements (18)
  - Lack of clarity around the boundaries between CVIU and MBIE (1)
  - The regulators use different paradigms e.g. Biosecurity uses a quality approach, MBIE uses a hazards management approach, Health uses a disease model. ACC operates a no blame approach, MBIE operates a blame approach (2)
- Inconsistent enforcement across regions and industry, including firm size and firm type (4)
- Regulators' capacity and capability is lacking. Reasons include long-term under resourcing and continued re-structuring. (76)
  - MBIE lacks health and safety capability (51)
    - Inspectors are expected to be experts in a very wide range of areas (1)
    - MBIE has a lack of industry-specific expertise and experience (8)
    - MBIE is not equipped to deal with complex or larger workplaces (1)
    - The low pay rate has impacted on the calibre of inspectors (4)

      MBIE has insufficient focus and expertise on health and safety, especially at senior management levels, caused by its multiple functions, organisational structures and poor performance measures (1)
  - MBIE lacks health and safety capacity (37)
    - Health and safety inspectors have become invisible to workplaces (5)
    - There are too few health and safety inspectors and they are overworked (2)
  - The occupational health workforce within MBIE and other government agencies has been dismantled in successive restructurings (5)
  - The Departmental Medical Practitioners are leaderless and have no capacity to influence the regulatory framework (1)

- Comments on whether the regulators provide the information that organisations and individuals need to generate good health and safety performance
  - Regulators don't provide specific advice about health and safety or health and safety education, with the result that firms are perplexed about their obligations (13)
  - Criticisms of workplace health and safety standards, as below (10)

        - Health and safety standards are lacking. As a result, employers don't have a clear understanding of what is required of them (9)
        - 17 of the 29 approved codes of practice on the MBIE website are more than 10 years old so may be inconsistent with current industry practice (1)
        - The standard setting process may be dominated by commercial interests because it relies on volunteers to draft standards (1)
        - The relevance and applicability of a standard may be suspect because the standard setting process has had no representation from the industry it is intended to impact (1)
        - Giving the responsibility for standard setting to industry has been unsuccessful. There is no regulatory back-up for such standards (3)
        - In some cases, industry has denied employee input into the standard setting (1)
        - The appropriate regulator has not been included in standards development e.g. laboratory safety standards (1)
        - Standards and other documents are produced without proper consultation with industry and are usually in response to an incident (1)
    - MBIE documentation is designed for general audiences, is oriented towards bureaucratic compliance, and is too long. Employers need accessible information about tangible intervention responses (2)
    - People don't know how to access the official websites (2)

The regulators' approach - what's not working well

- Regulators are reactive and only become visible when an incident occurs. They are the ambulance at the bottom of the cliff (48)
    - Regulators' invisibility in the absence of accidents makes firms think non-compliance won't be detected (10)
- The stick or policing approach isn't conducive to good health and safety outcomes because it encourages a compliance, tick box approach (27)
    - because firms focus on minimum compliance to avoid prosecution, rather than improving their safety culture (6)
    - because it makes firms reluctant to ask for advice as it will put them under the spotlight (5)
    - because it leads to firms under-reporting accidents (2)
    - because penalties prevent an accident from recurring but don't prevent it happening in the first place (2)
- The voluntary compliance, 'hands-off' approach isn't working. Greater enforcement is required (17)
- The regulators are not providing a level playing field (4)

The regulators' approach - what's working well

- Targeted harm reduction campaigns have been a positive step e.g. quad bikes, working at heights (3)

Question 6. How could the regulators' roles and responsibilities be changed to improve their effectiveness in influencing workplace health and safety outcomes?

Submitters made the following suggestions for improvements to the regulators' roles and responsibilities.

Leadership and effectiveness

- Increased health and safety leadership is needed from Government and the regulators (6)
- Establish a mechanism to independently monitor and report on the state of health and safety in NZ at a strategic level (1)
- Monitoring of the regulators' performance should be based on effecting measurable change, not on activity-based indicators such as the number of visits made (1)

ACC (See also q 16)

- ACC should maintain its current focus on workplace insurance and not be incorporated into a regulatory agency (1)
- Disestablish ACC and replace it with insurance companies (1)
- Increase the complementarily between ACC and the regulator (1)
- Introduce a no claims bonus scheme (2)
- Merge the injury prevention functions of ACC and MBIE (2)
- There needs to be clarity about ACC's role in health and safety (1)
- Restructure the WSMP so it works for SMEs (1)

ACC Levies

- Improve the clarity around where ACC levies go (1)
- Raise the ACC levy to assist with additional resourcing (2)

Coordination and collaboration across agencies

- Improve coordination and collaboration across regulatory agencies to ensure consistency of requirements and approach (20)
  - Cross government agency taskforce teams should assess and advise on how to impact on key targets, including sharing of intelligence (1)
  - Have a common underpinning paradigm for regulatory approach i.e. quality or risk assessment or safety (1)
  - Improved information sharing across agencies e.g. Maritime NZ does not have access to ACC data (1)
  - Improve the clarity about which agency is responsible for health and safety in schools (1)
  - Additional resourcing is required for health and safety responsibilities of CVIU, NZ Police (1)
- Combine the injury prevention resources of ACC and MBIE, e.g. create a single Injury Prevention Unit that amalgamates their current injury prevention roles (3)

Maritime NZ

- Make appropriate funding available for improved training for Maritime NZ staff to address health and safety in the Maritime industry (1)

Workplace Health and Safety Council

How the roles and responsibilities of a body like the Workplace Health and Safety Council could be delivered more effectively

- Improve communication, increase visibility, and take more action (1)
- Reconfigure the role of the Workplace Health and Safety Council to a group more in line with the UK HSE Executive (2)

Advisory committees

- Reinstate the National Occupational Health and Safety Advisory Committee (NOHSC) equivalent to conduct credible research (2)
- Reinstate the Employment Relations Education Advisory Committee (1)
- Reinstate the Ministerial Advisory Panel on work related gradual process and occupational disease (1)

Regulators' roles in providing advice and guidance

- Separate out the roles and functions for enforcement from education and advice (21)
  - Remove the education function from the regulators, other than ACC. Private consultants to provide the education function (1)
  - MBIE should provide advice and information, but not itself deliver advice at workplaces. This could be done by trade and industry associations, health and safety consultants etcetera (1)
- Strengthen and expand the regulator's role in providing information, tools and advice about health and safety requirements for employers and workers to help them better understand compliance expectations (57)
  - Develop a central repository of workplace safety resources, such as audit tools, or checklists that can be adapted to specific workplaces (2)
  - Establish an advisory service, particularly for SMEs that provides more expert, industry-specific advice than the current 0800 number (1)
  - Establish a health and safety hotline for businesses to access (1)
  - Have a website dedicated to health and safety that is more user-friendly than the current websites of regulators (2)
  - MBIE should develop a model of what a safe organisation looks like (1)
  - Outsource the advice-giving and education functions to private health and safety consultants (1)
  - Run short campaigns targeting major hazards in an industry, rather than a more generalised approach e.g. the working at heights programme (1)
  - Try innovative ways of communicating information as has been done in the UK e.g. joint employer and GP briefings (1)
- Strengthen and improve the development of regulations, standards and guidelines so that they describe up-to-date practice. This is required to remove ambiguity for employers about what health and safety competency means (26)
  - Adopt a taskforce approach to this, using the Workplace Health and Safety Council (1)

- Funding should be made available for employee representation in this process, as neither the CTU or individual unions have the resources to support standard setting work (1)
- There should be an industry-wide process for industry standard setting and review, which involves employers and unions (4)
- Work in partnership with large businesses and industry bodies to draw on existing industry experience as was done with the adoption of the SARNZ Scaffolding and Rigging Guide (4)

A single-focus organisation for workplace health and safety

- The consultation document differentiates between a single-focus and multi-focus organisation. Many of the submissions expressed support for a single-focus organisation (75)

Comments on the role and structure of a single-focus organisation

- A single focus organisation could combine the health and safety parts of MBIE and ACC, to consolidate what is at present two distinct approaches to workplace accidents (4)
- ACC's current role providing advice to employers, e.g. in relation to injury prevention, should lie with this organisation (2)
- Functions of a single focus organisation could include education, disseminating research and international benchmarking opportunities (2)
- Include the EPA hazardous substances arm (1)
- It could be complemented by a Centre of Excellence for guidance on health and safety knowledge and practice (1)
- The group should cover health and safety in all workplaces - land, air and sea (2)
- The regulatory, standards setting and education functions should be separate (2)
- Senior managers in the single focus organisation should have OHS tertiary education and experience (6)

An independent workplace health and safety crown agency

- Some of the submitters who supported the idea of a single-focus agency went further, suggesting the establishment of an independent workplace health and safety crown agency (34)
- Some submitters did not support setting up an independent crown agency (3)
- Some submitters were neutral about setting up an independent crown agency (3)
- One submitter supported setting up an independent agency, but said that it should not be a crown entity, so as to enable effective tripartite governance (1)

Comments on the governance and funding of an independent agency

- The new organisation should have a tripartite governance structure, as in the UK model (4)
- Funding for a new agency could come through an increase in the existing HSE levy collected through ACC (2)

Improve the inspectorate

- Develop an inspectorate that is highly trained, resourced and adequately remunerated. Inspectors should include industry and specialist expertise and experience, and people management skills (52)
- Increase the number of health and safety inspectors, including those who specialise in high risk industries (32)
- Instigate measures to professionalise the health and safety inspectorate e.g. a competency framework, practising certificate, career pathway (14)
- Regulators should be supported by technical and specialist advisers such as engineers, occupational hygienists, ergonomists (7)
- Use external health and safety experts as required (1)
- Streamline health and safety inspectors' work e.g. issue infringement notices on the spot, provisional improvement notices (5)
- Funding for HSNO from other agencies should be dedicated to the inspectorate (1)
- Establish a separate inspector group for HSNO compliance. This is needed due to the specialist knowledge required for HSNO (1)
- There should be a separate inspectorate group dedicated to high risk, not just high hazard industries (1)
- The inspectorate should adopt a risk-management approach to their own activity that involves a focus on the high-risk sectors and historically under-performing businesses (1)
- Change the term 'inspector' to something that is less adversarial (1)
- Inspectors should focus on building relationships with industry and firms (1)
- Have direct access to inspectors, rather than being required to contact a 0800 number (1)
- Implement research-based findings about effective inspectorates, as follows (1)
    - Adequate resourcing in terms of staffing. Industry background and specialist expertise is critical in some industries (1)
    - Codes to guide inspection and compliance, and to explain enforcement principles (1)
    - Greater emphasis is on proactive enforcement via routine visits (1)
    - Inspectorates should have recruitment and training regimes that are consistent with the broader understanding of OHS and the wider array of workplaces and hazards that inspectors need to deal with (1)
    - Inspectors require the widest array of remedies (verbal directions, improvement and prohibition notices, on-the-spot fines, enforceable undertakings, prosecutions (1)

Regulators' practices

- Strengthen regulatory practices and activities (18)
    - Adopt the Compliance Service Delivery Model used by MPI (1)
    - Apply the 'Just and Fair' model to organisations who are complying with and resourcing health and safety, but who have an incident (1)
    - Base regulatory practices and activities on research-based best practice e.g. 'behavioural safety' and 'human factors safety' (2)
    - Consistent enforcement by the regulator across regions (2)
- Increase visibility, monitoring and auditing by regulators in the workplace. Take a proactive, rather than a reactive approach (42)
    - Implement an audit programme that builds on ACC's current programmes but incorporates overall management of health and safety risks (1)

- Use a proactive risk-based approach (2)

Targeting of workplaces

- Engagement with specific workplaces should be intelligence-led, given the regulators' finite resources, e.g. improve ex-ante targeting of workplaces, including cross-agency business profiling and intelligence-based targeting of workplaces (2)

Enforcement approach

- There is a need for a greater range of enforcement tools (1)
- Make better use of staged approach by the regulator, with regards to non-compliance i.e. informal warning, improvement notices, prosecution (1)
- Introduce enforcement of non-compliance with regulations and approved codes of practice, rather than enforcement based on injury outcomes such as serious harm (1)
- Enforcement and penalties should be focussed on fundamental failures rather than technical breaches (1)
- Outsource some of the enforcement functions e.g. for low risk workplaces, and for issuing certificates of competence for employees undertaking specified work (3)
- Maintain a level playing field (9)
    - through consistent enforcement (4)
    - through creating an environment where non-compliance leads to competitive disadvantage (1)
- Improve accident investigation and corrective action processes (4)
- Place a greater emphasis on, and pay more attention to root cause analysis (1)

Health and safety practices of government agencies

- Introduce performance monitoring of government agencies to ensure the implementation of the HSE Act (3)
    - Government agencies should be required to attain a minimum of ACC WHS accreditation (1)
    - Government agencies should be required to incorporate national workforce health and safety issues into their objectives (1)
    - Government agencies should include health and safety requirements in their procurement policies (2)
- Monitor the impact of government decisions on safety management in the workplace (1)

Other suggestions

- Create a strong identity and brand for workplace health and safety so it is immediately recognisable. Don't change it every couple of years as has been the case (12)
- Ensure the regulators have the resourcing they need to do what is expected of them (24)
- Resource, manage and adequately support an expert rail regulator (1)

4.4. New Zealand's changing workforce and work arrangements

New Zealand's working environment has undergone significant changes over the last twenty years, including demographic shifts in the composition of the workforce, changes in the type of work being carried out, and an increasing diversity of working arrangements and employment relationships. The consultation document summarised these changes and their possible impacts on workplace health and safety. Submitters were asked to comment on the effects of these changes on health and safety outcomes, and to suggest any changes that might be needed to the health and safety framework as a result of these changes.

Question 7. What impacts are New Zealand's changing workforce and work arrangements having on workplace health and safety outcomes?

Submitters made the following comments about changes that have occurred and the way that those changes may be influencing workplace health and safety outcomes.

The changing nature of work

- The move to service-based industries may improve health and safety outcomes (2)
- There has been an increase in the risks associated with sedentary work (7)
- Work stress is increasing (3)
- There have been technological changes and increasing automation, changing the nature of the risks (11)
    - Increasing automation of manual tasks may improve health and safety outcomes (3)
    - Manufacturing operations are becoming more technical, e.g. involving larger, more complicated machinery and more hazardous chemicals (3)
    - The upsurge in social media may be compromising safety by causing workers to be distracted (1)

Changing work arrangements

Casual work and contract arrangements

- Casual employees do not always receive adequate induction, training, supervision, e.g. this is not prioritised by employers (14)
- Casual, short term employees present training challenges, e.g. employers' investment in training is not recouped, they may be less engaged in health and safety initiatives, and there may be less opportunity to develop their skills (11)
- Temporary employees sourced by third parties may not always have appropriate skills, increasing health and safety risks (1)
- The construction industry is trending towards larger main contractors managing sub-contractors, which has potential to raise standards for the smaller sub-contractors (1)
- Outsourcing to contractors affects health and safety outcomes (54)
    - Contracting can increase a workplace's complexity, e.g. create less connectedness, and ambiguity around health and safety responsibilities and procedures (13)

- Contractors may have poorer health and safety capacity, e.g. as they may be SMEs or self-employed workers (19)
- Cost competition and contract performance arrangements based on the lowest cost create unsafe working conditions (14)
- Employing contractors extends the duty of care hierarchy, removes the holder of the duty of care from the level of the site (8)
- Outsourcing may done as a deliberate way to devolve responsibility for health and safety (4)

Working from home

- People working from home are at greater risk, e.g. they may not have access to ergonomic assessments, they may not pay attention to health and safety, and their employer's responsibilities are unclear (5)

Longer and irregular hours

- Longer and irregular hours are associated with poorer health and safety outcomes e.g. due to fatigue, stress (35)
  - Flexible work hours can result in employees working alone (2)
  - Shift work has increased, e.g. resulting in fatigue, stress, more injuries (6)
- Longer hours and shift work do not cause accidents if they are properly managed (1)

Effects of legislation and policies

- Employment law changes have introduced flexibility for employers, disempowered employees, and negatively affected health and safety outcomes (18)
  - 90 day probationary periods make employees less likely to report health and safety issues for fear of dismissal (5)
  - The lack of a compulsory retirement age and economic pressures encourage older workers to continue to work despite reduced physical capacity (3)
  - The shift to a 'work focus' social security system forces mothers into the workforce before they're ready, increasing stress and fatigue (1)
  - The Employment Contracts Act may have driven changes in accident statistics through putting pressure on wages, increasing part time employment, increasing contracting, increasing precarious employment, and reducing union influence (4)
  - The Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill may negatively affect vulnerable workers' health and safety (1)
  - The Holidays Amendment Act (2010) may increase working hours, negatively affecting health and safety (1)
- There have been more rules imposed, and reduced personal responsibility assigned to safety. People are 'wrapped in cotton wool' and no longer allowed to think for themselves (3)
- Reduced access to, and changes to apprenticeships have compromised health and safety. E.g., historically, apprenticeships gave workers practical skills and experience in behaviours that reduce risks (5)
- Regulated KPIs are negatively affecting workplace safety for electrical engineers (1)
- The PBRF causes a performance focus for university staff, that increases hours and reduces participation in health and safety (1)

- The recent decision to require reflagging of foreign flagged ships will allow Maritime NZ to apply the HSE Act to those ships and is expected to result in improved health and safety (1)

Declining union membership

- Collective negotiation via unions is now less frequent, exposing workers to risks (4)
- Unions no longer perform monitoring of health and safety practices (2)
- Workers no longer have union back-up to challenge unsafe practices (16)

Demographic shifts

- The increasing number of immigrant workers and business owners affects health and safety outcomes (language and knowledge issues as described in q1) (41)
- The increasing number of older workers affects health and safety outcomes (reasons behind this described in q1) (42)
- The increase in women in the workforce is affecting working environments (4)
    - Women are disproportionately victims of domestic abuse, and this has implications for workplace stress and health and safety (1)
    - The increase in women returning to the workforce is associated with a higher prevalence of flexible working hours (1)
- Bringing in leaders from overseas where health and safety standards are higher has helped to improve outcomes (1)
- Ethnic shifts will have an impact on the prevalence of some health conditions, with implications for workplace health and safety (1)

Effects of macroeconomic changes, e.g. economic recession, inequalities, globalisation

- Economic pressures have encouraged firms to cut back on health and safety (12)
- Firm downsizing, cutbacks, and performance pressures can put pressure on employees, with negative health and safety consequences. E.g. this encourages multitasking, longer hours, pressure to work faster, decreased supervision (26)
- There has been a growth in precarious employment (less job security, high unemployment, higher living costs, multiple jobs), making workers more vulnerable to harm, more likely to accept safe work or accept unsafe practices (30)
- Globalisation is placing higher expectations around health and safety for NZ companies involved in international supply chains (1)
- The loss of some multinational companies from New Zealand means that fewer workers now benefit from those companies' high standards of training (2)

Black market labour

- Black market labour is affecting outcomes because it can involve unsafe work and workers can feel powerless to complain about it (2)
- Black market labour is impossible to regulate (3)

Changes in population health

- An increased number of workers with health conditions, such as diabetes, negatively affects workplace health and safety outcomes (1)

Changes in values, skills, awareness

Changing values and norms

- People are too busy, value speed (2)
- The move away from traditional values has had an effect (2)
- Worker aspirations are increasing, leading to longer hours, stress, fatigue, substance abuse (1)
- There has been an adoption of acquisition and wealth-based values (1)
- There has been increased drug and alcohol use in the workplace (4)

Changing skills and awareness

- Employees now have less awareness and knowledge of health and safety issues (2)
- There has been a reduction in workplace skills; there are skills shortages in some industries, e.g. skilled workers are retiring or leaving New Zealand, and not being replaced by younger workers (17)

Improvement

- Improvement has been occurring in health and safety, e.g. there is raised awareness, safer practices are becoming the norm (5)

Question 8. What changes to the workplace health and safety framework, if any, are needed as a result of the changing workforce and work arrangements?

Submitters made the following suggestions for changes that would address the problems that have been created by the changing workforce and work arrangements.

Legislation is not the issue

- In response to this question, a few submitters commented that changes to legislation, or the health and safety framework, are not needed to address these problems (6)

Suggestions for addressing wider economic and regulatory drivers

- Require regulators to consult on the potential adverse effects of new regulations on health and safety (1)
- Try to ensure a level playing field between New Zealand and other countries, in terms of health and safety compliance costs (1)

Suggestions for addressing issues with fatigue and working hours

- Introduce statutory limits on work hours and minimum rest periods (8)

- Improve monitoring and enforcement of maximum working hours, shift work provisions (3)
- Recognise that maximum hours are difficult to enforce, and appropriate maximum hours vary across job types, and can vary seasonally (1)
- Require employers to have fatigue management policies (1)
- Introduce or strengthen codes of practice, or guidelines on working hours (5)
- Provide education on fatigue, e.g. the dangers of fatigue, fatigue management guidance (5)
- Increase the number of public holidays (1)
- Support research to better understand the factors behind stress and fatigue and their influence on workplace health and safety (3)

Addressing issues with home-based or remote workers

- Clarify or increase employer responsibility for home-based or remotely-located workers (4)
- Consider facilitating regulator access to home-based workers (1)
- Raise awareness of the health and safety issues associated with working from home (2)

Suggestions for addressing issues with casual workers and contract arrangements

Provide assistance for contractor firms, contracted employees

- Assist contractors with advice on health and safety requirements (4)

Provide assistance for principals, contract managers

- Improve capabilities in contractor management, e.g. provide guidance, encourage consistent or pan-industry approaches (8)
- Remind contract principals of their health and safety obligations with respect to ensuring contractor competency (1)

Review or change the responsibilities and rights of different parties

- Clarify the respective responsibilities and duty of care provisions, for contractors, suppliers, sub-contractors, and labour hire firms, e.g. through regulations or codes of practice (26)
    - Any changes should strengthen or make more explicit duty holder responsibilities (3)
    - Changes should broaden the definition of duty holder (5)
- Require principals in contract arrangements, or businesses that contract a large amount of work out to have processes in place for managing sub-contractor compliance with health and safety regulations (5)
- Strengthen the status of casual workers in legislation, e.g. to require that they be included in health and safety process (6)
- Ensure representation of all workers on-site by health and safety representatives, not just employees. Also see suggestions under q10 (1)
- Require health and safety training for contracted and casual workers (8)

Tender processes

- Adapt legislation to enable tender processes to take account of health and safety. E.g. require a statement of labour compliance, or a statement of health and safety

risks and how they will be managed and the resources required, and enforce these provisions (6)
- Ensure that legislation does not prevent contractors with fewer resources from being competitive in tender processes (1)

Other suggestions
- The inspection regime should consider employment arrangements and their contribution to accidents (1)
- Several submissions made specific suggestions for amending the details of regulations, codes of practice, risk assessments. Please refer to these submissions individually, for the details (4)

Suggestions for addressing the issues for precarious, vulnerable workers

- Increase the minimum wage to encourage workers to stay in a job and receive training, develop skills (1)
- Provide incentives to employ permanent workers rather than casual workers, e.g. especially in high risk industries (4)
- Strengthen worker participation and representation in industries where precarious work is prevalent (4)
- Develop more prescriptive regulations, codes of practice for industries where precarious work is prevalent (1)
- Target enforcement to vulnerable workers, e.g. targeting industries where precarious work is prevalent (4)
- Target training, information, and guidance to vulnerable workers (3)
- Add protection into the 90 day probationary period so that employees can take a personal grievance if they are disadvantaged by raising a health and safety issue (1)

Address technological changes

- Develop proper regulatory coverage of nanomaterials (1)
- Develop training that addresses the greater complexity of machinery (1)
- Encourage investment in new technologies that can reduce risks (1)

Other suggestions

- Mandate, or otherwise increase the use of workplace drug and alcohol testing (13)
- Support research to better understand and monitor the changing workforce arrangements (2)

Suggestions relating to other areas of the consultation document

- A large number of suggestions were made that related to other areas of the consultation document. Many submitters felt that addressing these issues would address the problems that have arisen as a result of the changing workforce and work arrangements (110)
  - Address literacy issues, see q2 (8)
  - Make changes to the regulatory framework, see q4 (6)
  - Improve employee participation, see q10 (15)
  - Strengthen the role of unions, see q10 (5)
  - Improve health and safety capability in workplaces, see q14 (12)

- Improve workplace health and safety education, see q14 (21)
- Improve incentives and enforcement, see q16 (17)
- Improve leadership and governance, see q12 (2)
- Make changes to regulators' roles and responsibilities, see q6 (17)
- Improve New Zealand's health and safety culture, see q28 (6)
- Address issues with SMEs and the self-employed, see q24 (3)
- Target health and safety resources, strategies, training, to immigrants, see q2 (18)
- Target strategies or resources to older workers, see q2 (7)

4.5. Worker participation and engagement

The consultation document described aspects of worker participation in workplace health and safety in New Zealand, including national and industry-level participation, and legislative provisions. It compared the situation in New Zealand with aspects of worker participation and engagement in other countries. Submitters were asked to comment on the current effectiveness of worker participation in New Zealand, and to suggest any ways in which participation could be improved so as to get better outcomes.

Question 9. How effective do you think worker participation is in improving workplace health and safety in New Zealand?

Submitters made the following comments about the effectiveness of worker participation, and the factors that influence the effectiveness of worker participation.

To what extent is effective worker participation happening in NZ?

- Worker participation is adequate, OK, generally works well (7)
- Worker participation is inadequate, ineffective, not happening, needs improvement (45)
- Worker participation is variable across workplaces (41)
- There has been improvement in recent years, e.g. since the 2002 amendment of the HSE Act (4)

How effective is worker participation in influencing health and safety outcomes?

- Worker participation is important, very effective, essential (102)
- Worker participation is effective in addressing compliance-based safety issues, but less effective in addressing behavioural and cultural factors (1)
- In some workplaces it can be more effective to have managers or supervisors directly involved rather than placing them in the role of being reported to by health and safety representatives (1)
- There is insufficient evidence to judge effectiveness (1)

Factors that influence the effectiveness of worker participation

Provisions of the HSE Act

- New Zealand legislative provisions for worker participation are insufficient, minimal by international standards (5)

- The legislation implies that employees need to be protected from employers. This creates distrust, complexity, and does not encourage employers and employees to work together in good faith (2)
- The default employee participation provisions in the HSE Act do not fit well with non-unionised workplaces (4)
- HSE Act descriptions of worker participation systems do not translate well to SMEs (2)
- There is no requirement, in the Act, for an employer to undertake risk assessment and consult with workers on changes that could affect health and safety (1)
- There are insufficient requirements on employers to provide health and safety information, or to allow gathering of such information by representatives (2)
- The requirement for 2 days' health and safety training is important, beneficial (2)
- The provisions for enabling workers to decline unsafe work are important, beneficial (3)

Exercise of rights under the HSE Act

- Agreed employee participation systems as required by the HSE Act are not always in place, even among large employers (3)
- Employee participation agreements, when they exist, are not visible to workers; workers lack knowledge of them (1)
- The right to refuse unsafe work is rarely exercised, e.g. employees do not know their rights or how to identify these situations (3)
- The right to issue hazard notices is rarely exercised (1)
- Exercise of the right to refuse work does not stop someone else from agreeing to do the work, e.g. contractors may be engaged in place of employees (1)

Government resources for the promotion or enforcement of employee engagement

- There is no guidance as to what excellence in employee participation looks like (1)
- Employee participation systems, as required by the HSE Act are not effectively enforced or monitored, (5)
- No government resources have been put towards promotion of, or training related to Part 2A of the HSE Act (2)

Health and safety representatives

<u>Worker election of health and safety representatives</u>

- Election of health and safety representatives by workers, as required under the Act, is important (2)
- In some workplaces, health and safety representatives are appointed by employers, not elected by workers, there is widespread non-compliance with Part 2A (8)
- There are examples of discrimination against union workers in selection of health and safety committee members (3)
- Health and safety committees are often stacked with managers, with little ground-level worker participation (4)

<u>Training, knowledge, expertise of health and safety representatives</u>

- It is important that representatives receive training (4)
- Some employers do not have trained representatives, e.g. some refuse time off to attend training, e.g. less than 10% of representatives are trained in some workplaces (3)

- There are too few well trained, knowledgeable health and safety representatives (2)
- Health and safety representatives are reasonably knowledgeable, active, in New Zealand (1)
- The standard of representative training varies between providers (2)
- Some employers have not allowed their attendees to attend the CTU representative training, preferring other courses (1)
- Government guidance on how to develop in-house training for representatives is lacking, (1)
- The cost of representative training prohibits access for volunteer workers at non-profit organisations (1)
- Several issues were raised in relation to the ACC-funded health and safety representative training
    - The ACC-funded health and safety representative training is irrelevant, not sector specific, out of date, ineffective, e.g. its uptake has not been associated with a decrease in the accident rate, it covers legal issues not practical solutions (14)
    - The CTU representative training course has good outcomes, is useful to representatives (1)
    - There is little uptake of levels 2 and 3 of the health and safety representative training course (1)
    - The future of the CTU training course for representatives is uncertain, funding is under threat (1)
    - Funding for the health and safety representative training has reduced (7)
        - Reduced funding has decreased participation in the training, e.g. accredited employers can no longer access it (3)
        - Funding constraints prevent the development of course resources in languages other than English (1)
        - Due to reduced funding, course materials have not been updated since 2007 (1)

<u>Variable workplace support for health and safety representatives</u>

- Provision of sufficient time off for health and safety representatives to carry out their roles is important, examples were cited of this time not being provided (11)
- Health and safety representatives receive little support once they have completed the training course (4)
- Representative effectiveness is compromised by a lack of follow up by employers. on issues raised by them (5)
- Health and safety representatives can be marginalised, ignored, and discriminated against by management, some examples were described of this happening (11)
- There is a lack of interest in the health and safety representative role among employees in some workplaces (11)

<u>Other issues that can compromise representative effectiveness</u>

- There is insufficient clarity as to the roles and responsibilities of health and safety representatives (1)
- The health and safety representative system forces staff into roles that they are ill-suited for (2)
- Health and safety representatives have insufficient legislative mandate, e.g. to order a cessation of work where there is imminent risk, or to gather information, (4)

- Committee recommendations can be of poor quality, e.g. health and safety representatives are often focussed on minor issues related to the immediate work environment rather than higher risk issues at a strategic level (4)
- There is anecdotal evidence that representatives can become self-righteous, or petty, undermining their effectiveness in identifying genuine risk (2)

Workplace culture, leadership, structures, and processes

- Participation at multiple levels, is important, e.g. you need more than just health and safety committee meetings, and you need participation at operational and strategic levels (15)
  - Line managers or employers sometimes use the health and safety representatives as a way to opt out of participation, devolving their health and safety responsibilities to the representatives (5)
- Commitment from leadership, management, is essential for worker participation to be effective (49)
  - The level of management commitment to employee participation, is variable, poor in some cases (8)
- Participation is influenced by worker attitudes towards safety, the extent to which they value safety, and the extent to which workers can see the benefit of safe practices (9)
- A workplace emphasis on personal responsibility, employees willing to be accountable assists effective participation (9)
- In some workplaces, health and safety has a compliance focus; the workplace does not solicit meaningful input from employees, leading to disinterest among employees (4)
- A workplace culture that values health and safety, transparency, fair treatment, learning from mistakes assists worker participation (16)
- A no-blame culture within workplaces assists worker participation (2)
- Participation is affected by the complexity of, and the difficulty of compliance with of rules, systems, and documentation, e.g. there are problems with complicated language, too much paper work (5)
- The large area of farms can make workplace health and safety plans difficult to enforce (1)
- Requirements to report health and safety recommendations up through the organisational hierarchy can result in dilution or modification of their content (1)

Union involvement

- Unions can be conflicted in their role as an advocate for their members, and their role in improving health and safety (7)
- The adversarial position sometimes adopted by unions can compromise the effectiveness of employee engagement (1)
- Employee participation is more effective in unionised workplaces, or when the union is involved (12)
- The decline in union membership means that unions are less able to be a mechanism for employee participation in particular workplaces and industries (8)
- At the national policy level, unions provide the only representation for workers (1)

SMEs

- SMEs provide less support for employee participation (6)
- SMEs seldom meet the threshold requirements of the HSE Act for employee participation provisions; the 2002 HSE Act amendment has made little difference to SMEs (4)

- SMEs are subject to greater resource constraints, e.g. they may not be able to absorb the productivity losses from allowing time off for health and safety training of representatives, and staff have multiple roles already (8)
- In SMEs there is a more direct link between workers and the employer. In some cases this can make it easier for employees to raise concerns (4)
- There is no guidance on employee participation systems for employers of less than 30 employees (2)

Other issues

- Employee participation is affected by issues with precarious work, competitive pressures and contracted work, and casual workers, as described in q7 (19)
- Health and safety training for staff affects the effectiveness of employee participation (more detail on training, q13 and 14) (15)

Question 10. What improvements can be made to worker participation in workplace health and safety so as to get better workplace health and safety outcomes?

Submitters made the following suggestions for ways in which worker participation could be encouraged, and could be made more effective.

Changes to the legislation

Powers and protection of health and safety representatives

- Strengthen the powers and protection for health and safety representatives (39)
  - Representatives should have the right to select who trains them (1)
  - Representatives should have the right to receive annual training (1)
  - Representatives should have the right to make representations to the employer or principal on health and safety matters (4)
  - Representatives should have the right to investigate worker complaints about health and safety, and the right to be involved in accident investigations (6)
  - Representatives should have the right to inspect the workplace, (7)
  - Representatives should have the right to be consulted with about the use of health and safety specialists in the workplace (4)
  - Representatives should have the right to be consulted with over health and safety arrangements and plans to change those arrangements (9)
  - Mandate paid time away from normal duties for representatives to carry out their roles (10)
  - It should be a criminal offence to obstruct health and safety representatives carrying out their duties (2)
  - Introduce mandatory training for representatives (2)
  - Improve representatives' rights to represent workers interests on wider issues of work intensity, work organisation, hours (1)
  - Appropriately trained representatives should have the right to serve Improvement Notices to employers and principals when they observe a breach of the HSE Act (10)
  - Appropriately trained representatives should have the power to serve Prohibition Notices, to require other workers to stop dangerous work (15)
- Do not overly strengthen the powers of health and safety representatives (3)

- Require employers to work openly with representatives, but do not add to the powers of the representatives (1)
- Representatives should not be able to issue Improvement Notices as there is the potential for vexatious use (1)
- Do not adopt the Australian model of powers for representatives as it is excessive (1)

Employee protection and responsibility

- Improve legal protection for employees if there is cause to believe that discrimination has occurred as a result of raising a health and safety issue e.g. improve whistleblower protection (16)
- Give workers the right to nominate a representative to act on their behalf in relation to health and safety issues (1)
- Consider putting a greater emphasis on employee responsibility; better balance employer and employee responsibilities. E.g. the legislative approach should require employers and employees to work together in good faith, not promote an adversarial relationship (14)

Information for employees

- Develop legislative requirements on information that employers must provide to employees (8)
  - Require workplaces to display information for workers on health and safety rights, responsibilities and employee participation systems (1)
  - Require that companies make relevant health and safety information and statistics available to representatives and committees (6)
  - It should be unlawful to have policy disincentives to full reporting of injury statistics and employee participation in health and safety committees (1)

Non-traditional work arrangements

- Develop legislative provisions to clarify and enable employee participation among contractors, multi-business worksites (11)
- Require principals in contracting arrangements to ensure that there is a worker participation system covering contractors (2)
- Require employee participation systems to consider how contractors will be engaged (1)
- Develop codes or guidance on employee participation mechanisms for contract workers, vulnerable workers (1)
- Extend the function of health and safety representatives to include temporary workers and contractors, enable representation of these workers (5)
  - If 10 or more non-permanent staff are present in a workplace, a worker should be elected to represent their interests (1)

Codes of practice, standards, and guidance on employee participation systems

- Review the 30 employee threshold for the requirement to have employee participation systems in place (10)
  - Representatives should be required in workplaces with at least five staff (1)
  - Representatives and committees should be required in workplaces with at least ten employees (4)
  - All workplaces should have an employee participation system, regardless of size (2)

- Incorporate into legislation, the employee participation requirements outlined in the Australian New Zealand standard 4801 (1)
- Create a Code of Practice or guidance for worker participation e.g. as anticipated by the HSE Act (21)
    - Require employment participation systems to consider training, hazard identification, investigation, meetings, the roles of management and workers (1)
    - Develop guidance on performance targets for participation systems (1)
    - Develop guidance on communication pathways that could be used in participation systems (1)

Other suggestions

- Remove requirements for union involvement in employee participation schemes (4)
- Health and safety committees should only be formed on the request of the majority of the workforce, to ensure full workforce engagement (1)
- Health and safety committees should be compulsory for companies above a certain size (1)
- Employers should be required to go to mediation after receipt of a hazard notice (1)
- Take a more flexible approach to employee engagement; don't prescribe particular processes; make requirements outcome-based rather than process-based. E.g. allow employers and workers to negotiate an agreed system, suitable to their workplace (8)

Changes to enforcement and incentives

- Increase incentives for employers (10)
    - Provide positive incentives to employers for good employee participation, e.g. tax breaks, awards (6)
    - Implement fines for employers that do not comply with the worker participation provisions of the HSE Act (2)
    - Consider including measures of worker participation in the calculation of ACC levies, e.g. link with WSMP and experience rating (2)
- Improve monitoring and enforcement of the regulated requirements for employee participation (18)
    - Ensure that health and safety representative selection is free from employer influence (6)
    - Ensure that agreed employee participation systems are in place (4)
    - Enforce the training requirements set out in the HSE Act e.g. paid time off for training (4)
- Consider whether enforcement and incentives are balanced in their treatment of employers and employees, e.g. recognise, or better enforce employee accountability (8)
- Allow unions to submit on regulators' decisions on whether or not to prosecute (1)
- Set up an anonymous service that workers can use to report safety issues to the regulator (6)
- Require inspectors to work with health and safety representatives when investigating incidents (12)

Facilitate worker involvement in standard-setting processes and other higher level bodies

- Ensure that industry-level workers are represented in standard setting processes (4)
    - Provide subsidised support from independent health and safety professionals, to advise the worker representatives involved in these higher level bodies (2)
- Encourage union representation in health and safety forums (1)
- Develop better communication and links between health and safety forums at the workplace, industry, regional and national levels (1)
- Create industry forums for health and safety representatives, targeting smaller workplaces (1)
- Introduce a tripartite governance body to oversee the regulator, see q6 (3)

Better support for health and safety representatives and committees

- Set up a national health and safety representative forum, or include representatives on existing fora (2)
- Provide funding for continued support of representatives, once they've been trained, e.g. fund information dissemination to them, fund networking for representatives (4)
- Provide a hotline where representatives can seek advice (1)
- Encourage recognition and reward of health and safety representatives, e.g. recognition within workplaces, or national awards (10)
- Develop guidance for health and safety representatives and committees (14)
    - Develop guidance for effective health and safety committee practices, e.g. their roles and duties, what the composition for the committee should be, e.g. management to non-management ratios (5)
    - Clarify the roles and responsibilities of health and safety representatives, e.g. provide a role description, describe their duties, clarify that they are not a means for managers and employers to devolve their health and safety responsibilities (8)
- Consider subsidies to businesses to help them meet the costs of health and safety representatives' time out to train and perform their duties (2)
- The health and safety representative position should be a full time, well paid role (1)

Training for health and safety representatives

- Improve education for representatives; put more resources towards it (14)
- Bring the training under NZQA standards, to create a greater incentive for participation (6)
- Develop a refresher course for trained representatives (2)
- Continue or improve the current representative training, (32)
    - Review representative training, e.g. to improve uptake, relevance, dissemination, value, to ensure that it includes training in the appropriate codes of practices for different industries; consider breaking it up into smaller blocks to improve uptake (16)
    - Introduce an on-site component or industry-specific component to representative training, e.g. beyond level 1, representative training should be industry-specific (9)

    - Increase funding for the CTU training, e.g. so that it can reach more industries than those currently targeted, and so that it can develop improved resources, or industry-specific content (10)
    - Continue to fund the two day CTU training course for representatives; develop secure funding for it (7)
- Extend representative training to higher levels (10)
    - Support the development of higher levels of training, e.g. to enable employee representatives to get involved in setting industry standards (7)
    - Representatives should train towards the Level 4 National Certificate in Workplace Health and Safety Management (1)
    - Extend representative training so that representatives can issue Improvement Notices (5)
- Provide opportunities for joint training of managers, supervisors, and health and safety representatives (1)

Union involvement

- Support constructive union involvement (11)
- Find effective mechanisms of employee participation that do not require union involvement (5)
- Clarify the role of unions in representing workers and contributing to health and safety, some suggestions for clarification of or changes to the role below (11)
    - Unions should be involved as a duty holder (1)
    - Union officials should be able to present hazard notices to employers as they are not vulnerable to retribution (5)
    - Require employers to include unions in the participation system when they represent workers who will be covered by it (1)
    - In unionised workplaces, the union should be responsible for managing the election of health and safety representatives (1)
    - Find ways to ensure that industrial relations issues are kept separate from health and safety issues, e.g. address areas where unions have conflicts of interest (1)
    - Allow unions to appoint health and safety representatives according to the proportion of workers they represent in the workplace (1)

Advisory services and representation

- Provide an independent legal advice service on health and safety for employees (1)
- Establish roving representatives and or regional health and safety centres (17)
    - There should be an independent, non-partisan employee and employer (especially SME) advocacy service, that provides advice to both employers and employees (1)
    - Roving representatives can assist SME and rural worker participation, represent vulnerable workers, and contracted staff (5,)
    - Health and safety advisors at regional centres should provide support to health and safety representatives, and should have powers to enter workplaces at worker request or if they have good reason to believe a hazard exists (2)

Influencing workplace and industry practices, processes, structures, culture

A number of submissions discussed particular health and safety systems, or features of systems that encourage effective worker participation (for example, recommending committee meeting processes). These recommendations are not reproduced here apart from three which suggested actions that could be taken at a strategic level.

- Investigate, provide guidance or training on, or encourage adoption of workplace programmes that are successful in engaging employees and management in health and safety, e.g. innovative practices, virtual participation, non-unionised workplaces (18)
- Encourage adoption of sector-based improvement strategies, e.g. industry-association-promulgated benchmarking, training, sharing of best practice (7)
- Develop guidance for SMEs on effective employee participation methods, such as 'toolbox talks' (2)

Improve the information base

- Support research on effective worker participation schemes (4)
- Require notifications of refusals of unsafe work to a central register (1)
- Investigate the prevalence of agreed employee participation systems and their compliance with legislation (2)
- Develop central and open access to the results of scientific testing related to workplace health and safety issues (1)
- Develop a national register of trained health and safety representatives (1)

Should a different approach to worker participation be taken for higher risk workplaces?

- Support for a different approach to worker participation in higher risk workplaces (9)

Worker representation in inspection and approvals relating to high risk workplaces

- In high risk industries unions should be able to appoint roving inspectors (1)
- There is no need for union-appointed check inspectors except in underground mining (1)
- Health and safety representatives should be involved in approving high risk processes before they can proceed (1)
- Create a statutory position of worker safety inspector, elected by workers, in high risk industries (1)

There should be more prescription around worker participation systems in high risk workplaces

- Required ratios of health and safety representatives to workers should be set, relative to industry risk levels (1)
- Make adoption of particular worker participation agreements compulsory in certain high risk industries (1)
- High hazard industries should be required to have documented worker participation systems (1)
- Make additional resources available to health and safety representatives in high risk industries, e.g. additional training, additional paid time off normal duties to carry out their roles (1)

Other suggestions

- Increase uptake of, or improve health and safety training, see q14 (29)
- Implement health and safety education campaigns to inform workers of their rights to a safe and healthy workplace, e.g. the right to refuse unsafe work (3)
- Implement campaigns promoting better attitudes to health and safety, see q28 (3)
- Educate leaders and managers in health and safety, see q12, q14 (21)

4.6. Leadership and governance

The consultation document described the evidence that directors and senior leaders take a variable approach to workplace health and safety in New Zealand. It described some factors that may influence the approaches taken, including legislative responsibilities and general management capabilities, and asked submitters to comment on the current effectiveness of leadership and governance of workplace health and safety, and to suggest ways to improve leaders' contributions to workplace health and safety.

Question 11. To what extent do directors and other senior leaders provide effective leadership and governance of workplace health and safety?

Submitters made the following comments about the effectiveness of leadership and governance, and factors that influence its effectiveness.

Comments on the level of effectiveness of leadership and governance

- It is adequate, health and safety leadership is usually effective, or is effective in my workplace (10)
- Many businesses have effective health and safety leadership (4)
- Effectiveness of health and safety leadership and governance is variable (67)
- It is mostly inadequate, ineffective, not happening, needs improvement, or lacks effectiveness in my workplace (49)
- Government is not modelling effective health and safety leadership (5)

Comments on the importance of leadership and governance of health and safety

- The role of leaders is crucial, important. E.g. leaders are responsible for promulgating organisational culture and values, and can therefore set the tone in relation to culture and values around health and safety; leaders control the budgetary allocations to health and safety initiatives; leaders are in a position to set health and safety standards, to recognise and reward good health and safety practices, and to identify and address poor practices. (69)

How well does the health and safety system hold leaders to account for developing and leading health and safety?

- There is limited incentive under the regulatory framework for effective leadership involvement in health and safety; there is insufficient accountability (19)
    - There is insufficient incentive to encourage leaders to put health and safety before production (3)

    - There are insufficient rewards for good safety performance (1)
    - There are insufficient incentives for leaders to develop their health and safety competencies (4)
    - The regulatory framework encourages a focus on reducing exposure to prosecution, rather than a focus on preventing harm (2)
    - Directors face little direct consequence from health and safety failures, e.g. the consequences are heavier for staff (5)
- The scope of an employers', directors, and other leaders' accountabilities is unclear, e.g. how is accountability apportioned across directors, employers, contractors, principals, landowners, and what does 'all practicable steps' mean (6)
- There is insufficient enforcement of leaders' responsibilities under the HSE Act (8)
    - The low risk of prosecution is an issue, but enforcement is still an effective motivator for some leaders (1)
    - It is difficult to launch a prosecution over an occupational health issue (1)
- Comments on risk management versus hazard management
    - There are no or limited obligations for leaders to properly understand and manage risks (1)
    - The current system imposes health and safety compliance responsibilities that are separate from other risk management activities in the business (2)
- In the maritime sector, complex charter arrangements sometimes inappropriately remove health and safety accountability from directors or senior leaders (1)

Factors that influence the effectiveness of leadership and governance

The Business Leaders' Health and Safety Forum

- The Business Leaders' Health and Safety Forum is a good initiative (7)
- The Business Leaders' Health and Safety Forum lacks a clear mandate (1)
- The membership of the Business Leaders' Forum is limited to a small, non-representative group of employers (2)
- The Business Leaders' Forum lacks visibility (1)
- As yet, there is no evidence that the Business Leaders' Safety Forum is making a difference (1)
- Comments on the Zero Harm initiative
    - Zero Harm is a good initiative (2)
    - Zero harm initiatives encourage non-reporting of incidents (1)
    - The Zero Harm initiative has drawbacks (3)

Shareholder engagement

- Shareholder approval and recognition of health and safety can help drive effective leadership on health and safety (1)
- Reporting safety outcomes alongside financial reporting can help drive health and safety leadership (3)

Genuine commitment to health and safety

- There is a lack of genuine commitment, e.g. some New Zealand leaders see health and safety investment as a compliance cost rather than an investment; there is a lack of commitment beyond 'ticking boxes', and productivity is given priority (28)
- The extent of a leader's genuine commitment to health and safety is an important factor e.g. genuine commitment is associated with success, while a 'ticking boxes' mentality is associated with poor workplace health and safety (8)

- Leaders prioritising production over safety is poor practice, leads to poor safety, is not acceptable (8)

Leaders' engagement with the workforce

- Leaders, especially directors, can be too distant from the workers, e.g. they may not have a good understanding of work processes, and they may not understand the practical consequences of their decisions or lack of decisions (12)
- Directors can be insufficiently engaged, or have other priorities e.g. they may delegate health and safety responsibility to managers, and there is insufficient reporting on health and safety to Boards (16)
- Companies that model excellence in health and safety often have health and safety professionals in senior roles, reporting directly to the chief executive (1)
- Where employees and unions are engaged, it helps to encourage a leadership focus on health and safety (1)

Leaders' competency in health and safety

- Comments on leaders' backgrounds and experience
  - Leaders who have worked overseas tend to have a greater understanding of, and commitment to, health and safety, e.g. multinationals display better health and safety leadership (5)
  - Directors who were not exposed to high risk industry during their executive careers can struggle to ask the right questions when at the governance level (2)
- Comments on leaders' knowledge levels and education
  - Leaders tend to have an insufficient understanding of what is required to effectively manage health and safety, although they may have good intentions (13)
  - There are insufficient health and safety knowledge or training levels among leaders (5)
  - Many leaders do not understand their legislated responsibilities (8)
  - There is an absence of mainstream health and safety training for leaders (1)
  - The typical safety training for managers lacks sufficient depth (1)
  - Management qualifications often have health and safety as an optional component; health and safety is not a core competency in business leadership training (3)
- Comments on the adequacy of health and safety guidance for leaders
  - Insufficient health and safety guidance is available for leaders, e.g. there is a lack of advice on effective processes, not just liabilities (7)
  - Government resources for directors focus on dealing with liability issues rather than ways of preventing harm (1)

Generic leadership skills and training

- There is a lack of generic leadership skills in New Zealand (5)
- Leadership education in New Zealand is low quality, removed from workplace applicability (1)
- Effective health and safety leadership goes hand-in-hand with other leadership skills e.g. effective people management, good planning processes, and strong engagement with the workforce are needed (8)

Effective indicators and reporting

- The current system encourages a focus on lagging indicators, which in turn encourages compliance-based organisational priorities (1)
- Reporting of leading indicators of health and safety practices is helpful for leaders; an exclusive focus on lagging injury rate indicators is not helpful (7)
- Focus on lagging indicators such as injury rates may happen because these indicators are easier to report and to interpret (1)
- An open reporting culture is key to effective health and safety leadership (1)
- Some directors wrongly assume that being in the WSMP provides assurance that health and safety risks are being effectively managed (1)

Budgetary and production pressures

- Leaders are constrained in their health and safety investment by budgetary pressures, e.g. performance targets required by investors, clients who are not prepared to meet the costs of safe practices (8)
- Smaller organisations do not have the resources for specialised health and safety leadership, but in some cases this may be mitigated by closer personal links between employers and staff (8)

Focusing on behavioural health and safety, versus technical or operational risk

- There is a greater focus, among leaders, on behaviour-based health and safety interventions than on technical or operational risk (2)
- Leaders' focus is affected by reporting. Assigning health and safety reporting responsibilities to operational staff drives a technical focus, while assigning responsibilities to human resources staff drives a behavioural focus (1)

Question 12. What improvements can be made to directors' and other leaders' participation in workplace health and safety, so as to get better workplace health and safety outcomes?

Submitters made the following suggestions for improvements that could be made to leaders' participation in health and safety.

Improve health and safety leadership capacity, knowledge and skill

Director selection

- Develop health and safety competency requirements for Directors (3)
- Exclude directors guilty of serious health and safety breaches from eligibility for future directorship positions (2)
- Increase the proportion of leaders with health and safety expertise on public and private boards, e.g. require Boards to include members with health and safety management experience; appoint directors experienced in health and safety to SOE boards (4)

Guidance

- Improve guidance for leaders (33)
  - Develop guidance materials or Codes of Practice for how directors and senior leaders can meet their health and safety obligations (30)
  - Develop guidance tailored for leaders of SMEs (4)

Training

- Support health and safety leadership training (72)
- Introduce compulsory health and safety leadership training for directors, or find ways to strongly encourage it (12)
- Require health and safety leadership training for employers, senior managers (6)
- Make health and safety training of the owner or manager a pre-requisite for setting up a new business (7)
- Develop a health and safety leadership training programme for senior leaders and directors, e.g. provided by the Institute of Directors (17)
    - Focus the training on good practices in safety leadership, e.g. not just leaders' liabilities (4)
    - Use the Business Leaders' Health and Safety Forum's model of safety leadership as a basis for the content of leadership training programmes (1)
    - Encourage leadership or business training courses to include health and safety as a topic (14)

Other suggestions

- Address leadership competencies more generally, e.g. behavioural and organisational psychology (3)
- Encourage industry and government to place their health and safety professionals in senior roles, e.g. reporting directly to senior managers, the CEO, or directors (4)
- Find ways to encourage health and safety to be treated as an operational function, not a human resources function (2)

Increase visibility and transparency of health and safety performance

- Increase the visibility and transparency of health and safety performance (32)
    - Give health and safety a priority in national and industry level reporting (6)
        - ♦ Introduce industry benchmarking on health and safety performance (3)
        - ♦ Make health and safety performance a key industry productivity indicator (1)
        - ♦ The regulator should report regularly on the health and safety performance of New Zealand businesses (2)
    - Publicise good and poor performance (14)
        - ♦ Formally recognise and promote high performance health and safety leadership (7)
        - ♦ Increase the visibility of health and safety investigation findings (1)
        - ♦ Introduce health and safety auditing with publicly available results (3)
        - ♦ Name and shame poorly performing leaders and companies (3)
    - Require companies and government agencies to report on health and safety performance, e.g. as part of their annual reporting (17)
        - ♦ Reporting should include contractors' performance (1)
        - ♦ Reporting should include leading indicators, not just lagging indicators of injury rates (2)

Promote health and safety leadership

- Promote health and safety leadership (39)
  - As a way to promote leadership, create a new government agency focused solely on health and safety, see q6 (4)
  - Create a new Ministerial portfolio for workplace health and safety (1)
  - Encourage senior business leaders and directors to share stories of positive change, good practices (4)
  - Government agencies should lead by example, adopt best practice health and safety systems, and commit to a common health and safety vision (9)
  - Support, develop, and work with industry health and safety leadership groups (31)
    - Government should collaborate with industry leadership groups in improving health and safety leadership, e.g. in developing standards, education programmes, and guidance (6)
    - Introduce a national health and safety forum for SME leaders (3)
    - Publicise and encourage wider membership of the Business Leaders' Health and Safety Forum (6)

Review leaders' responsibilities and accountabilities

- Clarify accountabilities across different parties (17)
  - Consider adoption of the provisions in the Australian model laws for a Person Conducting a Business or Undertaking (4)
  - Consider provisions in the Australian and New Zealand Standard 4801 (1)
- Current legal provisions and penalties for leaders are adequate, do not need strengthening (5)
- Increase directors' and leaders' accountabilities (2)

Statutory liabilities

- Review the statutory liabilities of directors and senior leaders for health and safety, e.g. make them more accountable, or clarify their accountabilities with respect to workplace health and safety (40)
  - Corporate manslaughter
    - Do not introduce corporate manslaughter (6)
    - Give consideration to the introduction of corporate manslaughter (3)
    - Introduce corporate manslaughter (11)
  - Do not expose directors to criminal prosecution, except in cases of wilful or grossly negligent non-compliance, where serious harm is caused (3)
    - Align director accountabilities and penalties with those in the Financial Markets Conduct Bill (2)
  - Introduce due diligence provisions, e.g. do not allow 'wilful blindness' as a defence (13)
    - Adopt the provisions in the Australian model Work Health and Safety Act, 2011 (1)
    - Legislation should better reflect the requirements in the Australian New Zealand Standard 4801 for health and safety management systems (1)
  - Develop a Code of Practice for Directors, that will guide assessment of whether Directors have met their obligations for due diligence (1)

Incentives and enforcement

- Increase penalties for serious breaches of health and safety responsibilities (10)
  - Take care that increased penalties do not just encourage the covering up of poor practice (2)
- Shift leaders' focus to prevention through more frequent lower level enforcement aimed at preventing injury and ill health (1)
- Enforcement action by the regulator, and/or ACC audits should consider leadership practices and governance structures and processes (3)

Suggestions for regulatory change to encourage better involvement

- Require better leadership involvement in health and safety processes (8)
- Require leaders to be involved during engagement with, inspection by, or enforcement by the regulator (2)
- Require leaders to sign off on accident investigations, Hazard Notice responses, and actions following regulator intervention for non-compliance (1)
- Require or encourage leaders' involvement in safety management audits by the regulator or ACC (6)
- Suggestions for how to encourage better engagement among directors
  - Find ways to ensure that health and safety information is regularly monitored by Boards, e.g. require directors to provide evidence that health and safety is a fixed agenda item (18)
  - Require directors to ensure that risk management is undertaken in their company, as a core management function (1)
  - Require that one Director holds the responsibility for health and safety at the Board level (2)

4.7. Capacity and capability of the workplace health and safety system

The consultation document suggested that there is variable capacity and capability in New Zealand businesses to manage workplace health and safety issues. It described factors that influence capacity and capability, including education, sources of information and advice, and the availability and capability of health and safety professionals. Submitters were asked to to comment on whether firms have the capacity and capability to effectively manage health and safety, and to suggest options for improving firm level capacity and capability.

Question 13. To what extent do firms have the capacity and capability to effectively manage workplace health and safety issues (including through accessing external resources)?

Submitters made the following comments about capacity and capability, and factors that influence capacity and capability.

Comments on the level of capacity and capability

- Capacity and capability are present, e.g. most firms have capacity (20)
- Capacity and capability are variable (86)
- Capacity and capability are insufficient, e.g. most firms possess insufficient capacity (27)

General factors that influence the level of capacity and capability

- Motivation is the deciding factor. Capacity and capability are available, if the firm is motivated to put resources towards it (27)
- Capacity and capability varies by industry, e.g. high hazard industries often have greater capacity (3)
- Capacity is related to firm size, e.g. there is limited knowledge, resources, capacity and capability in SMEs, see q23 (63)
    - Smaller, less well-resourced employers do not have the resources for dedicated in-house health and safety staff (15)
    - SMEs have limited resources available to engage external health and safety professionals (9)
- Capacity and capability in health is less advanced than capacity and capability in safety (1)

Education and training

Note that comments on health and safety representative training are covered in q9, and are not reproduced here. Note also that while no comment was received on the effectiveness of school level education, there were many suggestions to introduce health and safety as a school level topic (see questions 14 and 28)

How effective is education and training in building the capacity and capability of New Zealand's workforce and organisations?

- Reasonably effective (1)
- Even when education and training is taken up, it is not always effective in producing change as it is not accompanied by changes to workplace policies and processes (2)
- Outcomes are variable because there are not consistent standards, moderation, or independent examinations across training courses (4)
- Education and training is inadequate, needs improvement. A number of general problems across all training types were raised, as below (21)
    - Available training in risk management is inadequate (1)
    - Most firms do not know how to access health and safety training (1)
    - There is insufficient regulator oversight of qualifications and competency frameworks (2)
        - ♦ Standards setting and moderation across health and safety qualifications is a large task, and funding for it is uncertain (1)
    - There is not enough training provided for managers, (12)
    - Training is often not sufficiently tailored to industry needs (1)
    - Health and safety skills development should not be considered to be separate from the development of other skills (3)
        - ♦ A key component of reducing workplace risk is the employment of people who are suitably trained and competent to do the job. e.g. health and safety competency cannot be separated from competency to do the job (1)
        - ♦ Health and safety training is often separated out as a stand-alone topic, and this leads to the attitude that health and safety is separate from the real work, e.g. it creates impression that safety is not part of the job (2)
    - Most training is designed to tick compliance boxes rather than actually change behaviours. e.g. it consists of classroom-based learning designed

to impart knowledge of hazards, rules, and procedures, rather than in-work skills development, and learning-by-doing (1)

Health and safety qualifications and unit standards

- Health and safety qualifications and unit standards are abundant, and not well coordinated (2)
  - All NZQA-listed health and safety qualifications are currently under review. This will result in some reconfiguration and rationalisation, and possibly changes to the agency that leads industry health and safety training (1)
  - Official statistics understate the volume of NZQA-aligned health and safety training (1)
  - Unit standards in health and safety are fragmented, and there is no seamless system for cross-crediting them (1)
- Health and safety training is rarely or not consistently included within tertiary training on other topics (3)
- Limited Credit Programmes are used extensively by employers for short-course health and safety training, rather than as a stepping stone to a full qualification, as was intended by government. However, TEC has placed a prohibition on these courses, leading to a large decline in health and safety training arranged through ITOs, potentially resulting in the substitution of non-NZQA-approved courses into this gap (1)
- Changes proposed under the industry training review may affect health and safety training, e.g. There may be reduced funding for on-the-job training, in favour of off-the-job, provider-based training (1)
- Comments on the content of health and safety qualifications
  - Health and safety education by tertiary providers takes a traditional approach focussed on noise control, machine guarding, representative training, etcetera, and ignores leadership, engagement, process safety frameworks, and safety management systems (1)
  - Health and safety qualification content may be overly influenced by education providers, in some cases at the expense of learning needs, e.g. there can be dilution of the practical, in-workplace learning elements (2)
  - Many of the NZQA unit standards relating to risk management are either not on the topic of risk management, are outdated, or provide poor guidance (1)

Firm-specific or in-house training

- SMEs are more likely to rely on on-the-job training and mentoring, than on off-site courses, as they cannot afford the productivity loss from sending a worker to a training course (1)
- Some very good in-house training is provided by leading New Zealand firms, and multinational firms located in New Zealand (1)
- Wellness education is often available within workplaces, but is ad hoc and detached from formal safety policies and processes (1)

Trade certification

- In the electrical industry, trade certification does not address health and safety content, apart from its focus on public safety (1)
- There is little support and monitoring of the health and safety behaviours of construction industry apprentices, when on placement in the workforce (1)

Literacy, language and numeracy

- Firms can struggle to effectively tailor health and safety training for employees with low literacy or English language skills, and they may not have good ways to check whether employees have understood the training (3)
- The Government's drive to embed literacy and numeracy in industry training has omitted addressing language issues for speakers of non-English languages (1)
- The CTU's Learning Reps Programme has had a significant impact in some industries that face numeracy and literacy challenges (1)

Government and industry sources of information and advice

Comments not specific to industry or government

- There is sufficient guidance available (10)
- Information and advice is not readily available; there is a lack of guidance, guidance is insufficiently visible, and most businesses are unaware of how to access information and advice (15)
- The available advice is hard to understand for non-specialists (4)
- Standards committees are often stacked with manufacturers, with token or no representation from end-users, resulting in standards that insufficiently consider end-user requirements (1)
- The available guidance is impractical, has had insufficient input from workers, is ignored due to its impracticality (1)
- Information and advice from government or industry associations is relied upon by SMEs, as they do not have the resources to employ health and safety professionals (7)
- There insufficient guidance, advice, support for SMEs (8)
    - Best practice standards recommended in government guidance documents can be costly to purchase; this is a barrier for SMEs (3)
    - Historically, ACC has targeted advice to large businesses, and has had little impact on SMEs and self-employed (1)

Information and advice from government

- Government provides insufficient advice and guidance (7)
    - The dearth of government guidance has led employers and employer groups to develop their own codes and guidance. E.g. in-house standards and guidance documents have proliferated (3)
        - Development of in-house standards can be inefficient, duplicating effort and resulting in a fragmented approach (2)
        - Processes for developing in-house standards may not be as robust as processes for developing national standards This can result in confusion and a lack of buy-in (1)
        - Development of guidance by employers and employer groups can be associated with insufficient worker or union input (1)
- Government guidance is fragmented, uncoordinated, and inconsistent, with different documents provide conflicting instruction (1)
- There are too few Approved Codes of Practice (3)
- Approved Codes of Practice are often out of date (3)
- Information on incident investigations is not communicated to the wider industry until investigations are concluded, so that lessons are not shared in a timely manner (1)
- Some employers are unwilling to approach regulatory agencies for advice, for fear that they will be required to make costly changes, or will be prosecuted (2)

Information and advice from industry groups

- Compared to other jurisdictions, New Zealand professional organisations are more fragmented, and less active and visible in leading health and safety culture change (1)
- Industry Associations have been effective in providing health and safety guidance to their members (2)
- Industry-specific comments
  - For the construction sector, there is no industry-wide agreement on competency standards, and there are various sector training organisations who are vying to be the voice of the industry (1)
  - The Meat Industry Health and Safety Forum has produced a range of resources for the industry on health and safety (2)
  - The NZ Forest Owners Association has undertaken many safety initiatives (2)

Health and safety professionals

- Advice provided by health and safety advisors is variable in quality and content (22)
  - Advice is not often evidence-based (1)
  - Advice is often overly complex, impractical (2)
  - Advisors often do not have enough industry-specific knowledge (3)
- Professional health and safety advice is under-used in New Zealand (2)
- There is a lack of competency standards, consistency in accreditation of, monitoring of, or accountability assigned to health and safety advisors or consultants (21)
- There is limited expertise available, e.g. there is a shortage of adequately qualified health and safety professionals in New Zealand (14)
- Health and safety duties are often assigned to Human Resources staff, who may have limited expertise in health and safety (3)
- Health and safety professionals have insufficient authority within workplaces (1)
- In-house health and safety teams are often too small, relative to the size of the workforce (1)

Question 14. What options are there for improving firm level capacity and capability to deliver better workplace health and safety outcomes?

Submitters made the following suggestions for ways to improve firm level capacity and capability in health and safety.

Education and training

Note that suggestions relating to health and safety representative training are covered in q10, and not reproduced here.

Balancing government and private funding for health and safety training

- Continued government support for health and safety training is essential, agree that subsidising training is in the public good (19)

- Consider the impact of the loss of government-subsidised health and safety training through the TEC prohibition of Limited Credit Programmes (3)
- Focus subsidies for training on SMEs; make training more accessible for businesses with limited resources (8)
- Focus subsidies on high risk industries (1)
- Increase funding to support workplace literacy (4)
- Consider subsidies to assist health and safety professionals to up-skill (1)

Regulatory oversight of training

- Improve regulator oversight of qualifications, competency and training frameworks (14)
  - Better measure how much training is provided, and to whom (2)
  - Require independent examinations for health and safety training (2)
  - Review health and safety training and develop better consistency and unification in content and standards; rationalise the number of standards and qualifications (9)

Uptake of training

- Increase uptake and/or availability of health and safety training (66)
- Increase availability of health and safety training for volunteers (2)
- Increase uptake among safety-critical professions, e.g. designers, planners, engineers, procurement managers (1)
- Increase uptake and/or availability of appropriate training for managers or supervisors (27)
- Increase uptake and/or availability of training for employees (6)
- Introduce mandatory requirements for training (22)
  - Consider mandatory training requirements for the self-employed (1)
  - Consider mandatory training requirements in high risk sectors (4)
  - Mandate health and safety training requirements for managers, supervisors (4)

Content of health and safety education

- Health and safety education should be integrated with a wider learning and development context, e.g. addressing literacy issues, and using effective learning strategies for different cultures (8)
- Health and safety education should cover practical risk management, not just legislation and systems (3)
- Health and safety qualifications should place a greater emphasis on health and wellbeing (2)
- Education should include an emphasis on the benefits of health and safety to businesses, e.g. highlight the productivity benefits (4)
- Include skin cancer prevention and detection strategies in health and safety education (2)
- Review the current training in risk management and enable more training in risk management (1)
- Safety should be taught such that it is integrated into work processes, not as a separate entity (5)
- Health and safety and risk awareness need to be better integrated into wider educational activities (10)

Health and safety qualifications and unit standards

- Bring more health and safety training under NZQA oversight, to improve consistency, standards (2)
- Develop a New Zealand qualification for health and safety advisors, that will form a basis for competency assessment and advisor registration. Some submitters noted that this is underway, with level 4 and 6 qualifications in development (5)
- Embed health and safety training into the relevant tertiary qualifications, e.g. health and safety unit standards should be embedded in all technical qualifications; place more emphasis on safety by design e.g. for engineers, architects (20)
- Facilitate better communication of industry training needs to tertiary education providers, e.g. consider developing a health and safety workforce skills strategy (2)

Firm-specific or in-house training

- Facilitate greater development of firm-specific training, tailored to the needs of the workplaces (3)

Trade certification

- Consider including recognition of employee certification in government incentives, e.g. ACC levy rates (1)
- Ensure that apprenticeships have a health and safety component (4)
- Ensure that licensing of safety-critical workers is always carried out by the regulator, not by employers (1)
- Reinstate apprenticeships or training based on the apprenticeship model (3)
- The certification of safety-critical tradespeople should include a requirement for workplace health and safety competence, not just competence in public health and safety. This could be done by amending the legislation governing the relevant trades (2)

School level education (see also comments under q28)

- Improve, increase health and safety education in schools (32)
  - Make health and safety training compulsory for all technical courses in schools (1)
- Introduce student health and safety representatives (1)

Government and industry sources of advice and guidance

Access to advice and guidance

- Improve access to advice and guidance (66)
  - Promote, or advertise the existence of advice and guidance (6)
  - Develop a single source of information and advice on health and safety, e.g. a dedicated agency, or a single reference point (8)
    - ♦ Develop and revise Codes of Practice, standards, guidance (10)
    - ♦ Facilitate the development of more guidance, where necessary (5)
    - ♦ Facilitate the development of new and reviewed Codes of Practice (5)
    - ♦ Facilitate the development of new and reviewed Standards (4)
    - ♦ Improve alignment with international standards and guidance (2)
  - Focus on developing appropriate advice and guidance for SMEs (19)
  - Focus on improving advice for high hazard industries (2)
  - Review delivery mechanisms, e.g. tailor the mechanisms to industry needs; use contact centres; get advisors out into workplaces (10)

- Provide results from accident investigations in a more timely way (1)

Content of advice and guidance

- Address areas where there are conflicting advice and standards (2)
- Better tailor the content of advice to the intended audiences, e.g. improve clarity, simplify the advice (7)
- Develop an on-line facility for workplaces to develop their own customised health and safety manuals (1)
- Develop guidance on effective in-house health and safety training for employees with low literacy, language or numeracy skills (1)
- Develop guidance on how to select appropriate health and safety training (1)
- Include information on the benefits of good health and safety, e.g. productivity benefits (4)

Involving industry groups

- Engage more with, and make better use of industry and sector groups (22)
  - Assist New Zealand firms or industries to learn from one another, e.g. facilitate mechanisms whereby smaller firms can learn from large firms; propagate information about successful industry models (10)
  - Encourage collaboration between workers, employers, and regulators, in development of industry-specific guidance (3)
  - Facilitate the development of industry-based guidelines, standards, and practices (10)

Health and safety professionals

Develop the profession

- Develop health and safety professional and practitioner competency standards, accreditation, and registration. Some submitters noted that there is work already underway on this front (49)
  - But only require accreditation of external providers, do not interfere with firms' ability to determine the competencies of in house health and safety staff (1)
  - Do not use qualifications as competency criteria as this will exclude many people currently working in the field (1)
  - Require that people representing industry and government on health and safety policy groups be appropriately qualified and experienced in health and safety (1)
- Provide better support for health and safety professionals, e.g. a peak health and safety industry body (5)

Increase the uptake of professional advice

- Improve access to professional advice (24)
  - Consider government subsidies to facilitate access to advice from professional health and safety advisors. e.g. for SMEs (13)
  - Introduce requirements for employers to seek advice from qualified health and safety professionals in certain situations (10)
  - Professional or industry bodies could provide a 'shared' resource for professional health and safety advice (1)

Health and safety systems

In answer to this question, a number of submitters recommended specific health and safety systems, training methods, or aspects of systems. Most of these comments were either at a too detailed level to fall within the scope of the Taskforce's work, or have been covered under other questions in this document. However, two suggestions were made, that were at a more strategic level, and that are not covered elsewhere.

- There is a need to better standardise health and safety systems (4)
- To address variable capacity, health and safety systems need to be scalable (2)

4.8. Incentives

The consultation document described the existing incentives for businesses and communities to improve workplace health and safety, including ACC levy discounting and loading, subsidies and grants to encourage health and safety, enforcement mechanisms and penalties, and some non-financial incentives. Submitters were asked to to comment on the effectiveness of current incentives, and to suggest ways to better use incentives to improve health and safety outcomes.

Question 15. How effective are existing financial and non-financial incentives in improving workplace health and safety outcomes?

Submitters made the following comments about the effectiveness of existing financial and non-financial incentives.

ACC

Accredited Employer Program (AEP)

- Improvements are required e.g. it is process focused and does not measure effectiveness (1)
- There are factors that assist the effectiveness of the AEP
  - It offers a better discount than the WSMP discounts (2)
  - The annual audit procedures keep an organisation focused on health and safety (1)
  - The findings of a 2009 review of the program found that accredited employers had lower rehabilitation costs than employers who paid the standard levy (1)
  - The joint approach to safety management is beneficial to safety (1)
- There are factors that hinder the effectiveness of the AEP
  - Auditors often make only limited attempts to engage with unions or health and safety representatives as part of their process (1)
  - Companies are enthusiastic until they end up with a series of claims. They stop seeing their employees as injured, but rather as a drain on the health and safety budget (1)
  - It is limited in scope, is too prescriptive and has limited checks (1)
  - The audit standards need to be amended so that the requirements relating to contract management reflect the requirements of the HSE Act (1)
  - The audit systems need to be reviewed. They don't reflect the real safety performance of a company (2)
  - The audit template questions are known in advance, and the audit venues are announced in advance. There are not random audits (1)

Experience Rating (ER)

- ER has some shortcomings
  - ACC does not apply the experience rating regulation correctly (possibly due to an inadequate claim information system). The effect is to not state morbidity data correctly (1)
  - ER can serve to discourage reporting of injury (1)
  - ER cannot address employer behaviour in relation to occupational illness (1)
  - ER incentivises employers to return employees back to work early after injury (1)
  - It is too easily achieved without a real impact in the workplace (1)
  - Some employers see that where they have been penalized via the ER, due to high claims costs, etcetera, they can off-set the expense via the WSMP levy discount they've received (1)
  - The formula for calculating the rating is too complex to achieve general understanding and buy-in (1)
  - The current rating formula contains distortions. These distortions are hard to identify due to the complexity of the formula and ACC 'hiding' the group and peer group quantum parameters (1)
  - The rating model has major flaws e.g. a single incident is carried in the rating calculations for three years (2)
  - The rating scheme must introduce parity for large and small businesses, and sole traders (1)
  - There is a lack of international evidence to show that experience rating of premiums and levies is an effective injury prevention tool (1)

Workplace Safety Discount (WSD)

- The WSD only relates to some industry sectors and as levels of incentives are low and payments to auditors are now non-existent, this scheme will probably die (1)

Workplace Safety Management Practice (WSMP)

- The WSMP has been effective in improving workplace health and safety (1)
- There are factors that assist the effectiveness of the WSMP
  - It places a focus on the maintenance of Health & Safety management overall (2)
  - It provides an external assessment of the organisation that would otherwise have nothing (1)
  - The joint approach to safety management is beneficial to safety (1)
- There are factors that hinder the effectiveness of the WSMP

  <u>Concerns about audit process and tools, and auditors</u>
  - It is a process-driven, 'tick box' exercise to demonstrate systems compliance. It does assess whether the developed systems are effective (6)
  - It provides only a 'snapshot' of a workplace on a certain day (1)
  - The audit focus on documentation is sometimes unhelpful; employers sometimes reach the conclusion that dating their policy is more important than, for example, purchasing compliant scaffolding (1)
  - The auditors are instructed not to provide improvement advice or to notify hazards (1)
  - The quality of the auditors is poor. They have little if any practical knowledge of the industries they audit (6)

- The WSMP audit guidelines specifically require a joint approach to be taken to the audit however this has never been enforced by ACC (1)

  Other concerns
- WSMP is aimed at large businesses. Small firms do not participate because it is too complicated and costly, and therefore not worth the effort and investment (9)
- The WSMP is too onerous and time consuming. Accountants advise their clients not to bother about it (1)
- The discounts should be higher. The current discounts only just cover the cost of the paperwork set-up and maintenance (3)
- There is no correlation between an organisation's ACC WSMP status and its safety performance (3)
- The ACC WSMP programme is not appropriate for high hazard environments (1)

General comments about ACC incentive schemes

- ACC incentive programmes are valued by industry. For example, companies proudly display their ACC WSMP certificates and cite their achievement in annual reports (1)
- The ACC framework e.g. WSMP and ER systems provide active guidance on health and safety practice to those that need it. The HSE Act and framework do not (1)
- The incentives schemes are based on a financially driven claimant model which is focussed on health and safety systems rather than risk reduction (1)
- Audits focus on adherence to policy, not the quality of the adherence or continuous improvement record (2)
- Evidence indicates that those under the WSMP programme have the same frequency and severity of accidents to the non WSMP employers. This is the same for employers under the AEP (1)
- It is difficult to provide incentives for industry overall given the extreme volatility in annual ACC levies, which prevents adequate planning by companies, and masks the effect of any performance based benefits (1)
- The management system audits do not have any relationship to the number of accidents that occur (1)
- The threat of a levy increase is more of a motivator than the threat of a prosecution. A levy increase hits the yearly profit figures (1)
- There are some unintended consequences of the ACC incentive schemes
  - ACC levy incentives based on performance cause some employers to under-report injuries, and place pressure on, or provide incentives (e.g. free jackets) for employees not to report accidents, or return to work early (3)
  - The current 'no fault' system affects workplace health and safety outcomes (5)
    - Losing the right to sue means that organisations and individuals are lulled into a sense of security because they think they are less accountable for how their action or inaction can impact on others (5)
    - The unintended consequence of the 'no blame' principle is to reduce workers' sense of responsibility for keeping themselves safe (2)
- WSMP is being used as a 'de facto' standard e.g. is used by government agencies and large corporations as a benchmark in their tender documents (3)

Effectiveness of financial incentives

Factors that hinder the effectiveness of financial incentives

- While incentives may affect the company's motivation, they have no bearing on the individuals' motivations, including workers who drive and 'are' the health and safety system (3)
- Existing financial incentives exclude small businesses (1)
- Financial incentives are based on lag indicators such as accident and injury rates which are poor indicators of overall risk (2)
- Financial incentives are of limited value. The value of the incentive has to be more than the cost of setting up, maintaining and reporting on the required system (3)
- Financial incentives have been shown to provide limited, short term improvements to health and safety performance, but over the long term there has not been any demonstrable influence in creating behavioural change (2)
- Financial incentives suggest that compliance is voluntary, and undermine the duties imposed by the Act (1)

Unintended consequences of financial health and safety incentives

- Pay incentives, cash incentives and prizes for health and safety performance can act as a perverse influence on health and safety behaviour. They can lead to under-reporting of incidents and injuries and 'blame' (16)
- Financial incentives for improving safety, such as the end of year bonus, are seen as a given – not something that is earned from being safe (1)
- An employee may claim that a work injury occurred at home, so as to avoid multiple interviews at work and being challenged by management (1)
- Management may put pressure on an injured employee to return to work immediately or to return to alternative duties so that the injury will not be included in the lost time injury statistics (2)

Other comments about financial incentives

- While financial incentives do work, informing directors and management about the effects of injury costs on the bottom line has more impact (1)
- Incentives are what drives my employer to sit in on health and safety meetings (1)
- For the construction sector, the most effective and most powerful incentive tool is the procurement process, assuming clients are committed to valuing health and safety (2)

Effectiveness of non-financial incentives

Enforcement mechanisms including penalties

- The level of fines and number of prosecutions are too low to act as real incentives for workplaces to comply (18)
- The risk of enforcement for non-compliance is low, and financial penalties are low, so the incentive for employers to invest in health and safety is low (3)
- The threat of fines is more effective than the savings from incentives (2)
- The infringement process is too cumbersome and the need for prior warning notices negates the usefulness of this tool (1)
- Penalties are not good incentives because you can't punish people into safe working (1)
- Penalties only work if there are inspectors to enforce compliance (2)

- The high thresholds in the HSE Act mean there is very low risk of personal liability or personal prosecution (1)

Question 16. How could incentives be better used to improve workplace health and safety outcomes?

Submitters made the following suggestions for ways to make more effective use of incentives.

ACC

Accredited Employers Program

- Increased discounts could be given for safety performance and the savings could be required to be directly reinvested back into the business with a trail of evidence required to support this investment (1)
- There is a need for more robust audits (1)
- Review the AEP criteria (1)

Experience Rating

- Additional metrics could be blended into the ER formula and weighted against levies (1)
- Expand ER to include contractor injuries in the principal's ER. This would provide added incentive to ensure contractors develop good health and safety practice (1)
- Expand the rating model to all employers (1)
- Increase the discounts available (2)
- Increase the experience rating penalty to 100% on top of the current levy and conversely, introduce an ER bonus i.e. a reduction of 50% for very good performance (1)
- Remove the compliance-driven WSMP and make ER the main source of premium discount as this is directly related to injury management performance. Use an audit approach and give organisations the option of using a recognised standard e.g. AS NZ 4801, ISO 1800 (2)

Workplace Safety Management Practice

- Improve audit process and tools (7)
  - Amend the audit process to look deeper into the pre-engagement process of contractors by a company to ensure their suitability for the task (1)
  - Enhance the audit process to focus on the quality of the safety management system in relation to business risks, and the depth to which a system is embedded in a company's day-to-day processes (2)
  - Have annual rather than bi-annual audits (1)
  - Random and more in depth audits would improve the integrity of the process (1)
  - The WSMP and AEP could be strengthened by having a more robust audit tool that is outcomes rather than process focussed (2)
- Increase the discounts across the three levels (6)
- WSMP is now mature. It needs updating and fine tuning especially to make it more accessible and feasible for SMEs (6)
- WSMP is driven by levy reduction, not necessarily by injury and harm prevention. Levy reduction should be linked to harm reduction (1)

General suggestions for how ACC incentive schemes could become more effective at improving workplace health and safety outcomes

- Levies
  - Introduce a user-pays approach where zero harm in an organisation reduces its ACC levies (2)
  - Explore avenues where businesses that continually seek to improve their safety performance are recognised by either lower levies or a mechanism where part (or all) of the levy rebate is channelled back to sustain safety improvement (2)
  - Introduce a no claims discount or bonus (2)
  - Reduce ACC levies for companies with robust systems and interventions in place (2)
  - Change the basis for levying organisations to one based on an assessment of the risk management capabilities of the organisation (1)
- ACC credits and incentives should be made available to workplaces who have implemented recognised workplace health and wellness programmes as well as workplaces with good safety records (1)
- Extend the current incentive schemes to better cater for SMEs (2)
- Instead of being linked to the cost of claims, incentives could be linked to the successful rehabilitation and ultimate return to work of claimants (1)
- Permit ACC to recover costs from employers or other decision makers (e.g. local government) where negligence is proven to an agreed threshold (1)
- Reinstate financial assistance for health and safety partnership initiatives such as 'Top Spot' in the Forestry industry (1)
- When injuries are caused by negligent businesses, ACC could be given the right to recover costs from those businesses (1)
- Incentive programmes such as ACC's WSMP and AEP should be regularly reviewed and updated to 'raise the bar' and encourage further capacity and capability (1)

Enforcement mechanisms including penalties

- A wider range of penalties is required. Penalties need strengthening (23)
  - Introduce adverse publicity orders, 'name and shame' penalties (7)
  - Introduce corporate manslaughter to ensure greater awareness of business and personal culpability (see q12 for a full analysis)
  - Introduce 'Enforceable undertakings' which are used overseas (3)
  - More effective use could be made of a wider system of penalties imposed by inspectors on observed non-compliance (1)
  - Provide penalty certainty by scheduling automatic fines categorised by injury or harm type and severity, penalty scaled against ability to pay based (1)
  - Review the 'Infringement Notice' regime and increase its use (3)
  - Introduce spot fines for the regulator to use while visiting a workplace (2)
  - The regulator should charge their time and labour costs to the organisation, when it is found in breach of their duty of care (2)
- Increase the level and size of penalties to act as a more effective deterrent (21)
- Provide 'penalty certainty'. This would involve identifying automatic fines which are categorised by injury or harm type and severity (1)
- Before a fine is imposed, a business should receive a formal warning with a clear set of actions to be undertaken (not just a letter with minimal actions) (1)

- Establish stronger rules around the impacts on directors and senior managers convicted of significant health and safety breaches. Have standards that result in loss of Directorship (see also q12) (1)
- Explore a 'restorative' justice approach to facilitate dialogue between those harmed or their family or community with the party that caused the harm (1)
- Greater flexibility should be introduced into sentencing, such as the ability to hand down suspended sentences that show the severity of the incident but only punish the duty holder to that extent if they re-offend (1)
- Introduce mandatory sentences for non-compliers of health and safety regulations (1)
- Penalties should match both the offence and the capacity of the employer (1)
- Review aspects of the prosecution system (3)
    - Remove the level of discount for early guilty pleas (1)
    - Review the process of prosecutions to make it easier for individuals to bring a HSE Act case to the courts (1)
    - The prosecution system needs to be more responsive and faster (1)
- The burden of proof should be placed on the non-compliers (1)
- Award reparation to worthy charities as well as victims (2)

Existing financial incentives that could be used more widely

- A tax rebate is currently available to employers who provide sun-protective items directly related to outdoor work, This is not widely known by industry (1)
- Increase non-financial incentives such as MBIE's 'Partners in Action' pledge and 'Passports to safety' (1)

Suggestion for new subsidies

- Provide subsidised health and safety advice and support for small businesses and health and safety representatives (8)
- Provide subsidies towards health and safety training costs (11)
- Provide subsidies for initiatives aimed at improving health and safety (1)

Suggestions for new financial incentives

- Smarter combinations of penalties and incentives may motivate better quality health and safety inputs e.g. graduating maximum penalty range downwards against on-going proof of effective and correspondingly improving systems (1)

Insurance-based incentives

- Reduce insurance premiums and excesses for workplaces with excellent safety systems (2)

Procurement-based incentives for government contracts

- Introduce a health and safety standard to be achieved by businesses who wish to apply for government and local government tenders (1)
    - Use existing ACC incentive schemes or new incentive schemes as a pre-qualification for businesses to access government or other large business tenders (1)
- Require independent certification of an employer's health and safety record and programme as a pre-requisite for applying for any government tender and

Overseas Investment Office application. Also for any business invested in by any Government agency (1)

Tax incentives

- Introduce tax rebates to offset training costs and the set-up of systems to achieve ACC accreditation or similar (2)
- The costs for managers to gain a health and safety qualification should be able to be recovered (1)
- Remove GST on basic health and safety equipment (1)

Other financial incentives

- Provide incentives for organisations committed to Industry self-governance, developed in collaboration with the Regulator (3)
- Provide incentives for organisations who meet ISO or AS NZ Standards (1)
- Incentivise innovation so that those who develop new ways of achieving health and safety results are supported and rewarded for their work (1)

Suggestions for more effective incentive design

- Incentive design should identify and penalise poor health and safety performance; reward better health and safety cultures, systems and practices, and promote excellence, not mere compliance (6)
- Incentive systems should be based on lead indicators, rather than lag indicators. E.g. they should use measures of behavioural change (5)
- Design incentives that will be attractive to employers, especially SMEs. Make them worth the investment in time, effort and resources (1)
- Any new incentives need to be assessed for the potential to induce perverse board, management, worker, contractor, sub-contractor, and supplier behaviours (1)
- Any new financial incentives based on an audit approach must ensure the audit addresses culture and safety systems 'on the ground' rather than just being paper-based (3)
- Fees could be charged ex post to recover the full cost that the regulator incurs when responding to a material breach of the HSE Act. Enterprises with a clean bill of health would not be invoiced (1)
- Premium bonus and penalty regimes can be used for injury compensation but must be applied carefully and monitored closely, and their limitations must be recognised both in terms of evaluating individual employer performance and deriving trend information (1)
- The WSMP primary level could be used as the base level and minimum requirement for all businesses' health and safety systems (2)
- Use pin-pointed behavioural expectations. Pin-pointed expectations are written in such a way that they precisely describe what an individual must do in order to achieve a requirement (1)
- Create benefits for employees at a national level e.g. tax refunds or grants to reward workers for excellent health and safety in the workplace (1)

Suggestions for new non-financial incentives

- Develop an accreditation system, a star rating system, a warrant of fitness, or a licence to operate for workplaces that is linked to preferred supplier status or reduced ACC levies (15)

  - An example is the national external Contractor Pre-Qualification process. This should be recognised by government agencies and wider industry (5)
  - Base incentives on a rating system like the operator rating system for transport companies (1)
  - Introduce some form of sustainability score that takes into account both safe working practices and environmental performance (1)
- Create a national brand e.g. 'made safely and cleanly in NZ' linking health and safety with environmental performance (1)
- Extend producer responsibility and product stewardship-type measures, similar to how chemical suppliers are required to ensure that the sites they supply chemicals to are compliant with the HSNO Act (1)
- Introduce non-financial incentives that focus on an employer's reputation, e.g. MBIE's 'partners in action pledge' should be encouraged (1)
- Publish accidents, investigations, prosecutions, and audit results (1)
- The health and safety performance of companies should be publicly disclosed in annual reports, and through a publically-accessible database (1)

4.9. Influencing health and safety outcomes beyond one's own workplace

The consultation document described some ways in which workplaces can influence suppliers, competitors, other workplaces, professional colleagues, and even employees' families to make greater efforts to improve workplace health and safety outcomes. Some means of achieving this include procurement or investment rules, membership eligibility criteria for business associations and professional bodies, gentle persuasion (for example, through articles in industry magazines), and encouraging public debate. Submitters were asked to comment on the effectiveness of current efforts, and to suggest ways in which workplaces could exert greater influence on others.

Question 17. How successful are government, industry, corporate or other potentially influential bodies in influencing health and safety outcomes beyond their own workplaces (for example through influencing their suppliers, counterparts, and competitors)?

Submitters made the following comments about the effectiveness of government, industry bodies, and others in influencing health and safety outcomes in other workplaces.

Observations on the extent to which influence is happening

- A number of large corporates are showing visible leadership in health and safety, such as Air New Zealand, Carter Holt Harvey and Fonterra (2)
- Few organisations, government or private sector, demonstrate leadership or express an interest in workplace health and safety protection (1)
- Industry initiatives are still too few and far between (1)
- In smaller regions, some larger businesses are good at assisting some of their smaller contractors to get health and safety systems in place (1)
- Very large infrastructure corporations and government agencies such as Councils and DHB's have programmes in place to ensure contractors working on their sites have attained a certain level of health and safety systems (1)

Observations on the influence of government agencies

- There is no visible health and safety strategy at Government level about influencing health and safety (1)
- Government agencies do not have any strategic health and safety goals as an employer (1)
- There appears to be no policy that requires central and local government agencies to attain a recognised health and safety standard (3)
- Previous government initiatives e.g. Gov3 have been eroded by financial pressures (1)
- The Ministry of Education has given responsibility for health and safety in schools to Boards of Trustees. They have little, if any expertise in health and safety (1)
- MBIE and other government agencies run public health and safety forums which are well supported by industry (2)
- The Compliance Common Capability Programme is focused on supporting and improving the capability of the government's compliance capability, including health and safety regulation (1)

Government procurement

- Currently the emphasis in central and local government tenders is on efficient contracting and value for money, rather than on sound health and safety practices (3)
- There is a lack of consistent procurement policy across central and local government agencies about suppliers meeting a recognised standard of health and safety competence (15)
    - Government and Territorial Authorities seem to have one standard for themselves and another one for everyone else. Governmental bodies transfer responsibility as a principal to the contractor when in actual fact they are the principal (2)
    - The MBIE's FFH project has been successful in getting some principals to set clear expectations with their contractors and getting them on board (1)
    - Many councils and government organisations have aligned their health and safety requirements to just be a level of WSMP audit achievement (1)
    - NZTA has recently taken a lead role in procurement processes that give recognition to health and safety (2)
    - Some local bodies turn a blind eye on contractors who are submitting low prices and then are not firm about them performing to the health and safety specification (3)
    - The Ministry of Defence (property and building maintenance) have set an excellent example of managing safety through the supply chain; from client, to principal, to contractor (1)
- The Tertiary Education Commission's influence is comprised because
    - accountability for safety content is not a requirement for TEC programme funding (1)
    - safety requirements associated with a course may not be considered in TEC's funding to the provider (1)

Observations on the influence of industry bodies

- Associations such as the Scaffolding and Roofers Associations have a great deal of influence, but only on their members. The problem is with the operators who are not, and never will be, members of an association (1)
- Currently industry associations tend to stay away from anything that might diminish their members' ability to compete with each other. This includes health and safety (1)
- Industry associations in a number of high risk industries do not focus on health and safety performance (1)
- Industry bodies tend to lack the required health and safety knowledge to make informed recommendations to their members (1)

Industry-specific examples of influence

- New Zealand Steel has positive, recent experience of influencing the safety performance of its embedded and larger, regular contractors through the company's Contractor Safety code of practice (1)
- One of the services of the Electricity Engineers' Association is to disseminate information to members after an incident has occurred (1)
- PrintNZ has put substantial resource into making health and safety a focus for their members and provides tools and assistance to help members so that they can put systems in place (1)
- The Business Leaders' Health and Safety forum provides seminars, case studies, CEO health and safety leadership, and identifies new issues (2)
- The Cancer Society provides advocacy for preventative interventions in respect of occupational related cancers (1)
- The Commercial Construction industry's independent accreditation has significantly improved health and safety performance (1)
- The Electricity and Gas Association has developed NZ 7901 'Safety Management System for Public Safety'. This is now also being used by other industries (1)
- The Electricity industry has several groups that share procedures (such as isolation permits) and lessons learned (1)
- Contractors' passport systems have proven good value in certain industries but contractors servicing many industry sectors find that there are over a dozen passports that each employee needs to gain (1)
- The five main electricity generators and Transpower formed a health and safety forum named 'Staylive' in 2011 to continue to improve health and safety practices through industry collaboration (2)
- In the rural sector Fonterra and Landcorp have highly developed health and safety systems. Consideration needs to be given to how these systems could be better leveraged into the sector (1)
- The Recreational Safety Engineering (group is a technical interest group for health and safety which has been established under IPENZ (1)

Construction sector

- The Construction Industry Council has produced Best Practice information about procurement (2)
- The influence is extremely limited to a relatively small number of predominantly larger dedicated companies who have demonstrated an health and safety culture driven from top level management (2)

- There have been a number of industry lead initiatives in the construction sector over the past ten to fifteen years that, while showing strong results, have not been sustainable because of the need for client support and equivalence through the procurement process (1)
- Some larger companies are exercising influence by requiring all workers on site to be subject to random drug screening (1)

Observations on collaborative initiatives

- The MBIE/Industry 'Working at Heights' initiative has been influential (2)

Procurement processes, supply chain requirements and management

- Procurement and supply chain requirements are influential because they help to create positive health and safety practices among those down the chain (21)
- Large organisations have to decide whether to influence or to fully manage their supply chain. Influencing (although a slower and more demanding process) is more likely to achieve genuine ownership for safety within the supply chain (1)
- Overseas research indicates that elaborate supply chains and contracting networks can be a source of quite negative workplace health and safety outcomes, as well as an opportunity for improving workplace health and safety (1)
- Principals' supply chain requirements are effective as long as there is competition from viable alternative contractors (1)
- Contractor performance qualifications
  - The external Contractor pre-qualification process provides extended reach and has had positive impacts on health and safety (2)
  - Contractor pre-qualification schemes simply support the health and safety 'gravy train' (1)

  Factors that compromise the effectiveness of procurement and supply chain requirements
- Lowest price tendering and competitive environments adversely impact on the effectiveness of supply chain requirements and practices (6)
  - Organisations tendering for work have to trim costs and the first costs to go are often those associated with health and safety e.g. training, or safety equipment. This is often seen as an acceptable practice (3)
- Reviews of contractor management by large organisations found:
  - a minority actively assessed contractor information and tried to improve contractor performance. However doing this at an employer level was resource intensive for both the employer and contractor concerned (1)
  - many organisations did collect contractor safety information, but did not formally assess and evaluate this information or try to influence wider safety performance (1)
  - many organisations did not have any assessment of contractor safety management systems in their procurement or contractor management process (1)
- Although supply chain obligations are specified in contracts, the responsibilities can sometimes break down at the work site level (2)
- Many health and safety conditions are itemised within contracts in order to secure the contract. What is failing is that these terms and conditions are rarely checked or monitored to any degree of compliance (1)

- Demanding compliance of contractors creates a 'make sure the boxes are ticked' response. This is better than no response at all, but the record of accidents in this country shows how shallow the commitment is (1)
- In-roads can be made but only for short periods of time until the relationship between one firm and another comes to an end as a job is completed (1)
- Safety requirements get dropped or diluted as a contract goes from the principal to a contracting company that omits the safety requirement so as to get the contract (1)
- The opportunity to influence supply chains is significantly overlooked and is poorly managed by many organisations (1)
- Companies move manufacturing to countries where there is little if any regulatory compliance for health and safety, thereby avoid incurring such costs (1)
- Foreign ownership makes it more difficult to manage health and safety consistently (1)

Suppliers as influencers

- There has been some success with hazardous substance suppliers influencing their customers through product stewardship regimes. For example, one major New Zealand chemical supplier will not supply to a site unless the site complies with HSNO Act requirement (1)
- Some suppliers run industry-based meetings which are open to all interested companies. They appear to be well supported (1)
- Suppliers are often not willing to mitigate health and safety issues in a way that the purchaser requires. It can be significantly harder and more expensive to buy the safer option (2)

Question 18. What could be done to get government, industry, corporate or other potentially influential bodies to exert greater influence on improving workplace health and safety outcomes beyond their own workplaces?

Submitters made the following suggestions for ways to get government, industry bodies, or others to exert greater influence in workplace health and safety outcomes in other organisations.

Suggestions for actions by government agencies

- Government needs to exercise health and safety leadership and be the role model. Corporates and SMEs won't follow unless the government leads (8)
- All central and local government agencies should have, at least, primary ACC WSMP or be part of the AEP (1)
- There should be better collaboration between the regulators and industry associations and bodies. For example, before Federated Farmers got on board with the Quad Bike Safety program run by DoL, few farmers wanted to engage with health and safety inspectors (7)
- Minimum health and safety standards for imported goods should be prioritised and enforced (1)
- Require District Health Boards to have an occupational health unit which is physician led, and available to advise other workplaces (1)

Government procurement practices

- Provide leadership in health and safety procurement by ensuring the procurement policies and practices of all government agencies are linked to health and safety standards and are consistent (17)
    - Policies could include using only accredited contractors, or companies who have WSMP (4)

Suggestions for actions by MBIE

- Develop standards for procurement that specify best practice in health and safety for use by principals (5)

Suggestions for actions by industry

- Industry associations should produce guidelines covering essential information to include in tenders, including health and safety information in a standard format (1)
- Industry bodies need to take a lead role in health and safety messaging and culture change (3)
- Industry groups could have a health and safety 'chair' which considers the common health and safety matters of its members (1)
- Larger industries could sponsor networking and benchmarking activities e.g. the recently formed NZ Process Safety Forum (1)
- Companies with sound health and safety systems could be used as case studies or models for other companies to learn from (5)
- Larger organisations could partner with SMEs to enable the SME to benefit from their expertise and resources (3)
- Proactive engagement and partnership is required between industry associations and leading industry organisations with the regulator to establish best industry practices (4)

Suggestions for ways to improve procurement processes, supply chain requirements and management

- Construction clients (building owners and principals) need to do more to promote and manage health and safety when engaging contractors and subcontractors (1)
- Contractors should be required to supply a 'fitness to work' health certificate for their workers prior to the commencement of a contract (1)
- Hold principals more accountable for their contractors' performance (1)
- Industries and corporates should have to report on their initiatives to improve the health and safety outcomes of their supply chains (1)
- Principals should monitor the health and safety practices of contractors to ensure health and safety compliance with their tender (1)
- Require all contracts for service to include KPIs on workplace health and safety alongside quality and completion targets (2)
- Require contractors to be accredited to an official accreditation scheme before they can enter into a head contractor role. (2)
- Safety through design should be an absolute minimum requirement for all engineering faculties. Engineers must be required to sign off that new or modified plant is safe (1)
- There should be tighter prescription and management by principals of contractor's health and safety practices (3)

- Voluntary supply chain codes emanating from government or business lack the ability to secure major changes in practices. Mandatory codes, some of which involve a level of collaboration, offer more potential (1)
- Where appropriate, a 'standard' sum needs to be allocated in tender documents to manage specified high risks, high hazards (1)

Other suggestions

- Investigate the idea of a 'chain of responsibility' which is a growing concept overseas. This can be done voluntarily or through certification regimes (1)
- 'Safety in design' and 'whole of life' principles need to be incorporated into New Zealand as they influence safety at both the initial construction stage and during the building's life cycle (2)
- Establish centres of technical excellence, supported or endorsed by government, industry or associations. An example would be the establishment of an Australasian iChemE branch dedicated to the development of a local professional community of process (1)

4.10. Major hazards

Major hazard incidents usually involve deep seated systems or process failures, which may not be addressed by conventional approaches to health and safety management. The consultation document summarised the situation with major hazard facilities in New Zealand, the high hazard industry regulations, and the regulatory bodies that deal directly with high hazard industries. Submitters were asked to to comment on the strength of New Zealand's current approach to regulating major hazards, and to suggest improvements to the regulation of major hazards.

Question 19. How strong is New Zealand's current approach to regulating major hazards?

Submitters made the following comments about New Zealand's approach to managing major hazards.

Strength of the current approach to regulating major hazards

- The current approach is strong (5)
- The current approach is satisfactory (9)
- The current approach is weak (42)

Reasons why the current regulatory approach is satisfactory

- Regulation does not and cannot drive safety. Regulation rightly covers the bare minimum required. Safety can only be effective when it is pursued by people who personally care about the wellbeing of their colleagues (1)
- The Courts are now sentencing at a level which is having an effect (1)
- The high hazard industries in New Zealand are already subject to high safety performance by requirements in statutes and regulations. It is a moot point as to whether those industries or some of them should be subject to more prescriptive requirements (1)

- The legislation is broad enough to enable businesses to manage their hazards (1)
- The regulations are satisfactory. What is missing is the information to back them up (1)

Shortcomings of the current regulatory approach

About the regulators

- MBIE's administration of the HSE Act, until recently, has provided no particular focus on high risk industries. The establishment of the High Hazard Unit is a welcome, albeit belated, recognition of the need to meet its regulatory responsibilities (1)
- The EPA often only provide vague answers to questions on how the act should be complied with (1)
- Many Government agencies are responsible for managing the requirements of the Hazardous Substances and New Organisms Act. There is potential for confusion and consequently gaps in enforcement (1)
- Regulators lack the expertise required for working in high hazard industries (9)
- The focus of regulators has been on the reduction of lower severity incidents (1)
- There has only been a low level of enforcement by the regulators (4)
- The regulators have not done enough to ensure compliance. This may be due to under resourcing (16)
- There is no cohesion between the regulators (1)

Industry-specific comments

- The regulatory oversight of petroleum industry regulations over the past 20 years has been inadequate. There have been no significant accidents during this time (1)
- Ports and Rail are highly hazardous industries which should receive targeted support from the regulator (1)
    - Ports have the additional hazard of multi contractor and sub-contractor arrangements. They operate in close proximity, operating highly hazardous machinery. This a health and safety concern (1)
- The specific regulations developed for underground mining and petroleum exploration and extraction, along with the stand-alone regulations for geothermal energy safety and pipelines, have not kept pace with international best practices (1)

Regulatory framework

- The regulatory framework is in place. All that is needed is resourcing from Government to enable the framework to be enforced (1)

Terminology

- the HSE Act only references 'significant hazards' and 'significant harm' so the hazard identification approach generally used in New Zealand follows the identification of significant hazards and control by 'elimination, isolation or minimising the hazards effect' (1)
- The term 'practicable' is too vague to apply to high hazard industries (1)
- The regulatory framework does not distinguish between 'hazard', 'high hazard, 'major hazard' (3)
    - Many operators of major hazards have no additional requirements because there is no classification of 'major hazards' or 'high risk operations' (1)

Level and quality of regulation (see also q21 for comments about the HSNO Act)

- Compared to overseas, our high-hazard industries are under-regulated (3)
  - New Zealand's regulatory approach to high hazards is still where Australia's approach was at the time of the 1998 Esso Longford gas explosion (1)
  - NZ lacks a Seveso 2 type framework for regulating major hazards (1)
- There are limited regulations in place. Those that are in place are loose and unclear (3)
  - The guidelines are sparse, out of date and do not reflect any recognised framework e.g. as set out in the safety case regime (1)
- The Approved Code of Practice for Major Hazards is virtually unknown (1)
- New Zealand has no specific major hazard facility regulations, although in theory the HSNO Act control framework should be flexible enough to deal with these larger, higher risk sites (1)
- High risk industries need more direct, clear specific minimum standards that can be easily reviewed with consequences. The current proposed update to the Petroleum Exploration and Extraction Regulations is a step in the right direction (1)
- Many high hazard companies are not required to be licensed before they are established (1)
- Process safety, as a concept, is not widely understood. There is a need for greater emphasis on process safety (2)
- The current regulatory approach is based on a 'one size fits all' approach. It lacks differentiation between very high risk operations and lower risk operations (1)
- There is a lack of recognition of high hazards associated with new and emerging technologies (1)
- The hazard management framework in the HSE Act is too simplistic, offering little guidance for high risk activities and industries (2)

HSNO test certification

- There are inadequacies in the test certification model (1)
- The management of flammable substances under the HSNO test certification regime has some redeeming features, but there are no checks on storage and use of toxic or corrosive substances (1)

Issues for high hazard workplaces

- There is little clarity around which regulations and codes of practice are required to be followed. There is often conflicting information creating confusion around compliance (1)
- There is a widely held perception that approved codes of practice and guidelines are optional (1)
- HSNO legislation and the certificates issued under it, give companies a false sense that all risks are under control and nothing else needs to be done (1)
- There is confusion about the responsibilities of principals and agencies supplying temporary labour. There is evidence that temporary agency workers are especially vulnerable to injury early in their placement (1)

Other issues

- There is insufficient clarity about the role of regional councils in respect of high hazards. For example, in Mount Maunganui there are at least four major hazards within 1.5km of each other (1)

- The recently established High Hazard Unit applies only to selected industries. Other high hazard operations require similar treatment e.g. some civil construction, high temperature processes (3)
- The regulatory approach is not proactive. Regulatory solutions are a politically motivated response to an issue (2)
- There is no national health and safety register for major hazards (3)

Factors that mediate the strength of the regulatory approach

- Management of any high risk industry is also the responsibility of the industry itself. Improvements achieved within the agriculture and forestry sectors, in partnership with the regulator and ACC, are indicators of what can happen when this approach is taken (2)
- New Zealand's major hazard facilities use a wide range of systems based 'on licence to operate' codes. This results in bespoke systems, which make regulator review more difficult (1)

Question 20. What improvements to the regulation of major hazards would lead to better workplace health and safety outcomes?

Submitters made the following suggestions for improvements to the regulation of major hazards.

Improvements to the regulatory framework

Terminology

- Define different levels of risks and the consequential treatment of those risks in legislation (1)
- Define 'major hazards', 'major hazard facility' (4)

Regulatory scope and strength

- Regulations for high hazard industries need to be more prescriptive. Guidelines should be mandatory (12)
- Research shows that measures to minimise routine risks in a workplace have, at best, a very limited effect in reducing the risk of low frequency high impact events, and the systems to manage each must recognise this. This reinforces the case for more stringent regulation (1)
- Take caution in extending major hazard regulation too far beyond the already included sectors such as underground mining and petroleum extraction (1)
- Consideration should be given, on a case by case basis, to widening the scope for regulation. This needs to be done with care, because some industries suit regulation better than others (1)
- It would be a retrograde step to try and expand regulation of industry practice in high hazard industries (1)

Suggested changes to the regulatory framework

- Base the regulations on a risk management approach (12)
    - There should be by regulatory requirements for high risk workplaces to undertake formal risk assessment and hazard analysis (4)

- Introduce more stringent assessment of the capabilities of a company to undertake hazardous work prior to granting them permission to operate. (10)
    - High hazard industries should have a more joined-up approval process involving all the relevant government agencies, including the High Hazards Unit (1)
- Extend the use of safety case management to all high hazard operations. Safety cases must be submitted to the regulator for approval (12)
    - Replace the ACOP with regulations requiring sites over a defined threshold to establish a safety case, which requires approval by the High Hazards Unit (or similar) to maintain operations (3)
- Requirements should to be added into regulations for high risk and high hazard sectors where contracting is prevalent (2)
    - There is a need for clarification about notification to MBIE of hazardous work for operations where there is both an employer and controller (as in forestry harvesting) (1)
- The regulation of major hazards could be improved if, in addition to any other measures identified, efforts were made to ensure the ten pattern causes identified in research (Quinlan, 2011) are addressed in the regulatory framework (2)
- Regulations need to include new hazards e.g. nanomaterials (1)
- Update the approved code of practice for high hazards (1)
- High hazard workplaces should be required to have a dedicated H&S professional, or use a contracted provider to advise the business (1)
- In higher risk industries, the increased risk for workers should be reflected in commensurate enhancements of the employee participation systems (1)
- Mandatory training should be required for workers on high hazard worksites (1)
- Consider a 'Seveso 2' type regulation as is used in the EU (1)

Mining industry

The following, quite specific recommendations were made by submitters in response to the Pike River Mining disaster.

- Return to the Inspectorate system and to bring back check inspectors (1)
- Adopt a system of Site and Union Industry Check Inspectors based on the Queensland mining health and safety framework (1)
- All underground workers, including contractors, must be required to undergo the full induction process (1)
- An effective and useable second egress should be required by law (1)
- Any proposed mine that is marginal should not be consented (1)
- Clarify the authority of Mines Rescue in disasters. They should be the dominant advisers with some degree of authority over civil authorities i.e. Police (1)
- If a consent is granted to mine any minerals in a State or DOC controlled area, there should be no restrictions on that company that will affect safety in an way (1)
- Independent inspections of gas sensors, drainage lines, underground communication systems, fire lines, etcetera, must be undertaken on a regular basis and reported back to an independent organisation (1)
- It should be mandatory for health and safety exercises and trial evacuations to be practiced at regular intervals by everyone on the mine site (1)
- Mining companies could be bonded to ensure that any infringements can be enforced (1)
- There should be provisions to enable a worker to report their safety concerns to an independent body so as not to put their job in jeopardy (1)

- Consider whether it should be compulsory for all underground mines to have self-contained fresh air bases and change-over stations (1)
- It should be compulsory for all underground mines to have a qualified ventilation manager (1)
- Consider whether miners, other than trainee miners, should be required to have formal qualifications and experience for the jobs they are required to do (1)
- Consider whether there should be regulated ratios of experienced to inexperienced workers underground (1)
- Consider whether there should be an evolving template or plan in place which can be activated if there is another mine disaster in NZ (1)

Other regulatory-associated improvements

- Introduce a standardised approach for recognition and rating of hazards. There are currently a range of ways to calculate risk scores (3)
- Large companies operating in industries with significant risks should be required to implement and maintain effective formal third party audited OHSMSs to AS NZS 4801 or a similar Standard (1)
- There should be registration of H&S professionals with high hazard expertise. They should be tertiary qualified, with appropriate skills and knowledge in the industry (2)
- There is a need for an increased focus on process safety management systems, safety in design, and enhanced asset management techniques (e.g. BSI PAS 55) for major hazard facilities (2)
- A register of major hazard sites and industries should be established and maintained which is made available to Civil Defence, Police etc (11)
    - Classify High Hazard Sites (according to risk) (1)

Improvements to the regulators' roles and responsibilities

- There need to be clear criteria and channels within the regulator for swiftly identifying and taking critical decisions, for example, to stop work at a major site (1)
- Introduce comprehensive monitoring and audits of high hazard worksites, and improved enforcement (20)
    - Conduct more rigorous enforcement of safety case applications (1)
- Given that New Zealand cannot afford having specialist regulators for each of the high risk industries, consider the concept of a co-operative approach with the Australian jurisdictions that have a licensing regime for major hazards (1)
- Increase the regulator capacity and capability for working with high hazard industry, including industry specialist inspectors (17)
- There should be more education by the regulators (1)
- Separate the education role from the enforcement role (2)
- The High Hazards Unit needs to broaden its focus to include other industries (11)
    - The High Hazard Unit has a fairly narrow focus and there is a danger that inherently hazardous facilities that sit outside the identified high hazard industries may be excluded. For instance, who is overseeing large ammonia refrigeration facilities? (1)
    - Units should be established for industries which have a lower level of 'High risk' profile (1)

Mining regulators

- An expert in underground coal mining should be appointed to the High Hazard Unit (1)
- Mines inspectors must have the necessary qualifications and experience (1)
- Mines inspectors should be adequately remunerated for the size of their responsibilities (1)
- The Mines Inspectorate must be accountable and subject to review (1)
- The Mines Inspectors must have reasonable workloads (1)

4.11. Health and hazardous substances

The consultation document summarised current estimates of the level of occupational disease and ill-health in New Zealand, the barriers to gaining accurate estimates of this level, and the challenges in managing hazards that lead to disease. Submitters were asked to comment on the challenges in managing occupational health risks and exposure to hazardous substances, and to suggest changes that could be made to reduce the harm from occupational disease and ill-health.

Question 21. What are the most significant challenges to managing occupational health risks and exposure to hazardous substances?

Submitters made the following comments about the challenges in managing occupational health risks and exposures to hazardous substances.

Shortcomings with the HSNO legislation

- HSNO is complex. The legislation is difficult to understand and apply, including for occupational health professionals and test certifiers (38)
- The lack of clear regulatory direction about assessment of exposure means that it is often not understood in the workplace. Consequently, exposure standards are not assessed or even risk assessed (4)
    - The Workplace Exposure Standards are difficult to understand. The values of the US and UK standards are different to NZ. They may need to be reviewed (2)
- Classification systems
    - HSNO does not align with UN Globally Harmonized System (GHS) of Classification and Labelling of Chemicals (1)
    - There is confusion throughout industry regarding classifications i.e. UN versus GHS versus HSNO versus HSIS (Australian system) versus old classifications (pre-HSNO) (4)
    - There are separate classification systems for transportation and on-site management of chemicals. They need to be aligned (2)
- The HSNO Act manages substances, not occupational health risk (2)
- There are no regulations about stress or fatigue other than for persons who drive for a job. Yet worker fatigue is the greatest cause of accidents (1)
- There is a lack of regulatory agility. For example, many technical requirements are specified in regulations made under the HSNO Act. Changing these regulations requires considerable resources from multiple agencies, including the Parliamentary Counsel (1)

Inconsistencies between HSNO and other legislation

- There is a lack of coordination and links between HSNO, the HSE Act and Land Transport rules (5)
- Businesses may think they are complying under one Act and that covers both, but in reality they are failing to comply in respect of the other Act (1)
- Every substance or health risk is different, meaning different precautions and controls apply. The HSNO Act addresses this with extreme complexity. Conversely, HSE addresses it in an extremely generic and simple way (2)
- There are aspects of HSNO and H&S legislation that conflict e.g. the way Workplace Exposure Standards are administered by each piece of legislation (2)

Occupational health leadership

- Government leadership, resourcing and support for occupational health protection, promotion and prevention has been poor (2)

Capacity and capability in government agencies

- Successive governments have diminished the health and safety workforce capacity to a point where very few occupational health practitioners are working with government agencies tasked with health and safety (2)
- MBIE inspectors lack the required specialist knowledge and skills. MBIE currently has one occupational hygienist (27)

Environmental Protection Authority (EPA)

- Getting clarification from the EPA is difficult. EPA focus on small differences in composition and manufacturing processes instead of the resulting hazardous properties (2)

Occupational health reporting

- The Notifiable Occupational Disease System is not used and well understood (3)
  - MBIE has not made proper use of the Notifiable Disease Panels (1)
- The Asbestos Register is not used and understood (1)
- Presently almost all injury and disease prevention initiatives are based on ACC claims data. But ACC claims data alone does not give an accurate picture of workplace disease because cover and access to entitlement are restricted by law (1)
- Serious harm injuries, exposures and accidents are often not reported, and there is confusion as to what to report (2)

Monitoring and enforcement by regulators

- There are unclear roles and responsibilities among the agencies involved in HSNO, particularly agencies with compliance and enforcement roles (1)
- There is a lack of focus on occupational health at the national office level of MBIE (1)
- There is little in the way of surveillance, monitoring of exposures in the workplace, enforcement or prosecutions. The cancellation, in 2011, of the contract with

regional councils to undertake monitoring means that little if anything is being done now (6)

- There have not been any prosecutions in New Zealand for a company regularly exceeding exposure standards or instances of companies having to explain why they have not carried out risk assessments or quantification of exposures (1)
- It is notoriously difficult to establish work-related gradual process injury under the ACC Act (1)

Workplace and workforce issues

- Cultural attitudes and complacency are significant barriers to effective management of occupational health risks and exposure to hazardous substances (16)
  - There is a relaxed attitudes to chemicals, especially herbicides and pesticides, coupled with over-use by city councils for weed control (1)
- There is a lack of focus and understanding about the general concept of occupational health, including the link to productivity (13)
  - Occupational health is not just about identifying hazards but also involves identifying risk. This is not widely understood (1)
  - The traditional focus has been on the health impacts of individual hazards rather than on wellbeing and mental health (2)
- There is a lack of awareness, knowledge and understanding about specific occupational health risks by employers, managers and staff (44)
- There is low capacity and capability among SMEs to understand, keep up to date with, and respond to HSNO requirements. Cost is a major factor for SMEs (6)
  - The highly technical nature of workplace-specific requirements makes understanding more problematic (14)
  - Businesses that have MSDS documents will often have no one experienced enough to make any sense of what is printed on them (1)
- Getting employers to comply with HSNO requirements can be an uphill battle (1)

Challenges for workplaces to implement HSNO requirements

- There are approximately 700 chemicals in the 2011 Workplace Exposure Standards so understanding how to use these and what controls to introduce is quite complicated (1)
- Lack of access to knowledgeable occupational health experts. GPs generally lack knowledge about occupational health (5)
- The cost of compliance is prohibitive, including the cost of accessing site specific specialist support (10)
  - Biological and environmental monitoring can be expensive (1)
- There is a lack of information for workplaces that is easy to understand and easily accessible. Workplaces have to pay consultants to help decipher and apply the legal framework (3)
- There is variable quality of information in the safety data sheets supplied by overseas manufacturers and suppliers. They can be difficult to interpret by a layperson (6)
- Private third party certification schemes for high-risk substances and facilities may not be providing the required level of assurance (1)
- The online information of ERMA and EPA is great. But finding the hazardous substance register is now not straight forward (1)

- It can be difficult to provide adequate separation or isolation zones for every hazardous substance required on every site (2)
- Retailers don't provide MSDS (1)
- In the construction industry, the management of hazardous substances is poorly specified and oversight is lacking, including by principals, designers, project managers and contractors (2)
    - The technical and prescriptive nature of the HSNO Act is unworkable in the construction sector because of the fluid and changing nature of the construction workforces (1)

Test Certification Model

- The number of test certifiers appears to be reducing, and robust certification for new certifiers is lacking (1)
    - Test certifiers are stretched. There is a huge knowledge base they have to work through (1)

Approved handler certification

- Hazardous substances can be purchased without an approved handler's qualification. Person in charge responsibilities are not clearly known. Firms assume the approved handler will be able to manage all situations that arise (4)
    - In the farming sector there is confusion between GrowSafe and Approved Handler certification (1)
- There is a huge variation on what is being taught under the Approved Handler requirements, anything from half a day to 2 days for the same topic (1)

Other challenges

- The rate and speed of technological change means that knowledge about risk is emergent (6)
- There are difficulties associated with separating workplace effects from non-work effects, and attributing harm to a specific employer (5)
- The time lag for health impacts to emerge can introduce challenges. Documentary evidence of substance and exposure may be difficult to obtain (15)
- A key challenge is the lack of data on harm. Without accurate data we do not know the extent of harm that is occurring in the workplace, or where and how it is occurring (1)
- There is a lack of willingness to recognise UVR exposure as a legitimate workplace hazard (2)

Question 22. What changes could be made to the existing workplace health and safety framework to reduce the harm caused by occupational disease and ill-health?

Submitters made the following suggestions for changes that could reduce the harm caused by occupational disease and ill-health.

Legislation and regulatory framework

- A comprehensive review of the underpinning regulatory framework is needed. This review should explicitly include the identification and addressing of any unintended consequences. (1)
- Align, link and simplify relevant requirements (HSE, HSNO, LTSA, Maritime) into one set of rules (5)
    - Amend and streamline the HSNO regulatory framework so it is easier for employers to understand their obligations (4)
    - Remove conflicting information in the HSE and HSNO Acts (2)
    - The relationship between the HSE and HSNO Acts should be reviewed to determine whether separate enforcement regimes under each Act remain appropriate and if so, whether further streamlining and integration in the delivery of enforcement activities is warranted (1)
    - Review the relationship between the RMA and the HSNO Act to remove duplicated responsibilities (1)
- Refocus the HSNO Act so that its primary focus is on the risk of employees' exposure to hazardous substances, not the storage and transportation of products (1)
- Simplify the framework of HSNO approvals and the application of controls so that multiple compliance routes are minimised (1)
- Ensure New Zealand legislation references up-to-date legislation from other countries, particularly in instances where substances have been banned overseas (1)
- Realign the Classifications to international standards (2)
- Remove exposure levels from regulations to speed up the process of changing them (1)
- Introduce strict responsibility on designers and manufacturers of products under the HSNO umbrella to specify the handling, storage and installation information in tender and construction documentation and that the applicators apply them in practice (1)
- Make it simpler to amend the classification criteria and control requirements currently within regulations under the HSNO Act, by moving them to a different form of legal instrument that can be updated by the EPA without requiring PCO legislative involvement (1)
- Introduce a requirement for buildings to have a record of harmful substances used in construction (2)
- The regulatory framework should provide greater recognition of work-related cancer (1)
    - Introduce a benchmark standard for workplaces to manage excess UVR exposure for outdoor work (3)

Standards

- All forms of hazardous substances control for health and safety purposes should meet the same marking and certification standards throughout New Zealand and not differing standards for public and professional use, e.g. use AS NZS 1715 (1)
- The Workplace Exposure Standards are rarely mentioned or seen at workplaces More work is needed to promulgate and educate about them (1)
- Integrate OHSMS (AS NZS4801 & 4804) with ISO 9000 (quality) and ISO 14000 (environment) (1)

Improve the roles and responsibilities of the regulators

- Clarify the roles and responsibilities between all agencies involved in HSNO Act compliance and enforcement activities (3)
  - Reduce the number of enforcement agencies under the HSNO Act. There are currently 85 for hazardous substances (1)
  - The systems of different regulatory agencies must be consistent with each other. Companies have to meet not only health and safety requirements, but also food hygiene, animal welfare, biosecurity, and assorted overseas regulatory requirements (1)
- Develop a more interactive approach so that inspectors provide more advice, guidance and follow-up, and if necessary, enforcement (1)
- Improve the leadership from the regulators (2)
- Introduce more MBIE inspectors who have the qualifications and training required to oversee compliance in respect of hazardous chemical and substances. More occupational health and hygiene expertise (14)
- Introduce specialist advisors on occupational health and disease. E.g. occupational health nurses and hygienists should be re-employed by MBIE (6)
- There is a need for government regulators and information providers to work together to remove patch protection issues (1)
- A state sponsored independent enforcement and monitoring authority should be established (1)
  - There should be a new organisation in the non-regulatory space to promote good practice, educate and undertake research (1)

Improve regulatory approach and activity

- The regulatory approach underpinning health and safety, especially for hazardous substances, may need a change in focus. A different approach should be taken where there is more interaction between the regulator and regulated party (1)
- There should be firmer direction about the role and responsibilities by employers for occupational health monitoring, especially in diverse hazardous substances employment settings (8)
  - Introduce mandatory monitoring for use of specified chemicals (1)
- Investigate regulatory approaches, incentives and surveillance schemes being used in Europe, US and Australia (6)
- Move to a Management of Substances Hazardous to Health (MOSHH) risk assessment process so as to provide a more cost effective approach (1)
- Improve access for the regulators to the instruments and tools required to monitor workplace hazards e.g. meters (1)
- Develop a simplified method for use of hazardous substances that is situationally appropriate, with pragmatic controls that can be understood by business operators (1)

Enforcement

- Improve inspection and enforcement of the HSNO legislation (6)
  - Create a stronger focus by regulators on workplace monitoring systems and compliance with MSDS sheets for hazardous products on site (2)
  - There needs to be greater enforcement action for individuals, for failing to control exposures (1)
- Provide a greater range of enforcement tools for HSNO (1)

Leadership in occupational health

- The WHO Asturias Declaration calls for the primary prevention of environmental and occupational cancer. A commitment by New Zealand to the declaration's recommendations would be a good start into reducing the number of occupation-related cancer deaths (1)

Improve occupational health reporting and research

- Improve the surveillance and data collection activities in relation to injury and disease in the work place. This could be achieved by better sharing of information with health practitioners (3)
- Improve and expand the Notifiable Occupational Disease Register, including mandatory reporting (15)
- Undertake a review of the carcinogenic register (1)
  - Introduce a register for monitoring exposure to carcinogens (1)
- Prioritise proactive occupational harm research. Shape policy and implementation on international best practice (4)

Identification of new hazards

- Government should be proactive in identifying hazards associated with new and emerging technologies (1)
- Identify UV radiation as an environmental hazard. UVR exposure should be considered a priority area in the regulatory framework. (5)
- Introduce a workplace exposure standard for flour dust (1)
- Mental health should be included as a potential workplace hazard (1)

Test certification

- Review the current certification model to ensure it can provide the necessary level of assurance, e.g. provide the EPA with greater ability to manage the quality and performance of third party test certifiers (2)

Partners in improving occupational health

About workplaces

- Improve workplaces' access to subject matters experts, occupational health experts and practitioners (13)
- Improve monitoring of worker health through on-going health checks by occupational health nurses and public health nurses (7)
  - Require firms over a certain size or in an industry with exposure issues to have an occupational nurse or physician (1)

    - Give priority to addressing the most common conditions which contribute to poor health amongst workers, including noise-induced hearing loss, muscular-skeletal disorders, respiratory disorders and work-related mental harm (1)
- Introduce a licence to operate, a safety rating system or certification for businesses which includes HSNO compliance and use of safety cases (4)
- Employers must ensure that workers for whom English is a second language are made fully aware of all hazards including hazardous substances and how to safely deal with them (1)
- Introduce greater requirements for businesses to implement rigorous reviews of hazardous substance inventories (1)
- Improve systems for workplace assessments of air quality and asbestos material (2)
- Increase worker participation and ownership (see q10) (3)

About industry

- Promote industry leadership through provision of lists of potential hazards and management strategies (2)

About unions

- Unions have a role in promoting occupational health (1)

About the medical profession

- On-going education for primary health professionals is needed to ensure that they are aware of the clinical pathways in detection of occupational disease (3)
- Prevention of occupational injury and disease should generally entail a much broader approach, including primary, secondary, tertiary and quaternary prevention approaches (1)

Collaboration and information sharing among parties

- Increase the collaboration and sharing of information among key groups e.g. ACC, G.P.s, physiotherapists, Fire Service and other first responders to incidents (1)

Awareness raising, education and information

- Develop codes of practice, guidelines and other resources about occupational health, that are user friendly and easy to access (17)
- Provide education and resources to help employers and workers to recognise and mitigate occupational health risk in their workplace, and so that they better understand long term effects. Such education could include industry supported campaigns that are hazard-specific or sector-specific (21)
    - Introduce an industrial hygiene monitoring programme (3)
- Improve the quality of information required from manufacturers and suppliers of hazardous materials so that it is readily understandable by the layperson (7)
    - Require manufacturers and suppliers to supply information in languages other than English for workers who do not have English as a first language (1)
- Run a public awareness campaign about occupational health, as has been done for other public health and safety campaigns (5)
- Strengthen the Chem-Safe database and make it freely available (2)

Incentives and subsidies

- Introduce subsidies and rewards to encourage better occupational health (11)
  - for employers for worker health monitoring (4)
  - for pilot programmes that look to improve the research available in certain areas (1)
  - for workplaces to access occupational hygienist expertise (1)
  - for workplaces to undertake environmental exposure monitoring, particularly for SMEs (2)
- Monies spent on biological and environmental testing could be offset against the companies tax liability (1)
- Implement some form of financial incentive for implementation of Wellness programmes (1)
- Tax incentives should be made available to employers for worker health monitoring (4)

4.12. Small to medium-sized enterprises

Self-employed and small-to-medium sized enterprises (SMEs), who employ 19 or fewer workers, made up 97% of all New Zealand businesses, and 41% of workers, as at February 2011. The workplace health and safety regulatory system may impact on SMEs differently to other businesses. The consultation document described factors that may influence different approaches to workplace health and safety among SMEs, and some challenges that SMEs can face, when trying to improve health and safety outcomes. Submitters were asked to to comment on the challenges, and to suggest improvements to the health and safety framework, that would ensure it is effective for the self-employed and SMEs.

Question 23. What workplace health and safety challenges are specific to the self-employed and small-to-medium enterprises?

Submitters made the following comments about the health and safety challenges faced by SMEs.

Capability issues

- SMEs have difficulty keeping up to date with regulatory requirements (3)
- SMEs lack access to health and safety expertise, resources and learning opportunities such as industry forums and conferences (23)
  - There is a lack of free education and advice (2)
  - There is a lack of role models and opportunities for peer learning in the circles in which SMEs operate (2)
  - There is no structured national health and safety training that leads SMEs through to more complex knowledge and system understanding (1)
- There is a lack of awareness and knowledge. Some 'don't know what they don't know' (33)
  - There is a lack of understanding of health and safety and risk management principles (4)

    - There is uncertainty about how to properly discharge their obligations; difficulty translating performance-based legislation into a 'how-to practice' format (4)
- There is a lack of systematic capability in respect of systems, processes and training (6)
- There may be a poor culture among SMEs, which is passed from the older generation to the new (2)

Management issues

- Employee participation and consultation policies are not usually in place (2)
- Personalised management is common, There is a lack of formal structures, and oral, not written, communications are normal (1)

Capacity issues

- SMEs' primary focus is on keeping their business financially viable and generating income to pay employees (7)
- They face a complexity of regulatory requirements e.g. the processes and paperwork introduced by CAA since the Fox Glacier accident (5)
- SMEs face time constraints and resourcing constraints; health and safety activities may be done by someone on top of their 'real' job (34)
    - SMEs lack time to attend training even it is available (2)

Specific financial or resourcing issues

- SMEs may have limited or no specific safety resources (1)
- The cost of advice and support is prohibitive (11)
- The cost of health and safety compliance in the context of tight financial margins is a barrier (44)
- The high cost of NZ AS Standards is a barrier (3)
- The stress of volatility of product prices and high gearing adds to the risk (1)
- The smaller the business, the higher the average compliance cost per employee (2)
- 'Unproductive' overheads are regarded as an add-on (2)

Market issues that affect SMEs

- By needing to keep the business viable, the owner is forced to fall in line with those who sacrifice safety to win contracts (3)
- Each large company has different requirements, which place costs on the SME who has to meeting each set of requirements (1)
- There is pressure caused by customers wanting the cheapest price and quickest completion time e.g. owner-drivers who are forced to drive long hours to meet deadlines (10)
- Principal payment systems can have a large impact on SME outlay, requiring them to carry a financial burden or cascade it down through sub-contractor tiers - this impacts on resourcing for safety (1)
- Principals are giving tacit approval of poor health and safety outcomes as a result of their quest to minimise costs (1)

Regulatory approaches, incentive and intervention design

- ACC workplace safety incentives are too complicated and the discounts are considered of limited benefit (3)
- Currently there is a lack of clarity in definition, monitoring and enforcement obligations as they apply to SMEs (1)
- Regulators use a 'one size fits all approach' (2)
  - SME interventions have assumed that it will work to transfer current best practice from larger organisations; there has not been an authentic search to accommodate the unique challenges presented by SMEs (1)
- The number of regulatory agencies and plethora of requirements results in a complex minefield for SMEs to navigate (6)
- There is a mismatch between what the regulators provide and what SMEs want. E.g. government is focussed on using technology to deliver solutions - for example resources on the internet, but groups like the farm forestry sector want face-to-face interactions (2)

Workplace environment issues

- Issues with working environments affect SME health and safety performance, e.g. working in isolation, working long hours, weather conditions, and the range and type of machinery in use (4)

Other comments

- Care needs to be taken in identifying self-employed workers (micro small business) and small business as a stand-alone category. Many self-employed workers and small business are part of subcontracting networks or supply chains (1)

Question 24. What improvements could be made to the workplace health and safety framework, and its implementation, to ensure that it's effective for self-employed and small-to-medium sized enterprises?

Submitters made the following suggestions for ways of improving health and safety outcomes for SMEs.

Regulatory framework

- Introduce health and safety licences or ratings (or other similar systems) for employers before work can be carried out e.g. a 'warrant of fitness' (10)
- Increase clarity around the health and safety obligations of SMEs (12)
- Legislation, regulations and approved codes of practice should be made easier to understand, interpret and implement (7)

Government advice and assistance

- Government agencies should take a more pro-active approach to providing assistance and guidance on health and safety requirements, tailored to SME needs (76)

  - A basic low level but comprehensive ACC auditable health and safety system software could be made available for free to all SMEs (6)
  - Improve access to assistance without fear of prosecution (22)
  - Develop an online information database for all employees and employees to access freely (2)
  - A website is not a service - the regulators need to go out and talk to SMEs (1)
  - Introduce funding and resources to enable SMEs to develop an accredited health and safety system (4
  - Introduce health and safety advice centres (2)
  - Provide the tools for carrying out simplified risk assessments (e.g. control banding) to enable SMEs to identify what levels of risks they are exposed to (2)
  - Introduce resources, tools and training designed to meet the needs of SMEs, specifically to ensure that they are aware of their duties under the HSE, HSNO and other relevant regulations, and include 'how to' information (38)
  - Set up a free 0800 help line that can provide specific advice and information (5)
- Increase ACC discounts and/or decrease ACC levies for health and safety performance, to encourage greater engagement by SMEs (9)

Industry-based advice and assistance

- Industry groupings or networks could be established for SMEs to share resources. Examples of existing initiatives are the Taranaki Construction Safety Group, and the Southland Health and Safety Forum (2)
- Facilitate mentoring of SMEs by larger companies and industry organisations (7)
- Encourage more collaboration and sharing of health and safety resources across supply chains and industry sectors (3)
- There should be more leadership, support and information from industry, occupational professional bodies, employer associations and Business NZ (7)
- NZ Trade and Enterprise should be consulted on ways their Regional Business Partners Network could be used to assist SMEs to meet their health & safety obligations (1)
- Introduce requirements for suppliers to provide more health and safety information and to ensure health and safety compliance of purchasers of their products e.g. training sessions, documentation (5)
- A basic health and safety framework could be made available for SMEs to purchase for their particular industry (1)

Procurement practices

- Further develop the supply chain influence e.g. principals should be encouraged to include the SME contracting workforce in their established processes when they are onsite. Use of contractor pre-qualification systems (9)

Suggestions for interventions, incentives and subsidies targeted at SMEs

- Introduce incentives (e.g. tax rebates) and subsidies that will go some way to setting off the costs of setting up health and safety systems, health and training etcetera (7)

- Use more partnership approaches between industry and the regulators to deliver up-to-date guidance to SMEs (1)
- Introduce free or subsidised health and safety assistance (23)
  - Introduce free or subsidised access to specialist occupational health services and support (2)
- There should be no charge for Codes of Practice. They should be freely available to all parties (5)
- Interventions must address the proportionately higher compliance costs faced by SMEs (1)

Other suggestions

- Require certification of health and safety consultants to ensure SME's invest in competent advice. Develop a register of such consultants. See q14 (6)
- Facilitate the right of union access to workers in small enterprises (1)

4.13. Measurement and data

While New Zealand has a number of data sets available for analysing and reporting on workplace related injury and occupational disease, there is no purpose-built, comprehensive data set for monitoring high level outcomes. The consultation document described the current situation with datasets, data integration, monitoring of outcomes, and investigation of causes, and asked submitters to comment on whether the existing data collection mechanisms are adequate, and to identify any opportunities to improve data collection, integration and reporting.

Question 25. To what extent are New Zealand's workplace injury and occupational disease data collection mechanisms conducive to robust monitoring, investigation and comparative analysis?

Submitters made the following comments about the effectiveness of health and safety data collection and analysis mechanisms.

Reasons why the current mechanisms are not adequate

Data quality issues

- Data quality is compromised by under-reporting by employers e.g. under-reporting of 'near hits' under section 26 and 'lost time injury' (19)
- Data sources for monitoring harm from hazardous substance exposure, particularly chronic harm, are not adequate (1)
- The data on occupational disease and work-related ill health is poor (11)
  - Many occupational health illnesses and disease have a long latency period which can lead to the actual cause not being recorded (3)
  - Occupational skin cancers are not being recorded, either in ACC statistics or the NZ Cancer Registry because occupational details are often not provided (2)

Data gaps

- There are no indices on psychosocial conditions at work (1)
- There is little monitoring of exposure levels to known carcinogens (1)

- UVR risk is not routinely reported or monitored as a health and safety workplace issue (1)
- Data about workers employed in non-standard and precarious work is not being collected (1)

Issues about government agencies

- Data collection mechanisms are fragmented, with different government agencies collecting different data. This results in gaps and incompatibilities (13)
  - Inconsistent statistical information is being released by MBIE and ACC e.g. serious harm reports and ACC claims accepted. This erodes employers' confidence in the statistics (3)
  - Cross-agency exchange of data appears problematic i.e. ACC, MBIE, MfE (4)
  - ACC data is collected for insurance purposes, rather than injury prevention purposes. So while there is demographic data, there is little or no information on what the person was doing and what went wrong (2)
- MBIE and ACC have different definitions of serious harm. There is confusion as to what to report (2)
- Gradual disease deaths cannot be recorded on documentation currently provided by MBIE (1)
- The New Zealand Health Information Service (NZHIS) under-records occupational disease (1)
- There are issues with ACC's data (6)
  - Almost all data used is based on ACC claims data. Many claims, by disputing causation or place of injury, are consequently not being included in the data (2)
  - ACC data lacks specific diagnostic coding (1)
  - The fatal work-related injuries statistics published by ACC classify fatalities into occupation, except that the classification 'not specified' is disproportionally large and distorts the analysis of where fatalities are occurring (1)
  - A poor quality of data collected by ACC in the meat processing industry (1)
  - The ACC Experience Rating provides a few selective benchmarking measurements of risk and rehabilitation but the information is based on lag data from a previous three to four year period (1)

Reporting registers

- The Notifiable Occupational Disease System (NODS) is not well used. It has been sidelined by MBIE and is now dysfunctional. At present there is no NODS Registrar (6)
- The Asbestos Register is no longer being maintained (3)

Medical profession

- The medical profession appears to have no real interest in identifying whether an injury or illness was caused by social, domestic or work related situations (6)

Bodies that analysed and reported health and safety data

- The disbanding of the National Occupational Health and Safety Advisory Committee has compromised the ability to collect and analyse data in one central place (6)

- Only the Injury Prevention Research Unit was undertaking independent, comprehensive and meaningful analysis of health and safety data but their funding was discontinued in the mid-1990s (1)

Other issues

- The Privacy Act is an obstacle to collecting and sharing information (3)
- Privacy Act issues get in the way of getting information from GPs about injured workers (1)

Industry initiatives that have a data collection and analysis component

- The Business Leaders' Health and Safety Forum (1)
- The Construction Safety Council (1)
- The NZ Contractors' health and safety portal (1)
- The Plastics and Chemicals Industry Association (1)
- The NZFOA has their own database called IRIS to which individual forest owners contribute their injury and near hit data (2)

Question 26. What opportunities are there for improving data collection, integration and reporting?

Submitters made the following suggestions for improvements to health and safety data collection, integration, and reporting.

Address data collection at the level of DHBs and Medical Practitioners

- A system is needed where GPs can report the possibility of a workplace environment or process risk before it becomes a serious injury (1)
- There should be education for GPs to improve their awareness and identification of occupational health. Provide screening methodology and assessment criteria (10)
- There needs to be improved or mandatory reporting by GPs and DHBs of occupational disease (7)
- Measuring medical providers' return to work performance against desired outcomes would be an advantage. Doctors specialising in occupational health tend to have higher return to work rates than others (1)
- Data captured at doctors' offices, medical centres and hospitals is largely medically focused. There is a need to capture more information on the factors influencing the events leading to injury or illness (1)
- If it doesn't already exist, establish a national coronial database on work-related deaths (this could be aligned and bench-marked with Australia's) (1)
- Information on occupation should be routinely collected for deaths, cancer registrations and hospital admissions, and occupation should be incorporated as a field into the National Health Index (NHI) system. The NZHIS should then routinely code this information (3)
- Implement occupational disease reporting from 'Sentinel' General Practices (1)

Address data collection and analysis at the level of government agencies

Improve consistency and data matching cross agencies

- Agencies should use clearly defined, standardised metrics and assessment criteria (9)
- Agencies should use standardised definitions of key terms e.g. 'harm', 'hazard', 'accident', that are comparable with international standards (14)
- Improve the coordination and sharing of data across government agencies to provide a better overall picture of workplace health and safety e.g. coordinate MBIE, ACC, the Ministry of Health, DHBs, the Health Quality and Safety Commission, MfE, and industry (25)
- Match ACC injury data to workforce data that Statistics NZ hold (1)
- Bring in a wider range of agencies (2)
  - Since IRD is the best source of data on where an employee currently works, their system should be developed to ensure more detailed categorisation of workers by sector (1)
  - The Ministry of Health needs to be part of the solution e.g. amending hospital admission forms (1)
- A single agency should collect data, examine standards and coordinate research on workplace health and safety. (12)
  - The agency should undertake analysis of causes of accidents (1)
  - The agency needs to be independent i.e. distanced from ACC and the regulators, so that employers can submit data knowing that it won't be used against them (3)
- Upgrade MBIE's Insite database (1)

Improve data availability

- Greater value could be realised by collecting information in such a way that industry can use this data e.g. for industry-specific benchmarking and to make comparisons (16)
- An integrated data collection and reporting system should be developed, in a single repository, that produces publicly available information. This would produce economies of scale and a reduction in repeat work (26)
  - base its processes on accepted international standards, such as those set by the Occupational Safety and Health Administration (OSHA) (1)
  - the repository should be able to provide comparative data to appropriate overseas jurisdictions (1)
  - it should provide drill-down data sets in trauma- and disease-specific data (1)
  - it should include sector specific data for reporting and benchmarking workplace injury and occupational disease (1)
- Make online reporting available (7)
  - MBIE could provide some free standardised health and safety software for recording accidents and incidents, which could be fed into a central database (1)

ACC data

- ACC data could be more effective if there was a structured interaction with employers, ACC, Doctors and injured employees (1)
- From industry's perspective, ACC doesn't appear to be doing much with the data from its data sets. Industry-based data needs to be more available. The data that is currently is very generic (4)

- Information collected from workplace audits by ACC could provide an additional data source (2)

Increase resources for data collection and analysis by government agencies

- Fund agencies so they can set up and monitor relevant information (1)
- Make greater investment in capability to analyse and communicate data and to advise on data improvements (1)
- Make greater investment in data quality, systems, and processes for key data. This would include data documentation, business rules, professional coding, regular independent audits, and standardised definitions (1)

Address data collection at the employer level

- Introduce mandatory reporting requirements for employers: (8)
  - of a defined suite of safety related data (2)
  - of accident investigation reports of all workplace injuries that require medical attention (2)
  - of all accidents (minor and serious harm) on a quarterly basis to the Department of Statistics (1)
  - on set lead and lag key performance indicators that are based upon national indicators (3)
- Employers report enough information already, and shouldn't be required to report more (1)

Suggestions about specific data, sources, and collection methods

- Accident data should identify the specific occupation of the person involved in the incident or accident (1)
- Amend MBIE's serious harm form so it provides better data (2)
- Collate pathology laboratory and DHB records of NMSC (1)
- Collect and analyse data from occupational health testing (1)
- Consider adopting the EU workforce survey or some other instrument for measuring psychosocial or other conditions at work not captured in conventional, injury-focused, data sets (1)
- Drawing on the philosophy of a 'truck being a place of work', utilise information from NZTA's RID and ORS data-base to identify 'at risk' work environments and potentially unsafe operators (1)
- Epidemiology databases for recording and monitoring occupational exposures would be useful for informing risk reduction strategies (1)
- Undertake regular industry-based surveys (2)
- Work-related road deaths should be included in the statistics to align with the 2002 Health and Safety in Employment Act amendment (1)

Notifiable Occupational Disease System (NODS)

- NODS should be preserved, improved and extended (1)
- It should be a mandatory requirement for medical practitioners to enter data on NODS (2)

National Health and Safety Advisory Committee

- Reinstate the National Health and Safety Advisory Committee NOHSAC (7)

- NOHSAC clearly articulated the problems with NZ's surveillance system for occupational health and safety. This analysis should be re-examined. (2)

Other suggestions

- Improve systems for surveillance of work-related disease and injury (see also q22) (1)
- Increase the emphasis on measuring lead key performance indicators e.g. the regularity of hazard management, employee training, alongside lag indicators (11)
- There is a need for analysis of 'underlying cause' of accidents (1)
- 'On the ground' regulators could use an electronic data transaction application that is transfers the data to a central database (2)
- Review the Privacy Act to address obstacles for collecting and sharing information (1)
- The difficulty of matching personal data across the multiple data sets could be addressed by using employees' IRD number when recording all workplace injury related data (1)
- Unions can be a valuable source of incident and worker fatality information (1)
- Universities could be involved in data collection and research methodology development (1)
- There should be a contestable fund for research (1)

4.14. Our National Culture and Societal Expectations

Health and safety outcomes in all settings (not just workplaces) are poorer in New Zealand than in Australia and the United Kingdom. The consultation document outlined some cultural factors and societal expectations that may influence health and safety outcomes, and asked submitters to comment on whether they think that New Zealand culture influences outcomes, and to suggest ways in which our health and safety culture could be improved.

Question 27. Do you think New Zealand culture influences our workplace health and safety outcomes?

Submitters made the following comments about the influence of New Zealand culture on workplace health and safety.

Extent to which culture influences outcomes

- Yes, New Zealand culture influence outcomes (186)
- No, the influence of culture is insignificant compared to other factors; attitudes are a consequence of aspects of the regulatory system; attitudes are not significantly different overseas (17)
- Attitudes to health and safety are improving (12)

Aspects of culture and attitudes that influence workplace health and safety

Attitudes to authority, regulation, personal freedom

- There is an acceptance of too much bureaucracy, and bureaucracy is unconnected to practice. E.g. there are too many generalists writing policies and procedures, there is 'bureaucracy gone mad' (4)
- Authoritarian, bullying attitudes in workplaces negatively impact health and safety (5)
- There is a desire for independence and a resistance to regulation and state interference. E.g. this results in scepticism of experts, an attitude that health and safety laws are just 'political correctness', a view that personal safety should be a personal choice (17)
- A no-blame culture reduces personal responsibility for health and safety. E.g. this results from ACC's no-blame accident coverage, or a 'nanny state' mentality where everything is the state's responsibility and people are not held to account (14)

Attitudes to risk

- New Zealanders have a higher acceptance of risk, and take pride in being risk takers and rule breakers. E.g. New Zealanders' leisure activities are often high risk (23)
- There is a 'she'll be right', 'laid back' attitude, an attitude that 'it won't happen to me'; my company has never had a problem before, so there is no need to change practices now (88)
- Stoicism, staunchness, and fatalism are valued, e.g. 'accidents happen', 'harden up', 'when your time's up, it's up'. Being concerned about health and safety is seen as a weakness (18)

Social interactions

- A gang culture is operating in some workplaces (1)
- There is a reluctance to 'dob people in' (4)
- In New Zealand we give people more chances when they transgress. This may be due to having a limited labour pool (1)
- New Zealanders are reluctant to 'make a scene', to complain or to confront people when they see poor practice (8)
- The 'tall poppy syndrome'; a reluctance to be different or stand out from our peers, affects outcomes (5)

The relative value of getting jobs done, versus health and safety

- There is a 'can do' attitude, and attitudes around 'getting on with the job', 'not mucking around' that can encourage corner cutting, not stopping and considering risks, and a reluctance to spend time on compliance (29)
- Financial benefits are seen as more important than safety (1)
- The 'number 8 wire', 'DIY' attitude can result in people making-do with equipment or processes that are not fully fit for purpose, e.g. this attitude confuses improvisation with innovation, and leads to a reluctance to seek professional advice (45)
- Other topics are seen as more interesting or important than health and safety (8)

Other attitudes

- There is acceptance of drug and alcohol use in the workplace (6)

- Attitudes towards UV radiation are affected by the way that a tan is perceived as indicating good health and attractiveness (1)
- Male risk taking attitudes, and immigrant culture and language issues were commented on, but are covered in q1.

Question 28. What might we do to improve our culture relating to workplace health and safety?

Submitters made the following suggestions for ways to influence New Zealanders' culture and attitudes towards workplace health and safety.

Social marketing

- Develop social marketing, public awareness campaigns targeting health and safety (68)
  - Campaigns will need to be ongoing, long term, not one-off (3)
  - Develop a reality TV programme that follows health and safety inspectors (5)
  - Use role models in the campaigns (8)
    - Identify industry leader role models who value people and demonstrate positive health and safety behaviours (5)
    - Use celebrities, sports icons to deliver messages (2)
    - Use 'local champions' to promote on-farm health and safety (1)

School level education

- Integrate health, safety, and risk management into school level education (62)
- Ensure that schools model good health and safety behaviour and compliance (1)

Suggestions for effective health and safety messages

- Highlight the consequences of the damage caused by poor health and safety; the effects of accidents on people's lives (15)
- Increase awareness of New Zealand's performance relative to other countries (2)
- Investigate Australian or other overseas campaign messages (3)
- Investigate the messages and delivery methods that have been effective in past New Zealand campaigns, e.g. campaigns around drunk driving and seatbelt wearing (8)
- Position health and safety as a productivity issue, not a compliance issue; demonstrate the economic benefits of good health and safety (7)
- Promote health and safety as everyone's responsibility (4)
- Promote health and safety as 'looking after your mates'; looking after your family; include messages about how we harm others by being unsafe (6)
- Promote, or educate about practical strategies for how people can work safer, e.g. how to recognise situations that can lead to accidents, how to recognise and assess risk, and how to think critically about risk (16)

Other suggestions

- Address instances of the portrayal of poor health and safety practices in the media (4)
- Conduct research on the influence of culture, and/or monitoring of changes in health and safety attitudes and culture (8)
- Couple efforts to improve workplace health and safety with efforts to improve health and safety outside of the workplace (7)
- Empower communities to deliver health and safety training and promotion, e.g. devolve these activities to iwi, local authorities, resources for mārae, community organisations (2)
- Tie the relevant government ministers' salaries to the incidence of occupational ill health, disease, accidents and death (1)
- Suggestions made in response to other questions will influence culture and attitudes. Some pointed to specific areas that will be necessary to effect cultural change, see below (148)
    - Improve health and safety education, q14 (74)
    - Improve health and safety leadership, q12 (40)
    - Improve regulatory responsibilities, incentives, enforcement, and recognition of positive and negative practice, see q4, q12, q16 (38)
    - Improve worker participation, q10 (20)
    - Provide more government resources, clarity, commitment, leadership, review regulators' roles and responsibilities, e.g. set up a dedicated crown agency q6, q14 (27)

4.15. Other factors

Submitters were asked if any other factors influenced health and safety outcomes, and were asked to identify any other ways in which workplace health and safety outcomes could be improved.

Question 29. Are there any other factors (not already covered) that influence workplace health and safety outcomes in New Zealand?

Comments on overarching issues that cut across the themes in the consultation document.
Aspects of these issues are covered under other questions, but some submitters chose to specifically highlight these general themes.

- Health and safety legislation, procedures, and systems are too complicated, or impractical, leading people to disengage from the topic (4)
- Money, productivity, and lowest cost is given a higher value than health and safety (7)
- People are unwilling to take personal responsibility for health and safety (1)
- The situation is complex; factors that affect health and safety are interlinked, cannot be separated from one another (3)
- There is a lack of employer belief in the productivity increases that derive from good health and safety (1)
- There is an overemphasis on trivial health and safety measures, at the expense of important issues; this diverts focus from high risk activities, and compromises the credibility of the health and safety system. (2)

Practices, attitudes, and circumstances outside of the workplace

- Attitudes to safety at home spill over into attitudes to safety at work (2)
- Children are wrapped in cotton wool and are not given the chance to learn about safety from mistakes (1)
- Domestic abuse has a negative effect on workplace health and safety, e.g. victims are compromised in their ability to work safely (1)
- Overall wellness and wellbeing affects people's workplace-related health and safety (4)
- The effect of climate change on health and safety should be considered. Its effects on the economy and public expenditure may influence the level of resources that are able to be put towards health and safety (1)

Relative priorities

- The 'health' component of 'health and safety' is given a lower priority than safety, e.g. there not enough effort to prevent ill health in the workplace; health professionals are not engaged within government processes to the extent that safety professionals are (4)
- Minimising occupational harm from UV radiation is given a low priority (2)

Specific workplace hazards and processes

- Forms for notification of accidents are usually completed by workers, in contravention of regulated requirements. This reduces management awareness of accidents, and there is no provision to ensure that workers are advised of investigation outcomes (1)
- Office furniture systems lack safety features (1)
- There is widespread non-compliance with regulations for machinery guarding (1)

Other issues

- Double standards can be apparent in workplaces, e.g. there may be an alcohol ban at work, but provision of alcohol at company social events (1)
- Many commercial buildings do not comply with earthquake regulations, and this is not being addressed, constituting a workplace health and safety risk (1)
- Media reporting of accidents tends to portray them as 'freak' accidents; media do not report the controllable factors that led to the accident (1)
- Over-regulation of farming activities is placing demands on farmers that negatively affect their health and safety (2)
- Products that could improve health and safety can be unavailable in New Zealand (1)
- Workplaces in New Zealand remain as cottage industries for longer, tend not to update and improve equipment and machinery to address productivity and safety issues (2)

Question 30. Do you have any other suggestions for how to improve workplace health and safety outcomes in New Zealand?

Cross-cutting suggestions

The following submitters were not the only ones to raise these issues, suggestions such as these occurred in many parts of different submissions, but some chose to raise these as more general, stand-alone issues.

- Assess the benefits of any Taskforce recommendations with regard to the compliance costs that they will impose (2)
- Find ways to get health and safety seen as part of the job rather than a separate activity to be left to others (1)
- Increase the resources, priority given to health and safety (2)
- Make people more personally accountable so as to encourage people to take better personal responsibility for their own and others' health and safety. E.g. replace the 'no blame' culture with a 'just' culture (4)
- Make solutions simple, easy to understand, accessible to all (3)
- Regulatory reform, guidance and support should recognise the importance of 'soft skills' such as leadership, culture, how people interact with one another, learning from experience and communication skills (3)
- There will be no magic bullet, many factors need to be modified to effect better health and safety (1)

Health and wellness

- Prioritise health and wellness (17)
  - Develop a comprehensive national strategy incorporating occupational health, safety, injury management and wellbeing (1)
  - Support health and wellbeing initiatives (13)
    - Adopt the World Health Organisation's recommendations for healthy workplaces, including more holistic aspects, such as enterprise community involvement (4)

Address specific health and safety issues

- Address issues with machine guarding, e.g. provide more training, stop non-compliant equipment from being imported (2)
- Ban the use of perfumes and perfumed products (1)
- Recommendation to adopt a specific worker participation system in workplaces (1)
- Regulate for better support and protection of employees who are victims of domestic abuse (1)
- Require rollover protection and other safety features for quad bikes, ride on lawnmowers, golf carts, mobility scooters (2)
- Specific suggestion for amendment of the building code provisions on safety at heights, see the individual submission for further detail (1)

Other suggestions

- Expand the building warrant of fitness provisions to include requirements for tenants' health and safety practices in the event of an emergency (1)

- Investigate quality management systems and what can be learned from them, for health and safety systems (1)
- Support an integrated programme that develops people's and organisation's capabilities in good compliance practice (1)

4.16. Other issues raised by submissions

Comments on the Taskforce membership, scope, processes

Comments on the membership of the Taskforce, or involvement of particular organisations or people with the Taskforce

- Health and safety inspectors or people with practical health and safety experience should be represented on the Taskforce (2)
- The Ministry of Business, Innovation and Employment's involvement with the Taskforce is unlikely to be helpful (1)
- More representation of the health sector is needed on the Taskforce (1)
- Recommendation for a peer reviewer of the Taskforce's recommendations (1)

Comments on the scope of the Taskforce's work

- The Taskforce's terms of reference should include all aspects of ACC function, e.g. changes to the no fault nature of New Zealand's accident compensation (3)

Dissatisfaction with the consultation process

- The consultation has not been promoted well enough; there has been insufficient awareness of the consultation (2)
- The consultation should treat different sectors differently and seek sector-specific comment (1)
- The Taskforce has unfairly stated that farmers do not care about safety; this perception is untrue (1)
- Paragraph 82 in the consultation document conflates the principles of 'reverse onus of proof' and 'due diligence' (1)
- There are too many committees, taskforces, too much talk, not enough action (1)

Comments outside of the consultation scope

- ACC should accept claims relating to illness (1)
- Complaint about a health and safety-related decision by the Employment Relations Authority (1)
- Safety for tertiary students is a concern, e.g. instances where they are given 24 hour access to industrial machinery, with no supervision (1)

Endorsement of others' submissions

- Endorsement of Michael Quinlan's submission (1)
- Endorsement of the Business NZ submission (1)
- Endorsement of the Cancer Society of New Zealand submission (1)
- Endorsement of the CTU submission (4)
- Endorsement of the EEA submission (1)
- Endorsement of the Royal Australasian College of Physicians' submission (1)
- Endorsement of the Summit Systems submission (2)