

**SUBMISSION BY FIRST UNION TO  
THE INDEPENDENT TASKFORCE ON WORKPLACE HEALTH AND SAFETY**

To: Independent Taskforce

On: Workplace Health and Safety

Name: FIRST Union

Address: Private Bag 92904, Onehunga, Auckland 1643

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

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

In the sectors that FIRST Union covers, most workers who are killed at work are in the road transport and forestry sectors. In the forestry sector we have a "Pike River" (over 30 killed) every six years. In the road transport sector, although the statistics are more difficult to analyse it could be said that we have a Pike River every year. Those killed in the forestry sector are disproportionately young and Maori and male compared to the general population but similar to the population working in the forests. Those killed in the road transport industry are predominantly male.

The wood processing sector has retired workers still suffering from their exposure to PCPs and other dioxins some decades ago which is still causing major health issues, premature deaths and is now becoming inter-generational. The sufferers from PCP poisoning are predominantly male Maori.

In the white collar / service sector of our union, while death and physical accident rates are comparatively low, major work related stress and mental health issues can be identified through brutal work intensity systems of targets (banks), pick rates (warehouses), box and scan rates (supermarkets). In addition the growing culture of understaffing, the demands of employers for

long hours of unpaid work and non replacement of workers on leave or on holiday adds to fatigue and stress levels.

Fatigue is a common cause of accidents and death across all of our sectors and demographics.

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?*

The workplace health and safety system need to be turned on its head and designed for those it is meant to protect - the workers, rather than be a system of blame, protection for owners and managers when any injury or illness arises.

Almost all of the major employers that our union deals with say that "health and safety is our number one priority". This is emblazoned on company letter heads and frequently the lost time injury board at the work place proudly proclaims a large number of days since the last LTI. However these camouflage a system that is broken and is killing and maiming proportionally more workers in New Zealand than any other comparable country.

The health and safety system in New Zealand has been taken over by a risk management culture; not a good risk management culture that identifies risks and takes steps to create a safe workplace with the knowledge of the risks, but a risk management culture that is designed to place the blame and responsibility for any accident, illness or death onto the worker, leaving the owner and employer blameless as the worker is deemed to have been the cause of the accident.

A good example of this can be seen in a number of sectors where highly invasive drug and alcohol testing regimes have been instituted. While little or no mercy is shown to workers with even a slight trace of a drug or alcohol in their urine, the work pattern forced on these workers with long, often unpaid hours being demanded, produces such high levels of fatigue that the workers are unsafe at work. We know from the literature and from road safety advertisements that fatigue is just as important as alcohol or drugs as a physiological cause of accidents yet this is completely ignored by the same employers who take such a hard line on drugs and alcohol.

So much research has been done on the effect that long hours and shift patterns can have on fatigue and consequential accident rates, yet this is completely ignored by most employers.

It is the view of FIRST Union that fatigue is the silent killer and maimer of workers across all of our sectors and especially in forest and road transport.

## **Regulatory framework**

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

No one knows where they stand in the current regulatory framework since most regulations and standards have been abolished in favour of self regulation based on ignorance which usually means no regulation.

The challenge is to turn this on its head and introduce a highly regulated health and safety framework overseen by an independent state funded and legislatively backed Authority with a further independent check system by workers representatives at the work place level.

The same problem has been identified in the financial sector with the establishment of the Financial Markets Authority. We would submit that workers lives are even more important than financial instruments and should have even greater regulation to ensure a safe and healthy work place environment.

The deregulation of health and safety mirrors the deregulation of other aspects of employment relations over the years.

The Health and Safety in Employment Act was introduced in 1992, just a year after the infamous Employment Contracts Act of 1991 and suffered from the same deregulation fervour. Although the Health and Safety in Employment Act was amended in 2002 the amendments were made to a flawed Act rather than starting again with an approach informed by the work of the Robens Report in the UK some three decades earlier; a framework adopted by the UK and Australia which have a much better health and safety record.

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

Start again.

Go back to the Robens Report and the modern day practice of the principles contained in this report by those countries that have implemented it.

Go to the findings of the Royal Commission on Pike River and extrapolate and implement these findings over the entire work force.

## **Regulators' roles and responsibilities**

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

There really are no regulators in today's health and safety environment. Most regulations and standards have been abolished and the numbers involved in the enforcement / inspection regime of the few remaining regulations and standards (Health and Safety Inspectors) has drastically diminished.

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

1) By having regulations and standards.

2) By establishing an independent Health and Safety Authority to develop and oversee the regulations and standards.

3) By having an inspection and monitoring system (including real people as inspectors) to ensure the regulations and standards are adhered to.

4) By having day to day monitoring and checking from independent worker representatives at each work place.

## **New Zealand's changing workforce and work arrangements**

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

Changing work arrangements are having a negative impact.

Casualisation and the rapid introduction of contractual and triangular employment relations into workplaces make it even more difficult to determine the responsibility for a healthy and safe workplace. Non standard work arrangements must be regulated much more and it must be made clear who has responsibility for health and safety on each work place.

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

See above (7).

### **Worker participation and engagement**

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

Very important. Worker participation in health and safety at the workplace is a critical component of a successful system.

However effective worker participation in health and safety is declining.

See below (10)

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

With some honourable exceptions the current system of worker participation in workplace health and safety is a joke.

The beginning of a more active system of worker participation in workplace health and safety started with the 2002 amendments to the Health and Safety in Employment Act and the ground breaking attempt of the Council of Trade Unions to train worker health and safety representatives to play the independent "check" role within the workplace.

This system was undermined by many employers and employer groups as being a threat to their "right to manage". They launched an ideological attack on it. Many employers set up health and safety committees that kept non supervisory and non lead workers and their elected union representatives off the committees. Some union representatives were told by employers that they could not be on a health and safety committee because they were biased due to being a union representative. Over time elections were replaced by the employers choosing who would be the employee representatives on the committee. Employers undermined the CTU training and on many occasions would send elected health and safety representatives to an "employer approved" course after they had attended a CTU course to "undo" what had been learnt at the CTU course. In other occasions worker representatives were refused permission to attend the CTU course(s) and were forced to go to the employer / consultant course. instead.

Most Health and Safety Committees are not seen to be independent from the employer. Over time elections as described by the Act have been replaced by the employers choosing who will be

the employee representatives on the committee. The committee is usually chaired and minuted by direct employer representatives as part of their management responsibilities. Often the meeting of the workplace health and safety committee is the sum total of the accident prevention work on a workplace. No risk assessment and little hazard identification is undertaken by the committee. The committee deals with the same (often small) issues meeting after meeting and over the years most health and safety committees have become moribund, and have met less and less with many not functioning at all.

## **Leadership and governance**

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

Directors and other senior leaders must be charged with the responsibility to ensure that workplaces under their control are safe and healthy.

But this does not mean that directors and leaders control the health and safety system in a top down way.

Directors and senior leaders must work within the new health and safety system that is developed, ensure that their workplace(s) abide by the regulations and standards that are developed and allow an independent health and safety monitoring and inspection system (including worker representatives) to operate in their workplaces without hindrance.

### *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?*

The responsibility for healthy and safe workplaces must be placed at the feet of directors and other workplace leaders for faulty equipment and or processes rather than the worker who may have made the "mistake" that lead to the accident or death.

Directors and workplace leaders must be forced to adhere to a new workplace health and safety system that gives workers representatives the right to independently check and monitor the system.

The concept of corporate manslaughter must be introduced so that that the loss of human life is given more weight and treated even more seriously than the loss of financial deposits.

## **Capacity and capability of the workplace health and safety system**

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

Firms must develop the capacity and capability to ensure a healthy and safe workplace environment. There can be no excuses based on industry, size or geographical location of the firm.

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

The entire Health and Safety system needs to be re-regulated and firms required to follow what these regulations are. All of the vagueness in health and safety standards must be eliminated so firms and workers know where they stand and what the standards are.

Once these are in place firms will simply have to provide the capacity and capability to deliver better health and safety outcomes, just as firms have to have the capacity and capability to comply with audit, taxation and where required food and other industry specific regulations.

## **Incentives**

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

We have not seen any positive effects of a financial or non-financial incentives in improving workplace health and safety outcomes.

In fact we have noticed much more where such incentives have had a negative outcome (see below (16)).

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

We have to be very careful with incentives as their consequences can often be the opposite of the what the incentives intended to improve.

To give an example.

Until very recently a major retail company included elimination of lost time injuries as an area that store managers would be marked on to achieve their performance pay / bonuses.

Reported lost time injuries did reduce but the over all safety of the workplace also reduced. Workers who injured themselves at work were told that reporting the accident to the store manager was more important than filling out the accident register. Store managers attempted to prevent workers from going to their own doctor if injured. We have a number of incidents of store managers following their injured employee to their own doctor and trying to gate crash the actual consultation. Store managers were absolutely determined to get the worker back to the workplace to prevent an LTI being registered even if a doctor had declared the worker unfit for work. In the end we had numerous examples of workers who did injure themselves at work going to their doctor and pretending that the injury was a home injury, simply to stop being harassed by a store manager and to ensure that they were covered by ACC and not the privatised or "partnership" system that applied at work.

## **Influencing health and safety outcomes beyond one's own workplace**

*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)?*

Not very successful at all.

FIRST Union is following global trends closely especially in the road transport and forest industries that are covered by the union and have huge accident and death rates.

Globally there is a growing movement to develop the concept of "chain of responsibility" for environmental and social issues. Sometime this is done voluntarily (which is the least satisfactory), sometime it is done through global certification regimes such as the Forest Stewardship Council (FSC) in the forest and down stream (including paper) industries.

We do have a "chain of responsibility" provision in our Part 6C of the Land Transport Act but this seems to be seldom, if at all, used.

More and more countries are adopting a legislative approach. The most significant is in Australia where a comprehensive Road Safety Remuneration Act (2012) has recently been passed. This should be a model for New Zealand legislation in road safety and other industries.

*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?*

See above. However, these should be legislative requirements, not voluntary codes.

## **Major hazards**

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

Very weak.

The regulations are very loose and unclear.

There is too much reliance on "self" (unfortunately often meaning "no" regulation).

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

There need to be a complete re-regulating and standard setting done in this area.

This needs to be backed up with adequate enforcement by an independent statutory authority and independent worker check systems.

This should apply for all industries and work places not just those deemed hazardous.

## **Health and hazardous substances**

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

Being open to the workforce about what hazardous or potentially hazardous substances are in the workplace, what the risks are to exposure to such hazards, and putting in place methods to deal with the hazardous substance in a safe way. 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.

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

Similar to that for physical hazards.

There needs to be full risk assessment of processes that cause occupational disease and ill health.

There needs to be regulations regarding these processes.

There needs to be a state sponsored independent enforcement and monitoring authority established.

At a workplace level, worker representatives must be given the power to check and monitor such processes.

### **Small to medium-sized enterprises**

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

There should not be any distinction made between larger employers and self employed and SMEs when it comes to health and safety regulations and systems.

The only exception that could be made is for a health and safety authority to make sure that self employed and SMEs have access to all the health and safety information required for their business and industry and are more closely monitored.

*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?*

Changes that are made to the overall framework should apply to self employed and SMEs as well.

This Review must resist the attempt that will be made by some to try and exempt self employed or SMEs from the new framework.

This would be a disaster.

In the two industries highlighted by FIRST Union in this submission, forestry and road transport the workers who are being killed and injured are more than often "self employed" or working for a small gang (in the case of forestry) or small scale truck owner (in the case of road transport).

### **Measurement and data**

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

Not at all.

The first thing that must happen is the accurate reporting of workplace injury. This does not happen at the present time.

When reportages of accidents are linked to managerial bonuses (as described above), to ACC Ratings or if employment warnings or dismissals are the consequence of reporting accidents or near misses then the source data will remain incorrect.

The workplace accident and near miss register must be the property of the new Health and Safety Agency and workers must be protected from employment warnings or dismissal for what they write in the register.

Accident reporting must be encouraged and not not forced underground as it is at the moment.

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

See above on the issue of reporting.

Workers must have their employment protected from both whistle blowing and reporting of accidents or near misses.

**Our national culture and societal expectations**

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

New Zealand does have a bit too much of the "she'll be right" and risk taking attitude which could have a negative affect on health and safety outcomes.

Given that, it is even more important that regulations and standards are strictly set and that there are a number of checks and balances in the system.

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

See above.

**Other factors**

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

N/a

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

N/a

## Other comments

*31. Are there any other comments that you would like to make?*

Thank you for the opportunity to make this submission.

It is all the more sombre to note that this review is probably only taking place because of the Pike River Mine tragedy and the 29 lives that were lost.

The Royal Commission made some very good recommendations. We hope that these will be developed and expanded by the Review Team.

Our final comment is that the current system is broken. It is also hollow.

It is a system where employers can transfer all the health and safety risks from themselves to their workers.

It is a system where health and safety enforcement is just another Human Resources technique to control the workforce rather than being a system to reduce or eliminate accidents.

This means that any accident or death is deemed to be the fault of the workers since the employer has put "perfect" health and safety systems into practice. Workers are therefore blamed, disciplined or dismissed for having an accident or a near miss.

Accident statistics and LTIs are reduced but actual and potential accidents are not. They are simply forced underground and not reported.

Accident statistics are distorted since there is an incentive not to report (keeping one's job).

The mantra of "health and safety is our number one priority" is the cover for this system.

It needs to be exposed.

If the Review team ignores this area then the positive recommendations will be completely compromised.

*November 2012*