

## **Occupational safety and health: the policy issues**

Chris Hampton\*

### **Introduction**

When this seminar was planned, it was expected that the Government's intentions for occupational safety and health reform would be known by now. Unfortunately, that has not happened. Because of this, I am able to discuss only the Department of Labour's perception of the policy issues. What I have to say should not be taken as Government policy; those decisions are still to be made.

### **Developments since the ACOSH proposal**

The Minister of Labour, Stan Rodger, invited submissions on the Advisory Council for Occupational Safety and Health proposal in June last year. He received 118 submissions and, almost without exception, these endorsed the need for some sort of reform of occupational safety and health. There was much variation in the actual comments made, and many issues were raised. The Minister subsequently obtained Government approval in principle to the reform and for the issues arising from the ACOSH proposal and submissions to be studied by a working party of officials. The Government also agreed that a consultative group comprising representatives of the Employers Federation and the Council of Trade Unions should be set up to assist the officials working party.

I was the convenor of the working party, and the other officials came from the Accident Compensation Corporation, the Department of Health, the Ministries of Transport, Energy and Environment, the Treasury and the State Services Commission.

The working party was set up in March this year and it was required to prepare its report by the end of April. The working party report has been in the Government's hands since May but has not yet been considered for two main reasons; first the Government wished to give the consultative group members more time to prepare comments on the working party's recommendations, and second because of the Minister's absence overseas while he attended the ILO Conference.

\* General Manager, Occupational Safety and Health, Department of Labour

**Department of Labour perspective**

The fundamental policy issues are:

- What is the role of Government (if any)?
- What form should Government intervention take?

In the case of occupational safety and health, the first question is relatively easy to answer. The second question is much more difficult, and there is probably no single correct solution. It is this latter question which was the subject of the ACOSH public discussion paper.

**Reasons for Government intervention**

The following points suggest that the Government should have a role:

1. There is an expectation, shared by unions, employers, and the general community, that some Government intervention is necessary. The historical justification for occupational safety and health legislation has been:
  - Management may consider the safety and health of the labour it employs to be unimportant and/or in the face of competitive pressures, fail to provide sufficient protection for those employees.
  - Employees are relatively powerless to protect themselves.

This perspective shows up in the existing occupational safety and health legislation which is essentially protective. It is designed to protect the rights of labour by the Government setting strict standards and providing various inspectorates to enforce them.
2. Voluntary and private arrangements do not ensure the provision of adequate safety and health for those at work because:
  - There are high costs in obtaining information about workplace hazards, the associated risks and the means of relieving them.
  - Individuals may be limited in their ability to understand and make appropriate decisions from the information which is available.
  - Labour market institutions can rectify these problems only slightly.
  - Negotiations between the parties in the employment contract, in the absence of any statutory guidelines, are unlikely to produce optimal safety and health conditions in workplaces.
3. Available statistics tend to support the view that New Zealand could improve its workplace safety and health performance. The cost of workplace accidents is considerable and much of that cost (despite the existence of accident compensation and public health systems) falls on those least able to protect themselves.
4. The availability of comprehensive no-fault accident compensation, together with the

absence of the right to sue, reduces incentives for both employees and employers. Employers know that they will not face the possibility of paying large amounts of damages and employees know that they will not suffer financially if they fail to work carefully.

Taking these problems into account, the conclusion can be reached that, on both economic efficiency and social equity grounds, some form of government intervention is required.

**Problems at present**

The ACOSH discussion paper identified a range of problems with present arrangements and I won't repeat these in detail. However, the problem is essentially one of fragmentation. The existing legislation is targeted at specific hazardous industries and situations. These have generally been introduced in response to a perception by either the community in general, or the administering authorities themselves, that some activity needs to be controlled. These laws treat different industries and hazards differently. For example, strict standards are applied in the construction industry while legislative standards are much lower (or non-existent) in agriculture. The laws are usually complex and easily become outdated because of technological changes.

A further consequence of the present approach to occupational safety and health legislation and its enforcement is that the community in general, and management and labour in particular, see occupational safety and health as primarily the Government's responsibility. The protection of worker rights is in the form of strict liability on the employer rather than giving employees rights that they can exercise either singly or jointly at the work place.

**Criteria for a new system**

There is widespread agreement that this system should change. Any new system must meet certain criteria:

- The outcomes being sought should be clear.
- The costs of work illness and injury should be minimised.
- Those costs should not fall disproportionately on those least able to protect themselves.
- A range of measures should be available for selective use in those situations where they have the greatest chance of success.

Occupational safety and health is situationally dependent. This means that measures which work well in one situation may be inappropriate and ineffective in others. Nor will rigid standards imposed by law fit the variety of situations where they must be applied. For these reasons global solutions must be rejected.

If firms already have safety and health measures in place, the scope for improvements as a result of Government policy is less than it would otherwise be. Consequently, as a general principle, the preferred approach to Government intervention in occupational safety and health should be to direct resources to those areas where they will have the greatest impact.

### Objectives for a new framework

Based on these criteria, it is possible to develop a new approach.

1. Management and labour should be encouraged to take greater responsibility for safety and health in their workplaces. At the same time, measures should be put in place to protect safety and health when management and labour fail to act responsibly.
2. Employees should be given more ability to influence their own safety and health while at work. It must be recognised that the relationship between management and labour can not be completely equal. The employer will always have the most power, derived from ownership of the capital invested in the enterprise.
3. The legislation, and the way it is administered, should be less prescriptive. That is, the law should focus on the ends to be achieved and the parties should be left to decide on the best means to achieve those ends. However, in some circumstances specific requirements will be necessary (such as prohibitions on particularly hazardous actions or materials), and the Government should ensure compliance.

From these principles, particular policy measures can be formulated.

### Encouraging management to take greater responsibility

Employers have little incentive at present to provide an optimal level of safety in their workplaces because they do not face the full cost of accidents. As part of their profit maximisation objective, private firms seek to minimise the cost of production. If they had to bear more of the damage costs, they would be more likely to allocate resources to prevention.

The current reform of the Accident Compensation system provides an opportunity to re-examine incentives associated with accident compensation. This would go some way towards making management take greater responsibility. Improving incentives would be more likely to be successful for larger firms. Consequently, there is a role for Government in providing direct support to smaller firms in the form of advice about hazards and ways of eliminating them and/or reducing the risk of illness or injury from those hazards. In the event that firms fail to act responsibly, legal sanctions should be invoked to require adequate safety and health performance.

### Enabling employees

A further means of encouraging management to take greater responsibility for safety and health is to require them to consult with those they employ. This can be done by enabling employees themselves to take a greater interest and responsibility for the conditions in which they work. At present, individual employees may ignore hazards (for a variety of reasons) rather than request the removal or reduction of those hazards; they expect an "independent" inspectorate to act on their behalf. A major reason for this behaviour is the imbalance of power between management and labour. The following measures would rectify the imbalance and enable employees to have a greater influence on workplace decisions affecting safety and health:

- The right to participate in workplace decisions that affect occupational safety and health.  
Worker participation in workplace decisions affecting their safety and health can be achieved by the use of safety and health committees and representatives. Such committees provide a forum to which problems can be brought, possible solutions identified and action plans approved.
- The right to know about workplace hazards, the risks associated with them and the precautions able to be taken against them.  
The more information that workers have about a hazard, the more likely they are able to make an accurate assessment of risk.
- The right to refuse to carry out work that would result in injury or illness.  
Such a right should not be able to be exercised when to do so would place another person at risk. This exclusion would cover such workers as hospital and laboratory staff. A further exclusion would be those jobs which are inherently hazardous, such as emergency services, active military service, or police duties.

The implementation of these measures would shift the emphasis for taking action on occupational safety and health away from the Government, bringing it before management and labour on a day-to-day basis rather than as a result of an infrequent visit from an enforcement agency. This should result in greater attention being paid to safety and health and a consequent reduction in accidents.

### Compliance with minimum standards

Greater incentives for management and greater ability for employees to make better decisions would not in themselves be sufficient to ensure the improvement of occupational safety and health. Other measures would need to be included in the policy framework to reinforce incentives and assist those in the workplace to make more appropriate decisions on safety and health issues.

The following measures would need to be carried out directly by the Government:

- Setting minimum performance standards.
- Producing information about the standards and possible means of compliance.
- Enforcing compliance with minimum standards as necessary to ensure that irresponsible firms and individuals do not inflict costs and pain and suffering on others.

### Performance standards

In some cases, targeting particular hazards by setting specific standards and enforcing compliance is the most effective means of preventing accidents and injury. Consequently, it is a valid compliance tool in certain circumstances. These include very serious hazards and cases where several measures may be equally effective but some uniformity is necessary.

This sort of approach is inappropriate as the sole means of achieving better safety and health. The alternative approach is for the law to state the performance desired. An example can be found in the specification of materials for the construction of spray booths, under the present Spray Coating Regulations. The performance being sought is a

two hour fire resistance. The regulations list the actual materials which may be used, thereby eliminating the possibility of using others.

With a performance standard, there is more chance that employers will comply with the intention of the law rather than do the simple minimum necessary to comply with a prescriptive standard. There is also more opportunity to keep up with technological changes and new methods of work when performance standards are used. Prescriptive standards quickly become outdated. Less detail is required in performance standards so the volume of the law can be kept to a minimum. With specification standards, a very large number of standards is required to cover all hazards and this in turn increases the difficulty of keeping the standards up to date and increases the chance of gaps in coverage. Standards developed by industry, in consultation with the Government, can promote ownership of the solutions by the industry and increase the level of compliance.

### Producing information

The benefits of workplace safety and health research and information dissemination are not limited to those who pay for them and, consequently, there is a role for the Government in producing information not only concerning hazards but also about ways of reducing risk. This could be done by sponsoring, or directly undertaking, research into the hazardous agents that cause occupational accidents and ill health, and research into new safety technology.

### Enforcing compliance

Enforcement of standards under this approach would be somewhat different from the way it is done at present.

- Enforcement officers would attempt to achieve compliance initially by ensuring the operation of the workplace mechanisms.
- The officers would provide the information necessary to assist both workers and management to make appropriate choices on prevention strategy.
- Where the actions taken in the workplace were insufficient or inadequate, the officers would issue directions requiring compliance.
- In serious cases, the officers would issue stop notices.
- Prosecutions would be taken in cases of serious non-compliance.

It is also likely that the approach will vary according to the size of the firm. That is, larger firms would be expected to take advantage of their economies of scale and comply with standards with very little input from the occupational safety and health agency. If spot checks on such firms revealed non-compliance with standards, that would be regarded very seriously. Smaller firms would require more assistance from the occupational safety and health agency in order to achieve compliance.

### Administration systems

The administrative arrangements for occupational safety and health must facilitate the application of a consistent policy and operational approach to occupational safety and

health issues. The Government agency or agencies carrying out occupational safety and health functions must be organised in such a way that they are able to deliver effectively the services with which they are charged.

The design of an administrative system for occupational safety and health will influence the costs incurred by employers. Dealing with occupational safety and health issues at the workplace will be much more costly if employers have to deal with a large number of separate inspectors at different times. It is therefore in the employers' interests to have a single point of contact with the occupational safety and health authority or authorities. This could be achieved either by having a single class of inspectors who could perform all inspection and enforcement tasks in a workplace, by better co-ordinating the activities of the different authorities, by amalgamation, or by setting up a separate co-ordinating body.

Given the broad range of functions performed by the various inspectorates, an inspector who could perform all necessary tasks would require an enormous investment in training to acquire the necessary knowledge and skills. Co-ordination is therefore a more feasible option, and this would be more easily achieved within a single organisation than among several agencies. The difficulty of achieving this co-ordination is nevertheless likely to be high, and should not be under-estimated even within a single organisation.

In order to evaluate the performance of any system of occupational safety and health administration, it is vital that the objectives are clearly stated and that the basis on which outcomes are to be based are made explicit. This requires that the lines and terms of accountability are made clear to decision-makers. To the extent that the activities of the authority are funded by Government, or are prescribed by law, there is a need for accountability to Parliament. There is a role for a non-Governmental body representing the interests of employers, workers, and the community to advise on the priorities which the agency or agencies should adopt and to review and comment publicly on the extent to which the objectives are being met.

### Conclusion

The policy proposals I have outlined are not new. Some are applied now in New Zealand firms which place importance on occupational safety and health. The approach has also been adopted in many countries overseas. There does not seem to be any reason to preclude the range of proposals I have described being adopted generally in New Zealand. This can be done so long as it is recognised that no one solution will be appropriate in every situation.

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