Understanding the new Health and Safety Act

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Royal Kneeler Builder

Graeme/Plumbers Contracting

CBI Construction
Overview

• Where did we come from?
• What was recommended?
• Where have we got to?
Royal Commission findings

• Incompetent mine operator, driven by production, profit
• No worker participation
• Major failings in regulator (DoL) due to lack of resources, training and political support
Serious harm frequency rates in mining 1992-96

Number of minerals and coal inspections 1991–97
Royal Commission findings

• Recommended major changes in all areas
• Government also set up Independent Taskforce on Workplace Health and Safety to provide recommendations for the system as a whole
The three-legged stool

Robens system (1972)

- Performance based
- Place responsibility where control lies: the employer
- Balance in workplace
  - Strong regulator
  - Capable employer
  - Empowered workers
- Statute based on general principles
- Regulations, approved codes of practice, guidance to prescribe and describe regarding specific risks, environments and requirements
Health and Safety in Employment Act 1992

• Companion to Employment Contracts Act 1991
  “the model of occupational health and safety regulation implemented through the HSE Act in the early 1990s may be seen as an object lesson in how not to implement legislation”

  *Independent Taskforce on Health and Safety*
Basis for Taskforce recommendations

Taskforce report highlighted:

• Failure to implement Robens model properly

• Terrible record in New Zealand
  – around 80 work-related fatalities by injury per year
  – about twice Australia, 4-6 times the U.K.
  – estimated **500-800** premature deaths from occupational disease per year
Basis for Taskforce recommendations

- Key weaknesses included
  - Confusing regulation, multiple agencies
  - Weak regulator
  - Poor worker engagement and representation
    - Including failure of regulator to engage with unions
  - Insufficient training, knowledgeable people
  - Inadequate incentives
  - Particular challenges for SMEs
Basis for Taskforce recommendations

- Key weaknesses (continued)
  - Poor data and measurement
  - Risk-tolerant culture
  - Hidden occupational health
  - Insufficient oversight of major hazards
  - Particular populations at risk
    E.g. Low literacy, migrants, working long hours, insecure employment, younger and older workers, Māori, Pacific, remote, men.
Taskforce recommendations

• New regulatory agency – WorkSafe
  – Tripartite, adequately resourced
  – Develops policy, ACOPs, guidance, education
  – Lead regulator, others (e.g. Civil Aviation Authority, Maritime NZ) led by it; partnership with ACC

• New law based on Australian Model Law
Taskforce recommendations

• “Workers” include contractors as well as employees

• Duties should extend to
  – “Persons in Control of a Business or Undertaking” (PCBUs)
    Includes employers, suppliers, contractors
  – Those in governance roles: officers of PCBUs (e.g. directors, senior managers)

• Corporate manslaughter offence
Taskforce recommendations

• Must do everything ‘reasonably practicable’ to ensure health and safety taking into account all relevant matters including...

  “after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.”

• Stronger penalties and cost recovery
Taskforce recommendations

• Stronger worker participation
  – Duty on PCBU to engage with workers
  – Elected Health and Safety Representatives and/or Committees wherever workers request them
  – Expanded powers and responsibilities for Health and Safety Representatives
    • Provisional improvement notices, Cease work
    • Training, time and resources to carry out their functions
    • Protections against repercussions
  – Stronger protections for workers who raise workplace health and safety matters
Taskforce recommendations

• Significantly strengthen attention given to occupational health
• Public awareness programmes, use of government procurement to raise standards in suppliers, contractors
• Extensive programme to review and update regulations, ACOPs, guidance
• Improve quality and availability of data and research
• Raise standards in health and safety as a sector and in education generally
What have we got?

Many of these recommendations have been carried out: significant step forward ...

.... But the Government did not implement some recommendations

- WorkSafe does not have tripartite governance, is not recognised lead regulator, policy role with MBIE
- Political backing increasingly doubtful – WorkSafe should “Engage not enrage” – Minister Woodhouse to farmers
- Backing off on ACOPs for that reason
- Little sign of public education campaigns, little use of government procurement
What have we got?

Most importantly: failure to fully implement worker participation

• Sound international evidence that

“(i) worker participation in how Workplace Health & Safety is managed is good for health and safety;
(ii) participation through elected representatives with sufficient legal rights is even better; and
(iii) union support for safety representatives and worker participation achieves the best result.”

(Frick, 2011, quoted in Gunningham 2015, p.9)
What have we got?

• Original Bill required elections for Health and Safety Representatives if requested

• After lobbying, Government removed right to Health and Safety Reps in workplaces with less than 20 workers
  – Unless “high risk” industry: bad principle, impossible to define sensibly (the Worm Farms farce);
  – Deliberately excluded farming, one of the highest risk industries
What have we got?

• In larger workplaces, PCBUs can minimise Reps by limiting Workgroups

• Still a duty for PCBUs to engage with workers – but many won’t know how, or conflicts with their command and control management style

• So a severely weakened leg of the stool, especially for the least capable employers
What have we got?

• Huge MBIE work programme to get new regulations in place
• Even larger work programme in WorkSafe to update ACOPs, guidelines, other guidance – several hundred documents – also hiring new staff, training them, putting sound policies in place...
• Lots of consultation for unions to respond to!
• Basis for better system, but a future Government will need to fix bad flaws, in places incoherent legislation
A significant step forward but...

“Pike River Royal Commission was the tenth Inquiry into mining disasters in New Zealand’s history. It is an open question whether there it will be the last.”

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