

Major change is required

Introduction

1. In this part of the report the commission sets out in detail its proposals for reform and makes its recommendations. This chapter brings together a number of key conclusions that are contained in later chapters.
2. The proposals arise from the commission's review of health and safety in underground coal mining but may often have relevance to other industries. They are based on an assessment of the evidence the commission received during its inquiry, a review of best practice overseas and research into past disasters in New Zealand and elsewhere.

New Zealand's poor health and safety performance

Injury and fatality rates

3. New Zealand's rate of work-related injury and fatality is far above that of the best-performing countries. The rate is about one third greater than Australia's. Country-specific differences in industry and hazards may account for some differences in performance, but it is clear that New Zealand performs poorly.

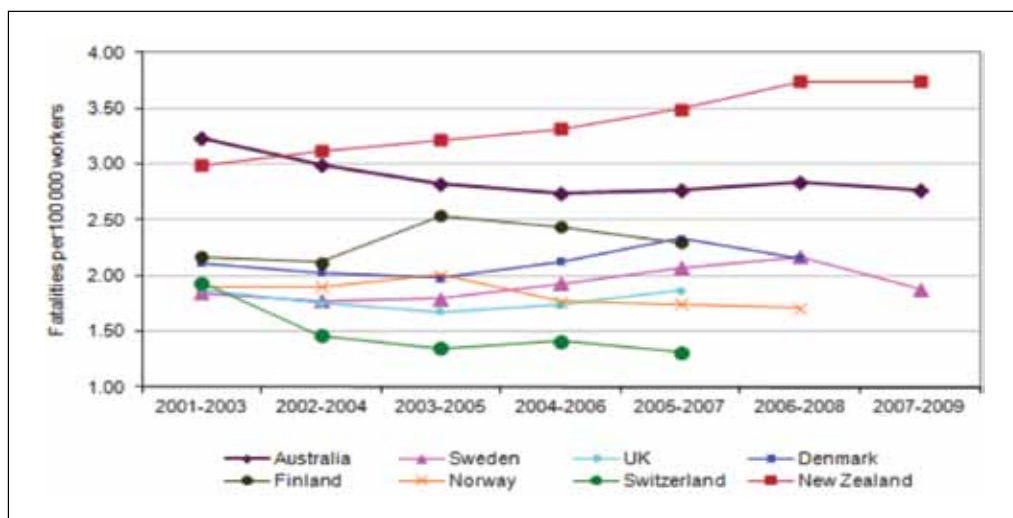


Figure 18.1: Comparison of work-related injury fatality rates with best-performing countries¹

4. The Department of Labour (DOL)'s *State of Workplace Health and Safety in New Zealand* of June 2011 paints a bleak picture. It is the first time key statistics have been brought together and it is intended that they be published annually.²
5. There were approximately 85 workplace deaths in 2008³, 445 serious injuries in 2009 and 228,300 accident compensation claims in 2008. The notified fatalities for 2010, including those at Pike River, are described as indicating a likely increase in the death rate.⁴
6. Data from the International Labour Organisation (ILO) shows that New Zealand's fatality rates are worse than those in many other advanced countries.

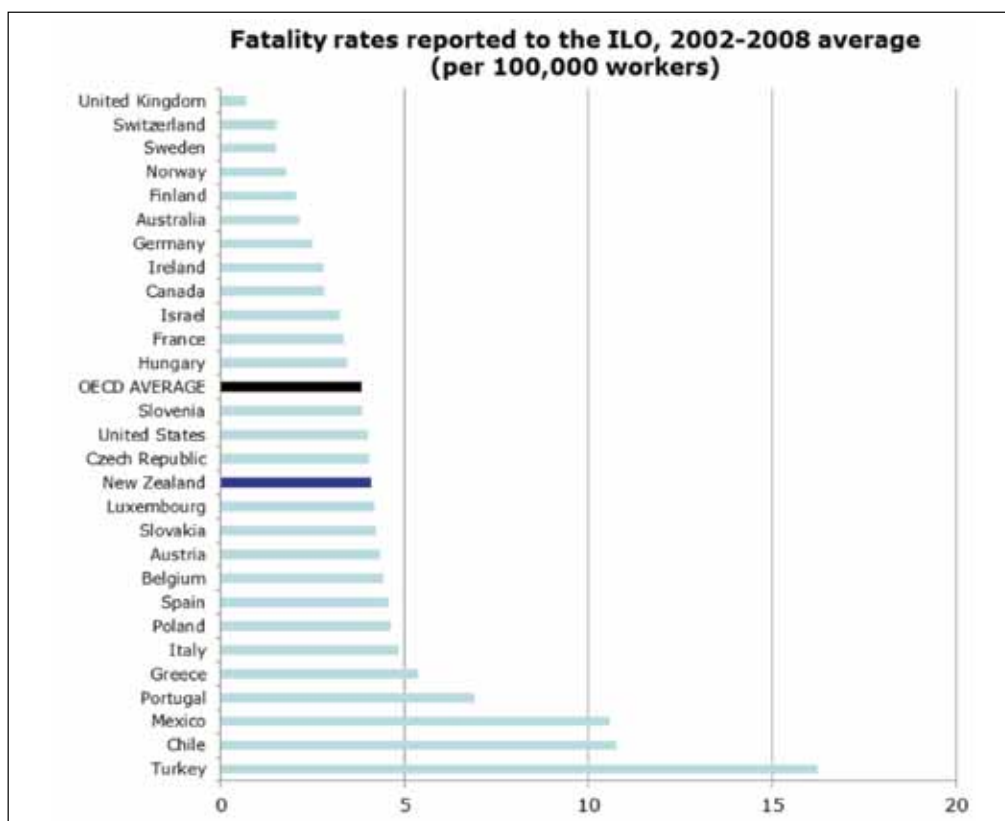


Figure 18.2: Fatality rates notified to ILO⁵

7. Australia's fatality rates have reduced significantly over the last 10 years.⁶ Rates in the United Kingdom have reduced substantially since it introduced modern health and safety legislation in 1974.⁷

Occupational disease

8. Accident compensation claims for workplace disease were 27,000 in 2008, an increase of 26% over six years. Workplace disease accounts for an estimated 700–1000 deaths annually. There are inadequate measures of occupational disease, but *State of Workplace Health and Safety* mentions the development and piloting of a model for the surveillance of occupational cancer, respiratory diseases and dermatitis.⁸

Industry and worker involvement

9. New Zealand has about 470,000 workplaces and two million workers. Eighty-nine per cent of businesses say they have processes in place to manage health and safety in the workplace and 85% of employees consider that health and safety risks are being well managed; 39% of small and medium enterprises say they have difficulty dealing with or setting up health and safety systems; 66% of businesses say that they train their staff in health and safety.⁹ The number of people completing ACC-funded health and safety representative courses dropped from 9735 in 2008–09 to 4153 in 2010–11 mainly as a result of a 44% funding cut in 2009–10.¹⁰

Overseas health and safety regimes

10. The commission has looked at the health and safety regimes that apply to mining in other countries. The most relevant and useful regimes have proved to be in Australia, especially the major mining states of Queensland and New South Wales. These regimes are recognised as representing best practice.¹¹
11. Further, those states have kept pace, legislatively and administratively, with modern developments in a way that New Zealand has not. Much of the comparative analysis by the commission has therefore focused on Queensland and New South Wales.

Resources available to the regulator

12. New Zealand generally has fewer resources allocated to policing health and safety than the Australian states.



Figure 18.3: Field inspectors (excluding mining inspectors) per 10,000 employees by jurisdiction, 2009–10¹²

13. The total of 145 inspectors employed by DOL in 2009–10 equates to 0.8 inspectors per 10,000 employees. As shown in Figure 18.3, Western Australia was the lowest of the Australian jurisdictions, but still had a ratio of inspectors to employees almost 20% higher than New Zealand's.¹³
14. The latest benchmarking data shows that New Zealand also has the second lowest government expenditure on health and safety regulation per employee (at a little over two-thirds the Australian average).¹⁴ This comparison is illustrated in Figure 18.4.



Figure 18.4: Occupational health and safety expenditure per employee by jurisdiction, 2008–09¹⁵

15. New Zealand is not well resourced on a per employee basis compared with Australian jurisdictions. In 2008–09 DOL spent approximately \$19 (Australian) per employee, compared with more than \$40 for the highest two jurisdictions. The average across all Australian states was \$30 per employee.¹⁶

The 1972 Robens committee¹⁷

Principles still relevant

16. In 1972 the Robens committee reviewed the entire framework of health and safety in the United Kingdom and recommended far-reaching changes. The recommendations heavily influenced health and safety developments across the Commonwealth, including the 1992 legislative changes in New Zealand. Thinking has developed over the last 40 years but the commission has found that the core principles remain relevant.

17. The Robens committee recognised that health and safety standards cannot be improved without the contribution of employers, workers and the government regulator. More self-regulation was required, under which everyone accepts appropriate responsibilities for health and safety. This includes the board of directors and senior managers, who should, as part of their normal functions, set the policies and promote the right attitudes to health and safety throughout the company.
18. The committee recommended the replacement of 'prescriptive' legislation and regulation, which had tended to focus on specific hazards, with legislation based on principles that could be flexibly applied to the health and safety issues facing employers. But it also stressed that the new legislative approach would not be effective without the right approach to implementation.¹⁸ Three aspects are especially relevant.

Implementation

19. First, employers should be provided with more prescriptive guidance through regulations and codes of practice which could be easily amended. Such guidance was expected to be necessary for general matters relating to most forms of employment, specific types of hazards and particular industries such as agriculture, mining or construction.
20. Second, worker participation was essential when designing and monitoring health and safety policies in the workplace. Without worker co-operation and commitment real progress was impossible.¹⁹
21. Third, the regulator should be a single purpose, professional organisation. Robens recommended an autonomous authority whose functions should include both policy advice and operational delivery (including advice and inspections), administering standards (including codes of practice), working with industry and employee associations and conducting research, education and training. A forward-looking and systematic approach to accident prevention was needed, rather than relying wholly on backward-looking injury rates.
22. The Robens committee considered that the regulator should focus solely on health and safety. It should be subject to broad policy direction by a minister. It should be headed by a senior executive reporting to an executive board chaired by a person publicly recognised in the field. The committee warned against the board being merely advisory on the grounds that its advice may not be followed.²⁰
23. The executive board would be supported by expert advisory and technical bodies. The authority should not be placed within a government department because it would not have a separate identity. As the Robens committee noted, 'responsibility is diffused vertically in departmental hierarchies that eventually culminate in senior civil servants and ministers who devote to the subject whatever time they are able to spare from other competing preoccupations.'²¹ The eventual result was the establishment of the United Kingdom Health and Safety Executive Agency.²²

The Health and Safety in Employment Act 1992 (HSE Act)

24. Twenty years after the Robens committee report, most of its legislative recommendations were included by New Zealand in the HSE Act. This legislation imposed a general duty on employers to 'take all practicable steps' to ensure the health and safety of workers.
25. Administration of the legislation was placed in the multi-functional DOL (now part of the Ministry of Business, Innovation and Employment),²³ but the department lost focus and did not keep up with modern thinking in policy, regulation, strategy and operations. This deterioration was not restricted to administration in respect of underground coal mining.
26. Long-term health and safety strategy was based mainly on backward-looking injury rates and took little account of lead indicators or the special features of high-hazard industries. In the mining context employers were left alone with little guidance or oversight, and no approved codes of practice. There was little emphasis on worker participation and no routine contact between the inspectorate and employee representatives.

27. The inspectorate lost its capacity and focus. Resource allocation was not based on solid risk analysis and data. Compliance strategy, including enforcement, was outdated. Only two inspectors were left to service the underground coal mining industry and they had other duties as well.

Recent government initiatives

The High Hazards Unit

28. Following the Pike River tragedy, in September 2011 the government established the High Hazards Unit within DOL. Its focus is health and safety in the mining and petroleum and geothermal sectors.
29. The unit has been a welcome improvement, but some problems remain. These are discussed in Chapter 24, 'Effectiveness of the health and safety regulator'.

Funding increases

30. In May 2012 the New Zealand government announced an extra \$37 million funding over four years for the health and safety regulator. The purpose is to increase the number of field inspectors by 20%, from 148 to 180, by 2015. At the same time, the minister of labour ordered a fundamental review of the health and safety system by an independent taskforce.²⁴

What should be done

31. It is primarily in the implementation and administration of the health and safety legislation that New Zealand has lost its way, with knock-on effects on industry performance. In Part 2 of the report the commission analyses what needs to be done about it. The starting point is reform of the regulator.
32. Major and rapid change is required. The Pike River tragedy is a wake-up call for all industries, not just for those in underground coal mining. It is also a wake-up call for the government and for regulators.
33. There are 16 primary recommendations in this report, which are supported, where necessary, with more detailed recommendations. The commission trusts that those charged with responding to this report will also attach weight to the views and conclusions in the text. Those recommendations couched directly in terms of the underground coal mining industry may have wider relevance.
34. Recommendations are found at the end of the relevant chapters that follow and are reproduced in Volume 1.

ENDNOTES

¹ Safe Work Australia, Comparative Monitoring Report: Comparison of Work Health and Safety and Workers' Compensation Schemes in Australia and New Zealand, October 2011, p. 5, http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/609/Comparative_Performance_Monitoring_Report_13th_Edition.doc

² Department of Labour, The State of Workplace Health and Safety in New Zealand, June 2011, p. 1.

³ The document does not provide the same categories of data for any one year.

⁴ Department of Labour, State of Workplace Health and Safety, p. 3.

⁵ Kate Wilkinson (Minister of Labour), Cabinet Paper – Proposal to Increase Investment in Safe Skilled Workplaces Using Unallocated Revenue from the Health and Safety in Employment Act Levy, 4 April 2012, DOL7770060003/7, paras 31–32.

⁶ *Ibid.*, DOL7770060003/1, para. 32.

⁷ Ragnar E. Löfstedt, Reclaiming Health and Safety for All: An Independent Review of Health and Safety Legislation (Cm 8219), 2011, <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

⁸ Department of Labour, State of Workplace Health and Safety, p. 3.

⁹ *Ibid.*

¹⁰ Department of Labour, Response of the Department of Labour to Request for Information, June 2012, DOL7770060067/5, paras 10–11.

¹¹ Gunningham and Associates Pty, Underground Mining Information: Contextual Advice on International Standards and Literature Review (RFP 234) – Report for the Department of Labour, 2009, DOL0010020402/3; Michael Quinlan, Report Comparing Mine Health and Safety Regulation in New Zealand with Other Countries, DOL4000010001/3, para. 4.

¹² Department of Labour, Phase Four Paper, 16 March 2012, DOL4000010005/90.

¹³ *Ibid.*

¹⁴ *Ibid.*, DOL4000010005/73, para. 310.2.

¹⁵ *Ibid.*, DOL4000010005/89.

¹⁶ *Ibid.*

¹⁷ Lord Robens (Chairman), Committee on Safety and Health at Work, Safety and Health at Work: Report of the Committee 1970–72, 1972, HMSO, 1972.

¹⁸ Lord Robens (Chairman), Safety and Health at Work, pp. 49–50.

¹⁹ Ibid., pp. 21–23.

²⁰ Ibid., pp. 36–39.

²¹ Ibid., p. 35.

²² For information on the agency see: <http://www.hse.gov.uk>

²³ Aviation and maritime health and safety are administered by Crown agents, the Civil Aviation Authority and the Maritime Safety Authority, which are close to the Robens model.

²⁴ Kate Wilkinson, (Minister of Labour) Media Release: Workplace Safety to Get Funding Boost, 2 May 2012, <http://www.beehive.govt.nz/release/workplace-safety-get-funding-boost>