HEALTH AND SAFETY IN THE BUILDING AND CONSTRUCTION INDUSTRY

Building and Construction Industry (Workplace Health and Safety) Taskforce – Final Report

Queensland Government
Workplace Health and Safety

For further information visit the Taskforce website at:
http://www.detir.qld.gov.au/hs/bcit/index.html

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Building and Construction Industry (Workplace Health and Safety) Taskforce

The Hon Paul Braddy MP
Minister for Employment, Training and
Industrial Relations
75 William St
Brisbane Qld 4001

Dear Minister

I am delighted to be able to submit our consensus report into workplace health and safety in the building and construction industry. The industry responded well to the challenge highlighted in this process and look forward to the submission being well received.

A special thank you must be given to all Division of Workplace Health and Safety staff who assisted the Taskforce in numerous capacities.

Yours sincerely

John Crittall
Chair
Building and Construction Industry
(Workplace Health and Safety) Taskforce

Executive Summary

The health and safety performance of the building and construction industry is completely unacceptable when one considers that over 60 building workers are killed each year and that people working in the industry are twice as likely to be killed at work than the all industries Australian average. The Queensland Government in conjunction with industry representatives decided that this record was simply not good enough and that something had to change. The terms of the Taskforce in simple terms was to: research and develop better health and safety data collection methods from which more informed intervention strategies may be initiated, make recommendations that will minimise exposure to risk, and introduce a package of measures that will improve compliance levels of all parties to meet their health and safety obligations.

The Taskforce adopted a strong commitment to consulting with all of the industry parties and inviting direct comment on a range of issues. Industry response was extremely positive with over 1000 hits being recorded on the two issues papers that were released for public comment. The most common feature of all of the submissions was the realisation that safety performance needed to improve.

The report focussed on the key hazard areas that contributed to major injury and loss within the industry. The collection of incident and injury data is the first place to start and is analysed in chapter 4. Although a number of key recommendations deal with this issue, the introduction of an industry backed WorkCover scheme that covers all of the sectors in the industry holds the greatest hope for accurate injury causation data that will improve and focus safety intervention strategies.

Chapter 5 examined the current legislative framework and revealed a complex system of interrelated provisions that were understood by few and followed by even less. Any system that hopes to generate high compliance levels must produce a framework that is accessible, practical, in a form that is understandable and implementable. The current framework does not easily fit the model outlined above. The Taskforce acknowledges the difficulties in reviewing legislation but is committed to working through the issues and providing a clearer system that is based on accountability and workability. New definitions of ‘building work’ and ‘building and construction workplaces’ provide an opportunity to clearly define what obligation holders have to do in order to comply.

Chapter 6 identifies a range of enforcement strategies that have been designed to tighten the link between a breach and the consequences of that breach. Hazard-based on-the-spot fines for seven leading regulations form the platform for instant compliance in the most critical hazard areas within the industry. Falling from heights, working off ladders, being struck by falling or moving objects, contact with electricity, excavation and trenching, public safety and better amenities and housekeeping standards have all been targeted as areas that could attract on-the-spot fines, and in doing so focus the attention of obligation holders.

The final chapter seeks to make some fundamental cultural shifts in the promotion and attitude to safety within the industry. The Taskforce know and understand that sustained change in behaviour can only come about with genuine commitment and will to improve safety performance. The industry is committed to developing better health and criteria and industry specific safety management systems that will be applied and assessed within the government pre-qualification and tendering process. Health and safety training and education must form a critical part of a long term

strategy aiming to lift compliance levels within the industry. Key recommendations linking safety training and safety performance with various licensing considerations have been raised in the report. Formal training through apprenticeships and TAFE are also essential in providing a foundation for safe working practices.

Appropriate safety material must be produced in such a way as to be understood and followed by the industry parties themselves. Everyone within the industry has a duty to protect themselves and others who may be affected by their own work or process. The role of Workplace Health and Safety Officers, Workplace Health and Safety Representatives and Workplace Health and Safety Committees are extremely important in providing the information and support necessary where informed decisions can be made to minimise risk. Greater workplace consultation requires further consideration and will cut across all industry boundaries for development and resolution. The consultative process is essential in providing avenues where genuine health and safety concerns can be raised and resolved in an atmosphere of cooperation and trust.

This report is only the beginning. Everyone involved in the building and construction industry has an undeniable duty to act in preventing further injury and death. This report proposes a package of measures that if implemented will lift compliance levels and so minimise exposure to the risk of hazards and the resultant injury and death. The final statement regarding the implementation of these recommendations remains the next challenge.

Acknowledgements

There have been numerous people who have made great contributions to the formation and development of the report. In the first instance I would like to thank the Taskforce members for diligently meeting and processing enormous amounts of complex information within strict timeframes. The focus on the industry and the need for improved safety performance provided common direction and meaning to the work of the Taskforce. The National Occupational Health and Safety Commission (NOHSC) were extremely helpful, with a special mention reserved to Tim Driscoll and Rebecca Mitchell. Kate Devlin and Shaneen Robinson from Qstats, and all of the people from Queensland Injury Surveillance Unit also deserve a special mention and thank you.

All of the Construction Inspectors from the Division of Workplace Health and Safety deserve mention. Other Divisional people who also went beyond the call of duty, include recently retired Anne Quinnell, Brian Geraghty and the ever helpful Pam Ivic, all provided special assistance on many different occasions. Bob Kinnaird, Ian Jennings and Michelle Hendersen also assisted the Taskforce in many ways, for which we are all grateful. My final thanks and deep gratitude goes to Victoria Thomson who deserves most of the credit for all the positive parts of the report and none of the blame for any deficiencies.

The Taskforce would also like to thank all those people and organisations that made suggestions, sent in submissions and offered support in many different capacities. To all those other people who have assisted in this review our sincere thanks.

John Crittall
Chair
Building and Construction Industry (WH&S) Taskforce

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1 Introduction

During the period 1989 to 1992, 299 people were killed in the building and construction industry, a rate of 10.4 deaths per 100 000 people, almost twice the all industry average of 5.5. Queensland recorded the third highest number of deaths, 62 people, and the second highest death rate at 12 deaths per 100 000. The three main mechanisms of fatal injury were falls from height (28%), being hit by falling objects (23%) and contact with electricity (21%) (NOHSC, 1999a). With a compensated injuries and diseases rate of 37.4 per 1000 workers, the building and construction industry rate remains significantly higher than the all industries rate of 22.9 (NOHSC, 1998b).

In December 1999 the Minister for Employment, Training and Industrial Relations, the Honourable Paul Braddy MP announced the commissioning of an Industry Taskforce to inquire into workplace health and safety performance in the Queensland building and construction industry. In undertaking the inquiry the Minister put in place an independent ten member Taskforce consisting of representatives of employers, employees, and government. The main objective of the Industry Taskforce was to address the industry's low levels of compliance as evidenced by a range of sources including the results of the Division of Workplace Health and Safety's 'blitz campaigns'. The recent blitz figures showed that, on average, every building and construction site visited was issued with either an improvement or prohibition notice. This was the first Queensland inquiry that specifically aimed to improve the building and construction industry's compliance with legislative obligations for the express purpose of reducing the rates of death, injury and illness. The building and construction industry gave wide support to this important and timely initiative.

1.1 Terms Of Reference

The Queensland Government set the following terms of reference for the review of workplace health and safety in the building and construction industry.

(i) *To research and recommend a comprehensive system of accident and injury data collection that provides for optimal decision making in the formulation of occupational health and safety policy that aims to minimise the risk of exposure to illness and injury to Queensland building and construction workers.*

(ii) *To make recommendations on a package of measures that will minimise the risk of injury and illness in key focus areas determined by the research outlined in (i) above.*

(iii) *To make recommendations on strategies to improve industry compliance and enforcement with current occupational health and safety measures.*

In addition the Minister specifically requested the Taskforce to provide advice on:

- the role of principal contractors in ensuring workplace health and safety
- the role of workplace health and safety representatives in the monitoring of unsafe practices or conditions
- the setting of pre-qualification or tendering requirements that support contractors with proven workplace health and safety management systems and committed to high compliance with their health and safety obligations

1.2 Taskforce Membership

Taskforce Chair
John Crittall
Employment Relations Advisor
Uniting Church in Australia

Taskforce Members
Greg Quinn
Executive Director
Queensland Master Builders' Association

Gordon Hutchings
President
Safety Managers' Association

Chris Tomlinson
Manager Construction (Industrial Relations)
Australian Industry Group

Wallace Trohear
State Secretary
Construction, Forestry, Mining and Energy Union (Construction Workers Divisional Branch)

Garry Ryan
District Secretary (South West District)
Australian Workers' Union

Jeff Knight
State Secretary
Communications, Electrical and Plumbing Union (Plumbing Division)

Peter Henneken
Deputy Director-General
Department of Employment, Training and Industrial Relations

Rob Seljak
General Manager
Division of Workplace Health and Safety, Department of Employment, Training and Industrial Relations
Tony Hawkins
Chief Executive Officer
WorkCover Queensland

In Attendance
Victoria Thomson – Project Officer
Robert Bills – Manager Regional Operations

1.3 Overview and Summary of Recommendations

The recommendations provided in this report are the product of detailed discussion, extensive consultation and investigation, and as such are practical and workable solutions. The Taskforce has produced a series of recommendations that if implemented correctly will meet the needs of the industry in the short and longer term. The consensus report acknowledges the incremental nature of change and the need to obtain broad based support from the major stakeholders before any meaningful and longer lasting advances can be made. The recommendations addressed each term of reference to provide a multi-faceted and holistic approach. The recommendations of the Taskforce are:

Data Collection

R4.1 That the creation of a building and construction industry injury data base with a revised claim form be introduced to incorporate the unique factors of the building and construction industry sector details when and if the industry levy based WorkCover scheme is introduced. The revised claim form must give consideration to the:

- sector in which the individual was working at time of injury (i.e. domestic, residential, commercial or civil)
- employment status of the injured party, details of the contracting party and details of the principal contractor for the site

R4.2 That a reciprocal process of information sharing between the Division of Workplace Health and Safety and WorkCover be implemented to focus on specific matters of interest including deaths, serious bodily injuries, work caused illness, and work injuries that result in incapacitation.

R4.3 That the requirement to notify the Division of Workplace Health and Safety be expanded to include 'work injuries' which result in the person being unable to perform work, or unable to perform work in their usual position, for a period of more than four days.

R4.4 That the Division of Workplace Health and Safety review the requirements and processes for event notification for the purposes of improving the levels of notification compliance. The review should be completed within six months and give consideration to:

- the definition of a 'serious bodily injury'
- the role of the Workplace Health and Safety Officer in event notification
- the role of others, such as medical practitioners, hospitals, private insurance companies, in event notification
- the mechanisms by which principal contractors become aware of events at construction workplaces
- the development of alternative forms of incident notification, such as email, fax or toll free phone-in, that maximise convenience
- an education campaign to alert the building and construction industry of notification requirements and penalties for non-compliance
- the amendment of the Form 3-Incident Record/Report to require the full details of both the principal contractor and the employer/self employed
- the development of a database that allows the storage and retrieval of both the principal contractor and the employer/self employed details for each event

R4.5 That the National Coronial Information System be used to identify targets for intervention purposes and that the Queensland Government establish, resource and

support the integration of the Queensland Coroner's Office within the National Coronial Information System.

R4.6 That the Division of Workplace Health and Safety continue to use and analyse QISU data to identify significant injury and illness patterns to support intervention strategies in the building and construction industry.

R4.7 That the Division of Workplace Health and Safety explore the option of requesting additional data, relating to the housing sector, from the QISU data collection process.

Legislative Framework

Workplace Health and Safety Act 1995

R5.1 That the Division of Workplace Health and Safety design and implement an approved form titled "Instrument of Appointment for Principal Contractor". The form should ensure that the person nominated as principal contractor by the owner of a construction workplace notifies the Chief Executive of the Division of Workplace Health and Safety no later than ten working days prior to the commencement of work of:

- being appointed as principal contractor
- QLeave notification number (if applicable)
- proposed work commencement date
- estimated construction duration
- geographic boundaries of the site

R5.2 That default provisions that include the failure to notify within the prescribed time period or where multiple Principal Contractors are appointed will result in the owner being declared the principal contractor for the project (excluding owners of domestic premises).

R5.3 That the term 'construction work' be renamed 'building and construction work' and a definition be inserted into schedule 3.

R5.4 That the definition of 'building work' in Schedule 3 be amended to include maintenance and refurbishment work and other types of work normally associated with building and construction work.

R5.5 That the reference to the estimated final price at practical completion of more than $40 000 be omitted from the definitions of building work and civil construction work.

R5.6 That the definition of construction workplace be amended to include a base monetary limit of $40 000 for building work and civil construction work, with no monetary limit for demolition work.

R5.7 That a regulation be created to identify principal contractors requirements to complement and add clarity to the existing obligation. The regulation shall include but not be limited to:

- plant and equipment provided for common use by others including scaffold, ladders and trestles
- provision of health and safety workplans

- protection of the public from overhead lifting, falling objects and security from unauthorised entry
- safe systems of working at heights
- identification and marking of underground services and exclusion zones prior to excavation and trenching, drilling or boring work
- good housekeeping and the provision of a system to collect and dispose of rubbish and unwanted materials
- provision, maintenance and use of construction workplaces amenities
- provision of common services (including power and water) for use by others

R5.8 That an obligation be placed on designers, engineers and architects to ensure that the design of a building or structure does not pose risk to the health and safety of those involved in the use, repair and maintenance of the building or structure.

R5.9 That consultation with relevant stakeholders is sought prior to the formalisation of the obligation.

Workplace Health and Safety Regulation 1997

R5.10 That the provisions relating to fee collection under the Building and Construction Industry (Portable Long Service Leave) Act 1991 be deleted from the *Workplace Health and Safety Regulation 1997* and inserted into the primary Act.

R5.11 That the term 'specified work' be removed from the Regulation.

R5.12 That the workplan and induction requirements for asbestos work be incorporated within Part 11 – Asbestos Removal Work.

R5.13 That section 57 and 59 of the Regulation be amalgamated into one regulation for principal contractor workplans at construction workplaces.

R5.14 That the principal contractor should continue to be required to ensure a health and safety workplan is prepared before building and construction work commences at a construction workplace.

R5.14 That a copy of the principal contractor's workplan is kept on site and available for inspection by anyone performing work at the site or a workplace health and safety inspector.

R5.16 That more rigorous criterion be incorporated with the aim of improving the content and quality of the principal contractor's workplan. Additional criteria should include but not be limited to: scope of work, emergency procedures, safe work procedures, management and notification of incidents, communication and consultation provisions, information and training, monitoring arrangements, and public safety. The criteria will be in addition to the risk management process outlined in section 55 and should be developed in consultation with industry.

R5.17 That an extensive public relations and information dissemination strategy, involving public forums, guidance material, and workshops be adopted to educate obligation holders prior to the introduction of any changes.

R5.18 That 'work method statements' be prepared by all employers and self employed persons, or someone on their behalf, if the employer, the employer's workers or self employed persons are performing building and construction work at a construction workplace.

R5.19 That a reciprocal requirement be placed on employers, self employed persons and principal contractors to provide and collect work method statements before the commencement of the person's building and construction work at the construction workplace.

R5.20 That all work method statements must be collated by the principal contractor and incorporated into the design of the orderly conduct of work and principal contractor's workplan.

R5.21 That work method statements are dated, updated (as required) and reviewed by the employer or self-employed person at least annually.

R5.22 That an accredited, competency-based general workplace health and safety induction course be developed in consultation with industry and introduced over the next two years. The process should give consideration to:

- the principles of the National Training Framework
- the issuing of an Induction Card upon successful completion

R5.23 That an employer must allow the employer's worker to start building and construction work only if the employer is satisfied that the worker has been given a general workplace health and safety induction. This would mean sighting the Induction Card.

R5.24 That the principal contractor may allow an employer or a self employed person to begin building and construction work at a construction workplace only if the principal contractor is satisfied that the self-employed person has received a general workplace health and safety induction. This would mean the principal contractor, or someone on their behalf, sighting the Induction Card.

R5.25 That the requirement to undergo a site specific induction prior to the commencement of building and construction work exclude domestic construction workplaces (however defined).

R5.26 That site specific induction include the principal contractor's workplan as a significant component.

R5.27 That the principal contractor must make a written record of the details of site specific induction provided, including the names and dates of employers, self employed persons and workers inducted.

Advisory Standards

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R5.28 That the existing Advisory Standards that apply exclusively to the building and construction industry be examined with a view to identifying areas that could be made into regulations with identifiable and appropriate infringement notices and other penalties.

R5.29 That future requirements be expressed in the form of regulation as a preferred option to ensure greater compliance.

Industry Codes of Practice

R5.30 That Industry Codes of Practice be produced for the three different sectors that operate within the building and construction industry. Such codes must be developed in close liaison with the building and construction industry and focus on the key hazards that pertain to that sector of the industry. The sector codes will not in any way replace current obligations.

Enforcement Strategies

Notices

R6.1 That, where available, building services licence details/Australian Business Numbers shall be used as the primary identifier for notices issued to employers, self employed persons, and workers in the building and construction industry. This will involve greater cooperation and sharing of information between the Division of Workplace Health and Safety and the Building Services Authority.

R6.2 That a building and construction industry database be established to record and retrieve all notices issued against obligation holders, as well as project details and the name of the principal contractor.

R6.3 That the Division of Workplace Health and Safety investigate the possibility of self-enforcing improvement notices which require obligation holders to advise and demonstrate compliance in accordance with the process identified on the notice. The system should be supported by a random audit procedure with additional and significant penalties for false declaration.

R6.4 That hazard-based infringement notices be introduced and integrated into a pyramidal enforcement strategy to support the proposed hazard-based regulations outlined in section 5. Such hazard-based regulations should initially be limited to: working from heights, ladders, excavation and trenching, electrical equipment and installation, construction workplace amenities, housekeeping, underground services and public safety (hoardings and gantries).

R6.5 That inspectors be provided with clear and consistent guidelines for the issuing of hazard-based infringement notices to minimise the possibility of inconsistency between regions.

R6.6 That a tiered system of infringement notice penalties be introduced in which the most serious (i.e. hazard-based) breaches and repeat offences receive more substantial penalties than administrative or technical breaches.

R6.7 That, where possible, standardised improvement, prohibition and infringement notices be produced and provided to inspectors to facilitate the issuing of notices on-site.

R6.8 That a full marketing and public relations strategy be prepared and implemented prior to the introduction of any hazard-based regulations. The strategy should include industry seminars and the broad dissemination of appropriate information products.

Industry Audits and Blitz Campaigns

R6.9 That the Division of Workplace Health and Safety, in consultation with the Construction Industry Sector Standing Committee continue to undertake blitz campaigns or industry audits in areas identified by the parties.

R.6.10 That the planning and coordination of the blitz campaigns give due consideration to:

- targeting the main hazards that cause most injury and illness in the industry
- launching major education and public relations initiatives prior to the blitz commencing
- the resources necessary to maximise efficiency and outcomes

R6.11 That reports on the outcomes of industry audits and blitz programs be produced, circulated and published through an extensive public relations strategy including:

- summary reports
- employer association and trade union journals and newsletters
- the Building Services Authority newsletter
- brochures for distribution with building plans from local authorities

Prosecutions

R6.12 That the details of successful occupational health and safety prosecutions, including a description of the offence, the obligation holder and the penalty be widely circulated and published by the Division of Workplace Health and Safety. This will require the Division of Workplace Health and Safety to keep precise records on the outcomes of the legal unit for use in future publicity material and strategic interventions.

R6.13 That a Special Prosecution Team be established within the Legal Unit and resourced appropriately so that the decision to proceed to prosecute or not, can be made as soon as possible after the incident. This team should also examine the means of simplifying the prosecution process and reducing the time in which decisions to prosecute are made.

R6.14 That the Division of Workplace Health and Safety continue to prosecute Executive Officers for breaches of section 167(2) and that particular emphasis be paid to publicising these prosecutions.

Industrial Manslaughter

R6.15 That the decision to prosecute corporations for industrial manslaughter be reviewed once legislation that enables the prosecution of corporations is enacted.

Sentencing Guidelines

R6.16 That the Department of Employment, Training and Industrial Relations develop, in consultation with the Workplace Health and Safety Board, sentencing guidelines for use by the courts in determining appropriate penalties for breaches of occupational health and safety legislation. Sentencing guidelines must consider:

- a wide range of sanctions that can be applied depending on the circumstances of the event and the company

- mitigation factors, such as company safety management or consultation systems, the cooperation of the company in assisting with the investigation, and a guilty plea
- aggravation factors, such as a history of offences, size and financial capacity of the organisation, and obstruction of inspectors in the course of the investigation

Inspectors

R6.17 That specific and intentional strategies be implemented to improve communication, consultation, training and support between the inspectors and the Department of Employment, Training and Industrial Relations which enables inspectors to maximise their time in the field.

R6.18 That specific strategies are adopted to increase the visibility and profile of inspectors while working on site. Such strategies might include special coloured and marked hardhats, safety vests, and vehicles.

R6.19 That the Division of Workplace Health and Safety continue to explore ways of aligning the organisational structure in accordance with a health and safety strategy so implementation and outcomes can be more readily achieved.

Compliance Strategies

Education and Training

R7.1 That the Construction Industry Sector Standing Committee identify strategies that highlight the health hazards and effects associated with varying aspects of working within the building and construction industry, and continue to provide information that promotes awareness and limits exposure to health risks within the industry.

R7.2 That a review of the current 'approved managerial qualification' that is currently used as part of the licensing criteria for new entrants be undertaken by key industry stakeholders within the next 12 months with a view to substantially increasing the health and safety component of the course.

R7.3 That all new entrants be required to complete the re-vamped course within two years of the course being approved, with existing licence holders being required to complete the re-vamped health and safety module only as part of the re-certification process as required.

R7.4 That consideration be given to ensuring that other parties 'in control of the workplace' not covered by the recommendations outlined above, receive identical safety management training and qualifications prior to commencing work in that capacity.

R7.5 That all future information products and materials designed for the building and construction industry be prepared in close association with the main industry partners ensuring the suitability, readability and broad-based acceptance of the material by the target audience.

R7.6 That the Division of Workplace Health and Safety continue to promote legislative changes and other vital health and safety material through specific building and construction industry seminars.

R7.7 That the Division of Workplace Health and Safety monitor and support the development of appropriate health and safety material for the inclusion within the vocational education framework of the building and construction industry.

R7.8 That the Division of Workplace Health and Safety continue to monitor and investigate any complaints regarding the performance of accredited providers to ensure their compliance with the standards determined.

R7.9 That the Division of Workplace Health and Safety liaise closely with the main industry partners before deciding upon the appropriate public relations strategy that should be adopted for the particular sector of the industry that is being targeted.

Consultative Provisions

R7.10 That formal accredited training be provided to enable elected Workplace Health and Safety Representatives to be more effective in understanding their role and performing their functions. Provisions regarding a minimum age (21) with at least 2 years experience of working in the industry be considered as additional criteria prior to the accreditation and appointment as a Workplace Health and Safety Representative.

R7.11 That the Construction Industry Sector Standing Committee investigate the feasibility of inserting an exemption for the domestic sector from the Workplace Health and Safety Officer provisions provided some other form of health and safety management training can be introduced for anyone 'in control of the workplace' that represents the principal contractor.

R7.12 That section 96 be amended to incorporate strict provisions on the formal recording of inspection reports including the format, issues raised, and time periods between inspections, in a regular and systematic basis. Such recorded information should include follow-up action statements and resolution of outcomes that could be made available to the Workplace Health and Safety Committee, Division of Workplace Health and Safety Inspectors and others by agreement. The Taskforce also supports the inclusion of a minimum qualifying period of service within the industry (no less than four years) before certification as a Workplace Health and Safety Officer is approved.

R7.13 That the review of the Workplace Health and Safety Officer qualification be consistent with the review procedures for prescribed occupations specified in the *Workplace Health and Safety Regulation 1997*, sections 26 to 29. That the Chief Executive exercise the power to suspend or terminate the Workplace Health and Safety certificate provided any one of the following is established on the basis of probability:

(i) the WHSO has repeatedly neglected his/her duties
(ii) the WHSO has exercised powers in an improper way
(iii) the WHSO has disclosed information for an improper purpose

The notice of suspension or termination should be final and binding and not subject to an appeal process.

R7.14 That a review of the functions of Workplace Health and Safety Committees as outlined in section 90 be undertaken with a view to clarifying specific roles and outcomes generated through the safety committee process.

R7.15 That worker anti-victimisation provisions be inserted into the Workplace Health and Safety Act to provide statutory protection for workers who raise health and safety concerns with those responsible for ensuring healthy and safe workplaces.

R7.16 That a workshop, with key representatives of employee and employer associations and the inspectorate be facilitated to develop a set of workable protocols for the raising and resolution of health and safety issues. Such an agreement should include but not be limited to the following: a process for reporting safety issues that involve imminent risk to people and property, emergency contact procedures, inspection arrangements, timelines for a response and outcomes that satisfy respective interests.

Safety Performance

R7.17 That the Division of Workplace Health and Safety explore ways of upgrading its database that links Building Services Authority licence information with obligation holders under the *Workplace Health and Safety Act 1995*. The Division of Workplace Health and Safety explore and develop further links to determine whether WorkCover data can be included within the upgraded database. Protocols regarding access to the information and special training of the inspectorate to ensure Building Services Authority licensing information is properly recorded on any notices issued must also be implemented.

R7.18 That the issue of designing a health and safety de-merit system be investigated with a view to linking health and safety performance as a criteria for certification and de-registration.

R7.19 That the Department of Public Works introduce effective workplace health and safety criteria into the pre-qualification tendering process and the monitoring of on-site performance of principal contractors on government projects. The guidelines and criteria shall be developed collaboratively with the Division of Workplace Health and Safety**,** Queensland Master Builders' Association, Construction, Forestry, Mining and Energy Union and other interested industry parties for implementation as soon as practicable.

Industry Strategies

R7.20 That the Division acknowledge and support the valuable contribution employer associations and trade unions make in the design and promotion of appropriate health and safety information and training by consulting and offering greater opportunities for collaborative efforts in relation to these issues.

R7.21 That a formal consultation process be introduced with employer associations and trade unions to ensure any material or information products produced for the building and construction industry are suitable for the needs of the constituents.

Implementation Strategy

R8.1 That an implementation review team with representatives from employers, employees and government be appointed to oversee and coordinate the development and implementation of the recommendations in line with government policy. That sufficient resources be provided to facilitate the implementation process in an efficient, practical and timely manner.

2 Methodology

2.1 Consultative Processes

The Minister asked the Taskforce to consult widely with industry and stakeholders. The consultation process encompassed four main strategies:

- distribution of issues papers
- call for written submissions
- representation to industry through private and public audiences
- discussions with workplace health and safety (construction) inspectors and Division of Workplace Health and Safety management

2.1.1 Issues Paper

Two issues papers were circulated among stakeholder groups namely the:

- Housing Industry Workplace Health and Safety Issues Paper
- Construction Industry Workplace Health and Safety Issues Paper

Individual papers were necessary to discuss the unique issues experienced by each sector. The primary objectives of both papers were to:

- identify key reasons and obstacles that prevent or impede compliance with workplace health and safety requirements; and
- obtain suggestions on how to improve compliance levels and lift the industry's workplace health and safety performance.

The issues papers:

- provided a description of current data sources and collection methods
- analysed the existing legislative framework
- discussed current enforcement strategies and identified other enforcement and compliance mechanisms
- asked a series of specific questions about each discussion point

Throughout April and May 2000, over 300 copies of each paper were distributed to employer associations, unions, training organisations, companies, government departments, parliamentarians and other interested organisations and individuals. A letter was attached to the initial mailout to 70 organisations requesting that the issues paper be circulated throughout their membership. The issues papers were also published on the Department of Employment, Training and Industrial Relations' website to allow general public access. As at 31 May 2000, the website recorded 406 hits on the Housing Industry Issues Paper and 848 hits on the Construction Industry Issues Paper.

2.1.2 Written Submissions

A call for public submissions was advertised in 12 newspapers on Wednesday 12 April 2000 (refer Appendix A). Written submissions were invited to assist the Taskforce in making considered decisions and formulating recommendations. Submissions could be posted, faxed or emailed. Twenty-nine submissions were received from employer associations, unions, private individuals, training organisations, other organisations representing employees and employers, government departments and agencies. A schedule of submissions is provided in Appendix B.

2.1.3 Employer Associations and Trade Unions

Personal representations were made to or by:
- Australian Industry Group (AIG)
- Builders Labourers' Federation (BLF)
- Construction, Forestry, Mines and Energy Union (CFMEU)
- Housing Industry Association (HIA)
- Queensland Master Builders' Association (QMBA)

These consultations provided an opportunity for unions and associations to directly raise the issues and concerns of their membership with the Taskforce. Discussions were confirmed in written submissions by all organisations.

2.1.4 Others

Construction Queensland is a joint industry/Government initiative established to address the industry's strategic direction and coordinate feedback to the Government on policy issues affecting the industry. The Taskforce Chair addressed an audience of representatives from approximately 20 organisations at a Construction Queensland forum on Monday 29 May 2000.

Industry representatives were also addressed at two separate industry seminars. The first, on Tuesday 22 February 2000, was a combined CFMEU, QMBA, Construction Training Queensland and DETIR initiative, to which 280 industry representatives were invited. The second, the Master Builders' Association National Occupational Health and Safety Conference, was held on Thursday 1 June 2000.

The Taskforce Chair also made representations to the Workplace Health and Safety Board, Construction Industry Sector Standing Committee, and the Department of Public Works.

2.1.5 Workplace Health and Safety (Construction) Inspectors

Taskforce representatives consulted with workplace health and safety (construction) inspectors, and Division of Workplace Health and Safety management representatives during the period Monday 10 April to Monday 17 April 2000. Consultations were held at Mt Gravatt, Lutwyche, Ipswich, Maryborough, Rockhampton, Townsville and Cairns. An invitation was extended to construction inspectors from other regional locations to either provide comments via their management representative or contact the Taskforce personally. The purpose of each meeting was to identify obstacles or reasons that impeded construction inspectors in the course of their duties. A ten-point questionnaire was circulated to all construction inspectors to examine the following:
- the role and purpose of construction inspectors
- the work demands of construction inspectors
- specific sections of the workplace health and safety act, regulation and advisory standards that impede or enhance the effectiveness of construction inspectors
- opinion regarding a variety of enforcement strategies
- preferred enforcement style
- issuing of prohibition, improvement and infringement notices
- factors that enhance or hinder the performance of construction inspectors

The questionnaires provided the basis for semi-structured discussion. Comments and responses were collated and reported to the Taskforce members. Three written

submissions, in addition to those detailed in Appendix B, were provided to the Taskforce by inspectors.

2.2 Conclusion

The consultation process adopted by the Taskforce was important in obtaining a broad range of opinion about data collection processes, the existing legislative framework, and enforcement and compliance strategies. Consultation also provided the Taskforce with arguments, ideas and possible strategies for change. The Taskforce would like to extend its thanks to all those who participated in the consultation process.

3 Building and Construction Industry

3.1 Description of the Industry

The Australian and New Zealand Standard Industrial Classification (ANZSIC) system defines construction as *units mainly engaged in the construction, repair, alteration, and renovation of buildings and other structures, and those engaged in providing building or construction trade services and specific installation activities*. Construction is broken into two major subdivisions, namely general construction, and construction trade services. General construction (ANZSIC 41) consists of house, residential, non-residential, road and bridge, and non-building construction. Construction trade services (ANZSIC 42) encompass site preparation, building structure, installation trade, and building completion services. ANZSIC classifications form the basis of statistical data collection used by the Australian Bureau of Statistics and state authorities (ABS, 1993). Classifications are summarised in Table 3.1.1.

Table 3.1.1 Description of ANZSIC Division E Construction Subdivisions

Group/Class	Description
4111	house construction (e.g. single unit dwellings)
4112	residential building construction (e.g. units, duplex, flats)
4113	non-residential building construction (e.g. hotels, hospitals, churches, prisons)
4121	road and bridge construction (e.g. highways, overpasses, parking lots, aerodrome runways)
4122	non-building construction (e.g. railways, dams, irrigations systems, harbours, golf courses, swimming pools, tunnels)
42	construction trade services (e.g. concreting, bricklaying plumbing, plastering, air-conditioning, painting services)

A Department of Public Works (1999) review of the Queensland building and construction industry's performance for 1997-1998 highlights the importance of the industry to the State's economic well-being. The study found that:

- based on the value of work (almost $11.9 billion) Queensland had the third largest construction industry in Australia
- construction was the fifth largest employing industry in Queensland, employing 8.1% of the total work force as at August 1998
- construction industry contributed 7.4% to the gross state product, making it the fourth largest sector in the state economy
- the public sector accounted for 54% of work under construction in the non-residential market
- the residential sector was dependent on private sector spending (97.7%)

Table 3.1.2 displays unpublished QLeave data on activity across all sectors of the industry for the same financial year. The data illustrates that the residential and housing sectors accounted for over 75% of activity numbers, whilst 67% of activity value was generated by commercial and civil construction (Portable Long Service Leave, 2000).

Table 3.1.2 Project Activity Value and Numbers by Industry Sector – 1997/98

Sector	Activity Value	Activity No.
Housing < $120 000	$1 678 956 000	19 936
Housing > $120 000	$1 187 940 000	6 702
All Other Residential	$1 123 508 000	1 727
Commercial	$3 698 561 000	4 442
Civil	$4 138 321 000	1 689
Total	**$11 827 286 000**	**34 496**

The characteristics of the domestic and residential construction sector are:

- small firms or businesses, often family run
- high rates of self-employed
- low rates of workers classified as employees
- high levels of competition with minimal profit margins
- a high degree of site mobility
- minimal principal contractor supervision
- minimal knowledge of, or resources for, health and safety
- multiple work groups on site simultaneously with limited coordination
- long working hours, often in excess of 49 hours per week
- a reliance on industry associations as the primary source of health and safety information (Mayhew, 1995)

Compared to domestic and residential construction the commercial sector is more likely to have:

- large contracting companies
- higher rates of workers classified as employees
- more coordination and principal contractor presence
- prominent union presence
- health and safety resources
- greater levels of technology and plant
- an impact on public safety

3.2 Industry Demographics

The Australian Bureau of Statistics (ABS, 1999a) Labour Force Survey reveals an average of 140 000 persons employed in the Queensland building and construction industry over the calendar year 1999. In comparison to other industries the building and construction industry:

- has a much higher proportion of self-employed persons, or persons working in their own business (48% compared to the all industries rate of 21%)
- has a high level of contracting and subcontracting, with an estimated 75%-85% of product now delivered by subcontracting (ABS, 1997a)
- has three times the number of tradespersons than other industries
- is mainly project based

Table 3.2.1 shows the employment composition of the industry in more detail.

Table 3.2.1 Building and Construction Industry (Qld) – Employment by Employment Type May 1999[1]

Employment Type	BCI '000	BCI %	All Qld Industries %
Employees	73.2	52	79
Owner managers working in own business[2]	67.1	48	21
Total	**140.3**	**100**	**100**

(Source: ABS (1999a) Labour Force Survey, Cat 6203.0; ABS (2000) Forms of Employment Survey, Cat 6359.0 published and unpublished data)

Labour Force Survey data (ABS, 1999a) also reveals that over 60% (42 000) of owner managers working in their own business were self-employed persons, that is owner managers working in their own business without employees.

The majority of building and construction industry workers (62% or 87 000) are employed in construction trade services. Construction trade services are dominated by owner managers and self-employed (55%). Conversely, general construction is weighted heavily with employees (61%). Table 3.2.2 profiles employment status on a sector and sub-sector basis. The table shows that the building construction sector (residential and non-residential) is the largest sector in employment terms, employing 37 000 people. The sector is split quite evenly between employees (55%) and owner managers (45%). Conversely, non-building construction is dominated by employees (81%), compared to 20% of owner managers. Sixty-six percent of all owner managers work in just three sectors namely building completion, building construction and installation trade services (ABS, 1999a; ABS, 2000).

Table 3.2.2 Building and Construction Industry (Qld) Employed Persons: Estimated[3] *Employees and Owner Managers, by ANZSIC 3 Digit Industry Group, May 1999.*

ANZSIC Code	ANZSIC Description	Employees[4] (000)	Owner Manager[5] 000	Total (000)	Total (%)
41	*General Construction*	*32.5*	*20.9*	*53.4*	*38*
411	Building Construction	20.5	16.8	37.3	27
412	Non-building Construction	13.0	3.2	16.1	11
42	*Construction Trade Services*	*39.2*	*47.7*	*86.9*	*62*
421	Site Preparation Services	6.1	5.9	12.0	9
422	Building Structure Services	5.4	7.0	12.4	9
423	Installation Trade Services	13.6	13.4	27.0	19
424	Building Construction Services	8.4	15.1	23.5	17
425	Other Construction Services	7.1	4.9	12.0	9
E	*Construction Total*	*71.1*	*69.2*	*140.3*	*100*

(Source: ABS (1999a) Labour Force Survey, Cat 6203.0; ABS (2000) Forms of Employment Survey, Cat 6359.0 published and unpublished data)

[1] August 1998 FOES percentage distribution applied to 1999 building and construction workforce estimates as per labour force survey.
[2] Both incorporated and unincorporated enterprises, with and without employees
[3] Estimate based on construction Australia employee/owner manager profile by ANZSIC 2/3-digit in August 1998 FOES, applied to construction Queensland 3-digit profile. This explains some small differences in the BCI Queensland estimates shown in this table.
[4] The 3 FOES employee categories: employees with paid leave, self-identified casuals, and 'other employed persons'.
[5] Owner managers of both incorporated and unincorporated enterprises.

Other industry demographic factors relevant to health and safety include:

- 25% (17 000) of owner managers are classified as dependent[6], meaning they have no control over their work or working procedures (ABS, 1999a; ABS, 2000)
- 94% of building and construction industry businesses employ less than five people (ABS, 1999b)
- trade union membership in 1997 was recorded at 34% (ABS, 1997b)

3.3 The Labour Relationship and Occupational Health and Safety

Over the past 20 years there has been a steady emergence of non-traditional working arrangements, including temporary and marginal workers such as casual and part-time employees and subcontractors, and labour hire companies. The construction industry has experienced a decrease in employee numbers and a rise in the number of small businesses that rely on outsourced work (Mayhew, Young, Ferris & Harnett, 1997). A contractor is commonly defined as "anyone who operates his or her own enterprise or engages independently in a profession or trade, and is engaged by a firm or organisation for some predetermined all-inclusive fee to provide a defined service for a specified period" (Vandenheuvel & Wooden, 1995:265). On most building and construction sites a 'principal contractor' hires a series of subcontractors to complete certain aspects of the production process (Mayhew, 1995). Vandenheuvel and Wooden (1995) describe subcontractors as either dependant or independent. Dependent contractors mainly provide services to one organisation (common among plant operators and labourers); whereas independent contractors regularly provide services to more than one organisation. Almost 94% of self-employed tradespersons may be classified as independent contractors.

Mayhew, Quinlan and Bennett (1996) argue that several characteristics of subcontracting give rise to negative occupational health and safety outcomes:

- subcontracting is a 'payment by results' system which is based on the amount of work not the time required, thereby encouraging contractors to minimise time to maximise profit
- subcontractors are, or work for, small businesses, which are less likely to have occupational health and safety resources, knowledge or information
- subcontractors often engage in horizontal and vertical contract relationships in which responsibilities, tasks, levels of supervision and communication processes are more inclined to become disorganised or confused and 'allow' occupational health and safety responsibilities to be avoided
- subcontractors are not well-covered by employment regulations or union negotiated collective agreements and retain minimal bargaining power

Evidence exists which supports the hypothesis that subcontracting and self-employment are related to higher incidences of serious injuries and fatalities. United States 1993 census data revealed that the self-employed were more than twice as likely to be killed at work than wage and salary earners, 12 persons per 100 000 compared to five. The same survey found that the construction industry accounted for 16% of fatalities, but only 6% of total employment (Toscano & Windau, 1994). A comparison of United Kingdom fatal incident rates over the five financial years commencing 1993/94 shows that the self-employed consistently recorded higher fatality rates than employees (HSE, 1999).

[6] Dependent means their contract with the client prevented the owner manager subcontracting their own work, or working for multiple clients; or the client retained control over the owner manager's working procedures.

3.4 Safety Culture and Compliance

Safety Culture

Generally, the building and construction industry place less emphasis on chronic injury or illness as a negative occupational health and safety outcome, than traumatic injury. A study of 300 South-East Queensland building contractors, cabinetmakers, and demolishers found that untidy sites, tools, machinery, and work at heights were most commonly identified as workplace hazards. Most respondents were unable to comprehensively identify the types of hazardous substances and dusts to which they were exposed. Chronic injuries, including back pain, hearing loss and skin disorders were considered to be a normal outcome of work. When asked to nominate how they knew what to lift respondents answered, "by looking at it", "lift till it hurts", "general knowledge" and "common sense" (Mayhew et al, 1997, 11-22). Evidence suggests that this attitude to chronic injury and health issues has not arisen due to lack of experiences of chronic injury and illness. For instance, Mayhew (1995) reported that of 500 small scale, self-employed builders, 22% suffered hearing loss, 39% suffered chronic back pain, 8% suffered some other chronic injury and 15% suffered a work related illness. The responses to a set of injury management questions indicated a 'grin and bear it' attitude, with 43% of respondents saying they used their own methods to treat their recent work injury. A further 31% chose not to seek treatment at all.

Level of Compliance

The Division of Workplace Health and Safety have undertaken two blitz campaigns exclusively in the construction industry, namely, working at heights in the domestic construction industry, and mobile cranes. The tables below detail the number of inspections and the type of notices issued during each blitz. Construction inspectors visited 973 sites throughout Queensland during an intensive five-week housing blitz, resulting in an average of at least one notice being issued per site. The same pattern of non-compliance was also identified in the mobile crane blitz. Together the results support the industry's long-held anecdotal belief that compliance with workplace health and safety requirements is poor.

Table 3.4.1 Number and Types of Notices Issues by Workplace Health and Safety Inspectors During Falls from Heights Blitz (August – September 1999)

Hazard	Improvement	Prohibition	On-the-spot Fine
Access	12	83	
Amenity	47		
Electrical	106	3	
Excavation	8	3	
Falls from Height	95	336	
Falling Objects	12	9	
First Aid	13		
Formwork	2		
General Obligation	89	20	
Hazardous Subs	1		
Lead	0	1	
Plant	8	17	
PPE	10	1	
Prescribed Occupations	3	1	
Scaffolding	41	35	
WHSO	1		
Work on Roofs	4	8	
Work Plan	212		7
Totals	**664**	**442**	**7**

Table 3.4.2 Number and Types of Notices Issued by Workplace Health and Safety Inspectors during Mobile Crane Blitz (November 1999 – January 2000)

Cranes Audited	Safety Issues		Other Issues	
	Improvement Notice Issues	Prohibition Notices Issues	Improvement Notice Issues	Prohibition Notice Issues
394	**305**	**45**	**106**	**2**

3.5 Health and Safety Performance

NOHSC Fatality Study

A National Occupational Health and Safety Commission (NOHSC, 1998a) study of work-related traumatic fatalities in Australia found that in the four year period January 1989 to 31 December 1992, 2389 persons were fatally injured while working, or commuting to work. The building and construction industry recorded a fatality incidence rate of 10.4 deaths per 100 000, almost double the all industry average of 5.5 deaths per 100 000 workers. A total of 299 deaths were allocated to the building and construction industry. Of these:

- 43 persons were construction workers killed commuting to or from work
- 256 persons were fatally injured as a result of construction activity; of which
  - 232 workers were employed in the construction industry
  - 18 workers were on a construction site, but not employed in the industry (mainly employed in council operations, surveying, agriculture and road transport)
  - 6 people were bystanders to construction work

The main mechanisms of fatal injury were falls from height (28%), electricity (21%), and being hit by falling or moving objects (23%). Excluding commuting fatalities, this averages 64 people killed as a result of construction activity for every year of the study (NOHSC, 1999a).

The Queensland building and construction industry accounted for 21% of the deaths (n=51) and recorded the second highest incident rate of 12 people per 100 000. The sectors of the building industry where workers were working at the time of the fatal industry were most commonly:

- non-building construction (eg. dams, golf courses, railways) – 45%
- non-residential building (eg. factories, hospitals) – 18%
- housing and residential building (eg. single unit dwellings, apartments, units) – 14%
- road and bridge construction – 6%
- not known – 17%

Building (27.5%) and maintenance work (23.5%) were the most common types of work being performed at the time of the fatal incident (NOHSC, 1999a & b).

Workers' Compensation Data

Queensland workers' compensation data provided a more recent indicator of death and permanent injury in the industry, however unlike the NOHSC study the results are influenced by definitional limitations and changes. Following the 1996 Kennedy Inquiry, a number of changes were enacted and should be noted when interpreting the following data:

- employers became responsible for the first five days of the claim (effective 1995)
- the definition of 'worker' was changed to exclude non-PAYE workers (effective 1997)
- an experience based rating system was introduced (effective 1997)

These definitional and system changes make it impossible to compare longitudinal data without introducing the probability of error (refer section 4.1 for comprehensive discussion of WorkCover data limitations). Nevertheless they are a useful indicator. Table 3.5.1 shows that during the detailed period, 1048 construction workers were compensated for fatal or permanent injury.

Table 3.5.1. Compensated Fatalities and Injuries for ANZSIC Division E - Construction for the Financial Years 1996/97 to 1998/99

ANZSIC Classifications (as per section 3.1)	96/97		97/98		98/99	
	Fatal	Permanent[7]	Fatal	Permanent	Fatal	Permanent
	No. of Claims	No. of Claims	No. of Claims	No. of Claims	No. of Claims	No. of Claims
4111	0	18	1	14	0	8
4112	0	5	0	2	0	3
4113	2	52	1	46	1	29
4121	0	121	1	123	0	46
4122	2	79	2	67	4	24
42	3	129	3	139	1	122
TOTAL	**7**	**404**	**8**	**391**	**6**	**232**

(Source: Qstats File No. 001030, 22/06/2000)

The building and construction industry lodged 19 336 claims at an approximate cost of $64 million, an average of just over $12.8 million per year[8] during the financial years 1994/95 to 1998/99. A further breakdown for the period 1996/97 to 1998/99 are provided in Table 3.5.2 below.

Table 3.5.2. Compensation Claims for ANZSIC Division E - Construction for Financial Years 1996/97 to 1998/99

ANZSIC Classification	96/97			97/98			98/99		
	No. of Claims	$ (000)	Work Days Lost	No. of Claims	$ (000)	Work Days Lost	No. of Claims	$ (000)	Work Days Lost
4111	130	698	3943	107	389	2510	88	464	1353
4112	27	156	1026	22	136	711	23	64	404
4113	595	1593	8761	521	1668	8017	428	975	4019
4121	971	2350	12526	982	2641	12353	851	1670	8694
4122	626	2705	11112	520	1812	8963	462	1361	5397
42	991	4907	28334	1031	4863	29670	910	3163	18316
Total	**3340**	**12409**	**65702**	**3183**	**11509**	**62224**	**2762**	**7697**	**38183**

(Source: Qstats 2000 unpublished data)

Appendix C details the mechanisms of injury by numbers of claims. An examination of the mechanisms of injury shows that muscular stress injuries, fall injuries and being hit by or hitting falling or moving objects consistently account for over 80% of

[7] Any disability where the claim type is time lost and the number of days lost is greater than or equal to 60 working days, or the claim type is permanent partial disability or lump sum payment.

[8] Data covers all statutory on duty, including vehicle crash and medical expenses only claims. The data excludes commuting, recess and common law claims. Data are based on injury year, not payment year. WorkCover would not have fully paid for injuries that occurred particularly in the 1998/99 financial year.

claims. Despite the falling numbers of claims there appears to be no significant coinciding decrease in any particular mechanism of injury as a percentage rate of total injuries. This tends to imply that either health and safety is improving due to better risk management of all hazards, or the reductions in claims is more likely related to other variables, such as definitional and legislative changes, improved rehabilitation practices, or economic factors.

Queensland Injury Surveillance Unit (QISU)
Between 1998 and 1999, 11 954 people who presented to the 12 participating QISU Emergency Departments stated they were 'working for an income' at the time of their injury. Construction trade services (1698) and general construction (1093) were identified as the activity in 23% or 2790 cases. Interestingly however, the construction industry constitutes only 8.5% of the total Queensland workforce. Of the 2790 cases, two people died and 219 were admitted to hospital. A further 55 people left the hospital against medical advice. Although QISU does not collect data specifically concerned with whether or not the injury occurred on a domestic, commercial or civil site, it is known that 1097 patients were injured on a construction or demolition site, 352 in a factory, 87 on a street or highway, 514 in trade or service areas such as warehouse, shop (QISU, 2000).

3.6 Critique of the Self-Regulation Model

Prior to 1989, the workplace health and safety regulatory framework was based on a whole range of detailed and specific acts, regulations and rules regarding almost every aspect of running your business. The building and construction industry was regulated by over 25 different Acts of Parliament, and a mass of regulations and rules. This form of regulation was known as 'prescriptive' regulation, as it sought to prescribe in quite minute detail the legal obligations of employers. The major shortcomings of the prescriptive model could be summarised as:

- the laws were far too numerous and complex
- the laws were slow to change and did not reflect new technology
- no matter how many laws were written they could never cover every situation or workplace
- there was ineffective enforcement of the 'prescriptive' laws

After a major review of workplace health and safety legislation in Britain between 1972/74 (called the Robens Review) a new approach was adopted in Britain and subsequently adopted throughout all Australian states during the 1980s. The main thrust of the Robens Review was a shift from the prescriptive regulatory approach to a system based upon 'self-regulation'. The main components of the self-regulatory approach included:

- a single Act that introduced broader duties within a comprehensive workplace health and safety framework
- wider coverage for all people affected by the risks associated with work
- greater involvement through increased consultation between government, employers, workers and their organisations
- a new enforcement regime which included additional powers for inspectors

The theoretical rationale for the shift in policy direction and approach was based on a number of key assumptions namely:

- employers possessed the knowledge, understanding and commitment to identify hazards and implement appropriate control measures that eliminated or minimised the risk of exposure of illness and injury to all people

- workplace health and safety issues were equally important to production and quality, and would be afforded the same, if not greater priority
- most accidents were preventable and injury causation was usually based on failures in control (either within the organisation or job)
- workplaces were static, with single employer enterprises employing full-time labour
- employers were the dominant employment status for control of labour and provided continuous supervision to all staff within a controlled environment
- specific workplace health and safety duties and accountabilities could be readily assessed

In 1989, the Queensland Workplace Health and Safety Act was introduced. In broad terms the Act:

- consolidated many pieces of legislation into one act
- created a statutory 'duty of care' for employers
- created Codes of Practice to provide information on hazard identification, assessment and control
- introduced formal tri-partite consultative processes between government, unions and employer associations
- introduced prohibition and improvement notices to improve enforcement strategies for inspectors

The *Workplace Health and Safety Act 1995* replaced the 1989 Act, however the provisions outlined above remained essentially the same.

A recent review encompassing the impact of 20 years under the Robens self-regulatory model has been quite critical of the system. This critique has highlighted the various shifts in labour market strategies as a key variable in analysing the effectiveness of the Robens model. The main points include:

- changes in the organisation of labour and the growth of self-employment, contract, part-time and casual labour
- growth in the number of small businesses and organisations
- decline in union membership and density
- a realisation that employers do not possess complete health and safety knowledge, expertise, or capacity to develop management systems
- a realisation that not all employers possess a willingness to adopt or effectively self-regulate
- work-related death and injury rates are still high (Institute of Employment Rights, 1999)

The building industry in general has experienced many difficulties in adapting to the self-regulatory framework. They have argued that the model simply does not fit the way in which the industry is structured or performs work. They list the following key points in support of this contention:

- hazards at construction workplaces are not static and are created by multiple employers and self-employed people who may or may not be supervised by the principal contractor
- the industry is so competitive that health and safety costs are invariably cut to ensure the tender is competitive
- the duties and obligations of the different parties are not clear which in turn creates a culture of allocating health and safety risk to others
- the over-representation of small businesses, temporary and non-traditional forms of labour (Mayhew, 1995)

The Institute of Employment Rights went even further in saying that the "shift towards goal-oriented duties has gone to far and at times been used to provide employers

with unnecessary and confusing discretion" (Institute of Employment Rights, 1999:44). The hybrid system that has evolved, creating other forms of regulation including regulations, codes of practice, advisory standards, Australian standards, and guidance notes, has made it impossible for obligation holders to know and understand how to comply with the Act. There is a clear case for obligations to not only lay down goal-oriented objectives, but also specify what is required so employers are left in no doubt how to:

- assess risks and remove risks
- clearly define health and safety responsibilities
- provide adequate information, instruction and training
- adapt work schedules and patterns to the abilities and capabilities of the workers and others
- investigate accidents (Institute of Employment Rights, 1999)

4 Data Collection

The Taskforce terms of reference called for the recommendation of a '*comprehensive system of accident and injury data collection that provides for optimal decision making in the formulation of occupational health and safety policy that minimises the risk of exposure to illness and injury to Queensland building and construction workers*'. This term of reference echoes the industry's long held concerns that existing data sources fail to accurately represent the experiences of death, injury and disease within the building and construction industry. An understanding of the causes and experiences of workplace death, injury and illness is crucial not only for the development of workplace health and safety preventative programs by government, industry and individual workplaces, but also for analysing the effectiveness of such programs (Industry Commission, 1995).

4.1 WorkCover

Issue

The primary objective of a workers' compensation system is to provide financial compensation for workers who sustain injury in the course of their employment. Information from state and territory compensation systems is collected in accordance with the framework of the National Data Set for Compensation Based Statistics (NDS). Workers' compensation statistics are the main source of non-coronial information used to identify work-related fatalities, injuries, disease and illness.

Discussion

WorkCover provides an extensive database for claims experience. However, several limitations diminish the value of the data for health and safety purposes, such as interventions. Limitations include:

- non-reporting for a variety of reasons including fear of reprisals, unawareness of eligibility and perceived delays in payments
- under-reporting and misdiagnosis of occupational disease, and chronic illness and injury
- information is drawn from a limited source (i.e. a single form) and it is especially difficult to code multiple injuries
- near misses and dangerous events that do not result in injury do not generate compensation claims
- workers' compensation data systems are designed to suit the particular needs of insurance activities, not health and safety applications (DEVETIR, 1994)

Perhaps the major limitation of using workers' compensation data for prevention and intervention purposes in the building and construction industry has been that until very recently the *WorkCover Queensland Act 1996* and provisions for compensation only extended to workers who worked *under a contract of service* and were *PAYE taxpayers*. WorkCover by definition excluded partnerships, trusts and people classified as self-employed. Labour force survey data shows that in June 1999 there was an estimated 140 000 persons employed in the Queensland building and construction industry. Persons who could be described as employees made up a relatively low proportion of the total construction workforce, just 52% (ABS, 1999; ABS 2000).

For the financial year 1998/99 the Australian Taxation Office recorded 33 000 PPS tax payers in the Queensland building and construction industry, who may or may not have adopted PAYE status in the same year (ATO, 1998). As from 1 July 2000,

WorkCover adopted a new definition of worker to minimise exclusions caused by the growing rates of non-traditional forms of labour across most industries. The definition is based solely on contract of service and there is no longer a requirement for the person to be a PAYE taxpayer. Instead the definition reflects the common law understanding and definition of 'employee'.

Building and Construction Industry WorkCover Levy
The Workers' Compensation Policy Unit within the Department of Employment, Training and Industrial Relations has been examining the feasibility of establishing an industry based WorkCover levy system to cover contract of service employees and persons performing production work, regardless of employment status, in the building and construction industry. This initiative has received broad-based support from all the major stakeholders within the industry as it would provide access to those in the industry previously ineligible under the *WorkCover Queensland Act 1996*. A levy system that applies to the majority of the industry would provide valid and reliable injury data for all industry sectors for the first time, and in turn promote informed health and safety interventions.

Although the WorkCover claim form has recently been improved and upgraded, a shift to an industry levy approach would require additional alterations to the claim form to ensure specific injury data and information is collected. For example, the current form does not require details pertaining to the principal contractor or provide a breakdown of the specific sector in which the injured party was working at the time of the incident. The Taskforce fully supports the creation and implementation of a building and construction industry activity levy WorkCover scheme and the creation of an industry injury database for the dual purpose of compensating injured workers and for identifying areas for workplace health and safety intervention.

Recommendations
R4.1 That the creation of a building and construction industry injury data base with a revised claim form be introduced to incorporate the unique factors of the building and construction industry sector details when and if the industry levy based WorkCover scheme is introduced. The revised claim form must give consideration to the:

- sector in which the individual was working at time of injury (i.e. domestic, residential, commercial or civil)
- employment status of the injured party, details of the contracting party and details of the principal contractor for the site

R4.2 That a reciprocal process of information sharing between the Division of Workplace Health and Safety and WorkCover be implemented to focus on specific matters of interest including deaths, serious bodily injuries, work caused illness, and work injuries that result in incapacitation.

4.2 Division of Workplace Health and Safety

Issue
All workplace health and safety jurisdictions across Australia have implemented some form of workplace injury and disease notification system (Johnstone, 1997). In Queensland, Part 7 of the *Workplace Health and Safety Regulation 1997* prescribes the requirements for notifying and recording serious bodily injuries, illnesses and dangerous events (collectively termed an *'event'*). The Division of Workplace Health and Safety primarily gather event information using a standardised form, the 'Form 3-Incident Record/Report' (see Appendix D).

Discussion

A Form 3 is required to be completed and forwarded by an employer or principal contractor if an event occurs at a workplace or construction workplace respectively. A penalty can be levied to individual obligation holders who fail to notify. As described in section 3, the level of direct supervision and principal contractor time on site, especially on domestic construction sites, is often minimal and as such principal contractors are unlikely to know first hand of an event occurring. At present there are neither explicit requirements for employers or self-employed persons to inform the principal contractor of an event, nor explicit provisions for injury notification systems within workplan requirements.

The industry is also concerned about the level of non-reporting. A 1993 research project examined the correlation between hospital admissions and notifications received by the Division of Workplace Health and Safety. During the period July 1989 to June 1992 there were 1397 participating hospital admissions due to a work activity, 322 (23.1%) of which were attributed to the construction industry. Forty-nine people died in the Queensland construction industry for the same period. However, during those years the Division of Workplace Health and Safety received only 44 notifications from the construction industry. The report surmised, "Builders are frequently in small business or are self-employed and are not aware of or are to busy to complete the notification requirements." (James & Wyatt, 1993). Regulatory changes have been implemented since the studies, however there is little evidence to suggest that the situation has improved.

The results are supported by the National Occupational Health and Safety Commission's (NOHSC, 1999b) study of work related traumatic fatalities, in which NOHSC cross-checked names on Queensland coronial files with occupational health and safety and compensation agency records in an effort to determine completeness of coverage. The investigation found that just over half (51.9%) of the fatalities were covered by at least one agency. On an industry basis the construction industry fared quite well with 82.4% of fatalities covered. However, only 27.5% were known to the Division of Workplace Health and Safety. Across all industry categories the compensation agency consistently recorded higher levels of coverage. It is hypothesised that this inter-agency variance is largely caused by the financial reasons for reporting to WorkCover.

Event information could be described as an outcome indicator or a measurement of an outcome. NOHSC (1999c) suggested that outcome indicators are easy to collect and understand, and are useful for benchmarking and comparative purposes. However, relying on outcome indicators as a measurement of health and safety performance has many limitations including:

- outcome indicators measure failure
- outcome indicators are subject to the limitations of workers' compensation data, including under or over reporting of injury, definitional changes, inaccurate measurement of illness and disease, and improvements in injury management and rehabilitation
- outcome indicators do not provide adequate feedback for specific targets or areas to improve

It is at least as equally useful to know and measure the processes that resulted in the outcome. Measurements that focus on the processes adopted by the organisation to achieve outcomes are described as positive performance indicators. "By adopting both outcome-oriented and positive oriented indicators of OHS performance, an enterprise should be provided with more comprehensive view of their performance" (NOHSC, 1999c:4). Over the last three years the Division of Workplace Health and

Safety have been attempting to measure activities, outputs and outcomes through resource agreements. The most recent agreement integrated quality issues into measurement. The same process could be adopted to measure the impact of the proposed recommendations.

Recommendations

R4.3 That the requirement to notify the Division of Workplace Health and Safety be expanded to include 'work injuries' which result in the person being unable to perform work, or unable to perform work in their usual position, for a period of more than four days.

R4.4 That the Division of Workplace Health and Safety review the requirements and processes for event notification for the purposes of improving the levels of notification compliance. The review should be completed within six months and give consideration to:

- the definition of a 'serious bodily injury'
- the role of the Workplace Health and Safety Officer in event notification
- the role of others, such as medical practitioners, hospitals, private insurance companies, in event notification
- the mechanisms by which principal contractors become aware of events at construction workplaces
- the development of alternative forms of incident notification, such as email, fax or toll free phone-in, that maximise convenience
- an education campaign to alert the building and construction industry of notification requirements and penalties for non-compliance
- the amendment of the Form 3-Incident Record/Report to require the full details of both the principal contractor and the employer/self employed
- the development of a database that allows the storage and retrieval of both the principal contractor and the employer/self employed details for each event

4.3 National Occupational Health and Safety Commission and the National Coronial Information System

Issue

The National Occupational Health and Safety Commission (NOHSC, 1998a) recently completed a study of work-related traumatic fatalities in Australia for the period 1989 to 1992. Every work-related traumatic death (excluding diseases) was examined through the extensive investigation of coronial files.

Discussion

Results relating to the building and construction industry are summarised in section 3.5. Information from coronial files is of particular importance for several reasons:

- nearly all traumatic deaths in Australia are investigated by a coroner
- the information is generally detailed and comprehensive
- unlike other sources of work related deaths data, such as the WorkCover database, the coronial system covers all deaths regardless of employment status
- the size of the data set provides a more reliable and valid measure
- the coroner often provides useful information for descriptive and preventative purposes. (NOHSC, 1998a)

As such the data is sound, valid and reliable as all deaths were investigated regardless of employment status, trade classification or type of construction.

Conversely the study was time and resource intensive. Later this year a National Coronial Information System (NCIS) will be implemented with the purpose of providing computerised information on deaths investigated by all state and territory coronial systems, except Queensland[9]. NCIS is expected to become a key source of information on the number, rate, and patterns of work-related death. The information will be entered using standard coding frames and definitions, and is expected to be accessed by a range of users including coroners, public health and safety policy makers and researchers. Since the circumstances that result in death are often similar to those that cause serious bodily injury or illness, coronial information is broadly useful in the development of prevention strategies.

Recommendation
R4.5 That the National Coronial Information System be used to identify targets for intervention purposes and that the Queensland Government establish, resource and support the integration of the Queensland Coroner's Office within the National Coronial Information System.

4.4 Queensland Injury Surveillance Unit

Issue
The Queensland Injury Surveillance Unit (QISU) collates data relating to emergency department presentations at hospitals throughout Queensland[10]. The Unit, funded by Queensland Health, distributes information to interested parties to be used in the formulation of injury prevention strategies, awareness raising and patient advocacy.

Discussion
In the early 1990s QISU (or Queensland Injury Surveillance and Prevention Project as it was then known) coded building and construction industry data into two categories: injuries not on a construction site (small domestic sites) and construction site injuries (large-scale projects) (Mayhew, et al, 1996). Data relating to the intention of the injured party to claim workers' compensation and safety precautions adopted were particularly helpful in obtaining data especially concerning the housing sector. The advent of a new data collection methodology in the later stages of the 1990s, meant that data of specific interest to the building and construction industry was no longer collected. The change in methodology did however improve the reliability, validity and generalisability of the data as information is now collected from 14 sentinel hospitals in accordance with the National Data Set for Injury Surveillance.

QISU offers, probably the only feasible way of capturing non-compensated, non-reported injuries. From the data set it is possible to identify the number of emergency department presentations who were performing construction work for income at time of injury. The data can be broken down further to include demographic information such as age, gender, employment status, treatment information, triage category (which gives an indication of severity), and injury causation factors such as external causes, activity, place of injury, and mechanism of injury. Place of injury is refined into sub-types such as houses, industrial or construction areas, hospitals, and streets or highways.

[9] Queensland currently lacks a State Coronial database therefore prohibiting the state's involvement in NCIS.
[10] As at April 1999 participating hospitals were Mater Children's Hospital, Mater Adult Hospital, Mater private Emergency Care Centre, Queen Elizabeth II Jubilee Hospital, Redland Hospital, Logan Hospital, Royal Children's Hospital, Mt Isa Hospital, Mackay Base Hospital, Proserpine Hospital, Sarina Hospital, Clermont Hospital, Dysart Hospital and Moranbah Hospital.

Recommendations

R4.6 That the Division of Workplace Health and Safety continue to use and analyse QISU data to identify significant injury and illness patterns to support intervention strategies in the building and construction industry.

R4.7 That the Division of Workplace Health and Safety explore the option of requesting additional data, relating to the housing sector, from the QISU data collection process.

5 Legislative Framework

In order to *recommend strategies that improve industry compliance with, and enforcement of current occupational health and safety measures* it is necessary to examine the core mechanism, which drives and directs enforcement – the legislative framework. The principal piece of Queensland occupational health and safety legislation is the *Workplace Health and Safety Act 1995*. The Act is supported by subordinate legislation in the form of regulation, advisory standards and industry codes of practice.

5.1 Workplace Health and Safety Act 1995

Issue

The main purpose of the Act is to prevent death, injury or illness by minimising exposure to risk. This objective is achieved by imposing obligations on persons who may affect the health and safety of others by their acts or omissions. Main obligation holders in the building and construction industry are employers (section 28), self-employed persons (section 29), principal contractors (section 31) and workers (section 36).

One of the key objectives of the Act is to clearly set out the scope and obligations of each of the parties under its jurisdiction. Unfortunately the building and construction industry does not easily fit into the model of single workplaces with a single employer, static hazards and permanent employees. In fact the building industry is readily identifiable as a hazardous industry, with complex systems of work, combined with semi-skilled and itinerant labour all operating within highly competitive markets and low margins. Examination of the current legislative structure has revealed a number of issues that require further clarification in order to secure a greater commitment to complying with those obligations.

Although the primary focus of the Taskforce was to examine the issue of 'compliance', it soon became abundantly clear that part of the non-compliance rationale related directly to the confusion surrounding many of the definitions and varying interpretations of the Act. The inspectorate provided the Taskforce with examples of ambiguous interpretations, definitional overlap and the sense of general industry confusion, that left key obligations open to broad, and oftentimes misinterpretation or simple non-compliance. The Taskforce argue that if issues and obligations are unclear and complicated for safety professionals, then it is almost impossible for industry to understand. There is no doubt that the prevailing confusion creates an interpretation, enforcement and compliance problem.

Discussion

Section 13 – Who is the "Principal Contractor"?

A number of submissions described occasions where there has been considerable confusion as to the identity of the principal contractor at a construction workplace. This confusion has been exacerbated by the removal of a previous 'Instrument of Appointment' form that required the owner/client of the project to either become the principal contractor themselves, or nominate the principal contractor for the purposes of the project. The confusion is further compounded when the owner/client appoints more than one party to the role of principal contractor, creating a situation where two or more principal contractors are operating within the same geographical area. It is obvious that this situation could result, and has resulted, in considerable confusion

over the management and responsibility for safety on site.

One way of clarifying the confusion surrounding the responsibility and oversight of the health and safety management is to have a default provision within the legislation that provides for the owner to become the principal contractor in the event that either the Instrument of Appointment is not completed, or more than one party has been appointed the principal contractor for the same geographical area of the project.

Section 13(2) of the Act provides for the principal contractor at a construction workplace for domestic premises to be the 'person in control of building' work and has been designed to exclude the average home owner. Any default provision that places the obligations of a principal contractor onto the owner, as outlined above, must continue to exclude owners of domestic premises. Owner builders do not, and should not enjoy the exemption for domestic premises under the Act and are deemed to be the principal contractor if they are the 'person in control of building work'.

The other area of concern relates to the situation of an owner of domestic premises, having appointed a builder to the role of principal contractor, contracting with another party (e.g. pool builder) to construct simultaneously. The letting of multiple contracts for the same geographical space cannot realistically shift the principal contractors obligations back to the owner of the domestic premises under construction. Builders who undertake the role of principal contractor need to be particularly aware of the fact that they will be held responsible for ensuring overall safety including the work being undertaken by a third party contractor for whom they have no direct contractual relationship. The builder may need to revisit the 'exclusive possession of site' clauses before agreeing to provide access to other contractors.

Recommendation

R5.1 That the Division of Workplace Health and Safety design and implement an approved form titled "Instrument of Appointment for Principal Contractor". The form should ensure that the person nominated as principal contractor by the owner of a construction workplace notifies the Chief Executive of the Division of Workplace Health and Safety no later than ten working days prior to the commencement of work of:

- being appointed as principal contractor
- Qleave notification number (if applicable)
- proposed work commencement date
- estimated construction duration
- geographic boundaries of the site

R5.2 That default provisions that include the failure to notify within the prescribed time period or where multiple principal contractors are appointed will result in the owner being declared the principal contractor for the project (excluding owners of domestic premises).

Section 14 - What is "construction work"?

The current provision section 14(1) states, *"a 'construction workplace' is a workplace where building work, civil construction work or demolition work ('construction work') is done"*. It seems clear that all three terms, which are independently defined in the dictionary (i.e. Schedule 3) of the Act, are to be included within the one term 'construction work'. However, the term 'construction work' itself is not listed in Schedule 3.

Recommendation
R5.3 That the term 'construction work' be renamed 'building and construction work' and a definition be inserted into schedule 3. Refer to Appendix E for a proposal to assist implementation.

Schedule 3 - Definition of "building work"
Schedule 3 defines *"building work as work to erect, construct, extend or structurally alter a building or part of a building if the estimated final price at practical completion is more than $40 000 or, if a greater amount is prescribed under a regulation, the greater amount"*. The definition of 'building work' attracted special attention for its obvious deficiency in excluding maintenance, refurbishment or work that does not involve structural alteration. Currently the definition excludes everyday building activities such as re-roofing work, painting and plumbing work.

Recommendation
R5.4 That the definition of 'building work' in Schedule 3 of the Act be amended to include maintenance and refurbishment work and other types of work normally associated with building and construction work. Refer to Appendix E for proposal to assist implementation.

Estimated Final Price at Practical Completion
The definitions of 'building work' and 'civil construction work' within Schedule 3 of the Act are suffixed with a monetary provision, which states "*if the estimated final price at practical completion is more than $40 000 or, if a greater amount is prescribed under a regulation, the greater amount"*. It is the intention of this inclusion to differentiate between a workplace and a construction workplace based on the value of the head contract, and exclude minor work and small projects from construction workplace requirements. The $40 000 limit satisfies this position, however it has also caused unnecessary confusion and misunderstanding with stakeholders uncertain as to whether the $40 000 applies to the total project or the individual subcontracts and jobs which comprise the project. Uncertainty has been exacerbated by the fact that no definition of 'practical completion' is provided.

Recommendation
R5.5. That the reference to the estimated final price at practical completion of more than $40 000 be omitted from the definitions of building work and civil construction work.

Section 14 – What is a "construction workplace"?
A *'construction workplace' is a workplace where building work, civil construction or demolition work is performed*. Removing the monetary limit from the definitions of building and civil construction work, as proposed above, may create the problem of very minor jobs being considered construction workplaces and as such requiring the appointment of a principal contractor. However inserting the monetary amount into the definition of construction workplace itself can solve this problem. It does not matter then the value of individual contracts, what matters is the total value of work.

Recommendation
R5.6 That the definition of construction workplace be amended to include a base monetary limit of $40 000 for building work and civil construction work, with no monetary limit for demolition work. Refer Appendix E for proposal to assist recommendation.

Section 31 - Obligations of Principal Contractor

Section 31 has been widely criticised for being ambiguous, unworkable and unenforceable. The Division of Workplace Health and Safety's own construction inspectors were particularly critical of subsection (a), which places an obligation on the principal contractor *"to ensure the orderly conduct of work at the construction workplace to the extent necessary to ensure workplace health and safety at the workplace."* The provision has proven to be almost totally unworkable in obtaining compliance due to its obvious interpretational problems. The other subsections of section 31 are not without their problems. For instance there are no examples provided of *"something that has been provided for general use".* There is an obvious need to clarify exactly what a principal contractor is obligated to provide and manage.

The role of the principal contractor in overseeing the health and safety of the site is an obligation that cannot be delegated. The need to clarify the obligations of the principal contractor became apparent with the number of interpretations given to the Taskforce. The notion of ensuring the principal contractor has an obligation for managing safety over the whole site and for common areas was generally agreed, but the specific application of such an approach requires further consideration. The inspectors have been resolving this problem by applying the dual obligations of principal contractor and employer to the same entity or individual. A principal contractor usually has dual obligations as the principal contractor and as an employer. This dual obligation extends to *"ensure the health and safety of others is not affected by the way the employer conducts the employer's undertaking"*. The reliance on dual obligations may assist the Inspectorate, but only confuses the obligations and role of the Principal Contractor which needs further clarification.

Recommendation

R5.7 That a regulation be created to identify principal contractors requirements to complement and add clarity to the existing obligation. The regulation shall include but not be limited to:

- plant and equipment provided for common use by others including scaffold, ladders and trestles
- provision of health and safety workplans
- protection of the public from overhead lifting, falling objects and security from unauthorised entry
- safe systems of working at heights
- identification and marking of underground services and exclusion zones prior to excavation and trenching, drilling or boring work
- good housekeeping and the provision of a system to collect and dispose of rubbish and unwanted materials
- provision, maintenance and use of construction workplaces amenities
- provision of common services (including power and water) for use by others

Refer to Appendix E for proposal to assist implementation.

Sections 28 and 29 – Obligations of Employers and Self-Employed Persons

While the current provisions provide for a general obligation for an employer and self-employed person to *protect themselves* and to "*ensure that the health and safety of others are not affected by the way the employer or self-employed person conducts their undertaking"*, there is still a great deal of ambiguity in determining exactly what each obligation holder is responsible for. The clear view of the Taskforce was that employers and self-employed persons, had an obligation for the identification and management of hazards generated by the production process for which they had or should have control over, as well as the consideration and management of risk to

others who could be affected by those activities. Where a hazard is generated by an activity or task that is part of the employer or self-employed persons obligation, then they are the party to whom enforcement should apply. Appendix E makes express provision for obligation holders in relation to the matters discussed for principal contractors.

Part 3 - Obligations of Designers/Architects/Engineers

A number of submissions recognised the apparent gap within the Act that places obligations on designer, manufacturers, importers and suppliers of plant (section 32), but fails to mention architects, engineers or designers of buildings. A recent publication prepared for the National Occupational Health and Safety Commission titled Safe Design Project noted that:

> "Construction work presents particular problems in terms of safe design. A major European Union research project concluded that 35% of fatalities investigated in the construction industry could be attributed to failure to properly identify hazards and control risks during the design process." (Totterdell, 1996 cited in Gunningham, Johnstone & Burritt, 2000:63).

The report concluded "it is important therefore that the OHS statutes require designers of building and construction projects to take into account OHS concerns". (Gunningham et al, 2000: 63). The Taskforce was told of a number of potential hazards and risks that could have been eliminated or minimised if particular care had been taken in the design phase of the project. For example, window cleaners who are left to find their own anchorage points or plumbers being asked to repair damaged roofs with no forms of access.

The Western Australia, Occupational Safety and Health Act 1984, section 23(3a) explicitly places an obligation on the *"designer of a building or structure to ensure that any persons who construct, maintain, repair, use or service the building are not affected by the way the designer conducts the designers undertaking*". In other words, designers of buildings in Western Australia need to consider how their design will impact safety issues during the building, using, repairing and maintenance phases of the life cycle of the building. New South Wales WorkCover (1999) has recently produced a document titled "Safety in Design" that highlights safety considerations relating to the design phase of a project. The insertion of a similar regulation may provide some assistance in bringing health and safety issues to the attention of designers who have the capacity to either design risks out or minimise exposure.

Recommendations

R5.8 That an obligation be placed on designers, engineers and architects to ensure that the design of a building or structure does not pose risk to the health and safety of those involved in the use, repair and maintenance of the building or structure.

R5.9 That consultation with relevant stakeholders is sought prior to the formalisation of the obligation.

5.2 Workplace Health and Safety Regulations 1997

Section 38(2) of the Act states that *a regulation may-*

(a) deal with matters of an administrative nature; or

(b) prohibit exposure to risk; or

(c) *prescribe ways to prevent or minimise exposure to risk*

The shift to performance-based standards in 1989 saw the substitution of prescriptive regulations with the introduction of statutory 'duty of care' provisions. The previous *Construction Safety Act 1971-75* detailed over 50 regulations dealing with the minutest matters. The strength of a regulation lies in its capacity to set a minimum standard, or prohibit exposure to a hazard or process. The obligation holder has no discretion and must comply with the regulation or face the possibility of a penalty. Regulations can only be written or applied where specific and exclusive standards or prohibitions can be set.

The nature of a regulation either prohibiting exposure to risk (for example, all power sources at construction workplace must run through a residual current leakage device) or simply prescribing ways to prevent or minimise exposure, (such as the requirements for the management of hazardous substances) has received broad-based support from all sectors of the industry. The submissions argued that the lack of minimal standards has allowed the competitive nature of the industry to take greater prominence over health and safety. The essence of the debate is that the industry must know in quite specific terms what it is required to do before any expectation of compliance can be realised.

Part 6 – Notifiable Building and Construction Work

Part 6 of the Regulation details the provisions for notification and payment of fees for building and construction work in relation to QLeave. The *Portable Long Service Leave Act 1991* definitions of 'building and construction industry' and 'building and construction work' apply and are detailed in Schedule 9 (the Regulation dictionary). This creates a layer of unnecessary interpretation and confusion between the liability sections, and the notification and fee collecting mechanisms. The solution is to design a workplace health and safety legislative framework that contains one set of terms with one set of definitions. Regulations for fee collecting or other purposes should be re-located into the primary pieces of legislation that regulate the activity.

Recommendation

R5.10 That the provisions relating to fee collection under the Building and Construction Industry (Portable Long Service Leave) Act 1991 be deleted from the *Workplace Health and Safety Regulation 1997* and inserted into the primary Act.

Section 56 – What is "specified work"?

Section 56 (1) defines "specified work" as

(a) Construction work (defined as building work or civil construction work >$40 000 or demolition work); or
(b) The type of work that is construction work (regardless of price) if someone can fall 2.4m or more when doing the work; or
(c) Excavating, if the excavation is to a depth of at least 1.5m; or
(d) Removing, sealing or inspecting for asbestos

Specified work is applicable only in relation to the provisions of workplace health and safety plans and workplace health and safety inductions for employers and self-employed persons. There is much confusion throughout industry and the Division regarding the interpretation of specified work. This is primarily created by the differing interpretation of building work and estimated final price already discussed in 5.1. The Taskforce believes the intent of the specified work provisions can be retained if other recommendations, namely work method statements and new induction provisions, are adopted.

Recommendations
R5.11 That the term 'specified work' be removed from the Regulation.

R5.12 That the workplan and induction requirements for asbestos work be incorporated within Part 11 – Asbestos Removal Work.

Regulation 57 - Principal Contractor's Workplace Health and Safety Plan for a Construction Workplace

Workplace health and safety plans, or workplans as they are more commonly known, were introduced in the building and construction industry in January 1997 as a means of "encouraging a proactive approach to health and safety risk assessment" (Johnstone, 1999:178). Workplans require principal contractors, employers and self-employed persons to identify the hazards involved in their work, assess the risks and communicate the control measures they intend to implement and as such are a way to raise awareness throughout the industry. As Johnstone (1999) quite rightly argues the strength of the plan depends on the quality of the risk identification and assessment, and the actual implementation of the control measures. The workplan process has been criticised by industry and the inspectorate for the following reasons:

- industry participants think that by simply providing a workplan they are deemed to comply
- the inability of some industry participants to operate within a self-regulation environment and understand risk management
- a large proportion of subcontractors buy off-the-shelf tick/flick model workplans rather than preparing their own
- inconsistency of enforcement (Johnstone, 1999).

Another major criticism of workplans has been the perceived lack of adequate guidance as to what a workplan should contain. Apart from the basic risk assessment model the Regulation provides no other guidance or quality control measures.

While the arguments about paper systems may have some validity, the implementation of an overall safety management system through health and safety workplans seem an essential platform in providing more long term strategic solutions within the industry. The Taskforce does not support the abolition of safety workplans, but supports a more rigorous approach to designing quality regulation requirements for those parties with the capacity and ability to manage health and safety on site. The purpose of workplace health and safety plans should primarily be intended and designed to assist industry in the management of hazards.

Recommendations
R5.13 That section 57 and 59 of the Regulation be amalgamated into one regulation for principal contractor workplans at construction workplaces.

R5.14 That the principal contractor should continue to be required to ensure a health and safety workplan is prepared before building and construction work commences at a construction workplace.

R5.15 That a copy of the principal contractor's workplan is kept on site and available for inspection by anyone performing work at the site or a workplace health and safety inspector.

R5.16 That more rigorous criterion be incorporated with the aim of improving the content and quality of the principal contractor's workplan. Additional criteria should include but not be limited to: scope of work, emergency procedures, safe work procedures, management and notification of incidents, communication and consultation provisions, information and training, monitoring arrangements, and public safety. The criteria will be in addition to the risk management process outlined in section 55 and should be developed in consultation with industry.

R5.17 That an extensive public relations and information dissemination strategy, involving public forums, guidance material, and workshops be adopted to educate obligation holders prior to the introduction of any changes.

Regulation 61 - Employer's or Self-employed Person's Workplace Health and Safety Work Plan for Specified Work

Section 61 of the Regulation states that an employer or self-employed person (usually the subcontractor) must ensure a workplan is prepared before they commence specified work. This section is also obviously affected by the ambiguities of 'specified work' and estimated final price. There is much confusion regarding whether employers and self-employed persons must prepare workplans if *their* building work is less than $40 000 and they are not working at height, with asbestos or excavating 1.5m deep. Two trains of thought exist:

- employers/self-employed persons involved in specified work (in particular construction work) where the final price at practical completion of the structure is greater than $40 000 need to prepare a workplan
- work is not 'specified work' where a sub-contractor is performing construction work that has a price less than $40 000

The Taskforce supports the concept of each employer and self-employed person performing building and construction work (regardless of the value of that work) at a 'construction workplace' providing a 'work method statement' that identifies and assesses the hazards involved with the activity, and control measures that will be implemented to prevent or minimise risk. The shift away from the provision of a workplan to a work method statement is not a diminution in health and safety standards, but rather a reflection of what employers and self-employed persons really need to be focussing on – the management of risk, which will prevent or minimise the likelihood of death, illness and injury.

A work method statement that concentrates on the management of hazards associated with the tasks can clearly be used on multiple sites, when and *if*, the work process and hazards remain constant. The multiple use of work method statements at construction workplaces should eliminate some of the unnecessary duplication and misunderstandings of the current provisions. The onus will clearly fall on the employer, their workers and self-employed persons to follow their own work method statements and the control measures outlined within the statement.

Recommendations

R5.18 That 'work method statements' be prepared by all employers and self employed persons, or someone on their behalf, if the employer, the employer's workers or self employed persons are performing building and construction work at a construction workplace.

R5.19 That a reciprocal requirement be placed on employers, self employed persons and principal contractors to provide and collect work method statements before the

commencement of the person's building and construction work at the construction workplace.

R5.20 That all work method statements must be collated by the principal contractor and incorporated into the design of the orderly conduct of work and principal contractor's workplan.

R5.21 That work method statements are dated, updated (as required) and reviewed by the employer or self-employed person at least annually.

Regulation 63 - General Workplace Health and Safety Induction for Specified Work

Section 63(1) states that *"an employer may allow the employer's worker to start specified work only if the employer is satisfied on reasonable grounds that the worker has been given a general workplace health and safety induction covering the topics mentioned in subsection (2)."* Aside from the problems with the 'specified work' provisions the Taskforce also believe that the time has come when everyone working in the industry should be expected to have some basic health and safety education. Persons working exclusively on minor jobs should not be excluded on the basis of a monetary provision. The industry needs to produce a complete general induction training resource that is received by all industry participants. There are also no current provisions for self-employed persons to undergo or provide any evidence that they have received a general induction. This anomaly obviously affects a large proportion of the industry.

Like workplans, the general induction process has also been heavily criticised for its almost total lack of quality control in the information provided and the training delivery. The Taskforce believe that the general induction course needs to be completely revamped. Examples of suitable starting points are the four-hour Western Australia and the five-hour NSW general induction courses. The general induction course should be an accredited, competency-based course designed in accordance with the National Training Framework and reviewed every five years as part of the continuing accreditation process. This process will ensure that only Registered Training Organisations with the appropriate skills and resources will be able to offer the course.

Recommendations

R5.22 That an accredited, competency-based general workplace health and safety induction course be developed in consultation with industry and introduced over the next two years. The process should give consideration to:

- the principles of the National Training Framework
- the issuing of an Induction Card upon successful completion

R5.23 That an employer must allow the employer's worker to start building and construction work only if the employer is satisfied that the worker has been given a general workplace health and safety induction. This would mean sighting the Induction Card.

R5.24 That the principal contractor may allow an employer or a self employed person to begin building and construction work at a construction workplace only if the principal contractor is satisfied that the self-employed person has received a general workplace health and safety induction. This would mean the principal contractor, or someone on their behalf, sighting the Induction Card.

Regulation 60 and 64 - Site-specific workplace health and safety induction for specified work

Principal contractors for a construction workplace may allow persons to start construction or specified work only if the principal contractor or someone on their behalf, has given the person a workplace health and safety induction that is specific to the workplace. The principal contractor must provide the site-specific induction to employers and self-employed persons. In turn the employer must provide workers with the site-specific induction. The site-specific induction requirements apply to workplaces other than construction. All employers may only allow their workers to start specified work if the worker has received a workplace health and safety induction that is specific to the workplace.

While the Taskforce acknowledges and accepts the need for all industry participants to undergo a general induction, the need for a site-specific induction becomes problematic. The big difference reveals itself when applying this provision within the domestic housing context. Most houses under construction do not require the formal provision of health and safety information to the same extent as that required on commercial sites because the nature of the construction method and control of hazards does not vary dramatically between domestic housing sites.

The site-specific induction process should be applied to all building and construction work, at a construction workplace except single domestic premises. While it is reasonable to expect all building workers including the self-employed to receive formal accredited general induction into the industry, site-specific induction should be restricted to commercial and civil sites only.

Recommendations

R5.25 That the requirement to undergo a site specific induction prior to the commencement of building and construction work exclude domestic construction workplaces (however defined).

R5.26 That site specific induction include the principal contractor's workplan as a significant component.

R5.27 That the principal contractor must make a written record of the details of site specific induction provided, including the names and dates of employers, self employed persons and workers inducted.

5.3 Advisory Standards

Issue

Section 41(1)(a) makes provision for the creation of advisory standards by the Minister. *Advisory standards state ways to manage exposure to risks common to industry* and can be used in court as evidence that an obligation holder has failed to manage exposure to risk as stated in an advisory standard. There has been in excess of ten separate advisory standards dealing with particular building and construction hazards and methods of control. While the intent to create another legislative form that provides scope for innovation and initiative is applauded, the reality is that this intent has not been realised by the building and construction industry.

Discussion

While the building and construction industry has been extremely well catered for in the design and development of advisory standards, the submissions indicated that

their impact and usage appear to be limited. Unfortunately the use of, understanding of, and compliance with the advisory standards has not met the levels hoped for by the creators. The competitive nature of the industry ensures that the obligation holder will usually only comply with their obligations in a certain way if they know their competitors are similarly complying. Before any cost is occurred in managing the exposure to risk, the industry party wants to know if they really have to do something, or whether there is some discretion to minimise the cost, or ignore the requirements altogether.

The advisory standards have really suffered interpretation problems by using the term 'advisory' in the title. To most obligation holders within the industry, such a title seems to indicate that they have a choice as to whether to implement appropriate control measures highlighted by the advisory standard. This is in direct conflict with the legal position, which gives choice in managing exposure by following the advisory standard or providing a comparable method of risk management. The false perception of discretion has severely limited the effectiveness of advisory standards. The Taskforce believe that the legislative form is just as important, or of even greater importance, than the subject matter itself. The industry belief of only complying when it is written in black and white, with obvious penalties for breach, supports the Taskforce's position that regulation is the only legislative form that will achieve increased compliance.

The re-working of at least two advisory standards (Falls from Heights and Excavation) and creating new regulations that can be more easily enforced is supported by the Taskforce. A number of other issues were raised in the submissions that highlighted the perceived absence of regulation that has occurred with the shift to Robens-style legislation. The intent of the submissions was to re-examine the existing advisory standards and see whether they should be reformed into more black and white regulation with identifiable penalties. For example, the current advisory standard on falling objects that provides for the use of hoardings and gantries to protect the public could be re-created into a regulation with a penalty of an infringement notice for non-compliance.

A number of submissions appealed to the Taskforce to re-regulate a number of areas. The submissions expressed a view that a number of items that formed part of the regulations under the old *Construction Safety Act 1971-75* had 'fallen through the cracks' and been replaced in part with advisory standards. Such things included but are not limited to mobile cranes, special requirements for the mandatory use of doggers, one plank exceptions for painters working on trestles, and plant inspection records for use and maintenance.

Recommendations

R5.28 That the existing Advisory Standards that apply exclusively to the building and construction industry be examined with a view to identifying areas that could be made into regulations with identifiable and appropriate infringement notices and other penalties.

R5.29 That future requirements be expressed in the form of regulation as a preferred option to ensure greater compliance.

5.4 Industry Codes of Practice

Issue

The Act makes provision in section 41(1) for the *"Minister to make industry codes of practice that state ways to manage exposure to risks identified by a part of industry as typical in the part of industry*". If an industry code of practice exists an obligation holder discharges their obligation only by following the way stated by the code to manage exposure to the risk, or adopting another way which gives the same or better level of protection against the risk. Industry codes of practice can be admitted as evidence in proceedings related to the contravention of an obligation.

Discussion

One of the difficulties, as previously identified, is the complexity in actually interpreting the obligations currently stated within the Act, regulations and advisory standards. The variety of sources and cross-referencing makes it extremely difficult to know exactly what is required under the legislation. This issue is compounded when one considers the differences between the various sectors within the industry. The housing sector is predominantly made up of small businesses that do not have the capacity or resources to develop comprehensive safety management systems within such a competitive environment. The commercial sector is not a homogeneous group, but rather exhibits huge differences in capacity and resources. The civil sector is dramatically different again, with a completely different labour/material mix and emphasis on major plant and equipment.

For these reasons the Taskforce acknowledges and supports the creation of three sector-based Industry Codes of Practice. Each sector (housing, commercial and civil construction) should have a discreet sector code of practice that focuses on the key obligations, hazards and control measures appropriate to the major hazards experienced by that part of the industry. The purpose of a sector code will be to:

- extrapolate the key sections of the Act and regulations relating to obligation holders within the sector
- assist obligation holders to identify, assess and control common and major industry hazards
- provide information in a clear, concise and easy to read manner

The need of the housing industry in particular for a "rule book" cannot be overstated. The industry does not need a document that covers every conceivable hazard or potential control measure, what it does need is a compact sector code that can be distributed as broadly as possible.

Recommendation

R5.30 That Industry Codes of Practice be produced for the three different sectors that operate within the building and construction industry. Such codes must be developed in close liaison with the building and construction industry and focus on the key hazards that pertain to that sector of the industry. The sector codes will not in any way replace current obligations.

6 Enforcement Strategies

The main objective of an enforcement strategy is to ensure compliance. The purpose of compliance is to minimise exposure to the risk of illness and injury for people at work. An effective enforcement strategy requires obligation holders to know and understand their obligations. The extent of commitment to compliance is also strongly influenced by the reasonable expectations of the likelihood of being inspected, prosecuted, convicted and having a meaningful penalty imposed. (Industry Commission, 1995). While it is acknowledged that everyone has a role to play in enforcing health and safety on site, the inspectorate have been appointed with specific responsibilities and powers in ensuring compliance with the legislation. Research in America by Gray and Scholtz (1991, cited in Industry Commission, 1995) found that inspections and the imposition of penalties significantly reduced injuries. Plants which were inspected (and penalised) in a given year experienced a 22% decline in injuries during the following few years.

Brown (1992, cited in Industry Commission, 1995:705) in further analysing Gray and Scholtz' report believes that the two greatest factors that alter behaviour concern the focus on general deterrence and more importantly the certainty of punishment. He states:

> *… this study estimates that a 10% increase in the number of penalties would reduce the number of injuries by 1.61% and that a similar increase in the average size of penalties would reduce injuries by 0.93%. In other words both the severity and certainty influence injuries but certainty has a substantially stronger effect than severity. The research also found that penalties prevented more injuries by altering the conduct of employers who have not themselves been penalised than influencing the performance of penalised employers. In other words, general deterrence is a more potent force than specific deterrence in preventing injuries.*

Accordingly then a holistic enforcement strategy that adopts a broad range of approaches is likely to produce more long-term results with genuine changes in attitude and behaviour.

6.1 Notices

6.1.1 Improvement and Prohibition Notices

Issue

The *Workplace Health and Safety Act 1995* contains provisions granting inspectors the power to issue improvement, and prohibition notices for contraventions of the Act or regulations. An improvement notice is a written direction requiring a person to remedy a breach of the legislation. A prohibition notice is a written notice or verbal direction that directs the person in control of the workplace to stop an activity that is posing an immediate risk to health and safety. These two forms of notice are the most commonly used tools applied by the inspectorate.

Discussion

All submissions to the Taskforce identified improvement and prohibition notices as an effective and essential strategy in ensuring compliance. Inspector opinion paralleled public opinion with over 75% of inspectors stating they had issued at least one improvement or prohibition notice during 50% of their previous months site visits. While the issuing of notices goes part of the way in securing compliance, they are not

a panacea and can be problematic in their own right. A number of concerns have been raised in relation to notices.

The first issue concerns the recording of the details on the actual notice itself. The current notices make provision for the recording of the obligation holder and the workplace registration number, which is also used to create the computer record of the notice. Businesses with two or less people (which are extremely common in the building and construction industry) are not required to be registered and therefore do not have a workplace registration number. Construction workplaces are not notifiable unless the cost of the building and construction work is $80 000 or more. Therefore creating records for improvement or prohibition notices given by an inspector to either a self-employed person, a business employing two persons or non-notifiable construction workplaces requires the creation of a workplace number using the self-employed person's home or business address, the business address (if applicable), or the job location. Oftentimes the notice is merely recorded against the principal contractor, rather than the unregistered obligation holder and lost on the completion of the project.

Conversely, if the inspector creates a workplace record for the self-employed person or unregistered construction workplace no record of the notice is attached to the principal contractor's history. This information should be entered on both the obligation holders and project's history. The process should be simple, easy and not dependent on a number that is irrelevant to a sizeable proportion of industry. The importance of recording and tracking safety performance is discussed more fully in section 7.3.

The second issue concerns that portion of the improvement notice that specifies the actions that must be taken to remedy the contravention and a given timeframe in which the obligation must comply. This provision seems to be placing the onus of proof on the inspectorate who are required to revisit the workplace to check compliance with the notice. The cost, inconvenience and limited value in having to check compliance with a notice given cannot be justified. The obligation holder who receives the notice should bear the burden of having to prove they have complied with the notice.

One of the major criticisms of the blitz campaigns was the inability of inspectors to clear improvement notices laid. Quite often the entire project was completed before the inspector was able to return and check as to whether the notice had been complied. A return slip is provided on the bottom of every improvement notice and may be completed and returned when the contravention has been remedied. However this administrative requirement is not supported by an equivalent legal requirement on the obligation holders to advise the Division of Workplace Health and Safety of when and how they have complied with the notice.

The Division of Workplace Health and Safety reported that the vast majority of notices are complied within the specified timeframe. A process that places more responsibility on obligation holders to evidence compliance will free up the resources and time of the inspectorate, as well as create a further disincentive to be in breach and receive a notice in the first place. There were a number of options canvassed by the Taskforce. One option would be to enable the inspector to nominate a confirmation strategy from a range of alternatives specified on the notice itself. The inspector would nominate the format for confirmation and the time period by which confirmation with the notice could be sent to the Division of Workplace Health and Safety. Clearly more serious breaches would require direct means of confirmation. There was general agreement that the responsibility to confirm compliance with a

notice should reside in the first instance with the obligation holder. Support also existed for the means of confirmation to be extended to include other forms of communication including: verbal through use of the telephone, and written either by fax or email if appropriate.

Recommendations

R6.1 That, where available, building services licence details/Australian business numbers shall be used as the primary identifier for notices issued to employers, self employed persons, and workers in the building and construction industry. This will involve greater cooperation and sharing of information between the Division of Workplace Health and Safety and the Building Services Authority.

R6.2 That a building and construction industry database be established to record and retrieve all notices issued against obligation holders, as well as project details and the name of the principal contractor.

R6.3 That the Division of Workplace Health and Safety investigate the possibility of self-enforcing improvement notices which require obligation holders to advise and demonstrate compliance in accordance with the process identified on the notice. The system should be supported by a random audit procedure with additional and significant penalties for false declaration.

6.1.2 Hazard-Based Infringement Notices

Issue

The ambiguity associated with the Robens-style legislation has previously been critiqued in relation to providing a rationale for clarifying obligations in a manner and form easily understood by the industry. Clarification or re-stating of existing obligations in the form of regulation that could be easily enforced received considerable support from the Taskforce. One mechanism of providing clearer consequences for health and safety breaches was the identification and application of infringement notices for hazard-based regulations. Since 1 July 1998 inspectors have retained the power to issue infringement notices (commonly referred to as on-the-spot fines) for certain offences against the *Workplace Health and Safety Regulation 1997*, and failure to comply with an improvement notice. On-the-spot fines are a relatively new concept in Australian health and safety enforcement, with New South Wales being the first state to introduce such fines in 1991 (Johnstone, 1997). Current application and use of infringement notices in Queensland extends only to of administrative breaches (e.g. failing to produce a workplan). The industry was critical that no avenue currently existed for inspectors to issue on-the-spot fines for clear hazard-based breaches.

Discussion

In late 1997 NOHSC commissioned a national study (Gunningham, Sinclair & Burritt, 1998) to evaluate the impact of on-the-spot fines on the prevention of injury and disease. The researchers canvassed a large cross-section of stakeholders including inspectors, government policy officials, safety representatives, employers and employees from various industries, and fine recipients. Key findings are listed below:

- small firms and subcontractors viewed penalties as little as $50 as significant. This supports United States data that showed that even relatively small fines could achieve a change in employer behaviour (Gray & Scholz 1991, cited in Industry Commission, 1995)
- the majority of industry respondents believed on-the-spot fines were an effective prevention tool that should be applied to recalcitrant companies

- most respondents believed the impact of on-the-spot fines might be short-term. Inspectors tended to mitigate this effect by using on-the-spot fines in conjunction with improvement and prohibition notices
- much of the resistance to on-the-spot fines was directly linked to the perception of inconsistency among inspectors and negative approaches, such as sending the fine in the post
- strong support was displayed for the use of warnings, backed by on-the-spot fines especially for 'technical breaches' (such as inadequate record keeping), which posed no immediate threat to health and safety
- the construction industry was less positive than other sectors about the effectiveness of on-the-spot fines. The major reason for negative perception amongst both large and small companies was that fines were often issued for trivial or 'technical breaches' that had little bearing on actual safety performance
- in comparison to prosecution, on-the-spot fines are inexpensive, administratively convenient, and provide an immediate punishment for the behaviour.

The latter point is particularly relevant to the construction industry. It is quite conceivable that a project is completed long before the matter is heard in court. Indeed court proceedings may take years to culminate in minuscule fines. On-the-spot fines provide "a stepping stone between advisory actions or compliance notices and criminal prosecution." (Gunningham et al, 1998:33).

The Taskforce spent considerable time considering the merits or otherwise of hazard-based infringement notices. Agreement was reached that inspectors should take action whenever they see a breach, and that the purpose of such action should be to reinforce compliance with health and safety legislation. The greatest argument in favour of infringement notices was the direct and almost instantaneous link between the breach and the consequence. Infringement notices, like prohibition notices, have the capacity to alter behaviour immediately.

On-the-spot fines can only be applied in limited situations where the regulations set a clear standard or limit, the breach is obvious and the evidentiary requirements easy to obtain and prove. The Taskforce examined a number of hazards that could be reformed into regulation, attracting infringement penalties and recommends that the initial development of hazard-based infringement notices should target major areas of injury and death. An analysis of the current data, even with all its limitations, identified the critical areas where this form of intervention may have the most significant impact.

The National Occupational Health and Safety Commission's traumatic fatalities study provides a summary of the main causes of death within the industry. Apart from vehicle accidents the four leading mechanism of fatal injury amongst the 232 construction workers were being hit by or hitting moving objects (12%); being hit by falling objects (13%); contact with electricity (21%); and falls from heights (28%). Of the 64 people involved in a fall from heights, 42% fell in or around the structure being erected, demolished or renovated, 33% fell from a roof and 19% fell from ladders. The specific activity of the 48 construction workers killed as a result of contact with electricity was not identified, but the most likely causes relates to contact with overhead powerlines, underground power services or the use of faulty portable electric tools or equipment (NOHSC, 1999a).

Queensland WorkCover statistics for the building and construction industry, 1996/97 to 1998/99, paint a similar picture (see Appendix C) with the three main mechanisms of injury being hit by moving/falling objects (32.8%), muscular stress injuries (32.4%) and falls (17.8%). Summaries of the main mechanisms of injury for compensated

WorkCover claims and claims relating to falls from ladders are provided below in Table 6.1.2 and Table 6.1.3.

Table 6.1.2. Compensated Claims for the Main Mechanisms of Injury ANZSIC Division E Construction for the Financial Years 1994/95 to 1998/99

Mechanism of Injury	Number of Claims per Financial Year				
	94/95	95/96	96/97	97/98	98/99
falls from height	279	223	161	154	147
falls from same level	836	467	434	414	412
hit by falling object	169	108	132	134	98
hit by moving object	660	417	315	315	307
hit moving objects	750	487	437	330	274
hit stationary object	262	161	153	144	115
muscular stress injuries	1944	1189	1081	997	784

(Source: Qstats 2000, unpublished data)

Table 6.1.3. Compensated Claims for Injury involving Ladders/Mobile Ramps and Stairways ANZSIC Division E Construction for the Financial Years 1994/95 to 1998/99

Financial Year	Number of Claims	Work Days Absent
1998/99	36	1121
1997/98	36	2792
1996/97	43	1458
1995/96	53	2383
1994/95	86	3218

(Source: Qstats 2000, unpublished data)

Trench and excavation incidents accounted for 15 fatalities (8%) of workplace deaths identified by NOHSC (1999a). Twelve WorkCover claims explicitly related to trenches and excavations were paid in the last five financial years. While the number of claims is comparatively low it is clear that excavation and trenching injuries have extremely high severity rates with the capacity to kill.

A number of submissions raised the issue of public safety. There were 150 bystanders fatally injured in Queensland in the four year period 1989 to 1992, with 6 people fatally injured while they were bystanders to work performed in the construction industry (NOHSC, 1999a & b). While this number appears relatively small, society no longer regards, indeed if it ever did, innocent bystander death to be acceptable. The Taskforce regards public safety as an important matter that requires an intentional intervention strategy to improves compliance and in doing so protect members of the public that may be exposed to risk caused by building activities. The regulation of gantries and hoardings seems an appropriate starting point.

Evidence is overwhelming for a focussed intervention strategy that deliberately targets, falls from heights, working from ladders, contact with electricity, excavation and trenching and public safety. Two other areas (housekeeping and workplace amenities) are also nominated for targeted interventions that could readily improve compliance levels and deliver significant improvements in minimising the risk of exposure to illness and injury. Poor housekeeping was often cited by inspectors as a potential hazard that significantly contributed to the risk of slipping, tripping or falling. While the hazard of poor housekeeping may be difficult to strictly define, there are a number of elements that should be considered when deciding on the suitability, or

otherwise of an appropriate housekeeping standard that separates good housekeeping from poor housekeeping. Good housekeeping practices include a systematic approach to identifying and protecting clear access ways and the collection and removal of rubbish and other waste material in a designated receptacle provided. Poor housekeeping significantly enhances the risk of injury, multiplies the severity of injury especially when combined with manual handling tasks and the movement of plant and materials on the site. Injuries that could be caused or exacerbated by poor housekeeping include:

- being hit by a moving or falling object
- hitting a moving, stationary or falling object
- muscular stress while lifting/carrying/putting down objects
- muscular stress other than lifting/carrying/putting down objects
- muscular stress with no objects

Workplace amenities or the lack of them were identified by inspectors as occupying nearly 10% of their valuable time with minimal health and safety outcomes. While it is untenable for building workers to not be provided with such a basic necessity, the current waste of resources pursuing this breach requires action. The Taskforce consider that the failure to provide appropriate amenities in accordance with the regulation should attract an infringement notice. Inspectors would be able to improve the compliance rate without the resources drain currently being experienced.

The areas identified above are the most critical areas that have been targeted by the Taskforce for the development of hazard-based on-the-spot fines. While the Taskforce was prepared to limit the recommendation to recreating or restating regulations in these seven areas, further investigation is required to discover whether other major hazards could be managed in this way.

Recommendations

R6.4 That hazard-based infringement notices be introduced and integrated into a pyramidal enforcement strategy to support the proposed hazard-based regulations outlined in section 5. Such hazard-based regulations should initially be limited to: working from heights, ladders, excavation and trenching, electrical equipment and installation, construction workplace amenities, housekeeping, underground services and public safety (hoardings and gantries).

R6.5 That inspectors be provided with clear and consistent guidelines for the issuing of hazard-based infringement notices to minimise the possibility of inconsistency between regions.

R6.6 That a tiered system of infringement notice penalties be introduced in which the most serious (i.e. hazard-based) breaches and repeat offences receive more substantial penalties than administrative or technical breaches.

R6.7 That, where possible, standardised improvement, prohibition and infringement notices be produced and provided to inspectors to facilitate the issuing of notices on-site.

R6.8 That a full marketing and public relations strategy be prepared and implemented prior to the introduction of any hazard-based regulations. The strategy should include industry seminars and the broad dissemination of appropriate information products.

6.2 Industry Target Auditing and Blitz Campaigns

Issue

For several years the Division of Workplace Health and Safety have targeted high-risk industries through state-wide audit programs. Examples of industry audits are metals manufacturing, printing and smash repair industries. More recently the Division has embraced hazard-based auditing, which involves the identification of a serious hazard and auditing workplaces affected by that hazard. The Division of Workplace Health and Safety refers to hazard-based audits as a "Safety Blitz". To date the Division of Workplace Health and Safety has undertaken four safety blitz programs namely working at heights in the domestic construction industry, mobile cranes, electrical, and abrasive blasting.

Discussion

Generally an Industry Audit Report is produced on completion of the industry audit to communicate the findings back to industry. The reports provide useful risk management information by identifying common hazards, associated risks and possible control measures. The Division have, produced two industry audit summary reports. These types of reports are especially important for small businesses that have neither the time, nor expertise to read large technical documents. The Taskforce believes that outcome reports are an important part of the education process.

The majority of submissions considered the blitz campaigns to be effective in securing compliance and "gaining the attention of the industry" (Submission S). Inspectors generally agreed that the blitz campaigns raised the profile of health and safety and the Division of Workplace Health and Safety in general, and provided an opportunity to maximise their time in the field. Inspectors did express concern that they were unable to clear notices, and felt the focus was clearly aimed at non-compliance, rather than educating and guiding employers in their obligations. The inspectors also stated that the blitz campaigns placed enormous strain on existing resources and cautioned against conducting further blitzes without proper training and resources.

Identifying domestic sites proved to be a particularly difficult task during the working from heights housing blitz. The Building Services Authority database was particularly helpful in identifying domestic construction workplaces and could easily be used to collate future blitz targets from within the housing industry. Lifting the profile and performance of the Division of Workplace Health and Safety are clearly positive outcomes associated with safety blitzes. Another advantage has been in the publicity surrounding the issues prior to the blitz actually commencing. The use of a highly publicised safety education programme on the hazards about to be targeted will add further weight to this process.

Recommendations

R6.9 That the Division of Workplace Health and Safety, in consultation with the Construction Industry Sector Standing Committee continue to undertake blitz campaigns or industry audits in areas identified by the parties.

R.6.10 That the planning and coordination of the blitz campaigns give due consideration to:

- targeting the main hazards that cause most injury and illness in the industry
- launching major education and public relations initiatives prior to the blitz commencing

- the resources necessary to maximise efficiency and outcomes

R6.11 That reports on the outcomes of industry audits and blitz programs be produced, circulated and published through an extensive public relations strategy including:

- summary reports
- employer association and trade union journals and newsletters
- the Building Services Authority newsletter
- brochures for distribution with building plans from local authorities

6.3 Prosecution

6.3.1 Prosecution Process

Issue

Workplace health and safety inspectors can enforce the occupational health and safety statute by conducting a prosecution for a contravention of obligations set out under the Act or subordinate regulations. Prior to the Robens reforms prosecutions were instigated for violations of the prescriptive regulations. Since the passage of new legislation the majority of prosecutions are for breach of an obligation when an event at a workplace has resulted in death, or grievous or bodily harm. During the financial year 1998/99 51 of the 64 instigated prosecutions were successful (DETIR, 2000 unpublished).

Discussion

Employer groups have argued that prosecution does not have a preventative outcome for the following reasons:

- prosecutions are not cost effective as the money paid in fines could be used for health and safety improvements in the workplace
- fear is not a good motivator for change
- adverse publicity could impose greater penalties than warranted
- encourage subterranean practices (Tawia in Johnstone, 1994, 52-54)

However the Taskforce support the view that serious offences need to be prosecuted to the full extent of the law as a deterrent to wilful and aberrant behaviour.

It has been general practice by the Division of Workplace Health and Safety to only utilise prosecution in the event of death, serious bodily injury or bodily harm. Few prosecutions have been instigated in response to extreme recalcitrance on the part of the obligation holder. In 1999, the Minister launched a new 'Enforcement Framework' aimed at directly lifting compliance levels across all industries in Queensland. The Framework states that action to prosecute may be taken where an inspector has obtained sufficient evidence to establish a case to answer, there is reasonable prospect of a conviction, and it is judged to be in the public interest. The Framework also provides that all 'priority one' incidents should be investigated. Priority one incidents are workplace incidents or activities causing death or grievous bodily harm to workers or members of the public, and exposures to substances likely to cause death or grievous bodily harm to workers or public.

During the Taskforce's consultation with inspectors it was revealed that inspectors invest an average of 120 to 150 hours to prepare a brief for prosecution. Considering that they also reported an average 60-70% of their time is spent in a reactive capacity this leaves little time for proactive, preventative work. The fact that between 50-60 cases are prosecuted each year indicates that many cases are fully

investigated but not followed through to a prosecution. This failure to follow through was a source of considerable frustration to inspectors who had spent inordinate amounts of time for seemingly little recognition or outcome. The challenge seems to be in streamlining the whole process and making prosecutions more effective for all the parties involved.

6.3.2 Publicising Prosecution Outcomes

Issue

The success of a prosecution does not stop with the imposition of a fine but needs to be widely publicised to obtain maximum effect and impact. A number of regulatory authorities seem to be relying on widespread publicity to 'send the message' out to its constituency in the first instance and the public at large. The Building Services Authority has begun to publish prosecution details of all licence holders who have received fines as a result of action taken by the Building Services Authority.

Discussion

Submissions to the Taskforce gave a mixed response to the issue of whether the names of companies and individuals prosecuted should be separately publicised. Recently the Division of Workplace Health and Safety published major cases involving workplace health and safety breaches in a brochure 'Queensland Workplace Prosecutions'. There are also plans to develop a 'Prosecutions Page' on the Department's website, as a further step in promoting the prosecution outcomes. The deterrence value of these initiatives are yet to be evaluated, but the shift in seeking to use the media and other publication sources in other jurisdictions as a legitimate means of providing stronger deterrence is undeniable.

6.3.3 Special Prosecutions Unit

Discussion

The Victorian WorkCover Authority recently established a Special Accident Investigation and Prosecution Unit, whose main purpose was to focus on the accident investigation and prosecution role and to lift the performance and profile of prosecutions for offences. The rationale behind the unit was to gather a team of expert investigators and to combine them with the actual litigators during the preliminary phase of the investigation. Serious matters were then investigated by an inspector and prosecutor together, so freeing up enormous amounts of time for inspectors to get on with other aspects of their job. Inspectors who were selected to become expert investigators underwent extensive training both on and off the job.

The Industry Commission in their 1994 review of work, health and safety throughout Australia were particularly supportive of the concept of a special prosecutions unit. The Commission stated:

> *Specialised units are likely to increase the willingness of inspectorates to prosecute breaches, as well as their ability to do so successfully… The commission recommends the formation of prosecution units within OHS inspectorates (Industry Commission, 1995:139)*

The greatest advantage would be in designing and coordinating a strategic view to prosecutions in this state. A special unit would have the ability to target industries, hazards and obligation holders with particularly recalcitrant behaviour. While the general feedback has been positive, not all of the Victorian experiences have been

smooth sailing. There are significant training, resource and human capital issues (such as attracting and retaining quality investigators and litigators) that would require special attention if Queensland were to follow down this path.

In response to the new enforcement framework the Division of Workplace Health and Safety established its own legal unit in February 2000. This unit, comprising of a designated legal team has already begun to assert its influence over the prosecution process. The unit has taken over the files previously residing with the Crown Law office and has begun to liaise closely with the regional prosecution officers. The timing of a decision to proceed with a prosecution has significant ramifications for the whole prosecution team and the likely success of the prosecution case. Unnecessary delays prior to the decision to prosecute enables the respondents to obtain unfair advantage through accessing all of the evidence written as part of the investigation process. This information can be used against the prosecution team and causes significant delay and cost. An early decision to prosecute would serve the dual purpose of improving the success rate of the cases and ensuring that justice is being done in a timely fashion as soon as possible after the incident has occurred.

Recommendations

R6.12 That the details of successful occupational health and safety prosecutions, including a description of the offence, the obligation holder and the penalty be widely circulated and published by the Division of Workplace Health and Safety. This will require the Division of Workplace Health and Safety to keep precise records on the outcomes of the legal unit for use in future publicity material and strategic interventions.

R6.13 That a Special Prosecution Team be established within the Legal Unit and resourced appropriately so that the decision to proceed to prosecute or not, can be made as soon as possible after the incident. This team should also examine the means of simplifying the prosecution process and reducing the time in which decisions to prosecute are made.

6.4 Industrial Manslaughter

Issue

Several submissions called for obligation holders, including organisations who engage in negligent and deliberate conduct, which results in the death of a worker or other to be prosecuted under mainstream criminal law as an alternative to, or in addition to prosecution under the statutory provisions. Submission I for example called for the introduction of a charge of “dangerous construction activity causing injury”.

Discussion

Arguments for manslaughter again relate to deterrence and prevention principles. Hopkins (1995) argues that if individuals in society who cause death in a culpable manner can be charged with manslaughter why not companies in the context of workplace death. He goes on to say that a corporate manslaughter conviction carries more stigma and could capture more public interest than a conviction for failure to maintain a safe workplace. Whilst these arguments are legitimate the realities of gaining a successful conviction within the present legal system is extremely problematic and highly unlikely.

In contrast to general obligation offences under the *Workplace Health and Safety Act 1995*, successful prosecution for a crime such as manslaughter requires proof of

guilty mind on the part of the defendant or *mens rea*. This is most problematic in relation to manslaughter charges as they pertain to a corporation. In order to gain a conviction the prosecution must prove a high degree of negligence. Negligence however is a state of mind and since a corporation does not have a state of mind it is almost impossible to describe a corporation's behaviour as negligent (Hopkins 1995).

To address this problem the courts have held that a corporation will only be criminally liable for an offence if an officer of the corporation, senior enough to be a directing mind of the corporation, is negligent. This principle, commonly known as the 'Tesco Principle' has been criticised as unworkable in larger corporations as it fails to reflect the diffused nature of decision-making in medium and large organisations (Johnstone, 1999).

These difficulties become apparent when examining the Victorian experience. Since 1990 Victoria has maintained a policy of prosecuting individuals and corporations for manslaughter in cases of reckless or criminally negligent workplace deaths. Despite the existence of the provision since 1990 there has been only one successful prosecution. In R v Denbo Pty Ltd a company was found negligent and fined $120 000 for causing the death of one of its employees. Although the company pleaded guilty within one month of the trial the company went into liquidation and was therefore unable to meet the fine. In other cases the judiciary have attributed the negligence to personal failures of individuals and not company negligence (Creighton & Rozen, 1997). The solution to this problem may lie in the adoption of an entirely new corporate liability law that establishes new methods for determining corporation mens rea.

Problems of prosecuting under general criminal law are significantly reduced in the context of personal liability matters. It is much easier to prove personal liability of individual managers compared to corporate liability. Cases however are still rare, with a few notable exceptions in the United Kingdom and United States of America. In addition most Australian jurisdictions have criminal provisions for reckless or negligent conduct leading to an injury. In Queensland any person who unlawfully does an act or omits to do any act (which it is the person's duty to do) that actually causes bodily harm can be charged under section 328 of the Criminal Code. If these offences are brought against corporations then the principles relating to mens rea must be proven. The decision as to whether criminal charges such as manslaughter should be laid rests with the police or investigating coroner (Johnstone, 1999). The bulk of union submissions received by the Taskforce, acknowledged the difficulties of prosecuting corporations as outlined above and have sought support through the Attorney Generals office to consider the introduction of new charges against individuals such as 'endangering peoples lives' or 'allowing dangerous activity'. The outcome of these negotiations or the likelihood of success are difficult to know or predict at this time.

The *Workplace Health and Safety Act 1995* contains no express provisions about charges under the general criminal law for negligence or common law for manslaughter. However, section 167 of the *Workplace Health and Safety Act 1995* does allow the Division to prosecute executive officers (management) of a corporation for failing to ensure that the corporation complies with the Act. The Queensland provision is stronger than any other state as the executive officers ignorance of the offence is not a defence. The only defence open is that the executive officer exercised reasonable diligence or that they were not in a position to influence the conduct of the corporation. Prosecutions under section 167 are becoming more frequent.

Recommendations
R6.14 That the Division of Workplace Health and Safety continue to prosecute Executive Officers for breaches of section 167(2) and that particular emphasis be paid to publicising these prosecutions

R6.15 That the decision to prosecute corporations for industrial manslaughter be reviewed once legislation that enables the prosecution of corporations is enacted.

6.5 Sentencing Guidelines

Issue
Under the *Workplace Health and Safety Act 1995* the maximum penalty for breach of an obligation which results in death or grievous bodily harm is $60 000, or two years imprisonment for an individual, and $300 000 fine for a corporation.

Discussion
The role of the courts is to apply discretion and determine an appropriate penalty and whether a conviction should be recorded. The principal purpose of sentencing is deterrence. Submissions to the Taskforce revealed a widespread concern about the level of fine imposed by court when individuals and companies are found guilty of offences under the Act and its provisions. Johnstone (1999:418) argues "penalties for OHS offences have resulted in substantial inconsistencies in penalties imposed, and in sentencing practices where the 'essence of the offence' has been distorted, resulting in low fines." This occurs because the nature of the offence "is transformed, decontextualised, and individualised so that the emphasis on systems of work is lost" (Johnstone 1994:79). The defence adopts isolation techniques such as blame-shifting to the worker, the inspector, and the manufacturer to mitigate the obligation holder's role in the contravention.

Sentencing guidelines may assist the courts in applying consistent and appropriate sentences by providing a framework that ostracises pressures to decontextualise the offence. Sentencing guidelines will also specify that the fine should reflect the means of the offender as well as the gravity of the offence. The United States introduced 'Sentencing Guidelines for Organisations' in 1991. The Guidelines specify a base fine for the type of offence and a multiplier (culpability score) that is affected by a range of mitigation or aggravation factors (Institute of Employment Rights, 1999). The New South Wales Government has recently passed the *Occupational Health and Safety Amendment (Sentencing Guidelines) Bill 2000 which* enables government departments or agencies the right to appear in proceedings, and for the Full Bench of the Industrial Relations Commission to hear submissions of sentencing guidelines for classes of courts, particular offences or classes of offences.

Recommendation
R6.16 That the Department of Employment, Training and Industrial Relations develop, in consultation with the Workplace Health and Safety Board, sentencing guidelines for use by the courts in determining appropriate penalties for breaches of occupational health and safety legislation. Sentencing guidelines must consider:

- a wide range of sanctions that can be applied depending on the circumstances of the event and the company
- mitigation factors, such as company safety management or consultation systems, the cooperation of the company in assisting with the investigation, and a guilty plea
- aggravation factors, such as a history of offences, size and financial capacity of the organisation, and obstruction of inspectors in the course of the investigation

6.6 Inspectors

Issue

Workplace health and safety inspectors are the major means by which agencies enforce occupational health and safety statutes. There are approximately 140 inspectors throughout Queensland, with 48 classified as construction industry inspectors. Inspectors are well qualified and trained to investigate workplace incidents and complaints, perform audits, provide information and advice. Their role shifts along the persuasion/punishment continuum depending on the risk and context in which it is found. When inspectors identify a breach of the Act or its provisions they have the discretion to adopt a range of enforcement strategies depending on the type and severity of the breach.

6.6.1 Role of Inspectors

Taskforce representatives consulted with 43 workplace health and safety (construction) inspectors and 20 of their direct managers during the period April 10 to 17 2000. A semi-structured interview format was adopted to identify the main reasons and obstacles that impeded the inspectors in the course of their duties. Inspectors identified a range of issues with the current legislative framework that had the potential to adversely affect their performance. These issues included such things as ambiguous enforcement strategies, the organisational structure, and inter-organisational communication and cooperation. A full summary of the key issues raised by inspectors are listed in Appendix F.

Table 6.6.1 displays the wide range of activities performed by construction inspectors. Inspectors spend a quarter of their time performing either computer or administrative work. Averaged out this means that at least one day out of every four must be spent in the office rather than on site.

Table 6.6.1 Typical Work Demands of a Workplace Health and Safety Inspector

Task	% of Time	Task	% of Time
Staff meetings/training and development	6	Target audits and blitz campaigns	6
Investigating complaints	12	Travelling	8
Investigating SBI/deaths/dangerous events	15	Auditing sites (other than target/blitz programs	9
Providing information/advice	7	Writing & issuing notices	8
Computer work	15	Other administrative work	2
Reading and research	4	Administration	8

6.6.2 Enforcement

Most inspectors indicated that they preferred a “50/50” enforcement style that encompassed a mix of persuasion and punishment techniques. The specific techniques adopted were situational. However 75% of inspectors said that over 50% of their site visits in the last month had resulted in the issuing of at least one notice. Improvement notices were by far the most prevalent of notices issued (see Table 6.6.2). The information also suggests that inspectors are still reluctant to issue on-the-spot fines.

Table 6.6.2 Types and Frequency of Notices Issued by Workplace Health and Safety Construction Inspectors

Type of Notice	Number of Observation			
	0-25%	26-50%	51-75%	76-100%
Improvement	12	8	0	0
Prohibition	0	2	9	9
Infringement	9	0	0	0

Inspectors identified the organisational structure, the legislative framework, staffing levels, the organisation of labour and perception of invulnerability within the industry as the most significant hindrances to their performance. Most inspectors believed that hazard-based regulations and infringement notice offences would go part of the way in immediately focussing the attention of the industry on key hazard areas. There was support for sector based Codes of Practice providing the obligations of what to do and how to do it was clear, practical and understandable.

Another issue that surfaced during the interview was the inordinate amount of time spent by inspectors on workplace amenities. Inspectors estimated an average amount of between 5-15% of their time was spent on the issue of toilets on construction workplaces. The process of responding to each complaint, identifying the site, chasing down the builder, finally making contact and then issuing the appropriate notice is cumbersome and of limited value. Most inspectors were supportive of inserting the construction workplace amenities into the *Justices Regulation 1993* and so liable to attract an on-the spot fine. The deterrence value of receiving an infringement notice is endorsed by the Taskforce (as per section 6.1.2).

Inspectors have an extremely difficult job and are often caught within the persuasion/punishment continuum. On the one hand they would like to inform and educate the obligation holders on all matters of health and safety, but on the other hand they are required to administer and enforce the Workplace Health and Safety Act and its provisions. These roles do not necessarily sit well together. Inconsistencies in approach have resulted in further confusion and suspicion between the inspectors and senior management. The perceived lack of trust within the organisation results in mixed messages and varied responses. Training, feedback and support are vital if inspectors are to escape the isolation and neglect that some of them clearly feel.

6.6.3 Training and Development

The issue of de-skilling and the loss of identity as a part of regionalisation were also raised by the inspectors. Many inspectors felt that senior management did not adequately understand the role or the demands of the job and did not have a shared background making it harder to present their views. Most construction inspectors particularly in the regions worked up to 30% of their time in industries outside of building and construction. This was not a major problem with most inspectors enjoying the broader use of their knowledge and skills. One concern related to the issue of de-skilling and the lack of a critical mass of expertise associated with more technical aspects of the industry. Most of the Assistant Regional Directors were cognisant of this issue and are monitoring developments.

The role of inspectors has also come under scrutiny by the Taskforce. Some of the submissions wanted the inspectors to be far more intentional in their presence and contact with workers on site. The submissions reflected a general view that nobody

ever knew if an inspector was on site, and therefore could not discuss any health and safety concerns they might have. This lack of visibility also contributed to the perception that 'they really don't get on sites very often'. While it is clear that record numbers of site visits are occurring, the lack of visibility is contributing to this perception.

Recommendations

R6.17 That specific and intentional strategies be implemented to improve communication, consultation, training and support between the inspectors and the Department of Employment, Training and Industrial Relations which enables inspectors to maximise their time in the field.

R6.18 That specific strategies are adopted to increase the visibility and profile of inspectors while working on site. Such strategies might include special coloured and marked hardhats, safety vests, and vehicles.

6.6.4 Organisational and Regional Support

Over the last three years a new structure has been introduced into the Department of Employment, Training and Industrial Relations. This re-structure basically set up a regional structure where the main services of employment, training, industrial relations and workplace health and safety were brought together under Regional Directors comprising six areas of the state. During consultations with the construction inspectors a number of critical issues surfaced in relation to the way they perceive the structure is assisting or impeding them in their role. While the issue of structure and accountability are clearly management issues and beyond the scope of the Taskforce, a number of observations need to be shared as part of examining the "broad raft of measures" that would improve health and safety performance within the building and construction industry.

Perhaps the single biggest issue confronting inspectors is the availability and use of motor vehicles. While many people have clearly addressed this issue across a range of forums, there still appears to be an unhealthy perception that access and usage is not freely available to all. This issue needs clarification in order to stop the rumour mill from creating any further mischief on this issue. The Taskforce fully supports the right of inspectors to have unlimited access to a motor vehicle in order to 'do their job', and would strongly support any initiative that ensured more of the inspectors' available time being spent on site and not in the office. The excuse of not being on-site for failing to have access to a motor vehicle is totally unacceptable to the Taskforce and needs to be resolved.

New staffing arrangements that mean that each region is responsible for there own staffing levels and budgets have also created some difficulties for the inspectorate. The inspectors all report through their Regional Directors or Assistant Regional Directors who have control over them on a day-to-day basis. This in itself is not a problem. The difficulty arises when strategic initiatives need to be considered and implemented across an industry and within the whole state. One of the key findings identified by the Taskforce in relation to compliance is the need for a consistency of approach, not only within a region but across regions as well. The current structure has tended to isolate health and safety inspectors and make any universal interventions almost impossible to deliver. While the blitz campaigns have been quite successful and well received, the Taskforce would argue that such success has been in spite of the structure, and not because of it. The blitz campaigns were

specifically designed and implemented through the General Manager of the Division with expert training and support provided by Programme Services.

There is little doubt that the inspectorate are still passionate in their role in ensuring workers are protected from exposure to risk at work and see themselves differently from staff working in other sections of the regions. Workplace health and safety inspectors require specialist training and need to continually upskill in order to keep up with changes in the legislation, standards and technology. The new enforcement strategy has received a mixed response from the inspectors. There is some doubt in the varying interpretations that could be applied as to how the new enforcement strategy is supposed to be applied on the ground. Inconsistency of implementation with the enforcement framework across the regions should be of concern to senior management. Protecting the skill mix particularly in some of the specialist areas of the industry (for example cranes, hoists, scaffolding, concrete pumps etc.) must be preserved at all cost.

Recommendation
R6.19 That the Division of Workplace Health and Safety continue to explore ways of aligning the organisational structure in accordance with a health and safety strategy so implementation and outcomes can be more readily achieved.

7 Compliance Strategies

7.1 Education and Training.

7.1.1 Health Issues within the Building and Construction Industry

The statistical evidence and cost associated with serious health issues within the industry are staggering and in most cases preventable. Unfortunately the nature of the health issues themselves and the long periods of time before the exposure and its effects tend to place these critical issues firmly in the background. The history of musculoskeletal injuries (such as back, soft tissue, shoulders, wrists, knees) is of such endemic proportion that the industry hardly even recognises it as an issue. Other major health concerns within the industry include respiratory disorders associated with dust inhalation, industrial deafness, lead poisoning, mesothelioma and exposure to hazardous chemicals. Long latency periods, coupled with the short tenure of a sizeable percentage of people within the industry, ensures the cost of health issues are transferred to parties outside the industry. The lack of immediate health effects in no way detracts from the potency of hazards, but instead provides an instant barrier or excuse to greater recognition and intervention. While the Construction Industry Standing Committee has endeavoured to raise the profile of health issues within the industry, their efforts have resulted in mixed success. The failure of the Taskforce to adequately address these issues will stand as a indictment to the Taskforce, but more importantly reflect a much larger problem for the industry itself.

A specialist health unit is located within the structure of the Division of Workplace Health and Safety, with a primary role on research and intervention in critical workplace health issues. The Health Unit have been critical to the development of health related standards such as the Manual Handling – Building Industry (1999) Advisory Standard. The Standard seeks to address the critical and specific manual tasks problems within the industry, but has failed to generate any real acceptance or compliance. One of the main reasons given for non-compliance is the lack of a suitable alternatives to lifting plant or material, and the failure to adequately legislate for obligations on the manufacturers and suppliers of materials and equipment. The complexity and multi-causal nature of health hazards has made the typical enforcement approach less effective in providing adequate protection to building and construction industry workers.

The Health Unit has identified a number of specific interventions that may provide a way forward. The Health Unit believes that the focus for change can only be addressed with government and industry forming a partnership to develop solutions to issues that provide alternative processes that eliminate or minimise exposure. Small study projects with specific outcomes will facilitate this process, as to will brief, regular fact sheets that highlight health problems. Any initiative that breaks the cycle of ignorance and acceptance of health risks should be strongly supported. It must be recognised that the Health Unit are a major source of specialist advice for the industry and their work should be commended and supported.

Recommendation
R7.1 That the Construction Industry Sector Standing Committee identify strategies that highlight the health hazards and effects associated with varying aspects of working within the building and construction industry, and continue to provide information that promotes awareness and limits exposure to health risks within the industry.

7.1.2 Safety Management Training

One of the key reasons for non-compliance identified by the Taskforce was the lack of understanding among obligation holders in relation to their health and safety obligations. There are a number of reasons that contribute to this general lack of understanding. Foremost is the complexity of the health and safety obligations and information already discussed. The second reason concerns the lack of formal mandatory training for every obligation holder. Apprenticeships, traineeships, general inductions, and Workplace Health and Safety Officers courses all provide avenues to health and safety training, but no extensive training is exclusively provided for principal contractors, employers, subcontractors, self-employed persons, project managers, supervisors, foreman (sic) or other parties in control of the workplace.

The Building Services Authority (BSA) retains a management qualification as part of the BSA licensing criteria. Section 3(1) of the *Queensland Building Services Authority Regulation 1992* currently defines a 'approved managerial qualification' that reflects particular courses or specified subjects offered by the QMBA, HIA or TAFE. The health and safety component within these courses is approximately two hours in duration. Given the need to lift the whole approach to managing health and safety risk and the industry's health and safety performance it seems an opportune time to review the current course content and provide more safety management modules within this framework.

Recommendations

R7.2 That a review of the current 'approved managerial qualification' that is currently used as part of the licensing criteria for new entrants be undertaken by key industry stakeholders within the next 12 months with a view to substantially increasing the health and safety component of the course.

R7.3 That all new entrants be required to complete the re-vamped course within 2 years of the course being approved, with existing licence holders being required to complete the re-vamped health and safety module only as part of the re-certification process as required.

R7.4 That consideration be given to ensuring that other parties 'in control of the workplace' not covered by the recommendations outlined above, receive identical safety management training and qualifications prior to commencing work in that capacity.

7.1.3 Information Products

The proliferation of health and safety information products has brought both positive and negative reactions from the industry. On the one hand information products provide greater explanation. Conversely however, much of the material has been long, complex and extremely difficult to understand.

While the rationale of producing information that covers every angle is understandable, it fails to appreciate the crying need for the industry to be told exactly what it needs to do to comply. The building and construction industry needs specific hazard-based information that is clear and concise with specific references stating exactly what is required in order to comply with obligations. The industry needs diagrams illustrating typical hazards and identifying practical control options. Failure to deliver information products that best suit the needs of the industry is not a

major criticism, but more a reflection of the lack of input provided by industry partners in developing current material.

Recommendation
R7.5 That all future information products and materials designed for the building and construction industry be prepared in close association with the main industry partners ensuring the suitability, readability and broad-based acceptance of the material by the target audience.

7.1.4 Industry Seminars

The promotion of new legislative changes and advisory standards through industry seminars has been widely accepted as a legitimate method of communicating important health and safety information to industry. Inspectors reported widespread support throughout Queensland, provided the information and material was directly designed for the building and construction industry. Industry seminars with a specific purpose, such as telling the stakeholders about new legislative changes will be well supported and fulfils a dual purpose of informing obligation holders and lifting the profile of the Division of Workplace Health and Safety.

Recommendation
R7.6 That the Division of Workplace Health and Safety continue to promote legislative changes and other vital health and safety material through specific building and construction industry seminars.

7.1.5 Vocational Education and Training

The vast majority of responses to the issues papers were totally supportive of the inclusion of rigorous and appropriate health and safety information and training within the vocational education framework. Formal health and safety training and competency-based assessment for apprentices and trainees is strongly supported by the Taskforce. However there is some concern in relation to the quality of the health and safety modules that are currently being offered and delivered.

Recommendation
R7.7 That the Division of Workplace Health and Safety monitor and support the development of appropriate health and safety material for the inclusion within the vocational education framework of the building and construction industry.

7.1.6 Accredited Provider Training

A number of submissions were critical of the apparent ease with which persons can be appointed by the chief executive of the Division of Workplace Health and Safety as an 'accredited provider' under sections 177-182 of the Act. The criticisms focussed mainly on the lack of quality control over accredited providers who issue licences for 'prescribed occupations' listed in Schedule 5 of the Regulations. General assertions related to the ease in which 'some' accredited providers issued licences and the perceived failure of the competency based assessment to really ensure fully trained operators.

While the issue of licences is extremely important to the industry and the quality of training and assessing people for doggers tickets, crane drivers and riggers etc impacts directly upon the health and safety performance of the industry, there was no direct evidence presented to the Taskforce. The chief executive does have power to

revoke an accredited providers appointment (section 182) and any industry party with evidence of non-compliance should report the matter to the Division of Workplace Health and Safety for investigation.

Recommendation
R7.8 That the Division of Workplace Health and Safety continue to monitor and investigate any complaints regarding the performance of accredited providers to ensure their compliance with the standards determined.

7.1.7 Public Relations Strategy

The development and promotion of relevant health and safety material and information has been of concern to the building and construction industry for some time. The industry has considered a number of promotional strategies with mixed success, with the real issue being finding a balance across a broad range of mediums that reflect the differing needs of the three sectors. Information must be in a simple form that is easily read and understood. The material must be easily accessible, cost effective and promoted through all of the mainstream information networks that service the building and construction industry. Particular attention should be given to promoting material in the BSA quarterly publication that is sent to all licenced industry operators. The industry has clearly demonstrated a willingness in wanting to obtain any relevant information concerning health and safety, but it must be provided in such a way that is acceptable to the industry.

Recommendation
R7.9 That the Division of Workplace Health and Safety liaise closely with the main industry partners before deciding upon the appropriate public relations strategy that should be adopted for the particular sector of the industry that is being targeted.

7.2 Consultative Provisions

Issue
The reliance on consultative provisions to identify and assess hazards, introduce appropriate control measures, and monitor and evaluate there effectiveness is pivotal to the whole philosophy behind the Robens-style regulatory framework. At any level of understanding it is quite logical that the only effective long term solution to providing healthy and safe workplaces rests with the ability of individual workplaces to raise and resolve health and safety issues within a spirit of legitimacy, cooperation and goodwill. The Taskforce is committed to improving the consultative provisions that assist this process.

There are a number of issues and assumptions that underlie a commitment to the consultative process. The most fundamental assumption is that workers:

- are most likely to know the hazards associated with their work
- are most likely to be exposed to the risk and suffer illness or injury and therefore show more interest in their own protection
- have a right to information about hazards that are likely to effect them
- have a right to be consulted over changes that will effect their exposure to risk
- can provide an active role in improving occupational health and safety performance if given the opportunity

While the Act currently prescribes for the appointment of Workplace Health and Safety Officers, Workplace Health and Safety Representatives and Workplace Health

and Safety Committees long specified terms, it was apparent to the Taskforce that a number of issues prevent these provisions from having optimal impact. The roles and functions as currently stated and the interpretation applied by the industry appear to be lessoning the effectiveness of these provisions.

7.2.1 Workplace Health and Safety Representatives

The Taskforce considered a range of submissions that focussed on the purpose, role, functions and duties associated with being an elected safety representative. While the Act currently provides for a number of functions associated within the role, the union submissions were critical of the lack of specific powers to be able to fulfil these functions effectively. The submissions focussed on extending the role and function of Workplace Health and Safety Representatives to include a more proactive role in the risk management process on site. The submissions identified provisions from other states (refer specifically to the Commonwealth jurisdiction, Victoria and South Australia) where the Workplace Health and Safety Representatives held broader functions that included such things as the issuing of 'provisional improvement notices' and 'stop work' notices in the event of imminent risk.

While it is true to say that other jurisdictions make specific provision for broader functions than the Queensland Act, it is also fair to say that various constraints and conditions are also applicable within those jurisdictions. The power to issue notices or to contact inspectors are within set certain constraints and only after other consultative processes have proven to be unsuccessful in resolving the matters in the first instance. The power to review the status of the Workplace Health and Safety Representative and to either suspend or terminate the role are also provided in the event of any misuse or poor performance in this role.

While there was no agreement on the unilateral extension of the safety representatives powers, there was agreement that any extension of the role would need to accompany some limits and a process for review in the event of any performance issues. The lack of any formal accredited training for safety representatives was identified as a key impediment in allowing the safety representative to understand and act effectively in the role. The issue of age or at least a minimum period of time spent working in the industry was also identified as important issues in optimising the performance of the Workplace Health and Safety Representative. The Taskforce supports the adoption of a formal accredited training course and for a minimum period of service within the industry for safety representatives. The Taskforce acknowledges the cost and inconvenience caused by compulsory training provisions, but equally recognises that the role, functions and responsibilities will not be effectively implemented without formal accredited training.

The issue of extending the role and function of the Workplace Health and Safety Representative may well prove to be problematic. One of the difficulties with any extension of the Workplace Health and Safety Representative's role is whether such additional duties will attract additional liability and exposure to litigation. Certain parties felt that the role is hard enough to fill now and that any further responsibilities will only make it harder to recruit people willing to fill this role. While the Act currently protects certain classifications of people from civil liability the extension of this role may expose the very people the Act is trying to protect. This issue will require special legal advice before additional entitlements are conferred.

The greatest difficulty in recommending changes to these provisions is the likely flow-on impact to all workplaces within Queensland. At least one industry party has stated that the issue is beyond the terms of reference of the Taskforce because of

the likely ramifications for workplaces beyond the building and construction industry. The Workplace Health and Safety Board has currently requested a report on the role and powers of safety representatives and will pursue the matter on behalf of all industries. This initiative is supported by the Taskforce as an appropriate way to broaden the debate and allow widespread consultation across all major industries.

Recommendation
R7.10 That formal accredited training be provided to enable elected Workplace Health and Safety Representatives to be more effective in understanding their role and performing their functions. Provisions regarding a minimum age (21) with at least 2 years experience of working in the industry be considered as additional criteria prior to the accreditation and appointment as a Workplace Health and Safety Representative.

7.2.2 Workplace Health and Safety Officers

The union submissions were critical of section 94 (3) of the Act that enables the Principal Contractor to effectively appoint themselves as the principal contractor and Workplace Health and Safety Officer. The submissions identified what they perceive to be a clear conflict of interest within the two roles, making it impossible to effectively give the appropriate amount of attention to the role of Workplace Health and Safety Officer. Submissions specifically identified a major issue when 'the person in control of the site' eg. project manager, site foreman, site supervisor is also nominated by the principal contractor to take on the role of Workplace Health and Safety Officer. While there was no agreement on this specific aspect of the Workplace Health and Safety Officer's role there was agreement that the issue of 'performance' of the Workplace Health and Safety Officer was the critical issue at hand.

The current functions as stated in the Act were criticised as being ambiguous and ineffective in a number of crucial areas. Provisions outline the functions in broad terms, but do not identify how those functions ought be carried out or the mechanisms by which performance can be assessed. While it seems reasonably clear that the focus of the role is on the reporting of hazards and safety issues to management, there is little formal process for when and how such reporting shall occur. The role 'to report' safety matters was deemed appropriate by the Taskforce, but the process of actually carrying out this function requires more attention.

Another issue regarding Workplace Health and Safety Officers is the lack of formal obligations to keep records of inspections or recommendations made to the principal contractor in relation to health and safety matters on site. The failure to have any clear obligation to report matters on a regular and systematic basis (or on a prescribed form) for inspection by others is a weakness identified by the Taskforce. The Taskforce supports the current role of the Workplace Health and Safety Officer reporting all safety matters to the principal contractor for action, but acknowledges that a more transparent and accountable process would ensure more effective outcomes. Such records could be in the form of a daily site diary for major projects or weekly inspection reports for smaller or less hazardous projects.

The issue of ensuring greater accountability and more effective performance in the role of Workplace Health and Safety Officer also requires some form of sanction in the event of non-performance. While the role can be onerous from time to time the primary function should be to report issues of concern to management for further scrutiny and attention. Construction workplaces need to provide clear avenues for health and safety issues to be raised and resolved in a spirit of cooperation and

goodwill. An effective Workplace Health and Safety Officer has the potential to raise compliance and provide healthier and safer workplaces. Greater accountability and clearer processes for dealing with non-performance of the Workplace Health and Safety Officer were generally supported by the Taskforce. Processes for reporting non-performance issues and the application of appropriate sanctions in the form of suspension or revocation of their accredited status were also supported.

Workplace Health and Safety Officers – Domestic Construction

The Act currently prescribes for organisations that build more than 30 domestic houses in a year to appoint a Workplace Health and Safety Officer. This provision applies approximately to the 100 biggest house builders in the state. Current Workplace Health and Safety Officer provisions seem to have been written for the civil and commercial sectors of the industry with little thought given to the practical application of this role within the domestic sector. In practical terms the person most likely to fulfil this role is the site supervisors who may visit or be responsible for supervising up to 20 domestic premises at once. The supervisors may only average a few hours supervision per week on each site and most of their time is spent in ensuring subcontractors are progressing satisfactorily with each project. The role and function of Workplace Health and Safety Officer, which relies heavily on reporting and recording health and safety issues to the principal contractor, seems a little misplaced within the domestic context. The critical issue for the Taskforce was to determine the effectiveness of the current provisions in relation to the Workplace Health and Safety Officer in the domestic sector, or whether there are other ways of minimising exposure to the risk of injury or illness.

While the Taskforce is fully supportive of people 'in control of the workplace' receiving some form of health and safety management training (see recommendation 7.4) it does not believe that the current Workplace Health and Safety Officer provisions for only a portion of the domestic sector is the most effective way of delivering such an outcome. Significant doubts were cast over whether the eight day Workplace Health and Safety Officer training course was the most appropriate form of training for this sector of the industry. Strong views were held that the domestic sector could be completely excused from having to engage a Workplace Health and Safety Officer at all provided a requirement for anyone 'in control of the workplace' be implemented that ensures some form of health and safety management training is received prior to the commencement of such a role.

Recommendation

R7.11 That the Construction Industry Sector Standing Committee investigate the feasibility of inserting an exemption for the domestic sector from the Workplace Health and Safety Officer provisions provided some other form of health and safety management training can be introduced for anyone 'in control of the workplace' that represents the principal contractor.

R7.12 That section 96 be amended to incorporate strict provisions on the formal recording of inspection reports including the format, issues raised, and time periods between inspections, in a regular and systematic basis. Such recorded information should include follow-up action statements and resolution of outcomes that could be made available to the Workplace Health and Safety Committee, Division of Workplace Health and Safety Inspectors and others by agreement. The Taskforce also supports the inclusion of a minimum qualifying period of service within the industry (no less than 4 years) before certification as a Workplace Health and Safety Officer is approved.

R7.13 That the review of the Workplace Health and Safety Officer qualification be consistent with the review procedures for prescribed occupations specified in the *Workplace Health and Safety Regulation 1997*, sections 26 to 29. That the Chief Executive exercise the power to suspend or terminate the Workplace Health and Safety certificate provided any one of the following is established on the basis of probability:

(i) the WHSO has repeatedly neglected his/her duties
(ii) the WHSO has exercised powers in an improper way
(iii) the WHSO has disclosed information for an improper purpose

The notice of suspension or termination should be final and binding and not subject to an appeal process.

7.2.3 Workplace Health and Safety Committees

The effectiveness of the current provisions and structure of Workplace Health and Safety Committees within the building and construction industry were discussed extensively by the Taskforce. The union submissions were critical of the current custom and practice of 'loading' safety committees with employer representatives from the major subcontractors, without due regard and attention to the current legislative provision relating to safety committees with equal numbers of employer and employee representatives. Other areas of concern related to the overall lack of accountability, ambiguous role and failure to adequately prescribe prescriptive outcomes under the current legislation. Committee details including names of members, frequency of meetings, tabling of inspection reports, methods of recording and publicising minutes, development of action plans and the responsibility for follow-up (within agreed timelines) are all issues that create ambiguity and diminish the effectiveness of Workplace Health and Safety Committees.

Recommendation
R7.14 That a review of the functions of Workplace Health and Safety Committees as outlined in section 90 be undertaken with a view to clarifying specific roles and outcomes generated through the safety committee process.

7.2.4 Workers

Every state in Australia, except Queensland, maintains loosely what is termed 'worker anti-victimisation' provisions. While the wording varies on a state by state basis, the intent is universal - everyone should have the right to raise health and safety concerns with those people who are responsible for providing healthy and safe workplaces and activities without fear of retribution or victimisation in any form. The recommendation outlined in Appendix E is a hybrid version that draws from the best provisions of other states and covers the major issues identified across the Australian jurisdictions.

Recommendation
R7.15 That worker anti-victimisation provisions be inserted into the Workplace Health and Safety Act to provide statutory protection for workers who raise health and safety concerns with those responsible for ensuring healthy and safe workplaces.

7.2.5 Protocols

This issue concerns the way in which health and safety issues are raised with the inspectorate and the form of response that could be reasonably expected to follow from such an approach. Representatives of employee and employer associations have argued that their organisations should receive special consideration from the

inspectorate when genuine health and safety issues are raised. Trade union representatives were particularly critical of instances where genuine matters of concern had appeared to have been ignored or merely placed in a que to be determined in due course. While it may seem inappropriate for the inspectorate to drop everything and be at the beck and call of employer associations or trade unions, there does seem to be a need for protocols of contact and resolution of safety issues between the major parties to be established. The inspectorate have a number of stakeholders and workload priorities that make it impossible to always be available when the industry demands. Support for greater cooperation and closer links between the industry parties and the inspectorate was supported by the Taskforce.

Recommendation
R7.16 That a workshop, with key representatives of employee and employer associations and the inspectorate be facilitated to develop a set of workable protocols for the raising and resolution of health and safety issues. Such an agreement should include but not be limited to the following: a process for reporting safety issues that involve imminent risk to people and property, emergency contact procedures, inspection arrangements, timelines for a response and outcomes that satisfy respective interests.

7.3 Monitoring Safety Performance

Issue
One of the key aspects in providing an incentive for obligation holders to comply is to enable a process where penalties will be imposed on obligation holders with a poor performance health and safety record. Obviously, poor health and safety performance can only be penalised is if a system can be introduced that actually monitors safety performance.

7.3.1 Industry Database

The purpose of this recommendation is to provide a database that records the safety performance of licenced obligation holders under the Act. The first step entails the gathering of details of all principal contractors, trade contractors and self-employed licence holders that operate within the industry. The Building Services Authority database has been identified as an important starting point for establishing such a database.

Once a database is secured a number of other sources of information, such as WorkCover data, could be fed into the system as employer claims experience may provide additional information regarding accidents, injury and illness at work. The database should be utilised to record any notices (improvement, prohibition, infringement) and prosecutions incurred by the obligation holder. Issues of access and confidentiality of information stored in the database have not been considered at this point in time, but will need further consideration sometime down the track. Releasing information to external parties such as the Department of Public Works, trade unions, employer associations or other interested parties will also need to be discussed after the data base has been established.

Recommendation
R7.17 That the Division of Workplace Health and Safety explore ways of upgrading its database that links Building Services Authority licence information with obligation holders under the *Workplace Health and Safety Act 1995*. The Division of Workplace Health and Safety explore and develop further links to determine whether WorkCover

data can be included within the upgraded database. Protocols regarding access to the information and special training of the inspectorate to ensure Building Services Authority licensing information is properly recorded on any notices issued must also be implemented.

7.3.2 Building Services Authority - Licensing Criteria

While the establishment of a broad based data base (as outlined above) that records health and safety performance of obligation holders within the industry is a positive start in monitoring safety performance, the real issue is how the industry wishes to use this information for the purpose of improving safety compliance. There are a number of ways in which the details of an obligation holders health and safety performance record could be used. Potential clients wishing to utilise the obligation holder's services may wish to check on the safety record prior to the letting of contract. Principal contractors may find a database useful to check the safety records of subcontractors they may be about to engage. Government departments may wish to use the data base as part of a pre-qualification or contract letting process and the inspectors may want to glean the history of an obligation holder in assessing whether the obligation holder is a first time offender or otherwise. The information collated has the potential to win praise or acrimony depending on the record itself. Penalties for poor performance are another way of providing positive incentives for obligation holders to endeavour to comply with their obligations and so protect their own safety performance records

Another incentive to have a positive health and safety record may lie in penalties for poor performance relating directly to their own Building Services Authority licensing criteria. Linking the obligation holder's safety performance record to the continuation of their licence has not been adequately developed by the Taskforce. The union submissions supported a demerit system where points are gathered depending on the number and type of notices issued by the Inspectorate. Issues of suspensions and revocation of licences depending on the safety performance record were identified as ways of providing genuine incentives for obligation holders to lift their compliance. The employer submissions were far more circumspect in their thinking. Critical threshold issues, including the scope and legitimacy of linking health and safety performance to licensing criteria, were raised in the first instance. The Building Services Authority legislation is primarily 'consumer based' legislation and may fall outside the scope of the whole question at hand. The notion of a safety demerit system that applies a penalty system based on a range of safety indicators needs a great deal of further investigation and analysis.

Recommendation
R7.18 That the issue of designing a health and safety demerit system be investigated with a view to linking health and safety performance as a criteria for certification and deregistration.

7.3.3 WH&S Pre-qualification Criteria for Government Projects

While the Robens philosophy has been severely criticised in relation to its application to the building and construction industry, one positive feature has been in relation to providing an avenue for creativity and innovation in the management of risks, within the workplaces of willing parties. The focus and development of safety management systems by some of the larger organisations in particular have deservedly received praise and recognition for some outstanding contributions to the management of risk within the industry. The only long term solution that provides for effective risk

management lies with the development and implementation of appropriate safety management systems that are tailored to the needs of the industry and sectors within it. The design and adoption of a 'systems' approach to managing health and safety risk within the industry has the potential to generate sustained and meaningful change at all levels of the industry.

There are a number of well documented features of an effective safety management system which include:

- effective health and safety policies that set clear direction for the enterprise
- effective management structure and arrangements in place for delivering the policy
- planned and systematic approach to the implementation of health and safety policy through an effective health and safety management system which includes the use of systematic risk assessment to set priorities for eliminating hazards and reducing risks
- measurement of performance against agreed standards
- systematic review of performance based on data from monitoring and independent auditing of the whole health and safety management (HSE, 1997)

The Taskforce identified the competitive nature of the industry and the failure to have a level playing field as critical issues in the search for greater compliance. Many submissions insisted that if there was a choice of allowing for reasonable safety and losing the tender, then the commercial pressure to survive would be too great and that adequate provisions for safety may well be compromised. A possible remedy that has the potential for focusing attention on a 'systems' safety management approach and provide a more level playing field (at least at the tender stage) is the design and implementation of workplace health and safety pre-qualification and monitoring criteria for government projects. The notion of specifying particular health and safety criteria prior to being awarded the contract, and upon which an assessment of safety performance will be judged, has the potential to take out much of the guess work relating to safety provisions within the project. If the client clearly specifies what is required in relation to the management of health and safety on site then there can be little argument in relation to compliance with those provisions after the project has been awarded.

The Department of Public Works are currently reviewing the current pre-qualification criteria that has been in operation approximately 18-months. While there is a small component dealing with health and safety matters at present, the timing of this review presents an ideal opportunity for the Taskforce and industry to develop more appropriate criteria that will improve compliance on site. The Taskforce supports a two stage process where tendering firms be required to submit their 'Corporate Safety Management Systems' as the first stage in being allowed to tender for government work; and a second stage where the winning tenderer submits a health and safety plan and management system in line with their corporate system, but specific to the project.

The Division of Workplace Health and Safety in conjunction with industry parties can stipulate the criteria and assess the suitability of each safety management system prior to registration as a government tenderer. The second stage requires an external audit process that assesses and reports to the client on the performance of the principal contractor against previously agreed audit criteria at times specified and determined in the contract.

A number of general principles were supported by the Taskforce and include:

- tender threshold limit for projects in excess of $250 000
- the Division of Workplace Health and Safety, in conjunction with key industry parties, setting the health and safety criteria for corporate safety management systems, project safety management systems and audit criteria upon which the external audit assessments will be based
- pre-qualification at the tendering stage where contractors need to supply information regarding their own corporate health and safety management system in order to pre-qualify. Such a system will specify criteria and include a project safety management system (PSMS)
- tender documents that specify the number and scope of external audits and the criteria that will be applied to the project (e.g. in the first instance it was agreed that audits should be allocated on the basis of 16-week periods as specified in the contract period clause)
- costs of the external audits be allocated within the overall project cost budget and absorbed by the Department of Public Works or the appropriate agency
- the selected tenderer providing a PSMS plan within a specified time period upon commencement of the work
- the DWH&S will accredit external auditors to conduct PSMS audits against specified criteria previously determined
- a contract review panel will review the health and safety performance of the principal contractor against the CSMS and PSMS and recommend the implementation of a pyramid of sanctions that may include but not limited to:
    - show cause notice to the Chief Executive Officer for an explanation regarding workplace health and safety performance
    - special conditions for future tendering considerations
    - probation periods to demonstrate improved workplace health and safety performance
    - limitations on projects for tender
    - suspension off tender lists for specified time period
    - cancellation of pre-qualification status ensuring that the contractor reapply for pre-qualification through the submission of a new CSMS

Recommendation
R7.19 That the Department Public Works introduces effective wworkplace health and safety criteria into the pre-qualification tendering process and the monitoring of on-site performance of principal contractors on government projects. The guidelines and criteria shall be developed collaboratively with the Division of Workplace Health and Safety**,** Queensland Master Builders' Association, Construction, Forestry, Mining and Energy Union and other interested industry parties for implementation as soon as practicable.

7.4 Industry Strategies

The role of employer associations in relation to health and safety has changed dramatically over the last ten years. The introduction of Robens legislation was particularly confusing for employers and employer associations in the building and construction industry. The new Act meant that many issues required interpretation and as a result a number of key information products were developed. Employer associations and trade unions also became directly involved in the design and

delivery of training courses. This key role has expanded and will continue to be of major assistance to the industry. Employer associations and trade unions have also assisted the Construction Industry Sector Standing Committee through the provision of suitable members, expert advice and key resources to assist in the implementation of certain strategies. This contribution has often come at considerable cost to organisations with extremely limited resources and cannot be assumed to continue forever.

Trade unions have encountered similar experiences and unions have played a crucial role in promoting appropriate health and safety information across a range of mediums to their members. Trade unions have played a pivotal role in the design and delivery of training courses for workers within the industry. While the role of trade unions in enforcement may be questioned there can be no doubt that health and safety problems are reported to trade unions on a daily basis. The relationship and levels of cooperation between union officials and the inspectorate is of concern and has been addressed in section 7.2.5.

Both employer associations and trade unions have raised concerns relating to the suitability and practicability of much of the information material produced by the Division of Workplace Health and Safety (see also section 7.1.3). It is imperative that all industry parties work more closely in producing material that suits the needs of the industry.

Recommendation

R7.20 That the Division acknowledge and support the valuable contribution employer associations and trade unions make in the design and promotion of appropriate health and safety information and training by consulting and offering greater opportunities for collaborative efforts in relation to these issues.

R7.21 That a formal consultation process be introduced with employer associations and trade unions to ensure any material or information products produced for the building and construction industry are suitable for the needs of the constituents.

8 Implementation Strategy

The Taskforce was united in its resolve to design and recommend an implementation strategy that would maximise the chances of each recommendation being considered on its merits and receiving due attention. The terms of reference were deliberately couched in broad terms to enable a wide spectrum of ideas and possible solutions that will lift compliance levels within the industry. The difficulty of such a wide ranging review is knowing when to stop and make incremental recommendations that will work in practice and make a difference on the ground where people get killed and injured every day. The Taskforce was particularly cognisant of the waste of producing a report that for many reasons could not or would not be implemented in accordance with the understanding and beliefs of the original parties.

A broad a range of issues were examined in an effort to improving health and safety outcomes for the industry and many parties have the potential to play a role in the implementation stage of the review. These potentially include: Division of Workplace Health and Safety officers working in policy, construction, legal unit and other specialist inspectors (heavy engineering and special plant); the Health Unit; Office of the Parliamentary Draftsperson; Construction Industry Sector Standing Committee; the Workplace Health and Safety Board; industry representatives; trade unions and other interested parties who may be recruited to assist specific lines of inquiry. When confronted with this reality the Taskforce supported the formation of a small subgroup of the Taskforce that could take on the task of overseeing and coordinating the implementation stage of the review after the Minister has provided the Government's view on the recommendations.

The Taskforce fully supports the formation of a small implementation review team consisting of Mr Greg Quinn (QMBA), Mr Wallace Trohear (CFMEU) and Mr Rob Seljak (DWH&S) with a named project officer or two, to act exclusively for the implementation review team. The role of the Chair was not discussed in any detail and does not form part of these recommendations. The initial work of the review team is to identify a process of how progressive steps can be taken to implement the recommendations in accordance with the report. While the Minister has the complete and final say on the status of any or all of the recommendations, the nature of the report has created a cooperative industry approach with a positive framework through which the issues can be worked through and resolved.

Recommendation

R8.1 That an implementation review team with representatives from employers, employees and government be appointed to oversee and coordinate the development and implementation of the recommendations in line with government policy. That sufficient resources be provided to facilitate the implementation process in an efficient, practical and timely manner.

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Occupational Health and Safety Amendment (Sentencing Guidelines) Bill 2000
Portable Long Service Leave Act 1991
Queensland Building Services Authority Act 1991
Queensland Building Services Authority Regulations 1992
WorkCover Queensland Act 1996
Workplace Health and Safety Act 1995 (Qld)
Workplace Health and Safety Regulation 1997 (Qld)
Workplace Health and Safety (Miscellaneous) Regulation 1995 (Qld)

APPENDICES

APPENDIX A

Newspaper Advertisements

A public notice promoting the Issues Papers and calling for submissions appeared in the following newspapers on Wednesday 12 April:

The Courier Mail
Mackay Daily Mercury
Cairns Post
Townsville Bulletin
The Queensland Times
Gold Coast Bulletin
The Fraser Coast Chronicle
The North West Star
Gladstone Observer
Bundaberg News Mail
Sunshine Coast Daily
Toowoomba Chronicle

APPENDIX B

Schedule of Persons and Organisations Who Made Written Submission to the Taskforce

Anonymous
Anonymous – Australian Workers' Union member
Queensland Workers' Health Centre
Aussie Cranes Pty Ltd
Electrical Trade Union
Queensland Council of Unions
Construction Managers and Contractors
Construction Training Queensland
Air Conditioning and Mechanical Contractors Association of Queensland
Builders Labourers' Federation Union of Employees – Queensland Branch
Construction, Forestry, Mining and Energy Union
Construction Training Centre
Communications, Electrical and Plumbing Union – Plumbing Division
Greg Tudehope
Civil Contractors Federation
Australian Workers Union
Building Services Authority
Frank O' Brien
Dennis Ryan
Seymour White
Watpac
Australian Industry Group
Queensland Master Builders' Association
Main Roads
Housing Industry Association
Workcover Queensland
National Electrical and Communications Association
Metal Roofers Industry Association of Queensland
Construction Queensland

APPENDIX C

Details of Workers' Compensation Claims Financial Years 1996/97 to 1998/99[11]

Table 1. Compensated Fatalities and Injuries for ANZSIC Division E Construction for the Financial Years 1996/97 –1998/99

Mechanism Description	1996/97	1997/98	1998/99
Bitten by animal	5	4	2
Hit by person	3	1	8
Hit by animal	3	2	1
Hit by falling object	132	134	98
Hit my moving object	315	315	307
Trapped between stationary and moving agents	60	70	95
Trapped by moving machinery	3	3	6
Contact with electricity	4	5	4
Contact with hot objects	18	19	22
Contact or exposure to biological factors	1	1	3
Environmental heat	1	1	4
Mechanical vibration	2	0	3
Mental stress factors	6	10	4
Non-ionising radiation	12	14	24
Single, sudden sound	1	0	0
Falls from height	161	154	147
Falls on same level	434	414	412
Hit moving objects	437	330	274
Hit stationary objects	153	144	115
Insect, spider bites and stings	16	16	12
Long term chemical contact	7	7	8
Long term sound exposure	144	164	95

[11] Source: Unpublished Qstats data. Data covers all statutory on duty, including vehicle crash and medical expenses only claim. The data excludes commuting, recess and common law claims.

Muscular stress other than lifting, carrying or putting down	505	466	345
Muscular stress while lifting/carrying/putting down	472	412	347
Muscular stress with no objects	104	119	92
Other and Multiple Mechanisms	39	74	46
Other or Unspecified contact with chemical	4	3	2
Repetitive movement	0	0	0
Variation on pressure	1	0	0
Rubbing and chaffing	1	2	3
Single contact with chemical	9	15	13
Slide or cave in	1	3	0
Stepping, kneeling or sitting on object	21	14	14
Unspecifed	185	190	183
Vehicle accident	80	77	73
TOTAL	**3340**	**3183**	**2762**

Table 2. Compensated Fatalities and Injuries for ANZSIC Division E Construction for the Financial Years 1996/97 –1998/99 Main Mechanisms of Injury as a Percentage of Total Financial Year Claims

Main Mechanisms of Injury	**1996/97**	**1997/98**	**1998/99**
Falling objects	4.0%	4.2%	3.5%
Moving objects	9.4%	9.9%	11.1%
Trapped between stationary and moving agents	1.8%	2.2%	3.4%
Contact with electricity	0.1%	0.2%	0.1%
Falls from height	4.8%	4.8%	5.3%
Falls from same level	13.0%	13.0%	14.9%
Hitting moving objects	13.1%	10.4%	9.9%
Hitting stationary objects	4.6%	4.5%	4.2%
Long term sound exposure	4.3%	5.2%	3.4%
Muscular stress other than lifting, carrying or putting down	15.1%	14.6%	12.5%
Muscular stress lift/carry/put down	14.1%	12.9%	12.6%
Muscular stress no object	3.1%	3.7%	3.3%
Vehicle accidents	2.4%	2.4%	2.6%
Total percentage muscular stress injuries	32.4%	31.3%	28.4%
Total percentage falls injuries	17.8%	17.8%	20.2%
Total percentage being hit or hit by moving/falling objects/agents injuries	32.8%	31.2%	32.2%

APPENDIX D

FORM 3

V3.2.98

QUEENSLAND GOVERNMENT

INCIDENT RECORD/REPORT

WORKPLACE HEALTH AND SAFETY ACT 1995

Type of incident:
☐ work injury ☐ serious bodily injury ☐ work caused illness ☐ dangerous event
Notify Workplace Health and Safety ☐ Yes ☐ No
Was injury/illness fatal? ☐ Yes ☐ No

Details of injured person

Given names		Surname	
Residential Address		D.O.B	
			☐ Male ☐ Female

Basis of employment				**Type of employment**			
Full time	☐	Part time	☐	Occupation			
Casual	☐	Volunteer	☐	Administration	☐	Tradesperson ☐	Apprentice/trainee ☐
Member of public	☐	Other	☐	Technical	☐	Professional ☐	Student ☐
Self-employed	☐			Other	☐		

Nature of work injury or work caused illness, eg. Fracture, sprain & strain, burns etc

Bodily location of injury or work caused illness

Medical treatment nil ☐ first aid ☐ doctor only ☐

Hospital admitted to: (if overnight)

Mechanism of injury/disease

Falls, trips and slips	☐	Sound and pressure	☐	Biological factors	☐
Hitting objects with part of body	☐	Body stressing	☐	Mental stress	☐
Heat radiation and electricity	☐	Chemicals and other substance	☐	Other and unspecified mechanisms of injury	☐

Agency of injury/disease

Machinery and (mainly) fixed plant	☐	Mobile plant and transport	☐	Animal, human and biological agencies	☐
Powered equipment, tools and appliances	☐	Non-powered handtools, appliances and equipment	☐	Environmental agencies	☐
Chemicals and chemical products	☐	Materials and substances	☐	Other and unspecified agencies	☐

Details of how incident occurred

Day Month Year Time of incident: ☐☐☐☐ am/pm

Description of incident (Attach report)

Name of employer/ principal contractor			
Address of employer/principal contractor		**Location address of workplace where incident occurred**	
Name of W.H.S.O And phone No. (if any)			Phone ( )

Employer/Principal Contractor Signature

Day Month Year

OFFICE USE ONLY

District Reference ☐☐☐☐☐☐☐☐☐	Action
Plant No. ☐☐☐☐☐☐☐☐☐	
Date: Day Month Year	
Workplace/Construction Workplace No. ☐☐☐☐☐☐☐	

APPENDIX E

Proposals to Assist Recommendations

Section 5.1 Workplace Health and Safety Act 1995

"Building and construction work" *means*

(a) building work
(b) civil construction work
(c) demolition work

"Building work" means

(a) work to erect, construct, *alter, repair, maintain, paint, or renew* a building or part of a building or;
(b) the provision of lighting, heating, ventilation, or air-conditioning within a building or other structure
(c) demolish or dismantle systematically a building or other structure, or part of a building or other structure for the purposes of alteration, maintenance, remodeling or repair;
(d) or any other type of activity considered as building or construction

"Construction workplace" means a workplace where

(a) demolition work is performed or
(b) building and/or civil construction work is performed and the contract sum between the principal contractor and owners exceeds $40000

Obligations of Principal Contractors, Employers, Self-Employed Persons and Others

Common Plant (terms in bold may need to be further defined)
The principal contractor must not allow registerable plant to be used on a construction workplace unless the plant is registered.

The principal contractor must maintain any **common plant and equipment**, provided by or on behalf of the principal contractor in a safe and serviceable condition.

The principal contractor must retain copies of the **common plant and equipment** maintenance records on site.

Common Plant and Equipment includes, but not limited to:

i. those items of plant and equipment that have been identified in the workplan that the principal contractor will be providing in order to control risks and hazards at the construction workplace, and,
ii. power supply to final sub-circuits
iii. water and sewerage services for work processes and amenities
iv. waste receptacles
v. construction workplace amenities in regulation

Workplans **(in addition to existing and proposed regulations relating to workplans)**
The Principal Contractor must ensure there are **systems of work** in place to manage the risks and hazards identified in the workplan

An employer or self-employed person must follow the **systems of work** required by the workplan to manage a risk at a construction workplace.

Public Safety

The Principal Contractor must implement control measures and systems of work to prevent or minimise the exposure to risk of injury to members of the public from the construction workplace or activities at or near the construction workplace.

Control measures include but are not limited to the following:
(a) clearly defining site boundaries to prevent unauthorised access to the construction workplace. This can be achieved by:

i. erecting physical barriers such as fencing, and,
ii. erecting physical barriers to prevent falling objects falling outside the project boundaries eg hoardings, and,
iii. erection of signage that indicates the restricted nature of the site, and,

Work at Heights

The Principal Contractor must make sure there is a **system of work** in place to ensure no person can have an interrupted fall of (a) 3 metres at a single storey domestic residence; or (b) 2.4 metres for all other types of construction and building work when the workplan identified that the principal contractor would implement control measures to manage the risk of working at heights.

When a principal contractor is not required to, or, has not provided a system of work or implemented control measures to manage the risks associated with working at heights, an employer or self employed person must ensure there is a **system of work** in place so that the employer, the employer's workers or self employed person cannot have an interrupted fall of (a) 3 metres at a single storey domestic residence, or (b) 2.4 metres for all other types of construction and building work.

The **system of work** must either, be a physical barrier that prevents a person falling any distance or, a properly designed, installed and used fall arrest harness system.

A properly designed, installed and used fall arrest harness system must consider the following: loads on the structure, rescue procedures, height above the ground and other obstacles, placement of shock absorbers, choice of hardware, and training and supervision

Excavation, Trenching, Drilling, Boring

The Principal Contractor must identify and mark the location on the site all **underground services** and their exclusion zones, before any excavation, trenching, drilling or boring work is commenced at a construction workplace.

The principal contractor must issue an **Authority to work in an exclusion zone** before any excavation, trenching, drilling or boring work occurs in the exclusion zone. The **Authority** must state the exact location and depth of the underground service, the status of the service (live or not live) and any restrictions or special requirements (systems of work) to be adhered to during the excavation, trenching, drilling or boring work.

The Principal Contractor is to ensure a competent person performs all excavation, trenching, drilling or boring work at a construction workplace.

Should excavation, trenching, drilling or boring work be required to be undertaken at a workplace other than a construction workplace, the employer or self-employed person must identify the location of all underground services before excavation, trenching, drilling or boring work commences, and, implement control measures to prevent or minimise exposure to the risk of illness or injury caused by uncontrolled contact with underground services at a workplaces.

The Employer or Self-Employer person carrying out excavation, trenching, drilling or boring work at any workplace must ensure that regardless of depth:

- excavation, trenching, drilling or boring work is not performed in the **exclusion zone** without an **authority** issued by the Principal Contractor, **and**,
- a safe means of access and egress is provided at all times while persons are required to be in the excavation or trench. Ladders (when required) must be spaced no greater than 9 metres apart, **and**,
- equipment, material and other matter must be located at a distance from the edge equivalent to the depth of the trench or excavation but no closer 600 mm from the edge (a **restricted zone**), **and**,

if the excavation or trench is greater than 1m in depth and there is a likelihood of a person or persons falling into the trench or excavation,

- a barricade, at least 900mm high and 1m from the edge, must be provided to every accessible part of the trench or excavation, **or**,
- the trench must be covered or back filled, **and**,

if the excavation or trench is 1.5 m or greater in depth and persons may be required to enter the excavation or trench,

- a competent person designs appropriate control measures that eliminates or minimises the exposure of risk of collapse, entrapment or suffocation, **and**
- the control measures designed are strictly adhered to.

underground services means, but is not limited to:

- underground electrical cables
- gas pipelines
- tanks
- water pipes
- sewerage lines and services
- stormwater lines and services
- telecommunication lines and services

Housekeeping

The Principal Contractor must ensure **good housekeeping practices** are implemented to minimise the risk of slips, trips, falls, and cuts on site.

The term **good housekeeping practices** shall be defined as the:

i. systematic collection and disposal of unwanted or waste materials
ii. provision and maintenance of clear and safe access ways without obstructions at all times throughout the duration of the project
iii. safe storage of materials, plant and equipment
iv. management of the risk of injury from protruding and/or sharp objects

The employer, self-employed and worker must ensure that their materials, plant and equipment are stored in a safe manner, and, any waste material produced by their

work activity is disposed of systematically so as not to obstruct clear access around the site

The employer, self-employed person and worker must ensure protrusions are covered, bent and/or removed to prevent a risk of injury to others on site

Ladders and Trestles

In this regulation the term 'ladder' means single ladders to 6m maximum, extension ladders to 7.5 m maximum, fixed ladders with landing platforms at 6m intervals and portable stepladders

An employer, self-employed person or worker may only us a ladder or trestle for temporary, limited activities but not as a work platform for building and construction work.

The principal contractor, employer or self-employed worker must ensure that any ladder or trestle used for any building and construction work:

i. is designed and constructed to have a load rating of greater than 120 kg, and,
ii. is maintained in good working order and free of defects, and,
iii. is fixed and footed to prevent movement in all directions, and,
iv. is used by one person at a time, and,
v. has manufacturers instructions for safe use, and,
vi. is extended 900mm above the point of access if the ladder is to be used as a temporary access way, and,
vii. is located in such a way to prevent them creating additional hazards to the user or others

The employer or self-employed person must not use or allow to be used by the employers workers, metal ladders or timber ladders with metal components where electrical work is to be performed

Section 7.2.4 Workers

A provision similar to that provided below should be included in the Act as a subsection to Section 184 (Protection from Liability – Others).

An employer must not dismiss a worker or act to the detriment of a worker in his or her engagement, or alter his or her position for the dominant or substantial reason that the worker has performed a function as a Workplace Health and Safety Representative, or elected safety committee member, or makes a complaint about a matter he or she considers exposes workers to the risk of illness or injury, or who contacts or gives assistance to an Workplace Health and Safety Inspector, or exercises any Workplace Health and Safety Representative function under the Act.

APPENDIX F

Summary of Consultation with Workplace Health and Safety (Construction) Inspectors, District Managers and Assistant Regional Directors

Period of Consultation: **Tuesday 11 April to Monday 17 April**

Where: Brisbane North (Lutwyche and Strathpine)
Brisbane South Coast (Mt Gravatt and Gold Coast)
Brisbane South West (Toowoomba and Ipswich)
Maryborough (Maryborough, Nambour and Bundaberg)
Rockhampton (Rockhampton, Gladstone, Mackay, and Emerald)
Townsville
Cairns

Who: 6 Assistant Regional Directors
14 District Managers
43 Construction Inspectors

Key Issues Raised

Issue 2.0 Legislative Framework

Self-Regulation

- Legislative framework and self-regulatory model is too complex for industry.
- Inspectors are often told "just tell me what to do and I'll do it. Inspectors, in general however, do not support returning to an extremely prescriptive model such as the Construction Safety Act.
- The vast majority of inspectors view notices as critical tools in achieving compliance.
- The self-regulation model has shifted the focus too far from principal contractors to self-employed persons.
- "The Act shifts risk and obligation to those least able to resource and understand it".

Workplace Health and Safety Act 1995

Inspectors identified problems with the following definitions and sections:

- Section 12 – 'self-employed person'.
- Section 13 – no instrument of 'appointment' for Principal Contractor. Owner/occupiers doing their own construction/demolition work are not covered.
- Section 14 – 'construction workplace/construction work', especially 'building work'
- Division 2 – no obligations for engineers, architects and designers of buildings
- Section 31(1)(a) – 'orderly conduct'
- Section 31(1)(d) – only a very few regulations prescribed for principal contractors, and they tend to be administrative in nature.
- Section 31 – inspectors described section 31 in general as "unenforceable".
- Section 32 – does not go far enough. That is the designer, manufacturer, importer or supplier of plant does not have an obligation to ensure safety equipment necessary for use is provided with plant
- Section 36(b) – workers only have to use personal protective equipment if 'properly' instructed in its use.
- Section 93 – a person can be the principal contractor or site supervisor and WHSO.
- Section 94(1) – why is the appointment threshold 30 persons at the construction workplace during any 24 hour period, when a industrial workplace is 30 people normally employed (but does not specify at the workplace at the same time).

- Section 94(4) – a principal contractor may, with the chief executive's written approval, appoint the WHSO for more than 1 construction workplace. Inspectors reported that several companies have WHSOs covering large geographical distances, which significantly challenges the WHSO's ability to perform their functions.
- Section 108(4) – 'reasonable excuse' and 'reasonable help'
- Section 108(5) – 'tend' to incriminate the person"
- Section 114(1) –seized items must be returned after 6 months, unless proceedings have started (which rarely happens in 6 months).
- Section 119 – if someone fails to comply with a prohibition notice the only recourse is an application to the Supreme Court and/or gathering of evidence for a prosecution.
- Section 120 – persons may fail to state their name and/or residential address if they have a 'reasonable excuse'.
- Section 148 – the review of an inspector's decision and appeals process should be strictly implemented.
- Section 175 – self-employed persons to be included with employers and workers as persons not to be influenced by a principal contractor.
- Schedule 3 – missing some key definitions such as "in control".

Workplace Health and Safety Regulation 1997

- Many of the problems experienced with regulations stem from the variety of interpretations, rather than 'poor' regulation.
- The contravention of any regulation should be a scheduled offence for which an infringement notice can be issued. This is especially important for high risk tasks such as work at height, electrical, trenching and major hazards.
- Part 3 – no age requirements for people working in prescribed occupations, such as earth moving plant operator.
- Part 7 – notification of serious bodily injury (protocols with Police, Ambulance and Fire Services)
- Section 10 – no requirement on registrable plant owners to obtain a certificate from a competent person stating plant is safe prior to registration.
- Section 47 – only notifiable if $80 000 or more. Reports of town house developments with each separate townhouse 'costing' $79 999.
- Section 52 – an injury is only classified as a 'serious bodily injury' if the person dies or becomes an overnight, or longer, stay in hospital. Injuries can be serious enough to result in significant time off work, but no hospitalisation.
- Section 54 – inspectors rely on integrity of accident scenes for investigation, however the penalty for site interference is only 20 penalty units.
- Section 57(1) – a copy of a workplan need only be available for inspection, not kept on site.
- Section 57(2) – no requirement on the principal contractor to collect employers' and self employed persons' workplans.
- Section 61(1) – uncertainty as to when employers and self-employed persons must prepare workplans.
- Section 57(3) and 61(4) – employers or self-employed persons and principal contractors must 'discuss' their workplans,
- Quality of workplans can vary dramatically as Part 8 contains few quality directives.

Workplace Health and Safety (Miscellaneous) Regulation 1995
Electrical Regulations

- Tagging of leads is not practical on building sites.
- No requirement for principal contractor to supply power to site.

Workplace Health and Safety Advisory Standards

- Contents of existing Advisory Standards should become regulation with attached penalties.

- "Too full of motherhood statements".
- Must be clear and concise.
- Poor knowledge of Advisory Standards amongst building and construction workers.
- Too vague and loose and therefore subjective
- Underpin Australian Standards with Regulation
- No Advisory Standard for Demolition

Industry Codes of Practice

- General support for Housing and Construction Industries Codes of Practice.
- Must be cheap, simple and accessible.

Issue 3.0 Enforcement Strategies – Punishment Model

Improvement and Prohibition Notices

- Work (especially demolition work) commonly performed on Saturday or Sunday to avoid inspectors or circumvent notices.
- Introduction of self-enforcing improvement notices i.e. onus on obligation holder to prove they comply not on inspector to 'chase up'.
- Notices only apply to the specified workplace, but if a builder has 20 jobs it is highly likely that the same breach is occurring on all sites.
- Develop standard notices for common contraventions, such as unguarded plant.
- As mentioned in Issue 2 there is no real avenue for inspectors when obligation holders fail to comply with prohibition notices.
- Support the introduction of a demerit points system

Infringement Notices/On the Spot Fines (OSF)

- On the spot fines only apply to administrative breaches. There was consensus that the schedule of offences be expanded to encompass hazard-based OSF, without removing the inspector's ability to prosecute.
- Infringement notices are not referenced in the Act.
- Discrepancies exist between regions on the process of issuing OSF.
- Concern that SETONS are not enforcing the non-payment of OSF.
- Policy on OSF should be changed to enable inspectors to issue infringement notices immediately, without the need for an improvement notice first, to an employer if they have previously received any notice for the same type of offence.

Blitz Campaigns

There was mixed opinion regarding the outcomes of the recent blitz campaigns:

Positive	Negative
Raised profile of health and safety	No strategic sampling process. Time spent finding sites to audit (falls blitz)
Raised profile of Division	Little information fed back to the inspectors
Provided a focus for inspectors	"Numbers game"
Gets inspectors out in the field	No 'real' change effected and few OSF issued

Prosecution

- The enforcement framework is "tying them up" with investigations. Inspectors consistently quoted 60-70% of time is spent on reactive work (investigations/complaints) leaving little time or resources for proactive work.
- Time lag between the incident and trial (i.e. >12 months) negates any deterrence effect.
- Inspectors feel they lose ownership of their cases.
- On average 120 –150 hours is required to investigate and prepare a breach report.
- Process for prosecution needs to be simplified, similar to 'fast-track' system in NSW.
- Concern that a Special Prosecutions Unit may further 'deskill' the inspectorate.
- Regional centres were concerned that the Special Prosecutions Unit would not service their needs, only the metropolitan areas.
- Move prosecutions from Magistrates Court to Industrial Court or a specific Construction Safety Tribunal.
- Liaise with local solicitors rather than a Special Prosecution, i.e. outsource prosecution briefs.

Issue 4.0 Enforcement Strategies – Persuasion and Deterrence Model

Education and Training

- An 'active' educational health and safety program for school children.
- Forums to be held specifically for the construction industry.
- Health and safety management module incorporated in BSA training.

Consultative Process

- No accountability for poor performing Workplace Health and Safety Officers.
- No incentive to be a (good) WHSO.
- Appointment of principal contractor as the WHSO and sharing a WHSO across multiple (and often widespread) sites contradicts the intention of the consultative mechanisms.

Protocols

- During the 1980s the division devised a policy that stated that only management (i.e. District Managers and above) spoke with unions. Inspectors expressed frustration that union officials contact them for, what they perceive to be, industrial issues and toilets.

Issue 5. Other

Regionalisation

- There is much disapproval of the current reporting and organisational structure
- Ultimate control rests with a Regional Director who has no qualifications or experience (and some inspectors perceive little interest) in health and safety.
- "Why can't WHS be a statutory organisation under the Minister like Portable Long Service Leave?"
- Is there a conflict between regional programs i.e. WHS v Employment?

Technology

- The computer system and program used by the Division is not 'friendly' for construction. For example, at the end of a project the project case is closed. The only way to retrieve the history is to remember the project number.
- A history search is difficult to produce for a finished project (unlike industrial workplaces).
- To record a subcontractor's notice the inspector must create a fictitious workplace number for their home address. All notices are then placed on the home address. The system can only 'handle' one input per notice, therefore there then is no way of also putting the same notice on the project's history.
- Many inspectors admitted to inputting notices against the project rather than creating a fictitious workplace for the subcontractor.
- Subcontractors are not linked to a project.
- Regional boundaries cause difficulties with case management. For example, the system won't accept business addresses outside Queensland (this issue is a problem for Gold Coast inspectors in relation to NSW subcontractors).

Portable Long Service Leave

- Portable Long Service Leave data is often incomplete or incorrect with principal contractor, workplace and employer details missing.
- Sometimes only lot and registered plan details are provided.
- Non-standard jobs such as shopping centre refurbishments are not identified by PLSL
- No record of jobs less than $80 000, but building work threshold is $40 000.
- Private certifiers are circumventing PLSL system.

Resources

- No Principal Inspector Construction appointed for Queensland.
- No senior construction inspector in Cairns (currently filled by District Manager who has no construction experience).
- No standardisation of case management documentation.
- Construction inspectors do not dedicate 100% of time to construction work.
- The Division is not maximising the skills of the inspectors i.e. Senior Inspectors responding to toilet complaints.
- Refresher type training sessions should be run for inspectors to ensure currency of skills.
- Construction inspectors should be required to have considerable construction industry experience.
- Geographical distances make enforcement and follow-up difficult. For example, the south-west region, which is half a million square kilometres in area, is covered by 2 construction inspectors.
- Vacant inspector positions should be filled in a more timely manner.