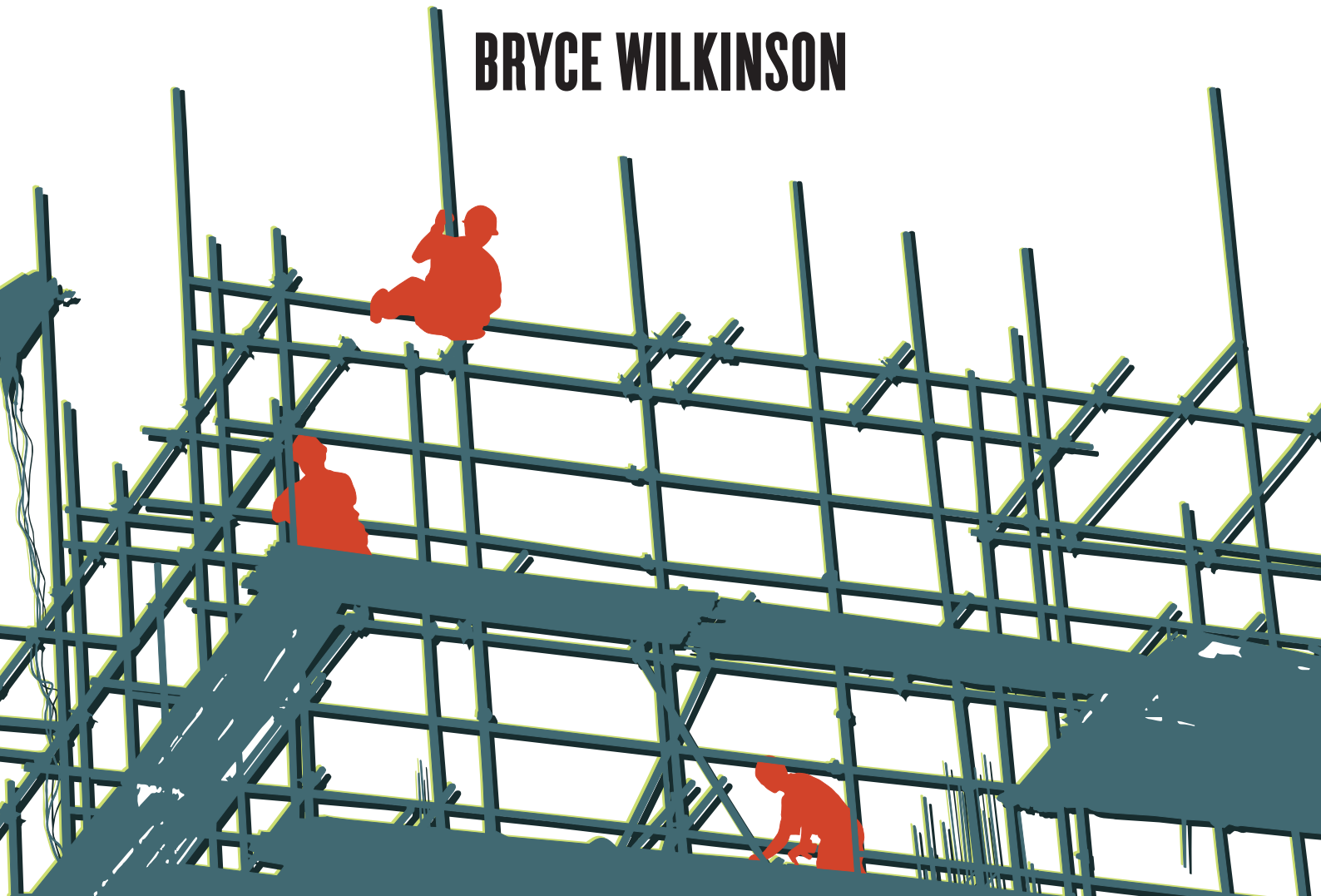


# A MATTER OF BALANCE

# REGULATING SAFETY

BRYCE WILKINSON



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# THE NEW ZEALAND INITIATIVE

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## ABOUT THE AUTHOR



Bryce is a Senior Fellow at The New Zealand Initiative.

Bryce is also the director of economics consultancy Capital Economics. Prior to setting this up in 1997 he was a director of Credit Suisse First Boston (now First NZ Capital). Before moving into investment banking in 1985, he worked in the New Zealand Treasury, reaching the position of director.

Bryce has a strong background in public policy analysis, including monetary policy, capital market research and microeconomic advisory work. Bryce holds a PhD in economics from the University of Canterbury and was a Harkness Fellow at Harvard University.

*The current obsession the authorities have with trying to prevent falls from heights on residential projects is costing the nation dearly, both financially and in lost productivity.*

— Mike Fox, *Building Today* (June 2014)

# A MATTER OF BALANCE: REGULATING SAFETY

## KEY POINTS

- House prices in Auckland are going through the roof, yet the Ministry of Business, Innovation and Employment (MBIE) is not helping.
- Its ill-justified campaign to reduce workplace falls from height is adding thousands of dollars to the cost of new homes.
- It is similarly raising the cost of home additions, alterations and repairs and maintenance. Yet evidence of widespread shortfalls in home maintenance spending prior to the campaign suggests a pre-existing affordability problem.
- The overall costs could exceed \$100 million dollars a year. Yet MBIE did not quantify them before launching its campaign, let alone establish greater benefits.
- The campaign particularly targets workplace falls of less than 3 metres. This potentially affects all single story homes.
- Of course safety is important; but those who care about safety should care about safety priorities. Vastly more injuries occur outside the workplace. Could more lives be saved and injuries avoided by spending the same or less money elsewhere, for example on road or home safety?
- Nor is safety the only priority. People must balance safety costs against other costs – such as food, clothing, fuel, education and health care. The campaign may induce some to further defer necessary maintenance work and/or take greater 'do-it-yourself' safety risks.
- MBIE's failure to establish net benefits is a major public policy concern. The Health and Safety in Employment Act 1992 does not help. Its "take all practicable steps" mantra echews the need to establish net benefits.
- In the absence of an official cost-benefit analysis, the Scaffolding, Access and Rigging Association New Zealand (SARNZ) hired BRANZ to do an early post-implementation assessment. The 2014 BRANZ report found that productivity and safety gains combined might marginally exceed costs in the fullness of time.
- The analysis in this report suggests otherwise. The annual costs could be more than double the \$79 million estimated by BRANZ, while the posited productivity gains look suspect both in the broad and in the details. In addition, the estimated safety benefits might be achieved by spending just \$22 million annually on road safety.
- Paradoxically, if BRANZ's calculations were correct MBIE's campaign would still not be justified. Firms and workers would have an incentive to secure the posited gains anyway, under-cutting those that did not, for the benefit of home owners.
- Neither MBIE nor BRANZ appears to have addressed the question of why regulation is necessary to secure gains that are internal to firm's owners and workers.
- This report identifies two possible sources of excessive risk-taking – the abolition of the common law right to sue for personal injury due to accident and the possible failure of the Accident Compensation Corporation (ACC) to price risk accurately through levy differentials. Neither source warrants a focus on falls from heights since their safety effects would be much wider.
- WorkSafe New Zealand is part of MBIE. Its current CEO took office in March 2014. He has rightly observed the need "to make sure that we are using money wisely and proportionate to the risks". How else could that goal be achieved other than by undertaking a prior objective assessment of the costs and benefits and the public policy case for intervening?
- But the deeper question is whether today's single purpose agencies have an incentive to act as regulatory silos that do not have to take due account of householders' real priorities.

## MBIE'S FALLS FROM HEIGHTS CAMPAIGN – WHY IS THIS A PRIORITY?

In November 2011, the Ministry of Business, Innovation and Employment (MBIE) launched a Working from Heights safety campaign aimed at reducing workplace injuries caused by falls from heights in residential construction. Its “Proactive enforcement approach to preventing falls from height” fact sheet stated:

*Preventing falls from height is a priority for the Labour Group of the Ministry of Business, Innovation and Employment.*

*From 1 July 2012, health and safety inspectors will be enforcing the Health and Safety in Employment Act 1992 in the construction sector as part of the Labour Group's Preventing Falls from Height project.*

*Falls while working at height contribute to an unacceptable number of serious harm accidents reported to the Labour Group. More than half the reported falls are from less than three metres and most of these occur from ladders and single-storey roofs. More injuries from falls happen on residential building sites than any other workplace in the construction sector.*

*Work at height must be actively managed so that people are not harmed or killed as a result. Doing nothing is not an option.<sup>1</sup>*

Table 1: Workplace accidents vs other accidents

Serious Injury (and fatal) accidents in 2013		
	Number	Rate per 100,000 person years
All workplaces	447	18.1
Motor-vehicle	1,510	32.9
All other (residual)	8,649	NA
<b>Total New Zealand</b>	<b>10,606</b>	<b>224.1</b>
Falls under age 75	1,677	37.3
Falls over age 75	3,594	1,274.1
<b>All falls</b>	<b>5,271</b>	<b>104.8</b>

Source: Statistics New Zealand

ACC claims due to falls in homes in 2014		
	Entitlement	Fatal
House construction (work-force)	198	None
Non-work DIY (working age)	225	Under 3
Non-work (working age)	10,234	76

Source: ACC (response to the author's OIA request)

The factsheet explained that the Health and Safety in Employment Act 1992 requires “duty holders” to take “all practicable steps” to ensure the safety of at risk workers. Health and safety inspectors would proactively visit worksites to “challenge any workplace that supports a view that no height hazard exists below three metres”.<sup>2</sup> Enforcement is vigorous. Penalties could shut down a business.

The proactive campaign targets builders, roofers, painters, electrical workers and decorators deemed to be at high risk of falling from less than three metres while working on a roof, a ladder, or an unsafe working platform.

Yet all such workers have good reason to care about their own safety. A significant number are self-employed. Also, bosses of small businesses commonly work alongside their workers and have personal and financial reasons to reduce the risk of injury to employees.

## BUT WHY THE FOCUS ON WORKPLACE FALLS FROM HEIGHTS IN HOMES?

If the desire is to reduce the incidence of serious injuries in the community, it is not obvious that workplace accidents should be a priority. Table 1 shows that fatal and serious workplace accidents are few in the total scheme of things, both in relation to all serious accidents in the community and to total falls in homes.<sup>3</sup>

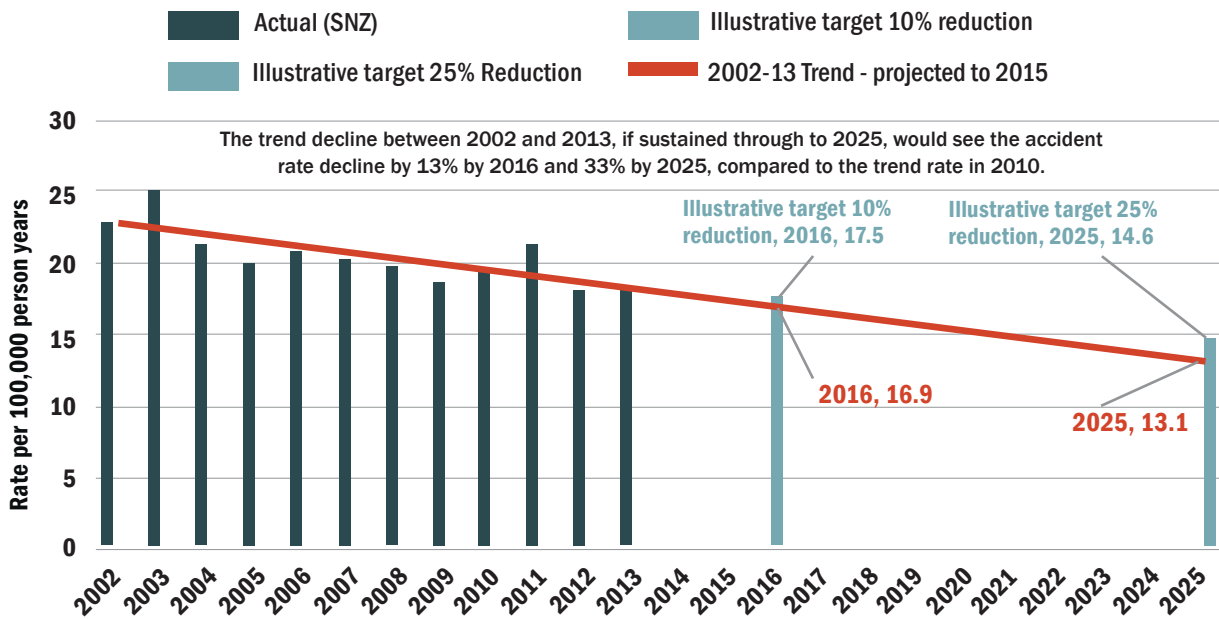
<sup>1</sup> Department of Labour, “Fact sheet: Proactive enforcement approach to preventing falls from height” (Wellington: Government of New Zealand), 1, <http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/factsheet-proactive-enforcement-approach-to-preventing-falls-from-height/factsheet-prevent-falls-from-height-enforcement-approach.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> Table 1 is derived from Statistics New Zealand spreadsheets that did not include statistics on minor injuries. These would be more numerous than serious and fatal injuries in all categories.

Figure 1: Is the campaign necessary given the government's targets?

## SERIOUS (FATAL AND NON-FATAL) WORK-RELATED INJURY AGE STANDARDISED RATE



Source for actuals: SNZ Injury Statistics, 2013 Table 27

Indeed, the Accident Compensation Corporation (ACC) claims statistics in the table indicate that entitlement claims arising from falls in homes by “Do-It-Yourselfers” (DIYs) of working age are as significant as workplace falls in house construction, and that both are dwarfed by falls in the home more generally by those in this age group.

### WORKPLACE SAFETY AND THE PIKE RIVER MINE DISASTER

Workplace safety is obviously WorkSafe NZ’s silo, but it is also a government focus.

MBIE’s campaign was launched in the context of the government’s targets to reduce the incidence

of serious workplace injuries and deaths by at least 10% by 2016 and by 25% by 2020. These targets are part of the “something must be done” response to the Pike River Mine disaster in 2010.<sup>4</sup>

However, as shown in Figure 1, the incidence of serious work-related injuries declined appreciably between 2002 and 2013. This is despite the 185 deaths (heavily work-related) in the February 2011 Christchurch earthquake and the 29 deaths in the Pike River mining disaster in November 2010. (Because each data point in the chart is a three-year average, these deaths boost the statistics for 2009 through to 2012.) Even so, the trend decline between 2002 and

2013, if sustained through to 2025, would see the accident rate decline by 13% by 2016 and 33% by 2025 relative to 2010.

This declining trend raises the question of the need for ever-more costly regulation for the workplace in general, let alone home construction in particular, in order to achieve the government’s targets. Given the costs, the burden of proof should surely fall on the agency seeking to impose the costs.

<sup>4</sup> WorkSafe itself is a product of this disaster. See Rob Stock, “WorkSafe boss calls for cultural change,” *Sunday Star Times* (8 February 2015), <http://www.stuff.co.nz/business/better-business/65857412/worksafe-boss-calls-for-cultural-change>. This article also contains the quote in the second to last point under Key Points above.



Figure 2: Nice to have, but who is paying – Illustrative scaffolding for a single-storey residence



Source: Department of Labour<sup>5</sup>

## WHAT IS THE POTENTIAL COST TO HOUSEHOLDERS?

The New Zealand Initiative's interest in this issue was sparked late last year by a chance conversation with a small-scale builder who said the costs of complying with the MBIE campaign had turned a small \$4,000 roof job into a \$6,000 job.<sup>6</sup> There are 1.8 million dwellings in New Zealand, a majority of which are single-storey buildings. All will need repairs and maintenance work on their roofs and upper walls from time to time. If half the 1.8 million dwellings need a roof job every 12 years at an additional cost of \$2,000 (paint guarantees might

only last 10 years), the illustrative annual cost burden on householders is \$150 million.<sup>7</sup>

The costs of more discretionary work, additions and alterations would be extra, as would be the costs of constructing new homes. A report by BRANZ, commissioned by none other than the Scaffolding, Access and Rigging Association New Zealand (SARNZ), judged the additional safety cost to be \$3,304 for a new single-storey dwelling of 200 sq m; \$2,300 for a double-storey new build (since scaffolding would likely be used anyway); and \$697 per 'addition and alteration' project. Assuming similar residential

activity in the next 25 years to the average during the last 20 years, BRANZ assessed the average annual cost to be \$79 million.<sup>8</sup> (BRANZ does not appear to have allowed for additional costs with respect to repairs and maintenance, as distinct from additions and alterations.) In the absence of authoritative cost estimates, all such numbers are contestable. Peter May, director of Homebuild Homes in Palmerston North, supplied us with a detailed costing for a new single-storey building on a flat section in that town. The additional cost was \$7,107, including GST.

<sup>5</sup> See <http://www.business.govt.nz/worksafe/information-guidance/national-programmes/preventing-falls-from-height-in-construction/what-safe-looks-like/scaffolding>.

<sup>6</sup> That interest resulted in an opinion piece. Bryce Wilkinson, "Weighing the costs of health and safety," *The Dominion Post* (12 January 2015). [http://nzinitiative.org.nz/About+Us/Staff/Bryce\\_Wilkinson/Opinion+and+commentary+Dr+Bryce+Wilkinson.html?uid=783](http://nzinitiative.org.nz/About+Us/Staff/Bryce_Wilkinson/Opinion+and+commentary+Dr+Bryce+Wilkinson.html?uid=783).

<sup>7</sup> Of course this illustrative calculation would be lower by almost 2/3rds if BRANZ's estimate of \$697 for additional costs of 'additions and alterations' were used instead of \$2,000. But the sum is still potentially significant. Perhaps MBIE could set up a website where contending cost estimates by industry professionals could be posted for peer review.

<sup>8</sup> David Norman, Matthew Curtis and Ian Page, *A Cost-Benefit Analysis of Improved Working at Heights Regulation*, Report prepared for Scaffolding, Access and Rigging Association New Zealand (SARNZ) (Wellington: BRANZ, 2014), <http://sarnz.org.nz/wp-content/uploads/2014/10/Cost-benefit-analysis-of-the-Working-at-Heights-Programme-FINAL-Copy.pdf>.

More dramatically, Mike Fox, founding director of Primesite Homes, said in the June 2014 issue of *Building Today*, the official magazine of Registered Master Builders Federation (RMBF):

*Conservatively, the cost to the consumer of the current approach is approximately \$15,000 per [new?] dwelling (excluding the consumer's additional holding costs) – or about \$300 million in total, each and every year.*<sup>9</sup>

Well, regardless of whether the additional annual cost on householders is of the order of \$79 million or \$450 million (including repairs and maintenance), how affordable is it for householders?

A 2013 BRANZ report on house repairs found that about 75% of assessed owner-occupied houses needed immediate repairs: “Additional to necessary physical repairs to avoid deterioration was the mitigation of trip and fall hazards, averaging about \$3,000 per house”.<sup>10</sup> This suggests that many householders are finding necessary home maintenance costs unaffordable. Adding \$2,000 to the cost of a smallish roof maintenance job will surely induce more households and landlords to defer necessary

maintenance. Indeed even Housing New Zealand appears to find affordability a problem.<sup>11</sup>

Of course, a campaign to raise home maintenance costs is likely to impact most on low income home owners. BRANZ assessed that 87% of owner-occupier households with incomes below \$20,000 needed to make “immediate repairs” at an average cost of \$5,800. Estimated outstanding repair costs represented 62% of annual income for households in the \$10,000–20,000 bracket and 25% in the \$40,000–50,000 bracket.<sup>12</sup>

The same BRANZ report observed that DIY work by an owner could significantly reduce costs. “Otherwise unrepaired housing may have health and safety implications as well as diminishing the investment value of their house”. BRANZ also observed that rental houses tended to be in even worse condition.<sup>13</sup>

## ASSESSED SAFETY BENEFITS DON'T JUSTIFY THE COSTS

The subsequent BRANZ report for SARNZ rather heroically estimated from outcomes in the first full year of the campaign that MBIE's safety

measures had reduced injuries in residential construction by 3.7%, or 0.6 deaths, 21.4 life-altering injuries/permanent disabilities, and 486 non-severe injuries.<sup>14</sup>

It was not BRANZ's fault that the estimates were heroic. It had to draw 25-year inferences from just one year of post-campaign outcomes not relating directly to falls from heights. The report flagged the desirability of revising those calculations in a few years.

Taking those estimates at face value, such safety benefits would be worth achieving if they could be secured by spending no more than \$22 million annually on road safety. (In road safety calculations in New Zealand, the (June 2014) value of a statistical life is \$3.98 million; the value of an avoided serious, non-fatal injury is \$419,300; and the value of an avoided minor injury is \$22,400.)<sup>15</sup>

It makes no sense to spend \$79 million annually to achieve safety benefits that could be achieved elsewhere by spending only \$22 million annually, if that were all there was to it.

<sup>9</sup> Mike Fox, “Falling from height safety measures – make them more cost-effective and practical,” *Building Today* (June 2014), <http://www.buildingtoday.co.nz/MagazineArticle.aspx?id=1162>.

<sup>10</sup> Ian Page and Matthew Curtis, *House Repair Priorities*, Study Report 285 (Wellington: BRANZ, 2013), 1, [http://www.branz.co.nz/cms\\_show\\_download.php?id=4158d0bdfcc81dacb0caf37e9423259fabec292d](http://www.branz.co.nz/cms_show_download.php?id=4158d0bdfcc81dacb0caf37e9423259fabec292d).

<sup>11</sup> See for example, “Govt to spend \$1.5b fixing up state houses”, Radio New Zealand 24 March 2015, [http://www.radionz.co.nz/news/political/269479/govt-to-spend-\\$1-point-5b-fixing-up-state-houses](http://www.radionz.co.nz/news/political/269479/govt-to-spend-$1-point-5b-fixing-up-state-houses): “Mr English conceded many state houses were not up to standard and had not been properly maintained.”

<sup>12</sup> *Ibid.*, 1–2.

<sup>13</sup> *Ibid.*, 2.

<sup>14</sup> Norman et al (2014), *op. cit.*, 1. The BRANZ report does not demonstrate that this assessed reduction is statistically significant.

<sup>15</sup> Ministry of Transport, “Social cost of crashes and injuries, update” (Wellington: Government of New Zealand, December 2014), 2, <http://www.transport.govt.nz/assets/Uploads/Research/Documents/Social-Cost-June-2014-update.pdf>.

Figure 3: Illustrative use of netting – potential overkill?



Source: <http://www.sitenets.co.nz/services/residential>

The BRANZ report also reached that conclusion. However, it also proposed, on the basis of surveyed opinion, that the use of safer techniques could generate material net productivity gains in house construction and additions and alterations. The report freely acknowledged that the issue of net productivity gains was contentious. Nonetheless, using the average (positive and negative) of surveyed responses, it found that the sum of estimated productivity gains and safety benefits marginally exceeded estimated costs.

A particularly controversial assumption was that contractors would incur no productivity costs from delays in waiting for scaffolding to be erected before they could start work.<sup>16</sup> Such assumptions may be more valid for large building firms than for smaller contractors, who are less able to shift their workforce between sites.

Moreover, the calculations built in markedly greater productivity gains in the construction of double-storey dwellings than single-storey dwellings. This is dubious because the practice before the MBIE campaign was to use scaffolding for double-storey dwellings. BRANZ recognised this point in assuming lower additional scaffolding costs from the campaign for double-storey dwellings.

There are other concerns. Apart from the fact that erecting scaffolding is a dangerous business in itself, the demand for scaffolding has gone through the roof, causing skills shortages that jeopardise safety and cause delays.<sup>17</sup> This is presumably primarily due to the Christchurch rebuild and the Auckland expansion rather than MBIE's campaign. But the development likely impairs productivity.

Another concern is the safety implications of increasing home

owners' incentives to save costs by DIY activities, which may be more dangerous than the same activities undertaken by a professional. There were 194 ACC entitlement claims in 2011 for both non-work DIY falls in homes and work-related house construction falls. In 2014, the DIY claims were 225 as against 198 for work-related claims. The differential movement is no more than suggestive from a safety perspective, (as might be BRANZ's estimated 3.7% accident rate improvement based on one year's outcomes).

### WHY DOES A CAMPAIGN RAISE COSTS? DOESN'T IT JUST ENFORCE EXISTING LAW?

Section 6 of the *Health and Safety in Employment Act 1992* requires employers to take *all practicable steps* to ensure safety in the workplace. Section 2A defines this to mean all *reasonably practicable steps*.<sup>18</sup> If MBIE's campaign is just enforcing existing laws and regulations, how can it be raising costs?

The costs of complying with section 6 ultimately depend on how the courts interpret it and the regulators enforce it. Words like "all reasonably practicable steps" are open to interpretation.

The Department of Labour's guidance states in part that "if there is a risk of serious ... injury or harm, then spending a greater amount

<sup>16</sup> Ibid., 12.

<sup>17</sup> See, for example, "Sky-high shortage", *Sunday Star Times*, 8 March 2015.

<sup>18</sup> See *Health and Safety in Employment Act 1992*, <http://legislation.govt.nz/act/public/1992/0096/latest/DLM278829.html>.

<sup>19</sup> Department of Labour, "Taking all practicable steps" (Wellington: Government of New Zealand, 2011), <http://www.dol.govt.nz/hs/law/quickguide/pdfs/allpracticablesteps.pdf>.



of money to deal with the hazard is considered reasonable".<sup>19</sup> Its 22 November 2011 *Working at Height* position paper observes, with no mention of costs, that "even if a possible fall is less than 3 metres, the HSE Act requires that if there is any chance of harm resulting, steps must be taken to prevent the fall from occurring".<sup>20</sup> MBIE's factsheet reiterates this point:

*Work at height must be actively managed so that people are not harmed or killed as a result. Doing nothing is not an option. ...*

*If there's a chance of a fall – from any height – precautions have to be taken. Health and safety inspectors will challenge any workplace that supports a view that no height hazard exists below three metres.*<sup>21</sup>

Such statements make the costs imposed on businesses a secondary consideration, if that. In contrast, a welfare-maximising policy approach would ensure that the benefits exceeded the costs.

What is considered reasonable by officials spending other people's money is not necessarily what

householders or suppliers would regard as reasonable. As Milton Friedman once observed, it is human nature not to worry very much about the quantum of either benefits or costs when spending strangers' money for the benefit of other strangers.<sup>22</sup>

As already indicated, WorkSafe's campaign is vigorous. Its inspectors have real clout over a small business.

They can issue a prohibition notice if they observe inadequate precautions to prevent falls from or through single-storey roofs and other structures, or the unsafe use of ladders. Prohibition notices can also be issued for inadequate edge protection, use of harness systems or ladders, and scaffolding not "erected, altered or dismantled by competent people".<sup>23</sup> Nets below single-storey roofs appear to be also mandated by the ability to issue a prohibition order to prevent falls through single-storey roofs (see Figure 2).

Inspectors take into account compliance with MBIE's "best practice"<sup>24</sup> working at height guidance when deciding what

constitutes compliance with the Act. This potentially makes such guidance mandatory for businesses too small to take the risks of legal action. In effect, guidance manuals have become a way to tax households, firms and workers.

This is a question of balance, but there is a view in the industry that it has not been found. Fox's June 2014 article referred to over-zealous activities by "a small army of safety inspectors roaming around the country dishing out instant fines and prosecution notices to builders who have not fully scaffolded a single-level dwelling, or installed fall nets before roof trusses are installed".<sup>25</sup> He asserted that it had "reached the point where a tradesman can't even stand on a saw stool without the fear of getting an instant fine or threat of prosecution. I have also heard of inspectors shutting down sites because a handrail was 100mm too low".<sup>26</sup>

Yet, deaths to workers from falls from heights in residential construction are rare. Statistics supplied by ACC under the *Official Information Act 1982* show zero claims for worker fatalities from

<sup>20</sup> Department of Labour, "Working at height," Health and Safety Position Paper (Wellington: Government of New Zealand, 22 November 2011), <http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/position-statements/working-at-height-health-and-safety-position-paper/heightspositionpaper.pdf>.

<sup>21</sup> *Ibid.*, 1.

<sup>22</sup> Milton Friedman, "Liberty quotation: Milton Friedman on the four ways to spend money," Quoted in a Fox interview (Libertarian Party of Maryland, May 2004), <http://lpmaryland.org/liberty-quotation-milton-friedman-four-ways-spend-money/>

<sup>23</sup> Department of Labour, "Fact sheet: Proactive enforcement approach to preventing falls from height", op. cit. 2.

<sup>24</sup> Ministry of Business, Innovation and Employment, "Best practice guidelines for working at height in New Zealand" (Wellington: Government of New Zealand, 2012), <http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/best-practice-guidelines-for-working-at-height-in-new-zealand/working-height.pdf>. Also see "Working Safer: A blueprint for health and safety at work" (Wellington: Government of New Zealand, August 2013), <http://www.mbie.govt.nz/pdf-library/what-we-do/workplace-health-and-safety-reform/Safety-First-blueprint.pdf>.

<sup>25</sup> Mike Fox, "Falling from height safety measures – make them more cost-effective and practical," *Building Today* (June 2014), <http://www.buildingtoday.co.nz/MagazineArticle.aspx?id=1162>.

<sup>26</sup> *Ibid.*

falls in residential construction in every year from 2010 to 2014 except in 2012, when the indicated total was between one and three deaths. Falls in homes from other sources are a major cause of deaths, but MBIE's brief is workplace deaths.

## PUBLIC POLICY ANALYSIS – WHY SUCH LITTLE INTEREST IN ASSESSING BENEFITS AND COSTS?

As already mentioned, WorkSafe chief executive Gordon MacDonald, who took office in March 2014, was quoted in the *Sunday Star Times* (8 February 2015) as saying that safety is not about eliminating risk or putting up barriers to profitability. “The smart trick is to make sure we are using money wisely, and proportionate to the risk”.<sup>27</sup>

Indeed it is. So why did MBIE not estimate the costs and benefits for its campaign before launching it? And why has it not done so since, to the best of our knowledge?

One not-very-good reason from a homeowner's perspective is that MBIE was not required to do so by existing laws and regulations. Another not-very-good-reason might be that the costs on householders are external to MBIE. No process exists for internalising them. They do not even pass through MBIE's accounts.

But MBIE's campaign has supporters in the industry. One utopian view is that all avoidable accidents should be avoided. That is a fine sentiment. Unfortunately, it is unaffordable in practice. Society tolerates so many road and home accidents for no other reason.

A different view is that the costs of adopting best practice across the industry are low. After all, if some firms are employing ‘best practice’ successfully, why can't all of them? Yet, if so why force costs up?

A contradictory view is that there are real cost differences and firms trying to apply ‘best practice’ are undermined by those who quote for work on the basis of cheaper but less safe practices. However, differences in willingness to bear risk will always exist. Some work activities and places will always be more risky than others. One size does not fit all.

A supplementary view is that too many householders accept the cheaper quote because they are not responsible for workplace accidents. Indeed they are not. They can't control or manage them. People who buy wooden furniture can't be held responsible for forestry accidents.

Another possible reason for regulators to not take costs as seriously as homeowners is the perception that opposition to them will die down once they have become embedded into the industry-wide cost structure.

Indeed it could. But the test of good public policy is not whether households become inured to a higher imposed cost structure. The test is whether there are benefits that exceed those costs to a greater degree than under any other option.

## SO IS THERE A PUBLIC POLICY CASE FOR TAKING ACTION?

All New Zealanders undertake risky activities to a greater or lesser degree. A completely risk-free existence is unattainable. Workplace risks are a matter of choice, as are the risks in playing sport, crossing the road, or driving a car.

When people are putting their own bodies at risk of personal injury, the normal presumption is that they are doing so because the benefits they think they will obtain exceed the potential cost. In the case of workers, the remuneration received is likely to be a substantial form of the inducement.

A general principle is that government should not intervene unless one person's actions adversely affect someone else without compensatory effects, and perhaps not even then.

A paradoxical feature of BRANZ's defence of MBIE's campaign was the report's conclusion that the health and productivity benefits to workers and firms combined would exceed the costs. Yet if this were so, there would be little or no case for government action. Firms that did undertake these safety measures

<sup>27</sup> Rob Stock, “WorkSafe boss calls for cultural change,” op. cit.2.

would be able to undercut the rest. Householders, workers and successful firms could all be better off – and MBIE’s campaign would largely be a waste of inspectors’ time. Those who do not believe this presumably do not believe in BRANZ’s conclusions.

There are at least two possible public policy reasons for thinking that people may be taking undue risks. Neither points to singling out falls from heights in residential construction as a remedy.

First, the abolition of New Zealanders’ long-standing common law right to sue an at-fault party for personal injuries removed a pervasive mechanism for penalising negligence. New Zealand is plausibly a riskier place as a result. If this is a source of too many falls from heights, it is surely a source of a great many other accidents. If so, the issue should be addressed at source.

Second, ACC levies on employers and employees may not adequately reflect occupational risks. This issue is also much wider in scope than falls from heights in residential construction. Again the obvious remedy would be to address this problem at source. One option would be to re-introduce competition for work account insurance.

## CONCLUDING COMMENTS

The bigger picture is that regulatory constraints on the supply of housing have independently made housing affordability a serious issue for young New Zealanders.

MBIE’s campaign was bound to further raise house construction costs, and indeed ongoing maintenance costs. It should have been required to demonstrate in advance that there would be superior offsetting benefits.

That it was not so required points to a governance problem. Regulators inevitably work in their own silos. Their enforcement decisions impose costs on others that are external to the regulator. The likely result is to bias costs upwards relative to benefits.

Wasteful government spending and regulation make the good things in life, including greater safety, less affordable. The New Zealand Initiative’s 2015 publication, *The Case for Economic Growth*, reported research that finds that a 10% increase in GDP per capita reduces the expected number of deaths in an earthquake of given magnitude by 5.3%.

The degree to which costs can be biased upwards depends on the degree of regulatory discretion. In this particular case, the fuzziness in the Health and Safety in Employment Act appears to allow considerable discretion in the degree to which costs may exceed benefits.

In the case of the regulation of safety, emotional considerations naturally loom large. Witness the Pike River deaths. But emotions can aggravate the silo tendency. Those responsible for regulating workplace safety are not responsible for regulating home or transport safety. It is naturally better that someone else has to explain an avoidable death to a bereaved family than oneself.

Unfortunately, actions dominated by emotion and good intentions can have unintended consequences that could make people worse off overall, not better off. Greater spending on scaffolding and nets means less spending by households on something else that they consider more important. Arguably, the more emotional the issue the greater the need for rational analysis.

WorkSafe New Zealand is part of MBIE. Its current CEO took office in March 2014. He has rightly observed the need “to make sure that we are using money wisely and proportionate to the risks”. Independently of the governance issue, he has a chance to review the campaign to assess whether the likely benefits really do exceed the costs. Let’s see if he exercises it.

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The New Zealand Initiative  
PO Box 10147  
Wellington 6143