

NOHSAC

National Occupational Health
and Safety Advisory Committee
Komitii Tohuohu Mahi A-Motu Hauora me te Haumarua

FIFTH ANNUAL REPORT TO THE MINISTER OF LABOUR

AUGUST 2008

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Foreword

In the last five years, occupational health and safety in New Zealand has changed significantly. The release of the first NOHSAC *Report to the Associate Minister of Labour* report, *The burden of occupational disease and injury in New Zealand*,¹ has provided the basis for sustained discussion about the identification and prevention of occupational disease and occupational injury. Discussion and preparation of policy documents, while essential, will not, on their own, lead to an improvement in the prevention of occupational disease and injury in New Zealand.

As noted in the Committee's first report from 2004: "In considering the findings of this report, several issues are particularly striking. The first is that in the field of injury we have a long way to go in even identifying the size and nature of the problems, let alone developing effective interventions. The second is that, although the burden of occupational injury remains inadequately addressed, there is a much greater burden of occupational disease (including cancer, respiratory disease and the effects of fatigue) – and this has received little attention in New Zealand. The third issue relates to a lack of New Zealand data; it is completely inadequate to document the size of the problem and suggest and enable solutions, particularly for occupational injury and illness in women and in Māori.

This last point is of particular concern because we cannot even start to tackle the burden of occupational disease until we know the size of the problem and the diseases involved. It would be considered completely unacceptable if the Ministry of Transport did not know how many New Zealanders were dying or being seriously injured on the roads, or the main causes and circumstances of the deaths and serious injury, and therefore had no effective strategies to reduce the death and injury rate. Why is such a situation therefore acceptable for deaths in the workplace?"

Regretfully, these statements are still valid in 2008. There has been virtually no progress on even the most basic and easily achievable recommendations that NOHSAC has made. For example, we have had four years of talk, but virtually no action, on simple and easily achievable recommendations such as the recording and coding of occupation on routinely collected data such as death registrations, cancer registrations and hospital admissions.² Such information is a prerequisite for surveillance of occupational disease and injury, which, in turn, is a prerequisite for effective prevention of occupational disease and injury. If such simple, inexpensive and crucial measures cannot be accomplished by the relevant government agencies (in this instance, the Department of Labour and the Ministry of Health), it is difficult to see how they can address the more difficult tasks involved in prevention of occupational disease and injury.

The Committee's latest report, *Review of the key characteristics that determine the efficacy of OHS instruments: Report to the Minister of Labour*,³ was undertaken in conjunction with the Office of the Australian Safety and Compensation Council (ASCC). Both the ASCC and NOHSAC were concerned that very little effort has been made to identify the relative importance of codes of practice and guidance materials to the functioning of the entire OHS regulatory system.

New Zealand's OHS regulatory regime, following the model recommended by the Robens report,⁴ is 'performance-based' or 'goal-setting'. The general duty provisions that form the core of the OHS regulatory regime are intended to be supported by regulations and approved codes of practice and also by guidance material prepared by regulatory authorities. These regimes also leave open the possibility of (or, in some cases, actively encourage) the development of codes of practice by industry.

The emphasis in the Robens approach is on:

- encouraging and facilitating compliance and best practice
- inspecting for and enforcing compliance.

A United Kingdom review⁵ considering the impact of 20 years under the Robens model highlighted the following as some of the key variables in the continuing effectiveness of the Robens model:

- 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.

Previous NOHSAC reports^{1, 6} have shown that significant gaps exist in the guidance materials that are intended to encourage and facilitate compliance with the performance-based framework in New Zealand. While NOHSAC acknowledges that the Department of Labour is undertaking policy research in this area, it remains a concern that this situation arose in the first place given that the framework was established in 1992^a and the clear role expected of the regulator within this framework.

Stakeholders interviewed for the reports have also expressed serious concerns regarding the lack of resources and commitment to support the OHS regulatory framework. According to the Workplace Relations Ministers' Council,⁷ in New Zealand, the number of field active inspectors^b in occupational health and safety has decreased from 1.2 inspectors per 10,000 employees in 2001 to 0.8 inspectors per 10,000 employees in 2004. Proactive visits to workplaces by the Department of Labour's health and safety inspectors has decreased from 26,405 in 1994/95⁸ to less than 5,000 currently.⁹

Increased spending on occupational health and safety alone will not necessarily lead to a corresponding reduction in work-related disease and injury. While some additional funding for OHS has been provided, the broader fundamental issues identified in the first and subsequent NOHSAC reports^{1, 2, 3, 6, 10} remain unaddressed, and even the simplest and most basic recommendations have not been implemented.



PROFESSOR NEIL PEARCE

Chair, NOHSAC

a The Health and Safety in Employment Act 1992 is the principal health and safety statute and aims to prevent harm occurring in the workplace.

b Field active inspectors are defined as gazetted inspectors whose role is to spend the majority of their time enforcing provisions of the OHS legislation directly with workplaces, i.e. a compliance field role. They do not include managers of the inspectorate.

The National Occupational Health And Safety Advisory Committee

The National Occupational Health and Safety Advisory Committee (NOHSAC) was established in July 2003. The Committee's function is to provide independent advice directly to the Minister of Labour on major occupational health and safety issues.

TERMS OF REFERENCE

The key tasks for the Committee are to:

- provide an independent assessment to the Minister on the major occupational health and safety issues for the New Zealand workforce
- advise the Minister on measures that would deliver the greatest benefit for the prevention of occupational injury and disease
- develop an evidence-based approach to occupational health and safety issues
- develop and implement an annual work programme approved by the Minister, including a research agenda
- have due regard for available resources and how the Committee's advice might impact both on occupational health and safety and on economic development
- advise the Minister on such other matters as the Minister specifies by notice to the Committee.

MEMBERSHIP OF NOHSAC AT JUNE 2008

The membership of the Committee represents a range of expertise within the broad fields of occupational health and safety. The Committee meets at least five times a year to discuss issues related to its Terms of Reference and to review progress on its work programme. The Committee is supported by a Secretariat.

PROFESSOR NEIL PEARCE

Professor Neil Pearce is currently the Professor and Director of the Centre for Public Health Research, Massey University. Professor Pearce has extensive research experience, with particular interests in occupational epidemiology, asthma epidemiology and more general public health research. Professor Pearce has previous experience in chairing committees, including chairing the Health Research Council Public Health Research Committee. Since 1988, Professor Pearce has been appointed to numerous committees advising government, including the Occupational Health Technical Advisory Committee and the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection.

DR EVAN DRYSON

Dr Evan Dryson is a practising occupational medicine specialist, lecturer and the Past President of the Royal Australasian College of Physicians – Faculty of Occupational Medicine. Dr Dryson has significant expertise and experience in the clinical practice, diagnosis, management and rehabilitation of people with occupational disease. He has strong affiliations with a range of international occupational health/disease bodies. Dr Dryson has also published widely in New Zealand and overseas on original research into occupational medicine.

PROFESSOR PHILIPPA GANDER

Professor Philippa Gander is currently the Director of the Sleep/Wake Research Centre, Massey University in Wellington. Professor Gander's research interests are in circadian and sleep physiology and its implications for occupational safety and health, particularly in shift work. She has extensive international experience in developing and implementing fatigue and shift work management programmes with the transport sector.

PROFESSOR JOHN LANGLEY

Professor Langley is the Director of the Injury Prevention Research Unit (IPRU). He has been involved in injury prevention research since 1978, and received his PhD from the University of Otago in 1985. He has written numerous articles in academic, professional and lay publications on a wide range of injury prevention issues. Professor Langley is an active advocate for improvements in injury prevention policy and practice.

Reports Released by NOHSAC During 2007/2008

Review of the key characteristics that determine the efficacy of OHS instruments³: Report to the Minister of Labour

A key component of an effective occupational health and safety system is that workplaces must be able to access relevant and current information from government agencies to assist in the development of effective health and safety systems that lead to a reduction in occupational disease and injury rates.

In 2007, NOHSAC, in conjunction with the Office of the Australian Safety and Compensation Council, commissioned a review of the key characteristics that determine the efficacy of OHS instruments, including approved codes of practice and guidance material.

In New Zealand, the lead agency with the responsibility and mandate for occupational health and safety and the Workplace Health and Safety Strategy (WHSS)¹¹ have effectively stopped producing approved codes of practice and reduced the level of guidance material for workplaces. This is due to a combination of a lack of resources (financial and technical) and the HSE Act being effectively silent on which agency is responsible for developing and maintaining approved codes of practice and other OHS instruments.

Clearly, there is a need for approved codes and guidance material. Such OHS instruments are used by workplaces, unions, OHS professionals and the agencies themselves in their day-to-day activities. The development of approved codes and guidance material can be resource intensive. This issue has been made far worse than it needs to be by the lack of commitment over the last decade to providing information to workplaces in line with the Robens model of performance-based occupational health and safety legislation. Compounding these issues are:

- a lack of criteria for prioritising the development of codes
- inconsistent development methods
- difficulties in reaching consensus when developing approved codes
- difficulties in removing outdated OHS instruments once approved
- a disconnect between the professional disciplines and government agencies.

The following recommendations were made in the report in light of the above considerations and previous NOHSAC reports. These recommendations, in part, reflect previous recommendations from NOHSAC. Rather than being seen as repetitive recommendations, they should be seen as integral parts of an effective national occupational health and safety system.

1. THE DEPARTMENT OF LABOUR, AS THE REGULATOR AND LEAD AGENCY FOR THE WHSS, MUST PROVIDE WORKPLACES WITH CURRENT APPROVED CODES OF PRACTICE AND GUIDANCE MATERIAL DESIGNED TO ENCOURAGE AND FACILITATE COMPLIANCE AND SUPPORT BEST PRACTICE.

The Robens model clearly envisaged support for workplaces; however, this role has not been fulfilled by the lead agency. The recent increase in funding received by the Department of Labour will provide a basis for the development and revision of approved codes and guidance material. What is required is the ongoing commitment over the longer term in resources (particularly financial and technical) by the Department of Labour to ensure that not only existing OHS issues are addressed but also new and emerging issues.

2. APPROVED CODES OF PRACTICE AND OTHER GUIDANCE MATERIAL MUST BE DEVELOPED IN RESPONSE TO CONSIDERED ANALYSIS OF CURRENT WORKPLACE EXPOSURES, EMERGING ISSUES AND IN CONJUNCTION WITH THE SURVEILLANCE OF OCCUPATIONAL DISEASE AND INJURY.

As noted in previous NOHSAC reports, OHS policies and prevention activities (and this includes approved codes and guidance material) must be based on data derived from concept-driven occupational disease and injury surveillance systems integrated with exposure surveillance data. Codes of practice and other guidance material must be developed in response to clearly identified risks and priorities for both occupational injury and occupational disease, which, in turn, requires accurate and timely information on occupational disease and injury and current workplace exposures. Effective data systems should be used to:

- develop accurate assessments of risks in the workplace
- target and support prevention activities and help in developing policy
- evaluate the efficacy of approved codes of practice and guidance material.

3. LEAD AGENCIES FOR OCCUPATIONAL HEALTH AND SAFETY MUST ATTRACT AND MAINTAIN A CORE OF SPECIALIST HEALTH AND SAFETY STAFF WITH RELEVANT KNOWLEDGE, SKILLS AND EXPERIENCE.

Such expertise is required to ensure the efficacy of any intended code or guidance. Staff involved in the development of approved codes must have knowledge, skill and experience in:

- the hazard/risk or other subject matter
- existing OHS legislation
- the standards development process
- practical understanding of the industry sector(s), workplace(s) and work processes
- plain language drafting
- user-friendly presentation.

4. THE DEPARTMENT OF LABOUR ESTABLISHES CLEAR GUIDELINES CONCERNING THE DEVELOPMENT OF APPROVED CODES AND GUIDANCE MATERIAL FOR WORKPLACES.

At present, it is not immediately clear when the regulator may choose to develop and/or recommend a document as a code of practice rather than the production of some other form of guidance material, or indeed the taking of no action at all. OHS instruments need to be designed as OHS policy interventions, on the basis of a clear understanding of the rationale for the instrument, how it is intended to work, and who or what is supposed to change. In turn, these questions need to be answered on the basis of a 'contextual analysis' of the characteristics of the intended target audience, the industry sector, culture, supply chain relationships and other relevant contextual issues. Decisions can then be made about the purpose of the instrument; the appropriate legal status and characteristics of the instrument; how the instrument should be developed, who should be involved and how; how it should be promoted, disseminated and explained; the need for and approaches to monitoring implementation; and a strategic approach to enforcement.

An example of the sorts of principles that may guide the development of approved codes of practice, guidelines and other guidance information is provided by the recently revised Victorian Workcover¹² approach to these issues.

This approach suggests approved codes are the appropriate choice when the purpose is to provide clarity and certainty about what may be done to comply with OHS obligations, provided there are known and effective means of achieving compliance.

If certainty and transparency are needed about interpretation or administration of OHS law, the appropriate choice is guidelines. For promotion of OHS awareness and to build OHS knowledge, OHS alerts can be used to identify immediate remedial action needed to address hazardous practices or things. More generally, guidance may be produced about the Act, regulations, particular hazards or risks, best practices, reference sources or performance data.

Additionally, to ensure the efficacy of approved codes of practice and guidance material, they should:

- be in plain language so they are easy to read for end users
- provide clear and concise information (not discursive)
- provide practical 'how to' advice and solutions
- include clear simple drawings, diagrams, photos or other illustrations to support advice/solutions provided, where appropriate
- incorporate checklists and tools for use in implementation
- include references to other resources and contacts
- be provided both in print and on websites
- be regularly evaluated for effectiveness.

5. NO CODE OF PRACTICE OR OTHER GUIDANCE MATERIAL SHOULD BE OLDER THAN 10 YEARS FROM THE DATE OF PUBLICATION WITHOUT BEING REVIEWED FOR ITS RELEVANCE AND ACCURACY.

Approved codes of practice and guidance material should be reviewed regularly to ensure that they reflect current practice in the workplace. They should be clearly identifiable as to the version and date of production.

A streamlined process should be developed for removing outdated approved codes of practice and, by association, regulations. Given the legal hierarchy of OHS instruments, outdated approved codes can effectively override current guidance material that reflects best practice.

6. GUIDANCE MATERIAL PRODUCED BY AGENCIES OTHER THAN THE REGULATOR SHOULD BE ALIGNED WITH PUBLICATIONS PRODUCED BY THE REGULATOR. IN THE ABSENCE OF INFORMATION FROM THE REGULATOR, THIS GUIDANCE MATERIAL MUST REFLECT TECHNICAL INFORMATION CRITICAL TO THE PREVENTION OF HARM AND BE SUBJECT TO THE SAME RIGOUR AS OTHER PUBLICATIONS, AS IT IS OFTEN RELIED UPON IN THE WORKPLACE.

The Injury Prevention, Rehabilitation, and Compensation Act 2001 places the obligation on ACC to ensure that its injury prevention initiatives are co-ordinated with those of other agencies.¹³ To this end, there is a joint planning requirement between ACC and the Department of Labour on work safety interventions. This should include the co-ordinated development of codes of practice and guidance material not only for occupational safety but also occupational health. (Note, only approved codes can be developed by the Department of Labour.)

7. APPROVED CODES OF PRACTICE AND GUIDANCE MATERIAL SHOULD BE USED STRATEGICALLY BY GOVERNMENT AGENCIES TO PROVIDE ADVICE, MONITORING AND ENFORCEMENT WHEN REQUIRED.

This includes:

- inspectors alerting duty holders to particular codes and guidance, and ‘taking them through’ the advice and solutions they provide
- referencing provisions in audit tools (including the ACC Incentive Programmes), so performance can be monitored and duty holders alerted to relevant codes and guidance available for areas of non-compliance
- targeted interventions, such as industry sector workshops to educate duty holders and follow-up checks on implementation, and enforcement action.

Summary of the Committee's 2007/2008 Work Programme

NOHSAC commissioned three further reports in 2007/2008.

1. OCCUPATIONAL HEALTH AND SAFETY IN SMALL TO MEDIUM ENTERPRISES

This project will clearly identify the strategic issues associated with efforts to improve occupational health and safety in SMEs.

The report will:

- define the specific characteristics of SMEs in New Zealand
- review New Zealand occupational health and safety practice and programmes for SMEs
- review international occupational health and safety practice and programmes in relation to SMEs
- complete individual case studies of occupational health and safety practice in SMEs from selected industries.

This report is being undertaken in conjunction with Massey University and AUT. It is expected the final report will be received in October 2008.

2. WORK-RELATED HARM: IMPLICATIONS FOR DIAGNOSIS, REHABILITATION AND COMPENSATION

The main objective of the project is to develop a comprehensive technical report on the definition of work-related harm and implications for diagnosis, rehabilitation and compensation. The report will compare and contrast how work-related harm is currently defined in New Zealand and other countries and the subsequent implications for diagnosis, rehabilitation and compensation of work-related harm.

The report will specifically address the following areas:

- Review the concepts of work-relatedness of disease and injury and compare and contrast this with the definitions used by regulatory and compensation agencies responsible for occupational health and safety internationally.
- Review the criteria used in the same countries to diagnose and differentiate between:
 - acute injury
 - acute health effects
 - chronic injury
 - chronic health effects.
- Review the classification systems that are used to operationalise the concepts of work-relatedness in the same countries.

The report will also show how harm, as defined, impacts on:

- policy development related to occupational health and safety
- the relationship between the diagnosis of work-related harm and its impacts on compensation and subsequent prevention programmes
- differing burdens of proof between various acts and regulations
- occupational disease and the relationship with public health.

This report is being undertaken by Allen & Clarke. It is expected the final report will be received in November 2008.

3. WOMEN'S OCCUPATIONAL HEALTH AND SAFETY IN NEW ZEALAND

This will provide a comprehensive technical report on women's occupational health and safety in New Zealand. The report will contain an overview of occupational health and safety in women, including:

- women's participation in the labour market
- working time
- employment status
- gender differences in unpaid household and caring tasks
- the impact of changes in the world of work
- gender pay gap
- gender segregation in occupations
- work-life balance and implications for personal and family health.

The report will also contain information on the differences in occupational exposures and outcomes between men and women, including:

- injuries
- musculoskeletal disorders
- work-related stress
- the effects of
 - workplace bullying
 - workplace violence
 - sexual harassment

- infectious diseases
- asthma and other respiratory disorders
- skin diseases
- cancer
- hearing disorders
- vibration-related diseases
- working temperatures
- reproductive health.

The Centre for Public Health Research at Massey University has been contracted to produce the report, and this is expected to be received in February 2009.

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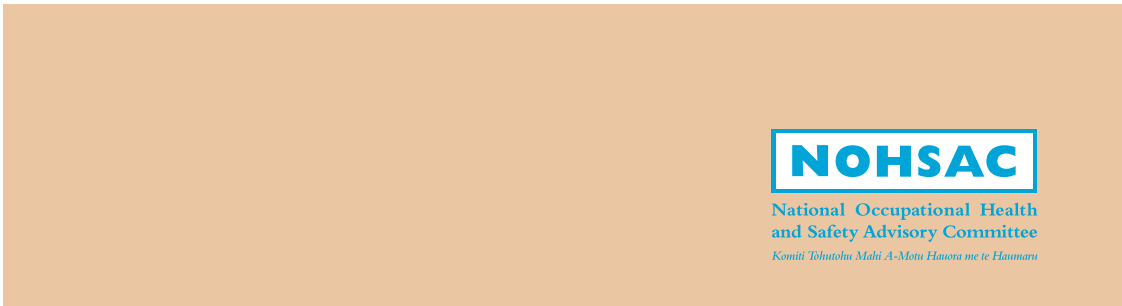
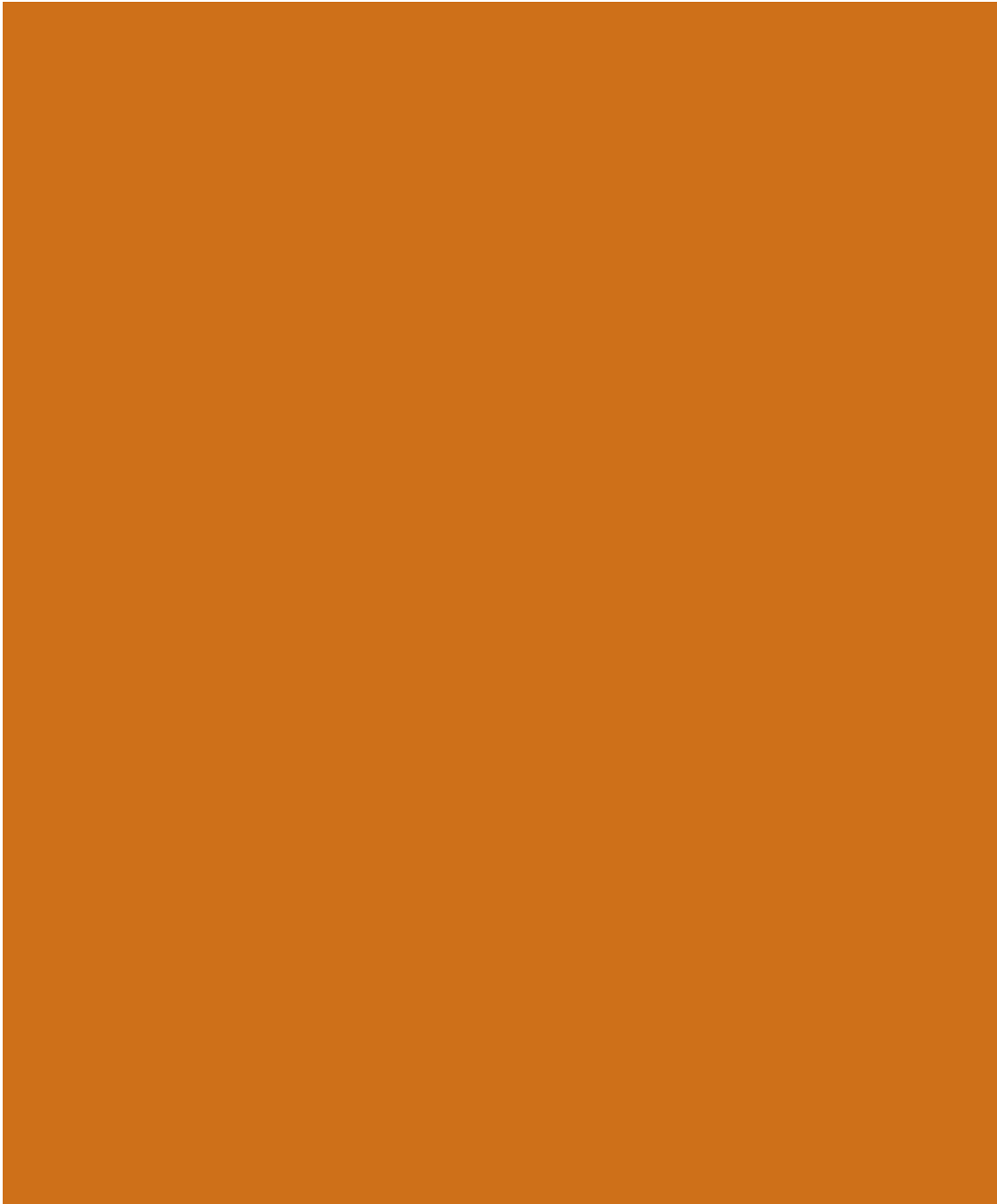
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NOHSAC REPORTS

The NOHSAC website contains the following reports:

- › Annual Reports
 - *First Annual Report to the Associate Minister of Labour – June 2004*
 - *Second Annual Report to the Associate Minister of Labour – June 2005*
 - *Third Annual Report to the Minister of Labour – June 2006*
 - *Fourth Annual Report to the Minister of Labour – August 2007*
 - *Fifth Annual Report to the Minister of Labour – August 2008*
- › The burden of occupational disease and injury in New Zealand – 2004
 - *The burden of occupational disease and injury in New Zealand: Technical Report*
 - *The burden of occupational disease and injury in New Zealand: Report to the Associate Minister of Labour*
- › The surveillance of occupational disease and injury in New Zealand – 2005
 - *The surveillance of occupational disease and injury in New Zealand: Report to the Minister of Labour*
 - *Methods and systems used to measure and monitor occupational disease and injury in New Zealand: NOHSAC Technical Report*
 - *International review of methods and systems used to measure and monitor occupational disease and injury: NOHSAC Technical Report 3*
- › Review of Schedule 2 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act) – 2005/06
 - *Review of Schedule 2 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act): Report to the Minister of Labour*
- › The economic and social costs of occupational disease and injury in New Zealand – 2006
 - *The economic and social costs of occupational disease and injury in New Zealand: NOHSAC Technical Report 4*
- › Surveillance and control of workplace exposures in New Zealand – 2006
 - *Surveillance and control of workplace exposures in New Zealand: Report to the Minister of Labour*
 - *International review of surveillance and control of workplace exposures: NOHSAC Technical Report 5*
 - *Review of Australian and New Zealand workplace exposure surveillance systems: NOHSAC Technical Report 6*
- › National profile of occupational health and safety in New Zealand – 2007
 - *National profile of occupational health and safety in New Zealand: Report to the Minister of Labour*
 - *Occupational health and safety in New Zealand: NOHSAC Technical Report 7*
 - *Management and governance of occupational health and safety in five countries: NOHSAC Technical Report 8*
- › Review of the key characteristics that determine the efficacy of OHS instruments – 2008
 - *Review of the key characteristics that determine the efficacy of OHS instruments: Report to the Minister of Labour*
 - *Review of the key characteristics that determine the efficacy of OHS instruments: NOHSAC Technical Report 9*



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