Understanding the Process of Change in Occupational Safety and Health Policy in Advanced Industrialised Democracies: An Examination of the International Literature, and the Experience of New Zealand Between 1981 and 1992.

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ABSTRACT

The international literature on change in occupational safety and health policy contains a multiplicity of divergent and opposing disciplinary approaches and theoretical explanations for the various change outcomes that have occurred in advanced industrialised nations. However, commonalties in determining factors and policy debates across all advanced industrialised countries can be discerned. Analysis of the literature also indicates that, when compared to the general literature on public policy, there is an absence of 'process-orientated' theories and theories of the 'middle-range' about change in occupational safety and health policy. Furthermore, the current body of knowledge lacks any discussion or definition of what 'occupational safety and health policy' means. In terms of New Zealand, robust academic discussion of occupational safety and health policy is virtually absent, except for a few analyses in industrial relations textbooks and journals. Furthermore, the New Zealand analyses are also usually descriptive and lack critical analysis. This thesis begins the task of rectifying these criticisms by providing an original contribution in three areas.

The first area of contribution is the provision of a thorough critical review of the current state of international knowledge concerning the process of change in occupational safety and health policy. The second area of contribution is the provision of a detailed analysis that characterises, describes and explains the New Zealand experience of change in occupational safety and health policy between 1981 and 1992. The final area of contribution is the presentation of a theory of the 'middle range' of change in occupational safety and health policy in advanced industrialised nations. In conjunction with the theory,

a set of propositions are formulated concerning the origins and determinants of change, the policy issues that dominate debates, and the relationship between policy and the management of occupational safety and health in the workplace. The initial validity of the propositions is assessed by discussing them in the context of the international literature and the New Zealand experience.

The conclusion is that there is a high degree of convergence between the policy debates in New Zealand and those occurring overseas - irrespective of cultural differences and institutional arrangements. Various comments by observers of the occupational safety and health policy process and debates in the United States, Canada, Great Britain, and Australia, can be seen to have direct relevance to New Zealand. The clear link between these countries is that they all have inherited the British legal system and ideas about industrial relations and property rights. The comparison highlights the fact that at the core of occupational safety and health policy there is conflict, inherent within the capitalist system of production, over the forms of control of the social relations of health and safety in the workplace. At the centre of this conflict are the representatives of workers and employers. Resolution of the general direction of the debates is ultimately determined by the political party in power. Equally important though, are the views of the representatives of government whose job it is to advise Government, and provide the policy details.

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One of the main interests at the centre of this thesis is the question of the origins of change in occupational safety and health policy. In the case of the New Zealand union movement, the arrival of two informed and interested individuals were critical to the beginning of the process. The same is equally true for this doctoral thesis, in this case in the form of one person, the visit of Professor Tom Dwyer from Sao Paulo Brazil to Massey University in 1993. Without Tom's encouragement and support at the end of my Honours year, this thesis would never have been started - thank you Tom for your interest and guidance.

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CONTENTS

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ABBREVIATIONS COMMONLY USED

ACC	Accident Compensation Corporation (Commission)
ACOSH	Advisory Committee on Occupational Safety and Health
AHBs	Area Health Boards
CoP	Code of Practice
CSU	Combined State Unions
CTU	Council of Trade Unions
DoL	Department of Labour
EF	New Zealand Employers Federation
F and CPB	Factory and Commercial Premises Bill 1980
F and CP	Factory and Commercial Premises Act 1981
FoL	Federation of Labour
HSE Act	Health and Safety in Employment Act 1992
HSE Bill	Health and Safety in Employment Bill
MoE	Ministry of Energy
MoH	Ministry of Health
MoT	Ministry of Transport
OSH Bill	Occupational Safety and Health Bill 1990
OSH Service	Occupational Safety and Health Service of the Department of Labour
PCO	Parliamentary Council Office
SEQ	Cabinet Social Equity Committee
SOP	Supplementary Order Paper
SSC	State Services Commission

CHAPTER 1: INTRODUCTION

The "history of accident law is much too complicated to be viewed as merely a struggle of capital against labour, with law as a handmaid of the rich, or as a struggle of good against evil" (Friedman and Ladinsky, 1967:53-54).

"Regulatory [occupational safety and health] decisions...involve issues of life and health, and thus are inevitably the most emotion-laden issues governments deal with. The interest groups contending over government occupational safety and health policy...are the most organised in society, which makes these questions among the most difficult to resolve politically" (Wilson, 1980:266).

Introduction

At the centre of the thesis is the idea that understanding the process of change in occupational safety and health policy requires a more nuanced theoretical analysis - than currently exists - which recognises the interaction between material, ideological, structural, and agency forces in motivating and shaping change processes in advanced industrialised nations. In addition, by defining what constitutes occupational safety and health policy, and by assessing the potential effects of various policy outcomes in terms of social control, a more insightful understanding can be developed of the significance of any change, and of the continuities and differences that exist between policies within and across nations. Both the evidence for the analysis and propositions generated, are informed by original research into the New Zealand experience of occupational safety and health policy change between 1981 and 1992, and analysis of the international literature on change in occupational safety and health.

During the period 1981 to 1992, New Zealand underwent major social and economic change. One largely unnoticed area of change, unnoticed except to those who were directly

involved, has been in the area of occupational safety and health policy. In the time period in which a lot of the occupational safety and health policy changes were being implemented, the researcher was employed as an Inspector of Factories with the New Zealand Department of Labour. The experience served to create a desire to understand the reasons for the changes, the reasons for the outcomes that eventuated, and to clearly identify and to assess in some way the significance of the changes. It is these questions that are at the heart of this research. In many ways the research thesis can be seen as an exercise in "the intellectual and practical need to link public policy with public administration and to relate both to the broader causal forces" (Doern, 1977:2).

The process of answering the questions began with a review of the international literature on change in occupational safety and health policy, and semi-structured interviews with representatives of organisations at the centre of the change process in New Zealand. The initial perceptions gained through the analysis of the interviews were then checked by an exhaustive examination of original documents. Following the examination of the documents, work began on finding ways that made sense of the mass of data gathered. Because of the analysis, it has been possible to describe, characterise, and explain in detail the New Zealand experience of occupational safety and health policy change between 1981 and 1992. In addition, similarities and differences between the New Zealand experience, and overseas experience of change, can be seen. Finally, the analysis has led to the generation of a series of propositions concerning the origins, determinants, process of change, and policy issues surrounding occupational safety and health policy in advanced industrialised nations. The propositions are situated within a theory of the middle range. The theory is informed by the work of Touraine (1977; 1981; 1988) and Dwyer (1991).

In the rest of this chapter, the research methods, analyses generated, conclusions drawn, and other chapter contents in general, are introduced. In order to first situate the reader though, a brief historical outline of the process of change in New Zealand occupational safety and health policy between 1981 and 1992 is given below. The outline is informed by the contents of Chapters Four to Six.

Historical background

In the period 1981 to 1992 occupational safety and health policy in New Zealand underwent a major transformation. At the beginning of the period multiple government agencies were involved in the administration of a plethora of safety-related Statutes and regulations. The legislation was of varying age, quality, and enforcement regime. Beginning in the mid 1970s, union and employer groups began to agitate for legislative and administrative reform; their activity met with limited success. However, the ongoing pressure for reform was partially answered in 1980 when the Government authorised a major review of New Zealand's occupational safety and health arrangements. The review was published in 1981 as the "Walker Report".

At the same time as the Walker Report (1981) was being prepared, the National Party Government introduced into Parliament in 1979 a new piece of factory legislation called the Factory and Commercial Premises Bill (F and CPB). After a major review of the original Bill through the Select Committee process, a modified Bill was enacted in 1981. The legislation did little to reduce the amount of legislation relating to health and safety at work, and did nothing to reform the multiplicity of administrative arrangements.

Following a change in government in 1984, New Zealand entered a period of major political, economic, and social change. An essentially invisible part of the changes that have occurred, has been a belated, but significant, reform of occupational safety and health policy. Shortly after the election of the Fourth Labour Government, the new Minister of Labour Mr Stan Rodger announced the formation of a tripartite advisory committee to advise the government on occupational safety and health policy. The committee came to be known as ACOSH. At the same time as ACOSH began working on various issues, a number of the government agencies responsible for the administration of health and safety at work, were undergoing structural change. These changes were not related to concern about how to best administer occupational safety and health, but focussed on making the government agencies more accountable and economically efficient.

In July 1988, ACOSH published a report outlining its recommendations for change in the legislative and administrative arrangements. The recommendations included a complete consolidation of the existing law, and the introduction of new tripartite administrative structures to oversee and enforce the legislation. In response to the ACOSH Report (1988), Government convened an "Officials Working Party" to investigate the recommendations. The officials reported back to the Government in May 1989. The conclusions of the officials were not unanimous. The prevailing official opinion was though, that some form of legislative change was desirable, however the proposed administrative structures were unacceptable. Following receipt of the officials report, the Labour Government introduced into Parliament in 1990, six years after coming to power, an Occupational Safety and Health Bill (OSH Bill). The Bill consolidated all the existing legal instruments, contained strong statements of workers' rights, and proposed a new bipartite committee to advise government on the operation of the legislation and its

administration. Administratively, a new body for the administration of health and safety was rejected in preference for the consolidation of government functions in the occupational safety and health area within the already restructured Department of Labour. The 1990 Bill was never passed by Parliament.

A national election in October 1990 saw a new National Party Government elected to the Treasury benches. The new Government was strongly opposed to the strong statements of workers' rights in the 1990 Bill, and rejected it in favour of developing new "performance" based standards for health and safety. Within two years of coming to power, the Government had passed new legislation called the Health and Safety in Employment Act 1992. The legislation is markedly different in its approach to the previous two pieces of legislation, and signifies the culmination of significant change in the way in that occupational safety and health policy is thought about, developed, and administered in New Zealand.

It is with understanding the above change process that this thesis is principally concerned. Of particular interest are questions such as: why did change occur? What were the main policy debates? How is it that a reforming and ostensibly pro-worker Labour Party Government failed to introduce reforms favouring strong statements of workers' rights after two consecutive terms in power, when a pro-employer National Party Government did pass reforms favourable to employers within two years of coming to power? Would the National Party Government have introduced legislative reforms if it hadn't been faced with the Labour Party Government's Bill on the parliamentary table? Where did the inspiration come from for the detailed contents of the final policy outcomes? And, how does the New

Zealand experience compare to international experience? The process of answering these questions begins in Chapter Two.

Chapter outlines

In Chapter Two, the philosophical and methodological orientation underpinning the research is outlined. Philosophically, the position taken is one that perceives social structures as "transcendental realities" (Bhaskar, 1979; 1989): realities that epistemologically can only be known cautiously. The method followed, in order to build a better theoretical understanding of the process of change in occupational safety and health policy, is that of analytic induction. Analytic induction involves following events through time to identify the "time order, convariance, and rival causal factors", and importantly, it involves the search for "negative cases that refute the investigator's propositions" (Denzin, 1989:24-25; see also Silverman, 1993:160-62). The details and consequences of the adoption of these philosophical and methodological approaches are outlined in the chapter sections on philosophy, methods, and practice.

In Chapter Three, an assessment and summary of the current state of international knowledge about the process of change in occupational safety and health policy, and the issues commonly debated, is presented. The main objective of the review, in keeping with the methodology, is to provide a foundation for research into, and discussion of, the New Zealand experience of major occupational safety and health policy change in the period 1981 to 1992. Specifically, the review identifies within the literature the reasons given for change in occupational safety and health policy, the reasons given for different policy outcomes between and within nations over time and the occupational safety and health policy issues commonly debated. In addition, the review identifies the range of theoretical and methodological positions used so far in the study of occupational safety and health

policy. Following a detailed examination of the occupational safety and health policy literature, the state of the literature is briefly compared to that of the general policy literature.

As the result of the review, it is clear that the various explanatory accounts for differences in occupational safety and health policies between nations, and change in occupational safety and health policy within them, are quite diverse in their disciplinary origin, theoretical perspective and methodological orientation. Furthermore there is no definition of what 'occupational safety and health policy' involves. In addition, when compared to the range of work conducted in the general public policy literature, analysis shows that there are some notable theoretical gaps in the literature concerning the change process. There is also a need for greater specificity about what occupational safety and health policy means, and what the links are between various policy areas and issues. In spite of the divergences in forms of analysis and explanations, a range of tentative propositions about the origins and determinants of change in occupational safety and health policy change can be formulated, and about the policy issues debated.

Chapter Four identifies, describes, characterises, and assesses the significance of the main New Zealand legislative and administrative proposals that were suggested or implemented at various points during the period under study. The chapter argues that descriptions of the legislative and administrative changes that have occurred in New Zealand from 1981 to 1992 as representing a hazard management or risk management approach to occupational safety and health, while accurate, do not adequately depict all the changes that have occurred, nor the continuities that remain. A better description and understanding can be arrived at by discriminating more carefully between the different approaches that were put

forward in the period. At the beginning of the period the situation can better be described as system of "Government Management", by 1990 a system of "Tripartite Management" had been partially introduced, in 1992 a new system of "Employer Hazard Management" replaced existing arrangements. The chapter goes on to suggest that these changes are significant for two reasons. First, the changes demonstrate a growth in independence from overseas legislative models in New Zealand's occupational safety and health policy, towards one that reflects the dominant occupational safety and health philosophy found amongst senior government officials and big business. Second, the changes clearly reflect the existence of class conflict and politics in New Zealand. Using other criteria though, it can also be argued that the changes signify that little has changed. Preliminary evidence is also presented that indicates the existence of a number of similarities between explanatory factors highlighted in the literature, and the New Zealand experience.

In Chapter Five, the origins and process of occupational safety and health policy change in New Zealand, between 1981 and 1992, are identified and described in detail. In addition, the policy debates are identified, and the positions taken by each of the main actors on the issues are introduced. A key feature of this chapter is the provision of a series of time and incident charts that track the flow of key events and policy debates throughout the period.

With Chapter Six, description moves towards analysis, and an explanatory narrative is presented that focuses upon identifying and assessing the factors which determined what changed in New Zealand between 1981 and 1992. It is here that the answers to questions raised earlier are provided. The chapter argues that the New Zealand determinants of change include a range of structural and agency variables that have been identified in the literature reviewed in Chapter Three. Furthermore, it is clear that a sharp political division

exists between the two main political parties over the issue of workers' rights. It is also apparent that the employers' organisations were adamantly opposed to any strong statements of workers' rights. Interview evidence suggests as well, that the policy framework within which occupational safety and health policy is discussed in New Zealand has undergone significant broadening. In the latter half of this chapter, using theory, it is argued that the origins of change in New Zealand can be explained as representing a crisis of rationality and a crisis of integration. Furthermore, the change process demonstrates a dynamic relationship between structural and agency forces: forces that also determined the eventual outcomes.

Chapter Seven presents a theoretical framework of the 'middle-range' concerning the process of change in occupational safety and health policy in advanced industrialised countries. The model aims to, firstly, avoid the extremes in analysis and explanatory emphasis commonly associated with pluralist and marxist accounts of occupational safety and health policy change. Secondly, propositions are made concerning how occupational safety and health policy may be defined, what the relationship is between government policy on occupational safety and health and other policy areas, what the key policy debates are, and about the relationship between government policy and the control of the incidence of injuries and illnesses in the workplace. The utility and explanatory adequacy of the theoretical model is illustrated by reference to the literature reviewed and the account in the previous chapter of the New Zealand experience. The theory presented is one that Lloyd (1986:189, 279-306) has called "political (or structural) action"; the approach is fundamentally informed by the work of Touraine (1955; 1965; 1968; 1971; 1977; 1981; 1988a and b; 1989; 1990; 1991; 1992), Touraine *et al* (1955; 1961; 1965; 1983 a and b; 1987), and Dwyer (1983; 1984; 1991; 1995).

The last chapter, Chapter Eight, reviews the descriptions and analyses provided and the conclusions reached. The chapter finishes by briefly considering the contribution made by this research, and identifies areas for future research.

CHAPTER 2: RESEARCH METHOD - ANALYTIC INDUCTION

Introduction

In this chapter the philosophical and methodological orientation underpinning the research is outlined. Philosophically, the position taken is one that perceives social structures as "transcendental realities" (Bhaskar, 1979; 1989): realities that epistemologically can only be known cautiously. The method followed, in order to build a better theoretical understanding of the process of change in occupational safety and health policy, is that of analytic induction. Analytic induction involves following events through time to identify the "time order, convariance, and rival causal factors", and importantly, it involves the search for "negative cases that refute the investigator's propositions" (Denzin, 1989:24-25; see also Silverman, 1993:160-62). The details and consequences of the adoption of these philosophical and methodological approaches are outlined in the following sections on philosophy, methods, and practice.

Philosophy

To understand the philosophical position adopted in this research it is helpful to refer to Lloyd's (1986:Chap 14) examination of the types of theoretical approaches to explaining and describing social change in sociology. In his book, Lloyd (1986:279) identifies a number of 'traditions', one of which he calls "relational structurism". "Relational structurist" theories of social change are attempts to bridge the divide between explanations of social change that tend towards "systemic determinacy" on one hand and those that are individualistic on the other (Lloyd, 1986:279-280). In the relational structuralist tradition, Lloyd identifies four main streams: Marxist, Weberian, "Elias's

figurationism; and structurationism, which includes Giddens and Touraine" (Lloyd, 1986:284). Each of these streams, while having their differences, share seven components that unite them in their approach to theorising about social change. The seven components are: a realist relational concept of social structure, a social-levels model of society, an emphasis upon a human agency and praxis that is relatively free, a concept of social class and class interest and conflict, an awareness of the problematic of ideology and need for social critique, a notion of the importance of the unintended consequences of action and intention, and a commitment to the idea of society as a historical structure that is constantly acting to reproduce and change itself through agents (Lloyd, 1986:280-84). In terms of this dissertation and research, what do each of these components mean?

The 'realist relational concept of social structure' underpinning this research, utilises Bhaskar's (1979; 1989) idea of social structure as comprising levels of increasing transcendental reality. This means that social structures are considered ontological facts, but facts that are not always amenable to positivistic analysis. The most concrete social structures are things such as political institutions and legal systems. Less observable, and more transcendental, are social classes and ideologies. The most transcendental (but not necessarily less real) social structures are those realities that could be called 'spiritual'. The greater the transcendence of a perceived social structure the more difficult it is to observe and test positivistically. Social structures are relational because each structure has intended or unintended effects upon other social structures, and human praxis in general. Social structures are also transcendental and relational in that they are subject to paradigm shifts in intellectual thought, and are dependent upon one's perception and experience of life and society. Epistemologically this means that social structures and scientific knowledge are phenomena that are contingent and relative. Consequently, scientific neutrality and

objectivity are problematic. The most that can be expected is an objectivity and form of knowledge informed by scepticism and self-awareness on the part of the researcher about their own attitudes and perceptions, coupled with an understanding of how others perceive society and social processes.

The insistence upon the limits of positivism is not a denial of the importance of epistemology. Rather, it is a rejection of the assumption of 'value free' research and the related "hope that public policy could be made to rest on a body of politically neutral theory and fact, validated by scientific method and beyond the disputes of moral and political sides" (Gusfield, 1984:48 in Gessner and Thomas, 1988:87). This raises the question of the "practical relevance" (Silverman, 1993:171) of this research for sociology and policy making. If there is no way to validate the research, what use is it? The practical relevance and value of this form of research, suggests Renn (1985; in Gessner and Thomas, 1988:90), is its contribution to the systematisation of knowledge about the policy process and the issues debated. In the context of this dissertation, the value and practical relevance of the research lies in its potential to produce a better elaboration of the ideas that currently exist about change in occupational safety and health policy in general, and in New Zealand specifically. However, for there to be some relevance to the concepts employed and the theoretical synthesis presented in Chapter Seven, there must be some form of correspondence between the concepts and the facts. This returns us to the issue of epistemology, and the methods used to establish a link between the facts and the concepts employed.

Methods

The premise underlying the methods used in establishing a link between the concepts and the facts employed in the research, is the belief that a researcher can obtain understanding

of a subject by interpreting the actions and meanings of social actors who have participated directly themselves in the subject area. However, before interpretation can take place, relevant data must be gathered. Data may take the form of direct field observation of the subject, conducting written questionnaire surveys, conducting in-depth interviews with the actors knowledgeable about the subject, gathering original documents related to the subject, and analysis of secondary materials on the subject. In this research the last three forms of data gathering were employed. However, in addition to gathering the data, the data must be analysed. There are two common approaches to data analysis: qualitative and quantitative. The approach taken in this research has been qualitative. The question now is: what does qualitative research and analysis involve?.

Babbie (1989:G6) defines qualitative analysis as "the nonnumerical examination and interpretation of observations, for the purpose of discovering underlying meanings and patterns of relationships." Abercrombie *et al.* (1984:200) in their definition of qualitative analysis comment that: "sociological analysis is frequently qualitative, because research aims may involve the understanding of phenomena in ways that do not require quantification, or because the phenomena do not lend themselves to precise measurement." Hakim (1987:26) suggests that qualitative research is:

> "concerned with individuals' own accounts of their attitudes, motivations and behaviour....the meanings and interpretations given to events and things, as well as their behaviour; displays how these are put together, more or less coherently and consciously, into frameworks which make sense of their experiences; and illuminates the motivations which connect attitudes and behaviour, or how conflicting attitudes and motivations are resolved in particular choices made."

Miles and Huberman (1994:7-9) argue that while qualitative research takes many forms, they all share common features. These features are: a desire to describe and explain social

events and actions; the research involves prolonged in-depth contact with the subject; an attempt is made to develop a 'holistic' overview which encompasses all the dynamics related to the subject; understanding of the subject matter is derived by attempting to understand the perceptions of participants and by 'bracketing' out preconceptions about the situation; analysis of the data proceeds by searching for patterns, commonalties, and contrasts in words used, with the goal of uncovering common and consistent themes; and, standardisation of instruments of measurement is uncommon and depends upon the intuition of the researcher and their ability to empathise with the subject.

Although the above features re-occur in qualitative research, they are also configured and used differently according to the type of research question and the 'research tradition' followed in the study (Miles and Huberman, 1994:7). For example, if the research interest is the characteristics of language as communication, in particular the content of the communication, an appropriate methodology and tradition would be content analysis. However, if the research question was concerned with the discovery of social regularities, particularly the identification of elements and the exploration of their connections, then the method and tradition followed may be transcendental realism, grounded theory, ethnographic content analysis, ecological psychology, or event structure analysis (Tesch, 1990, in Miles and Huberman, 1994:7).

Qualitative research has a major problem though: certainty about the accuracy of an interpretation of the subject can never be assured. However, the most compelling interpretations are those that are internally consistent in their grounding in the data, and in theoretical terms employed. One way to overcome uncertainty, is to use the research procedure of triangulation. Triangulation involves the use of two or more appropriate

research methods to test the veracity of a finding (Babbie, 1989:99). However the strategy of triangulation is not a total panacea for ensuring the validity and reliability of any research outcome. A couple of difficulties can arise. First, there is the danger of the unwarranted aggregation of the data in "order to arrive at an overall 'truth'" (Silverman, 1993:157). Second, what happens if the data sources conflict (Miles and Huberman, 1994:267)? These two problems are particularly important for the interpretivist sociologist who believes that social action and experience is contingent, relative, and specific to the social actor and the circumstance (Silverman, 1993:157; Denzin, 1989:244). What can be done about these problems?

Denzin (1989:245) suggests that to have confidence in one's interpretation, "the researcher must have multiple occurrences or representations of the processes being studied". Multiplicity of occurrences and representation can be achieved not only by triangulation of methods, but also by triangulation of data sources, triangulation of theories, and triangulation of researchers (Denzin, 1989:247). Silverman (1993:157) notes that Fielding and Fielding (1986) reject Denzin's "eclecticism" in preference for the selection of theory, method and data that "will give you an account of structure and meaning from within that perspective". Silverman (1993:158) himself prefers "to distinguish between 'how' and 'why' questions and to triangulate methods and data only at the 'why' stage". Miles and Huberman (1994:267) suggest that what these problems reveal is that:

> "at best, this can push us into more complex, context-respecting set of explanations....In effect, triangulation is a way to get to the finding in the first place - by seeing or hearing multiple *instances* of it from different *sources* by using different *methods* and by squaring the finding with others it needs to be squared with. Analytic induction, once again" (Miles and Huberman, 1994:267).[1]

[1] Italics appear in the original.

It is this sentiment, that has fundamentally informed the methodological practice followed in the examination of the New Zealand experience of change in occupational safety and health policy.

The practice

Research strategy

The questions at the core of this research can be restated as two research objectives. The first objective is to uncover the policy issues at the centre of occupational safety and health policy debate in New Zealand, and to explain the process of change that occurred between 1981 and 1992. The second objective, is the development of a theory about change in occupational safety and health policy in advanced industrialised democracies that is more precise about the policy issues, social regularities, and specificities that exist, than the current accounts of change offer. While both objectives can be separated, in practice they are intended to reinforce each other as complementary sets of research questions and strategies. Together such questions and strategies enables the development of a compelling empirical and theoretical analysis of change in occupational safety and health policy in advanced industrialised democracies. The specific links established between the two aims will now be outlined.

At the overall design level, two research strategies were used. The first strategy involved a detailed analysis of the secondary material on the subject of change in occupational safety and health policy. The material examined consisted of over two hundred and fifty academic articles and books published on the subject of change in occupational safety and health policy, and the related policy issues. The results of this literature examination are presented in the next chapter. The literature analysis served two purposes. The first was the provision of information about what other researchers had discovered about the

process of occupational safety and health policy change. More specifically, the review provided insights into what the policy issues were, what research strategies had been followed, what forms of explanation had been put forward, and enabled the identification of problem areas within the current state of knowledge about the making of occupational safety and health policy. The identification of the problem areas provided the impetus for the development of a more refined theoretical analysis. The second purpose served by the literature review, was the gaining of insight into what the policy issues might be in New Zealand, and of ways in which the process of major change between the years 1981 and 1992 may be explained.

The second research strategy involved original research into the process of major change in occupational safety and health policy in New Zealand that occurred between 1981 and 1992. The purpose of this particular research was twofold. The first was to uncover evidence that would inform the development of an original and significant critical analysis of the making of occupational safety and health policy in New Zealand. The second purpose was that, through the analysis of the New Zealand experience, evidence would be gathered that could be used to refute or support any one of the range of explanations that can be found in the literature, and would assist in the development of a new theoretical synthesis that builds upon the work that has already been done.

Regarding the methods used for the study of the New Zealand experience, a three-pronged triangulation strategy was used. The first strategy involved semi-structured interviews with representatives of groups of social actors who directly participated in the change process. The second involved detailed analysis of several thousand pages of original documents directly related to the policy process and debates that took place in the period 1981 to

1992. The third strategy followed was to gather multiple instances of the interviews and documents, from multiple sources, in order to cross-check the information provided in the material. All the data was gathered in the last of six months of 1995, and the first few months of 1996. How each of these strategies were employed, is outlined in the following sub-sections.

The data and its collection

All the people eventually interviewed, eighteen in total, were intimately acquainted with part or all of the change period. Each interviewee was a representative of a social organisation who had a stake in the re-development of New Zealand's occupational safety and health policy. The initial selection of potential interviewees focussed upon the generation of a list of core organisations at the heart of the change process, and the identification of the individuals that represented the organisations. A list of twenty-five individuals was eventually generated through a process of 'brain-storming' by the researcher, based upon personal knowledge of the change process[2], and from discussion with supervisors. In addition, in the course of the interviews, interviewees suggested a couple of other potential sources of information that were then followed up.

The restriction of the number of interviews conducted to eighteen people, reflected the occurrence of two limiting factors. The first was a decision to conduct high quality interviews rather than focus on sheer quantity. This meant that 'in-depth' interviews of representatives of only the main participating organisations in the change process were held. As a result, attention was concentrated upon obtaining interviews with the representatives of the main union, employer, and government organisations involved. The

[2] The Occupational Safety and Health (OSH) Service employed the researcher as an Inspector of Factories between 1986 and 1989.

second limiting factor was the occurrence of a problem common in longitudinal studies, that of 'falling-out'. This meant that a number of representatives contacted declined to be interviewed because they felt they did not remember the events well enough, or felt that they were not sufficiently involved in the process to be worth interviewing. A couple of other interviewees contacted did not wish to participate for other reasons. As a consequence of these limitations, of the twenty-five people contacted, eighteen responded positively and were interviewed.

All the potential respondents were approached initially by letter and invited to participate. The letters were followed up by a telephone call. The interviewees were asked to sign a consent form for the use of any information provided and were promised confidentiality. The assurance of confidentiality means that access to the transcripts is restricted to the researcher, transcription typists, and supervisors, and all quotations are referenced by an interview and transcript line number only. The interviews were conducted at a time and place convenient to the informants. The interviews varied in length from thirty-five minutes to three hours. The majority of interviews lasted approximately one hour. A transcription typist initially transcribed the interview tapes, and the researcher then checked the transcripts.

In conducting the interviews, a semi-structured interview schedule was followed. The questions were open-ended and aimed at eliciting from the informant, their perspective about who the key participants were in the change process, what the main determinative events were, what the main issues debated were, and sought explanatory elaboration of the reasons behind the answers given. In following this format, the questions were based upon the three core research questions of identifying and assessing the significance of the issues

debated, describing how change occurred, and explaining why change occurred in the way that it eventually did.

The documentary data collected and examined, was derived from two main sources: official government information from the archives of the New Zealand Department of Labour (DoL) Occupational Safety and Health (OSH) Service, and from the archives of the New Zealand Council of Trade Unions (CTU). In both cases the organisations gave the researcher unrestricted access to sight and copy documents from their archives pertaining to the change in occupational safety and health policy and administration between 1981 and 1992. In the case of the CTU files predating 1984, these were accessed, after prior approval from the organisation, through the Alexander Turnbull Library. Facsimile copies of many of the documents perused and cited by the researcher are available for scrutiny by other bone fide researchers.[3]

Access to the documents was achieved by seeking the assistance of key people who were known by the researcher within each organisation. The New Zealand Employers Association also released a very small number of papers. The documents scrutinised numbered well over one thousand items, of which over five hundred items were copied (with the permission of the organisations concerned) and indexed by the researcher. The documents record in detail the debates over issues, the policy positions of different organisational actors, and decisions made by officials and politicians throughout the period. The documents include letters exchanged between actors, position papers prepared by actors about issues, minutes of both public and private meetings between actors, Cabinet

[3] Permission can be sought by contacting the researcher at: John Wren, Department of Sociology, Massey University, Palmerston North, New Zealand.

committee minutes and memoranda, public submissions to Parliamentary select committees, and press releases and public speeches made by participants.

Gathering the multitude of documents served three purposes. They allowed for the cross-checking of the documents themselves for quality, consistency, and content. They helped ensure that documents were being properly interpreted within their full context. And, they acted as a cross-check upon the opinions and explanations expressed in the interviews.

Data analysis

In analysing the interview and documentary material two 'modes' of thinking were employed. The first was a "variable mode" that approached the question of explanation by looking for specific patterns and similarities (Miles and Huberman, 1994:147). The second utilised a "process mode" that assembled chronologies and connections between events into a 'big picture' (Miles and Huberman, 1994:147). Linking both modes of analysis was the act of 'retrospection'. Retrospection involves looking for patterns of particular antecedent events that have clear connections to later outcomes (Scriven, 1974; in Miles and Huberman, 1994:147).

To facilitate the retrospective search for patterns of events, two types of matrices were used. In relation to the interview data, the material in the early stages were organised and assessed by constructing a Role-Order Matrix (Miles and Huberman (1994:122-126). This matrix sorts the interview data into rows, and the interview questions into columns. The body of the matrix comprises summaries of the views of each interviewee in relation to each question. By grouping together all the interview rows of representatives with a particular point of view, for instance unions, it is possible to construct a "role domain" that

constitutes the viewpoint of that organisational actor. The matrix also enables an analysis of variations within each role domain to be made. The matrix is principally concerned with answering the 'why' question.

In entering the interview data into the Role-Order Matrix, the material was treated as 'conversational data' that was subject to filtration according to the interviewee's and interviewer's social position, norms, expectations, etc. Fundamentally the interviews represent "compelling narratives" (Silverman, 1993:114). Given the philosophical position underpinning the research, the information provided by the interviews was treated as representing accounts of external realities; perceptions though that are conditioned by the social and political context of the interviewee and their personal and organisational background, and as such is neither necessarily true or false. Each account represented, for example, a single note on a music score; a music score that can be systematically analysed for its underlying structure and relationships, and individual meaning.

The documentary data was organised, in the first instance, by the construction of an index created in a computer spreadsheet (Microsoft Excel version 7). The index allowed the documents to be described and sorted according to a number of factors, principally date of origin, source of document, document type, and document content (see Hakim, 1987:Chapt 4 for discussion). Aided by the index, each document was carefully examined and a comprehensive diary of events and debates was constructed. Informing construction of the diary, was the creation of a Time-Ordered Event Matrix (Miles and Huberman, 1994:110-122). This matrix consists of columns representing time periods, and rows that correspond to conceptual levels of analysis. The body of the matrix is filled by listing the important 'incidents' that occurred within any given conceptual level and time period. An

important incident is defined as an action or event that can be clearly identified as shaping or determining a particular policy outcome or outcomes. A critical action is defined as a specific decision or meeting that had a determinative impact upon the making of a policy outcome at a particular period in time. A critical event is defined as something that occurs over a longer time frame that acts to shape and guide the policy making process over the longer term. The matrix served two purposes. The first purpose served was assisting in the development of an event process network that helped to answer the 'how' and 'why' questions. The second purpose served by the matrix, was identification of the policy issues debated, and the identification of important variables that conditioned the policy process and outcomes. The analysis presented in the following chapters on change in New Zealand's occupational safety and health policy between 1981 and 1992, is the result of the use of the above methods.

Research problems encountered

During the research process a number of potentially serious problems arose that could have introduced severe bias problems into the data collection and its interpretation. The main problems encountered were: repetition in the interview schedule used in early interviews that caused some vexation to interviewees; a need to improve the listening skills of the interviewer; and a need to check the origin and status of some of the documents gathered.

Problems with the interview schedule were revealed early on in the interview process. The problem revealed itself when the first informants answered the latter schedule questions while responding to the first part of the question schedule. In subsequent interviews, when

respondents similarly answered the later set of questions during the interview, the latter questions were then truncated and used to clarify and confirm the earlier answers.

As for the issue of listening skills, the researcher noted when checking the first transcripts, that there was a tendency to cut across respondents in mid answer, with a consequential loss of potentially useful information. After recognising this tendency, the problem substantially receded in the interviews that followed. In addition, reflection by the interviewer on the early interviews, resulted in the recognition that the interviewer needed to take more care about his verbal and bodily responses to points of view that ran counter to his own affinities.

Uncertainty over the origin and status of some of the documents was particularly a problem with the archives of the OSH Service. The main problem was that the files, in many cases, contained multiple copies of the same document and in some instances in different places. However, not all the copies were complete, or dated, irrespective of where they were filed. As a consequence it was necessary to be very careful about the status accorded to every document seen. Nevertheless through careful cross-referencing, and the knowledgeable assistance of representatives of the Department of Labour, the problem was largely overcome. Where the provenance of a document could not be established, the document was rejected for the purposes of the research. Where rejection of a document was proposed, a careful check was made to ensure that the absence of the document did not appear to compromise the interpretation of the other documents, or other evidence.

Summary

In summary, a philosophy of transcendental realism underpins the research. In order to arrive at an adequate and verifiable elaboration and explanation of the occupational safety and health policy process and issues debated in New Zealand, a multi-factored methodology was used. The data collection methods employed consisted of gathering multiple instances of semi-structured interviews with representatives of the social actors at the core of the change process, and analysis of original documents. The interview questions focused on identifying from the respondent's perspective, who the key participants were, what the determinative events were, what the main issues were, and sought explanatory elaboration of the answers given. Well over one thousand archival documents, drawn from a number of sources, were assessed. All the documents studied recorded aspects of the process, the debates over issues, and the decisions made between 1981 and 1992. The documents gathered included letters exchanged between actors, policy position papers, minutes of both public and private meetings between actors, Cabinet committee minutes and memoranda, speeches, and press releases. In assessing the material gathered, the approach taken was to analyse the data for similarities and differences between what each actor has said, and what was reported in the documents.

In the next chapter, the literature on change in occupational safety and health policy is examined. In keeping with the method of analytic induction, and the desire to build upon the work already done in the field, the purpose of the review is to provide a solid foundation for informed discussion of the current state of knowledge about the topic. The review focuses upon identifying the origins of change in occupational safety and health policy, the determining factors in the change process, the policy issues commonly debated, and the forms of analysis and explanation that have been put forward so far.

CHAPTER 3: EXAMINING THE LITERATURE

Introduction

In this literature review an assessment and summary of the current state of knowledge about the process of change in occupational safety and health policy, and the issues commonly debated, is presented. The main objective of the review, in keeping with the methodology, is to provide a foundation for research into, and discussion of, the New Zealand experience of major occupational safety and health policy change in the period 1981 to 1992. Specifically, the review aims to identify within the literature the reasons given for change in occupational safety and health policy, the reasons given for different policy outcomes between and within nations over time, and to gain an understanding of the occupational safety and health policy issues commonly debated. Another aim is to gain an insight into the range of theoretical and methodological positions used in the study of occupational safety and health policy. Following a detailed examination of the occupational safety and health policy literature, the state of the literature is briefly compared to that of the general policy literature.

As the result of the review, it is clear that the various explanatory accounts for differences in occupational safety and health policies between nations, and change in occupational safety and health policy within them, are quite diverse in their disciplinary origin, theoretical perspective and methodological orientation. Furthermore there is no definition of what 'occupational safety and health policy' involves. In spite of the divergences in forms of explanatory analysis, a range of initial propositions about the origins and determinants of change in occupational safety and health policy can be formulated, and about the policy

issues debated. In addition, analysis shows that there are some notable theoretical gaps, and a need for greater conceptual specificity, in the occupational safety and health policy literature when compared to the range of work conducted in the general public policy field.

Introducing the literature on occupational safety and health policy

In conducting the literature review the inductive method has been utilised. By adopting the inductive approach a four-fold purpose is served. The first is the identification of the range of theories and methods that have been used to describe and explain the process of occupational safety and health policy change, and the outcomes that have occurred in various countries. The second purpose has been the identification of the "enduring patterns and relationships" (Hakim, 1987:18) across time and cultures about the origins of occupational safety and health policy change, the factors that commonly determine the final outcome, the policy issues commonly debated, and the policy positions taken by participants in the debates. The third purpose served is the development of a cumulative and critically aware body of evidence that can be used to inform the investigation of the New Zealand experience of occupational safety and health policy change between 1981 and 1992. The final purpose served is that through both the analysis of the New Zealand experience, and the examination of the literature, it will be possible to develop a synthesising theory of occupational safety and health policy change that consolidates and builds upon the international research conducted so far.

In identifying the material to review, the only limitations applied were that the article or book must be in English, and focussed upon describing and or explaining the process of change in government occupational safety and health policy. As a consequence, the material presented is multi-disciplinary in origin, theoretically and methodologically diverse,

covers a wide time span, and is multi-national in coverage. The diversity of the material highlights the occurrence of a problem that arose early on in the research, and which exists in the occupational safety and health policy literature. The problem is: how to define what 'policy' means, and 'occupational safety and health policy' in particular. The problem is an important one because the definition chosen will determine the range of material considered for review, and how the topic will be discussed in latter chapters.

Defining what policy and occupational safety and health policy mean is not easy. Regarding the general policy literature, Dye (1987:3) argues that the "proper definition of public policy [has] proven futile, even exasperating, and they often divert attention from the study of public policy itself". This sentiment is shared by Ham and Hill (1993:11), who note that this question "has attracted much interest but little agreement". Wildavsky (1979:15) has commented that "there can be no one definition of policy analysis". Fitzpatrick (1995:105-106) regarding social-legal studies notes that the debates about what is 'social' and what is 'legal' are "interminable". Within the literature on occupational safety and health policy, the issue of definition is not even raised. What is to be done?

Answering the question of "what is to be done" is difficult. All the solutions put forward in the general policy literature avoid the issue of theoretical definition in favour of an empirical method, or call for more theoretical awareness. For example, Dye (1987:xii) argues that any given policy issue is amenable to study by one or more of a number of theoretical models, and most policy issues display combinations of elements of each. Similarly, Ham and Hill (1993:11and18) prefer a policy analysis 'orientation' that recognises the social, political and economic contexts within which problems are tackled, and that acknowledges the difficulty of maintaining the distinction between analysis 'of' policy and

analysis 'for' policy in research practice. Ham and Hill (1993:79) go on to suggest that an "eclectic" approach to analysis may be the best method, and in terms of "linking levels of analysis" advocate the use of "radical organisation theory" (Ham and Hill, 1993:174-188).

In terms of the wider context of disciplinary boundaries, Dror (1971:ix) has suggested that policy studies constitutes a new "supra discipline". Wildavsky (1979:15) argues that "policy analysis is an applied sub-field whose content cannot be determined by disciplinary boundaries". In social-legal studies - a related area of study to 'policy analysis' - Kagan's (1995:143) solution is not for social-legal scholars to withdraw into their disciplinary origins, or for the establishment of a new universe, but for scholars to "be quite clear about which portion of the legal universe [they] are working in". Gessner and Thomas (1988:87-89) suggest that policy analysis could benefit from social-legal studies that are less positivistic about "the researcher-object relationship". Gessner and Thomas (1988:92-94) go on to suggest that policy studies need to be more aware of the theoretical and empirical contribution that the sociology of law and an interpretive methodology can make to understanding the social role of law, how law is implemented, and how policy problems are not 'givens' but are constructed by society.

In terms of the sociology of law, Tomasic (1980:42-43) suggests that, while some case studies have persuasively argued for a particular theoretical perspective, it would be wrong to impose one perspective over another because many theories are often simply different ways of looking at the same thing: "a variety of theories are often compatible in explaining a particular legal phenomenon" (Tomasic, 1980:42). Travers (1993) rejects Tomasic's approach. Travers (1993) argues that instead of eclecticism or pragmatism, or complaints about the lack of theoretical development, what is required is a real appreciation of the

extent and depth of the debates about terms such as society, sociology, policy, sociology of law and social-legal studies.

Given the difficulty of defining what is 'policy' and 'policy studies', the approach taken in this research is to recognise that investigation of change in 'public policy' means the investigation of the processes of decision-making and non-decisions by central government. Furthermore, analysis requires cognisance of the complexity of institutionalised systems of government decision-making. Understanding the complexity of decision-making involves acknowledging the social, political, economic, and personal contexts within which policy problems are tackled. Government is defined in this research as the institutional apparatus of political decision-making at the highest level in a nation state, and includes the administrative systems for implementing the decisions made. As for defining 'policy', 'policy' is defined in this research as referring to the full range of legal instruments and administrative techniques available to the state to make known, and enforce, the decisions it makes on behalf of the people within a defined territorial boundary, about a particular issue. Given both these definitions, occupational safety and health policy is defined as the range of legal and administrative decisions made by central government at the highest political level concerning the control of workplace injuries and illnesses in any given nation state.

The above definition of occupational safety and health policy still leaves an important question unanswered. The question is: to what degree are debates about accident compensation reform, public safety, environmental protection, transport safety, economic reform and employment relations reform, relevant to occupational safety and health policy? The question implies the existence of a broad net of relationships between policy debates and decisions. The opposite might actually be the case. Occupational safety and health

policy can equally be conceived in 'strict' terms of only referring to the specific means implemented by government to achieve the stated ends, in this case the control of workplace injuries and illnesses. Occupational safety and health policy in this more limited sense would only refer to questions such as why was a particular injury causation model, with all its associated implications for injury prevention, chosen over another model. In the absence of debate about these sorts of questions in the literature on occupational safety and health policy, a broad and liberal definition has been initially adopted that acknowledges that occupational safety and health policy cannot be totally separated from other policy debates about employment relationships and accident compensation etc. It may be possible at the end of the research to be more precise about what constitutes 'occupational safety and health policy', and what the policy debates, boundaries and relationships are.

The task of gathering and examining the literature, given the problems of defining 'policy' and the stated aims set for the review, proved to be an "immensely frustrating logistical problem" (Bennett, 1995:6). The problem was only overcome with the development of a taxonomy that is represented in Figure 3-1 on the next page. Moving from left to right across Figure 3-1, the top row of headings suggests that research into change in occupational safety and health policy revolves around three types of research question; there are a range of explanatory factors; and the evidence for each type of perspective identified in the body of the diagram can be measured.

Moving down to the second and third row of headings. The second row of headings expands on the items raised in the top row. The third row that is shaded, represents one of two poles of opinion or explanatory orientations that appear in the literature regarding each

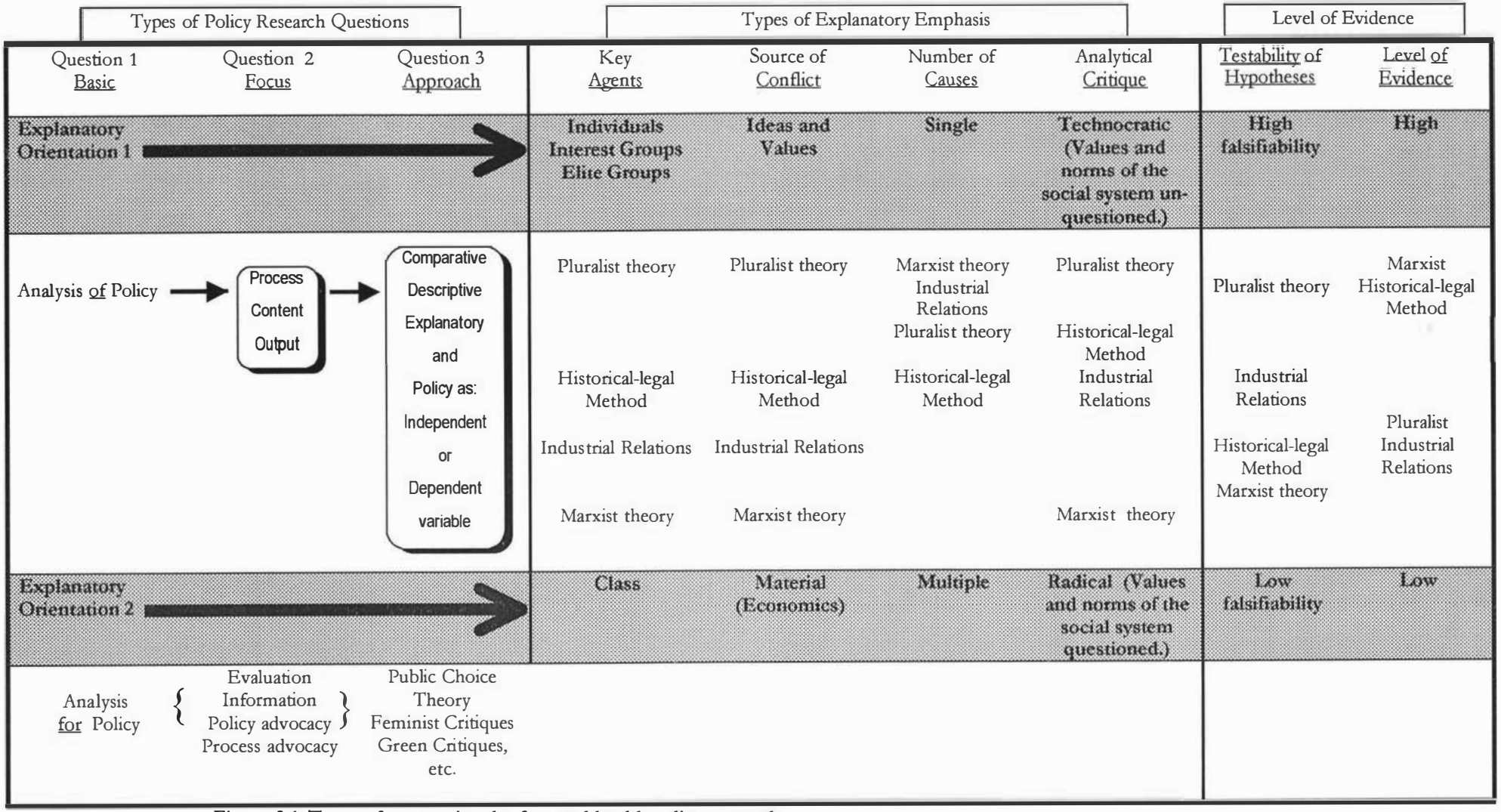

Figure 3-1: Types of occupational safety and health policy research.

item. The other pole of opinion is set out at the bottom of the diagram. The first set of headings in the second row, identifies the main types of research questions asked. The next set of headings along, identifies the existence of three sets of explanatory factors that appear in the literature. The explanatory sets are binary in nature, and represent the opinions that are expressed about who the key agents are in motivating and determining the change process; the sources of conflict in the process; and, the tendency in explanation to identify a single or a number of causes of change. The fourth set, identifies the type of analytical critique offered by the perspective. The last sets of headings indicate two measures that have been used by other writers to measure the degree of evidence that exists for the perspectives highlighted.

The text in the main body of Figure 3-1 provides details about each item identified in the headings. For example, the text relating to question one concerning basic research orientation, indicates that there are two types of policy study: analysis 'of' policy and analysis 'for' policy. Analysis 'of' policy refers to analyses aimed at achieving understanding of the policy change process and the issues involved. Analysis 'for' policy is concerned with solving the policy issues, and advocating for a particular solution. The distinction between the two is based upon one made in the general policy literature by Hogwood and Gunn (1981) and Ham and Hill (1993:4-10). Ilchman and Uphoff (1983:23) refer to this basic distinction respectively in terms of "writing about public policy" and "referring to public policy". In contrast, Rainey and Milward (1983:133-145) phrase the problem of research orientation in terms of "unit of analysis questions". For instance is the unit of analysis the policy 'process' or the policy 'network', or is it the policy 'program' (Rainey and Milward, 1983:139-140)? As this research and literature review is oriented towards the "analysis of policy", the taxonomy only develops the features of this approach.

Moving to the second question of research focus, three common focal points for analysis are identified. The first point of focus that commonly appears, is an interest in the 'process' of how policy is made. The other two involve an interest in understanding the 'content' of a policy, and how the 'output' of a particular policy-making system or institution is determined. In many studies, all three foci coexist.

As for the third question of research approach, studies are either oriented towards comparative analysis, descriptive analysis, or explanatory analysis, or a combination of all three. In addition, the studies may treat policy as an independent or dependent variable.

Having identified the main types of research orientation found in occupational safety and health policy studies, the taxonomy suggests there are four bi-modal axes of emphasis associated with understanding change in occupational safety and health policy. The first emphasis found in the literature focuses upon identifying, and understanding the role played, by key actors in the change process. The fundamental question here is are individual actors the prime agents of change, or are small groups, or are social classes the primary participants? The answer to the problem depends upon the theoretical and methodological position taken by the researcher in the study. The range of opinions that exist on this issue are represented in the body of Figure 3-1 by four general types of explanations that have been identified. The first general type of explanation identified as existing in the literature are pluralist explanations that emphasise the roles played by individuals and or small elite groups of people who represent particular interests. At the opposite end of the spectrum are marxist accounts which tend to identify social classes as the key agents of change.

The second explanatory emphasis found in the literature concerns the source of conflict between participants in the change process. Two opposing tendencies are evident. Pluralist accounts point to the occurrence of conflict between participants over different ideas and values about how, and to what extent, workplace injuries and illnesses should be controlled by the state. Marxist explanations emphasise that conflict over the control of workplace injuries involves a fundamental conflict of interest between workers and employers over control of the means of production. Regarding the role of the state, marxist studies of occupational safety and health policy emphasise the functional role played by the state in maintaining the labour supply to industry. However the state can also play an important mediating role, and can impose a policy solution more favourable to one side or the other.

The next explanatory emphasis found in the literature, concerns a tendency towards identifying either a single determinative factor or the existence of multiple causes for any given outcome or sets of outcomes in any particular policy process. Once again, whether one points to a single factor, or to multiple factors, depends to a degree upon the theoretical and methodological position adopted in the study.

The last point of emphasis that appears in much of the literature, is a tendency towards an analytical critique that is either technocratic or radical in nature. Technocratic analyses focus upon perceived problems within the operation of the political system, and tend to ignore issues such as the role played by dominant ideologies and the structure of the economic system. Many pluralist accounts of the occupational safety and health policy process are technocratic in their analysis. In contrast, marxist oriented explanations often

conduct radical analyses that highlight the determining role played by social values and the structure of the economy.

The last two components on the right-hand side of Figure 3-1 do not identify core aspects of the change process, but give an indication of the reliability and validity of the main types of explanation that appear in the occupational safety and health policy literature. The first column, testability of hypotheses, indicates the degree to which the explanations put forward can be or are refuted by other studies that attempt to replicate the initial analysis. The most obvious example of this in the occupational safety and health policy literature is the scathing criticism of Kelman's (1980; 1981) pluralist-type analysis of occupational safety and health policy-making in Sweden and the United States by Navarro (1983). Another example is Wilson's (1985) study of Great Britain and the United States in which he also rejects Kelman's thesis. The last column indicates the level of empirical evidence that exists in the literature for the perspectives commonly offered by the identified forms of explanation. In the literature there are approximately eighteen authors who have adopted a marxist-oriented explanation in their studies of various occupational safety and health policy outcomes, compared to approximately eight authors who have used a pluralist form of analysis. The more numerous evidence that exists for understanding occupational safety and health policy processes and outcomes from a marxist perspective is reflected in the top position allocated to it in the last column. The ranking of the material in these last two columns, has been informed by Grint's (1991:117) typology of theories in the sociology of work, and the work of Dunleavy and O'Leary (1987:340-41), Held (1987), and Pierson (1991) about theories of the state.

The body of Figure 3-1 identifies four overarching explanatory streams that exist in the literature. The streams are pluralist theory, marxist theory, studies using a historical-legal method, and an industrial relations orientation. The first two streams have a strong theoretical component to them, and have a more macro orientation. The historical-legal method stream tends to eschew theory for more method, and adopts a social-legal focus. The industrial relations stream does not have a policy process focus *per se*, but it does contribute to understanding the origins of the policy debates and policy positions taken by actors.

The Literature

The primary intention in this section is to highlight in more detail the ways in which occupational safety and health policy-making is explained by each of the four literature streams identified. Another purpose is to "uncover" for comparative purposes the policy issues identified as debated during the course of the policy-making process. The order in which the streams are discussed below does not reflect any *a priori* statements about the 'size' or 'importance' of the literature stream. The ordering of the streams simply reflects the logical juxtaposition of material for the purpose of highlighting similarities and differences. In examining each literature stream, only some contributions from each group are highlighted. When selecting the material to focus upon two criteria were used. The first question asked was: does this study offer a description or explanation for different occupational safety and health policy outcomes and processes that may account for the New Zealand experience from 1981 to 1992? The second question asked was: is the study a significant contribution to the literature, and does it provide a good example of the type of perspective adopted?

Pluralist oriented explanations

The studies of occupational safety and health policy by Ashford (1976; 1988), Mendeloff (1979), Kelman (1980; 1981), Wilson (1985), Gräbe (1991), Boehringer and Pearse (1986), Doern (1977; 1978) and Doern and Wilson (1974) all have in common a pluralist strand in their points of emphasis. The commonality between these studies appears in their focus and emphasis upon the decision-making processes or behaviour of individual political actors or groups of actors as agents of change. The studies also tend to emphasise the role of conflict over different values and ideas as the motivation behind change, and point to the influence of different institutional political arrangements in shaping change outcomes. While these studies share common features, they also have differences that in many ways reflect Mitnick's (1980) typology of regulatory theory. Mendellof's (1979) study, for example, fits the first variant of Mitnick's two "utility maximising" theories. Ashford's (1976; 1978) and Kelman's (1980; 1981) analyses can be seen as examples of "private interest" theory, and Wilson's (1985) and Gräbe's (1991) studies are representative of "public interest" theory. Doern's (1977) perspective is more neo-pluralist, while Boehringer and Pearse (1986) characterise Australian developments as "corporatist". All these studies, except Gräbe's, appear in the political science literature. They will now be discussed in more detail.

Ashford (1976; 1978) provided the first comprehensive description of the United States Occupational Safety And Health Act 1970 (OSHA) and the issues that surrounded its passage and implementation. According to Ashford (1976:535), conflict is inherent in occupational safety and health policy because of competing self-interests, lack of knowledge, differences in values, conflicts over governmental jurisdiction, and differences in disciplinary perspectives. In explaining the origin and eventual content of OSHA,

Ashford points to the behavioural and economic rationales put forward by private sector interest groups in response to the actions and arguments of other political actors. Ashford notes that the behaviour of business interest groups is not always consistent with their economic interest. The reason suggested for this is that behaviour is conditioned not only by economic rationality, but also by "custom, tradition, and a host of other social, cultural, and attitudinal characteristics" (Ashford, 1976:311). Ashford concludes that for occupational safety and health policy to be effective it "must rely upon four sets of policy instruments: the law, market incentives, the generation, dissemination and utilisation of knowledge, and the development of personnel in various professions...with the requisite knowledge of the issues" (Ashford, 1976:34).

Mendeloff (1979) argues that change in occupational safety and health regulation "depends upon a display not only of defects in the private market but also of inadequacies in the existing public programs established to remedy those defects" (Mendeloff, 1979:153). However, an interest in and justification for policy change is in itself not enough to achieve change. In the case of OSHA the initial impetus for legislative reform came from Labor Department officials in the mid 1960s. Additional pressures for change came out of social events such as the major mining disaster in West Virginia in 1968, and the appearance of new social movements under non-union leadership agitating for action on occupational safety and health, and miners' compensation (Mendeloff, 1979:15-20). However, without political leadership from the Whitehouse, Congress, or unions, little progress was made. It was not until political pressure was applied by coalitions of interest groups that change began to occur. In terms of the content of the legislation, "debates over procedural and substantive issues often revealed underlying differences in perceptions of management behaviour and the workings of the labor market" (Mendeloff, 1979:22). The eventual

content of OSHA, especially the way economic issues are considered, is explained as reflecting the contingent and pragmatic decision-making processes of regulators. In considering the decision-making processes of regulators it is necessary to understand the pressures brought to bear by other actors, to investigate how the decision-makers view the issues involved, and to understand their sets of values. In assessing the last two items Mendeloff (1979:xi) suggests it is necessary to keep in mind how both are partly determined by the bureaucratic and professional roles played by the regulators.

Mendeloff (1979) concludes that the OSHA legislation, with its attention to safety rather than health, prescriptive standards, feasibility, targeted inspections, and absence of any overt reference to economic cost-benefit analysis, reflects the confluence of: the aims and objectives of the AFL/CIO[4] union movement, Ralph Nader's activism, the preferences of Department of Labor officials, the particular strategy adopted by a business lobby that wanted to minimise regulation yet did not want to be seen as putting a price on peoples' lives, and the needs of politicians in Congress (Mendeloff, 1979:20-35; 154-164). In sum, OSHA is an example of pragmatic politics by politicians within Congress:

> "Politicians are more interested in finding issues that meet their political needs than in finding policies that meet analytic needs.... The task of constructing policies designed to meet the stated objectives is left in the hands of the private or public organisations who are the chief advocates of action. But these organisations usually care as much or more about the methods used to pursue the objectives as they do about the objectives themselves" (Mendeloff, 1979:156).

Kelman (1980; 1981:4), in his research comparing the United States and Swedish occupational safety and health policy, rejects theories that refer to the political context as

[4] The United States Federation of Labor and the Combined Industry Organisations, the two main union groupings in the United States.

adequately explaining the similarities and differences perceived in regulatory approaches between the two countries. References to political contexts are inadequate because the regulations adopted by both countries were thought to be quite similar and "usually favoured more protective alternatives over less protective ones...inspite of the fact during the period examined [1970-1976] a Republican administration hostile to OSHA[5] was in power in the United States and a Social democratic one friendly to ASV[6] in power in Sweden" (Kelman, 1981:5, 221). Kelman draws upon individualistic exchange theory[7] to explain his conclusion. Thus the perceived similarity in occupational safety and health protection afforded to workers in the United States and Sweden is due to the "pro-protection ideology" of officials, rather than issues of differences in expertise or the balance of political power between workers and employers determining the content of regulations.

In those areas where Kelman (1981) does see differences between the United States and Sweden, in enforcement methods adopted and the social conflict generated by regulation, these are explained as being the result of variations in social values, and differences in the structure of the respective countries' political institutions (Kelman, 1981:221). Sweden is categorised as being dominated by "deferent" values that encourage acceptance of government while the United States is dominated by "self-assertiveness" values that discourage acceptance. Because of these value differences Sweden has developed "accommodationist institutions" that encourage compromise and agreement, whereas the

[5] OSHA, "Occupational Safety and Health Administration", the United States regulatory agency responsible for occupational safety and health, situated within the Department of Labor.

[6] ASV, "Arbetarskyddsverket", or the "Worker Protection Board", the Swedish occupational safety and health regulatory agency.

[7] See - note 10 for chapter 1 pp 7 (Kelman, 1981:238) for references to influences in Kelman's work.

United States has developed institutions that encourage "adversary trials" (Kelman, 1981:221).

Wilson (1985), in his comparison of the United States and British occupational safety and health policy, sets out to prove two hypotheses. The first is, "that the nature of occupational safety and health politics in the USA is the consequence of political decision making, not culture" - as argued by Kelman (1981). The second hypothesis is, that "Lowi's claim that regulatory policies produce similar patterns of politics is inapplicable in international comparisons" (Wilson, 1985:30-31). Wilson concludes that both hypotheses must be accepted (Wilson, 1985:152-54). Kelman's cultural differences thesis is rejected because past United States history demonstrates that regulatory policy has not always been combative, and other areas of British policy-making, for example industrial relations, is combative; and in both the United States and Britain occupational safety and health policy and practice has imposed very little economic cost upon business (Wilson, 1985:1). Lowi's thesis is rejected, because while there are similarities between the two nations, major differences exist over how conflict in occupational safety and health policy and practice is handled politically. The question then is, how can the shape and nature of OSHA policy and practice be explained?

The answer, according to Wilson (1985), lies in the "political choice" of political actors operating within different political and constitutional frameworks. Thus OSHA is a product of political decisions made in reaction to the history of previous regulatory experiences. The legislation passed in 1970 forced OSHA to adopt practices that brought it into conflict with interest groups that were able to mobilise effective political and constitutional opposition that undermined its authority and activity. In contrast to OSHA,

the Health and Safety Commission and the Health and Safety Executive[8] (HSC/HSE) in Britain enjoyed political and legal legitimacy, placing it in a position of authority that can only be envied by OSHA.

Wilson (1985) argues that the reasons for the greater legitimacy and political support enjoyed by the HSC and HSE, in contrast to OSHA, can be found within the different constitutional and political arrangements that exist between the United States and Britain. In the United States the plurality of competing power structures and interest groups encourages the challenging of government agencies, and prevents the build up of consensus and effective policy (Wilson, 1985:158-62). Britain, on the other hand, has a centralised interest group structure that can claim to be able to represent powerful groups, enabling the possible development of policies that are more effective (Wilson, 1985:158-62). Wilson notes though that, while the British system seems to have been more effective in reducing the occurrence of workplace injuries than OSHA, neither OSHA nor the HSC/HSE can take comfort in their achievements - especially in the area of occupational health. In fact, where the United States system has led to "pluralist deadlock", the British system has led to "corporatist deadlock" in occupational safety and health, and both are equally effective at preventing regulatory change and progress in occupational safety and health policy (Wilson, 1985:163-68).

In terms of policy issues, Wilson (1985:2) points out that conflict over occupational safety and health policy occurs in both the United States and Britain around the degree to which government should intervene, and how government should intervene. At the core of these debates there is argument over what the causes of workplace injuries are thought to be, and

[8] The British equivalent to OSHA in the United States, the ASV in Sweden, and the Occupational Safety and Health Service in New Zealand.

the "matter of advancing the power of labor vis-à-vis employers" (Wilson, 1985:18). Regarding the power of workers, any attempt to accord to workers any 'rights' is particularly contentious, especially since the advent of Reaganomics in the United States. Furthermore, the type of regulations implemented by government depends greatly upon how the two questions are resolved. Wilson (1985:20) also argues that calls for total "de-regulation" of occupational safety and health obfuscate the fact that debate needs to distinguish between regulations aimed at the control of prices and service standards in industry, and regulations that promote the advancement of social goals.

Gräbe (1991), using the same form of analysis as Wilson (1985), has come to a similar conclusion in her comparison of Great Britain and West Germany. Gräbe points out that in West Germany the formulation of occupational safety and health policy is fragmented as "numerous private and quasi-governmental institutions are entitled to formulate standards which gain practical relevance in the enforcement process". Britain on the other hand, has clearer lines of institutional policy formation (Gräbe, 1991:57).

Regarding British policy-making, Gräbe (1991:58) reports employer representatives as saying that "more important than formal representation on committees, is...membership in the informal networks of politics and administration". In contrast, union representatives "demand an input...[into the institutional process] to ensure that they are heard and acknowledged" (Gräbe, 1991:59). As for the policy positions of employers and unions, these are reflected in the comments of the respective representatives (Gräbe, 1991:59). Employer representatives state their policy position in terms of costs, while union representatives use moral and emotional arguments to advance their position (Gräbe, 1991:59). Gräbe (1991:59) goes on to point out that, in the face of the conflicting union

and employer demands, government representatives try to "hold a neutral position as they do not want to appear biased", and see tripartite committee arrangements as a way of "guaranteeing that the regulations discussed...will be accepted by both interest groups".

The disadvantage of British tripartite arrangements is that they are "slow", as consensus is always sought on decisions made (Gräbe, 1991:60). Delay in the process is also exacerbated because "much happens behind the scenes, including intervention by senior management people, and informal trade-offs are part of the procedure" (Gräbe, 1991:60). Where a consensus outcome fails to occur, stalemate results and the parties move their debate to another arena. In the end, the regulatory outcome "strongly reflects the power that the participant groups represent outside the scope of a particular committee" (Gräbe, 1991:60). The relative strength of the participants in the process is particularly influenced by internal factors such as the quality of the personnel that each party can bring to the discussions, and external factors such as the economic and political climate (Gräbe, 1991:62).

At the end of her analysis, Gräbe (1991:68) notes that "consensual decision-making involves a structural disadvantage for those who wish to make changes or improvements that would result in increasing costs, while those who want to hold the status quo have an advantage". The comment is also made that "cultural differences" between West Germany and Britain, particularly in relation to the status accorded to expert advice and the level of consciousness amongst workers about safety issues, could be observed (Gräbe, 1991:68). In West Germany, expertise is likely to be "esteemed" more highly than in Britain, and German employees were more likely to accept accidents and diseases "as the price for progress and wealth" than their British counterparts" (Gräbe, 1991:68).

Boehringer and Pearse (1986:80, 91-92) characterise the development of the Australian Commonwealth National Occupational Health and Safety Commission as an exercise in corporatism. In backgrounding their analysis, Boehringer and Pearse (1986:81) note that Commonwealth policy since the 1920s has seen a division of functions that has manifested itself in a number of dichotomies and conflicts. For example, there is the dichotomy between health as a Health Department responsibility, and safety as a Labour Department responsibility. This dichotomy also manifests itself as conflict for domination between the domains of medicine and industrial relations. By the early 1980s the Federal Australian Labor Party, then in opposition, signalled that it was prepared to implement a major reform of occupational safety and health if elected to power (Boehringer and Pearse, 1986:87). The reforms promised included centralisation of responsibility for occupational safety and health under one ministry, a commitment to allowing workers in Federal employment to have health and safety representatives, and the establishment of a tripartite system of federal standard setting and administration.

After the Federal Labor Party came to power in November 1983, the new Government established an Interim Commission with the purpose of it advising the Government "on the final structure of the agencies to be embodied in legislation" (Boehringer and Pearse, 1986:88). In May 1984 the Commission published its report. The report was accepted and the new agency met for the first time in October of 1984 (Boehringer and Pearse, 1986:88-89). However, the proposal to establish a tripartite set of arrangements was met with opposition. A coalition of occupational safety and health activists was formed who decried the new "bureaucratic, non-participatory application from the top downwards of medical/scientific/technical based solutions" (Boehringer and Pearse, 1986:90). The

activists argued that the new tripartite arrangements would fail to acknowledge the basic contradiction between capital and labour in terms of the imbalance in power that exists between rank and file workers and top decision-makers, and place too much faith in the ability of science to be impartial (Boehringer and Pearse, 1986:90-91).

In relation to Canada, Doern (1977; 1978), and Doern and Wilson (1974) argue that the occupational safety and health legislative changes in the Canadian Provinces of Ontario and Quebec in the mid 1970s, originated as a political response to political criticisms and industrial labour problems (Doern, 1977:3-4). In addition, the changes in both provinces reflect the 1972 British Robens Report, and earlier activity in the province of Saskatchewan (Doern, 1977:2). Doern describes and explains the changes in Ontario and Quebec as reflecting:

> "The nature of the market economy, the role of labour, the relationship of both to federalism, the relationship of federalism to the choice of governing instruments, the alternative organisational forms in which regulatory authorities might be located, the interface between regulation-making and compliance, and the perceptions of research needs and standards of proof and evidence by the major regulatory participants - all these factors influence the adequacy of the regulatory response" (Doern, 1977:35).

Having outlined the pertinent characteristics determining change, Doern goes on to outline each item in more detail.

According to Doern's (1977:16) analysis, the Canadian market economy is characterised by debates about "the appropriate role of the state, the extent of corporate market freedom, and the balance between property, individual rights and collective or public goods". Political liberal, conservative, or radical perspectives inform these debates. Furthermore, the union movement is seen as a historically important agent for change, but only since the 1970s have unions made occupational safety and health a top priority - largely because of

pressure from the rank and file. As a labour issue, occupational safety and health is caught up in debates about the rights of labour and their place in the labour process (Doern, 1977:22). Federalism is seen as both a blessing and a curse as it provides plenty of opportunities for delay, debate, and diversity in approach (Doern, 1977: 22-23).

In terms of methods of intervention, Doern (1977:23) comments that the choices made by the Federal government "is in part an end in itself". The question of which regulatory instrument to use, is important because the degree of legitimate coercion used is critical in a democratic state. The point is, compliance is characterised by the need for "effective and fair enforcement" without seeming to be overbearing (Doern, 1977:27). In Canada "enormous discretionary power" is given to regulatory authorities both for regulation-making power and enforcement (Doern, 1977:29). How this discretionary power is exercised determines the degree to how affected groups "perceive themselves to be the objects of arbitrary power" (Doern, 1977:29). Compliance capability though, is limited by restrictions on enforcement staff numbers and by the level of training and status accorded to inspectors by the bureaucracy and outside parties. Another conditioning factor in the choice of regulatory instrument, is the political context of "other broad instruments of governing such as spending and exhortation" (Doern, 1977:23).

Regarding regulatory administrative structures, Doern (1977:12) argues that there is a need to distinguish between 'form' and 'substance' in debates over which particular structure to use. The idea here is that a change in administrative structural form does not necessarily mean a change in substance. The distinction is particularly relevant to debates about the pros and cons of setting up quasi-independent boards or commissions, and regular departments (Doern, 1977:25-27). The key policy issue here for Doern (1977:27), is not

the structure of the organisation administering occupational safety and health, but the level of "political will and resources available to the organisation rather than...any superficial or stylish preferences for the 'board' or the 'departmental' model". Another issue in regulatory organisation is the problem of inter-departmental and intra-departmental co-ordination and conflict. Conflict can occur both as a function of 'empire building' and, more simply, the historical fact that most departments have been given many functions by past governments (Doern, 1977:27).

However, "the final and perhaps the most important issue in the day-to-day political economy of the regulatory process in Canada" is the openness of the regulatory process (Doern, 1977:30). On this issue, and highly reminiscent of Kelman (1980) and Wilson (1985), Canada is described as moving from the "professionally open model" associated with the British system of government, to being more like the United States "democratic open model" (Doern, 1977:30-33).

In summary, pluralist analyses of occupational safety and health policy-making are dominated by the United States political science perspectives that emphasise the importance of the role played by individual actors or groups of actors, and the particular shape of the respective national constitutional and institutional arrangements. In terms of policy issues, debates about the form and extent of state intervention in occupational safety and health is a common feature reported in the literature, as is debate over recognition of workers' rights. Although common features can be seen, there are differences in emphasis. Ashford (1976) mentions a range of explanatory factors for any given set of policy outcomes as being the result of the behavioural and economic rationales put forward by participating actors. Ashford also points out the conflicts that can arise as the result of

different safety and health disciplinary perspectives. Kelman (1980) has highlighted the role of individuals, and differences in social values towards government. Wilson (1985) rejects Kelman's analysis and points to the effects of different political arrangements as explaining differences in policy outcomes. Doern (1977) and Gräbe (1991) present similar analyses to Wilson. Boehringer and Pearse (1986) on the other hand, use a corporatist approach in their examination of Australia.

Marxist oriented explanations

In stark contrast to the pluralist accounts of occupational safety and health policy-making, are explanations that draw explicitly upon marxist theory. Theoretically inclined marxist accounts of occupational safety and health policy change are predominantly found within the sociology of health and illness literature and the sociology of law literature. A range of nations has been examined in the studies.

In the sociology of health and illness literature, Navarro (1976; 1978; 1980; 1982a and b; 1983; 1986; 1991), Berman (1978), Wysong (1992; 1993), Calavita (1983), Curran (1984) and Coye (1979) have all written studies on United States occupational safety and health policy. Studies of Canadian occupational safety and health policy development have been conducted by Sass (1986; 1989; 1993) and Walters (1983; 1985; 1991). Similar work in relation to the United Kingdom has been done by Clutterbuck (1983) and Dalton (1992). Other studies have focussed on Italy (Assennato and Navarro, 1983), Mexico (Laurell, 1979), India (Vilanilam, 1980), and Australia (Pearse and Refshauge, 1987). Elling (1977; 1980; 1982; 1989; 1994) and Greenlund and Elling (1995) have conducted cross-national surveys looking at the reasons for the various forms of government occupational health

service provision that can be found in some capitalist countries and former east-European socialist states.

In terms of the sociology of law literature, Carson (1970; 1974; 1979; 1980; 1982; 1985; 1989), Carson and Henenberg (1988), and Carson and Johnstone (1990) have used a marxist perspective to examine the role of English and Australian health and safety legislation, its effects, and reasons for its development.

All these studies, irrespective of where they were found, share similar conclusions about the origins of occupational safety and health policy change, the determining factors of any outcome, and what the main policy debates revolve around. In many of the studies the origins of change are attributed to pressure in the early 1970s from rank and file trade union members upon organised union leadership for more attention to be paid to health and safety at work. The advent of this pressure has been linked to the perception that the then existing arrangements were not working, and were incapable of controlling new hazards arising out of new technologies and production methods.

In explaining the change outcomes, emphasis is placed upon the historical conflict between workers and employers over control of the means of production. In addition, where change has been deemed favourable to workers, this has only occurred where labour has had the political and or economic advantage.

One particular policy issue is identified by the literature: the issue of workers' rights. In particular the right to know about the hazards of the job, the right to be informed about the results of any monitoring of their health or the work environment, and the right to

refuse dangerous work. In relation to this debate, a feature that commonly appears across all nations examined, is the adamant opposition by business to granting workers any rights to protect themselves, especially the right to stop dangerous work.

While the studies sketched below highlight the above points, they also show that within this stream a diversity of opinion exists about how to explain the changes. A number of writers for example, emphasise the determining influence of the level of political power that can be mobilised by the representatives of labour. Other authors highlight the functional role played by the state in maintaining the economic system. Some researchers focus upon the role of ideology in constraining the way occupational safety and health policy is thought about by policy makers, academics, practitioners, and managers. Still more authors have argued that much occupational safety and health law is only of symbolic value, while others have commented that even symbolic law can come to have a positive effect in the longer term.

Navarro (1983), in a scathing critique of Kelman's (1981) analysis of United States and Swedish occupational safety and health policy, argues that Swedish policy offers more protection and is more stringently enforced than United States policy. Swedish workers have more control over the labour process, and have more access to scientific competence, knowledge, and information than their United States counterparts. Furthermore, Kelman's hypothesis that there was no political pressure upon Swedish regulators is not necessarily true. Political pressure can exist as an ideological climate that either encourages or discourages regulatory activity.[9] Navarro (1983:524) concludes that Kelman's study is an analysis that is profoundly political and propagandist on behalf of the establishment.

[9] For a discussion of regulatory activity in New Zealand see Lamm (1989; 1992) and Campbell (1991).

In other work, Navarro (1982:20; see also 1976; 1978; 1982a) argues that occupational health policy and practice serves the function of reproducing labour and maintaining the existing social relations amongst classes. Regarding change in occupational safety and health policy, change is "the result of different degrees of political power of the two major classes (capital and labor) and the set of influences exerted on the regulatory agencies by the instruments (e.g., political parties, unions, trade organisations) of those classes" (Navarro, 1983:517).

In an analysis of the United States federal coal mine safety legislation, Curran (1984:5-6) takes particular issue with one-dimensional pluralist or historical analyses that posit a direct linkage between mining disasters and the appearance of legislation. Such explanations do not account for the many times when both a disaster and public anger have occurred without resulting in legislative action (Curran, 1984:6). This is not to say that the accounts are wrong, but that they are too simplistic and historically selective (Curran, 1984:6). According to Curran (1984:14-15), closer analysis shows that mining safety law has only eventuated when there has been a crisis of legitimation in society. In terms of the mining industry, a crisis of legitimation is brought on by the confluence of public outrage at a mining disaster, the simultaneous occurrence of large scale labour unrest, and demands from industry to maintain the flow of energy (Curran, 1984:14). To prevent a "minor crisis" developing into a larger one, law is "symbolically" changed to "induce a feeling of well being among the general population" (Curran, 1984:8 and 15).

Calavita (1983) notes that several writers have put forward a similar analysis to Curran's (1984) concerning OSHA. The question is though, "if OSHA was created largely as a

symbolic act, why has it been the target of such vitriolic deregulation" during Reagan's years in office (Calavita, 1983:445)? In response to the question, Calavita (1983:446) argues that while "OSHA began as a token gesture to labor, it ultimately provided a vehicle for real material and ideological gains on the safety and health front, and that it is in order to curb these advances that the agency has been cut back.... however, it is the current recession and the erosion of the economic and political power of labor that permits these deregulators to carry out their mission". The corollary of this is, even a 'symbolic' event can have a substantial flow on effect.

Using a "class-dialectic" analysis of the attempt to pass through the United States Congress, from 1985 to 1988, the "High Risk Occupational Disease Notification and Prevention Act", Wysong (1993:301-02; and 1992) argues that the core dynamic driving work-related policy issues is the conflictual relationship between the owners of capital and workers (Wysong, 1993:303). In addition, the emergence and development of policy is historically contingent upon events. Furthermore, institutional arrangements are likely to benefit the owners of capital rather than any other class interest (Wysong, 1993:303). However, the dominant capitalist class interests are not united, although the occurrence of division is likely to result in attempts promoting unity. Wysong (1993:318) concludes that: controversy over occupational safety and health policy is "directly related to the potential economic and/or ideological and political redistributive effects of such proposals"; sustained political interest in the issue is contingent upon socio-economic events and the existence of inter-class and intra-class division and conflict; and, the longer conflict continues over an issue, the more likely it is that the full range of resources available to the dominant class will be mobilised to contain or defeat proposals contrary to its interests.

Clutterbuck (1983) depicts the development of British safety and health legislation as a never-ending struggle by the working class. The origins of the 1974 Health and Safety at Work Act (HSWA) are ascribed to pressure for change on elected union officials from workers (Clutterbuck, 1983:147). Prior to this pressure, union leadership lacked a coherent and integrated national health and safety policy, and was oriented towards seeking compensation rather than promoting prevention (Clutterbuck, 1983:147-49). Another contributing element to pressure for reform was the example set by the reorganisation of occupational safety and health regulation in the United States. As for explaining the content of the HSWA and the subsequent administrative reorganisation, Clutterbuck (1983:147-49) points to the importance of the 1972 Report of Lord Robens.

For Walters (1983), Doern's (1977) analysis of the origins of occupational safety and health legislative change in Ontario overlooks the "increasingly obvious contradictions within the labour process" that was appearing (Walters, 1983:416-17). Walters (1983:416-17) also points out that it was not until 1975 that "the Ontario Federation of Labour issued its first lengthy and comprehensive statement on occupational health and safety", even though the topic had long been an issue for workers.

Walters (1983:423) goes on to argue that while the origins of the legislation can be seen as the state serving its function of maintaining the long-term interests of capital, this does not explain its content. The content is explained as the result of the state mediating between conflicting class interests; interests that once the legislation was initiated, became "more clearly and more forcefully" articulated (Walters, 1983:423). On one side, business interests argued that "it was the moral, legal, and financial responsibility of management to formulate health and safety policy.... [but] none favoured comprehensive legislation to

achieve this goal" (Walters, 1983:425). Hence corporate submissions argued for the use of flexible guidelines rather than standards, and were strongly opposed to giving workers the right to refuse dangerous work because they might misuse it (Walters, 1983:426). Opposing the business argument, unions argued that strict standards and workers' rights were required, and only then would the incidence of accidents at work be reduced (Walters, 1983:424).

In a similar vein to Walters (1983), Sass (1986; 1989; 1993) comments that throughout the 1970s occupational safety and health legislation in Canada underwent a broadening of concerns, particularly empowering workers with the right to know, to participate, and to a certain extent, to refuse work (Sass, 1989:157). Leading the reform process was the province of Saskatchewan which, in 1972, established the right of workers to participate in joint health and safety committees. In 1977, under a Social Democrat Party Government, Saskatchewan extended to workers the "right to know" (Sass, 1989:159-160). A change to a Conservative Party Government in 1982 ended the period of major reform in the province. According to Sass (1989:158), the impetus for these changes came from union demands for the extension of the legal definition of health and safety to encompass the concept of "work environment". Informing this development was the Scandinavian research of Bertil Gardell (1979; 1982) and his team (Sass, 1989:158). Swedish and Norwegian legislation that included rights for workers, was also used as an example to follow (Sass, 1989:158).

In discussing workers' rights, Sass (1989:164-65) distinguishes between "weak" and "deeper rights". The 'right to know' is a weak right, a deeper right is that to participate, the deepest right is the right to refuse dangerous work; the difference between the three is one of

power. In Sass' (1989:165) experience, "management generally favoured the 'right to know' policy, felt more reserved about 'effective' health and safety committees or the workers' right to participate, and definitely opposed the worker's 'right to refuse' dangerous work".

Inspite of the developments in Saskatchewan, and parallel ones by Ontario and the Federal Government, Sass (1989:161) comments that there are "serious deficiencies in the major [Canadian] public policy instruments" . The main deficiency in the law is that it reflects "a particular kind of economic 'utilitarianism' in which health and safety issues are consistently 'traded-off' for economic considerations and market values" (Sass, 1989:161). The "triumph of economic utilitarianism" in Canada in the late 1970s has paralleled a "strengthening of management prerogatives and property rights in the employment contract" (Sass, 1989:161). It is for this reason that "legislated worker rights...are basically 'weak rights'" (Sass, 1989:161). Sass (1989:163) reports that strengthening of workers' rights is "opposed by employers and regulatory agencies in Canada...in all jurisdictions". Employers have opposed extension "primarily because they view work environment matters as an essential component of management prerogatives" (Sass, 1989:163). Opposition from regulatory agencies and all the Canadian political parties to a strong expression of workers' rights derives from their support for the idea that employment contracts must be based on a "liberal utilitarian concept of justice and not upon democratic criteria" (Sass, 1989:164).

Carson (1970; 1974; 1979; 1980; 1982; 1985; 1989), Carson and Henenberg (1988), and Carson and Johnstone (1990) argue that, to understand English and Australian occupational safety and health legislation, it is necessary to adopt a broad framework of

political economy. From such a perspective, it can be seen that legislative change reflects change within the social, technical, economic, and political structure of capitalist societies. Carson's particular contribution, though, has been his additional argument that, to understand legislative developments in British Commonwealth countries, it is also necessary to understand the "traditional hegemonic ideology" associated with occupational safety and health legislation and its enforcement in the British workplace. The ideology identified, is the 'natural' assumption by occupational safety and health professionals, managers, policy makers, and lawyers that occupational safety and health is divisible from industrial relations, and that responsibility for occupational safety and health regulation belongs primarily with the state. A consequence of this ideology is the belief that enforcement of occupational safety and health regulation belongs solely to government, and that control of occupational safety and health in the workplace is the prerogative of management. Writers within the next two literature streams reviewed discuss the analysis presented here by Carson, further, in slightly different ways.

In summary, marxist perspectives on occupational safety and health policy suggest that the origins of change in occupational safety and health policy can be traced to a growth in pressure, in the 1970s from workers, on union leaders to act in the face of the failure of legislative arrangements to prevent workplace injuries and illnesses. The core policy issue, around which conflict occurs, is that of workers' rights. Determining the outcome of pressure for change, is the level of power that representatives of labour are able to exert at the political level. Opposing workers are the representatives of business, who are adamantly opposed to any strong expression of workers' rights. Other writers highlight the functional and mediating role played by the state in the change process. Another item emphasised by some authors is the hegemonic influence of utilitarian ideology in Anglo-

Saxon countries. This ideology emphasises the issues of individual justice and property rights over concepts of human rights and workplace democracy, effectively constraining the way occupational safety and health is thought about and practiced both in the workplace and in national policy.

The focus in marxist approaches upon class actors, class conflict, and ideology in explaining occupational safety and health policy stands in stark contrast to the institutional structure, individualist, and small group focus found in pluralist analyses. A common feature that exists in both strands though, is the identification of the issue of workers' rights as a core policy debate. The next literature stream considered tends to eschew theory for more method. This is the historical-legal method literature. It is reviewed below.

Historical-legal method explanations

Historical-legal method oriented studies of change in occupational safety and health legislation are distinguished by four features. The first feature is an explanatory emphasis upon what Skocpol (1985), Orloff and Skocpol (1984), Skocpol and Ikenberry (1983), and Skocpol and Somers (1980) call state and society centred factors. State centred factors are the objects commonly focussed upon by pluralist studies. Society centred factors constitute the points emphasised in marxist oriented research. The second feature is a tendency towards the use of a comparative social-historical form in description and explanation, rather than a theoretically informed analysis. The third feature is an inclination towards emphasis upon the historical specifics and contingency of legislative developments. The fourth feature is a focus in some of the studies upon changes in the 'legal interpretation' of the law pertaining to health and safety and accident compensation,

rather than the wider state and society factors. This last feature is particularly applicable to studies that appear in the legal literature on changes in British health and safety law.

The historical-legal method approach to studying occupational safety and health policy change has been applied to a wide range of countries, and examples of it can be found within all the types of disciplinary literature identified in this review. Studies adopting a social history emphasis focussing upon the United States have been conducted by Orloff and Skocpol (1984), Brodeur (1973), Page and O'Brien (1973), Szasz (1984), Davidson (1970), Moss (1994), Heath (1986), Peters (1986), Altman (1976), Donnelly (1982), Muraskin (1995), and Levenstein (1988, in Levy and Wegman). Similar studies of Australia have been done by Gunn (1990), Biggins (1993), Gunningham (1984; 1987), Creighton and Gunningham (1985), and James (1993). Cassou and Pissarro (1988) have written about France, while Hauss and Rosenbrock (1984) have reported on Germany. Italian occupational safety and health developments have been assessed by Bagnara, Biocca, and Mazzonis (1981). As for New Zealand, Bird (1983), McIntosh (1983), Campbell (1983; 1985; 1987; 1989a and b; 1991 a and b; 1992; 1995), and Glass (1974; 1986; 1989; 1992) have all provided some commentary upon aspects of the development of occupational health services and industrial safety law in the country. Singleton (1982; 1983), Gordon (1988:Chap 7) and Weindling (1985), all present, to varying degrees, cross-national comparative studies of the development of factory legislation in advanced Western economies. Studies focussing upon Britain have been done by Hutchins and Harrison (1966), Thomas (1970), Steemson (1983), Barrett and James (1988), Eberlie (1990), Baldwin (1990), and Harrison (1995). Other British studies that include descriptive social history accounts of the changes in British health and safety law in conjunction with a legal

interpretation emphasis, have been undertaken by Howells (1972; 1974), Woolf (1973), Lewis (1974), and Barrett (1977).

Friedman and Ladinsky (1967) have conducted a United States study that combines an element of social history with an emphasis upon legal interpretation. Similarly in Britain, Drake and Wright (1983), Dawson, *et al.* (1988), Hepple and Byre (1989), Eberlie, (1990), Miller (1991), Fitzpatrick (1992), James (1992), Holgate (1994), Williams (1995), Barrett and Howells (1995), and Burrows and Mair (1996) all present analyses of British developments informed by an awareness of social history, but have a strong focus on legal interpretation.

Many of these historical-legal method studies detect the same explanatory factors found in pluralist and marxist analysis. As well as reinforcing the importance of the commonalties already identified as appearing in the literature, they also point out that the values and ideas held by some political actors cannot be simply explained as serving purely a functional, ideological, illusory, or coercive purpose. In many cases the ideas are put forward in the belief that they truly best represent how society and the economy operates, and offer the best solution to the problems faced. Another important point made by historical-legal method studies is the conditioning influence of the development, and changes in, judicial definitions and concepts about health and safety at work, particularly in the context of accident compensation. This point is particularly relevant for British Commonwealth countries which have inherited the English legal system; a heritage that is in many cases reflected in the accident compensation and occupational safety and health policy debates and policies developed in such nations. Closely related to the last point, is a recognition in the latest British legal literature of the difficulties posed for Britain in 'harmonising'[10] its

[10] Harmonisation is defined as the implementation of a degree of "uniformity and commonality" between member countries of the European Union in the regulation of trade and movement of people (Burrows and Mair, 1996:7).

health and safety law in accordance with recent Directives issued by the European Commission. Difficulties have arisen, in part, because the British approach to the making and interpretation of law varies from the Romanic and Nordic traditions dominant in various parts of Europe.

As most of the studies cited above repeat much of what appears in the pluralist and marxist oriented literature, only the studies that clearly illustrate the new factors identified, or present analyses that may inform about the policy process and issues surrounding occupational safety and health policy change in New Zealand, are outlined below. The literature that has a more social history emphasis is reviewed first.

Studies with a social history emphasis

Hutchins and Harrison (1966), Thomas (1970), and Steemson (1983) in their respective accounts of the development of early English factory legislation, suggest that the initial pressure for change came from humanitarian reformers and movements aimed at reducing working hours. Humanitarian reformers such as Lord Shaftsbury and Robert Owen were genuinely interested in improving the living conditions of the working class, apart from gaining any productivity benefits. Public opinion was aroused over things such as the morals of apprentices, and the severe disfigurement of young children and women working in appalling conditions. Agitation by Chartists and early unionists over working hours further added to a rise in social tension. Room for legislative innovations came as political and economic alliances shifted between small and large manufacturers, between the 'old' aristocrats and the 'new' manufacturing aristocrats, and between unions and large manufacturers over new competition. Further change in the latter half of the nineteenth century came as resistance from politicians and employers lessened after experience with

the early Acts demonstrated that regulation of working hours and welfare could aid productivity by securing a healthier and better motivated workforce.

Steemson (1983:26-28) [11] suggests that up until the 1920s England led the United States in the development of health and safety initiatives, and English enforcement of workplace health and safety was superior to the United States. Steemson also notes that in both nations the idea of the 'careless' worker dominated, and the opinion of the employer was valued more than that of the worker. However, a shift in leadership of health and safety developments from Britain to the United States, began in the 1920s with the rise in the United States of the "safety movement". This rise was symbolised by the formation in 1914 of the employer-based American National Safety Council (Steemson, 1983:28).

Another feature identified by Steemson (1983:29) as occurring in England in the period from the 1880s to the 1920s, was a growing voluntary employer interest in health and safety that sought to shift action on workplace injuries from Parliament, to the workplace itself. The growth in voluntary employer instigated activity is represented by the formation in 1918 of the British Industrial Safety First Association and its growth and metamorphosis into the Royal Society for the Prevention of Accidents in 1941 (Steemson, 1983:28-30). In spite of these employer activities, Steemson (1983:35) comments that attempts in the middle 1920s to update British factory legislation were "blocked" by "industrialists", and it was not until 1937 that any significant change occurred. The most significant feature of the 1937 Factories Act was the reduction in permissible working hours for women and young people - the same issue that figured predominantly in the factory legislation of the previous

[11] Steemson (1983), apart from providing a thorough review in a short book (55 pages), provides a couple of interesting appendices that include a list of novelists who provide descriptions of working life in the last century, and a table that highlights key developments in English health and safety legislation in parallel with other major historical events.

century (Steemson, 1983:36). Following the 1937 legislative enactment's, the subsequent changes that occurred up until 1970, "tended to be the result of some form of public outcry" (Steemson, 1983:38). After 1937, no major change occurred until 1970.

In 1970, the British Secretary of State for Employment and Productivity attempted to pass a new health and safety bill through Parliament. The Bill included "the notion of full and compulsory consultation and co-operation between trade unions...and management" (Steemson, 1983:39). The resulting debate about consultation raged not around whether it was desirable, but around how consultation should take place and whether a compulsory method of consultation should be imposed (Steemson, 1983:43). The failure of the Bill led the Secretary to form a Committee of Inquiry into safety and health at work. The Report of the Committee came to be known as the Robens Report (1972); after the name of its chair Lord Robens. Behind the introduction of the 1970 Bill was a rise in injury rates, concerns about the ability of existing legislation to control new dangers posed by new chemicals and complex industrial technologies, and a growth in central trade union interest in prevention rather than financial compensation for dangerous conditions (Drake and Wright, 1983:34; Dawson, *et al.* (1988:9-10).

The Robens Report (1972) "was the first comprehensive study of occupational safety attempted in the United Kingdom" (Howells, 1972:185), and became the basis for the 1974 reform of the legislation[12] and administration of health and safety in Britain. The Robens Report concluded that existing British legislation was paternalistic, overly prescriptive, often out-dated, and inaccessible in its diversity and number of statutes and regulations. In addition to these problems, worker and employer "apathy" was a major inhibitor to

[12] The Health and Safety at Work Act 1974.

improving health and safety performance. What was required was a new approach that recognised that health and safety was the responsibility of the employer, as they create the "risk"; and suggested that a new regime of "self-regulation" should be introduced (Robens, 1972:7). The basis for this new regime was the perception that there was a community of interest between workers and employers over achieving better occupational health and safety (Robens, 1972:219-21). The Report went on to argue that while mechanisms for worker participation in the management of health and safety were important, the imposition of a compulsory system of health and safety representatives and safety committees was not recommended as they would conceptually be too "rigid" and "too narrow" (Robens, 1972:22). Following the Robens Report, a new Labour Government in 1974 passed the Health and Safety at Work Act (HSWA). The Robens Report and the HSWA subsequently became a source of inspiration for change in New Zealand and Australia in the late 1970s.

Robens' (1972) analysis though, was not without its critics. Howells (1972:195-196), while generally supportive of Robens, suggested that the solutions offered were less than "persuasive". Woolf (1973:89-90 and 93-95) argued that what was wrong with the legislation was not its quantity or terminology, but its lack of enforcement. Furthermore, Robens was wrong in the assumption of the existence of a community of interest between employers and workers about health and safety (Woolf, 1973:90). Woolf (1973:92) was also critical of Robens' failure to examine the issue of resource constraints on government management of health and safety. Nichols and Armstrong (1973), in a sociological study of industrial accidents, refuted the "apathy" thesis as it applied to workers. Phillips (1976:162) pointed out that the concept of 'self-regulation' was "never really defined" by

Robens, and argues that the most effective form of self-regulation would be a system of "economic deterrence".

Dawson, *et al.* (1988:3-11) also comment on the lack of precision in the Robens Report about the meaning of "self-regulation". In their analysis, they define "the doctrine of self-regulation" as meaning the provision of a "regulatory framework within which those in industry could themselves undertake responsibility for safety at work" (Dawson, *et al.* 1988:3). Self-regulation was never meant to mean the absence of legal standards" (Dawson, *et al.* 1988:11). The authors also comment that, at the heart of the concept of self-regulation, there is recognition of a need to involve the workforce in health and safety matters (Dawson, *et al.* 1988:3 and 12).

Lewis (1974) pointed out that the voluntary approach to worker involvement by Robens (1972) was highly problematic. Lewis argued the voluntary approach would only offer to workers the "illusion of involvement without the reality of power"; unions would be unwilling to participate for fear of compromising their ability to protect workers; there is the problem of finding the balance between participation and accountability for decisions made; and, while conceptually a distinction can be made between 'consultation' and 'negotiation', in practice the distinction is irrelevant. Lewis (1974:101-102) also commented that the main issues concerning worker participation involves debate over the method of appointing employee safety representatives, defining the role of safety representatives and the provision of training for them.

Howells (1974:93), also in relation to worker participation, comments that a 1953 attempt to introduce provisions for safety delegates in British industry was defeated "ostensibly

upon the virtues of the voluntary as opposed to the compulsory approach, but the potential threat to management prerogative contained in the proposals clearly influenced the parliamentary debate". Furthermore, Howells (1974:89) argues that traditionally worker participation in England is seen as "solely a matter of discipline at the workplace", and that for worker participation to be effective anti-discrimination protection has to be provided (Howells, 1974:95).

In 1976 the British government published a consultative document on the establishment of a system of safety delegates and committees. Barrett (1977:170-174) suggests that the main opposition to the proposals came from government departments concerned about the economic costs associated with providing paid part-time training for employees, and for the carrying out of their functions as safety delegates. As for the proposals themselves, the main problem was the lack of provision for safety delegates for non-unionised workers (Barrett, 1977:175). Twenty years later, the problem remains unresolved in Britain and is arguably more important given the decline in union coverage (Barrett and Howells, 1995:52). Another problem identified by Barrett (1977:174) was an apparent unwillingness by the authorities to enforce the 1974 provisions relating to worker consultation.

Recently, James (1992:83) has suggested that the "optimism" surrounding the HSAW Act has been "to a significant extent misplaced". James (1992) argues that while there might have been a decline in injury rates in the later half of the 1970s, since the 1980s there has been a significant deterioration in British health and safety standards. The lowering of standards has come about because of the political and economic changes that have occurred under the Conservative Governments of the 1980s and 1990s, and the "faulty assumptions" in the HSWA about the basis of organisational decision-making (James,

1992:85-86, 104). James (1992) identifies three issues of particular concern in any reform of the self-regulation framework of the HSWA. The issues are greater specification of the duties of employers, better enforcement, and clearer instructions as to what consultation with employees entails (James, 1992:82).

Regarding Australia, Gunningham (1984) and Creighton and Gunningham (1985) trace the origins and development of all the states' health and safety legislation back to British legislative examples, and their particular experiences of industrialisation. As the Australian states industrialised, many of the same occupational safety and health problems arose as those that had previously appeared in Great Britain. The first Australian state to pass protective factory legislation was Victoria in 1873. The underlying structures and philosophy of the first Acts passed by Australian states remained largely unchallenged and unchanged until the 1970s (Creighton and Gunningham, 1985:23). Consequently, the Acts suffered the problems associated with British law: a lack of coherence in direction and administration, reluctant enforcement, a fragmented approach, a focus upon physical hazards overlooking the organisational aspects of injury/illness causation, a narrow legalistic interpretation often ignoring broader intent, and a failure to enable worker input into their health and safety (Creighton and Gunningham, 1985:24-25; Gunningham, 1984:88-89).

By the 1970s the manifest failings of the legislation in Australia led to progressive change in Australian state laws. The new laws have each, like their antecedents, been influenced to greater or lesser degree by a British model - the 1972 Robens Report (Creighton and Gunningham, 1985:26; Gunningham, 1984:90 and 266). Gunningham (1984:71) goes on to conclude that the dynamic of factory legislation in Australia is fundamentally one of

economic and social class conflict, at the centre of which is manufacturers' opposition to any threat to their profitability.

In terms of occupational safety and health policy issues, Gunningham (1984:264-65) suggests that the most important issue faced by government is the degree to which it should intervene in the management of workplace safety and health. Government needs to decide if it will rely upon education and persuasion, or upon enforcement. For Gunningham (1984:266 footnote 3), the reality is that the decision about which intervention option should be chosen is not one of either or, but of where the balance should lie. In Australia, the balance between the two has been towards the first approach (Gunningham, 1984:266). The rationale for this was acceptance of the ideas espoused by Lord Robens (1972) (Gunningham, 1984:266-70). Regarding the enforcement option, Gunningham (1984:276) notes that another balancing discussion has to be made. Should employers be compelled by allowing the invisible hand of the market to regulate on its own, or whether 'weaker' forms of [legal] intervention such as liability rules be applied. Alternatively, should government intervene more directly by creating stringent preventative safety standards, administered and enforced by government inspectorates?

Elsewhere in his analysis, Gunningham (1984:79-82) notes that four commonalties can be identified in the Australian legislation. The first is, a common principle of action, based upon Robens (1972). The second feature is that injury prevention is intertwined with the provision of compensation. For example, the level of compensation available is invariably related to the application of criminal sanctions and access to civil claims for damages. The third and fourth commonalties concern the level of enforcement power available to officers, and the extent to which officers can use their discretion in the exercise of this

power. These last two features have important implications for the extent of protective coverage offered to groups of workers, and in the ability of workers to protect themselves. The level of discretionary power allocated to departmental officials is important because the power is often used to exempt classes of industry from coverage. Related to this issue, are the enforcement powers allocated to officers, workers and their representatives. The power of different groups to enforce health and safety law varies considerably between the states ranging from the ability to stop processes and machines, to issuing compliance orders, and the instigation of criminal prosecution.

A related policy issue to that of enforcement identified by Gunningham (1984), is the form of prosecution adopted for health and safety offences. The central issue here is the method employed in establishing guilt. Gunningham points out that in the English criminal system, establishing guilt often means proving beyond reasonable doubt what the defendant's intention was (e.g. 'state of mind' - *mens rea*) when the alleged offence occurred. In some cases, it is sufficient to only show that 'negligence' has occurred. The issue of *mens rea* is critical, unless it has been replaced by a concept of 'absolute' or 'strict' liability, as usually happens with occupational safety and health law. In such a case it is sufficient to only prove that the event occurred regardless of the defendant's intention (Gunningham, 1984:82-83). The justification for this approach is public interest in "efficient law enforcement" (Gunningham, 1984:82, footnote 24)[13]. An alternative to strict liability is the preference for 'liability rules' oriented towards establishing the case for negligence. Negligence rules assign rights and responsibilities to specific parties based upon assessment of duty of care and the costs and benefits associated with compliance. Liable negligence

[13] According to Gunningham (1984:83) there are two defences to "strict" liability: (1) "reasonable mistake of fact", and (2) "circumstances beyond the defendant's control". The applicability of these defences depends upon the wording of the statutes concerned and the criminal code that applies in the particular jurisdiction.

would be established where a party fails to take cost-justifiable actions that would have prevented the unwanted event from happening. The justification for this legal preference is that freedom of choice is enhanced, and the need for costly state enforcement would be reduced as the liability rules replicate market forces that would apportion costs efficiently and thus help promote injury/illness prevention (Gunningham, 1984:287). Gunningham (1984:275-87) notes that this is the option preferred by economists from the Chicago school of economic thought.[14]

New Zealand studies of occupational safety and health policy have been dominated by a focus upon accident compensation, limited to a few studies of particular pieces of factory legislation, and to small descriptive articles on the development of occupational health services. Campbell (1983; 1985; 1987; 1989a and b; 1991; 1992; 1995 in Slappendel; 1996) has extensively described the basis of New Zealand's accident compensation legislation, and throughout the 1980s has provided legal analyses of the problems associated with New Zealand's health and safety law. Historical descriptions of the development of occupational health services and earlier Factory legislation have been provided by Glass (1974; 1986; 1989; 1992). McIntosh (1983) and Bird (1983) have respectively conducted research projects that highlight the links that exist between English statutes and the 1981 Factory and Commercial Premises Act, and the 1950 Machinery Act. All the accounts clearly show that New Zealand's occupational safety and health policy and administration has traditionally been highly influenced by British examples.

While the above New Zealand studies do provide interesting information, they all fail to identify clearly who the occupational safety and health policy protagonists are, what their

[14] For example: Steigler (1971), Diehl and Ayoub (1980) in Peterson and Goodale, Oi (1973; 1974), Rinefort (1977), Smith (1980) in Peterson and Goodale, Coase (1960) and Viscusi (1979; 1983; 1996).

policy positions are, and the nature of the relationships between them in the policy process. They also do not provide reasons why occupational safety and health policy has followed behind British developments. For example, Campbell (1995) in the best account of state regulation of occupational safety and health so far, starts by saying that:

> "it is important to bear in mind that the trends described tend to be a reflection of prevailing economic and social conditions. The trends also frequently reflect the political views and ideologies of the political party in power" (Campbell, 1995:81).

However, Campbell fails to elaborate and support the connections that he perceives. For example, in illustrating the early "very cautious approach" to workers' health in New Zealand, Campbell (1995:85) refers to a 1880 Report from the Under Secretary of Mines that mentions balancing "the financial interests of the mine owner...and the necessity of enforcing provisions". The obvious influence of economic criteria this shows in shaping policy, is not explicitly commented on at all. As another example, Campbell (1995:87) reports that, in 1939, the Department of Health "realised that more attention should be paid to the health of hazards of the workplace" and indicates by a quotation from a Departmental Annual Report that this decision was related to the expansion of industry. The problem here is, whether the perceived connection between industrial expansion is adequate, given that in the previous year a major political change had occurred in New Zealand with the re-election of the first Labour Government in 1938 - a strong pro-workers' party. A more complete explanation could be that the sudden interest by the Health Department in doing something about workers' health reflected not so much an expansion in industry, but rather political pressure from a workers' government to act, and the recognition that with expanding industry more needed to be done to protect the health of workers in the context of an increasingly tight labour market, and the threat of a new world war.

In a cross-national comparative study of occupational safety and health policy in Switzerland, Great Britain, and the United States, Singleton (1983) argues that there are both historical differences and discernible similarities between the three countries. Similarities perceived include: the development of compensation systems before prevention systems; prevention systems in all three countries having to combat the obstacles of scientific defensibility, feasibility, and cost; and, policy debate is "essentially political and emotional rather than scientific and rational" (Singleton, 1983:162-163). In spite of these similarities, Singleton (1983:161) concludes that each country's law has to be "viewed in relation to [the country's] cultural ethos and level of industrial development". Furthermore, there are differences in the "the quality" of the various pieces of legislation. The quality of the legislation varies according to how clearly the objects of the legislation have been stated, the choice of instruments used to attain the objects, and the measures introduced to evaluate progress made in attaining the stated objectives (Singleton, 1983:167).

Singleton's (1983) suggestion that compensation systems predate prevention systems, is at variance with Dwyer's[15] (1991:17-34) analysis. Dwyer (1991:14) points outs that as early as 1662 English miners had begun to demand the use of prevention systems in the form of ventilation systems in mines, as a means to prevent deaths. Furthermore, the Davy safety lamp was introduced in 1815 in English coalmines in order to minimise the risk of fires and explosions (Dwyer, 1991:17-18). However, Drake and Wright (1983:1-2), in a similar vein to Singleton (1983), have also observed that early British law was not primarily concerned with prevention, but with compensation. The important point to note about this debate is that there appears to be a need to define more clearly what one means by prevention

[15] The issue was raised by Professor Dwyer and debated with him in a private discussion with him and Dr Carol Slappendel in December 1996.

systems. If a distinction is drawn between technical prevention systems, and other methods of prevention such as the use of law and bureaucratic management systems, then the observations made by both Singleton (1983) and Dwyer (1991) can be accepted. Dwyer's (1991) assertion can be accepted if prevention systems are defined in technical terms. However, Singleton (1983) and Drake and Wright (1983) can be seen to be correct in that early English law on industrial accidents was not concerned with prevention but with compensation.

The importance of the above distinction between forms of prevention systems and the use of the law is highlighted by some studies examined in the next subsection.

Studies with a legal interpretation emphasis

The importance of changes in legal interpretation and its impact upon attitudes towards the control of dangerous working conditions has been examined by a number of writers. The literature reviewed below focuses upon developments in the interpretation of Anglo-Saxon law relating to industrial accidents, and highlights the differences that exist between different legal systems.

Friedman and Ladinsky (1967:53-54) argue that in the United States the "history of accident law is much too complicated to be viewed as merely a struggle of capital against labour, with law as a handmaid of the rich, or as a struggle of good against evil". In their study, they are interested in examining the way in which law initiates or reflects social change (Friedman and Ladinsky, 1967:50). Social change is defined as "any non-repetitive alteration in the established modes of behaviour in society. Social change is change in the way people relate to each other, not change in values or in technology" (Friedman and

Ladinsky, 1967:50). This type of change "necessarily means changes in powers, duties, and rights; it will normally be reflected both in custom and law" (Friedman and Ladinsky, 1967:51).

Based upon their definition of change, Friedman and Ladinsky (1967) argue that the development of industrial accident law in the United States, particularly accident compensation, stems from the growth of exceptions made by the Courts to the original common law rules pertaining to Fellow-Servant. As the number of exceptions to the rules grew "the rules lost much of their efficiency as a limitation on the liability of business persons" (Friedman and Ladinsky, 1967:65), and were replaced with workers' compensation legislation that was seen to be more rational (Friedman and Ladinsky, 1967:71). Behind the growth in exceptions to the original rules were changes in social values towards the desirability of economic development. These changes were reflected in the attitudes of the judiciary concerning where the balance lay in apportioning the costs of development. For example, the original doctrine of assumption of risk, set in 1842 by Justice Shaw, seems to have been established with the purpose of giving "maximum freedom to expanding industry" (United States Supreme Court (1948), in Friedman and Ladinsky 1967:58 see footnote 26) at a time when society placed great value upon industrial expansion (Friedman and Ladinsky, 1967:55-58).

However, by the end of the 19th century, the original social and judicial attitude had changed and the validity of the doctrine of assumption of risk was increasingly challenged by judges (Friedman and Ladinsky, 1967:59-65). The new generation of judges slowly devolved "upon the employer...a due and just share of the responsibility for the lives and limbs of the persons in its employ" (Justice Thomas 1891, in Friedman and Ladinsky

1967:59). The process of change had by the 1920s, in many states, resulted in workers' compensation statutes "that abolished the fellow-servant rule and the defences of assumption of risk and contributory negligence" (Friedman and Ladinsky, 1967:70).

Drake and Wright (1983), in their commentary on the British 1974 HSWA, present an account of legal change similar to that put forward by Friedman and Ladinsky (1964). In Drake and Wright's book, the evolution of British health and safety law is depicted as a product of a dynamic relationship between judicial activism in the common law, change in social attitude, and the judiciary's interpretation of the intention of Parliament as it is expressed in statute law.

In Drake and Wright's (1983) scenario[16], the development of British health and safety law began in the late eighteenth century with the onset of the industrial revolution. The early stages of the industrial revolution resulted in a shift in social attitude away from "stoical acceptance" of workplace injuries and illnesses, towards "collective bargaining" over compensation and prevention (Drake and Wright, 1983:31). As a consequence of these attitudes, early British law was not primarily concerned with prevention, but with compensation (Drake and Wright, 1983:1-2). The basis for seeking compensation was the idea that a 'duty of care' exists in the employment relationship (Drake and Wright, 1983:22). Over time, the judiciary defined the duty of care as one involving a standard of "reasonable care" as practiced by a "reasonable employer" (Drake and Wright, 1983:1-2 and 7). If it could be demonstrated that the employer had not taken reasonable care, then financial compensation for damage done to the worker could be awarded. By the late nineteenth century the failure of the tort system to reduce the occurrence of workplace

[16] See also Barrett and Howells (1995: Chapter 3) for a strikingly similar account.

injuries resulted in another change in social attitude that pressed for the imposition, via statute, of an "absolute standard" of care (Drake and Wright, 1983:7, 31-32).

Imposition of an legal absolute standard of safety though, faces two problems in the English judicial system. The first is a strong tendency within the English judiciary towards "literalism" in the interpretation of statute. The consequence of this has been a judicial move to interpret an absolute standard in terms of "strict" duties of care rather than absolute (Drake and Wright, 1983:8). The judicial reasoning is that a absolute standard may impose "impossible prescriptions" (Drake and Wright, 1983:8). The second problem identified is British parliamentary resistance to:

> "broadly-framed prescriptions in the continental tradition. The British...prefer statutes which are proof against the imbecile who requires detailed guidance and the charlatan bent upon misunderstanding the law" (Drake and Wright, 1983:7).

The perceived difficulty with providing detailed and specific statutes is the likelihood of "rigidity and loss of personal responsibility on the part of the individual" (Drake and Wright, 1983:4). Conversely, the use in legislation of "too general a language" often means that people find it difficult to use the legislation in the regulation of their behaviour (Drake and Wright, 1983:4). It is at this point that other debates concerning the "role", "validity", and "enforcement of the law" begin to arise (Drake and Wright, 1983:10-13).

According to Drake and Wright (1983:10-12), the role of health and safety law is to act as a regulator of human conduct through the threat of force and the use of systems and procedures. However, for enforcement to be effective, the law and related enforcement systems must be seen as valid. One of the problems that impinges upon the question of validity, involves the difficulty of balancing the desirability of effective enforcement against

the social and economic costs of enforcement (Drake and Wright, 1983:15). It is at this point that debates about the application of analyses involving cost-benefit assessments, risk assessment, self-regulation, economics, and morality appear (Drake and Wright, 1983:16-22). Another issue debated, particularly in the British Parliament, was that of "ministerial responsibility" for the proposed quasi-autonomous Health and Safety Commission (Drake and Wright, 1983:41-42). A related problem area to that of ministerial responsibility concerned the administrative amalgamation of inspectorate functions. Drake and Wright (1983:36) note the 1974/75 British administrative amalgamation was reported by politicians as causing a "first-class Whitehall row" over the surrender of departmental functions.

Since Drake and Wright's (1983) work, other writers such as Hepple and Byre (1989), Eberlie (1990), Miller (1991), Fitzpatrick (1992), Williams (1995), Barrett and Howells (1995) and Burrows and Mair (1996) have noted the existence of differences between the English (Anglo-Saxon) approach to health and safety law and European continental legal traditions. This recent scrutiny has come about because Britain has had difficulties in implementing a series of European Community Directives on health and safety that have been issued since 1989. The differences between the British approach to health and safety, and that promulgated in European Directives, have been perceived by British officials to be so severe as to pose a "fundamental" threat to the entire English health and safety system (Department of Trade and Industry, 1993; in Burrows and Mair, 1996:272).

Hepple and Byre (1989:129) argue that the European Community's Labour Directives "have been imperfectly implemented by the United Kingdom". The fundamental reason for the failure is the "conceptual structure of British Labour Law" which does not adequately recognise the rights of all workers to effective participation and representation

in the workplace, i.e. industrial democracy (Hepple and Byre, 1989:142-143). The problems manifest themselves when the British judiciary attempt to apply principles based upon "common law presumption" to the interpretation and translation of European Directives (Hepple and Byre, 1989:142). Eberlie (1990) identifies three issues of particular concern to British industry surrounding the legal interpretation and translation of European Commission Directives into British law. The three issues are: the appearance of "excessive detail"; a suggestion in the Directives of an European 'absolute' standard that does not recognise the implications of such an approach for British employers given the "strict letter of the law" approach taken by English judges; and, ambiguity over the meaning of "balanced participation" in regard to consultation with workers (Eberlie, 1990:95-96).

Recent reviews by Barrett and Howells (1995) and Burrows and Mair (1996:Chap 12) of Britain's efforts to implement European Directives on health and safety, highlight the same substantive problem areas identified by Eberlie (1990). However, Burrows and Mair (1996:7-9) supplement Eberlie's (1990) analysis by noting that "harmonisation" of European Union member countries' laws is hampered by: inconsistency in rulings handed down by the European Court of Justice; a lack of European agreement on the meaning of terminology such as "employer", "self-employed", "worker" and "employee"; a lack of codification of existing European legislative arrangements which would encourage understanding and informed debate; and, a lack of political willingness on the part of member states to implement European Commission rulings. It is the last factor that Burrows and Mair (1996:5 and 9) see as the reason behind British implementation problems.

For Burrows and Mair (1996:5), the real problem of implementation is not so much a problem of different legal systems - although these are real enough - but rather a clash of "ideological opposites". On one hand Britain is pursuing labour market de-regulation, and on the other several European countries have a more "consensus" model of industrial relations (Burrows and Mair, 1996:5). A more sophisticated variant on the ideological dichotomy identified by Burrows and Mair (1996) has been presented by Fitzpatrick (1992).

Fitzpatrick's (1992) categorisation of the differences between European legal systems combines political ideology with the existence of different legal systems. Fitzpatrick (1992:210), referring to the work of Nielsen (1990) and a study by a Commission of the European Communities (1989), suggests that three "legal families" can be identified within the European Community in relation to health and safety and individual and collective rights in labour law. One group consists of a Romano-Germanic tradition where there is a high degree of regulation and convergence between states about individual employment rights, although this does not translate to collective employment rights. The second legal tradition is an Anglo-Saxon one where individual rights are recognised but on a voluntaristic basis, and even these have been constrained more recently by the extreme voluntaristic ideas surrounding the ideology of the 'free market'. The third legal family that can be perceived is a Nordic group which, rather than relying upon legislation, recognises individual and collective rights through voluntarism and enforcement of collective agreements. Ideologically, the three legal systems can be equated with Esping-Anderson's (1990) "three worlds of welfare capitalism" of 'conservative-corporatist', 'liberal' and 'social democrat' (Fitzpatrick, 1992:210).

In a departure from the above analyses, Baldwin (1990) presents a process model of the policy making procedure followed by the Health and Safety Executive. Baldwin (1990:321) defines law as "rules": rules that have particular characteristics. The variables that characterise a particular rule/law include the degree of specificity, the extent of inclusiveness, the linguistic accessibility and intelligibility of the law, the status and force accorded to the law, and the type of prescription and sanction invoked in the law (Baldwin, 1990:321). Law is also characterised by its objectives. The objectives may be to control officials, or to facilitate prosecution, or to educate, inform and promote a desired social outcome, or to form the basis for negotiations on controversial topics (Baldwin, 1990:322). In making these distinctions, Baldwin (1990:328) argues that the process followed by the British Health and Safety Executive, "is not one calculated efficiently to match rule-types to the requirements of enforcers or compliers".

Baldwin (1990:330) characterises the regulation formation process followed by the Health and Safety Executive as "top-down" and typically involves a three-year ("160 weeks") cycle of development. The process begins with receipt of a proposal for a new regulatory initiative. Upon receipt of the proposal a draft initial submission on the proposal is written and approval is sought for further work. If further work is approved, a cost-benefit analysis is conducted. The analysis is followed by a round of informal consultation and the writing of a draft set of regulations. A formal period of consultation and revision then begins. The process concludes with the preparation of a final draft, and its submission for approval by Parliament.

Throughout the development process, Baldwin (1990) notes that policy-makers face several problems. The problems revolve around finding the balance between ease of

enforcement versus standards of reasonableness and, providing enough information sufficient to do the job in a wide variety of situations while ensuring that it is readable without being overly vague or complex or restrictive. There is also the problem that any regulation that adopts a self-assessment approach to enforcement, needs to overcome the fact that many who are subject to the regulation are not competent to implement the proposed standard without some form of assistance or oversight (Baldwin, 1990:330-331). Other problems stem from the nature of the process itself. First, the process is one where policy is made from the top down. This means that policy makers are often divorced from the realities faced by those who try to enforce and use the law (Baldwin, 1990:332-333). In addition, because the process itself is political, it results in rules becoming increasingly vague and complex as attempts are made to placate competing opinions (Baldwin, 1990:334). The final problematic that surrounds the process involves the constraints imposed by the internal and external political situation of the organisation responsible for the policy development (Baldwin, 1990:335-337).

Given the problems identified with the process used by the British Health and Safety Executive, Baldwin (1990:337) concludes "improved rulemaking will come through paying regard to that issue rather than by clinging to the notion that rules shape the world". In terms of developing more effective health and safety rules, Baldwin (1990:337) suggests that:

> "targeting is necessary and centres on four questions....
> What are the key hazards?
> Who creates these hazards?
> Which enforcement strategies will best influence the mischief makers/hazard creators?
> Which rule-types best compliment those strategies?"

In summary, historical-legal method approaches to occupational safety and health policy have provided additional evidence supporting the explanatory factors identified by pluralist and marxist accounts. In addition, the studies have highlighted the historical links that exist in occupational safety and health policies across nations that share a legal heritage with Britain. The links are particularly revealed over issues such as the recognition of workers' rights, the standard of duty of care to be imposed upon employers, and the use of the Robens (1972) concept of "self-regulation". Another feature influencing occupational safety and health policy, in all nations, is their particular experience of industrial development. The relevant parts of this experience for understanding change in occupational safety and health policy are: the introduction of new technologies, changes in the number and intensity of working hours, the occurrence of major catastrophes, the occurrence of a long term rise in injury rates, and a consequential rise in public concern pushing for change that is led in many cases by a small group of motivated and informed activists.

In terms of occupational safety and health policy debate, the historical-legal literature particularly contributes by highlighting the importance of understanding how different legal systems and terms reflect differences in values and ideas about the role of law in controlling safety at work, the economy, and efficiency in government intervention. In this regard the recent literature examining Britain's attempts at harmonising its health and safety laws in accordance with European Commission Directives, has been especially illuminating. The literature highlights the problems that can arise when trying to transplant ideas across a group of nation-states who do not always share the same political, legal, and social backgrounds. The British experience with 'harmonisation' may hold lessons for Australia

and New Zealand as they move towards closer economic relations, and seek to "cooperate closely over occupational safety and health matters" (Safeguard, 1992:6).

Another fact revealed by this body of literature is the need for a more informed awareness, in particular by researchers conducting cross-national comparisons, of the specific social and legal situation of any given individual or group of nation-states. The importance of this point is demonstrated by the debate that has occurred between Navarro (1983) and Kelman (1980, 1981) over the reasons for differences in the occupational safety and health policy of Sweden and the United States. Similarly there is a need for greater specificity in the use of the terms used by researchers. A particular case in point is the imprecision in the use of the term "self-regulation" which has been highlighted by Phillips (1976), and Dawson, *et al.* (1988). Another illustration, is the difference that has been identified in this review between Dwyer (1991), Singleton (1983) and others, as to whether accident prevention systems predate compensation systems or *vice versa*.

The final contribution of this body of literature, particularly in terms of Anglo-Saxon countries sharing a British legal heritage, is its highlighting of the developmental link between occupational safety and health law and employment law. The next body of literature considered examines the relationship between occupational safety and health and industrial relations in more detail.

Industrial relations perspectives on occupational safety and health policy

In contrast to the forms of literature considered so far, industrial relations perspectives on occupational safety and health do not focus upon the policy process as such, but comment upon the effects of occupational safety and health policy in the workplace. Jeffrey

(1995:157-158, in Slappendel) suggests that industrial relations "is the study of the processes through which rules are made and amended in the employment relationship". It is the explicit focus upon the conflict over the management of occupational safety and health in the employment relationship that distinguishes the industrial relations perspective from the other types of study reviewed.

The industrial relations literature contributes to understanding occupational safety and health policy by drawing attention to the false distinction commonly made between industrial relations and occupational safety and health by some academics, practitioners, and political lobbyists usually representing employers groups. In making this contribution, the industrial relations perspective confirms the links between occupational safety and health law and employment law described in the historical-legal literature, and by Carson (1970; 1974; 1979; 1980; 1982; 1985; 1989) in the marxist-oriented literature. There are two core arguments for the separation of occupational safety and health from industrial relations policy. The first is that occupational safety and health is too important an issue to negotiate over. The second is that occupational safety and health issues are not generalisable to industries, enterprises, or occupational groups. Opposing these points, Quinlan (1993:140) argues that any study of industrial relations that fails to consider the occupational safety and health dimension is "intellectually bankrupt". The argument that occupational safety and health and industrial relations must be separated, is a fiction put forward to support an ideological stance that glosses over the right of workers to have input into, and some control over, their health and safety (Quinlan, 1993:141-45).

In Quinlan's (1993:146) analysis, the division between occupational safety and health and industrial relations law has had several consequences. The first consequence has been that,

where industrial relations academics and practitioners have recognised and involved employer and union organisations, this recognition has not followed through into occupational safety and health. In many instances occupational safety and health is still viewed in a paternalistic and individualistic manner (Quinlan, 1993:148). Secondly, industrial relations has developed comprehensive legal institutions and forms that recognise the unique aspects of employment contracts, a situation that does not apply to occupational safety and health (Quinlan, 1993:149). As a result of these two points, occupational safety and health policy has been open to political trade offs that compromise the introduction of more stringent occupational safety and health standards, and have often seen unions excluded from any input into the policy development process (Quinlan, 1993:149-50). The fourth consequence of the division between industrial relations policy and occupational safety and health policy is that analyses of causes of industrial injuries and illnesses are individualised, leaving the field open to dominance by biomedical and psychological assessments of the causes of workplace injury and illness (Quinlan, 1993:150).

Creighton and Gunningham (1985:3-5), in their compilation of papers about industrial relations in Australia, also argue that occupational safety and health is intrinsically an industrial relations issue. The core occupational safety and health policy issue is the need "to find equitable and effective means of rationalising or institutionalising...conflict" over occupational safety and health (Creighton and Gunningham, 1985:9). Creighton and Gunningham (1985:6) also argue, that while unions have long been involved in health and safety, this has largely been limited to assisting workers in their compensation claims, with prevention "being a poor second". Where unions have been interested in prevention, activity has predominantly taken the form of agitating for greater state involvement, or seeking extra money for dangerous work (Creighton and Gunningham, 1985:5-6). It is

only since the 1970s that interest in the area of health and safety has really arisen (Gunningham and Creighton, 1980:140; see also Quinlan, 1993: Chap 7; Quinlan and Bohle, 1991:Chap 10; and Matthew's, 1993:11-22). Beaumont (1983) presents a similar analysis of occupational safety and health policy and industrial relations in Great Britain.

Australian union interest in workplace injury prevention arose because of a number of factors. One factor was a perception that traditional methods of dealing with injury and illness at work were thought not to be working. Another factor was that unions needed to find other ways of enhancing their members' position in the face of constraints upon the traditional negotiating issues of wages and hours of work. An additional impetus behind the increase in interest was a growing concern within the community about the environmental damage caused by industrialisation, a concern which workers brought with them into the workplace (Creighton and Gunningham, 1985:6-8; see also Mathews, 1993:12; Quinlan and Bohle, 1991:Chap 10).

What of industrial relations and occupational safety and health in New Zealand? Walsh (1994:168), in a recent assessment of New Zealand industrial relations research, says that the two largest areas of research are studies that focus upon the institutional arrangements that regulate the employment relationship, and legal analyses. A third area of study, that reflects "the policy importance attached to them over the last decade or more", is "gender and minority groups, employment and unemployment and occupational health and safety" (Walsh, 1994:168). Furthermore, the "picture that emerges is decidedly one of a discipline focused heavily on analysis of, and comment upon, current industrial relations policy and practice. Theory and self-conscious efforts to develop theoretical frameworks are notable by their absence" (Walsh, 1994:162).

Walsh's (1994) comments about industrial relations generally, apply even more so to the industrial relations items that have been published in New Zealand about occupational safety and health in New Zealand. The majority of articles published specifically relating to health and safety at work in the *New Zealand Journal of Industrial Relations* since its inception in 1976, have been contributions to symposiums held in 1983 and 1989 around the time of the appearance of major changes in New Zealand's health and safety legislation. All contributions, except for Dwyer (1983),[17] have been a-theoretical, presenting viewpoints about the merits of the proposed changes from the organisational perspective of the author, i.e. academic, union, employer, or government. At various times other 'one-off' articles have appeared in the Journal, such as the debate between Mullen (1991) and Farlow (1991) over implementation by employers of the 1987 Voluntary Code of Practice for Health and Safety Committees and Safety Representatives. Other published articles are overwhelmingly those by Campbell (1983;1985; 1987; 1989a and b; 1991; 1992; 1996) dealing predominantly with the legal consequences of changes in workers' compensation law, and various health and safety proposals.

Roth's (1964) bibliography of *Labour Legislation in New Zealand* lists thirty-seven items, published prior to 1975, under the heading "Accident Compensation and Safety". However, only five of the thirty-seven items are directly related to industrial accidents, and all were published between 1894 and 1924[18]. Further analysis shows that seven more references relating to health and safety occur under the heading "Women and Children",

[17] Dwyer's article is a general sociological theoretical analysis of injury causation, applicable to all industrialised nations; it is not specifically formulated just for New Zealand.

[18] Of these five items, two were reports about inspection of machinery (1894; 1903); one was on industrial accidents in Great Britain (1900); another was a thesis on "The history of the principle of employers liability in New Zealand" (1924); and one was the report of a Commission into Waterside Accidents (1918). Attempts to obtain copies of all these studies have been unsuccessful.

six of which appeared before 1924, the last in 1945. Recently, Henderson (1995) completed a Masters thesis on the *"Evolution of Attitudes and Approaches to Occupational Health and Safety in New Zealand"*. A quick survey of three commonly used New Zealand textbooks on industrial relations - McLennan, *et al.* (1987); Ellis, *et al.* (1981:180-192, 200-206); and Deeks, *et al.* (1994: Chap. 17) - reveals a similar pattern of a-theoretical descriptive analysis. McLennan, *et al.* do not discuss health and safety at all, Ellis, *et al.* discuss health and safety in terms of the requirements of law and provide a brief historical background. Deeks, *et al.* provide a very general wide-ranging descriptive discussion of occupational safety and health in New Zealand in terms of causation theory, the development of the current law, compliance policy and behaviour of Inspectors of Factories, and make passing reference to the ideological content of the Health and Safety in Employment Act 1992. Recently two exceptions to the criticism made here have appeared. The first is Jeffrey's (1995, in Slappendel) discussion of the development of occupational safety and health in New Zealand since the 1840s in terms of "rule making". The second is Lamm (1989; 1992; 1994; 1995) who, in researching the linkages between compliance behaviour of small business and the enforcement activity of government in Australia and New Zealand, has written from a perspective informed by the sociology of business, and organisational theory.

In summary, industrial relations studies of occupational safety and health policy say very little about how occupational safety and health policy is made. Nevertheless, they do provide additional support for statements found in the other literature streams about the change in union approaches to health and safety since the 1970s, and the existence of a link between industrial relations and occupational safety and health.

Identifying gaps in the literature

Notably absent from the occupational safety and health policy studies reviewed, are 'micro' and process oriented accounts of policy change such as Rationalist models found in the general public policy literature, and those by Lindblom (1959; 1979), Lindblom and Woodhouse (1993), and Lowi (1964; 1970; 1972; 1988). The exception to this is Baldwin's (1990) analysis that is reviewed in the historical-legal method section. How might the absence of this form of analysis in Figure 3-1 of this review be explained?

Rationalist models usually conceive of the policy process as analytically separable components or 'boxes' that form a sequence of events called the policy process. Rationalists, such as public choice theorists, suggest that policy-making is about maximising social gain (Dye, 1987:31), and argue that the problem with bureaucratic policy-making by the state is that it tends to be captured by the interest groups that are being served or regulated. The result is policy that is often economically unsustainable, inefficient and ineffective (Pierson, 1991:45-48). According to advocates of the rationalist perspective, policy-making should be about the rational consideration of all alternatives, including competing values, costs, and benefits (Dye, 1987:31-35).

Rationalist approaches, as described above, are absent from this review not because they do not exist, but because they are overwhelmingly more concerned with advocating for a particular occupational safety and health policy solution than explaining the process of occupational safety and health policy formation. Steigler (1971), Diehl and Ayoub in Peterson and Goodale (1980), Oi (1973, 1974), Rinefort (1977), Smith in Peterson and Goodale (1980), Coase (1960), and particularly Dorman (1996) and Viscusi (1979; 1983, 1996) are all good examples of rationalist studies of occupational safety and health policy.

All these studies, uniformly, do not offer an analysis of the occupational safety and health policy-making process. Instead they provide an economic analysis of, and economic solution for, government intervention in occupational safety and health. In sum, rationalist approaches to occupational safety and health policy are absent from this literature review because they fit the criteria of "analyses for policy", as described in the introduction to the taxonomy presented in Figure 3-1.

Having explained the absence of rationalist approaches in Figure 3-1, how might the absence of analyses similar to the work of Lindblom (1959; 1979), Lindblom and Woodhouse (1993), and Lowi (1964; 1970; 1972; 1988) be explained? Lindblom's analysis of policy-making, known as incrementalism will be considered first. Incrementalism, also known as "the science of muddling through" (Lindblom, 1959; 1979; Lindblom and Woodward, 1993), is the antidote to rationalism.

Early incremental theory argued that policy evolved through the "method of successive limited comparisons" (Lindblom, 1959:81). According to the theory, policy makers do not distinguish between means and ends, or question values, and analysis of alternate delivery systems is extremely limited. Furthermore, the adequacy of a policy is judged by the level of consensus reached about it, not whether it is the most effective or efficient (Lindblom, 1959:81). In adopting this system of policy-making, policy makers are not being obtuse or dense but are simply coping with the limitations imposed by financial, cognitive, and time limits in doing analysis. In sum, policy-making is largely a process of compromise through "partisan mutual adjustment" (Lindblom, 1965; 1979:522-524). The question is, does incrementalism adequately account for large-scale and rapid changes in policy direction, and does partisan mutual adjustment really occur when the 'big' policy issues such as

welfare and income redistribution are being debated (Dror, 1968; 1971; 1986; Etzioni, 1967)?

In a later version of his incremental theory, Lindblom (1979:523) acknowledges that when the 'big' issues of policy are being discussed mutual adjustment "is weak or absent". In terms of accounting for change, Lindblom (1979) argues that small-scale change can, over time, come to mean large-scale change. Large policy shifts can be explained if one differentiates between simple, disjointed, and strategic incrementalism (Lindblom, 1979:517-18). Lindblom (1979:520-522) goes on to note that incremental change is often easier to legitimate politically, ideologically and economically than larger change. Furthermore, incremental policy change is not necessarily a problem of incremental policy analysis, but of incremental politics. Cates (1979), commenting on Lindblom's later incremental theory, makes two points: first, while Lindblom depicts much of the reality of day-to-day policy-making, there is another side to policy-making that is far more "intuitive, creative, messy [and] elusive" (Cates, 1979:527); and second, debates about differences between big and little decisions, or incremental versus fundamental decisions are difficult in practice because "appearances are deceiving" (Cates, 1979:529).

A counter-intuitive contrast to rationalist and incrementalist theories of policy-making is Lowi's (1964; 1970; 1972) thesis that it is not organisational, cognitive, resource limitations, pluralities of power, or dominant elites that explain different policy processes, rather it is the policy issue that determines the political process (Lowi, 1972:299). Lowi's argument is:

> "(1) The types of relationships to be found among people are determined by their expectations - by what they hope to achieve or get from relating to others. (2) In politics, expectations are determined by governmental outputs or policies. (3) Therefore, a political relationship is determined by the type of policy at stake, so that for every type of policy there is likely to be a distinctive

> type of political relationship. If power is defined as a share in the making of policy, or authoritative allocations, then the political relationship in question is a power relationship or, over time, a power structure" (Lowi, 1964:688).

Lowi (1964, 1972) goes on to suggest that government policies fall into four functional categories, each of which "constitute real arenas of power" that tend to develop their "own characteristic political structure, political process, elites, and group relations" (Lowi, 1964:689-90). The policy categories are distributive, regulative, redistributive, and constitutive. Lowi's classification system has however, been criticised for being static and having boundary difficulties (Kjellberg, 1977; Wilson, J. 1973; Oppenheimer, 1974; Kellow, 1988:714).

The above reviews of the work of Lindblom (1959; 1979), Lindblom and Woodhouse (1993), and Lowi (1964; 1970; 1972; 1988) are demonstrably "analyses of policy", and suggest alternative explanations of policy-making that clearly do not appear in the occupational safety and health policy literature. How might this be explained?

Wilson (1985) clearly tackled and rejected Lowi's (1964) thesis in his comparison of occupational safety and health policy-making in the United States and Great Britain. However, the review of the occupational safety and health policy literature presented here, while offering some support to Wilson's conclusion that Lowi's thesis is not applicable in international comparisons, Lowi's thesis cannot be rejected out of hand. It is clear that on one hand Lowi is right in that occupational safety and health policy has produced similar politics of conflict, particularly over the issue of workers' rights, irrespective of differences in national institutional systems and differences in cultural values. On the other hand, it is also clear that Lowi's thesis may need to be modified because occupational safety and health policy debates and outcomes can be seen to be determined in part by factors not

only of outright power, but also by differences in forms of legal system, and the dominant attitudes towards the regulation of industrial relations and the employment relationship in various countries. In sum, Lowi's thesis may not have received more attention in the occupational safety and health policy literature, simply because there is enough apparent evidence for it to be rejected as applicable to international comparisons of occupational safety and health policy-making, as argued by Wilson (1985). And yet, the evidence of this literature review indicates that Wilson's (1985) rejection of Lowi's hypothesis may have been premature.

Finally, while an explanation can be found for the absence of Lowi's form of analysis in the literature, there is no obvious reason for the absence of Lindblom's type of analysis, except to note that the gap exists.

Conclusions

The literature review set out to identify within the occupational safety and health policy literature the reasons given for change in occupational safety and health policy, the reasons given for different policy outcomes between and within nations over time, and to gain an understanding of the occupational safety and health policy issues commonly debated. Another aim was to gain an insight into the range of theoretical and methodological positions used to date in the study of occupational safety and health policy.

The daunting task of reviewing the literature was aided by developing a taxonomic system, illustrated in Figure 3-1, that organised the material into four literature streams, and according to a number of discursive factors. The first set of factors identified was concerned with identifying the forms of research question being asked. The next set of factors identified three binary question sets around which explanations of change were

commonly developed. The question sets were concerned with providing answers about who the main change 'agents' were, what 'motivated' the change, and what 'caused' the eventual outcomes of the change process. Analysis of the literature indicates that the theoretical and or methodological position adopted determined how these questions were answered. Hence pluralist theories emphasised the conditioning influence of institutions and structural factors, the role of individuals or groups of individuals as change agents, and the role of conflict over ideas and values as the cause of change. In contrast to pluralist accounts of change, marxist theories emphasised class groups as the primary change agents, and identify class conflict over ownership and control of the means of production as the primary cause of change. Studies that eschew theory for more method, tend to point to combinations of the factors highlighted by pluralist and marxist theories, and point out the historical and legal contingencies and specificities that exist between occupational safety and health policies around the world.

Another feature of the literature, is the absence of any definition of what 'occupational safety and health policy' means. A review of the general public policy literature indicates that the question of definition is important because how it is answered reflects not only the disciplinary origin of the researcher, it will also shape the type of research questions asked, the methodologies adopted, and the theoretical perspectives considered. Given the consequences of an implicit or explicit definition of 'policy', how is the absence of discussion about the definition of what 'occupational safety and health policy' means, to be explained? A number of reasons can be put forward.

The first reason that can be given for the absence of any definition of occupational safety and health policy in the literature, is that the problem has not been recognised until now

due to the small size and disparate location of the literature. The second reason is, all the studies have been conducted within the context of the disciplinary boundaries and literature in which they appear, i.e. political science, the sociology of health and illness, the sociology of law, and industrial relations. This has meant that the question of definition has not arisen because the issue is already predefined by the constraints of the disciplinary and literary genre from which the research has emerged. A third reason that can be put forward, relates to the first two: because the literature is so small, and because it is subsumed within other disciplinary boundaries, the study of occupational safety and health policy-making lacks an identity - a consciousness of its own - that demands definition and recognition of the subject area in its own right.

In recognition of the importance of defining what occupational safety and health policy means; occupational safety and health policy is defined throughout this dissertation as referring to the range of legal and administrative instruments available to, and used by, the central government of a particular nation-state for the control of workplace injuries and illnesses in that country. The term "legal instruments" refers to the pertinent statutes and common law relating to the regulation of workplace health and safety. The term "administrative instruments" refers to the bureaucratic systems of government that are used to implement and enforce the "legal instruments". However, adequate consideration of the reasons for particular occupational safety and health policy choices demands the recognition that questions of strict occupational safety and health policy cannot be divorced from other policy issues such industrial relations, accident compensation, public safety, the environment, and government resource constraints.

Another important gap appears in the occupational safety and health policy literature that is not addressed in the above definition of occupational safety and health policy. The gap is the absence of any explicit statement of what distinguishes "significant" change from a "minor" change in occupational safety and health policy. The problematic of assessing the "significance" of any change is outlined by Cates (1979) in her commentary on the work of Lindblom (1979). Cates (1979:529) comments that "debates about differences between big and little decisions, or incremental versus fundamental decisions are difficult in practice because "appearances are deceiving". However, in the context of the literature, it appears that "significant" policy change can be defined as representing any major alteration in the way that government thinks about an issue, and the measures government introduces to implement its decisions. For example, legislation that changes the emphasis in occupational safety and health policy from an implicit reliance upon state intervention to emphasising the responsibility of the employer, demonstrates a major shift in the way that government thinks about occupational safety and health and thus represents "significant" change. In contrast, legislation that only consolidates the existing law, but does not otherwise change the way in which government intervenes, only represents a "minor" change. The problem here, as Calavita (1983) has pointed out, is that even apparently minor legislative and administrative changes can over time come to represent significant change. In this dissertation, the period 1981 to 1992 in New Zealand is deemed a time of significant change, as defined here. In making this assessment in the next chapter though, it will be seen that the points raised by Cates (1979) and Calavita (1983) are equally applicable to New Zealand.

In terms of understanding the processes of change in occupational safety and health policy, analysis of the literature has shown the existence of a high degree of complexity in the

institutional decision-making process. Cognisance of the complexity of institutional decision-making involves recognising and giving due weight to the social, political, economic, organisational and personal contexts within which the policy problems are tackled. In terms of occupational safety and health policy, what does due weight mean? It is clear, that the due weight given to each of the contexts is a function of the theoretical and methodological position adopted by the researcher. Hence pluralist and marxist analyses emphasise different factors respectively ranging from either individuals and or small groups of individuals, to large groups of individuals identifiable as a 'class'. Similarly, the change process has been identified as being driven by either conflict over different values and ideas, and or conflicts over economic well being and control of the means of production. Other explanations have pointed to the specific historical and legal contingencies associated with particular policy developments in different countries. Given the above considerations, and after considering the New Zealand experience of change, it is suggested in the final chapter that a new theoretical synthesis, that builds upon the work of Touraine (1976; 1981) and Dwyer (1991), offers a better account of the origins and determinants of change in occupational safety and health policy than currently exists.

Regarding identification of the origins and determinants of change in occupational safety and health policy, a number of views have been found. Marxist viewpoints focus upon the actions of the working class represented through the union movement and their representatives in Labour political parties. Pluralist analyses tend to emphasise the actions of individuals and small elite groups. Historical-legal method accounts point to combinations of the factors identified by marxist and pluralist studies, and also point to specific historical contingencies that shape a particular nation-state's development. The main social, political, and judicial factors that surround the determination of the debates

about occupational safety and health policy include the type of legal system used, the particular experience of industrialisation, and the type of dominant ideology that exists about how the employment relationship should be regulated. Ultimately though, it appears from the literature that the issues are determined in the final analysis by the balance of political power that is able to be brought to bear on the process by the protagonists in the debates. The only study that disputes this is Kelman's (1980; 1981) analysis.

One factor about the origins of change described in the literature that stands out, is the resurgence of union activism in the late 1960s and early 1970s regarding health and safety. This resurgence, in its derivation, has a strong resemblance to the circumstances outlined as existing at the beginning of the last century. The recurring themes are the advent of new technology, a rise in concern about the effects of the technology, agitation from rank and file union members for action, concern about a long term rise in injury rates, and the occurrence of major industrial catastrophes that prompted people to act.

It must be noted though, that while historical similarities can be seen concerning the origins of change, the outcomes sought by unions in the 1970s appear to be of a qualitatively different type from those sought in the last century. In the last century the initial legal outcomes sought were compensation for harm done, and then the promotion of prevention through state action and criminal sanction in the event of an incident occurring. Since the 1970s the outcomes sought, have emphasised the introduction of better prevention systems, rather than compensation. It is at this point of changed emphasis, that debate over policy reappears. For instance, is better prevention to be gained by strengthening the role of the factory inspectorate, or strengthening the role of employees through acceding rights to workers, or through the withdrawal of the state

leaving the "free market" to act as regulator, or through the promulgation of performance regulations aimed at employers, or would prevention of injuries and illnesses be best promoted through highly prescriptive technical standards.

As for the identification of issues at the core of debates about occupational safety and health policy, there is a remarkable consistency across all the range of studies and countries about what the issues are. The most commonly recurring issue, irrespective of the dominant political ideology, type of legal system, the particular experience of industrialisation, or country examined, is that of workers' rights. It is around this issue that the most conflict appears to occur between representatives of employers and workers. It is abundantly clear from the literature, that business interests around the world, but particularly in Anglo-Saxon countries, are uniformly and resolutely opposed to the granting of rights to workers, especially the right to stop dangerous work. It is also this issue, and the way that it is acknowledged and implemented, if at all, that allows the researcher to distinguish between the policy positions of different political parties.

Another important issue, particularly in Anglo-Saxon countries in recent years, is the debate about the extent to which the state should intervene in regulating occupational safety and health. The question of 'extent', means the degree to which government should be involved in health and safety. In other words, what level and type of resources should government commit to the control of injuries and illnesses in the workplace.

Closely related to the issue of the 'extent' to which government should intervene, is the question of how government should intervene. At this point the discussion about which prevention system to use returns. For instance, should government have nothing to do

with health and safety at work and leave employers and employees to work it out between themselves. Or should the state set specific criteria in statute by which the performance of employers and employees would be measured. Alternatively, the state could intervene by promulgating highly detailed sets of prescriptive technical regulations that would be rigorously enforced. The state could also intervene, by empowering workers and or their representatives to act on their own behalf. Another issue implicit in these debates, of particular relevance in countries with a British legal heritage, are debates about the legal "standard of care" that should be imposed upon employers and employees. Should the standard of care be an "absolute" standard, or a lesser one of a "strict" duty of care that provides for a defence of "all reasonably practicable". Linked to these debates are two other issues. The first concerns the matter of resource allocation by government for implementation of the final policy solution chosen. This issue is particularly relevant for the administrative agency responsible for implementing the decisions made by the political process. The second issue concerns the constitutional question of 'ministerial responsibility' when changing administrative structures.

Finally, a range of factors have been identified in this chapter about the origins of change in occupational safety and health policy, the determinants of policy outcomes, and what the issues commonly debated are. It is also clear that thinking about change in occupational safety and health is fractured along theoretical and disciplinary lines. In addition, until now, the literature lacks any attempt to define what "occupational safety and health policy" means. Furthermore, there is a need for greater theoretical specificity about the links between policy issues, the contexts in which they take place, and the outcomes that occur in different nation-states. In the next few chapters the experience of change in New Zealand's occupational safety and health policy between 1981 and 1992 is examined,

compared and contrasted to the literature reviewed here. After the New Zealand experience has been studied a theoretical perspective will be presented that builds upon all the material reviewed here in this and subsequent chapters.

CHAPTER 4: THE NEW ZEALAND EXPERIENCE - WHAT CHANGED?[19]

Introduction

This chapter introduces the changes that have occurred in New Zealand's occupational safety and health policy between 1981 and 1992. The chapter focuses upon identifying, describing, characterising, and assessing the significance of the main legislative and administrative proposals that were suggested or implemented at various points during the period.

Identifying and Assessing What Changed

In identifying and assessing 'what' changed between 1981 and 1992 in New Zealand's occupational safety and health policy, the procedure followed was to search for similarities and differences between policy positions at certain points in time, and then to assess their importance according to two criteria. The first criterion asks, what is the degree to which the social relations of control between employer and employee have been significantly modified? The second criteria involves attempting to establish whether there has been any real change in the way that occupational safety and health policy is thought about and administered by the bureaucrats concerned, and other participating actors.

A table summarising the legislative and administrative situation at various points in the period under study is presented in Figure 4-1 on page 106. The diagram highlights the similarities and differences in general policy direction at three stages of the transformation

[19] The core of this chapter has been published as: "Characterising the transformation of New Zealand's OSH legislation and administration from 1981 to 1992: moving from the "Balkanisation of control" to employer management systems." Journal of Occupational Health Safety – Aust NZ 1997, 13(3): 221-227.

process. Each stage of the transformation process represents the policy situation as it existed in December 1981, as it was proposed and partially implemented in 1990, and as it was introduced in 1992.

An important aspect about Figure 4-1 is that it helps to demonstrate a criticism made in the previous chapter. The criticism was that there is a need for greater specificity and care by researchers about the terms they use when discussing occupational safety and health policy. For example, the diagram indicates that descriptions in the New Zealand literature which claim that recent changes represent Robens-style reform, de-regulation, or "self-regulation" (Hughes, 1993:1; Lamm, 1992; 1994; Harcourt, 1996) are, at best, only partially accurate. In addition, descriptions of the eventual outcome as representing a hazard management or risk management approach to occupational safety and health, while accurate, do not adequately depict all the changes that have occurred, nor the continuities that remain. To quote a representative of the New Zealand Business Roundtable in a speech on occupational safety and health reform to the New Zealand Institute of Safety Management: "the objective is not deregulation as such, but reform of regulation" (Brook, 1989:8). The quote begs the questions though, what sort of regulatory reform does the New Zealand Business Roundtable want, and can it be described as representing "deregulation"? The Figure 4-1 and the quote from Brook (1989) clearly demonstrate the validity of the comment by Phillips (1976) about the need to define what "self-regulation" means, and the point made by Dawson, *et al.* (1988) that the term "self-regulation" was not meant to mean the absence of regulation.

Policy Situation at December 1981 **Government Management**	Policy Situation at December 1990 **Tripartite Management**	Policy Situation at December 1992 **Employer Hazard Management**
Administrative Arrangements	Administrative Arrangements	*Administrative Arrangements*
Multiple Central Government Authorities. Some Local Government Responsibility.	Proposed: One Central Administrative Authority Comprised of Three Institutions. In Process of Establishment: One Central Government Authority Located in the OSH Service of the DoL.	One Central Government Authority Located in the OSH Service of the DoL.
Funded from General Taxation.	Funded from Special Employer Levy via ACC.	Funded from Special Employer Levy via ACC.
Legislative Arrangements	*Legislative Arrangements*	*Legislative Arrangements*
Policy Philosophy: Government Responsibility (Modelled on Occupational Hygiene Approach and Part Robens Report).	Policy Philosophy: Tripartite Responsibility (Modelled on ILO OSH Conventions, 1972 Robens Report, and the Australian State of Victoria of the early to mid 1980s).	Policy Philosophy: Employer Responsibility (Hazards Management Approach Modelled on Loss Control and Risk Management Approaches).
Multiple Acts and Regulations.	One Act, Multiple Regulations and Codes of Practice.	One Act, Regulations Progressively Replaced by Multiple Codes of Practice and Guidelines.
Reliance Upon Prescriptive Technical Specification Standards.	Mix of Prescriptive Technical Specification Standards and Performance Standards.	Reliance Upon Prescriptive Performance Standards, with Minimal Prescriptive Technical Standards.
Minimal Recognition of Workers' Rights.	Positive Statements of Workers' Rights.	Minimal Recognition of Workers' Rights.
Limited Coverage of Work Sites.	Full Coverage of Work Sites.	Full Coverage of Work Sites.
Implicit Public Safety.	Explicit Incorporation of Public Safety.	Explicit Incorporation of Public Safety.
Mixed Liability Regime for Employers: Absolute and Strict Depending on Legislation.	Strict Liability Regime for Employers.	Strict Liability Regime for Employers.
Discriminatory Working Provisions Against Women and Young People.	No Discriminatory Working Provisions Against Women and Young People.	No Discriminatory Working Provisions Against Women and Young People.
Means to End: Effective Government Action	**Means to End: Effective Employee Action**	**Means to End: Effective Employer Action**

Figure 4-1 Summary Description and Characterisation of New Zealand's OSH Legislative and Administrative Arrangements as at December 1981, 1990, 1992.

Given the above points, Figure 4-1 suggests that a better description and understanding of the changes that have occurred in New Zealand can be arrived at by discriminating more

carefully between the various policy approaches in terms of the points of emphasis in each period, and by understanding the philosophy behind them. Hence, the table suggests that the policy followed at the end of 1981 can best be described as a system of "Government Management". By 1990, a policy of "Tripartite Management" was mooted, and administrative amalgamation was largely completed. In 1992, a new system of "Employer Hazard Management" replaced existing arrangements. Each of these characterisations is described in more detail in the following sub-sections.

Government management

Walker (1981:9), in his 1981 Report inquiring into New Zealand's occupational safety and health arrangements, described New Zealand's legislation as serving the function of "occupational hygiene". The system was defined in this way because the policy instruments focussed upon the control of specific types of hazards by specific means in particular industry and occupational groups. The approach suffered though from gaps in workplace coverage, and from anomalies in jurisdictional application (Walker, 1981:1). To rectify this situation, Walker (1981: 4 and 55-56) recommended that New Zealand cautiously follow the British example as set out in the 1972 Robens Report. Subsequently, the Factory and Commercial Premises Act 1981 was passed. This Act amalgamated the 1946 Factories Act with the 1955 Shops and Offices Act, provided for the training of workers, set out the duties of employers and employees, signalled a move away from reliance upon detailed technical and prescriptive Regulations to less specific Codes of Practice (CoP), and provided for the possibility of health and safety committees and representatives. However the new legislation still left fourteen major Acts, seventeen minor Acts, and over fifty Regulations pertaining to occupational safety and health in force (ACOSH Report, 1988:3). One consequence of this multiplicity of regulation was that

employer' liability for health and safety varied from "absolute" to "strict". The Act also discriminated against women and young people in terms of hours of work and the types of work that they could do, and lacked any positive statement of workers' rights.

Administratively, responsibility for enforcing the legislation prior to 1981 and after the 1981 Act, was divided up amongst five government agencies, with local territorial authorities having some responsibility. The government agencies concerned were:

1. the Department of Labour (DoL) which had primary responsibility for industrial safety;
2. the Department of Health (DoH) which had responsibility for occupational health;
3. the Ministry of Transport (MoT) which had responsibility for boilers, lifts and cranes, port side safety, and the safety of seaman;
4. the Ministry of Energy (MoE) which had responsibility for safety in mines, gas and oil fields, and electricity generation; and
5. the Accident Compensation Corporation (ACC) which promoted health and safety at work through education and training and, in the middle 1980s also provided a health and safety audit service.

Walker (1981:1-4 and 48-64) was of the opinion that amalgamation of departmental inspectorates was neither justifiable economically or technically, although amalgamation of inspectorates within the DoH over a 20 year period was feasible. However, Walker (1981:5) did recommend that a tripartite "Council" be established to oversee the operation of the legislation. This recommendation was declined by Government, in preference to the establishment of an interdepartmental officials committee called the Co-ordinating Committee on the Development of Occupational Safety and Health (CCDOSH) (Cabinet Minute SS(82)M41 Part 4 paragraphs (a) and (b)), in DoL files). This new oversight

committee replaced a previous committee known as the Interdepartmental Co-ordinating Committee on Occupational Safety and Health (IDCOSH), that was established in 1976 but which had met with limited success (Cabinet Minute SS (76) M23 Part II, in DoL files). The final characteristic of this first period is that funding of government activity in the occupational safety and health area came from general taxation.

In sum, the arrangement of occupational safety and health policy at December 1981 relied heavily upon government action, that is, government management. It was an arrangement that the Deputy Prime Minister Geoffrey Palmer in 1986 called the "Balkanisation of control" (Speech G. Palmer, 10 July 1986:3, in DoL file, 19/5/51-3 Part 4). The system was limited in its coverage, rigid in its modus operandi, paternalistic in its provisions restricting the employment of women and young people, and prescriptive in its technical specifications for the control of hazards.

Tripartite management

By the mid-1980s some change had occurred. In May 1985 CCDOSH, which had even less success than its predecessor, had been replaced by a tripartite "advisory council" known as the Advisory Council for Occupational Safety and Health (ACOSH) (Cabinet Policy Committee Minute P(85) M 19 Pt.4, 21 May 1985; in DoL files). The ACOSH committee was comprised of equal numbers of representatives from outside organisations and government agencies. The legislative discriminatory provisions against women and youth had been removed in 1982, and extended paid trade union education was provided through the Trade Union Education Authority that had been established in 1986. In March 1987 a voluntary Code of Practice (CoP) for Health and Safety Committees and Representatives had been introduced on a trial basis.

From 1986 onwards the principle of "user pays" had begun to appear in relation to the funding of the occupational safety and health activities of various government agencies. In the case of the DoL, funding for the Department's occupational safety and health operations shifted in 1987 to a "full cost recovery basis" through a special levy on employers that was collected via the ACC system (DoL paper "Funding of OSH and the ACC Levy" for Officials Working Party, 16 September 1988:1, in DoL files).

More change was mooted in 1990 when new legislation was introduced into Parliament - the Occupational Safety and Health Bill (OSH Bill). The legislation was intended to replace all the previous legislation, proposed the extension of protection to all workers including the general public affected by any work activity, positively provided for workers' rights, intended the establishment of a bipartite Commission to advise Government on occupational safety and health policy, placed more responsibility for occupational safety and health action upon employers and employees including establishing a regime of "strict" liability for employers, and undertook to replace prescriptive technical Regulations with less specific CoP. The legislation was never passed. Administratively, by 1990, responsibility for the enforcement of occupational safety and health legislation had largely been delegated to the OSH Service of the DoL.

Had the proposed legislative reforms been introduced, New Zealand would have seen a tripartite management system for occupational safety and health implemented. Paternal state intervention was going to be replaced by a system of joint government, union, and employer oversight and responsibility that placed greater emphasis on employer and employee self-help.

Employer hazard management

In 1991, the OSH Bill was withdrawn from Parliament and a new Bill introduced. The passage of the Health and Safety in Employment Act (HSE Act) in 1992 saw the introduction of the final changes transforming New Zealand's occupational safety and health policy. The HSE Act placed responsibility for occupational safety and health solely upon employers, extended coverage to all workers including the general public, removed any reference to extended workers' rights and a bipartite advisory Commission, placed emphasis upon prescriptive performance standards rather than specific technical requirements, and confirmed that funding for government activities in occupational safety and health should come from a special levy on employers collected through the ACC system. Administratively, the OSH Service had completed the transfer of the various government agencies' occupational safety and health related resources to its control, and had contracted out for the delivery of specific specialist services. Tripartism had been rejected in favour of minimalist government involvement and a system emphasising the rights and responsibilities of employers to manage their affairs. With the passage of the Act, the focus had shifted from the situation in 1981 of Government telling employers what hazards to prevent and how they were to be controlled, to setting out a specification of a desired level of management performance underpinned by the application of a regime of 'strict liability' in the event of an accident or injury occurring. Strict employer responsibility for hazard management was the new approach. The role accorded to employees was limited to weak statements of workers' rights about being informed and consulted about the hazards they faced, and to be informed about the results of any personal health tests.

Significance

The question remains, why are these changes deemed "significant"? To answer this question two criteria will be used. The first criterion asks, what is the degree to which the social relations of control have been significantly modified? The second criterion involves attempting to establish whether there has been any real change in the way that occupational safety and health policy is thought about and administered by the bureaucrats concerned, and the other participating actors.

Regarding the first criterion, it can be argued that the 1990 OSH Bill would have brought about a significant change in the balance of control over workers' health and safety from government and employers to workers. If the OSH Bill had been passed by the Labour Government, it would have given far more power to workers and unions to control their health and safety at work than they previously held. From 1980 onwards, unions consistently sought more power for workers principally through the compulsory establishment of health and safety delegates and then through health and safety committees. The approach was justified on the basis that the existing system was failing, and reflected the application of basic human and democratic rights about the protection of health, and participation in decisions that affect people. In many ways the union objectives can be seen as part of the wider push by the union movement, particularly during the period of the Fourth Labour government (1984-90), for greater workplace democracy and workplace reform. The policy was a solution cautiously supported by the unions' political allies in the Labour Party Government. It was an approach that was just as consistently resisted by employers' representatives as soon as the union position appeared late in 1980. Employers resisted the approach on the basis that it encroached upon their right to manage their businesses - their property - as they saw fit, and that it would impose economic costs

that would discourage economic growth and job creation (Manufacturers Federation Submission to Select Committee on F and CP Bill, 10 March 1981:2, in National Library FoL File 5/9 F and CP Bill January 1981-Dec 1985).

In addition to promising a re-balancing of power between workers and employers, the OSH Bill held the hope, through the establishment of an "Advisory Commission", of a shift in power over the control of government occupational safety and health activity from politicians and officials, to greater oversight and participation by union and employer organisations. The administrative changes were particularly sought by union representatives, in order "to get some legitimacy [for a] union role in the workplace and [at the] national level [of] policy making about health and safety" (Interview 4, 1995:384-89). The changes were also half-heartedly supported by employer representatives, at the time, because it was politically expedient to do so. As one employer representative interviewed said: "Generally speaking with reservations, Employers Federation was committed to tripartism under the Labour Government.... and if there [was] going to be a Health and Safety Commission 'by God' we were going to be on it" (Interview 7, 1995: 469-474).

The rejection of the OSH Bill in favour of the HSE Act by the 1990 National Government effectively ended the union attempts to shift the balance of control for workplace health and safety from officials and employers towards workers. Therefore, in terms of comparing the OSH Bill and the HSE Act, the HSE Act represents a significant shift in the social relations of control towards employers. However in the context of a longer time frame, the question has to be asked does the HSE Act represent any significant shift from the beginning of the period as represented by the F and CP Act 1981. This is a more difficult question to answer. On one hand it could be argued that the HSE Act does represent a shift towards greater employer

control, because employers have clearly been made explicitly responsible, and are now expected to actively identify and prevent workplace hazards without constant government oversight. The F and CP Act had also placed responsibility upon employers for health and safety, but in operation it effectively depended upon government agencies to identify hazards and stipulate means of prevention. On the other hand, there has been no significant shift between 1981 and 1992 since in both the F and CP Act and the HSE Act employees' rights, and power to act, receive only passing acknowledgement.

Yet again, if a wider focus were to be taken that compared the collective industrial conciliation and arbitration framework that existed in 1981 with the individualised employment contracts system that now exists, it could be argued that in this context a significant change has occurred. At the beginning of the period a strong union support system existed, that no longer exists to the same degree today, thus there is less protection for workers now than there was then. However, it could be argued that, while unions were certainly more powerful and prevalent in 1981 than they are currently, unions are more knowledgeable and pro-active about health and safety now than in 1981.

In summary, using the first criterion, the significance of the changes depends upon what is being compared. From the longer and wider perspectives, there appears to be little significant difference between the social relations of control at the beginning of the period with that at the end; in both cases the balance lies with employers. Only when the OSH Bill is compared with the HSE Act can it be said that, at best, the OSH Bill held the promise of a shift in the social relations of control towards workers and their representatives.

In terms of the second criterion, the evidence is much clearer that a significant change has taken place in the formulation and administration of occupational safety and health policy from 1981 to 1992. The documents show that the policy situation in 1981 in government agencies was essentially ad hoc in nature, fragmented, largely based upon United Kingdom developments, and had no explicit philosophical foundations (DoL paper 'One Act/One Authority', 4 February 1988: 7-8, in DoL file 19/9/3-1 Vol 2; and DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: section 1.2.2 and 1.2.3; in DoL File 19/9/3-1 Vol 2). The F and CP Act involved no major rethinking of how to manage occupational safety and health, or fundamental change in the management of occupational safety and health. Unions and employers had no formal policy statements on health and safety at work. After 1982 this situation began to change.

Signs of significant change appeared in 1982 with the advent of the first ever major combined unions investigation into the role of workers in the management of occupational safety and health (FoL/CSU Report, 1985). This was followed in 1983 with the publication by the New Zealand Employers Federation (EF) of their first ever policy statement on health and safety for employers (Hodson, 1983:4-5). In 1985, ACOSH was formed which was significant in that it formally and publicly opened up discussion about occupational safety and health beyond the confines of government agencies. In 1988, the OSH Service of the DoL established its own policy unit, which led to the development of a coherent set of 'preferred' policies in October 1988. This last change was significant, because it signalled the beginnings of a move away from reliance upon overseas examples.

With the establishment of the policy unit within the OSH Service, a process began which eventuated in policy particularly reflective of the New Zealand political and economic environment in the late 1980s. The changes taking place were signalled by the content of the OSH Bill and confirmed by the HSE Act. With the appearance of the 1990 OSH Bill, came the first legislative proposals that had a definite philosophical basis. As one union interviewee said: "The OSH Bill really was the union agenda, that was our Bill, that was what we wanted...that we picked up from Victoria and South Australia" (Interview 1, 1995:286-287; 291). The approach of the OSH Bill also reflects the Labour Government's initial support for possible ratification of ILO Convention 151 on occupational safety and health services (Cabinet Policy Committee Minute P (85) M19 Pt 4, May 1985, in DoL files). The outcome of the conjunction between the union agenda and the Government's agenda, was an OSH Bill inspired by "the Victorian Occupational Health and Safety Act 1985, the South Australian Occupational Safety, Health and Welfare Act 1986, and Part IV of the Canadian Labour Code 1984" ("OSH Bill Explanatory Comments", Officials Working Party, 7 March 1989:2, in DoL files).

The approach taken by the Labour Government in 1990 was rejected in July 1991 by the new National Party Government, which was elected in October 1990. The National Government preferred to adopt a philosophy of intervention advocated by representatives of big business in the form of the EF and, in particular, representatives from members of the Top Tier Group of industry.[20] The representatives of these groups of employers suggested that government withdraw from any detailed intervention in their affairs. If government were to intervene then it should use an approach that would promote the

[20] The "Top Tier" Group consist of a loosely aligned group of medium to large employers within the EF. The group acts together in representing the views of employers to government on particular issues. The composition of the group varies from issue to issue. The group is distinct from the New Zealand Business Roundtable.

adoption by employers of "risk management systems" (OSH Service Memo of meeting 5 July 1989, in DoL file HSE Bill and A Vol 2). Subsequently, officials of the OSH Service of the DoL chose to use the managerial philosophy found in the International Safety Rating System - of hazard identification, loss control, and audits - to construct and implement the new legislation (Interview 13, 1995: 1250-60 and Interview 12, 1995:39-87; DoL Report to the Labour Select Committee 1992:116). It is the conscious decision by senior government officials and big business to follow this particular form of intervention in occupational safety and health that signifies a critical change has occurred. The change is significant because it represents a clear break from dependence upon overseas legislative models, and it reflects a policy solution clearly representative of the dominant philosophy of health and safety management found in many large New Zealand businesses, and amongst senior government officials (see Wren, 1995; Interview 13, 1995: 1250-60). The policy solution is also significant because it is consciously designed to be compatible with the industrial relations framework established in the Employment Contracts Act 1991, and the accident compensation changes of 1992 (The Accident Rehabilitation and Compensation Insurance Act 1992). It is also compatible with the 'new right' economic philosophy implemented in New Zealand since 1984. In sum, the HSE Act clearly reflects the dominant forms of occupational safety and health knowledge in New Zealand in the early 1990s, and the prevailing business ideology.

The changes are also significant in the sense that forty-five years after Davidson's 1945 initial, and largely unheeded, call for rationalisation of New Zealand's occupational safety and health legislation and administration, such a development has come about.

The changes though, can be seen as of little significance. The changes are insignificant in that no new government resources were allocated to the OSH Service; if anything there was a loss of resources due to the drawn out nature of the administrative reforms (Interview 2, 1995:28-32; Cabinet Minute CAB (89) M 23-17, 10 July 1989; DoL papers for Officials Working Party 1989; OSH Service Briefing Papers for Minister of Labour, October 1990). In addition, it is uncertain as to whether there has been any significant improvement in working conditions or reduction in the incidence of injury and illness in New Zealand's workplaces since the introduction of the new Act. Assessment of the incidence of workplace injuries and illness is difficult because of major inadequacies in data systems maintained by the OSH Service and ACC. One year after the HSE Act came into force, the CTU concluded that the Act "is more an ideological counterpart to the Employment Contracts Act than a serious measure to ensure effective protection of the safety and health of employees at work" (CTU, 1994:iii). Union representatives interviewed in 1995 commented though that:

> "The HSE Act has...got some very good features, I think that actually it's quite a good piece of legislation to which you could tack on workers' rights...it's structured better than our OSH Bill...there's a greater clarity of how you go about reaching the outcomes. I think it's a forward moving piece of legislation. Whereas...our OSH Bill, looking back, was quite a static piece of legislation" (Interview 1, 1995:294-99).

> "It's just that the Health and Safety Employment Act is incomplete really....[it] is a gutted version of the OSH Bill" (Interview 2, 1995: 111-13, and 413).[21]

Contrasting views about the significance of the HSE Act, by employers' representatives, have also been expressed. One employer representative commented that the HSE Act "is

[21] The reference to "gutted", means the absence of strong statements of workers' rights; i.e. the HSE Act is essentially seen as a modified version of the OSH Bill.

very broadly non-prescriptive, it does the coverage things...[and]...it's actually harder to comply with than the traditional stuff" (Interview 7, 1995: 631-35). In contrast, another commented that the HSE Act:

> "only really affects you when things go wrong. And if you're lucky enough for things not to go wrong, you could do nothing and be quite happy. You don't have to register yourself these days, you don't have to do anything. So in that respect it's somewhat of a, not a Clayton's but a reactive piece of legislation, it bites you in the bottom if things go wrong" (Interview 5, 1995:274-279).

Summary of analysis

The inquiry in this chapter into what changed in New Zealand's occupational safety and health policy between 1981 and 1992 has highlighted several points. The first point is that researchers need to be more discriminating in their analysis and characterisation of different policy outcomes. Glib characterisations of policy as "self-regulation" etc. are only partially accurate; they do not do justice to the differences and continuities than can be seen to exist, as illustrated in Figure 4-1. A better classification system is one which recognises that regulation still exists but in a different guise. At the beginning of the period the situation can best described as system of "Government Management", by 1990 a system of "Tripartite Management" had been partially introduced, in 1992 a new system of "Employer Hazard Management" replaced existing arrangements.

In appraising the significance of the changes in policy frameworks, two criteria were used. The first criterion involved judging the changes in terms of differences in the social relations of control. The second criterion assessed the degree to which thinking about occupational safety and health policy had changed. Analysis indicated that on the first criterion the significance of the changes is mixed, depending upon what is being compared. On the second criterion though, the changes can be seen as involving a significant

transformation in the way occupational safety and health policy is formulated and administered. In terms of policy development, occupational safety and health policy was dependent in 1981 upon English example; mechanisms for developing policy were largely ineffectual, and union and employer policy statements were informal - if they existed at all. However, by 1992 unions, employers, and government agencies had all developed formal policy statements, and the government agency responsible for occupational safety and health policy, the OSH Service, had developed coherent mechanisms for the future development and evaluation of occupational safety and health policy. Legislatively, a framework had been put in place which was independent of overseas examples and directly reflected the dominant ideology and forms of occupational safety and health knowledge and practice current in New Zealand. Inspite of these developments, doubt still exists about the significance and efficacy of the changes for improving New Zealand workplace health and safety.

Other factors highlighted by the analysis, that have a resounding echo in the literature, include the centrality of debate over the issue of workers' rights, and the importance of the type of political party in power for determining policy outcomes. The reference to the level of administrative resources, in the discussion on the significance of the changes, is also an issue identified in the literature.

In the next chapter, the New Zealand experience of occupational safety and health policy change between 1981 and 1992 is described in detail. The chapter identifies the origins of change, the main actors in the process, and the policy issues debated.

CHAPTER 5: DESCRIBING THE NEW ZEALAND EXPERIENCE

Introduction

In the previous chapter the changes that have occurred in New Zealand's occupational safety and health policy between 1981 and 1992 were identified, characterised, and assessed for their significance. It was concluded that existing characterisations of the changes were, at best, only partially accurate. A more discriminating assessment was then presented that argued that three related but distinct policy arrangements can be distinguished: Government management; Tripartite management; and, Employer hazard management. Furthermore, it was argued that by the end of 1992 New Zealand's occupational safety and health policy had undergone a significant change, particularly in the way that occupational safety and health policy was thought about by bureaucrats, unions, and employers. The analysis also indicated the existence of some similarities between factors highlighted in the literature and the New Zealand experience about the origins of change, core policy debates, and the determinants of change. In this chapter, the origins and process of change in occupational safety and health policy in New Zealand between 1981 and 1992 are identified and described in detail. In addition, the policy debates are identified, and the positions taken by each of the main actors on the issues are reported. In the next chapter, an assessment based upon the description provided in this chapter is made concerning the determinants of the change process.

Describing the process and identifying the actors and policy debates

In identifying the origins of change, the important events, key actors, and policy issues debated, three time periods representing different stages of action and influence have been

discerned. The first period runs from 1982 to 1988, this is the initial period of change and is dominated by the actions and influence of unions and employers. The second period runs from 1989 to 1990; it is a period of legislative and administrative development dominated by the actions and influence of officials and unions. The third period, from 1991 to 1992, is one of administrative consolidation and legislative refinement dominated by the actions and influence of employers and officials. The main events and policy debates in each period are summarised in Figures 5-1 to 5-4 on the next four pages. The figures take the form of simple flow diagrams that highlight the main events and debates described in the rest of the chapter. The narrative that informs Figures 5-1 to 5-4 begins with a brief historical sketch of events prior to the first period of activity.

Historical background

Historically, the first calls for legislative and administrative amalgamation can be traced to Davidson's 1945 report to Government on occupational health services. Davidson's Report was released to the public in 1946 and recommended "some simplification and codification of industrial legislation in New Zealand" (Glass, 1985:33). The recommendation was answered by the passage of the 1946 Factories Act that updated the existing legislation, but otherwise did little. The original Factories Act was passed in 1891 and subsequently amended in 1894 and 1936. The 1936 amendment was significant for its introduction of the forty-hour week and eight-hour day. The administration of the Factories Act has always been the responsibility of the DoL: administration of the original Act was the reason why the Department was created on 1 June 1891 as the Bureau of Industries (Martin, 1996:1 and 44).

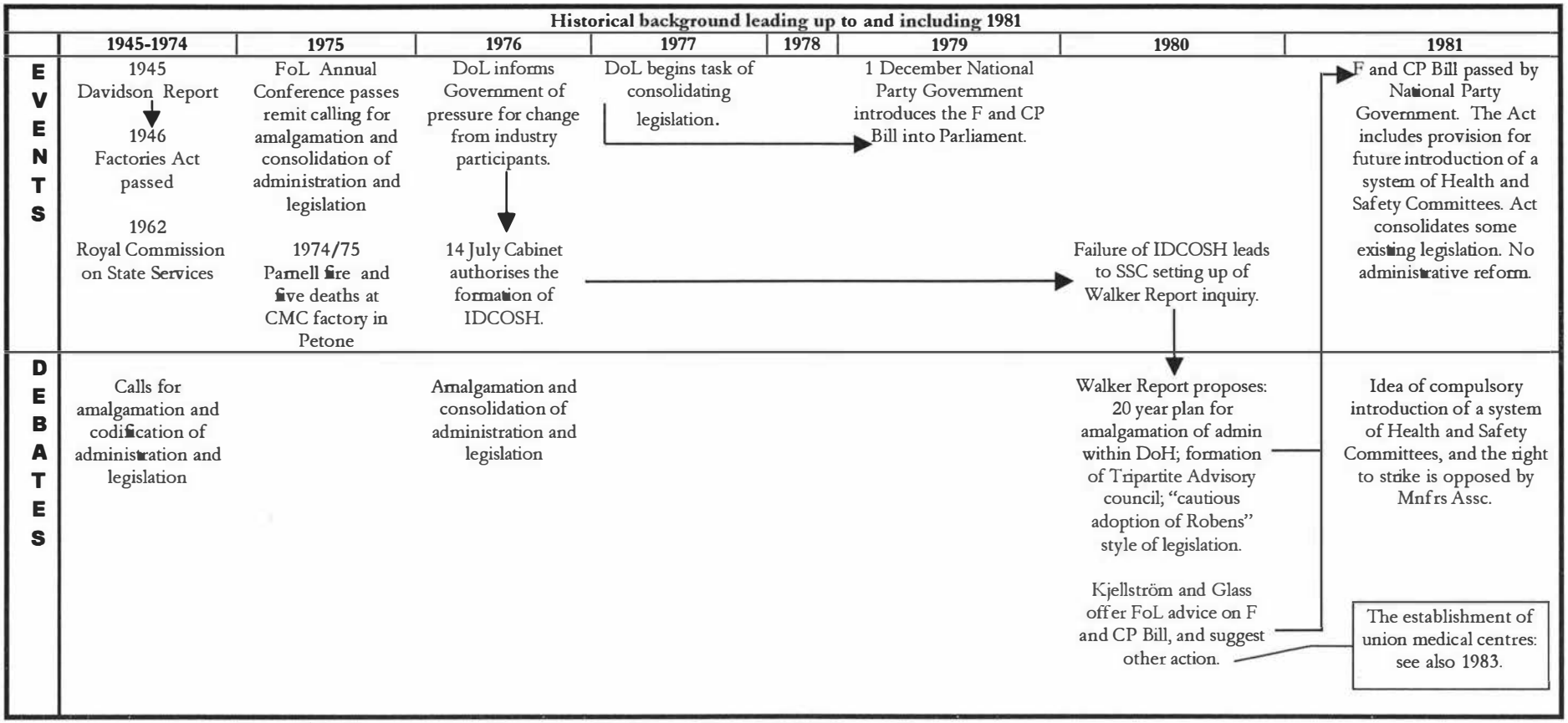

Figure 5-1: Flow diagram of events and debates – historical background.

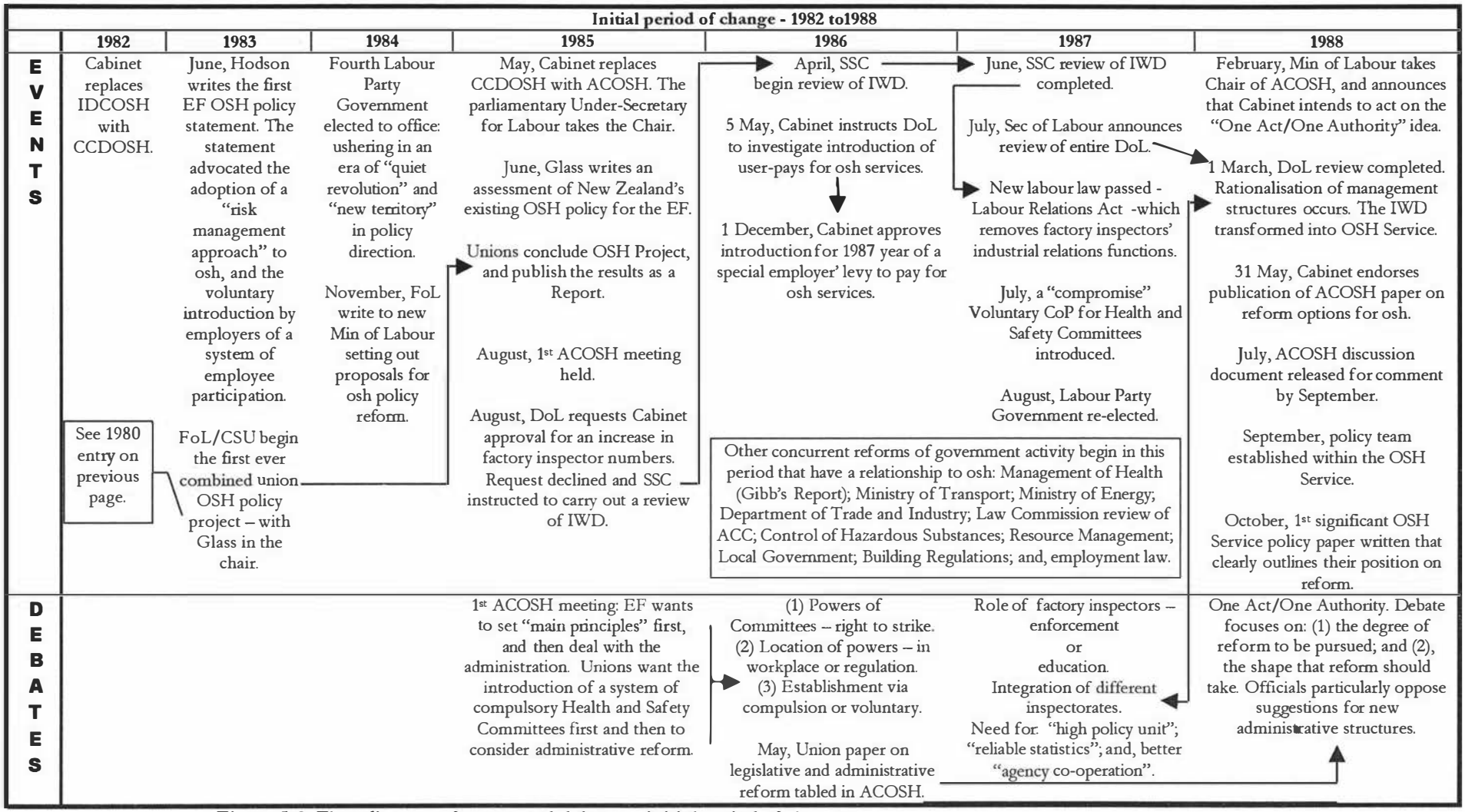

Figure 5-2: Flow diagram of events and debates – initial period of change.

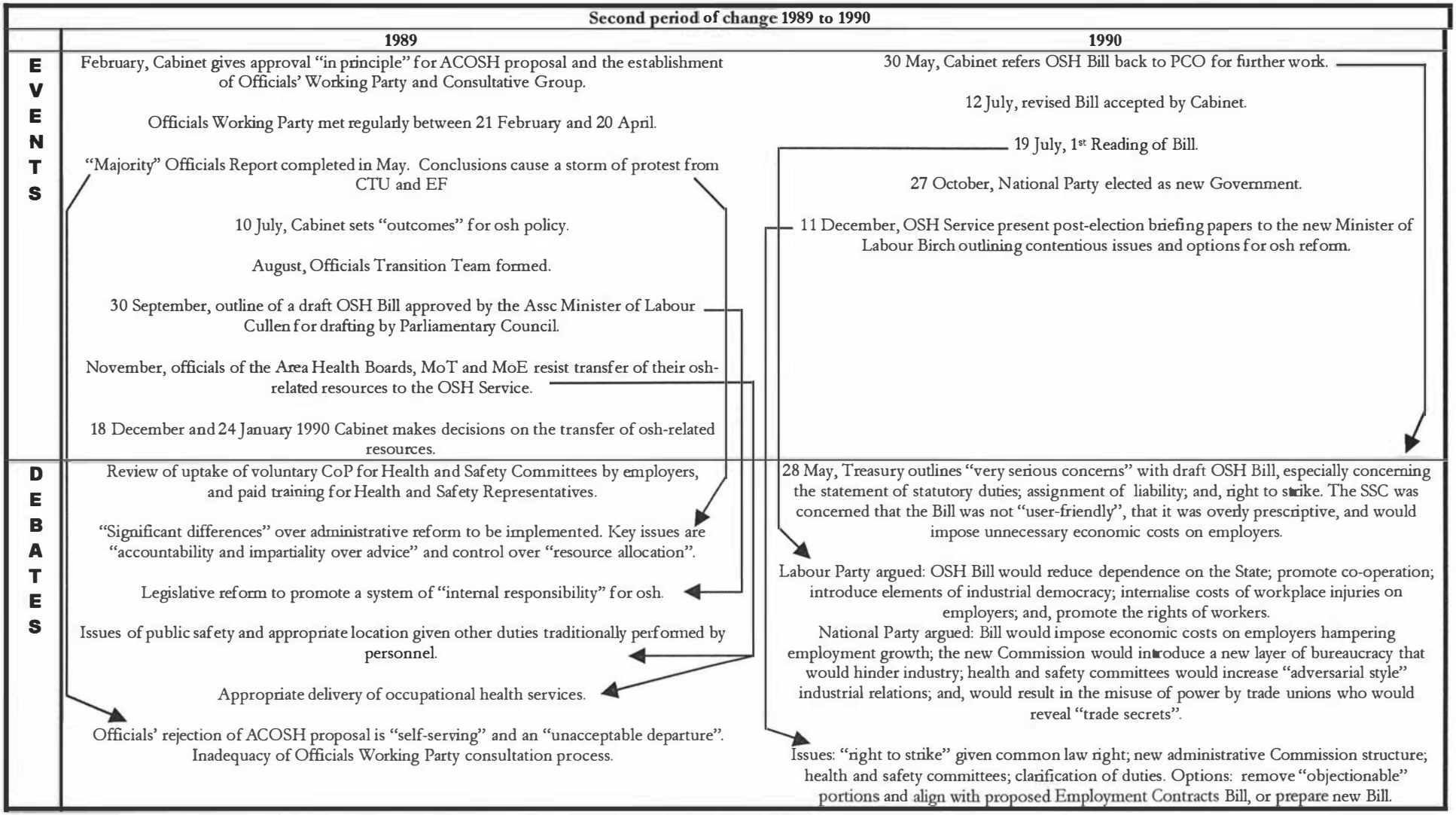

Figure 5-3: Flow diagram of events and debates – second period of change.

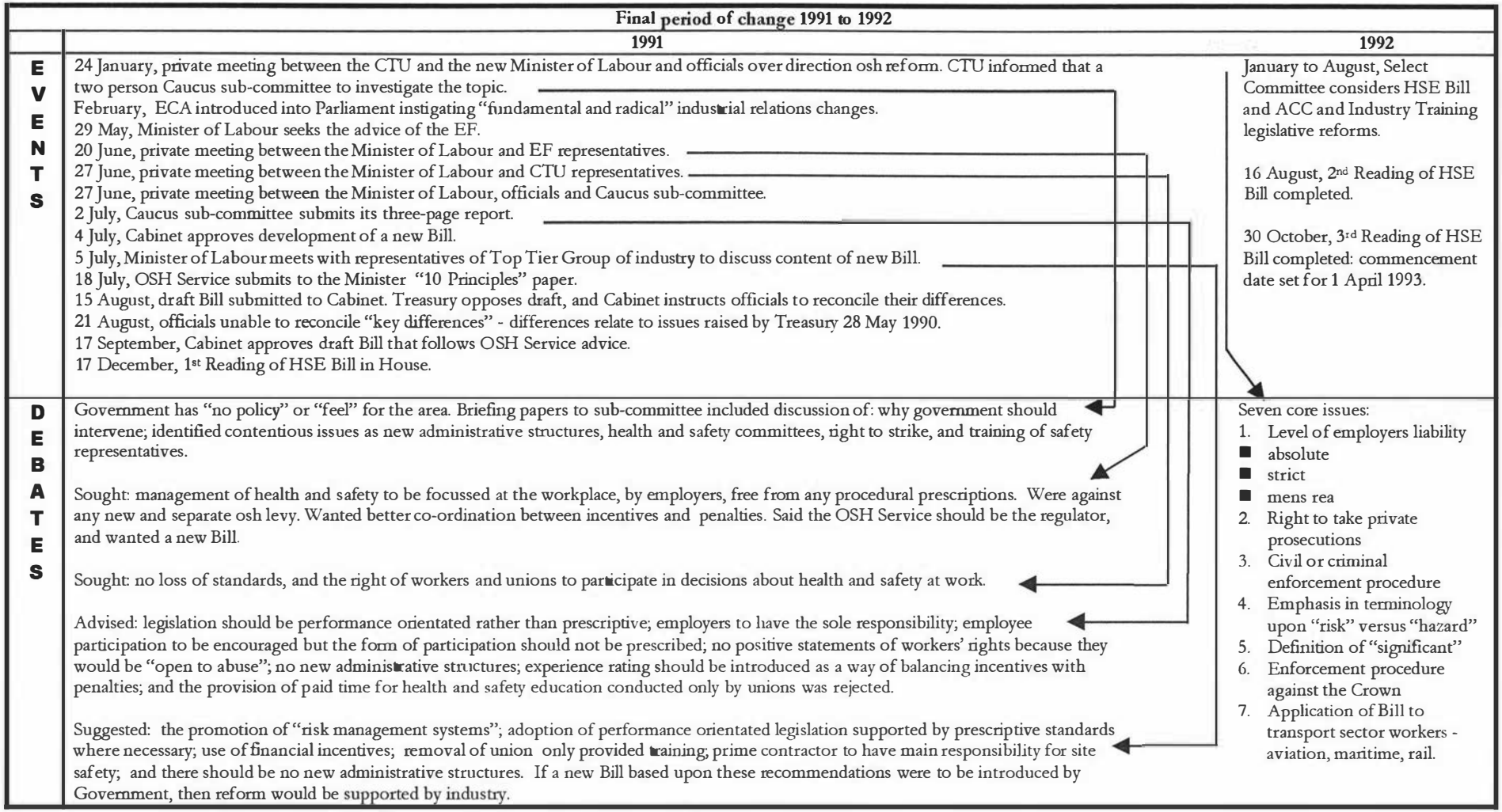

Figure 5-4: Flow diagram of events and debates – final period of change.

After the 1946 Act other Acts relating to machine guarding, construction safety, and working conditions in shops and offices were passed or amended. In 1962, a Royal Commission on State Services criticised the fragmentation of New Zealand's occupational safety and health legislation and lack of co-ordination of its administration. A decade later, following a large scale emergency in the industrial district of Parnell in Auckland and the death of five workers in a factory at Petone, two other inquiries made similar criticisms (Memo to Minister of State Services for Cabinet Minute SS(76)M 23 Part II, in DoL files; and DoH position paper "Occupational Health and Safety: Future Policy Directions and Administration, 3 December 1987:1, in DoL files). In conjunction with these events, in 1975 at its annual conference, the FoL endorsed a remit (#104) calling for government to "consolidate all industrial safety health and welfare legislation into a single statute administered by one Department of State alone" (National Library, NZFOL file 5/9 F and CP Bill 1977-Dec 1980).

Following the above events, in 1976 the DoL informed Government that representatives of employees, employers, and industry groups were complaining:

> "that the present administration is inconvenient, confusing, and insufficiently co-ordinated or controlled. These organisations have proposed that the responsibility for industrial health and safety should be restructured under one authority (or even under one enactment)" (Memo to Minister of State Services for Cabinet Minute SS(76)M 23 Part II, in DoL files).

Upon receipt of this memo, the National Party Government on 14 July 1976 approved the establishment of a senior officials committee (IDCOSH) to investigate "methods by which the current legislation may be co-ordinated with a view to providing for its administration by a single authority" (Cabinet Minute SS (76) M23 Part II, in DoL files). The failure of the officials committee in March 1980 prompted the SSC to commission an independent

report into the administration of occupational safety and health legislation by Dr Ian Walker (Walker Report: 1981). Walker presented his report to Government in November 1980, the Report was released to the public in 1981.

Parallel with the establishment of the officials committee in 1976, and in the later stages with the Walker Report, officials of the Industrial Welfare Division (IWD) of the Department of Labour - the division of the DoL responsible for health and safety - began work in 1977 on amalgamating some of the safety and health legislation (Letter from DoL to FoL, 22 September 1977; in National Library, FoL File 5/9 F and Bill 1977-Dec 1980). The work culminated with the introduction into Parliament on 1 December 1979, by the National Party Government, of the Factory and Commercial Premises Bill (F and CP Bill). The Bill underwent major revision as the result of criticisms made in the Select Committee process. Consequently, the 1979 Bill was rewritten and eventually passed in 1981 under the National Party Government.

Summary of historical background

In summary, a thirty-year period characterised by sporadic, but significant, calls for administrative and legislative amalgamation can be identified: 1945-1975. The major calls for change occurred in government reports. In each case, the call was met largely by no government action, or action of little consequence. It appears from this brief historical examination that real pressure for change only began in the mid 1970s after the occurrence of major industrial accidents, and demands from rank and file union members for action by union leaders.

Initial period of change 1982 to 1988

The period 1982 to 1988 can be characterised as a time of initial change dominated principally by the actions and influence of unions, and secondly employers' representatives. Real discussion about change began to occur in 1985 because of the actions and influence of union representatives at the political level. During the period unions demanded change aimed at empowering workers to act for themselves in protection of their health and safety, all other occupational safety and health reform considerations were secondary. Employers' representatives on the other hand were more interested in changing the fundamental framework of occupational safety and health legislation and administration, and resisting any encroachment by unions on their perceived rights to manage as they saw fit. Government officials in this period were not particularly open to any form of change. At the political level of decision-making, the change process was delegated by the Minister of Labour to a lower ranking politician to supervise. Little progress was made until early 1988 when the Minister of Labour began to take personal charge of the discussions about change. The occupational safety and health administrative changes that did take place in this period were motivated by other considerations than what is best for occupational safety and health. The official occupational safety and health policy-making apparatus within the DoL, until the end of the period, was essentially non-existent and lacking in any philosophical direction.

The introduction of the F and CP Bill in 1979 saw intervention by two people who were instrumental in the development of FoL policy. Early in March 1980 Dr Tord Kjellström – a lecturer at Auckland University - wrote to the FoL about the F and CP Bill. He commented that:

> "missing is a section which clearly spells out the workers' rights in relation to health and safety at work. These could be: A right to safe and healthy working

> conditions. A right to information about hazards in the workplace. A right to refuse dangerous work. A right to expert advice when needed. A right to his or her own exposure data. A right to his or her own health data" (Letter from Kjellström to FoL, 10 March 1980, National Library, FoL File 5/9 F and CP Bill 1977-Dec 1980).

The letter went on to advocate the removal of "discriminatory" restrictions on women's and young person's hours of employment, and the types of work that they could do (Letter from Kjellström to FoL, 10 March 1980, in National Library FoL File 5/9 F and CP Bill 1977-Dec 1980). These suggestions were picked up by the FoL and appeared in their submission to the Labour Select Committee considering the F and CP Bill (FoL submission, 31 March 1980, in National Library FoL File 5/9 F and CP Bill 1977-Dec 1980). The F and CP Bill was reported back to Parliament late in 1980 with a large number of recommendations for change, including a provision for the issuing of a Code of Practice for health and safety committees and delegates.

A second round of hearings on the revised F and CP Bill was held early in 1981. During this second set of hearings, the Manufacturers Federation opposed the compulsory introduction of any system of committees, and argued that health and safety was the "primary responsibility of any employer" (Manufacturers Federation Submission to Select Committee on F and CP Bill, 10 March 1981:2, in National Library FoL File 5/9 F and CP Bill January 1981-Dec 1985). The F and CP Bill was passed by Parliament on 31 September 1981, containing a provision for the possibility of the introduction of a system of Health and Safety Committees and Representatives at a later time. In 1983 the EF published their first policy statement on occupational safety and health. The statement suggested that employers should adopt a risk management approach to health and safety, and "cultivate" systems of employee participation "on a less formal basis" than health and safety committees and representatives (Hodson, 1983:4-5).

At approximately the same time that Dr Kjellström began advising the FoL, another eminent occupational safety and health academic Professor Bill Glass – of Otago University Medical School - suggested to the FoL that they should write a report on union involvement in occupational safety and health (Interview 3, 1995:37-47). The suggestion led to the establishment in 1983, with funding from ACC, of a combined public and private sector union research project that ran for two years and involved extensive consultation with union members in Trades Halls around the country. The Report of the FoL/CSU project team was released in June 1985. The advent of the project and its report was a significant event, for two reasons. It was the first report ever written by the union movement in New Zealand on occupational safety and health in New Zealand and the role that unions had historically played in the area (FoL/CSU "Report on OSH", 1985:2). Second, it helped set the agenda for union action on occupational safety and health, an agenda that was foreshadowed in a letter to the new Under-secretary of Labor Mr Isbey in November 1984, and was to be reflected in the actions of union representatives in the years that followed.

In July 1984, the Labour Party was elected as the Government, ushering in an era of "quiet revolution" (James, 1986) and "new territory" (James, 1992) in economic, social, and political direction. Following the election on 27 November 1984, senior executives of the FoL and the CSU presented their agenda for change in the area of occupational safety and health to the Parliamentary Under-Secretary for Labour Mr Eddie Isbey. The list consisted of seven items. At the top of the list was the compulsory introduction of a system of health and safety committees and representatives, and provision for their training. This was followed by demands for: increased resources for the DoL; government funding for union

occupational safety and health activity; incorporation in statute of positive statements of workers' rights; better compensation entitlements; consolidation of the legislation; and, an inquiry into a single administrative authority for occupational safety and health (FoL letter to Mr Isbey, 26 November 1984, in DoL files).

In May 1985 the Cabinet Policy Committee agreed to the replacement of the current officials committee (CCDOSH), with a new tripartite body called the Advisory Committee for Occupational Health and Safety (ACOSH) (Cabinet Policy Committee Minute P (85) M19 Pt 4, 21 May 1989 in DoL files). The new Committee was to comprised of equal numbers of representatives from inside and outside of government, and serve the purpose of providing a vehicle for joint government, union, and employer participation in the formulation of occupational safety and health policy and its administration in terms of ILO Conventions (Cabinet Policy Committee Minute P (85) M19 Pt 4, 21 May 1989 in DoL files). The Committee met twenty-two times between August 1985 and March 1990. During the course of its activities ACOSH formed a number of small sub-committees to investigate and develop reports on various issues. Sub-committees were formed to investigate the possible implementation and ratification of ILO Conventions, updating of the First-Aid Regulations, options for legislative and administrative reform, regulations for the control of major accident hazards, and the introduction of a system of health and safety committees and representatives.

At the first meeting of ACOSH on 28 August 1985, the employers' representatives argued that the first things to consider were the "main principles" for reform, followed by a "single" administrative authority for occupational safety and health. Representatives from the DoH and MoT immediately rejected the desirability of administrative reform. Union

representatives supported the call for administrative reform but thought that the introduction of a system of health and safety committees was more important (1st ACOSH Minutes, 28 August 1985: 2-3, in DoL File 19/9/3-1 Vol 1). The topic of health and safety committees was to dominate the ACOSH meetings for the next eighteen months and prevent progress on other substantive issues (DoL Memo to Mr Isbey, 23 September 1986 in DoL files; and ACOSH Minutes 10 December 1985, 25 March 1986, 22 July 1986, 30 September 1986, 25 November 1986, and 17 March 1987). Common agreement between the union and employer representatives over the issue was never reached, and the Minister of Labour finally imposed a compromise position after the ACOSH meeting of 17 March 1987. The compromise position was one suggested by officials of the DoL in September 1986 to the Under-Secretary for Labour Mr Isbey (DoL Memo, 23 September 1986, in DoL files). The compromise involved accepting the unions' wording, however the introduction of workplace health and safety committees was to occur via a voluntary CoP as the employers' representatives desired. However, the voluntary nature of the CoP would be subject to review after a twelve-month period. If, after the review, it was considered there had been insufficient employer implementation of the CoP, then consideration would be given by government to compulsion by statutory regulation (6th ACOSH Minutes, 30 September 1986: 4, in DoL File 19/9/3-1 Vol 2).

Three issues were at the heart of the debate over health and safety committees and representatives. The first issue involved discussion of where the location of any powers accorded to health and safety delegates were to originate. Were the powers to originate in regulation, or to be derived from individual Committees in each workplace? On this issue, employers' representatives were "opposed to any system under which an individual employee exercises any functions and powers, except as delegated by a Committee and

agreed to by the employer" (Report of the Working Party on Safety and Health Representatives and Committees, 16 July 1986: 1, in DoL file 19/9/3-1). The second issue concerned whether health and safety delegates and committees should be provided for by the establishment of a voluntary code of practice or by regulations. The employers' representatives were "opposed to any system being imposed by regulation" (Report of the Working Party on Safety and Health Representatives and Committees, 16 July 1986: 1, in DoL file 19/9/3-1). The final "irreconcilable difference" occurred over:

> "the NZEF representatives [opposition] to any formalised arrangement under which employee representatives may order work to be stopped where they consider there is an immediate and serious danger to safety and health. They consider the status quo should prevail, where there is a Common Law right that an employee may refuse to carry on work if there is such a danger. The FoL representatives consider there are deficiencies in the Common Law approach and a more formalised arrangement is necessary" (Report of the Working Party on Safety and Health Representatives and Committees, 16 July 1986: 1, in DoL file 19/9/3-1).

A related debate, that cropped up in 1988 and 1989, was a demand by the unions for the provision by employers of an initial three days of paid training for health and safety delegates that would be controlled by the unions. The employers' representatives strongly objected to any suggestion that they should have to pay for the training of delegates, particularly when they had no control over the content of the training and the choice of who provided it (see 11th ACOSH Meeting Minutes, 16 February 1988, in DoL File 19/9/3-1 Vol 2; 15th ACOSH Meeting Minutes, 23 September 1988, in DoL File 19/9/3-1 Vol 4; CTU file note of meeting, 26 June 1989, in CTU file ACOSH Working Party Vol 2, April 89-July 89; DoL Memo of 7 July 1989 on 2 July meeting with CTU representatives, in CTU file OHS/1/14C; OSH Service Memo of meeting, 5 July 1989, in DoL file HSE Bill and A Vol 2). The conflict was not resolved until the Minister of Labour Michael Cullen

instructed the OSH Service to include in the draft OSH Bill three days of paid training by the employers for delegates, with training to be supplied by unions (Letter Minister of Labour to OSH Service, 2 November 1989, in DoL files).

Discussion of proposals for legislative and administrative reform did not begin to receive serious consideration until a paper prepared by the union representatives was discussed at an ACOSH meeting on 27 May 1986. In the paper the unions argued that while employers had primary responsibility for health and safety at work, it was "not a management prerogative" (FoL discussion paper on "Organisation of OSH Administration", April 1986: 1-2, in DoL File 19/9/3-1 Vol 1). Workers also had a right to participate through "legal recognition to certain rights and powers for workers' health and safety representatives and committees" (FoL discussion paper on "Organisation of OSH Administration", April 1986: 1-2, in DoL File 19/9/3-1 Vol 1). As for administrative arrangements, "patch protection" by the DoL and other departments "is possibly the most difficult factor to overcome in any reorganisation" (FoL discussion paper on "Organisation of OSH Administration", April 1986: 3, in DoL File 19/9/3-1 Vol 1). Therefore:

> "neither the Health Department nor the Labour Department is really the appropriate organisation to have control...since at the present time political considerations seem to dictate that the Health Department concerns are medical and hospital services while the Labour Department seems primarily concerned with employment issues. The most sensible proposal would seem to be the formation of a National Occupational Health and Safety Commission (similar to the UK situation and recent Australian proposals). Under this Commission should be an administrative and operational branch or 'office' and a technical and scientific branch or 'Institute'" (FoL discussion paper on "Organisation of OSH Administration", April 1986: 3-4, in DoL File 19/9/3-1 Vol 1).

In response to the union discussion paper, the SSC indicated that they "had difficulty" with the concept in terms of its practicalities, and given that the Government was committed to restructuring in other areas at present. The SSC representative also noted that it was presently conducting a review of the Industrial Welfare Division of the DoL, and suggested that ACOSH should wait until this was completed. This was rejected by the union representatives who argued "that the review did not address the problem and was too narrow an area of Government responsibility" (4th ACOSH Minutes, 27 May 1986: 3-4, in DoL File 19/9/3-1 Vol 1). The MoT representative supported the concept of reform, but with two reservations: a) the public safety aspects should not be forgotten and b) the Marine Division, who had responsibility for the safety of seaman and the waterfront, should be kept together (4th ACOSH Minutes, 27 May 1986: 4, in DoL File 19/9/3-1 Vol 1). The DoH representative also voiced support, but observed that "overseas models did not necessarily apply in this country" (4th ACOSH Minutes, 27 May 1986: 4, in DoL File 19/9/3-1 Vol 1). The Manufacturers Federation representative suggested that an OSH Commission could fit in with ACC. The ACC representative replied that ACC was currently "reviewing their role" (4th ACOSH Minutes, 27 May 1986: 4, in DoL File 19/9/3-1 Vol 1). The MoE representative "felt that it was better to keep the technical expertise together so that both safety and non-safety needs could be considered", particularly as "an New Zealand organisation would be too small to...maintain the necessary technical expertise" (4th ACOSH Minutes, 27 May 1986: 4, in DoL File 19/9/3-1 Vol 1).

The DoL's initial reaction to the union proposal was expressed in a private letter to the Chair prior to the ACOSH meeting. In the letter the DoL said it supported "in principle the concept of One Act/One Authority, but saw the need for an investigation of related issues". Regarding the location of a single adminstrative authority "the department has no

strong views on the location....however it would be preferable from an economic point of view that it be associated with some existing infrastructure for administration, personnel support and EDP services etc". The Department went on to argue that suggestions for the establishment of tripartite processes for standard setting should be treated with caution. While tripartite processes may be an 'ideal', "in practice, it may be difficult to reach a concensus on some issues", as illustrated by the problems experienced by the Health and Safety Commission in the UK (DoL letter to Mr Isbey, 26 May 1986:1-4, in DoL file 19/9/3-1 Vol 1).

In a follow-up paper tabled at the next ACOSH meeting in September 1986, the DoL argued that the desirability of change was a matter of "opinion" (DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: sections 1.5.3, 1.5.5, 1.6.11; in DoL File 19/9/3-1 Vol 2). The Department suggested that the union and employer criticisms amounted to nothing more than the application to New Zealand of criticisms found in the 1972 Robens Report. The Department questioned though whether the "evidence" for the applicability of such criticisms to New Zealand, was really that "compelling". However, this was not to deny, that there was room for "some consolidation" of the legislation (DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: sections 1.5.3, 1.5.5, 1.6.11; in DoL File 19/9/3-1 Vol 2). Furthermore, one criticism in the Robens Report that was applicable to New Zealand, was that the development of factory legislation historically in New Zealand contains:

> "no abstract theory of social justice or the rights of man. Policy makers seem always to have been incapable even of taking a general view of the subject they were legislating upon.... Any attempt to provide a philosophical basis for the legislation or to set out a conceptual framework for policy has come about after the event" (DoL paper "Legislation and Administration of Occupational Health

and Safety" for 6th ACOSH meeting, 30 September 1986: sections 1.2.2 and 1.2.3; in DoL File 19/9/3-1 Vol 2).

The paper went on to say that, apart from the pressure for change from unions and employers, there is "anxiety" in the general public about the dangers of new chemical products, "as witnessed by the public statements and submission to the Commission for the Environment on the 1984 ICI fire in Mt Wellington". There is also "considerable pressure" on Government agencies "to justify existing policies and programmes...in terms of 'objective-based management systems'.... In many cases a 'user pays' approach is being mooted for the provision of such services" (DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: sections 1.2.2 and 1.3.1; in DoL File 19/9/3-1 Vol 2).

The reference to 'user-pays' in the paper was the result of a Cabinet minute to the DoL on 5 May 1986. In the minute, Cabinet instructs the DoL "to explore ways of funding" its occupational safety and health related activities "on the basis of full cost recovery and applying wherever possible the user-pays principle" (Cabinet Minute 86/16/14 Part C (22), 5 May 1986, in DoL files). As a consequence of this instruction, on 1 December 1986 the Cabinet Policy Committee approved proposals from officials that would for the 1987 year result in "a substantial increase in factory registration and other fees" (DoL paper "Funding of OSH and the ACC Levy" for Officials Working Party, 16 September 1988:1, in DoL files). The Policy Committee also approved a proposal that the occupational safety and health activities of the DoL in the future should be fully funded from a special employer levy to be collected through the ACC system (DoL paper "Funding of OSH and the ACC Levy" for Officials Working Party, 16 September 1988:1, in DoL files).

At the same time as Cabinet was instructing the DoL to investigate the implementation of 'user-pays' to occupational safety and health services, the SSC was conducting a review of the Industrial Welfare Division of the Department. This review had its origins in a request by the DoL in August 1985 to Cabinet for an increase in the number of factory inspectors from 153 to 241. The request was declined. Instead, a review by the SSC of the Industrial Welfare Division "the legislation it administers and alternative means for achieving Government objectives in this area" was ordered (Cabinet Minute M(85)M16 Part 3, 21 August 1985, in DoL files). However the review did not get started until after April 1986 (DoL Memo to Minister of Labour, 4 April 1986, in DoL files), and was only completed in June 1987. The principal effect of the review was the removal in the 1987 Labour Relations Act of factory inspectors from policing Awards and Agreements in preference for unions being responsible for the enforcement of their own contracts of employment. The Labour Relations Act encouraged unions towards more "competitive self-reliance" and signalled that the DoL "was to be concerned solely with occupational safety and health and the oversight of other industrial legislation" (Jeffrey, 1991:171). The removal of the enforcement of Awards from the Division's work load was then used to justify no increase in the numbers of factory inspectors (Report of the SSC Review Team into the Industrial Welfare Division, June 1987).

Immediately following the completion of the SSC review of the Industrial Welfare Division, the Secretary of Labour Mr Jas McKenzie announced that a new review of the entire DoL was to be conducted. In the press release announcing the review the reason given was:

> "to clarify the roles and goals of the Department of Labour and improve efficiency....Mr McKenzie said the exercise was not being undertaken because the Department was failing in its task but because a higher standard of

> performance was being demanded of the Public sector.... He said two fundamental questions have to be addressed: How well do we serve our clients? Is everything we do giving value for money?" (DoL press release, June 1987, in DoL file 19/9/3-1 Vol 2).

The report of the DoL review team was released on 1 March 1988. The report noted that the DoL had essentially doubled in size from 1978 to 1988, largely in the area of employment and training, however the organisation structure had not changed, nor was there a "clear perception among staff, at all levels, about the essential role of the DoL" (DoL Review, 1 March 1988:4, in DoL file 19/9/3-1 Vol 3). In the area of occupational safety and health, for example, "a belief has emerged that the fundamental role is education of employers and workers. In contrast, many staff involved in this field believe that this detracts from the role of enforcement of standards, to the detriment of the overall objective of reducing accidents and hazards" (DoL Review, 1 March 1988:4, in DoL file 19/9/3-1 Vol 3).

The Review Team concluded that in the area of occupational safety and health, a number of important issues required attention. There was a need for the development of a "high level policy analysis" unit, and for more "reliable statistical information". Co-operation between government agencies had to be fostered. A "technical...unit managed by a technical person" was recommended, and continued support for the concept of safety committees was encouraged. The inspectorate should focus on enforcement rather than education, and there should be a greater integration of the DoL safety-related inspectorates. Furthermore, the inspectorate needed to "focus continually on the needs of the labour market and the participants in it". In addition, given the 1987 Labour Relations Act, the industrial relations activities of the safety inspectorates should be removed (DoL Review, 1 March 1988:61-64, in DoL file 19/9/3-1 Vol 3). It was also suggested that the

management structures be revised. The Review team went on to say that if all these issues were addressed, "a comparison of resources applied in the occupational safety and health area overseas suggests New Zealand is very well resourced" (DoL Review, 1 March 1988:64, in DoL file 19/9/3-1 Vol 3). The real question though, of whether the overseas and New Zealand resource levels were adequate to do the job, does not appear to have been considered.

The effect of this report was a restructuring of the operational divisions of the DoL into more business-like units tasked to deliver specific government policy outputs. The Industrial Welfare Division was transformed into the Occupational Safety and Health Service (OSH Service). The transformation largely involved removing a couple of layers of management, and rationalisation of office accommodation. The transformation also formally removed from inspectors their traditional industrial relations activities relating to the enforcement of Awards and Agreements.

The DoL review, coincided with a wide range of other reviews of government administration that had some "applicability to occupational safety and health management" (DoL paper, "Current Reviews of Aspects of Government Administration with Applicability to OSH Management", 14 December 1987:1, in DoL files). The relevant reviews highlighted by the DoL in a paper submitted to ACOSH in December 1987, were:

1. The 1986 Law Commission Review of the Accident Compensation Scheme which made recommendations about the need for better statistics, and the development of a schedule of occupational diseases along the lines developed by the World Health Organisation (WHO).

2. The Inter-agency Co-ordinating Committee on Hazardous Substances (ICC) under the Ministry of the Environment. The initial drafts of the Report of this committee recommended that at the "central government level" occupational safety and health policy making and operations should form part of a new Department of Hazards that could be formed inside or outside an existing department. Another early recommendation was that regional government occupational safety and health functions should be transferred to the new Area Health Boards. The ICC review provoked concern amongst union and employer representatives on ACOSH who took the view that it represented an unnecessary "duplication" of efforts in regard to management of hazardous substances (9th ACOSH Minutes, 23 June 1987: 2-5, in DoL File 19/9/3-1 Vol 2).
3. Related to the work of the ICC, was the work being done, by another committee, on Resource Management Law Reform.
4. The review of the Department of Trade and Industry (DTI) and its subsequent renaissance as the Ministry of Commerce. The DoL paper noted that "since a function of a Ministry of Commerce should be to implement and manage appropriate constraints on individuals and firms involved in commercial activity, then the advocation of policy relating to safety would fit under such an ambit" (DoL paper, "Current Reviews of Aspects of Government Administration with Applicability to OSH Management", 14 December 1987:3, in DoL files).
5. The 1987 Gibb's Report on the management of hospitals, which recommended a shift in responsibility for the local management of health to Area Health Boards (AHB), and the downsizing of the Ministry of Health to a policy-making unit. The DoL paper commented that the review considered it "axiomatic that health and safety cannot be divorced and thus safety is to be a legitimate concern of AHBs with occupational safety

a clear adjunct of this, but with public safety to be taken on board" (DoL paper, "Current Reviews of Aspects of Government Administration with Applicability to OSH Management", 14 December 1987:3, in DoL files).

6. The review of Local and Regional Government. Changes in this area "have possible ramifications for occupational safety and health management on a decentralised basis" (DoL paper, "Current Reviews of Aspects of Government Administration with Applicability to OSH Management", 14 December 1987:4, in DoL files).
7. The reviews of the Ministry of Transport and the Ministry of Energy, both of which had possible consequences for their associated safety inspectorates. The review of both organisations resulted in the MoE being reformed into a State Owned Enterprise, and the transfer in 1990 of the mines and petroleum inspectorate to the newly established Ministry of Commerce (Dol paper, "Current Reviews of Aspects of Government Administration with Applicability to OSH Management", 14 December 1987:4, in DoL files).

Another review that was to impact upon later legislative developments, but not mentioned by the DoL in its paper, was the Report of the Legislation Advisory Committee to the Minister of Justice Geoffrey Palmer in August 1987 on "Legislative Change: Guidelines on Process and Content". The Report was important for its laying down of "guidelines to be followed within government on the preparation of legislation (Legislative Advisory Committee, 1987:7). Of particular moment for the OSH Service in drafting new legislation were the principles to be followed when making statements about the rights of people, and the regulation-making powers accorded to government agencies.

After the re-election of the Labour Party to Government on 15 August 1987, the Minister of Labour Stan Rodger in February 1988 took over the Chair of ACOSH from Mr Isby. During the course of this meeting, the Minister announced that:

> "the Deputy Prime Minister was going to drive a number of initiatives through the Cabinet Social Equity Committee...including the One Act/One Authority proposal. Their intention was to create a task force to deal with this proposal. The task force could be ACOSH or a component of ACOSH and it could be tripartite. In this way ACOSH could obtain faster and higher level treatment for its proposal" (11th ACOSH Meeting Minutes ,16 February 1988:2-3, in DoL File 19/9/3-1 Vol 2).

The One Act/One Authority proposal was one of seventeen being considered by the Cabinet Committee. The original proposal referred to here, was a discussion paper prepared by the DoL for the consideration of ACOSH. However, ACOSH decided to form a legislation sub-committee that would develop another proposal, of the same name, for Cabinet consideration.

At the next ACOSH meeting on 10 May 1988, two items dominated the discussion; the report of the DoL review team, and the ACOSH legislation sub-committee's One Act/One Authority recommendations to the Cabinet Social Equity Committee. In response to the DoL review report, "a number of members objected strongly to the fact that the review team did not consult...with ACOSH as a body.... this was considered reprehensible" (12th ACOSH Meeting Minutes, 10 May 1988:2, in DoL File 19/9/3-1 Vol 3). Union representatives also expressed concern over the suggestion that the factory inspectorate would lose their "educative role", and this concern was supported by others (12th ACOSH Meeting Minutes, 10 May 1988:2, in DoL File 19/9/3-1 Vol 3).

As for the issue of One Act/One Authority, the Chair said that since the last ACOSH legislation sub-committee meeting:

> "he had received a paper outlining a scheme that included a number of options....But he felt there was insufficient supporting argument. He had not submitted the paper to the Social Equity Committee because in its unsubstantiated form the paper would have been rejected and the committee would have set up its own task force instead of using ACOSH. He had persuaded the Deputy Prime Minister not to set up a separate task force as he had intended but to use ACOSH. However there was a very short time frame. He had therefore invited the Department of Labour to prepare the draft discussion paper on occupational safety and health reform. He asked for comments on procedure and changes of content....
>
> Mr Wilson [a CTU representative - a new central union organisation that combined the hitherto separate public and private sector union organisations] said ACOSH had been considering the matter for more than two years. His understanding was that what was required from ACOSH was a preference. ACOSH was expected to make a decision and would lose credibility if it did not. The issue had been discussed by both the employer and employee organisations and they had no difficulty in producing a proposal even if they supported it for different reasons. The CTU had put forward their reasons for the one Act one Authority proposal. He was surprised and alarmed that only a discussion paper had been produced presenting only options to the Social Equity Committee. Government departments had the opportunity to present their views to Cabinet but ACOSH was the only avenue open for the employer and employee organisations to do so" (12th ACOSH Meeting Minutes, 10 May 1988:3-4, in DoL File 19/9/3-1 Vol 3).

After further discussion, it was agreed that ACOSH would recommend a "New Organisation" as the preferred option. The MoE and DoL representatives dissented from this. The DoL said it dissented because "it had just completed a major review of its own structure and was still examining the implications of this" (12th ACOSH Meeting Minutes, 10 May 1988:3-4, in DoL File 19/9/3-1 Vol 3). The meeting concluded with an agreement to meet again in two and a half weeks to consider a redrafted discussion paper (12th ACOSH Meeting Minutes, 10 May 1988:3-4, in DoL File 19/9/3-1 Vol 3).

On 25 May 1988, ACOSH members met again and approved a revised draft discussion paper for the endorsement of the Cabinet Social Equity Committee (13th ACOSH Meeting Minutes, 25 May 1988, in DoL File 19/9/3-1 Vol 3). Cabinet approved the release of the document on 31 May 1988, but with the proviso, at the instigation of Treasury, that a preface be added to the report that would make it clear that the document did not represent Government policy. Furthermore, Government reserved the right to convene a "taskforce...to produce an overview report on Government involvement in safety" at a later stage (Cabinet Minute, SEQ(88)M17/2, 31 May 1988, in DoL files; Treasury Memorandum T3930, 27 May 1988:2-3; and Minister of Labour press release, 5 July 1988, in DoL file 19/9/3-2 Vol 1).

The ACOSH discussion document on legislative and administrative reform options for occupational safety and health was released to the public for comment on 5 July 1988. The Report recommended new legislation be passed that would have ten objects:

> "(i) to provide for the protection of persons at work from hazards that may result in injury or harm to their health;
>
> (ii) to provide for the reduction of the probability of injury or harm to the health of the general public from the carrying on of work activities;
>
> (iii) to assist in securing safe and healthy work environments;
>
> (iv) to promote the elimination at source of hazards to which persons are exposed (such as unsafe and unhealthy systems, processes, machinery, tools and equipment);
>
> (v) to provide for the supply by employers and others of information, education and training about safety and health at the employer's workplace and the hazards from the plant, processes and substances used there;
>
> (vi) to set out the rights and responsibilities of employers, workers and others in relation to safety, health and welfare at work;
>
> (vii) to foster co-operation and consultation between employers and workers in the maintenance of safe and healthy conditions and practices at work;

(viii) to provide for the formulation and implementation of safety, health and welfare standards and the involvement of employers and workers and their representative organisations in those activities;

(ix) to provide for the enforcement of the Act through a system of inspection and the imposition of penalties for contraventions;

(x) to establish a Commission responsible for developing and implementing policies to ensure a safe work environment; an Authority which would be the administrative and operational arm of the Commission and an Institute" (ACOSH Report, June 1988:10).

The document argued that legislative and administrative reforms along these lines was required to overcome the problems of legislative and administrative gaps in coverage, multiplicity of jurisdictions, and inadequacy in regulatory standards (ACOSH Report, June 1988:3-5).

The philosophy underlying the reform proposal was:

1. Injury rates could be reduced by appropriate action at all levels of action, from the Government down to the workplace.
2. A rejection of the Robens 'apathy' thesis and the use of 'awareness' campaigns and a preference for a "focus on underlying work systems".
3. The imposition, "for economic and social reasons", of "a basic level" of safety law upon all "enterprises".
4. Better enforcement.
5. As Government, workers, and employers are all affected by occupational safety and health, a tripartite process should be established at the national level for the resolution of conflict over the determination of the levels of basic standards.
6. While occupational safety and health is a management responsibility, workers should be "collectively" involved "in applying and maintaining

> safe and healthy conditions and practices in the workplace" (ACOSH Report, June 1988:2).

Alternative reform options briefly considered and rejected were:

1. A "Modified Status Quo - One Act and Co-ordination through ACOSH". This was rejected because the "approach fails to...provide a single administrative system" (ACOSH Report, June 1988:16).
2. "Separation of Policy and Operations". This was rejected because it "achieves uniformity only at the policy development level"; "policy would not be informed by experience"; and there would be "no accountability...on the part of the policy agency for the advice it gave" (ACOSH Report, June 1988:16-17).
3. "Incorporation within a Larger Organisation". This option was not favoured because: it "would create severe problems...because of inter-agency rivalry"; any attempt to impose a particular philosophy over others "would lead to severe difficulties"; "the other major disadvantage...is that occupational safety and health would be subsumed within a larger corporate structure... [that]...could lead to a re-allocation of resources away from occupational safety and health"; and the ability of a "tripartite forum" to influence such an organisation would be reduced (ACOSH Report, June 1988:17).

Submissions on the Report were to be sent to the DoL by 1 September 1988 (ACOSH Report, June 1988:1).

On 1 September the newly formed OSH Service of the DoL formed an internal policy team to analyse the ACOSH Report submissions, and to formulate a DoL policy response. The core of the policy team consisted of senior OSH Service staff (Chris Hampton, Geoff Wilson, Rex Moir), supplemented at various times by other internal DoL staff, and by a

small group of outside occupational safety and health consultants - John Weiss, and Paul Heveldt (Interviews No. 8 to 13, 1995).[22] By 1 October 1988 a detailed paper had been prepared identifying and summarising the advantages and disadvantages of four different ways of approaching occupational safety and health policy, outlining reasons for legislative change, and setting out the OSH Service's preferred option (DoL paper "Occupational Safety and Health Legislation", 1 October 1988, in DoL files).

The advent of the October paper marks a significant event. In contrast to previous DoL papers, this paper is much better in its quality of writing, and scope and detail of argument. From this point forward subsequent DoL papers copy the standard set by the October paper. The paper is also significant because it sets out for the first time in the DoL's history, a comprehensive and coherent review of the reasons why government should intervene in occupational safety and health, and discusses the policy instruments available to government. In addition, the paper clearly states what the Department's "preferred" set of policy solutions is. The arguments and analysis that appear in the paper are set out below. By reviewing the paper in some detail, it is possible to gain some insight into the thinking and perceptions about the change issues and options of a key group of officials at the centre of occupational safety and health policy in New Zealand during the period under study.

The 1 October paper begins by reviewing the reasons unions, employers, ACC, and private insurance institutions have for being interested in occupational safety and health, and attributes the reform process to the "concerns expressed by government, unions, employers, and the community". The paper then turns to justifying Government

[22] In 1991 three other outside policy analysts joined the policy unit for a short period of time.

intervention in occupational safety and health (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:1-13, in DoL files). Government involvement is justified on "social grounds" and "economic efficiency". Socially,

> "the government may prefer less workplace risk, or a different distribution of work-place risk, than results from the operation of bargaining between workers and employers. This desire may reflect the inherent value attached by society to human life and health, or a belief that the government should guarantee a minimum standard of health and safety, regardless of income, knowledge, or bargaining power. The government may also act in the interest of third parties whose interests are not reflected in the bargaining process" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:13, in DoL files).

Economically, Government is concerned to "ensure that resources are not wasted" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:13, in DoL files). As such, Government may "wish to intervene" in the operation of the market, where constraints to effective resource allocation can be identified that are "amenable to correction by policy" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:13, in DoL files).

Consideration in the 1 October paper then moves to which policy instruments should be used by government to intervene in occupational safety and health. Five types of intervention are identified and discussed.

1. Regulations and their enforcement. Regulatory standards may take the form of "design" specifications, or be "set in terms of performance". The former has dominated in New Zealand legislation, while the latter type of regulation has come to the fore overseas. In both cases "some form of inspectorate, and a reliance on...expensive legal proceedings" is necessary (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:16, in DoL files).

2. Negative incentives or penalties. "Forms of negative incentive include: fines imposed through the Courts; spot fines imposed by inspectors; a variable fine scale, with the size of fine possibly increasing for repeated offences; more regular inspection of premises; or imposition of a tax for injuries (or a levy for compensation claims), with the employer paying according to the number and severity of injuries or illnesses" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:16-17, in DoL files). In order to use fines "the existence of ...performance or design standards, or a statutory requirement for the employer to have a 'reasonable duty of care'" is required (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:17, in DoL files). The paper notes that negative incentives are "particularly important where enforcement is less than complete" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:18, in DoL files).
3. Positive incentives. Examples include: exemption from inspection of premises; self-certification; subsidies towards the costs of providing occupational safety and health protection measures; and encouraging self monitoring by facilitating the establishment of on-site safety and health committees or representatives (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:17, in DoL files).
4. Tort law or legal penalties. The use of tort liability is rejected in the paper on the grounds of differences "in knowledge about risky activities", differences in ability to pay for "the full magnitude of the harm" done, a suit may not be taken, "historically the level of compensation has been pitiful and the chance of getting a successful prosecution is small", and "the cost of litigation is high and would fall in the first instance on the injured party" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:17-18, in DoL files).

5. Provision of Information. The provision of information to both employers and employees is seen as a "positive incentive" in that "it reduces the costs involved in deciding on occupational safety and health matters". It also "changes the behaviour of employers and workers by enabling them to take into account facts that they could not otherwise have taken into account" (DoL paper "Occupational Safety and Health Legislation" 1 October 1988:18, in DoL files).

Out of this range of instruments, the one favoured by the DoL was the second option of "fines as a means of introducing disincentives for the employer" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:18, in DoL files).

After considering the forms of intervention available, the paper identified "four different ways" that occupational safety and health policy reform might proceed, each of which is attributed to a particular group of actors. The first option was to continue with the existing approach, with some administrative improvements. This option was identified as that preferred by other government departments. The second option, preferred by most unions, was a regulatory approach with more effective enforcement and compliance procedures. The third option was the controlled devolution of responsibility for occupational safety and health to workers and employers. This option was advocated by a large number of employers and some unions. The last option was for no government involvement in decisions about occupational safety and health. This was the option promoted by the New Zealand Business Roundtable in their submission on the ACOSH Report, and by Treasury (DoL paper "Occupational Safety and Health Legislation", 1 October 1988, in DoL files).

Of the four reform options identified by the OSH Service, the "preferred approach" was "a combination of options two and three - better enforcement and controlled devolution of responsibility" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:26, in DoL files; and, DoL Background paper "Implications Of...Preferred Option", 16 September 1988, in DoL files). This combination was preferred because it allowed some "flexibility to meet varying needs of different workplaces", encouraged "an informed responsible attitude on the part of workers and employers", and gave room for the likelihood of "fiscal cost reduction" by allowing the targeting of "resources where most needed" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:26, in DoL files). The paper suggests that if this combination was accepted by Government, then appropriate enforcement philosophies that could be followed were the Canadian government's 1986 Labour Code and the British 1972 Robens Report (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:23 and 33, in DoL files).

In making its choice, the OSH Service used the criteria that "the chosen approach should be the one best able to satisfy most of the concerns of most of the parties for most of the time" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:19, in DoL files). This pragmatism was based upon the "fundamental view...that no one approach to occupational safety and health policy will be able to satisfy the needs of all workers and employers in all situations.... occupational safety and health policy cannot eliminate all injuries, health hazards, and complaints, but it can reduce the number and severity of industrial accidents and hazards in the work-place" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:19, in DoL files).

At the sixteenth ACOSH meeting on 25 November 1988 the Minister of Labour "indicated that he had booked legislative time, for a new Occupational Safety and Health Bill which at the very least would tidy up legislation administered by the Labour Department" (16th ACOSH Meeting Minutes, 25 November 1988:3, in DoL File 19/9/3-1 Vol 4). The Chair also advised that the procedure for Cabinet decision, and approval of any changes, was that any proposals would be taken by him

> "to the Social Equity Cabinet Committee seeking approval in principle. When this approval was obtained the next step would be to set up a small working party of officials who, working to a tight time frame, would put together the details for the proposals. A panel made up of two CTU and two Employers Federation representatives could advise, liase and exchange ideas with the officials working party" (16th ACOSH Meeting Minutes, 25 November 1988:3, in DoL File 19/9/3-1 Vol 4).

In reply the union representatives responded that "they wanted progress and this would be got, not by an officials working party, but by one comprising the direct players - union and employer representatives serviced by officials". The employers representatives "agreed...that an officials committee was not the way to proceed...(they)...were concerned that the proposals would be taken too far down the road before CTU and Employers Federation representatives could make their views known" (16th ACOSH Meeting Minutes, 25 November 1988:3, in DoL File 19/9/3-1 Vol 4). The Chair then commented that

> "Government would not give up its function of allocating resources to an external party. He acknowledged that members held strong views on the proposals. He was quite happy with a bipartite group from ACOSH being a consultative group to the officials working party. He was not trying to isolate members from the process, rather the problem was created by a minefield of enormously different views including Health, ACC, Energy, Transport and Treasury. A consultative group might get down to fortnightly or even weekly meetings with the officials working party" (16th ACOSH Meeting Minutes, 25 November 1988:3, in DoL File 19/9/3-1 Vol 4).

Summary of initial period of change

In summary, at the beginning of the initial period of change union and employer organisations had no formal role in the formation of occupational safety and health policy. At the end of the period unions had succeeded in establishing a tripartite consultative process for change through the mechanism of ACOSH. The process of this change began because of the action and influence of union and employer organisations. The unions were particularly influential after the election of the Labour Party Government in July 1984. Unions wanted change that would empower workers, employers wanted change that would lessen government regulation and bureaucratic interference. Officials were not particularly supportive of change, particularly any administrative change. Little change occurred until the Minister of Labour took personal charge of the discussions early in 1988. Policy debate in this period was dominated by acrimony over the introduction of a system of health and safety committees. Action by government on the issue eventually happened with the publication in July 1987 of a compromise voluntary CoP for Health and Safety Committees and Representatives.

Administratively, in 1987 change had begun to occur within the DoL and the DoH that directly impacted upon occupational safety and health. These changes were due to pressures upon the public service in general from politicians demanding greater accountability and efficiency in government agencies, rather than any real thought about what was best for occupational safety and health. Major proposals for legislative and administrative change did not appear until June 1988 after personal intervention by the Minister of Labour. The administrative proposals suggested by the ACOSH Report, had they been accepted, would have seen a significant change in the control of occupational

safety and health administration away from government agencies to a new set of organisations that would have been more amenable to tripartite supervision.

Second period of change, 1989 to 1990.

The actions and influence of government officials, and union representatives dominate the period 1989 to 1990. Officials were particularly influential in substantially modifying the 1988 ACOSH administrative proposals, while union representatives were able to influence the occupational safety and health legislation introduced by the Labour Government in 1990. The legislative proposals promised to seriously threaten employers' control over workplace health and safety. The actions of officials during the early part of this period elicited a storm of angry protest from union and employer representatives about inadequacies in consultation over advice offered by officials to Government. Another notable feature about this period is the disagreement amongst officials over the direction that occupational safety and health policy should take.

Following the ACOSH meeting in November 1988, the Cabinet Social Equity Committee in February 1989 approved "in principle" the ACOSH proposals for reform, and established an inter-departmental officials working party to examine the proposal in more detail. In their work, officials were to be supported by an employer and union consultative group (Cabinet Minute SEQ (89) M 2/2 14, February 1989, in DoL file).

The new officials group met for the first time on 21 February 1989, and then regularly until 20 April at which time a draft report for the Cabinet Social Equity Committee was discussed. Early in their meetings, officials decided that the Consultative Group of union and employer representatives was not to receive copies of departmental position papers,

and rejected attempts by the union and employer representatives to obtain access to them (Minutes First Officials Working Party meeting, 21 February 1989:1, in DoL files; Minutes Second Officials Working Party meeting, 21 February 1989:1, in DoL files). After several meetings, there was little agreement amongst officials about the direction that reform should take. At the end of the meeting of 20 April, the OSH Service prepared a paper for the Minister of Labour on "Progress and Unresolved Issues". The paper concluded that "the working party discussion on administrative structures revealed significant differences of opinion" (Letter General Manager OSH Service to Minister of Labour, 20 April 1989, in DoL files). For example, the ACC supported the ACOSH proposal for a Commission, but the government agencies

> "Labour, Environment, Treasury, and SSC opposed the proposal on the grounds that:
>
> - Enforcement of legislation should be carried out by a Government department.
> - The Government would have little influence on resource allocation decisions.
> - Accountability would be split three ways.
> - Decision-making would be likely to be ineffective resulting in no action on difficult problems.
> - The Government could abdicate responsibility for decisions on contentious issues.
> - Communication barriers would be created between the Commission and operational units.
>
> The ACC support a stand-alone Organisation, as a second option to supporting the ACOSH proposal. Health also support this option. Their arguments are:
>
> The whole Organisation should be devoted to occupational safety and health.
>
> - Clients would oppose such a structure having other responsibilities.
> - Other organisations would view merger within an existing organisation as a takeover. Management and Ministers losing responsibility would oppose this.
> - Staff affected could identify with a new agency and leave behind personal

investment in the former status quo.

- A new Organisation could have a high public profile and gain acceptance from all parties....

Environment and Transport had no strong view on the need for a separate department or incorporation in the Department of Labour.

Energy remained fundamentally opposed to the need for administrative reform along the lines being considered by the working party. They intend to dissent from the final report." (Letter General Manager OSH Service to Minister of Labour, 20 April 1989, in DoL files).

On 1 May 1989 the conclusions of the "majority" of the officials working party, i.e. representatives of the SSC, Treasury and Labour, were submitted to the Minister of Labour. The officials concluded that any legislative reform should apply to all forms of employment, and place less emphasis on inspection of physical conditions, and more emphasis on education, advice and consultation, and audits of employers' and employees' performance in relation to their duties of care (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:7, in DoL files). In essence the new legislation should provide for more "internal responsibility" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:3, in DoL files). A regime encouraging greater self-regulation could be provided by imposing clear statements of duty of care upon employers and employees, and requiring employers to provide each employee with information, instruction, training and supervision (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:5-6, in DoL files). In addition, the common law right to refuse dangerous work could be replaced with a permissive statutory provision, and provision could be made for statutory implementation of a system of safety and health representatives and committees where

there is a failure to provide an alternative system (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:6-7, in DoL files).

Administratively, the officials recommended that a single "organisation responsible for occupational safety and health policy" should be formed, "and this should extend to areas which were not covered adequately or at all under the present arrangements" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:10, in DoL files). Establishment of a tripartite commission to oversee the administration of occupational safety and health was not favoured, "due to concerns about accountability and impartial advice" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:11, in DoL files). At the centre of this objection, was the officials' belief that a Commission comprised of employers' and employees' representatives should not be making policy and resource allocation "decisions at the central Government level" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:12, in DoL files). In contrast to a tripartite commission, "a stand alone agency would achieve clearer accountability more easily, would help achieve a corporate identity and staff acceptance but location within an existing agency would have the advantage of minimising both transitional and ongoing costs" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:11-12, in DoL files). If the option of locating the organisation within an existing core department was chosen, "the Department of Labour was the most appropriate location" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:11-12, in DoL files). It was most appropriate because of the Department's other activities in the labour market, its established "substantial" regional and national administrative structure, its existing "high concentration" of occupational safety and health activities, and "there could be scope to absorb some of the

corporate resource cost within its existing resources" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:12, in DoL files).

While officials rejected a tripartite commission they did agree to the establishment of a bipartite advisory commission comprised of employer and union representatives, "to provide the Minister with advice and make recommendations on the...law" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:13, in DoL files). The establishment of a separate scientific Institute was not recommended. Officials argued that New Zealand was not significantly different from other countries and thus did not require separate research. If, at any stage research was required, it could be contracted out by either private or other government organisations or purchased from overseas (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:13, in DoL files). Officials also noted that the reforms needed to be consistent with, and linked to other legislative reforms taking place, particularly those in the areas of local government, resource management, hazardous substances management, the general shift towards de-regulation, and the formation of a national building code (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:7, in DoL files).

As for the division of responsibility amongst government agencies for occupational safety and health activities, it was recommended that the entire safety and health role of the "Mines, Quarries and Tunnels" group of the Ministry of Energy should become part of the new occupational safety and health organisation. However the Ministry of Energy would retain the role of maintaining public safety standards. Similarly the occupational safety and health aspects of the Road, Rail, Marine and Air activities of the Ministry of Transport would come under the occupational safety and health organisation, as would responsibility

for Boilers, Lifts and Cranes. Furthermore, the occupational health policy functions of the Department of Health should become the responsibility of the single organisation, as should the occupational health functions of Area Health Boards. As for the occupational safety and health aspects of 'hazardous substances', these should become the "policy responsibility" of the new organisation, and the occupational safety and health resources of the ACC should be transferred to it as well (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:15-19, in DoL files). Officials also said that no new resources would be required from Government if all the identified personnel and budgetary allocations were moved as recommended (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:19, in DoL files).

The Interdepartmental Officials report touched off a storm of protest from both the unions and the employers to the OSH Service and the Minister of Labour. At the Officials Working Party Consultative Group meeting of 3 May 1989, the CTU representatives informed the OSH Service that they have been "very concerned by the inadequacy of the consultative process" and that the recommendations "include matters which are a serious departure from the principle and substance" of the ACOSH proposals.

> "The NZCTU representatives can only conclude that the...preferred option was supported by Officials on the basis that they would have a later opportunity to undermine it and negate the tripartite process.... The NZCTU representatives believe that the Officials' objections to a tripartite authority are self-serving and without substance" (CTU letter to Convenor of Working Party, 3 May 1989:3-4, in DoL files).

On the same day, the Director-General of the NZEF wrote to the OSH Service that the Working Party's draft report:

> "rather than developing further the ACOSH proposals, is seeking to debate from scratch many of the issues. This approach is an unacceptable departure from our understanding of the basis on which the matter was to proceed.... We

> are not prepared to take part in a piecemeal endorsement or rejection of individual items of the report when important matters of principle remain unresolved" (NZEF letter to OSH Service, 3 May 1989, in DoL files).

These complaints were followed up by the CTU and EF in a joint letter to the Minister of Labour on 17 May 1989, and by joint meetings with him on 18 May and 7 July. In their complaints, the representatives noted their dissatisfaction with the behaviour of officials, their "strong exceptions" to the recommendations made in the officials report, and said the consultation process was a "mockery" (Joint CTU/EF letter to Minister of Labour, 17 May 1989, in CTU file OHS/1/14C; CTU letter to Minister of Labour, 10 July 1989, in DoL files; EF to letter Minister of Labour, Deputy Prime Minister, and CTU, 10 July 1989:4, in DoL files).

After considering the views of the CTU and the EF, Cabinet on 10 July 1989 decided that:

> "....the outcomes for occupational safety and health policy are:
> i: to minimise the economic and social costs of workplace illness and injury;
> ii: to ensure that no worker group or public group suffers a disproportionately high level of illness and injury or other costs from work activity;
> c: agreed that one Act covering work-related hazards in all industries and activities and all types of employment should replace the existing legislation covering different industries and activities;
> d: agreed that the new Act should provide a more self-regulating environment than provided in existing legislation;
> e: agreed that the administration of the law should emphasise stimulating employers and employees to achieve high standards of safety and health by providing education, advice and consultation services, and audits and inspection of employers' and employees' compliance with their statutory duties;
> f: agreed that the legislation should contain high penalties for non compliance with statutory duties;
> g: invited the Minister of Labour to consult with the New Zealand Council of Trade

Unions and the New Zealand Employers Federation concerning the inclusion in new legislation of provisions dealing with:

i: the ability of employees to participate in workplace safety and health decisions through safety and health committees and representatives,

ii: the right for employees to receive information on safety and health so that they can make better choices on matters affecting their safety and health;

iii: the right for employees to refuse dangerous work in certain circumstances;

h: approved the establishment of an occupational safety and health advisory Commission to advise the Minister of Labour on the law and its administration:

i: comprising equal numbers of employer and employee representatives with ex officio representation from the Department of Labour;

ii: chaired by a person appointed by the Minister after consultation with organisations representing employers and employees;

iii: with its own budget and servicing arrangements;

iv: agreed that the Department of Labour should be responsible for occupational safety and health policy covering work-related hazards in all industries and activities and all types of employment, at present covered by the Ministry of Transport, the Ministry of Energy, the Department of Health and the Accident Compensation Corporation;

[Note: Work-related hazards exclude hazards primarily affecting members of the public.]

j: note that the Department of Labour will administer the new legislation, but that it may contract out delivery of services relating to occupational health and safety to other government departments or Area Health Boards;

k: agreed that the reform should be resource-neutral, with any additional costs being met from savings from efficiencies obtained from the restructuring but note that there will be some once only costs arising from the transition;

l: invited the Minister of Labour to consult with the New Zealand Employers Federation concerning the funding of the proposed Commission and the Department of Labour's occupational safety and health activities from a levy on employers' payrolls;

m: agreed that a transition team be convened by the Department of Labour with representatives from all affected agencies to prepare the new legislation and examine the arrangements for forming the new administrative structure;

n: agreed that the transitional team should address the role of Area Health Boards in relation to occupational health and safety."

(Cabinet Minute CAB (89) M 23-17, 10 July 1989, in DoL files).

These decisions were announced by the Government in its Budget presentation to Parliament on 27 July 1989. Following the Cabinet decision, a "Transition Team" comprised of officials from the affected departments was established in August by the OSH Service, to manage the transfer of staff and resources from the various government agencies to the DoL (Report of OSH Reform Transition Team, November 1989, in DoL files). In addition by 30 September, a draft legislative outline for an OSH Bill had been approved by the new Associate Minister of Labour Michael Cullen for sending to the Parliamentary Council Office (PCO) for drafting (DoL paper to Ass Minister of Labour "Proposed Contents of OSH Bill", 30 September 1989, in DoL files).

Although the Interdepartmental Officials Working Party Report had made recommendations regarding the transfer of occupational safety and health staff and resources to the DoL, and these had been approved by Cabinet, the Transition Team encountered resistance, particularly from the representatives of Area Health Boards, to the administrative arrangements. In the final report of the Transition Team in November 1989, it is remarked that because of the addition of the Area Health Board representatives to the team - at the instigation of the MoH, the "team has had to devote considerable time into more fundamental issues principally concerning the delivery of occupational health services.... and in order to explore the implications the team has had to re-examine many fundamental issues" (Transition Team Report "OSH Reform", November 1989:5, in DoL files). There was no unanimous agreement over what the role should be for Area Health Boards. The "majority" of the team "favoured" the OSH Service delivering general occupational safety and health services, with contracts let out to Area Health Boards for delivery of specific occupational health services, while the OSH Service preferred to provide solely all occupational safety and health services. The Area Health Boards

preference was for them to provide "all occupational safety and health services" under contract to the OSH Service, and if that was not possible, then for the OSH Service to provide all the "safety" services and they would contract to provide all the "health" services (Transition Team Report "OSH Reform", November 1989:3 and 31-32, in DoL files).

As for the transfer of the mining and petroleum inspectorates of the Ministry of Energy, two options were identified for the inspectorates by the Transition Team for Cabinet to consider (Transition Team Report "OSH Reform", November 1989:2, in DoL files). The first option was for the Ministry of Commerce to contract with the OSH Service for delivery of occupational safety and health services. The second option was for the OSH Service to contract with the Ministry for the delivery of Commerce functions. As for the Ministry of Transport Maritime shore-based safety functions, it was recommended that these should be transferred to the DoL, although the identification of particular resources for transfer would depend upon the outcome of the internal MoT review of the Maritime Safety Division that was in progress (Transition Team Report "OSH Reform", November 1989:2, in DoL files). There was no resistance from ACC in 1990 to the transfer of their workplace focussed injury prevention consultants to the OSH Service.

On 18 December 1989, Cabinet decided that the OSH Service would take responsibility for OSH services generally, and contract with Area Health Boards for delivery of specific health activities. Furthermore, the Mining Inspectorate of the Ministry of Energy should be transferred to the Ministry of Commerce, with the OSH Service contracting for the delivery of occupational safety and health functions, subject to a review after two years (Cabinet Minute CAB (89) M45/46, 18 December 1989, in DoL files). A decision on the transfer of the MoT inspectorates was referred to the Cabinet Policy Committee to decide

in the New Year. At its meeting on 24 January 1990, the Cabinet Policy Committee agreed "that the regulatory functions for boiler, lift and crane and port safety, and the associated resources and funding, be transferred" from the MoT to the OSH Service (Cabinet Policy Committee Minute POL(90) M1-1, 24 January 1990; in DoL files). With this decision, the administrative reorganisation of government activity in occupational safety and health in New Zealand was complete.

While no more change was to occur in the administrative apparatus after January 1990, the shape that legislative reform would take was still being debated. Treasury on 28 May 1990 wrote to the Minister of Finance expressing their "very serious concerns" with the draft OSH Bill (Treasury paper T90/1875:1, 28 May 1990, in DoL files). Of particular concern were the areas of statutory duties, assignment of liability, and the right to strike. Treasury concluded:

> "the current draft of the Occupational Safety and Health Bill does not adequately reflect the Government's policy objectives. The rights and responsibilities defined in this draft are open to conflicting interpretations. In particular, some provisions can be interpreted to imply that all risks should be eliminated rather than carefully managed. The difference is important, for example, the Railways Corporation could be required to build thousands of overbridges or automatic control gates to ensure safety at all level crossings. The draft Bill provides an ability for workers to refuse work they consider hazardous. This could become a major industrial relations weapon, e.g. providing a pretext for an illegal walk-out by waterside workers"[23] (Treasury paper T90/1875:3, 28 May 1990, in DoL files).

Treasury consequently recommended that consideration of the Bill be deferred until further legal advice was sought and a new draft prepared (Treasury paper T90/1875:3, 28 May 1990, in DoL files). The SSC supported the Treasury position, and argued that the

[23] The reference to watersider strikes has particular resonance, and connotations, for New Zealand politicians and students of politics. In 1951 a waterfront strike occurred that provoked a major confrontation between the unions and government, and caused deep divisions between sectors of society.

Bill needed to be made more "user friendly" (SSC letter to Minister of SSC, 30 May 1990:3, in DoL files). Furthermore, the OSH Bill would impose additional costs on employers, and the level of "prescription" in the Bill in conjunction with the Employment Equity and Smokefree Environment Bills "could well result in a serious adverse reaction" (SSC letter to Minister of SSC, 30 May 1990:3, in DoL files). As a result of this intervention, the Cabinet Legislation Committee on 31 May 1990 referred the draft back to the PCO for further legal advice and drafting (Cabinet Legislation Committee Minute, LEG(90)M 15-1, 31 May 1990, in DoL files). The Cabinet Legislation Committee finally accepted a revised, but largely unchanged, Bill (PCO 53/9) on 12 July 1990 (Cabinet Legislation Committee minute LEG (90) M19/1, 12 July 1990, in DoL files).

The OSH Bill was introduced into Parliament on 19 July 1990, read for the first time, and referred to the Labour Select Committee for consideration (Hansard, 19 July 1990:2943-2955). In introducing the OSH Bill, the Labour Government argued that the Bill was intended to reduce reliance upon the State, promote co-operation between employers and employees, introduce elements of industrial democracy, internalise the costs of workplace injuries and illnesses on businesses, and promote the rights of workers to know, participate, and refuse dangerous work (Hansard, 19 July 1990:2943-2955). Opposing the introduction of the Bill, the opposition National Party argued that the Bill would only create more costs for employers and thus restrict employment growth. In addition, the Bill would introduce new layers of bureaucracy and establish a new government quango that would serve to hamper industry; in this regard, it was argued that the example of the Australian State of Victoria was not a good one to follow. Furthermore, the imposition of health and safety committees would only serve to increase "adversarial style industrial relations and conflict

in the workplace". The result would be more strikes, and trade secrets would be revealed as unions misused their new powers (Hansard, 19 July 1990:2943-2955).

Summary of second period of change

In summary, the period 1989 to 1990 saw vociferous opposition from officials to the ACOSH proposals for administrative change. The advice given by the Officials Working Party in May 1989, while not unanimous in its recommendations, was sufficiently influential to bring about a significant modification to the ACOSH recommendations. Although unions weren't wholly successful in their administrative suggestions, they were successful in obtaining all their other demands for positive acknowledgement of workers' rights, and the introduction of a system of compulsory health and safety committees and representatives. At the end of this second period of change, the last administrative changes that were to take place had been introduced, and legislative proposals were mooted that promised to seriously challenge employer control of workplace health and safety.

Final period of change, 1991 to 1992.

The final period of change, 1991 to 1992, saw a new political party come to power more favourable to employers' views on occupational safety and health reform. Upon election in October 1990 the National Party Government immediately set about introducing a new industrial relations regime, and began an investigation into what should be done about occupational safety and health. As the result of its investigation, the Government withdrew the previous Government's OSH Bill and introduced a new Bill that set performance standards for employer management of health and safety at work. During this period officials relitigated amongst themselves many of the policy issues that had previously been debated. Dominant throughout this period were the representatives of big

business in the form of the Top Tier Group of industry. These representatives provided the policy direction taken in the HSE Act, and were responsible for seeing that legislative reform actually took place. Officials of the OSH Service were also important as they successfully resisted proposals from Treasury officials that, if accepted, would have seen the almost total withdrawal of the State from intervention in occupational safety and health.

A General election was held on 27 October 1990 which saw the incumbent Labour Party replaced with a conservative National Party Government. Immediately the new Government early in February 1991 signalled that it intended to instigate a new industrial relations regime with the introduction of the Employment Contracts Bill into Parliament. When the Employment Contracts Bill was passed on 7 May 1991, it introduced "fundamental and radical" changes to the industrial relations system (Jeffrey, 1995:172). The new system did away with centralised negotiating structures, undermined the union support systems, and promoted individual freedom of action and responsibility (Jeffrey, 1995:172 and 176). The Government's intention to move in this direction had immediate implications for occupational safety and health reform. The implications first appear in an 'issues and options' paper for occupational safety and health legislative reform submitted to the new Minister of Labour Bill Birch on 11 December 1990. In the paper the OSH Service suggested that reform could be achieved by either "revising the current Bill to remove objectionable provisions and align it with the Employment Contracts Bill; or preparing a new Bill" (OSH Service paper "OSH Reform", 11 December 1990:1, in DoL files). The revisions suggested included clarification of the application of the clauses pertaining to the duties of employers and other persons, deletion of the right to refuse dangerous work as "the matter is already covered by the Common Law", deletion of the

clauses establishing health and safety committees as they "conflict with Government policy on employment contracts", and deletion of the provisions establishing an Occupational Safety and Health Commission given that such a body "may be contrary to Government policy", and central organisations of the Employers Federation and the Council of Trade Unions already exist (OSH Service paper "OSH Reform", 11 December 1990:5-6, in DoL files).

On 24 January 1991, in a meeting with representatives of the CTU and the OSH Service, the Minister of Labour informed them that a sub-committee of the Caucus Labour Committee would be set up to investigate occupational safety and health reform as the "Government had no policy on occupational safety and health" (DoL file note, 25 January 1991, in DoL files; see also, "Record of meeting in Minister's office", 16 May 1989, in DoL file HSE Bill and A Vol 2). Subsequently on 5 February the Government issued a press release announcing the review. The review was to be done by the Members of Parliament Mr Ian Revell and Mr Graeme Reeves (Press release from Office of Max Bradford Chair of the Labour Select Committee, 5 February 1991). Throughout March to May 1991 Mr Revell and Mr Reeves were supplied with briefing papers on why government should intervene in the market, contentious issues in the OSH Bill, and outstanding administrative issues. They also visited a number of large work sites and had a series of meetings with managers and occupational safety and health professionals on what should be done. The Minister of Labour also wrote a personal letter, on 29 May 1991, to the Director-General of the Employers Federation asking for his advice (Letter from Minister of Labour to D-G of EF, 29 May 1991, in DoL files). A meeting followed this up with senior representatives of the EF on 20 June. An OSH Service memo records that the EF representatives made the following points at the meeting:

> "Safety and health should be managed at the workplace.
> Management should be free to make decisions without the law prescribing procedures.
> Management should have a duty to do it and that's all.
> There should be powers to see that it is done....
> [Legislation] (n)eeds to co-ordinate with incentives and penalties.
> Dead against separate levy, agrees OSH should get funding from ACC levy - but ACC to have no control.
> OSH should be regulator and should see standards are maintained.
> The OSH Bill should be scrapped and start again" (OSH Service Memo of Meeting, 21 June 1991, in DoL file HSE Bill and A Vol 2).

The meeting concluded with the Minister indicating that he wished to "consult with the Top Tier Group" of industry representatives and asked for the EF to facilitate this (OSH Service Memo of Meeting, 21 June 1991, in DoL file HSE Bill and A Vol 2).

A meeting between the Minister of Labour and a range of union representatives on what should be done about occupational safety and health reform was held on 27 June 1991. In the meeting the union representatives emphasised that reform was supported so long as current standards weren't lost, and workers had the right to participate (CTU briefing paper for union representatives, 19 June 1991, in CTU file OHS/1/14C). Straight after this meeting the Minister of Labour held another with OSH Service officials and the Caucus Review team - Mr Revell and Mr Reeves - about what should be done about the OSH Bill. After some discussion:

> "Mr Reeves recommended...that the Bill be scrapped and a new drafted. The Minister advised that he has some difficulty getting us on the legislative programme because he's being accused at the moment of hogging the list. Irrespective...there will be a new Bill because the changes that are involved would be too great to handle in an SOP[24].

[24] The initials "SOP" stand for supplementary order paper. A supplementary order paper is a parliamentary procedure for making last minute changes to a Bill being debated in Parliament.

> He has asked Ian Revell to give him a one page summary of what a new Bill should contain..... After discussion with the Unions [the Minister decided] that the two stage progression of regulations will be adopted and that we can continue the process that was started under the previous administration" (OSH Service Memo of meeting, 28 June 1991, in DoL file HSE Bill and A Vol 2).

Mr Revell and Mr Reeves subsequently submitted a three-page summary to the Minister of Labour on 2 July 1991. The report suggested that new legislation should be performance orientated rather than prescriptive, and employers should have sole responsibility for occupational safety and health. Furthermore, while employee participation was seen as essential, health and safety committees should not be made compulsory nor should any form of consultation be prescribed. Regarding the right to refuse dangerous work, the provision should be removed as it is "open to abuse", and given that the common law right to refuse exists. In addition, provisions that allow workers' representatives to shut a work-place or plant on health and safety grounds was "particularly obnoxious on the grounds that the responsibility and the accountability for safety matters rests with the employer, not the employee". The proposal for an OSH Commission was "an unnecessary additional bureaucratic structure". But there was a need for closer liaison between ACC and OSH, particularly in the area of information sharing, and a more responsive levy system such as experience rating should be introduced to reward and penalise good and bad performing employers. Finally, "serious misgivings" were held "as to the relevance of the Trade Union Education Authority approach to workplace safety management" (Caucus Sub-committee review of OSH Bill, 2 July 1991:1-3, in DoL file HSE Bill and A Vol 2).

On 4 July 1991 the Cabinet Legislation Committee agreed to the deletion of the OSH Bill from the legislative programme, and gave the new "Management of Health and Safety in Employment Bill a Category G (introduce by 31 December 1991, subject to drafting)

classification on the legislative programme" (Cabinet Minute LEG(91) 57, 3 July 1991). A Category 'F' (pass by 31 December 1991, if practicable) had been recommended by the Minister of Labour (Cabinet Minute LEG(91) 57, 3 July 1991). Furthermore, the Minister was "invited...to report to the Cabinet Committee on Enterprise, Growth and Employment by 10 September 1991 on the proposed content of the Bill" (Cabinet Minute LEG(91)M/17-3, in DoL files).

Development of the content of the new Bill took a major step forward when the Minister met with representatives of the EF and the Top Tier Group on 5 July 1991. The OSH Service memo of the meeting records that:

> "Attending: Bryan Watts (BP Oil), Alec Gallatley and Barry Chiplin (Fletcher Industries), David Farlow and Cherry Johnston (NZEF), Geoff Mayes (Taubmans Paints), Jack Raffills (Weddell Ltd), Ian Revell, the Minister and myself.
>
> As part of a general discussion the Minister outlined:
>
> - The need for reform of safety and health legislation.
> - The need for confidentiality from the group.
> - ACC scheme will be revamped to include experience rating but there would be access to benefits for non-work accidents and the week stand-down will not be increased.
> - Some companies achieve excellent results in managing safety and he is keen to see this extended.
> - He believes occupational safety and health needs to be administered through incentives (via ACC experience rating) and compliance activities to ensure standards are met.
> - OSH has the role of administering legislation and standards together with a strong role in developing standards (codes) - this will continue to be funded from employer levies.
>
> In dealing with the agenda items the following views were expressed by the group:

1. There are a number of successful risk management systems currently in use and new legislation should allow them to continue provided they produce results.

There was strong agreement that responsibilities and accountabilities need to be assigned to employers to manage risk.

2. There was general agreement that the OSH Bill needs to set a general framework for managing risks arising from employment. The Bill should set performance standards and because it needs to set broad requirements there is a strong need for the Bill to be supplemented by:

- Regulations setting out prescriptive standards where necessary (hazardous materials).
- Codes of practice.
- Guidance notes....

3. All representatives agreed there should be some type of financial incentive to invest in safety. In reply to a comment about potential high costs in operating an experience rating system - the Minister advised that it should operate similar to insurance practice with no-claim bonuses being applied.

4. All agreed that safety and health training is highly necessary but none agreed with the Bill's provisions that Unions should have a sole role for training workers. Suggestions for delivery included private providers (polytechnic colleges) or directly by OSH....

5. All agreed that the prime contractor should have requirements to set safety procedures for the site. Individual contractors should have responsibilities for their own staff and the safety of other staff on sites they operate in.

6. There was no support for an OSH Commission. The Minister asked the NZEF representatives why they had supported the proposal. NZEF advised that now the Government had changed and there was a changed industrial environment the Commission concept was not needed.

The Minister advised that in lieu of a Commission, OSH would consult affected parties directly.

In closing the Minister asked the representatives if employers really wanted a changed OSH Bill - if they didn't, he would consider dropping the whole proposal for OSH legislation.

All employers present indicated they would support the Government to proceed with an OSH Bill but on an altered basis, i.e. promoting safety through management systems" (OSH Service Memo of meeting, 5 July 1991, in DoL file HSE Bill and A Vol 2).

Following this meeting, the OSH Service developed a paper setting out ten "principles for the management of health and safety in employment" (OSH Service paper "Principles", 18 July 1991:1, in DoL file HSE Bill and A Vol 2). In presenting the principles, the comment was made that they "do not contain any of the elements...objected to by the NZEF...[and]...the principles reflect the ideal philosophy outlined by the NZEF" (OSH Service paper "Principles", 18 July 1991:1, in DoL file HSE Bill and A Vol 2). The ten principles for legislative reform were:

1. Comprehensive coverage of all work situations
2. Clearly defined responsibilities
3. Promotion of excellent health and safety performance
4. Improved hazard identification and control methods
5. Internal communication on health and safety issues
6. Health and safety training and education
7. Dual approach of incentives and penalties
8. Minimum standards for specific hazardous situations
9. Reduction in cost of Government interventions
10. Active administration of health and safety.

The Minister on 26 July, said that he "felt that the paper...reflected a sound base to commence drafting a new Bill" (OSH Service Memo of meeting, 26 July 1989, in DoL file HSE Bill and A Vol 2).

A new draft Bill was submitted to the Minister of Labour on 15 August 1991, for the consideration of the Committee on Enterprise, Growth and Employment (OSH Service Memo to Minister of Labour, 15 August 1991, in DoL files). However Treasury opposed

the memorandum containing the draft proposal in a set of letters to the Minister of Finance.

Treasury's initial opposition was set out in a paper dated 6 August (T91/3433, in DoL files). In the paper Treasury notes that, since its input into the OSH Bill, they had done more work "on the design of optimal legislation for promoting safety in employment" (Treasury paper T91/3433, 6 August 1991:1, in DoL files). In Treasury's opinion, the role of the health and safety in employment law "is to ensure that all the costs and benefits of different hazardous activities and precautions are appropriately weighed up when decisions on the organisation of workplaces are made" (Treasury paper T91/3433, 6 August 1991:2, in DoL files). The difficulty here is, in "designing the law...without undermining the compensation objectives of the ACC" (Treasury paper T91/3433, 6 August 1991:4, in DoL files). The best way this could be achieved, it is argued, is for any new legislation to "prescribe a general duty of care resembling the well-established and understood negligence standard of tort law. Victims would be able to sue for damages resulting from breaches of the duty of care" (Treasury paper T91/3433, 6 August 1991:1, in DoL files). Enforcement of this legislation, it is recommended, would primarily be a civil procedure taken by individuals rather than a criminal prosecution by a Government agency (Treasury paper T91/3433, 6 August 1991:8, in DoL files). For this scenario to be effective, liability would have to be related to the actual loss suffered for an injury or illness (Treasury paper T91/3433, 6 August 1991:3, in DoL files). One way of achieving this would be for statutory financial penalties to go as high as "$200,000" (Treasury paper T91/3433, 6 August 1991:9, in DoL files). However, it is acknowledged that "market signals alone are unlikely to carry sufficient information for optimal decision making" (Treasury paper T91/3433, 6 August 1991:2, in DoL files). In the "exceptional" circumstances where the

market may not work perfectly, a case exists for "residual regulatory powers" to be held by the government (Treasury paper T91/3433, 6 August 1991:3, in DoL files).

Subsequent to the paper of 6 August, Treasury on 15 August reiterated its position to the Minister of Finance and the Minister of Labour, and highlighted a couple of new points: First, "we are particularly uncomfortable with the proposal to impose duties on suppliers of goods and services.... We are concerned about possible distortions if different liability rules are applied to the same goods and services depending on whether they are consumed in workplaces or in private dwellings" (Treasury letter to Minister of Finance, 15 August 1991, in DoL files). Second, it is not "clear how responsibility is to be allocated between employers, employees and on-site visitors" (Treasury letter to Minister of Finance, 15 August 1991, in DoL files).

As a result of the intervention by Treasury, the Minister of Labour instructed Treasury and the OSH Service officials to meet and try to reconcile their differences (Note on OSH Service Memo to Minister of Labour, 15 August 1991, in DoL files). The officials met on 21 August 1991; "little progress was made to resolve the key differences" (OSH Service Report to Minister of Labour, 22 August 1991:4, in DoL files). The key differences identified were: the role of regulation; degree of specification of duties; allocation of liability; the issue of private prosecution and a shift to civil proceedings vs. criminal; and the extent of product liability for importers and manufacturers.

The OSH Service position regarding the role of regulation was that there were more "barriers" to the operation of an effective liability model for managing health and safety at work than Treasury recognised: "This is more a question of respective philosophies" (OSH

Service Report to Minister of Labour, 22 August 1991:1, in DoL files). As for the specification of duties, duties needed to be specified "as there are important specific requirements that need to be addressed by employers when operating an enterprise" (OSH Service Report to Minister of Labour, 22 August 1991:2, in DoL files). On the issue of the allocation of liability, "it was for the Courts to decide, or the Parliamentary Counsel to decide at the drafting stage" (OSH Service Report to Minister of Labour, 22 August 1991:2, in DoL files).

As to allowing private prosecutions, "while initially supported by the DoL, it was not now supported because it was opposed by the EF on the basis that it could be 'misused'" (OSH Service Report to Minister of Labour, 22 August 1991:3, in DoL files). The Mining Inspectorate of the Ministry of Energy had raised a similar fear about "misuse" in discussion on the proposal. The private prosecutions proposal was also opposed on the grounds that the provision has "the potential to cause conflict", when the intention of the Bill overall was to avoid conflict. Another objection was "that the provision is unlikely to be used by many individuals (OSH Service Report to Minister of Labour, 22 August 1991:3, in DoL files).

As for a shift to civil proceedings, this was opposed "on the basis that it is untried anywhere in the world..., it is based on damages in the main, and that it is more appropriate to have criminal proceedings where people's health is at risk" (OSH Service Report to Minister of Labour, 22 August 1991:3, in DoL files). It was also noted that the Justice Department is "strongly opposed" to the proposal, "for reasons of principle and practicality" (OSH Service Report to Minister of Labour, 22 August 1991:4, in DoL files; and Letter Dept of Justice to OSH Service, 23 August 1991:2and3, in DoL files). Regarding

the provisions for product liability, these were to be included as they reduced "compliance costs" and were supported by employers and unions (OSH Service Report to Minister of Labour, 22 August 1991:4, in DoL files).

Given these opposing positions, the Cabinet Committee on Enterprise, Growth and Employment directed officials on 27 August to provide more information (Cabinet Minute CEG (91) M 32/2, 27 August 1991, in DoL files). Upon the receipt of additional papers supporting the OSH Service position from the Department of Justice and the Legal Division of the Corporate Office of the DoL, and with the concurrence of "the Ministries of Commerce and Transport, the Department of Internal Affairs and the Ministry for the Environment", the Cabinet Committee on 17 September 1991 agreed to the draft contents for the HSE Bill as prepared by the DoL (Cabinet Minute CEG (91) M 34/1, 17 September 1991, in DoL files). On the same day the draft legislation was then approved by the Cabinet Legislation Committee for introduction to Parliament "no later than 10 December 1991, and passed no later than 31 May 1992" (Cabinet Minute LEG (91) M 1, in DoL files).

Drafting instructions were issued to the PCO on 24 September. In issuing the instructions the OSH Service referred parliamentary counsel to the United Kingdom Health and Safety at Work, etc, Act 1974, the Australian State of New South Wales Occupational Health and Safety Act 1983 No. 20, the Australian State of Victoria Occupational Safety and Health Act 1985 No. 10190, the Australian State of South Australia Occupational Health and Safety and Welfare Work Act 1986 No. 125, and the Australian State of Queensland Workplace Health and Safety Act 1989 No.63 as legislative examples to follow when framing the sections setting out definitions, general duties of employers and employees,

specific duties of employees and others, and the specific duties of employers (OSH Service drafting instructions HSE Bill, 24 September 1991:2, in DoL file - Drafting HSE Bill Vol 1).

The HSE Bill was introduced into Parliament for its first reading on 17 December 1991, and was referred to the Labour Select Committee for consideration (Hansard, 17 December 1991: 6395-6416). From January to August 1992 the Select Committee received and considered written and oral submissions on the HSE Bill. At the same time as it was doing this though, it was also considering legislation altering the accident compensation system and legislation reforming industry training. On these occasions when the Select Committee was considering the HSE Bill, the OSH Service provided advice to Committee members. In providing advice a number of protocols had to be observed, and pitfalls avoided.

A quick review of these 'pitfalls' reveals interesting insights into the degree of control exercised by the Minister over the decision making process, and the extent to which officials were expected to 'protect' the Minister from any political embarrassment. An internal OSH Service memo (Internal DoL Memo on "Select Committee Process", 14 January 1992, in DoL Files) recording the protocols to be observed, comments that all written replies to Committee members' questions had to go through the Minister for prior approval. In addition, any major amendments to legislation that the Committee might be considering had to go through the Minister and then to Cabinet for prior approval. Furthermore, the Minister had to be forewarned of any potential problems seen to be arising during the process. Officials also had to avoid embarrassing the Minister, with ill advised remarks, when responding to oral questions by members of the Committee.

Officials were to take care because opposition party members use the process to uncover problems in the legislation, and Government members may not be in agreement with the Minister on issues. While the Minister was not to be embarrassed, officials needed to realise as well, that the hearings were used by Ministers to educate Committee members on the issues in the Bill. This aspect was important because Committee members led the debate on the Bill in the House. The last major point was that officials had to be organised in order to meet the tight deadlines for the supply of written answers to oral questions, generating reports on issues raised, development of 'slip' amendments to clauses in the Bill, preparation of briefing papers for MPs on the Bill, and the preparation of speech notes for the Minister's use at the second and third reading stages of the Bill - with all potentially requiring consultation and co-ordination of activities with other government agencies (Internal DoL Memo on "Select Committee Process", 14 January 1992, in DoL Files).

Another important aspect of the officials' job regarding the Select Committee process, was the preparation of a report summarising, discussing, and recommending what should be done about all the comments made in the written and oral submissions (Internal DoL Memo on "Select Committee Process", 14 January 1992, in DoL Files). During the course of the submission process a number of specific issues were identified by officials or Committee members for further consideration. Briefing papers on these were then supplied to the Minister for his approval, and then forwarded to the members. The briefing papers constituted the substance of the Select Committee Report, including recommendations for change.

There were seven core policy issues raised in the Select Committee process. The first three issues raised are related, and involved revisiting debates that had already taken place

between Treasury and the DoL. The first issue revisited was the question of the type of liability to be imposed upon employers, whether absolute, strict, or *mens rea.* The proposed imposition in the HSE Bill of a regime of strict liability was not changed.

The next issue involved the right of private individuals to take prosecution action. The right was considered but rejected on the basis that it would not materially strengthen enforcement of the Bill, and that it "could create a backdoor right to sue for compensation for harm" (Briefing notes for Labour Select Committee HSE Bill, 3 July 1992:1and3, in DoL files). There was also a fear that the ability to take private prosecutions would result in "frivolous or vexatious cases" (Briefing notes for Labour Select Committee HSE Bill, 3 July 1992:1and3, in DoL files).

The third policy debate revisited, concerned the advisability of changing the enforcement mechanisms in the HSE Bill to a Civil action, versus a Criminal action. Officials pointed out that historically breaches of New Zealand's workplace health and safety legislation had invoked criminal proceedings. This was because criminal proceedings are deemed to signify a higher sanction against the offender than if proceedings were taken under civil law. If there were to be a shift from criminal to civil proceedings this would "reduce the incentives on employers to operate in a safe way" (Briefing notes for Labour Select Committee HSE Bill, 3 July 1992:2, in DoL files). No change in mechanism took place.

The use of the terms "risk" versus "hazard" in the HSE Bill generated considerable debate. The debate focussed on the relation between the two terms and where the emphasis should be placed. A number of submissions from employers and professional groups argued that the term "hazard" should be replaced by "risk", thus shifting the emphasis from the

management of hazards to the management of risk. The officials were of the view that a shift to the use of the term "risk", which they defined as "the likelihood that the hazard will lead to harm", was inappropriate given that the Bill aimed to prevent harm to workers. The focus upon hazards, defined as "something which may cause harm", was thought to be more appropriate because "it is the existence of hazards which should trigger action by employers": "The risk of harm is only one of the factors to be taken into account in determining significance" (Briefing notes for Labour Select Committee HSE Bill, 10 June 1992:1, in DoL files).

The debate over the use of the terms risk and hazard arose again, via the Employers Federation, over definitions of "significant risk" and "significant hazard". In this debate the same argument, as above, was applied by officials. However officials also pointed out that, for occupational safety and health professionals, "risk" entails elements of probability as well as severity, while legally "risk" is only construed in statistical terms.

> "If 'significant risk' was used in preference to 'significant hazard'...the similarity in meaning could result in Courts determining when a probability becomes statistically significant. In such a proceeding the Court may not consider the severity of the outcome, or the relationship between probability and severity" (Briefing notes for Labour Select Committee HSE Bill, 8 July 1992:2, in DoL files).

The sixth issue debated, involved stipulation of enforcement measures to be taken against the Crown. There was concern that, as drafted, the Bill was unenforceable against the Crown. To remedy this it was recommended that amendments be made that would allow "declaratory proceedings" to be taken against the Crown. The declarations would "provide non-criminal enforcement of the HSE on the Crown" by stating "whether the law applies". As well as this court procedure, officials noted that administrative actions such as 'stop

notices' and 'improvement notices' could be used (Briefing notes for Labour Select Committee HSE Bill, 3 July 1992:2 and 4, in DoL files).

The final major concern was the application of the HSE Bill to employees in the transportation sectors of aviation, rail, and shipping. The problem here was the interface between the Bill, and the concurrent changes being considered by Cabinet and another Select Committee on land transport safety in regard to rail and shipping reform. Regarding aviation, the issue was ensuring coverage of aircrew given that they were excluded in the HSE Bill, and were not specifically covered in the Civil Aviation Act of 1990 (Briefing notes for Labour Select Committee HSE Bill, 15 July 1992:2, in DoL files).

The concern about the safety of rail employees came about because of a submission from New Zealand Railways that they should be exempt from the HSE Bill given the licensing requirements contained in the Transport Services Licensing Provisions Act (New Zealand Rail submission 3 April 1992). It was eventually decided by the Minister of Labour that New Zealand Railways would be made exempt for three years from having to comply with the HSE Bill. However he also instructed that a Memorandum of Understanding between the Ministry of Transport and the OSH Service be drawn up, that would require the Ministry of Transport to take note of Government policy on occupational safety and health, as represented by the HSE Bill, when considering licensing arrangements for New Zealand Rail (Letter Minister of Labour to OSH Service, 30 October 1992, in DoL files).

As for the safety of seamen, officials noted that the proposed maritime reforms would include similar provisions to that in the HSE Bill, and thus there was no problem (Briefing notes for Labour Select Committee HSE Bill, 15 July 1992:2, in DoL files).

Concern over aircrew safety arose out of the submission from representatives of Air New Zealand aircrew who wanted to be covered by the Bill as opposed to International Civil Aviation agreements. The aircrew submission was subsequently opposed by a late submission from the management of Air New Zealand who did not want to be covered by the HSE Bill, arguing that the International agreements where satisfactory. The DoL officials agreed that a gap in coverage of cabin crew did exist, but to shift industry "from an unregulated to a regulatory regime will need sensitive management" as it "can be anticipated they will not be unanimously in favour" (Briefing notes for Minister of Labour, 17 July 1992:2, in DoL files). After further discussion with Ministry of Transport officials, it was agreed that coverage of aircrew could be provided if the Minister of Transport were to issue a "directive" to the Civil Aviation Authority that they "take cognisance of the policy of the Government by co-operating with the OSH Service" (Memo to Minister of Transport from the Secretary of Transport, 24 July 1992, in DoL files).

In July 1992 the OSH Service completed its report on the submissions on the HSE Bill. The report presented the text of the Bill clause by clause, and alongside, summarised the proposals for change. The proposals were then discussed, and a recommendation made as to whether it should be accepted. In making their recommendations, the officials used "four phrases" to indicate their level of support for or against the proposed change. The phrases used were: The change was deemed "essential for the effective working of the Act"; or the change was "desirable" as it "will significantly add to the successful working of the Act"; or "no change is required" as the change was thought to be "adequately covered by the Bill as drafted, or the effect of the change will be negligible on the working of the Act"; or, change was "not desirable" as the proposal will "detract from the effective

working of the Act" (Report of the DoL to the Labour Select Committee, July 1992:3, in DoL files).

Examination of the Report is instructive because it reveals the range of perspectives held by the actors in the change process about how to manage health and safety at work. There were 112 submissions in total on the HSE Bill. Of these submissions, 54 percent were from individual employers or employer organisations, 28 percent of submissions were from professional organisations or individuals, and 18 percent were from unions or union organisations. The DoL identified 531 proposals for change, and recommended that 8 percent of them were "essential" changes, and 17 percent were "desirable" changes. All the DoL recommendations for change either involved small changes in wording to enhance clarity such as stating them more "positively", or were an exercise in "machinery of government" to correct oversights in drafting. All the proposals for a shift to more "positive" wording came from unions or submissions from professional groups or individuals. An example of the shift to a positive phrasing was a change in the "objects" clause of the Bill from using terms such as "prevention of harm to employees" to "promotion" or "improvement of health and safety" (Report of the DoL to the Labour Select Committee, July 1992:39, in DoL files). Any proposal for change that involved a major shift in Government policy, as represented by the content of the draft Bill, from either employers or unions, was rejected as being "not desirable". Proposals for change given a "no change" recommendation, were argued against on the basis that they "misunderstood" or misconstrued the intention of the clause or its relationship to other clauses in the Bill.

Employers' submissions argued for less prescription as to what their duties were and the preventative actions required of them. The only exception to this was in their demands for more prescription of employee duties. A number of employers objected strongly to the funding arrangement in the Bill that would see them paying a special levy for the activities of the OSH Service. In contrast to employers' submissions, union submissions wanted more prescriptive detail to be included in the legislation stipulating what actions employers had to take to prevent harm, more details setting out the rights' of workers, and more details about the enforcement activity of inspectors.

Analysis of the submissions on the "Interpretation" clause are interesting for what they reveal about the range of positions taken on occupational safety and health policy, and for what they reveal about the dominant mode of thinking about occupational safety and health within the OSH Service. Proposals for change to this clause accounted for 20 percent of all proposals for change, and for 21 percent of the recommendations for change made by the DoL. The proposals for change centred upon the meaning attached to words such as hazard and significant hazard, safe, health and healthy, harm and serious harm, employee, and practicable. Debate about the definitions of these words revolved around what should be included, and about what were appropriate distinctions and associations between words and concepts used in the Bill. Submissions for example from the health sector, wanted the words 'health' and 'healthy' to be given the wider meaning that is attached to them by the World Health Organisation (WHO). This proposal was deemed "not desirable" by officials on the basis that the:

> "WHO definition does not take account of the principle object of the Bill, which is to prevent harm to employees. A person can be healthy...but unsafe. Similarly a person could be safe, but unhealthy, for reasons outside their employer's control" (Report of the DoL to the Labour Select Committee, July 1992:15, in DoL files).

Other submissions debated the relationship between harm, hazard, risk, safe and accident. Officials recommended that it was "desirable" to change the definition of "accident" to make it "consistent with loss management theory and practice"[25] (Report of the DoL to the Labour Select Committee, July 1992:25-26, and 116, in DoL files). The reference here to "loss management theory and practice" has followed through into the OSH Service's publications (for example see page 25 "A Guide to Managing Health and Safety", June 1994).

The officials' recommendations were accepted by the Committee, and tabled in Parliament as "slip amendments" to the HSE Bill in the Report of the Select Committee (Labour Committee Report #126-2, 11 August 1992). The Bill completed its second reading on 16 August, and passed its third and final reading on 20 October 1992 (Hansard, 15 August 1992: 10895-10909; 16 August 1992: 10970-10985; and 20 October 1992: 11878-11897). The commencement date for the new Act was set for 1 April 1993.

Summary of final period of change

In summary, the period 1991 to 1992 was a time of re-investigation and relitigation of the role of government in the management of occupational safety and health. At the end of the process officials of the OSH Service, with the support of other government agencies, had successfully resisted Treasury proposals that would have seen the almost total withdrawal of the State from oversight of safety and health in the workplace. Change though was dependent upon the support of employers' representatives. Throughout the period, representatives of big business, in the form of the Top Tier Group, were highly

[25] Underline emphasis added.

influential in directing the shape of the legislative change enacted in 1992, and their support for the HSE Bill was critical to its introduction. While the representatives of the Top Tier Group were influential in providing the general direction taken by the HSE Act, the emphasis upon "hazard management" reflects the current state of knowledge of senior officials within the OSH Service.

Summary of Analysis

The process of change in New Zealand's occupational safety and health policy between 1981 and 1992 is situated within a historical context dating back thirty years to 1945. Subsequent to this historical period, change can be seen to have proceeded through three stages; an initial period starting in 1981 and finishing in 1992, a second period running from 1989 to 1990, and a final period from 1991 to 1992.

The period between 1945 and 1975 can be characterised as a time of sporadic, but significant, calls for administrative and legislative amalgamation. The major calls for change occurred in government reports. In each case, the call was met largely by no government action, or action of little consequence. It appears that real pressure for change only began in the mid 1970s after the occurrence of major industrial accidents, and pressure from rank and file union members upon union leaders for action.

At the beginning of 1981, the beginning of the period of initial change, union and employer organisations had no formal role in the formation of occupational safety and health policy. However by 1988, the unions had succeeded in establishing a tripartite consultative process for change through the mechanism of ACOSH. The unions were particularly influential after the election of the Labour Party Government in July 1984. Unions wanted change that would empower workers, employers wanted change that would lessen government

regulation and bureaucratic interference. Officials were not particularly supportive of change, particularly any administrative change. Little change of legislative substance occurred though, until the Minister of Labour took personal charge of the discussions early in 1988. Policy debate in this period was dominated by acrimony over the introduction of a system of health and safety committees. Action by government on the issue eventually happened with the publication in July 1987 of a compromise voluntary CoP for Health and Safety Committees and Representatives.

Administratively, in 1987 change had begun to occur within the DoL and the DoH that directly impacted upon occupational safety and health. These changes though were due to pressures upon public service organisations from politicians demanding greater accountability and efficiency in government agencies, rather than any real thought about what was best for occupational safety and health. Major proposals for legislative and administrative change did not appear until June 1988 after personal intervention by the Minister of Labour. The administrative proposals suggested by the ACOSH Report, had they been accepted, would have seen a significant change in the control of occupational safety and health administration away from government agencies to a new set of organisations that would have been more amenable to tripartite supervision.

During the period 1989 to 1990, officials voiced vociferous opposition to the ACOSH proposals for administrative change. The advice given by the Officials Working Party in May 1989, while not unanimous in its recommendations, was sufficiently influential to bring about a significant modification to the ACOSH recommendations. Although unions weren't wholly successful in their administrative suggestions, they were successful in obtaining all their other demands for positive acknowledgement of workers' rights, and the

introduction of a system of compulsory health and safety committees and representatives. At the end of this second period of change, the final administrative changes that were to take place had been introduced, and legislative proposals were mooted that promised to seriously challenge employer control of workplace health and safety.

The final period of change, 1991 to 1992, brought a new Government favourable to employers to power. It re-investigated the role of government in the management of occupational safety and health. In this period, officials of the OSH Service successfully resisted Treasury proposals that would have minimised State oversight of occupational safety and health. Representatives of big business, in the form of the Top Tier Group, were particularly influential in shaping the general policy direction of 1992 legislative change, and for ensuring its introduction. However the emphasis upon "hazard management", in the form of Loss Control, reflects the current state of knowledge of officials within the OSH Service.

Having described in some detail the process of change and associated policy debates, the next chapter develops an explanatory narrative that builds upon the description and evidence presented so far. The chapter will present analysis and conclusions about the New Zealand origins of change, and the determinants of the change process. In addition, answers to questions including the following will be given.

- Why did it take ten years for change to occur?
- How is that a Labour Party Government after six years in power failed to complete legislative reform of benefit to workers?
- Would the National Party Government have initiated change if it had not of been faced with the OSH Bill on the Parliamentary table?

Furthermore, comparisons will be made between the New Zealand experience and the determining factors and policy issues identified in the literature reviewed in Chapter Three.

CHAPTER 6: EXPLAINING THE NEW ZEALAND EXPERIENCE

Introduction

In the previous chapter, the recent New Zealand experience of occupational safety and health policy change was described in some detail. In this chapter, an explanatory narrative is presented that focuses upon identifying and assessing the factors that have determined what changed in New Zealand between 1981 and 1992. Answers to other questions will also be provided, questions such as: why did it take ten years for change to occur; how is that a Labour Party Government after six years in power failed to complete legislative reform of benefit to workers; and, would the National Party Government have initiated change if it had not of been faced with the OSH Bill on the Parliamentary table?

Analysis indicates that the New Zealand specific determinants of change include a range of structural and agency variables that have been identified in the literature reviewed in Chapter Three. Furthermore, it is clear that a sharp political division exists between the two main political parties over the issue of workers' rights. It is also apparent that the employers' organisations were adamantly opposed to any strong statements of workers' rights. Interview evidence suggests as well, that the policy framework within which occupational safety and health policy is discussed in New Zealand has undergone significant broadening. In the latter half of this chapter, using theory, it is argued that the origins of change in New Zealand can be explained as representing a crisis of rationality and a crisis of integration. Furthermore, the change process demonstrates a dynamic relationship between structural and agency forces: forces that together determined the eventual outcome.

Initial insights

Summarising the views of participants

The process of beginning to understand the transformations that have occurred in New Zealand starts with the presentation of brief summaries of interviews conducted with key participants involved in the process. From these interviews, initial insights into the policy debates and the determining factors were gained. The perspectives presented below are summaries of interviews with representatives of organisations at the core of the policy debates and decision-making process. Each perspective corresponds to a particular set of organisational actors. The perspectives presented reflect the views of representatives of: the central trade union movement in New Zealand - the Council of Trade Unions (CTU); the main employers group - New Zealand Employers Federation (EF); the Department of Labour and the Occupational Safety and Health Service (DoL and OSH); professional bodies; and, representatives of political parties in Parliament, and other government agencies. All the interviewees participated at some stage in the major committees that were established at various stages of the change process, or took part in helping to make the decisions that were made at the political level. In sum, the accounts provide a personalised view of the origins of the change process, reasons for the change outcomes, and insights into the policy debates. The accounts also provide information about the behaviour of the actors.

Unions' perspective

"In the early 1980s the Factory and Commercial Premises Act happened; it was really just tidying us up" (Interview 3, 1995:149-150).[26] "Then there was the blossoming from the union point of view...that was allowed because of personalities and because of the

[26] The number after the colon refers to line numbers in the interview transcript.

international scene" (Interview 3, 1995:150-152). However, "the unions have been peripheral to the change process probably all along, probably slightly less so during the Labour regime, but completely now in the National regime" (Interview 1, 1995:119-121). The process "was [a] mixture really of constructive dialogue and frustration. Yeah I think frustration, a change in position from the Employers Federation, and a change in and obstructive approach from the officials who really provided very little support at all" (Interview 2, 1995:116-118). "We were being led up a blind alley in a way...we wasted a lot of energy" (Interview 4, 1995:300-303). In the end, I think, "we really disagreed about means to ends" (Interview 4, 1995:510).

Employers' perspective

Participating in the change process was "frustrating" (Interview 7, 1995:562). The changes and their origins were a "reflection of what was happening both overseas and in New Zealand. The departments...were not doing their job very well, and...what could potentially happen [was] something to go very very wrong and, as a consequence of that, legislation could be put in place, thoughtlessly, in response to a situation which was inevitably my god we've got to do something about this because we haven't done anything about it for the last 50 years" (Interview 6, 1995:958-963). "So...it was very important that the employers [started] to get an understanding of the issues" (Interview 6, 1995:963-964). As for the administrative changes, they were "more disabling than constructive" (Interview 5, 1995:488). The administrative changes were "a lost opportunity" (Interview 7, 1995:1099). The changes were a lost opportunity "partly as a result of government reforms and general departmental reforms, so the best people left and the old lags stayed on" (Interview 7, 1995:1130-1131). "So the tragedy was not that the Labour Department won the

battle, despite all the underhand [things] they did, but then they...haven't got it right" (Interview 7, 1995:1169-1170).

Officials' perspective

The process can be seen as a set of "unfolding events driven by social and economic needs" (Interview 11, 1995:240). At the end of the Walker Report the Department "had a very strong agenda of promoting the value of a "One Act One Authority" (Interview 11, 1995:228-229). In saying this, "you must give credit to the Council of Trade Unions and the Employers Federation", particularly during the period of ACOSH, for promoting to government the issues and supporting the need for change...even if they did so for different reasons" (Interview 11, 1995:229-230). The process was in many ways "ad hoc", there certainly wasn't "any grand plan" (Interview 13, 1995:1067-1068). The changes that have happened can be seen as evolving, "in the first instance, from piecemeal legislation to an umbrella piece which tried to impose a safety and health framework based on a Robens-style model. The second phase was then taking those same principles of umbrella but fitting it in more to...having clear accountabilities on those who control the workplaces, and demanding a certain level of outcome from that" (Interview 11, 1995:703-707). The shift has been the result of the "distillation of various influences", and "quite frankly...the detail has come from within the Department" (Interview 13, 1995:1067-1069). There wasn't much by way of direction from the various Ministers of Labour [in the Labour Government], "we actually got a lot more constructive criticism from the National Government than we did from the Labour Government" (Interview 13, 1995:1070-1073).

Professionals' perspective

"The Factory And Commercial Premises Act was obsolete...even probably the day it was produced. The OSH Bill was driven by the Council of Trade Unions and that sort of mentality of trying to be prescriptive and getting...employee involvement" (Interview 17, 1995:1308-1313). The "HSE Act has gone to saying these are what the outcomes are" (Interview 18, 1995:1381-1382). In terms of the change process, "it's been a very zigzag...and it could have been a lot more efficient if the industry experts had been taken note of. I think that's the failing. If ACOSH had continued, or some similar organisation, or committee of experts if you like, of which there is no shortage of in New Zealand, then...we could have made sure that the legislation at the end of the day was kept simple but very practical, and was prescriptive enough to make sure things happened without telling people how" (Interview 17, 1995:1148-1154). "So I think it's an opportunity missed" (Interview 17, 1995:1157). In saying that "there's been a huge, in terms of legislation, change in philosophy of how business should be run...and yet there hasn't been a huge amount of money...spent on educating...people within industry to the changes" (Interview 18, 1995:1169-1173).

Others' perspective

The change process has "been pretty slow" (Interview 14, 1995:462). In saying that, it was also "interesting because the way it went off out this way, and then the opportunity came to go that way" (Interview 16, 1995:512-513). "The effect of the OSH Bill ...was very interesting...because it actually committed the employers to doing something that they didn't want to do, and they did it almost willingly.... If nothing else I think that is the most significant advantage of that period of time. It took the Employers Federation and shipped them from here to there, and they did it and said they would do it, because it was the lesser of

all the evils" (Interview 16, 1995:526-531). "So I'm not worried about the length of time it took.... because although there was no change in the legislation for a longer period of time, it actually made some people, some key players in big organisations shift ground" (Interview 16, 1995:535-537). "The greatest drive, [for change], was in the OSH [Service of the Department of Labour], and secondly with the Employers Federation because they wanted an Act that was different from the OSH Bill" (Interview 16, 1995:772-774). The OSH Service was driving it because it "was their responsibility...to make sure...that the legislation under which they work was adequate to do the job, and what they had [in the OSH Bill] was a miscarriage. They had an odd child, they had a miscarriage and then they came up with something new" (Interview 16, 1995:786-792). Finally though, "the politicians have the greatest influence because they're the ultimate determinants, and they're only changed if public opinion changes" (Interview 14, 1995:337-338).

Initial insights - policy debates, roles, explanations

Policy debates and outcomes

Legislatively, interviewees from all perspectives identified a similar range of changes in the period between 1981 and 1992. The identified changes included extension of coverage to all workplaces, a shift in the level and type of prescriptive regulation promulgated, and alternating shifts in the extent to which workers' rights were acknowledged by government. Administratively, the most significant change that occurred, was the consolidation of all government-related occupational safety and health enforcement functions, under the direct or indirect control, of a newly created Occupational Safety and Health Service (OSH Service) within the Department of Labour.

However, while there was broad agreement as to what the main changes were, interviewees characterised the changes and differences between the Factory and Commercial Premises Act 1981 (F and CP), the Occupational Safety and Health Bill 1990 (OSH Bill), and the Health and Safety in Employment Act 1992 (HSE Act) in different ways. The characterisation of the New Zealand change outcomes presented previously in Chapter 4, reflects the range of ideas expressed in all the interviews. Representatives of the OSH Service in particular suggested that each piece of legislation should be seen as reflecting a combination of characteristics that can be summarised as representing a particular philosophical approach, or model, to the management of occupational safety and health by government (Interview 11, 1995:345-396; Interview 12, 1995:984-1043; Interview 13, 1995:1128-1140).

While there are continuities between the three pieces of legislation - as described in Chapter 4 - one of the must striking things about the OSH Bill and the HSE Act is that they clearly reflect the existence of class preferences and differences between the two main political parties - the Labour Party and the National Party. The OSH Bill reflects the views of the union movement and their political supporters in the form of the Labour Party Government, while the HSE Act reflects the position of employers and the National Party Government. The key difference between the two pieces of legislation concerns the degree of recognition accorded to workers' rights. In the OSH Bill, there are 'strong' statements of worker's rights. The HSE Act in contrast, at best, contains limited reference to 'weak' forms of workers' rights. A notable thing about the debate over workers' rights is the similarity in extremity of opposition by New Zealand employers to any recognition of workers' rights to that reported in the literature reviewed (e.g. Szasz (1984) about America, and by Walters (1983) and Sass (1989) regarding Canada). The employers' opposition to

any strong statements of workers' rights was freely acknowledged by some of the representatives interviewed (Interview 5, 1995:60-65; Interview 6, 1995:580-583).

Another interesting point that emerged out of the interviews with employers' representatives was an acknowledgement of the fiction of distinguishing between occupational safety and health and industrial relations as separate policy issues. The division between the two is particularly spurious when discussing the introduction of health and safety committees and workers' rights (Interview 7, 1995:303-306, 782-784). As one employers' representative put it:

> "The employers' line was that this [was] not an industrial relations issue, we want industrial relations kept out of it, that was our absolutely solid line. But the reality is that when you're talking about health and safety representatives and so on, you can't do it without the labour relations framework set up" (Interview 7, 1995:317-20). "Once you've done that, once you've looked at what your industrial relations philosophy is, then the other things are going to flow out of that" (Interview 7, 1995:828-829).

In sum, the division between occupational safety and health and industrial relations is both ideological, and a practical negotiating tactic. In contrast to the employers' position, the unions' attitude, from the start of the process, has been to recognise that occupational safety and health is often a source of industrial conflict, and an industrial relations matter (Interview 3, 1995:89-119).

The existence of a relationship between occupational safety and health policy and industrial relations policy was recognised by all interviewees particularly in regard to the HSE Act and the Employment Contracts Act 1991 (ECA). The crux of the connection is the existence of an ideological and legal framework in the ECA, reinforced by the HSE Act, that restricts

the power of workers to act positively on behalf of their own health and safety. One union representative interviewed commented that a "triad" (Interview 2, 1995:205) relationship existed between the employment, accident compensation, and occupational safety and health law reforms that took place between 1990 and 1992. One employer representative said:

> "I think the Employment Contracts Act kind of cracked the shell, ACC and OSH collectively...broke it wide open. I don't think, retrospectively, that ACC by itself without OSH or OSH without ACC would have worked to the same extent" (Interview 5, 1995:43-47).

Similarly, a union representative commented that the relationship between the HSE Act and the ECA was of particular note because it involved "a policy change with the government saying that the conditions of employment, of employees including health and safety conditions, are a matter for managers to manage...to the exclusion of employees and unions" (Interview 2, 1995:194-197).

The above interview material offers the opportunity for initial insights about the nature of the link between occupational safety and health policy and industrial relations policy in New Zealand. Where occupational safety and health policy involves discussion of workers' rights then occupational safety and health policy cannot be debated without reference to industrial relations policy. However, where an issue is being debated that does not touch these matters, for example the level of protection to be established in a technical standard, then occupational safety and health policy can be separated from industrial relations policy. The relationship between the two policy areas is represented in Figure 6-1 on the next page.

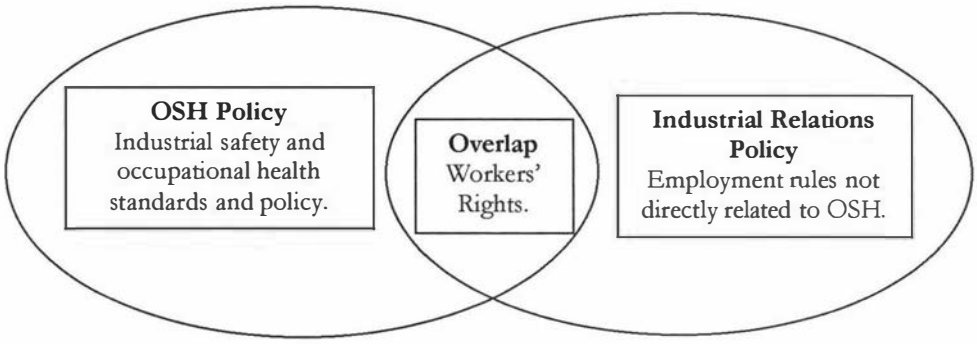

Figure 6-1: Relationship between occupational safety and health policy and industrial relations policy.

While the above insight and figure offers a clarification of the relationship between occupational safety and health policy and industrial relations policy in New Zealand, other interview evidence suggests that there has been a shift since the mid 1980s to broaden the connection between occupational safety and health policy to wider "labour market" policy considerations (Interview 11, 1995:130-140). The shift is significant because the 'labour market' perspective is defined by DoL representatives as deriving from neo-classical economics, a discipline which would suggest that: occupational safety and health is an apolitical matter; safe working conditions should be left to the market to negotiate; and, there should be minimal interference in the process from outside parties particularly government (Interview 11, 1995:139-140; Interview 13, 1995:882-884). As a consequence of this perspective, occupational safety and health policy is no longer discussed strictly in terms of the paradigms of 'industrial safety' or 'occupational health', or within a narrow industrial relations framework that refers solely to the employment relationship. Rather, decisions about occupational safety and health policy are also situated alongside policy concerning immigration, employment, and training.

Another policy connection made by some of the interviewees, was a link between occupational safety and health policy and accident compensation policy. In all instances, interviewees who made the connection commented that they believed New Zealand's

accident compensation regime has actually hindered the cause of injury prevention. Injury prevention has been hindered because New Zealand's comprehensive accident compensation coverage and "no fault" system, has meant that since its introduction in 1972 there has been little economic incentive for employers to be proactive about health and safety at work (Interview 3, 1995:658-660; Interview 18, 1995:1081-1090).

The identification of the above links between occupational safety and health policy and other policy areas suggests that the previous insight needs to be modified. Where occupational safety and health policy involves discussion of workers' rights then occupational safety and health policy cannot be debated without reference to industrial relations policy. However, where an issue is being debated that does not touch these matters, for example the level of protection to be established in a technical standard, then occupational safety and health policy can be separated from industrial relations policy but not necessarily other policy areas: particularly accident compensation, immigration, industry training, and employment.

In sum, since the mid 1980s in New Zealand, decisions about occupational safety and health policy have taken place in the context of a wider and more complex set of interlocking policy areas than just industrial relations. Currently, the main policy areas can be summarised as involving 'labour market' policy and 'accident compensation' policy. The connections, boundaries and overlaps between the three policy areas are represented in Figure 6-2 on the next page.

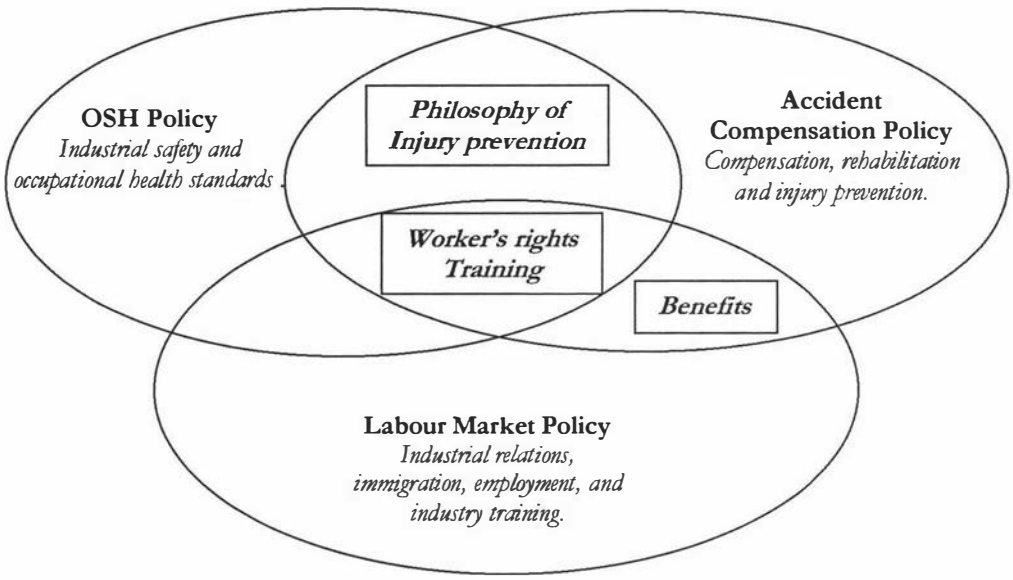

Figure 6-2: Current New Zealand occupational safety and health policy connections.

Origins of change

The origins of change are ascribed to different sets of influences depending upon the perspective of the actor interviewed. Particularly influential for the union movement was the offer, in the early 1980s, of assistance from people with expertise in occupational safety and health (Interview 3, 1995:39-43, 553-556). Unions were also inspired by legislative changes taking place in Scandinavia and Australia which promoted the extension to workers of rights that would enable them to protect themselves (Interview 3, 1995:16-18). Another consideration included the recognition that the union movement had to modernise, and occupational safety and health was part of that process (Interview 3, 1995:19-28).

Employers generally, were motivated by frustration with overlapping, constricting, and conflicting government regulations and bureaucracies (Interview 6, 1995:34-38). The move to closer economic relations with Australia, and the changes that were taking place in Australia in the early 1980s, was also a source of inspiration for change (Interview 5,

1995:287-289). In addition, in the wake of major overseas disasters such as Bhopal, Piper Alpha and Seveso, the multi-national companies with New Zealand operations - such as ICI, Shell, and Mobil - were uneasy about the possible consequences of rising public concern about hazards associated with new chemicals and new complex industrial plants (Interview 6, 1995:275, 291-298). There was also "the burgeoning of the occupational safety and health educational industry...and the first recruits were coming out from it beating the drum" (Interview 5, 1995:287-289). Furthermore, "there was a slow but steady...significant move within the unions" which required a response from employers (Interview 5, 1995:289-290).

OSH Service officials wanted change that would update the legislation in line with overseas developments, and that would satisfy the criticisms they were facing from unions and employers alike (Interview 11, 1995:82-83; Interview 13, 1995:585). Change was also required to mollify rising public concern about occupational hazards (Interview 11, 1995:82-83).

Professionals interviewed also identified the same factors already mentioned (Interview 17, 199523-29, 242-245, 331-336; Interview 18, 1995: 1539-43, 1081-1090). One professional summarised the origins of change as resulting from:

> "dissatisfaction by the unions, by big multi-nationals, [and] by employers all saying that the current thing [the Factory and Commercial Premises Act 1981] didn't do what they wanted it to do. They probably wanted completely different things out of it, but nonetheless it didn't do what they wanted it to do, and I suppose if enough people say that to politicians eventually, and it is eventually", they will act (Interview 18, 1995:1539-43).

While it can be seen that the different actors had their own reasons for change, a notable theme that commonly appears in all the perspectives, is the importance of the influence of

overseas legislative change. Overseas legislative examples, particularly those in Scandinavia and the States of Victoria and South Australia in Australia, were influential in providing union representatives and officials with examples to follow, or in the case of employers to be avoided (Interview 3, 1995: 116-119; Interview 7, 1995:100-113, 841-843, 871-873; Interview 11, 1995:481; Interview 13, 1995:73-76, 84-90). Unions saw the Victorian legislation of the mid 1980s as a good model of how health and safety representatives could be empowered. The employers saw the Victorian model as something to be avoided at all costs, particularly any extension of workers' rights. Department of Labour officials saw the Victorian legislation at the time, as an administrative example that might be adopted (Interview 11, 1995:173-174).

Perceptions of the 'roles' played by various actors in determining the eventual outcomes

One of the most striking features of the interviews, was the depth of frustration expressed by all the actors with the process. A number of the informants, across all the perspectives, expressed frustration with their experience of the ACOSH discussions; a few also believe that the administrative changes in particular represent a "lost" or "missed" opportunity for meaningful reform of occupational safety and health administration (Interview 7, 1995:1099; Interview 17, 1995:1157). Union representatives expressed particular frustration with the employers changing their negotiating position, particularly in regard to the discussions about the introduction of a code of practice for health and safety committees (Interview 2, 1995:75-86, 219-223, 350-356). An interesting aside to this is the acknowledgement in the employer interviews that public expressions of common agreement between employers (Farlow, 1989) and unions (Wilson, 1989) in June 1989[27] over the need for reform, and the direction that reform should take, were more agreements

of 'form' rather than 'substance'. Agreement existed over the 'form' of words to use, but there was little agreement about the 'substance' of what those words meant. As an illustration of the differences that could occur, one interviewee said:

> "When [unions] talk...[about] participation, [they] mean union health and safety delegates, only union people, nobody else counts, and they will...be responsible to the union and all the things that that implies.... When employers talk about employee participation they mean anybody who works here can participate, if we actually want to go that far anyway, and they'll be responsible to us because we're the ones who pay the money and we're not going to have any outside body telling us how we're going to run our workplace" (Interview 7, 1995:417-422).

One area though where the employer and union representatives interviewed were in complete agreement, was in their disgust with the behaviour of officials. All the interviewees, except for the Department of Labour representatives, uniformly expressed frustration, and some lingering animosity, over what they perceive as "obstruction" by government officials over the ACOSH reform proposals (Interview 1, 1995:71-72; Interview 2, 1995:24-27, 116-118, 206-207; Interview 4, 1995:81-83, 374-377; Interview 6, 1995:759, 767-769; Interview 7, 1995:38-40, 738-745, 1015-1029; Interview 18, 1995:105-108). In addition, it is clear that all the non-governmental actors believe that government officials, in particular Department of Labour officials, had an unfair advantage by virtue of their servicing of ACOSH, and in their access to the Ministers responsible for the reform process. The union, employer, and professional informants also asserted that the central position of the DoL in the reform process meant that representatives of the department could relitigate decisions they didn't like, and that they could offer alternative advice to Ministers that the representatives of non-governmental organisations weren't privy to until

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[27] The comments were made publicly at a Conference on OSH Reform organised by the Industrial Relations Centre at Victoria University of Wellington in June 1989. A number of the papers given at the Conference were subsequently published in the following issue of the New Zealand Journal of Industrial Relations.

it was too late to influence decisions (Interview 1, 1995:71-72; Interview 2, 1995:24-27, 116-118, 206-207; Interview 4, 1995:81-83, 374-377; Interview 6, 1995:759, 767-769; Interview 7, 1995:38-40, 738-745, 1015-1029; Interview 18, 1995:105-108).

While the role played by officials came under severe attack, other interviewees - aside from the DoL - offered a defence for the officials. These informants pointed out the difficult position that officials find themselves in as they attempt to mediate between conflicting positions. These are positions that in many cases are not resolvable without compromise by both parties. Where compromise isn't forthcoming, and officials decide upon a compromise solution, they end up being attacked by both the opposing parties and classed as being ineffectual. In sum, officials find themselves in a 'no win situation' (Interview 3, 1995:400-415-416, 466-467; Interview 2, 1995:505-510). Another factor to recognise, is that officials had other constraints upon their actions that other actors at the time may not have given due weight to. The clearest example of this is the criticism levelled against the officials, by union and employer representatives, over their failure to support the ACOSH Report (1988) recommendations for new tripartite administrative structures. Officials point out that, given the demands from politicians for clear lines of accountability and the severe economic constraints placed upon them, any proposals that could not satisfactorily meet the criteria of accountability and efficiency were not going to be acceptable. Furthermore, given the total environment surrounding officials, it could be argued that the reforms of the DoL in 1987 - prior to the ACOSH Report - were not a cynical attempt to pre-empt unwanted recommendations from ACOSH, but were pragmatic and understandable responses by officials to other political demands for change (Interview 9, 1995:10-11; Interview 10, 1995:23-24; Interview 11, 1995:780-796).

Participants explanations for the outcomes

One of the interesting questions to ask about the change period, is why certain proposed changes didn't eventuate. The change that didn't eventuate of particular interest here - apart from the non-introduction of 'strong' statements of workers' rights - was the proposal by ACOSH for a completely new set of tripartite administrative structures, and the formation of a dedicated occupational safety and health research institute. A similar way of examining the issue of administrative reform, is to ask, how is it that the DoL came to be the sole government department responsible for occupational safety and health, given that the 1981 Walker Report recommended otherwise, and the union and employer representatives were keen to see the responsibility for occupational safety and health removed from the department? Other questions of interest were: why did it take ten years for reform to take place; and, would the National Party have introduced reform without the OSH Bill being on the Parliamentary table?

Interviewees pointed to a number of explanatory factors for the length of time taken for change to occur, and the outcomes that eventuated. The factors were:

1. the different outcomes of national elections;
2. the lack of any real direction from Government Ministers, particularly from the Labour Government, as to what officials should do;
3. the difficulty of getting the actors, especially unions and employers, to agree to a common position on contentious issues;
4. the need to respond to other government reforms outside of occupational safety and health, especially in regard to the reform of the public service - as epitomised by the 1988 State Sector Act;

5. the need to ensure that any suggestions for new administrative structures be acceptable to Ministers and other government departments in terms of 'models of accountability'; and
6. the influence and level of knowledge of individual Ministers and officials within the DoL.

The 1992 legislative outcomes are fundamentally explained as the consequence of the changes in Government that occurred after the elections of 1984 and 1990 (Interview 2, 1995: 10-12; Interview 4, 1995:148-152; Interview 6, 1995:727-728; Interview 7, 1995:10-12; Interview 11, 1995:156-160; Interview 13, 1995:64-71). The first election was important because it brought to power a Labour Government committed to economic and social reform. The 1990 election was important because it changed the Government, at the time when the OSH Bill was on the Parliamentary table, and the new Government was opposed to the direction taken in the OSH Bill. The 1984 election saw the process of occupational safety and health reform begin; the 1990 election determined how the process of reform ended.

While, at the structural level of sociological analysis, the process can be seen to have been determined by the balance of political power, interviewees also clearly indicated that individual Ministers and officials within the DoL were equally important in forcing the pace of change, and in shaping the detailed content of the reform outcomes. All the informants commented on how the speed of change fluctuated depending upon the level of interest shown in the matter by the different Ministers responsible for the process of reform (Interview 1, 1995:92-100, 200-208; Interview 2, 1995:66-67; Interview 6, 1995:69-68; Interview 7, 1995:731-745; Interview 11, 1995:558-560; Interview 13, 1995:1067-1073;

Interview 17, 1995:43-46, 151-155). Under Labour, the Minister initially responsible was Mr Stan Rodger, who delegated the task in the first term of the Labour Government to his Under-Secretary Mr Eddie Isbey. In the second term of the Labour Government, the Minister Stan Rodger took a more direct interest, and the process began to move faster. However changes within the Labour Cabinet in 1989 saw ministerial responsibility for the process shift to Dr Michael Cullen. In contrast, under the National Government, one person was responsible - Mr Bill Birch. Mr Birch drove the process through, and gave specific directions to officials about the general direction that should be taken in drafting a new Bill.

The direction of the HSE Act in terms of 'risk and systems management' is acknowledged in the interviews as reflecting the level of knowledge and influence of senior OSH Service personnel who were trained in these approaches to occupational safety and health management. Of particular moment was the cross-over in 1990 of ACC staff trained in the International Safety Rating System to the OSH Service (Interview 13, 1995:913-915, 1266-1278). This came at a critical time when senior officials of the OSH Service were searching for a model of occupational safety and health management that would fit the political and ideological climate within which they were operating.

In terms of the length of time taken to pass legislation, a number of the actors commented that the problem was, quite simply, that occupational safety and health is not a priority political issue for both political parties (Interview 5, 1995:250-253; Interview 6, 1995:941; Interview 7, 1995:76-78; Interview 11, 1995:156-160, 170-173, 480-486; Interview 13, 1995:1087-1088). Labour failed to pass legislation because occupational safety and health reform was not a significant issue compared to the issues of economic deregulation, public

sector reform, and the major social expenditure items of health, housing, and education. This raises the question: would the National Party Government have passed reforming legislation in the absence of the Labour Government's 1990 OSH Bill on the Parliamentary table? A number of informants, particularly union representatives, were horrified at the thought that no legislative change might have been an option, and had not considered the question. Other informants answered the question with a qualified yes (Interview 5, 1995:63-65, 92-96; Interview 11, 1995:156-160; Interview 13, 1995:746-751). National would have passed new legislation, but not necessarily in the current form of the HSE Act, or within two years of coming to power. The reason National passed legislation so soon, it is suggested, was because it was seen as a logical extension of the National Government's labour market changes. These changes were of immediate priority to the Government when it came to power in 1990. In addition, employers wanted change because they were afraid of the OSH Bill. With the changes to employment law in the Employment Contracts Act, employers took the opportunity posed by the new philosophy, and applied the same arguments to occupational safety and health law. In effect the HSE Act appears to be a negation of the OSH Bill, in particular the references to any strong form of workers' rights, rather than a positive affirmation on the part of the National Government or employers to be 'proactive' in the area of occupational injury and illness prevention, proactive in the sense of supporting strong statements of workers' rights and committing more resources to the OSH Service.

Other informants suggested that the delay in reform was a consequence of the Labour Government's early penchant for consensus agreement on issues: agreement that was not forthcoming (Interview 1, 1995:92-100; Interview 2, 1995:97). The desire for consensus meant that plenty of opportunity existed for participants to relitigate areas of concern, and

thus slow things down. It is at this point that the question has to be raised whether the unions' insistence on discussing the introduction of a system of health and committees first, was a strategy mistake: a mistake that cost it the opportunity of achieving other major legislative and administrative reform under a Labour Government. The adherence to achieving the introduction of a compulsory system of health and safety committees was an error given the entrenched employers' opposition, and the apparent unwillingness of the Labour Government to support such a move without a measure of agreement from the employers. As a consequence, the time and energy for reform favourable to unions in other areas of occupational safety and health was dissipated as debate focussed upon an issue that neither of the actors were prepared to move on. In sum, an unintended consequence of the union push for health and safety committees was the loss of an opportunity to meaningfully influence government reform activity in the other areas of occupational safety and health, and to see reform proceed under a Labour Government in those areas.

Other interviewees pointed to several other factors such as the actions of employers' representatives, the lack of unanimity amongst officials, the lack of policy on the topic in the Labour Government, and the workload of the Labour Government which caused it to simply run out of time. Interviewees commented:

- "The employers' representatives can take some credit for mounting a good campaign" (Interview 7, 1995:259-260).
- "It suited the employers to jump up and down, and scream and shout, about being cut out of the process, and agreements being gone back on, because that helped the delay frankly" (Interview 7, 1995:531-533).

- "The other factor I suppose [that] influenced...the outcome was the fact that the departments were still squabbling and couldn't agree" (Interview 7, 1995:318-319).
- "If you wanted to put it down to a single reason, it was probably that the Labour Ministerial structure didn't have a clear enough vision of what they wanted to say - this is what we want now, and we'll get on with it" (Interview 6, 1995:792-794).
- "The other thing that delayed it was that the Labour Government was so busy doing so many reforming issues it was very hard even after getting legislation drafted to actually get it in the House. You really had to have a damn good case to get your time on...the legislative programme" (Interview 11, 1995:274-285).

However, the failure to see faster change in occupational safety and health, particularly legislative change, need not be perceived as a problem (Interviews 11, 13, and 16). The ten year process of reform can be seen as beneficial because it enabled a major rethink by officials of the issues, and the way in which occupational safety and health in New Zealand could be legislated for and administered. From this viewpoint, a quote from Freidman and Ladinsky (1967) concerning social change and change in early American industrial accident law, could equally be applied to New Zealand:

> "What appears... as an era of 'lag' was actually a period in which issues were collectively defined and alternative solutions posed, and during which interest groups bargained for favourable formulations of law. It was a period of 'false starts' - unstable compromise formulations by decision makers armed with few facts, lacking organisational machinery, and facing great, often contradictory, demands from many publics. There was no easy and suitable solution, in the light of the problem and the alignment of powers. Different perceptions of the problem, based at least in part on different economic and social stakes, led to different views of existing and potential law. 'Lag' therefore at most means

> present-minded pragmatism rather than long-term rational planning" (Freidman and Ladinsky, 1967:76-77).

Explaining the New Zealand process of change

In this section, theoretical concepts derived from the work of Dwyer (1983; 1984; 1991; 1992; 1995), Touraine (1955; 1965; 1968; 1971; 1977; 1981; 1988a and b; 1989; 1990; 1991; 1992) and Touraine *et al* (1955; 1961; 1965; 1983 a and b; 1987) will be used to explain the New Zealand experience of occupational safety and health policy change between 1981 and 1992. The concepts have been selected for their perceived ability to coherently organise and elaborate the range of explanatory factors highlighted by interviewees, and identified in the literature reviewed in Chapter Three. Fundamentally, the explanatory approach taken is a theoretically informed one that attempts to bridge the divide between pluralist and marxist accounts of policy change found in the occupational safety and health policy literature. In essence, the following explanation constitutes the beginnings of a theory of the "middle-range" of change in occupational safety and health policy in advanced industrialised democracies. The theory is developed in the next chapter.

The work of Dwyer (1991) has been chosen because he has presented a sociological analysis of occupational injury causation that acknowledges the influence of institutional and other social factors in shaping how injuries are produced in the workplace. However, Dwyer does not generate any strict propositions about what the institutional factors might be, or how they might relate to the production of injuries within the workplace. In the rest of this chapter, and the next, statements will be generated concerning what the policy issues are, and how they might influence how workplaces injuries and illnesses are controlled in the workplace. By making this additional and original contribution to Dwyer's work, it is hoped that academics, policy analysts, occupational safety and health

professionals, and students will have a better understanding of the relationship that exists between occupational safety and health policy and the control of the production of workplace injuries and illnesses.

The theoretical work of Touraine has been utilised because his ideas on social change are thought to offer a way of developing a more nuanced theory, than currently exists in the literature, of change in occupational safety and health policy in advanced industrialised democracies. The particular attraction of Touraine's work is a perception that his concepts suggest a way of bridging the divide between pluralist and marxist accounts of occupational safety and health policy change. In other words, Touraine's concepts are perceived as providing a theoretical alternative that acknowledges the importance of both structural and agency factors in determining change outcomes. The application of Touraine's concepts to occupational safety and health policy in this manner also constitutes an original contribution to the international literature on occupational safety and health policy.

Origins of change - crises of rationality and integration

According to Touraine (1977:87), change occurs as the result of a crisis in the social system. Crisis can be experienced at three points in society. First, a crisis of historicity may occur when rupture occurs in the sphere of historicity that comprises the dominant modes of knowledge, economic accumulation, and culture of a nation-state. This type of crisis occurs because of tension in the system between pressure for change and pressure to maintain the status quo. The second point of crisis is that of rationality; in this form of crisis the cultural orientations and economic and social resources of a society are opposed to each other (Touraine, 1977:87-88). The third form of crisis is one that occurs at the point of integration. In this form of crisis the forces of production and consumption are

opposed to the means of organisation and distribution. In addition to these three points of crisis, a total system crisis may occur when all three crises occur at the same time (Touraine, 1977:88). When a total system crisis occurs, social rupture (a total breakdown in the system) may eventuate. For Touraine (1977:389-93), the chance of rupture occurring depends upon the ability of the system to adapt when under pressure. In relatively open systems, change need not be violent as reform may take place through 'developmental movement'. In relatively closed systems, rupture is more likely (Touraine, 1977:389). Using these ideas, it is suggested that the origins of change in New Zealand's occupational safety and health policy between 1982 and 1992 are the result of 'a crisis of rationality' and a 'crisis of integration'.

In terms of occupational safety and health policy, a crisis of rationality occurs when existing regulatory modes are perceived to be no longer working nor appropriate for new technologies and production methods. A crisis of integration is one where a social problem exists (i.e. the occurrence of occupational injury and illness) that involves a contradiction in the way work is organised in capitalist economies. Both of these types of explanation can be found in the literature reviewed. The crisis of rationality explanation can be found in pluralist explanations, in historical social-legal studies, and the industrial relations analyses reviewed in Chapter Three. 'Crisis of integration' explanations are those typified by marxist accounts which argue that occupational safety and health is intrinsically a fundamental social problem involving contradictions in the organisation of work in capitalist economies. Change in policy occurs when social integration breaks down as conflict erupts between employers and employees over working conditions.

In terms of New Zealand, it is clear from the interviews and the documentary material presented, that the change process primarily originated in the mid-1970s within organisations representing workers and employers. Unions desired change because the existing arrangements were perceived as ineffective - particularly from 1974 onwards with the death of five workers in a chemical explosion. There was also awareness amongst union leaders and researchers of changes in overseas occupational safety and health legislation. The awareness led to the idea in the early 1980s in the union movement that the time was appropriate for New Zealand to update its legislative and administrative arrangements. At the same time employers desired change because they thought the multiplicity of administrative systems and regulatory provisions were technically and economically outmoded, interfering, and ineffective. Another pressure point for change was awareness amongst DoL officials of increasing concern within the general public, from the late 1970s onwards, about the effects of new chemicals and technology. The rise in public concern is attributed to concern about the health effects on communities and the environment of events such as a large chemical fire in a suburb of Auckland in 1984, and the building of large scale industrial-chemical plants such as the Motonui Synthetic Fuel project in Taranaki and the Marsden Point Oil Refinery Expansion at Whangarei. Another source for change was the demand from Government Ministers, since the mid-1980s, for greater administrative efficiency and accountability from government agencies.

The demands for change in occupational safety and health policy can be characterised and explained as a crisis of integration and a crisis of rationality. The demands for change from unions on the basis that the existing occupational safety and health policy was failing workers and that workers needed more power to protect themselves, would indicate a crisis of integration. In contrast, demands for change from employers' representatives on the

basis that the existing regulations were outmoded and inefficient, indicate a crisis of rationality.

Additional evidence for characterising and explaining the origins of change as constituting crises of integration and rationality can be found in the particular policy solutions put forward by different antagonists throughout the process. A crisis of integration is reflected right from the first moment in 1981 when the concept of compulsory health and safety committees and delegates was first mooted. Ever since this point, employer and union representatives and their respective political allies in the National and Labour parties, have clashed over how best to organise management and employee relations to prevent workplace injuries and illnesses. Union representatives have consistently advocated for, as their prime objective, the compulsory introduction of health and safety committees and representatives, and enhanced rights for workers. The demands have just as strongly, and consistently, been resisted by employers who see the move as an encroachment upon their prerogatives to manage as they see fit. The debate constitutes a crisis of integration in that it revolves around the division of power and authority between parties who do not always share a common interest: employers are primarily interested in profit, workers are primarily interested in a just reward for their effort and in protecting their health. If power were to be more equally shared through health and safety committees and enhanced workers' rights, employers were particularly fearful that conflict would increase thereby threatening the viability of their businesses. The difficulties of trying to integrate these divergent positions was not lost on officials of the DoL who in October 1988 justified their preferred option by arguing that:

> "the chosen approach should be the one best able to satisfy most of the concerns of most of the parties for most of the time....(and) that no one approach to occupational safety and health policy will be able to satisfy the

> needs of all workers and employers in all situations" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:19, in DoL files).

The incompatibility of the positions, and thus difficulty of integration, is also clearly evidenced by the fact that the debate over health and safety committees and workers' rights was not resolved until a decision was imposed in favour of their introduction in 1987 and 1990 by a Labour Party Government more favourable to workers. A National Party Government at the instigation of employers' representatives promptly reversed this decision in 1991.

As for characterising the pressures for change as a crisis of rationality, further evidence for this can easily be found by referring to the reasons given for administrative change by officials of the DoL, and in the arguments put forward by Treasury advisers in support of their preferred policy solution. Interviews in 1995 with DoL officials, press releases, Cabinet Minutes, and policy papers (outlined in the previous chapter) all show that the administrative reforms from 1987 onwards were primarily motivated and guided by Ministerial concern for improved efficiency, effectiveness, and accountability from government agencies at a time when government finances were under pressure. What was best administratively for occupational safety and health was a secondary consideration. In terms of policy debate, Treasury's argument was strictly an economic rationalist public choice one, highly reminiscent of the work of Viscusi (1979; 1983). The DoL's response, crucially supported by the Justice Department and in the end by a wide range of other government agencies, was to reject Treasury's approach on the grounds that the position was not in fact economically rational for the reasons enunciated by Hawkins (1983; 1984 a

and b; 1987) (see DoL paper "Occupational Safety and Health Legislation", 1 October 1988:13-15, in DoL files)[28].

Determinants of change - rational reconciliation and political power

The examination of the occupational safety and health policy literature in Chapter Three indicated that a range of factors determined policy outcomes. The factors identified as determining a change outcome included the decisions of individual politicians and officials, the value systems and practices of individual officials, the balance of political power at a particular moment in time, the inter-action of organisations, the constitutional and political arrangements of a particular nation, and the dominant political value systems and ideology within a nation.

Marxist analyses such as those by Navarro (1982b; 1983), Walters (1983), and Sass (1986) have particularly highlighted the critical importance of who has control of the legitimate core decision-making apparatus for determining the content of any decision. Writers such as Ashford (1976; 1978), Kelman (1980; 1981), Singleton (1983), and Wilson (1985) have all pointed out how a particular policy reflects the current level of knowledge, values, and beliefs of decision-makers. Public choice theorists and economic rationalists such as Viscusi (1983; 1979; 1996), Smith (1974), Steigler (1971), Dielhl and Ayob (1980), and Oi (1973; 1974) have all argued for the application of economic rational thought to occupational safety and health policy on the basis that their preferred solutions better replicate the operation of society and the economy. Lindblom (1959; 1979) highlights the contingent and incremental nature of much policy change. Wysong (1992; 1993), Mendelof (1979), Boehringer and Pearse (1986) and others have all shown how occupational safety

[28] See Dorman, P. (1996) Markets and Mortality. New York: Cambridge University Press for a recent economic critique

and health policy alters as organisations modify their behaviour in response to that of other organisations, and shifts in the patterns of power between them. Historical-legal method studies point to a combination of all the factors highlighted by pluralist, marxist, and industrial relations studies of occupational safety and health policy. In sum, the literature as a whole suggests that a range of structural, agency, ideological, and material factors determine change outcomes.

In spite of the diverse opinions expressed in the literature, it is clear that a certain amount of commonality exists about what the determining factors are in any policy process. The main factors identified in the literature are: the importance of individual decision-makers; the level of influence able to be exerted by representatives of social groups interested in the issue; the types of external social and economic forces influencing the political system; the range of inter and intra organisational pressures faced by representatives of groups; and, the policy position of the political party holding the balance of power. Given the analysis of the literature and the initial insights generated from the interviews, it is argued in the following sections, that change in New Zealand's occupational safety and health policy between 1981 and 1992 was determined by:

> (a) the particular rational reconciliation and integration into a policy framework, by officials and politicians, of the internal competing inter- and intra-administrative debates and pressures on them with the external ideological and material demands on them by representatives of social groups interested in the policy issue; and

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of Viscusi's approach.

(b) ultimately, the ideological position of the social group holding the political balance of power in the social system at a particular moment in time.

In the following sub-sections the evidence for the veracity of the above statement is presented. In addition, it is argued that the origins, dynamics, and outcomes of the New Zealand change process represent a case of reactionary politics. The New Zealand change process has been reactionary in the sense that the origins of change can be seen as series of reactions to events in Touraine's sphere of historicity - that is; the social areas of culture, knowledge, and economic accumulation. The process of change is also reactionary in that actors' positions on policy issues were formulated, and changed, in response to other actors and other developments in the institutional sphere of activity. Similarly, the 1992 legislative and administrative policy outcomes were a political reaction against earlier proposals put forward by an opposing political party.

Rational reconciliation: the influence of individuals and organisations

At the forefront of the debates about the direction that occupational safety and health policy should take were representatives of the central union and employer organisations - the Council of Trade Unions and the New Zealand Employers Federation respectively. On the government side representatives of the DoL, and representatives of Treasury supported by representatives of the SSC, were equally important. Other contributors to the debates, at various stages of the process, were the representatives of other government agencies affected by the proposed changes. These were the ACC, the Maritime Safety Division of the MoT, the Mines Division of the MoE, the DoH and in latter stages more particularly Area Health Boards (AHBs). The contribution of the Justice Department late

in the process was also vital in determining the final legislative outcome. There was little contribution by politicians in any positive sense to the development of occupational safety and health policy. Where politicians were important was in their decision-making capacity. The role of each of these participants in the change process will now be examined in more detail.

The role played by representatives of unions and employers was absolutely critical to the whole process of starting and finishing the change process. Unions were particularly important in starting the change process. It was their action in presenting their list of demands for occupational safety and health change on 27 November 1984, to the new Labour Government, that led to the opening up of discussion about change in occupational safety and health policy, through the formation of ACOSH, beyond the confines of officialdom (FoL letter to Mr Isbey 26 November 1984, in DoL files). Employer representatives from the Top Tier Group of industry were pivotal to finishing the process when they said they would support change, albeit on their terms, when given the option on 5 July 1991 of proceeding or not proceeding with legislative reform by the National Government (OSH Service Memo of meeting, 5 July 1989, in DoL file HSE Bill and Vol 2). It is clear from the evidence that both groups wanted change even if it was for different reasons. Business supported legislative reform because it offered the opportunity for removal of regulatory restrictions upon their right to manage as they saw fit (OSH Service Memo of Meeting, 21 June 1989, in DoL file HSE Bill and Vol 2; OSH Service Memo of meeting, 5 July 1989, in DoL file HSE Bill and Vol 2). Unions, in the end, supported any reform that promised the maintenance of existing standards, indicated that workers had the right to participate, and held out the hope of re-invigorating official

government action in the area of occupational safety and health (CTU briefing paper for union representatives, 19 June 1991, in CTU file OHS/1/14C).

Apart from being critical to the starting and finishing of the transformation process, union and employer representatives were important for the parts they respectively played in shaping the legislative outcomes at various stages. It is clear that the introduction of the Voluntary CoP for Health and Safety Committees in 1987 was brought about only through the persistence of the union representatives, as was the inclusion of positive statements of workers' rights and training for safety delegates in the Labour Government's 1990 OSH Bill. Equally so, the representatives of employers' organisations were highly influential in shaping the content of the National Government's 1992 HSE Act. Employers' influence was particularly important for the removal of any positive reference to workers' rights in the new legislation, and for the emphasis upon the introduction in legislation of risk management systems and performance standards rather than technical specifications. While employers' representatives were instrumental in introducing the idea of risk management systems into legislation, the particular application of the approach in the form of ideas derived from the International Safety Rating System in subsequent policy, reflects the dominant level of knowledge of officials within the OSH Service.

However, union and employer representatives were not so successful in shaping the administrative reforms; officials from the DoL, Treasury, and the SSC were much more important in this. It is apparent from the documents that, in the period from 1984 to 1988, all government officials involved in the ACOSH process, except for ACC beginning in 1987, resisted any suggestions for administrative change from the unions and employers. Objections consisted largely of rehearsals of the arguments found within the 1981 Walker

Report. Serious opposition to union and employer administrative reform proposals though was not offered until after the 1988 ACOSH Report was published recommending the introduction of a completely new tripartite administrative system. Resistance from this point onwards by officials, especially from the 'control' agencies of government (Treasury and the SSC in this instance) became very strong. Resistance at this stage occurred through individual agencies offering alternative policy advice to their Ministers, and collectively through the May 1989 Report of the Officials Working Party (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989, in DoL files). The Officials Working Party Report advice was given without what union and employer representatives perceived to be adequate consultation. Furthermore, the representatives believed the officials' rejection of the recommendations for administrative reform, was an attempt to relitigate decisions already made by Cabinet. Officials from the Treasury and the SSC were particularly resistant to any new administrative model that involved new expenditure and a model of government management that deviated from the strict lines of accountability between Ministers and public servants implicit in the 1988 State Sector Act, and the 1989 Public Finance Act. Acquiescent in this opposition, was the DoL. Representatives from the AHBs, the MoE and MoT were equally resistant to any suggestion of a loss of autonomy, and constantly relitigated decisions by Cabinet up until the passage of the HSE Act in 1992.

Examples of official opposition to administrative reform in the period 1984 to 1988 are numerous and evident right from the first ACOSH meeting in August 1985. In the first ACOSH meeting, DoH and MoT representatives disagreed with the suggestion from the employers' representatives that administrative change was necessary and pointed to the 1981 Walker Report as evidence for this (1st ACOSH Minutes, 28 August 1985: 2-3, in

DoL File 19/9/3-1 Vol 1). At the fourth ACOSH meeting on 27 May 1986, the SSC representative commented, in response to the call in the union paper on "One Act One Authority" for a National Occupational Health and Safety Commission, that they "had difficulty" with the concept in terms of its practicalities, and if change was to occur it could be done "without setting up a complex new body" (4th ACOSH Minutes, 27 May 1986: 3-4, in DoL File 19/9/3-1 Vol 1). The DoL expressed similar reservations in a letter to the Parliamentary Secretary for Labour Mr Isbey on 26 May 1986 (DoL letter to Mr E. Isbey, 26 May 1986:1-4, in DoL file 19/9/3-1 Vol 1). The DoH representative at the same ACOSH meeting observed that "overseas models did not necessarily apply in this country". Similarly the MoE representative "felt that it was better to keep the technical expertise together so that both safety and non-safety needs could be considered", particularly as "an New Zealand organisation would be too small to...maintain the necessary technical expertise" (4th ACOSH Minutes, 27 May 1986: 4, in DoL File 19/9/3-1 Vol 1). In a paper tabled at the sixth ACOSH meeting on 30 September 1986, the DoL argued that the desirability of change was a matter of "opinion", in that the arguments for change were largely premised upon the application to New Zealand of criticisms found in the 1972 Robens Report on occupational safety and health in Britain, the "evidence" for which was "not so compelling" in the case of New Zealand (DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: section 1.5.3, 1.5.5, in DoL File 19/9/3-1 Vol 2).

No further significant discussion on administrative change occurred until the eighth ACOSH meeting on 17 March 1987. At the meeting the legislation sub-committee of ACOSH reported that while a draft "Work Environment Bill" had been developed, it was "difficult to develop the proposal without also considering the concept of a single

executive" (ACOSH Legislation Working Party Interim Report, 15 March 1987:4, in DoL file 19/9/3-1 Vol 2). Little progress was made though until the eleventh ACOSH meeting on 16 February 1988. At this meeting union and employer representatives, in reference to a DoL paper of December 1987 identifying a number of current Government reviews relevant to OSH management (DoL paper, Current Reviews of Aspects of Government Administration with Applicability to OSH Management: 1, in DoL files), expressed concern over the "number of initiatives being undertaken in this area", and "that there was general support for bringing the various agencies together under one organisation" (11th ACOSH Meeting Minutes, 16 February 1988:2, in DoL File 19/9/3-1 Vol 2). After an initial suggestion from the ACC representative for a "more adventurous and broader approach" it was eventually decided that the "working party was to look at the fundamental requirements of an administrative organisation for one authority and not simply at a way of amalgamating existing administrative structures" (11th ACOSH Meeting Minutes, 16 February 1988:3, in DoL File 19/9/3-1 Vol 2).

Implicit opposition within the DoL to administrative proposals from any quarter, other than amalgamation of activities under its own umbrella, can be seen in two statements made by the DoL early in 1988. The first involves a discussion paper prepared by the DoL in February 1988 for ACOSH on administrative options. In the paper the DoL briefly reviews a number of occupational safety and health administrative examples found in Western Europe and the Australian State of Victoria, and then sketches a couple of "possible extremes" for New Zealand (DoL paper 'One Act/One Authority' Section 4, 4 February 1988, in DoL file 19/9/3-1 Vol 2). The first "extreme" was for "a purely advisory body" operating much as ACOSH did, "with a government department administering the legislation, carrying out research, developing standards and performing all

other functions" (DoL paper 'One Act/One Authority' Section 4:1, 4 February 1988, in DoL file 19/9/3-1 Vol 2). The second "extreme" was "an autonomous body which would be the employing authority for all enforcement and other staff. The ACC is an example of this type of organisation" (DoL paper 'One Act/One Authority' Section 4:1, 4 February 1988, in DoL file 19/9/3-1 Vol 2). To characterise these administrative forms as "extremes" is ludicrous given that the health reforms that were being implemented were a variation on the first "extreme", and that the ACC system had been operating for over 20 years in the form outlined. It is difficult to conceive of the characterisation of these two administrative examples as "possible extremes" as at best a poor choice of words, and at worst nothing other than a bureaucratic attempt to forestall any administrative reform proposals beyond amalgamation of government activities in the area of occupational safety and health.

In its March 1988 Report, the DoL Review Team commented, that regarding the ACC belief that all government health and safety activities should be amalgamated into one agency, they had found:

> "widespread scepticism about the notion of an all encompassing agency. Most, including Ministers, felt that an occupational safety and health focus should be retained. If this is indeed the end result of the present discussions about 'One Act/One Authority' then we believe that the DoL should assume responsibility for it" (DoL Review, 1 March 1988:87, in DoL file 19/9/3-1 Vol 3).

Furthermore, in a shot at other government agencies, the Review Team argued that the administration of occupational safety and health:

> "is a role that the DoL should continue to perform because of its focus on the labour market and its independent and long history in enforcement of osh legislation. While some other state organisations such as the Ministry of Transport and the Health Department do operate in the area they are principally focussed on issues other than labour market concerns" (DoL Review, 1 March 1988:46, in DoL file 19/9/3-1 Vol 3).

The attempt by the DoL Review Team to influence events, was not lost on the then Director-General of the DoH Dr George Salmond. In a letter to the Minister of Health on 26 April 1988, Dr Salmond wrote: the

> "Cabinet paper MSE(88) 6 identifies any Labour Department initiative as an interim measure that would not complicate the proposed review of occupational health and safety services....I am concerned that any moves to base 1 Act 1 Authority proposal on the new service unit within the Labour Department will prejudice departmental interests in seeing an effective occupational health system set up. The DoL review has been concerned with making that department and its service delivery functions more effective and efficient and has not concerned itself with the broader policy issues beyond occupational safety to embrace full occupational health programmes" (Letter Dept of Health to Minister of Health, 26 April 1988:1-2, in DoL files).

Strong opposition from government officials to any proposals for administrative reform did not appear until the July 1988 ACOSH Report recommendations for new tripartite administrative structures were examined by the Officials Working Party early in 1989. It is at this point that the influence of officials from Treasury and the SSC becomes clear in shaping the administrative outcomes. Examination of the account presented in the previous chapter, clearly shows that Treasury's and the SSC's concerns about costs, accountability in the use of government resources, accountability in provision of policy, and fears of policy 'capture' by users were instrumental in significantly modifying the ACOSH proposals. However, even after the recommendations of the "majority" of the 1989 Officials Report and the 1990 Transition Team Report were accepted by Cabinet (CAB (89) M23-17, 10 July 1989; CAB (89) M45/46, 18 December 1989; POL (90) M1-1, 24 January 1990) other officials from the MoT, MoE, and the AHBs in particular, resisted the proposed changes. As an example, as late as April 1991 the OSH Service had to request the intervention of the Minister of Labour Mr Bill Birch to "remove obstacles

encountered in discussions with (Area Health) boards" who are attempting to "relitigate the issues" over the transfer of occupational health staff and related financial resources to the OSH Service (Letter from OSH Service to Minister of Labour, 30 April 1991:1 and 3, in DoL file HSE Bill and Vol 1).

Given the level of resistance from some government agencies to change, it is easy to understand the perceptions of interviewees that officials lacked commitment to the ACOSH administrative reform proposals, and were being obstructive. Bearing in mind though that the public service generally, and the DoL and the DoH particularly, had been under significant pressure for change since 1986, and subject to stringent review and actual change throughout 1987-1988, it is understandable that there was a certain amount of reticence toward further change that threatened the loss of more jobs and investment in established career structures. The opposition of Treasury and the SSC to the ACOSH reform proposals is also consistent with their functions as 'control' agencies upon expenditure and the management of government agencies, as set out by the State Sector Act 1988, and the 1989 Public Finance Act (Scott, Bushnell, and Sallee, 1990:11-24; Hood, 1991:3-19). The opposition of officials to the setting up of new administrative bodies is defensible given the pressure they were under from Ministers to cut costs, and for greater lines of accountability.

In highlighting the role of union and employer organisations in shaping the 1990 and 1992 legislation, apart from the administrative reforms, it is important to recognise that the evidence also clearly points to the important role played by officials within the DoL in providing the detailed legislative contents of the OSH Bill and the HSE Act. The enforcement philosophy in the OSH Bill based upon the 1976 Canadian Labour Code and

the 1972 Robens Report, and the loss control and audit systems enforcement philosophy in the HSE Act, were both provided from within the DoL. The Department was also central to resisting the hard-line 'New Right' position articulated by Treasury in 1989 and 1991, through its marshalling of supportive evidence from the Justice Department and its gathering of support from a wide range of other government agencies for its draft legislation.

Apart from resisting the position taken by Treasury, and in providing a philosophical basis for the enforcement direction of the OSH Bill and the HSE Act, the role of the DoL has been much more ambiguous. Examination of the Department's policy papers, letters exchanged, and memoranda prepared throughout the period 1981 to 1988 indicates that, in the early stages especially, the Department had no real policy position on any of the legislative issues, nor did it have the capacity to formulate coherent and well argued policy statements. In addition, the Department throughout did not take a principled stand on any substantive issue relating to legislative direction except to argue the case for government intervention in the labour market. The evidence for this exists in a number of facts, such as:

1. No DoL policy position paper on preferred directions for occupational safety and health reform was found prior to the appearance in April 1986 of the unions' paper on the "Organisation of OSH Administration" (FoL Discussion paper on "Organisation of OSH Administration", April 1986: 1-2, in DoL File 19/9/3-1 Vol 1). In response to the paper the DoL informed the Parliamentary Under-Secretary for Labour Mr Isbey that the DoL supported "in principle the concept of One Act/One Authority, but saw the need for an investigation of related issues", and administratively "the

department has no strong views on the location" of any new organisation (DoL letter to Mr E. Isbey, 26 May 1986:1-4, in DoL file 19/9/3-1 Vol 1).

2. In a paper dated 30 September 1986, the Department acknowledges that historically New Zealand factory legislation has lacked any guiding "philosophical basis" or "conceptual framework" (DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: section 1.2.2 and 1.2.3, in DoL File 19/9/3-1 Vol 2). This is a rather astonishing admission given that the DoL has been the primary government agency responsible for safety at work since the 1890s.
3. No formal occupational safety and health policy unit was established within the DoL until after the 1987 Review of the DoL recommended the establishment of such a unit. Even then only an informal unit of senior occupational safety and health managers was established in September 1988, with assistance from contract researchers, to consider the submissions that had been received on the ACOSH Report (June 1988), and to form a Departmental response to them.
4. The first major policy statement setting out the DoL's "prefferred option for legislative and administrative reform" - better enforcment and controlled devolution, was not formulated till September and October 1988 (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:26, in DoL files; DoL Background paper "Implications Of...Preferred Option", 16 September 1988, in DoL files).
5. The justification for the preferred option was not based on any philosophical preference or one coherent philosophy, but political realism and administrative pragmatism:

> "The chosen approach should be the one best able to satisfy most of the concerns of most of the parties for most of the time....no one approach to occupational safety and health policy will be able to satisfy the needs of all

workers and employers in all situations" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:19, in DoL files). Furthermore, the preferred combination allowed some "flexibility to meet varying needs of different workplaces", encouraged "an informed responsible attitude on the part of workers and employers", and gave room for the likelihood of "fiscal cost reduction" by allowing the targeting of "resources where most needed" (DoL paper "Occupational Safety and Health Legislation", 1 October 1988:26, in DoL files).

6. The policy papers prepared after September 1988 are far more substantial both in size and quality of content than those written before September 1988.
7. While the defence of the need for government intervention in occupational safety and health and the fight against the position of Treasury can be seen as principled, it can also be seen as a necessary and understandable action by people seeking to protect their jobs.
8. Justification for administrative consolidation within the DoL in the 1989 Officials Working Party Report, was not based upon any statement of what was best for occupational safety and health, but upon issues of accountability and the minimisation of "transitional and ongoing costs" (Report of the Interdepartmental Officials Working Party on OSH Reform, 1 May 1989:11-12, in DoL files). The additional justification that DoL was the best location because of its connections with other labour market activities, can be seen as a secondary consideration that happened to happily, and neatly, fit with the overall economic rationalist model of occupational safety and health and the labour market preferred by Treasury.

In defence of the DoL, it is clear that, given the strength of opposition from employers, and National Party politicians from 1991 onwards to any form of positive statement of workers' rights, pursuit of inclusion of such statements would have been futile. In addition, any effort to defend a positive statement of workers' right to strike within the HSE Bill on

the grounds of "defects which exist under the present Common Law which effectively prevents its use" (DoL paper "Proposed Contents of OSH Bill" to Assoc. Minister of Labour, 30 September 1989:17-18), was not going to succeed given a legal opinion from the Corporate Office of the DoL that such a clause did "nothing" to extend the Common Law right to strike (Legal Division opinion on 'right to refuse', 27 June 1991:2, in DoL file HSE Bill and Vol 2). Administratively, in the climate of the late 1980s of tight fiscal control and the introduction of strict lines of control and accountability between Ministers and government agencies, any reform proposals that seemed to deviate from this were going to run into serious problems. As one union interviewee observed: the ACOSH

> "model of the authority wasn't really relevant in the context" [of the state sector reforms] (Interview 4, 1995:469-70). The specific context being "the idea of the role of the Public Service and there being a bit of separation between the Public Service and interest groups" (Interview 4, 1995:483-84). "I don't think that the officials sort of saw themselves as doing either the Employers Federation or the CTU in the 'eye' or trying to keep them out necessarily. I think it was more of what's proper and what's an efficient way to operate, and what's a way to get health and safety administered effectively" (Interview 4, 1995:495-98). "Rationalisation was the thing. You know trying to overcome some of the barriers and trying to sort of sort out where functions fell more logically, and the terms that were seen as logical in context of that time" (Interview 4, 1995:505-07).

In contrast to the position taken by representatives of the DoL, were the positions taken by officials from the other government agencies participating in the process. From August 1987 onwards, ACC began to consistently argue for occupational safety and health policy to be discussed in a wider context than that of industrial relations, and argued for the establishment of an "Health and Safety Commission" that would incorporate all aspects of health and safety beyond just the occupational (Letter from General Manager of ACC to the Secretary of Labour, 31 August 1987 and 13 October 1987, in DoL file HO 19/9/93). However, not too much should be ascribed to this, because prior to the beginning of this

activity by ACC, "the Corporation's initial involvement in ACOSH was somewhat reluctant", including participation in "its predecessor CCDOSH" (Letter from General Manager of ACC to the Secretary of Labour, 31 August 1987, in DoL file HO 19/9/93).

Representatives of the DoH, up until the DoH was reformed in 1987 as the result of the Report of the Gibb's Taskforce on Hospital Management, took the position put forward in the 1981 Walker Report that administrative reform was not required, and if change were to occur the most logical location was not within the DoL but within the DoH itself (1st ACOSH Minutes, 28 August 1985: 2-3, in DoL File 19/9/3-1 Vol 1). The DoH was the most logical position because it had the technical expertise, a regional presence the same as the DoL, and it had a coherent philosophy that fitted with that espoused in ILO Conventions 151 and 161 on occupational health services and occupational safety and health respectively. After the 1987 restructuring of the DoH into a Ministry of Health with only policy advice functions, there was a hiatus in advocacy of the health perspective until the AHBs, under the leadership of the Wanganui AHB and the New Zealand Occupational Health Nurses Association, took up advocacy of the old DoH position in June 1989 (Letter to Social Equity Committee from Wanganui Area Health Board and to all Area Health Boards, Hospital Boards, and Principal Health Protection Officers, 9 June 1989, in CTU file ACOSH Working Party Vol 2 April 89-July 89; Letter Waikato Medical Health Officer to New Zealand Occupational Health Nurses Association, 20 June 1989 in CTU file ACOSH Working Party Vol 2 April 89-July 89; Transition Team Report "OSH Reform", November 1989, in DoL files).

As has already been highlighted, the position taken by Treasury was to advocate the application to occupational safety and health policy of economic rationalism and public

choice theory in the form of the "risk by choice" idea espoused by Viscusi (1979; 1983; 1996). The interesting thing about Treasury's position between 1989 and 1991 is its almost identical replication of an earlier position publicly advocated by the New Zealand Business Roundtable in its September 1988 submission on the ACOSH Report (New Zealand Business Roundtable paper "Regulating For Occupational Safety and Health", September 1988), and in a speech on behalf of the Business Roundtable by Dr Penelope Brook to the New Zealand Institute of Safety Management in June 1989 (Brook, 29 June 1989). In both cases the argument was put that government should totally withdraw from intervening in occupational safety and health, leaving it to the participants in a totally deregulated labour market to negotiate their own voluntary agreements and to enforce them through tort actions. In putting forward this argument, Treasury played the role of providing an alternative source of contestable policy advice to that put forward by the DoL, and acted as a 'control' upon government expenditure. As a consequence of playing this role, Treasury's intervention had two effects. First, it pushed the DoL to justify ongoing government intervention in occupational safety and health in the context of the labour market. Second, it prevented any imaginative administrative reform beyond simple amalgamation of government activities. Supporting Treasury throughout in the role it played, and the position it took, was the SSC.

Scrutiny of the process shows that there was little contribution, in any positive sense, by both Labour and National Government Ministers of Labour to the development of the details of occupational safety and health policy. Where the Ministers were important was in their capacity for deciding the general direction which reform should take, and in their ability to get things done when they took a direct interest. The only real instance of a direct contribution by a Minister of Labour, from either the Labour or the National

Governments, in the detailed development of occupational safety and health policy was the Associate Minister of Labour Dr Michael Cullen's instruction to the OSH Service in November 1989 that the new legislation must "clearly state" that the initial three day training for health and safety representatives was to be undertaken by the unions (Letter Minister of Labour to OSH Service, 2 November 1989, in DoL files). Apart from this instance of direct Ministerial intervention in policy development, Ministerial involvement from both political parties was restricted to indicating to officials where the general emphasis for reform should be. During the term of the Labour Government there are two main examples of this, the first involved a shift to tripartism, the second indicated support for the introduction of health and safety committees.

The shift to tripartite arrangements under the Labour Government was signalled shortly after the 1984 election when Mr Stan Rodger, the new Minister of Labour, informed senior officials of the DoL that he:

> "felt CCDOSH should be continued, but in the longer term should become associated with the reconvened Industrial Relations Advisory Council in order that both should gain in effectiveness, as had been found elsewhere. He felt that the wage freeze may have assisted in increasing awareness of osh and conditions generally. He did not favour a large council as envisaged by Dr Walker, but supported a move to tripartism, and suggested the prospect should be canvassed at the next meeting of CCDOSH" (DoL Memo, in file HO 19/5/51-3).

Subsequently on 28 November 1984 at the next meeting of CCDOSH, it was agreed that CCDOSH would endorse its own replacement by a new tripartite council that came to be known as ACOSH (CCDOSH Minutes, 28 November 1984, in DoL file HO 19/5/51-3). The willingness to implement a compulsory system of health and safety committees was clearly stated at the fifth ACOSH meeting where the Chair, the Under Secretary for Labour Mr Eddie Isbey, commented that regarding the matter "the Government considered that

legislation on this matter was inevitable in the longer term" (5th ACOSH Minutes, 22 July 1986:5, in DoL File 19/9/3-1 Vol 1).

The National Government Ministerial direction was limited to withdrawing the previous Government's legislation, and directing officials on 5 July 1991 to draft a new piece along the lines suggested by the Top Tier Group of industry representatives.

The most striking things about the role played by Ministers was their capacity to get action on matters when they took a personal interest, and their control of all the decisions involving changes in policy direction and major administrative change. On the first point, the momentum for change during the term of the Labour Government rapidly increased after the Minister of Labour Stan Rodger personally started to take a real interest in occupational safety and health reform. The Minister signalled his intention to act on occupational safety and health in a speech he gave on 4 February 1988 at the opening of the Dunedin Occupational Health Centre. In the speech the Minister commented:

> "Most of my effort in the Labour portfolio in our first term involved the reform of our industrial relations system. That reform, in the name of the Labour Relations Act, is now in place.... So, that task completed, I am able to put my mind to improving other aspects of our labour market, and health and safety is a priority of mine for this second term of the Labour Government" (Rodger, S. Speech, 4 February 1988:3, in CTU file Health and Safety Reps Vol 1).

The Minister of Labour followed his speech up by taking over as the Chair of ACOSH at the next meeting on 16 February 1988 (11th ACOSH Meeting Minutes, 16 February 1988:2, in DoL File 19/9/3-1 Vol 2). It was at this meeting that the Minister announced that "the Deputy Prime Minister was going to drive a number of initiatives through the Cabinet Social Equity Committee...including the One Act/One Authority proposal...[and] in this

way ACOSH could obtain faster and higher level treatment for its proposal" (11th ACOSH Meeting Minutes, 16 February 1988:2-3, in DoL File 19/9/3-1 Vol 2). Similarly the documents indicate that the National Government Minister of Labour Mr Bill Birch had the same capacity to get things done. This is indicated by his ability to form a small Caucus sub-committee to conduct an investigation for him of occupational safety and health policy, and is also indicated in his support for a new Bill. While he would have "some difficulty getting ...[new legislation] on the legislative programme because he's being accused at the moment of hogging the list. Irrespective...there will be a new Bill because the changes that are involved would be too great to handle in an Supplementary Order Paper" (OSH Service Memo of meeting, 28 June 1989, in DoL file HSE Bill and Vol 2).

As for Ministerial control of all the decisions pertaining to the change outcomes, ample evidence for this exists in the description of the entire change process provided in the previous chapter. Throughout all the three periods of change identified in the previous chapter, all changes had to be approved by the Minister, or Cabinet, prior to their implementation. The material indicates that while Ministers may have had little positive input into the day to day development of the reform proposals, both Labour and National Ministers jealously guarded and exercised their decision-making capacity. The preface to the 1988 ACOSH Report illustrates clearly that the Labour Government had no intention of handing any decision-making control over policy to a third party. Another instance, is a later comment by the Minister of Labour in an ACOSH meeting where, in response to union and employer objections to the setting up of the Officials Working Party, he replies that "Government would not give up its function of allocating resources to an external party" (16th ACOSH Meeting Minutes, 25 November 1988:3, in DoL File 19/9/3-1 Vol 4). Similarly, the internal DoL memo of 14 January 1992 on protocols to be observed by officials servicing the Select Committee process, reported in the previous chapter, shows

the extent to which the National Government Minister of Labour guarded and controlled the decision-making process through the parliamentary stage.

The evidence outlined here concerning the ability of Ministers to get action when they were directly involved, and their control of all the decisions pertaining to the direction of reform, supports the comments made by interviewees about the capacity for work by both the Labour and National Government Ministers of Labour, and the importance of gaining Ministerial interest for getting any action on an issue.

Political power

The description in the previous chapter of the transformations that have occurred, and the analysis of the actions, influence, and roles played by key actors in the process presented above, clearly reflect the operation of a structured policy process. It is a process that begins at the organisational level of action whereby individual employees and employers begin to make representations to actors operating at the next social level. The next level is the institutional level of activity that constitutes the central political decision-making apparatus of society. The apparatus consists of representatives of organised social groups, bureaucrats, and politicians. Beyond the institutional level of action is the level of historicity, this third level is the most abstract of the three. The level of historicity constitutes a society's dominant economic model, cultural model, and level of knowledge, each of which exercises subtle control over the way in which people think about issues and experience their daily lives. The institutional model of action outlined here is depicted in Figure 6-3 on the next page.

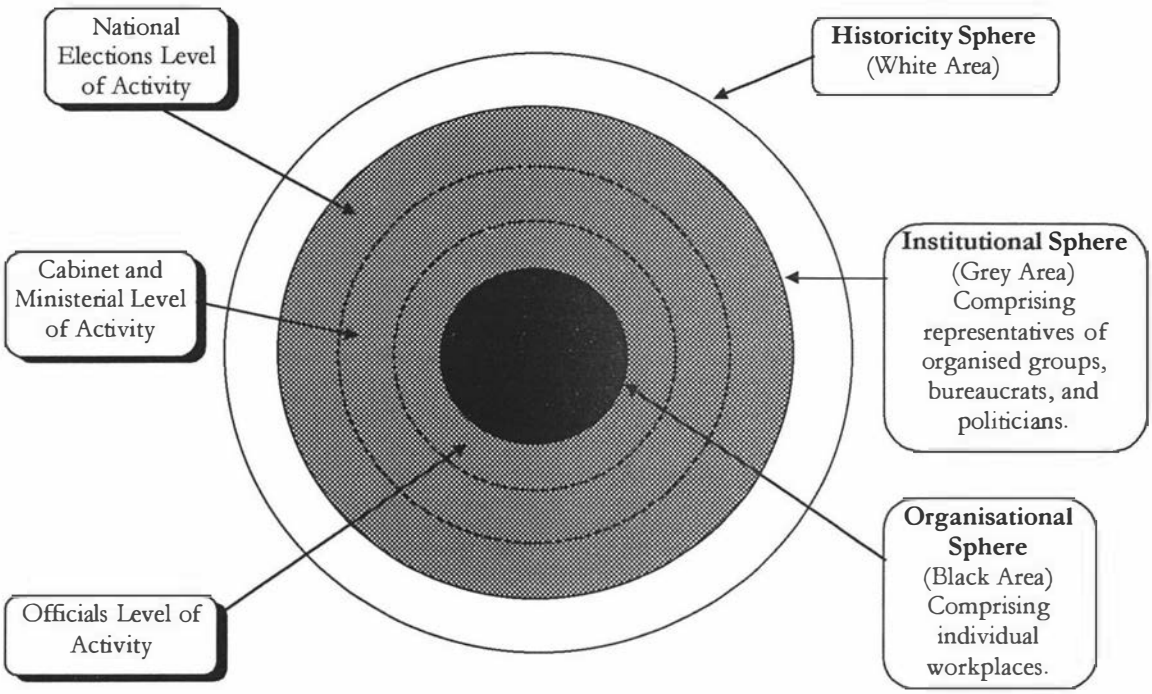

Figure 6-3: Conceptual model of spheres of influence and action. Adapted from "Life and Death at Work" (Dwyer, 1991:91, Figure 1).

Using this theoretical framework, the CTU and the EF represent at the institutional level the two main social groups operating within the organisational level of the workplace. Each of these actors represent groups of individuals who have quite different perspectives about occupational safety and health, as illustrated by the policy debates over compulsory health and safety committees and workers' rights. The views of both actors are largely informed by their respective experiences and perceptions of the behaviour of the other in the workplace.

At the institutional level, analysis of the material indicates the need to differentiate between three levels of activity within the institutional sphere. The first and lowest level is that of administrative actors made up of government agencies and their representatives. The second level is that of the Cabinet and individual Ministers of the Crown who make the final decisions within the institutional sphere. The third and highest level of decision-

making, is the regular but infrequent national election by society of representatives of political parties who act to form the Cabinet. The action relationship between all these levels is a cybernetic one, in that an action at one level can have consequences for both the levels above and below it, as well as within that level. The differentiation here between three levels of activity within the institutional sphere of action, is a modification of the theoretical model outlined by Dwyer (1991:91).

An example of the lowest level of institutional activity in the institutional sphere of action, is that represented by the various governmental committees such as CCDOSH, ACOSH, and the Officials Working Party. While these committees had some decision-making power, all the decisions consisted of recommendations that were either accepted or rejected at the next level up. The second tier of decision-making at the institutional level is composed of politicians in the form of individual Ministers of Labour, and the various Cabinet Committees. The decisions made at this second level were final, unless they were revoked as a consequence of a decision at the next level up by society in a national election, or the decision was challenged by an actor in another forum within the institutional sphere. The debates about administrative reform in the 1989 Transition Team Report clearly illustrate the process of challenging decisions made at the Cabinet level, by representatives of government agencies relitigating the issues through other avenues within the institutional sphere. Two decisions at the tertiary level of activity that were of critical importance were the elections of 1984 and 1990. The first saw the election of a Labour Party that promised the introduction of legislative and administrative reform heavily influenced by the representatives of organised workers. The second election saw the advent to power of a National Party Government which revoked the previous legislative

proposals in preference for reform along the lines demanded by the representatives of organised employer groups.

It is clear from both the documentary material presented and the interviews, that the legislative and administrative transformations originated as a crisis of integration and rationality in New Zealand's regulation of occupational safety and health, as argued earlier. It is also clear that the general direction of the reforms were determined by changing patterns in power between the representatives of the two opposing social groups (union and employer organisations) and their agents in the institutional sphere of action (respectively the CTU, EF, and the Labour and National Party's). The detailed content of the reforms though, reflects the particular rational reconciliation by policy advisers within the OSH Service of the general direction given by the political decision-makers, with the resources available, and their levels of knowledge. Furthermore, the dynamics of the process can be characterised as sets of reactions by actors who were responding to each other and events in other areas of social activity.

Other conclusions about the New Zealand process

While the reform outcomes can ultimately be explained as reflecting the balance of power between opposing social groups and the rational reconciliation of politicians and officials, this does not explain why the administrative reforms occurred before the legislative reforms, or why the ACOSH administrative proposals failed to materialise. Nor does the "balance of power" argument explain why a Labour Government failed to enact reformist occupational safety and health legislation after six years in power, when a National Government did within two years of coming to power. While aspects of these questions

have already been discussed, the following analysis elaborates further the previous arguments and draws some conclusions about the New Zealand experience.

Sequencing of legislative and administrative reforms

Regarding the questions concerning the sequencing of the administrative and legislative reforms and the failure of the tripartite ACOSH proposals, the first point to recognise is that the initial administrative changes in 1987 and 1988 were not really co-ordinated with the later legislative or administrative reforms. In fact, the later administrative changes of 1989-1990 and the legislative proposals of 1990, can effectively be seen as adjuncts to the earlier reforms. The 1987 and 1988 administrative reforms of the DoL - that saw the appearance of the OSH Service - were the result of government departments coming under increasing pressure to justify their existence "in terms of objective based management systems" (DoL paper "Legislation and Administration of Occupational Health and Safety" for 6th ACOSH meeting, 30 September 1986: section 1.2.2 and 1.3.1, in DoL File 19/9/3-1 Vol 2). As one official said about the 1987-88 reforms of the DoL; they were not an attempt to pre-empt ACOSH rather it "was...driven by the reforms that were going on across the economy...in other words Chief Executives had to demonstrate that they were structuring their departments to very much firm up on the accountability models" (Interview 11, 1995:844-47). As another interviewee put it, the early reforms of the DoL were about clarifying "functions" (Interview 9, 1995:4-8), while the administrative changes of 1989-1990 - that saw the transfer of resources from other government agencies to the DoL - were about confirming the "role" of the OSH Service as the proper government agency responsible for occupational safety and health outcomes (Interview 9, 1995:10-11).

Supremacy of OSH

Why was the OSH Service confirmed as the responsible agency? The official reason can be found in the rationale provided in the 1989 Report of the Officials Working Party. The reason provided was that the DoL was the logical recipient of government occupational safety and health related resources because it had a history of involvement in the area, and continued to have an infrastructure to support implementation of government policy. A less flattering explanation would be that the 1987 Gibb's Report reforms of the DoH removed a strong alternative administrative structure to the DoL and advocate of the occupational health perspective. As consequence, the only really viable administrative structures left were the DoL and ACC, who both had experience in injury prevention. In the words of one ex very senior DoL official, the DoL ended up with control mainly because of "attrition, neither unions or employers wanted the department [of Labour] to have control" (Interview 9, 1995:15-18).

A more balanced explanation for the failure of the ACOSH administrative proposals and the confirmation of the OSH Service of the DoL as the sole responsible government agency, is that they were an unintended consequence of the wider public sector reform process. By the time ACOSH recommended new administrative structures in June 1988, the proposals had been overtaken by the "new public management" (Hood, 1991:3) model espoused in the March 1988 State Sector Act. In addition, the 1987 reviews of the DoH and the DoL had effectively removed the Health Department from contention, and positioned the DoL as the only credible agency as per the justification provided in the 1989 Officials Working Party Report.

Why legislative reform under a National Government and not Labour

In response to the question why a reformist and ostensibly pro-worker Labour Government could not pass new legislation during six years in office while a pro-employer National Government could; a number of reasons can be found. The first reason is that occupational safety and health reform in the first term of the Labour Government was very much a secondary priority for the Minister of Labour, whose first priority was the reform of industrial relations and public sector management (Rodger, S. Speech, 4 February 1988:3, in CTU file Health and Safety Reps Vol 1). With reference to the second term in office, the lack of progress may in a small part be explained by the turmoil within the leadership of the Labour Party in 1989, one result of which was the loss of Stan Rodger as the Minister of Labour early in August 1989. However this 'loss' brought another very able politician to the portfolio - Dr Michael Cullen, who saw the legislative reforms introduced into Parliament.

Another reason for the lack of earlier progress on occupational safety and health reform can be found in the delay caused by the intense debate between the union and employer representatives over the introduction of health and safety committees and delegates. The desire for "consensus" on this issue in the period from 1984 to 1987, by Labour politicians can be seen as contributing to the lack of progress overall (4th ACOSH Minutes, 27 May 1986: 2, in DoL File 19/9/3-1 Vol 1; 5th ACOSH Minutes, 22 July 1986:3-5, in DoL File 19/9/3-1 Vol 1; Speech, Mr E. Isbey, 25 September: 31-32, in DoL files). The desire for consensus meant that little progress was made on other issues until the debates over worker' representatives and health and safety committees were settled. The delay caused by deadlock over this issue was highlighted by officials who wrote to the Chair of ACOSH Mr Isbey late in September 1986:

> "The Department considers that it is essential that ACOSH reach a decision on this topic at the next meeting, as there is a possibility that ACOSH will lose credibility, both within its member organisations and outside, if it is not able to conclude this matter soon. There are also other important topics which cannot be properly considered while this subject dominates the agenda" (DoL Memo to Mr Isbey, 23 September 1986, in DoL files).

A further factor explaining the delay in occupational safety and health reform can be found in the fact that neither political party had a coherent well thought-out policy on occupational safety and health prior to coming to power. Labour's 1984 policy consisted of one sentence in its industrial relations policy statement that said Labour will:

> "legislate to provide for occupational health services; improve the quality of the work environment; enforce requirements for health and safety standards in the workplace; provide for health and safety delegates and committees at the workplace" (DoL background paper for Cabinet Minute P (85) 61, 14 May 1985:2, in DoL files).

In addition, when establishing ACOSH, the objectives for the Council set by the Labour Government were:

> "to provide a forum for tripartite consideration of osh policy;....to make recommendations to the Government on the development and implementation of a coherent national policy aimed at preventing accidents and injury to health and improving the workplace; to facilitate compliance with international obligations, in particular those contained in ILO Conventions" (DoL background paper for Cabinet Minute P (85) 61, 14 May 1985:5, in DoL files).

As for the National Government, the Minister of Labour Mr Birch acknowledged that "the Government had no feel for the issues in the occupational safety and health area, unlike for employment contracts where the policy was clear" (Record of meeting in Minister's office, 16 May 1989, in DoL file HSE Bill and Vol 2). This documentary evidence lends support to the comments made by interviewees that occupational safety and health policy was simply not a priority issue for either political party.

While the political parties can be criticised for their lack of prior thinking about occupational safety and health, it must also be remembered that their respective core client groups did not have any clear and coherent plan for reform in the early period of the 1980s either; these were not fully established until 1985.

To digress at this point to an occupational safety and health policy issue; the examples given above, while illustrating the lack of developed policy on occupational safety and health amongst the two key political parties, also clearly show that occupational safety and health is considered an integral component of the industrial relations system by both political parties. During the period under study, both Labour and National Governments framed their occupational safety and health statements within the context of industrial relations policy, and changed the industrial relations legislation prior to occupational safety and health legislation.

In addition to a clear lack of policy on occupational safety and health by both political parties, there is evidence that suggests that neither party was willing to commit more resources to the management of occupational safety and health. It is this unwillingness to provide more resources for occupational safety and health, that saw the demise of the proposals to ratify ILO Convention 155 on OSH Services, by the Labour Government. At the eighth ACOSH meeting, the Chair "suggested that because of the resource implications of achieving compliance it may not be worthwhile doing so unless resources were likely to be made available" (8th ACOSH Minutes, 17 March 1987: 4, in DoL File 19/9/3-1 Vol 2). Resources weren't forthcoming, and the proposal disappeared from the agenda. Regarding resource allocation for occupational safety and health, one official interviewed noted that:

> "in reality New Zealand governments, Labour and National, have always indicated that they would never be prepared to put that percentage of gross domestic product [similar to the Scandinavians] into improving health and safety outcomes" (Interview 11, 1995:510-12).

A similar opinion, though more critical, was expressed by a union representative interviewed:

> "A National Government doesn't want effective legislation and to a lesser extent the Labour Government didn't want effective legislation if that was going to be too much of impost on employers, and so that is the problem I think. Officials...get mixed messages from the political leadership as to what in fact their role is. Because in fact if they were effective enforcers of the legislation, and given the resources to do it, the employers would scream about it" (Interview 2, 1995:538-44).

Another reason for the failure of the Labour Government to implement reform relates to a point made earlier concerning the personal interest of Ministers. There is documentary evidence which suggests the Labour Government Minister of Labour Mr Stan Rodger was not that committed to the union proposals for health and safety committees and delegates, nor to the ACOSH proposals. Evidence for this exists in a couple of places. The first indication that the Minister may not have been that committed to implementation of compulsory health and safety committees and delegates can be seen in the persistent attempts by the Minister throughout the ACOSH process to get 'consensus' on the issue, in spite of the obvious difficulties. Even as late as 1988 the Minister was calling for the parties to reach an agreement. In a speech at the opening of the Dunedin Occupational Health Centre, Mr Rodger commented:

> "The code [for Health and Safety Committees] remains voluntary until June 30 this year.... If at that time it has not worked satisfactorily on a voluntary basis all over the country, we'll legislate for it. I would prefer not to have to do that.... things are always easier to achieve if there is a genuine desire to achieve them, and I have no doubt occupational health and safety can be improved if both parties put their minds to it collectively" (Rodger, S. Speech, 4 February 1988:17-18, in CTU file Health and Safety Reps Vol 1).

A more telling indication of the doubts held about the issue by the Minister are found in a letter he wrote to the EF where he comments: "I agree that introducing a mandatory system of Health and Safety committees under the present legislation would probably have little benefit and could possibly affect industrial relations adversely" (Letter Minister of Labour to EF, 26 July 1989:1, in DoL file 19/9/3-2). Further evidence for the existence of doubts by the Minister of the wisdom of the union and ACOSH reform proposals can be found in the interviews conducted. One professional interviewed said:

> "I'm still amazed that the Labour government between '84 and '90 couldn't cough out some legislation...one of the reasons was Stan Rodger...obviously wasn't really sold on it, and ACOSH. In the end ACOSH had the unions and employers sort of attacking the Minister. Saying for goodness sake we need something" (Interview 17, 1995:41-46).

Another factor that has already been mentioned in other contexts, that can be identified as contributing to the delay, was the constant re-litigation of the issues by all the parties, particularly government agencies and employers. An example of re-litigation late in the change process by AHBs has already been given. Another clear example of the ability of government departments to have issues re-opened in new forum can be found in an agenda note prepared by the DoL for the second ACOSH meeting on 10 December 1985. The note refers to a SSC inquiry into the advisability of the transfer of the safety inspectorates of the Maritime Division of the Ministry of Transport and the Mining Inspectorate of the Ministry of Energy to the DoL, and a Cabinet decision of 30 July 1985 (Cabinet Minute M(85) M 15 Part 4, 30 July 1985, in DoL files) accepting the SSC recommendation that the transfers be declined. In the note the DoL comments:

> "It was agreed that an inquiry should be carried out to settle the issue 'once and for all'.

> The DoL has some misgivings about the thoroughness of the report and considers it does not finally settle the issue of amalgamation of inspection functions.... However given the Cabinet decision of 30 July 1985, the matter is closed unless ACOSH raises it when considering any re-organisation of the administration of osh and is able to debate the issues raised and rebut the conclusions reached in the SSC report" (Chair's Agenda, 2nd ACOSH meeting: 1, 10 December 1985, in DoL file 19/9/3-1 Vol 1).

Subsequently, during the course of the ACOSH meeting, when the issue came up the Chair commented that as far as the Government was concerned the matter was closed unless "ACOSH could identify reasons to re-open it" (2nd ACOSH Minutes, 10 December 1985: 2, in DoL File 19/9/3-1 Vol 1). In reply the union and employer representatives said:

> "that there was a need to carry out a wider review of occupational safety and health principles and administration. It was felt that the Walker Report, which purported to be such a review, was now out-of-date and in any case reflected a single point of view which had...been developed without adequate consultation" (2nd ACOSH Minutes, 10 December 1985: 2, in DoL File 19/9/3-1 Vol 1).

Through the ACOSH forum, the DoL had successfully re-opened the issue of the transfer of inspectorates even though a purported "once and for all" inquiry had just been completed by the SSC, and a Cabinet decision had been made.

However, none of these reasons explain the phenomena of a pro-employer party passing reforming occupational safety and health legislation when a pro-worker party could not. The answer to this question is quite simply that employers genuinely wanted reform albeit on their own terms - as is recorded by the OSH Service Memo of the meeting between the Minister of Labour and members of the Top Tier Group of industry on 5 July 1991. In addition it must be remembered that the National Government did not have to do anything to reform the administration of occupational safety and health, as the Labour Government had already largely completed this. It is clear that while the National

Government did pass legislation, it is probable they would not have, if they hadn't been faced with the OSH Bill on the Parliamentary agenda, and if employers weren't so keen to see reform proceed that removed any threat to their managerial prerogatives.

The discussion so far has seen the failure of the Labour Government to pass legislation as a problem to be explained. However it is only a problem if one is operating out of a Marxist paradigm that needs to explain why a Labour Government failed to pass legislation, and if it is considered that the HSE Act is a bad piece of legislation. From an employers' perspective, the failure of the Labour Government is not a problem as it meant that in the end they got the type of reform they wanted. The length of time taken to pass occupational safety and health legislation can also be seen as beneficial in that the political process enabled a major rethink of the issues and the ways in which occupational safety and health could be thought about, legislated, and administered.

Finally, the New Zealand change experience lends clear support to Gräbe's (1991) analysis of tri-partitie occupational safety and health policy processes in Great Britain. Gräbe (1991:59) comments that while tripartite arrangements are a way of enhancing the likelihood that new regulations will be accepted, they are "slow", as consensus is always sought in decisions made. Furthermore, where a consensus outcome fails to occur, stalemate results and the parties move their debate to another arena. Delay in the process is exacerbated because "much happens behind the scenes, including intervention by senior management people, and informal trade-offs are part of the procedure [and] the compromise reached at the end strongly reflects the power that the participant groups represent outside the scope of a particular committee" (Gräbe, 1991:60). Gräbe's analysis describes very closely the reform process under the Labour Government and in particular

the course of the debates in ACOSH over the voluntary CoP for Health and Safety Committees and Representatives.

Summary of Conclusions

The origins of change in New Zealand's occupational safety and health legislation and administration from 1981 to 1992 can be seen as a set of reactions by representatives of organised groups of people to a perceived crisis of integration and rationality in the functioning of New Zealand's occupational safety and health policy. The change process itself represents an institutionalised process of decision-making that is ultimately determined, at the general level, by the political party in power. While the politicians determined the general direction of occupational safety and health policy in New Zealand between 1981 and 1992, employers' representatives and officials within the OSH Service heavily influenced the detailed contents of the outcomes.

The roles played by all the actors throughout the process can be seen, in the context of wider "environmental constraints" (Rainy and Millward, 1983; in Hall and Quin) and the activities of other actors, as "reasonable" and "rational" (Van de Ven, 1983; in Hall and Quin). This is particularly true for the behaviour of officials, given the internal and external constraints within which these actors were working.

The debates over the issue of workers' rights, and the opposing political decisions about the issue by the political parties, demonstrate clearly the existence of class politics in New Zealand. The weak statements of workers' rights in the HSE Act was the reaction of political actors to the anathema employer representatives felt towards earlier legislative proposals that threatened their control of health and safety in the workplace.

The administrative transformations that saw the consolidation of government activity in occupational safety and health situated within the OSH Service of the DoL, can be seen as the unintended consequence of the actions of officials reacting to political pressure for greater accountability and efficiency in government agencies. Unintended in that the change outcomes were not directly related to considerations of what was best for occupational safety and health, nor to what other participants wanted, but to concerns about cost control and the propriety of administrative structures in the context of new public sector management models.

In the next chapter, the form of explanation developed above, is expanded further into a theory of the 'middle-range' about the process of change in occupational safety and health policy in advanced industrialised countries. The utility and veracity of the model, and the explanation given in this chapter of the New Zealand experience, will be re-examined by making comparisons with the forms of explanatory emphasis identified in the literature reviewed in Chapter Three.

CHAPTER 7: THEORISING THE PROCESS OF CHANGE IN OCCUPATIONAL SAFETY AND HEALTH POLICY IN ADVANCED INDUSTRIALISED COUNTRIES: A SYNTHESIS

Introduction

This chapter presents a theoretical framework of the 'middle-range' concerning the process of change in occupational safety and health policy in advanced industrialised countries. The theory builds upon the theoretical work of Touraine (1955; 1965; 1968; 1971; 1977; 1981; 1988a and b; 1989; 1990; 1991; 1992), Touraine *et al* (1955; 1961; 1965; 1983 a and b; 1987) and Dwyer (1983; 1984; 1991; 1995). The chapter begins by introducing Touraine's ideas about the process of social change. Based upon these ideas, propositions are generated concerning the process of change in occupational safety and health policy in advanced industrialised nations, the issues commonly debated, and the relationship between policy and the control of workplace injury and illness. The last set of propositions is based upon Dwyer's (1991) hypotheses concerning the production of industrial accidents. An assessment of the utility and explanatory adequacy of the theoretical model is then presented. The appraisal is informed by reference to the literature reviewed in Chapter Three and the account given in the previous chapter of the New Zealand experience.

The theoretical synthesis outlined aims to, firstly, avoid the extremes in analysis and explanatory emphasis commonly associated with pluralist and marxist accounts of occupational safety and health policy change. The theoretical work of Touraine and Dwyer has been utilised because their respective ideas on social change and occupational safety

and health are thought to offer a way of developing a more nuanced theory, than currently exists in the literature. The particular attraction of Touraine's work is a perception that his concepts offer a way of acknowledging the importance of both structural and agency factors in determining change outcomes. The hypotheses that Dwyer (1991) generates in his sociological analysis of occupational injury causation - which is informed by Touraine - is of particular interest because of a perception that they can be elaborated further by making connections to the policy decisions made at the institutional level of analysis. The theory is one that Lloyd (1986:189, 279-306) has called "political (or structural) action".

Theorising social action

Philosophical underpinning

To understand the theoretical model outlined in this chapter it is helpful to refer to Lloyd's (1986:Chap 14) examination of the types of theoretical approaches to explaining and describing social change in sociology. In his book, Lloyd (1986) identifies a number of 'traditions', one of which he calls "relational structurism". "Relational structurist" theories of social change are attempts to bridge the divide between explanations of social change that tend towards "systemic determinacy" on one hand and those that are individualistic on the other (Lloyd, 1986:279-280). In the relational structuralist tradition, Lloyd identifies four main streams: Marxist, Weberian, "Elias's figurationism; and structurationism, which includes Giddens and Touraine" (Lloyd, 1986:284). Each of these streams, while having their differences, share seven "components" that unite them in their approach to theorising about social change. The seven components are: a realist relational concept of social structure, a social-levels model of society, an emphasis upon a human agency and praxis that is relatively free, a concept of social class and class interest and conflict, an awareness of the problematic of ideology and the need for social critique, a notion of the importance

of the unintended consequences of action and intention, and a commitment to the idea of society as a historical structure that is constantly acting to reproduce and change itself through agents (Lloyd, 1986:280-84).

The 'realist relational concept of social structure' underpinning the following theoretical model, utilises Bhaskar's (1979, 1989) idea of social structure as comprising levels of increasing transcendental reality. This means that social structures are considered ontological facts, but facts that are not always amenable to positivistic analysis. The most concrete social structures are things such as political institutions and legal systems. Less observable, and more transcendental, are social classes and ideologies. The most transcendental (but not necessarily less real) social structures are those realities that could be called 'spiritual'. The greater the transcendence of a perceived social structure the more difficult it is to observe and test positivistically. Social structures are relational because each structure has intended or unintended effects upon other social structures, and human praxis in general. Social structures are also transcendental and relational in that they are subject to "paradigm shifts" in intellectual thought, and are dependent upon one's perception and experience of life and society. Epistemologically this means that social structures and scientific knowledge are phenomena that are contingent and relative. Consequently, scientific neutrality and objectivity are problematic. The most that can be expected is an objectivity and form of knowledge informed by scepticism and self-awareness on the part of researchers about their own attitudes and perceptions, coupled with an understanding of how others perceive society and social processes.

Touraine's three levels of social action

Touraine (1981:76) imagines society as three separate spheres (levels) of social action. The core sphere of society is the "organisation". Surrounding this core is an "institutional" sphere that, in turn, is surrounded by the sphere of "historicity". Two dialectical axes of action bisect all three levels. The first axis is composed of order and change, and the other represents action and crisis. How each of these axes manifests itself in any given society constitutes that society's system of historical action (sha). However, for analytical purposes, in all social systems both axes have similar characteristics at each level of analysis. At the organisational level, order is characterised by processes of reproduction, crisis is represented by dysfunction, and change by modernisation. At the institutional level, order is imposed by rules, a state of crisis is represented by rigidity in the system, and a process of adaptation signifies change. At the level of historicity, order is represented by repression, a state of crisis is reflected in the occurrence of class conflict, and change is seen as social development.

Dwyer (1984:137, in Wilkes and Shirley), in his application of Touraine's concepts to the analysis of government responses to unemployment in New Zealand, identifies Touraine's three social levels as: the "organisational" level, the "institutional" level, and the "economico-social". Figure 7-1 on the next page, depicts Touraine's model of society as described above. The three shaded circles represent the three concentric spheres of social analysis. The arrows that bisect the circles delineate the two axes of action. The other boxes indicate how the axes of action are characterised by Touraine at each level of analysis.

The three social levels identified in the Figure 7-1 have a complex relationship. Each level has its own defining characteristics, and each level permeates and influences the others through a set of cybernetic relationships. The strength of the influence of one level upon the others depends upon the distance between the levels and the strength of the action being exercised.

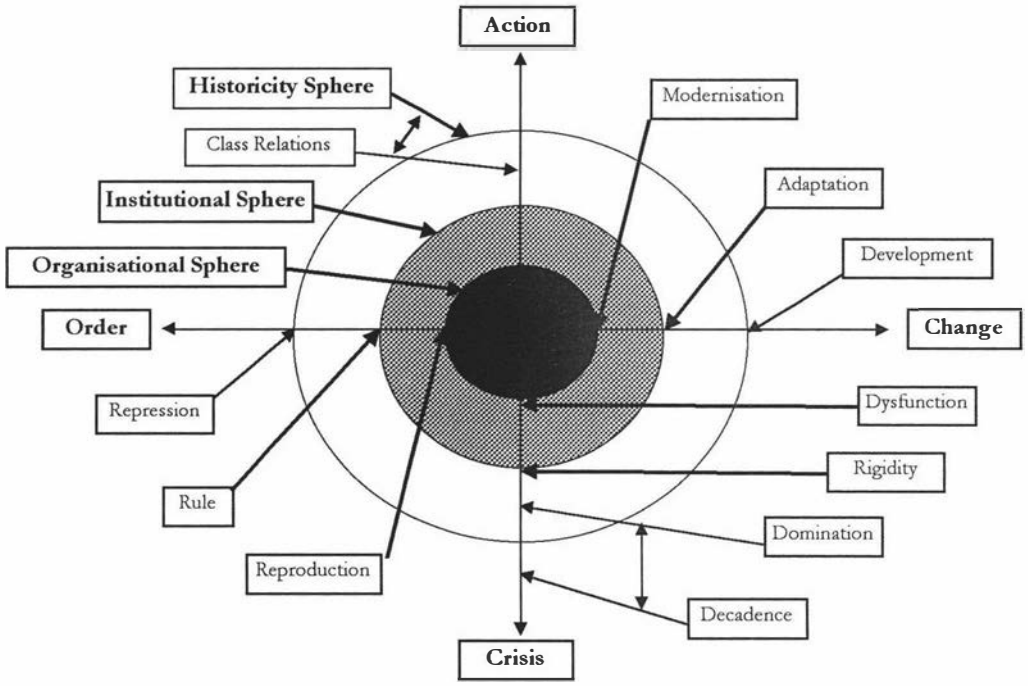

Figure 7-1: Diagram adapting Touraine's theoretical model of society (in "Voice and the Eye" 1981:76).

The most pervasive and all encompassing social level of action is that represented by the sphere of historicity. This sphere is characterised by the dominant forces and orientations that shape and control a society. The key forces and orientations in any society are represented by the dominant modes of knowledge, accumulation, and cultural model extant within the society in any given historical period (Touraine, 1977:460-61).

The influence of the sphere of historicity upon the other spheres of action is seen in a number of ways. At the institutional level, the influence of the sphere of "historicity" is

seen in the way in which society adapts itself to demands for change through the political processes of decision-making. At the organisational level, the influence of historicity is seen in the way in which society produces its material, intellectual, and artistic goods and services (Touraine, 1977:23).

Another way of perceiving the action and influence of historicity upon the social levels beneath it, is through the concept of the sha. The concept of the system of historical action involves the idea of oppositional pairs of action that act to simultaneously bring about change and resist change. In other words the sha means the way in that "historicity" operates. Touraine (1977:67) identifies three oppositional pairs of action that complement and oppose each other. The first pair involves the principles of movement and order. The second pair concerns the tensions between the orientations of the society, and the available resources. The final pair concerns the degree of unity that exists between the main cultural model of the society and other groups within the society. In the theoretical schema, each of these elemental pairs can be seen as social facts. These three axes of action, represented in Figure 7-2 on the next page, constitute the sources of crisis and conflict in society that are identified in the next sub-section.

The institutional level of society is synonymous with the "political system" (Touraine, 1977:175). Within this level of action, two institutional forms coexist. The first institutional form consists of the legitimated processes of national decision-making. The core function of this type of institution is to mediate conflict between opposing social groups. In New Zealand, this means the British Westminster parliamentary system, and executive decision-making by Cabinet. The second institutional form is comprised of the

organisational institutions that administer the decisions made. This second institutional form is represented by bureaucratic "administrations" that are directly attached to the

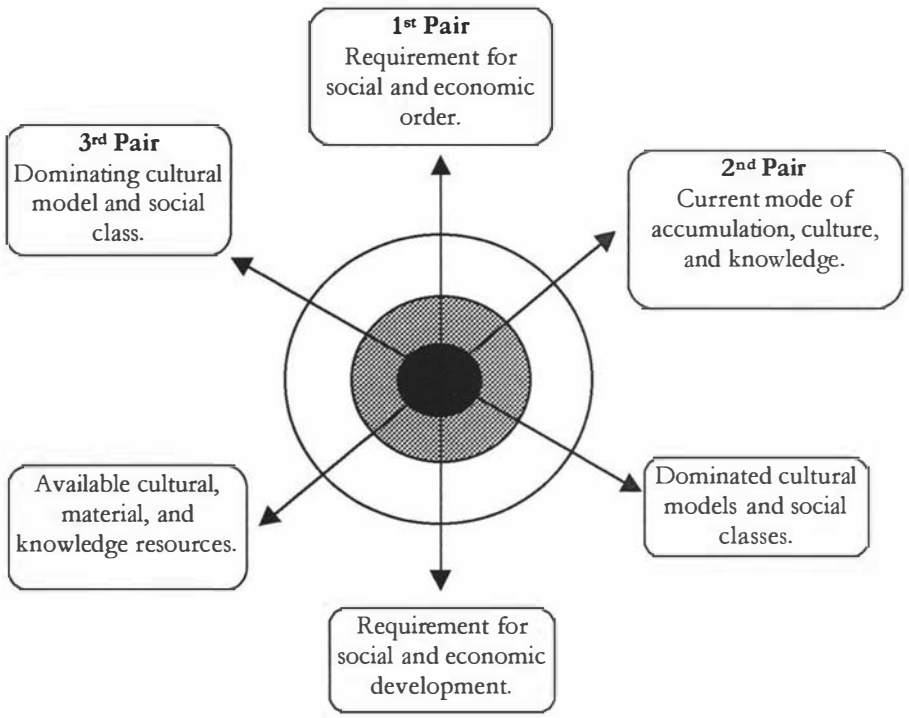

Figure 7-2: Diagram illustrating pairs of social action comprising the sha.

political system, but which do not directly participate in class relations and the system of historical action other than through the political system. In New Zealand, principally departments of state and state-owned corporations represent these institutional administrative forms.

By joining the idea of the sphere of historicity with that of the institutional, the 'state' is defined as a social actor, based within prescribed geographical boundaries, within which a collectivity of people live who are guided by a particular cultural model, a model that shapes the formation and operation of the institutionalised processes through which the major social decisions are made. The state is "rooted in the political system but acting as

much on the level of social organisation and inter-social relations as on the level of the system of historical action and class relations" (Touraine, 1977:175). Hence the state fulfils three essential functions: it conducts relations with other states; imposes order within a sovereign territory; and guides long-term decision-making. The state also exists as an entity separate from a particular ruling class: a ruling class dominates a society, but a state is a collectivity of classes within a territorial boundary ruled by an elite which may or may not be entirely associated with the dominating class (Touraine, 1981:104-08).

In any institutionalised political system, the dominant class provides unity in the field of politics, while plurality exists in the multiplicity of opposing political actors. Touraine (1971:16) defines social classes as social groups that are linked to other social groups by specific sets of normative and material relations. Political opposition is represented by conflict between social classes and their representatives within the institutional system. The source of political conflict is alienation. In the post-modern society, alienation does not mean material deprivation or separation from creation of things, but peoples' lack of access to information and effective participation in the decision-making processes that impact upon their lives (Touraine, 1971:63). Alienation as defined here, is exemplified by the degree of right of access given to workers to knowledge about aspects of the work process that may affect their health and safety, and in their ability to meaningfully participate in decisions about their health and safety.

Touraine (1977:187 and 193) also argues that when assessing the dependence and autonomy of the parts of the political system, researchers need to distinguish between the ideology of the ruling class and the ruled; be aware of the interaction, interpretation, and communication involved in institutional discourse; be sceptical of the rhetoric of

politicians; and, to distinguish between influence, power, and domination. Influence is defined as the capacity to inspire, guide, and change an actor's decision. Power is the ability to impose an order upon an actor. Domination is the "dominion of one class over the system of historical action" (sha) (Touraine, 1977:187). Just as the sphere of historicity acts to control the institutional system, the institutional system acts to control the activity taking place in the organisational level below it.

The organisational level of analysis is, in many ways, the 'agency' end of the dichotomy between structure and agency. The level of historicity and the system of historical action, and the institutional level represent the structure end. The organisational level of analysis is made up of discrete organisations that are relatively independent social collectivities organised and managed for the attainment of objectives. Touraine (1977:240) defines an organisation as "a set of means governed by an authority with a view to performing a function recognised in a given society as legitimate". The phrase "a set of means", refers to the combination of social and technical resources that are mobilised for the attainment of the objectives. The most common organisations in industrialised societies are businesses. However, political parties can be seen as organisations operating within both the institutional and organisational spheres. It should be noted that the organisation *per se* is not the unit of analysis, rather it is the interaction and relationship between the hierarchy of actors in the system. Organisations both act upon and are acted upon by the other two social levels (Touraine, 1977:240-42). However, the degree to which an organisation, and for that matter a political institution, is dependent or autonomous from the other social levels, depends upon its relations within the level to other organisations and to the overall sha. Organisations are also restrained by their own internal forces that act to both motivate and constrain their activities within the institutional system.

Social change

For Touraine (1977:382), "change is not a thing, but an initiative that modifies social relations.... the relations of authority, influence or power". Furthermore, analysis of social change involves distinguishing between diachronic and synchronic forms of change. Synchronic analysis is the study of the shape and functioning of a society at a particular moment; it involves understanding and explaining the daily multiple interactions that occur as actors construct social reality, a reality that can have multiple expressions and contingencies. Diachronic analysis is the study of a society's transformation from one model of knowledge, accumulation and culture to another - its "mode of relation between reason and cultural specificity - and by the forms of rupture between them" (Touraine, 1989:30). Analysis of historical change requires diachronic analysis. Analysis of change in a society's functioning that does not result in fundamental shifts in the system of historical action involves synchronic analysis (Touraine, 1981:102-104). The characterisation provided in Chapter Four of the changes that have occurred in New Zealand between 1981 and 1992 can be seen as synchronic 'snap shots' of occupational safety and health policy in New Zealand at three points in time. In both synchronic and diachronic forms of change, analysis focuses upon the "tensions and discrepancies that always exist between the field of historicity, the political system, and the social organisation" (Touraine, 1977:381). The use of the synchronic and diachronic concepts can be seen as an alternative to Giddens' (1990) "time-space distanciation" formulation.

According to Touraine (1977:87), change occurs as the result of a crisis in the social system. Crisis can be experienced at three points in society. Each point of crisis runs parallel to the

axes of action identified earlier in Figure 7-2. Each of these points of crisis, and their associated parallels to the axes of action are illustrated in Figure 7-3 on the next page. The

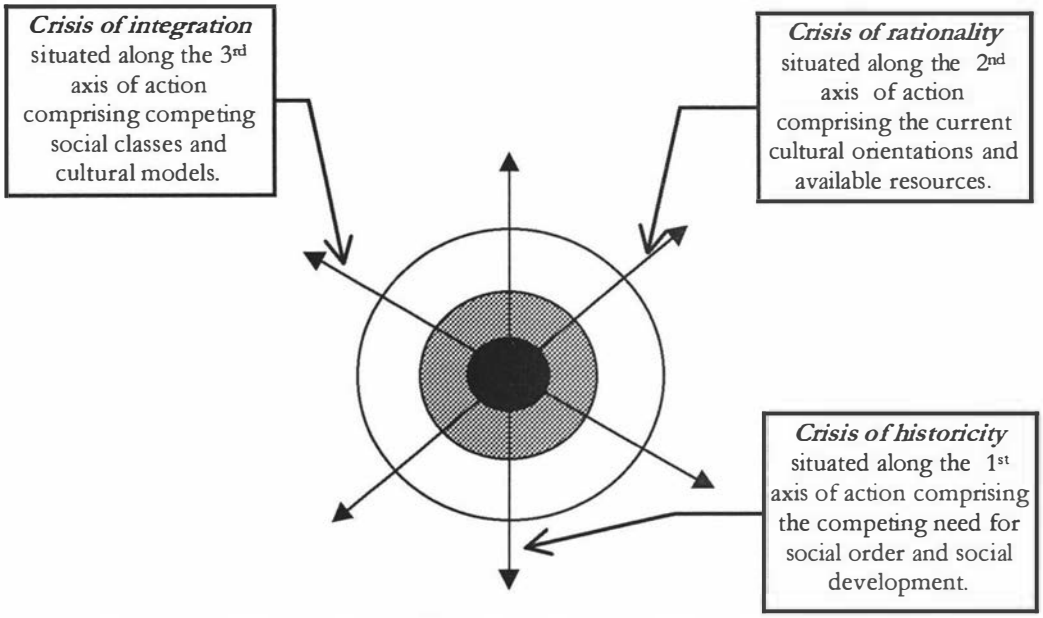

Figure 7-3: Diagram illustrating points of social crisis and associated axis of social action.

first type of crisis that can occur is a crisis of historicity. A crisis of historicity may occur when rupture occurs in the sphere of historicity that comprises the dominant modes of knowledge, economic accumulation, and culture. This type of crisis occurs because of tension in the system between pressure for change and pressure to maintain the status quo. The second point of crisis is that of rationality. In this form of crisis the cultural orientations and economic and social resources of a society are opposed to each other (Touraine, 1977:87-88). The third form of crisis is one that occurs at the point of integration. In this type of crisis the forces of production and consumption are opposed to the means of organisation and distribution. In addition to these three points of crisis, a total system crisis may occur when all three crises coincide (Touraine, 1977:88). When a total system crisis occurs, social rupture (a total breakdown in the system) may eventuate. For Touraine (1977:389-93), the chance of rupture occurring depends upon the ability of the system to adapt when under pressure. In relatively open systems, change need not be

violent as reform may take place through 'developmental movement'. In relatively closed systems, rupture is more likely (Touraine, 1977:389).

Depending upon the type of crisis confronting a society, change in a social system may take one of three forms. The most radical change that can occur is one that goes beyond reforming social institutions, by remaking instead the whole system of historical action. Touraine (1977:396) calls this order of change "revolutionary critical action". Change at the institutional level, involving reform that does not fundamentally reshape other aspects of the system of historical action, is called "critical action" (Touraine, 1977:400). The lowest form of change, is change that results in a break with the dominant forms of order, but does not of itself immediately provoke a change in the dominant order, for example change in intellectual thought. This form of change is called "anticipatory critical action" (Touraine, 1977:403).

Just as Touraine has identified three social levels, types of crisis, and types of change; three types of change agent are identified. Agents of change may be social movements, organisations, or individuals. In keeping with the rest of the theory, each of these change agents operates at respective levels of analysis. At the highest level of analysis, that of historicity, the change agent is the 'social movement'. A social movement is a collectivity of actors oriented to challenging the current system either by reform or critical action: a true social movement simultaneously acts at all three levels of social analysis - historicity, institutional, and organisational (Touraine, 1977; 1981; 1988). When social movements are reduced to specific single activities they no longer can be called social movements. A social movement is defined by its most prominent element that may be either its self-identity, or its point of opposition, or its view of totality.

The key organisational agents of change at the institutional level are political parties, interest/pressure groups, and administrations. Political parties are one of the institutionalised means by which social classes participate in society's decision-making processes. Political parties act to gain control of the central decision-making system to implement their goals and dominate the system. Interest/pressure groups are groups organised with the purpose of achieving specific goals at the institutional level or at the local organisational level. Interest/pressure groups usually do not aim to entirely change or dominate the entire field of historicity, aiming principally to change or protect only that part of the system that is of concern. While interest/pressure groups tend to operate at a lower project level than political parties, they can be seen to operate simultaneously at the project level of the political party. Centralised groupings of trade unions and employer organisations, for instance the Council of Trade Unions, the Business Roundtable, and the Employers Federation in New Zealand, are institutionalised interest/pressure groups that also have links to political parties, and operate at the political level as well as the lower organisational level of the workplace. Administrations are the state's apparatus for executing decisions. Administrations are directly attached to the political system and generally do not directly participate in class relations, or the system of historical action, other than through the political system. In terms of occupational safety and health in New Zealand, the OSH Service of the Department of Labour and the ACC are the pre-eminent administrations. It should also be noted that Touraine comments that administrative institutions are politicised to a greater or lesser degree between nation states. The degree of politicisation depends though, upon the specific patterns of social relations, forms of institutional organisation, and cultural orientations of the social collectivity.

Touraine has very little to say about individual agents of change. However Dwyer (1991:44), in his application of Touraine's ideas to the production of accidents at work, defines individual agents within the context of institutions and organisations. In this context, while organisations can be seen as discrete bodies, they participate in the levels of social analysis through individual agents. The 'particular agents' are individuals, or small groups of individuals, who "seek to apply their specialised knowledge, come to develop their own interests and, frequently...engage in the construction of their own identities as 'professionals', 'public servants', and 'scientists'" (Dwyer, 1991:90). It is Dwyer's definition of individual agents of change that is used here.

Applying the theory

Extrapolating from the above theory, a number of propositions about the process of change in occupational safety and health policy in advanced industrialised nations are outlined below. Other propositions are made concerning the definition of occupational safety and health policy, what the key policy issues are, and what links exist between policy issues. In addition, propositions are made concerning the links between government policy and the way in which workplace health and safety is managed at the local organisational level of the workplace. The initial validity of the propositions will be tested by assessing their ability to coherently organise the range of explanatory factors and policy issues highlighted in the literature reviewed, as well as the analysis of the New Zealand experience of change presented in the previous chapters. The propositions outlined below move from the general to the specific.

Propositions about the occupational safety and health policy process

1. Generally, a particular nation-state's occupational safety and health policy process and outcomes will reflect that society's form of historicity; that is, it will reflect the

dominant culture, forms of knowledge, and mode of accumulation and consumption in that society.

2. Specifically, the general direction of any given occupational safety and health policy outcome is ultimately determined by the ideological position of the group holding the political balance of power in the social system at a particular moment in time.

   2.1. However, the detailed content of a policy reflects the particular rational reconciliation and integration into a policy framework, by officials and politicians, of the internal competing inter- and intra-administrative debates and pressures on them with the external ideological and material demands on them by representatives of social groups interested in the policy issue.

3. The origins of change in occupational safety and health policy are the result of:

   3.1. 'a crisis of rationality' and or,

   3.2. a 'crisis of integration'.

4. The significance of any changes can be measured by:

   4.1. assessing the degree to which the social relations of control have been significantly modified; and,

   4.2. establishing whether there has been any real change in the way that occupational safety and health policy is thought about and administered by the bureaucrats concerned, and the other participating actors.

5. The central actors in a change process, and the core policy debates, are revealed by analysis of the policy arguments of the participating actors. Examination of the areas of debate and tension reveals that the key actors in occupational safety and health policy are:

   5.1. the representatives of workers;

   5.2. the representatives of employers; and,

5.3. the representatives of the central decision-making and administrative institutions - bureaucrats and politicians.

6. Understanding the behaviour of the organisational actors making occupational safety and health policy requires cognisance of the constraints under which they work.

Propositions about occupational safety and health policy debates and issues

7. Occupational safety and health policy can be defined as the range of legislative and administrative arrangements instituted by central government, in any given nation-state, concerning the means to be used for the control of the production of workplace injuries and illnesses.

8. Occupational safety and health policy debate fundamentally involves questions and decisions about the appropriate:

   8.1. type and level of government legislative and administrative responsibility for the control of occupational injuries and illnesses; and

   8.2. the appropriate type and level of employer and employee responsibility for the control of occupational injuries and illnesses.

9. Specifically, debate about occupational safety and health policy occurs within the context of debate about 'labour market' policy. Labour market policy refers to policy concerning industrial relations, accident compensation, immigration, industry training, and employment.

   9.1. Where occupational safety and health policy involves discussion of workers' rights then occupational safety and health policy cannot be debated without reference to industrial relations policy.

9.2. However, where an issue is being debated that does not touch these matters, for example the level of protection to be established in a technical standard, then occupational safety and health policy can be separated from industrial relations policy but not necessarily other policy areas: particularly accident compensation, immigration, industry training, and employment.

10. The arguments presented by participants in the process reflect their particular 'world view' and experience of social relationships in the workplace.

Propositions about the relationship between policy and workplace management

11. Where occupational safety and health policy allows a high degree of worker control over their health and safety, and workers act to exercise control of their health and safety, the lower the incidence of occupational injury and illness will be in the area they act to control.

12. Where occupational safety and health policy allows a high degree of employer control of health and safety, and employers subsequently act to exercise control, the lower the incidence of occupational injury and illness will be in the area they act to control.

13. Where government administrative agencies actively seek to exercise control over the incidence of occupational injuries and illness, the lower the incidence of occupational injury and illness will be in the area they act to control.

14. The less detail provided in occupational safety and health policy about how health and safety is to be managed, the greater the diversity of injury prevention methods used, and the wider the variability in incidence rates across - and within - industry groups.

Assessing and discussing the validity of the propositions

In the rest of this chapter, the above propositions will be assessed and discussed in the context of the literature reviewed in Chapter Three and the New Zealand experience of change described and analysed in the previous chapters. Each group of propositions will be examined in the order in which they are presented above.

Discussion of the propositions and alternative explanations

In terms of the first and second propositions concerning the determining influences of various social factors, initial evidence for the centrality of the factors identified lies within the literature reviewed. Pluralist analyses of occupational safety and health policy such as those by Wilson (1985), Kelman (1980; 1981), and Doern (1977; 1978), as well as Singleton's (1983) historical analysis, all point to the importance of variations in cultural factors for the way that social conflict is mediated, and the way that social decisions are made. Writers such as Ashford (1976; 1978), Kelman (1980; 1981) and Wilson (1985), have all pointed out how a particular occupational safety and health policy reflects the current level of knowledge, values, and beliefs of individual decision-makers. More recent work by historical-legal method commentators such Drake and Wright (1983), Hepple and Byre (1989), Eberlie (1990), Miller (1991), Fitzpatrick (1992), Williams (1995), Barrett and Howells (1995) and Burrows and Mair (1996) have noted the influence of differing European legal traditions surrounding industrial relations for shaping occupational safety and health policy. Marxist analyses, such as those by Navarro (1983; 1982), Walters (1983) and Sass (1986), have particularly highlighted the critical importance of who has control of the political apparatus for determining the content of any decision.

The main problem with the above approaches is that they can be criticised for emphasising a single explanatory point over another. The theoretical approach outlined in this chapter

overcomes this problem. The key premise underpinning the first two propositions is that a better theoretical understanding of the process of change in occupational safety and health policy is one which integrates the key factors identified by both pluralist and marxist analyses, yet discriminates clearly between the roles played by each factor. It is clear that the New Zealand experience could be explained solely from a Marxist perspective, in that the direction of reform was ultimately determined by the balance of power between competing class interests. It could equally be argued, from a pluralist perspective, that the outcomes were determined by the attitudes and level of knowledge of key individual actors within specific government agencies. However, to emphasise one perspective over another would distort the reality of what happened. A more subtle discrimination that draws upon both pluralist and marxist insights is called for. Thus an accent in emphasis upon the shifts in the balance of power between the representatives of unions and employers in the political system is justifiable in explaining the general policy direction of the New Zealand policy outcomes between 1990 and 1992, but not in terms of the provision of the operational policy details. The pluralist emphasis upon the values, and level of knowledge, of various officials within key government agencies is more appropriate for explaining the details of the eventual policy outcomes.

The first two propositions identify individual values and levels of knowledge, and the balance of power between social classes as the most crucial factors that explain change outcomes. Another explanatory emphasis found in the literature that is not given any prominence in this thesis, concerns the importance attached to the "openness of the democratic process" by some pluralist analyses. In terms of the New Zealand experience of change, it could be argued that the formation of ACOSH in 1985 represents an opening up of the democratic process, while the actions of the Officials Working Party in 1989

represents a closing of the process. The opening up of the process through the formation of ACOSH was important, as one interviewee put it, because there were "new terms being brought up, new philosophies being aired publicly, without being stabbed in the back and shot down" (Interview 5, 1995:59-63). The 'closing' of the process in 1989 was important, it could be argued, because it meant that union and employer representatives had little opportunity to influence the advice officials gave to the Minister of Labour from 1989 onwards, and thus they lost a vital opportunity to influence the direction of reform at a crucial stage. There is however a major flaw in the argument. While the actions of officials may have been objectionable, it did not prevent union and employer representatives from presenting their opinions directly to the Minister and the Cabinet in 1989 - or later in 1991 to 1992. The Ministers then considered the advice along with the advice from officials; advice which throughout the entire process was far from unanimous. The conclusion has to be that any explanatory emphasis upon the openness, or otherwise, of the democratic process is insufficient to explain the New Zealand experience and other factors must be sought.

Comparison with the explanatory models briefly identified in the general public policy literature is also illustrative of the utility of the propositions for explaining policy outcomes. While many of the models in the literature do offer insights into the policy process, no one model seems to fully represent the New Zealand process, or the range of behaviours exhibited by the actors throughout the entire period. For example, the policy position taken by Treasury bears a strong resemblance to that described as a "Rationalist" approach (see Dye, 198731-35; and Pierson 1991:45-48) to policy making, while the approach of the DoL up until at least 1988 closely resembles the application of Lindblom's (1959; 1979) "science of muddling through". As for Lowi's (1964; 1970; 1972) thesis that it is the

policy issue that determines the politics not politics the issue, the debate over workers' rights would seem to support Lowi's analysis. The support here for Lowi's hypothesis, runs counter to its rejection by Wilson (1985). Apart from this example though, it is difficult to classify the issue of worker's rights into one or another of Lowi's (1964; 1972) four categories representing types of policy and associated types of politics. For example, the issue of worker's rights would appear to fit the criteria described for both "Regulatory" and "Redistributive" policies (Lowi, 1964:690-95). Classification into one or the other type of policy, would depend upon how the issue is perceived, and where the emphasis was put. At the "Regulatory" level, the issue can be seen as a case of "directly raising costs and or reducing or expanding the alternatives of private individuals" (Lowi, 1964: 690), in this case the individual right of employers to manage. In contrast, the issue can be perceived as a "Redistributive" policy in that it was about empowering people; the debates were confined to conflict between "peak organisations" within "highly stabilised" institutional systems, and were surrounded by class politics (Lowi, 1964:691, 709-711). The problem of 'boundaries' in any taxonomic system is clearly illustrated at this point (see, Kjellberg, 1977; Wilson, 1973; Oppenheimer, 1974; in Kellow, 1988:714).

Wilson's (1980) taxonomic system, based upon who pays and who benefits, is equally incapable of satisfactorily classifying the politics of occupational safety and health policy in New Zealand in a unitary way: Wilson (1980:371) has acknowledged that the politics of occupational safety and health in America "has features of both interest group as well as entrepreneurial politics". Wilson (1980:367) defines interest group politics as likely to occur "when both costs and benefits are narrowly concentrated". Entrepreneurial politics depends upon the attitudes of third party elites, and occurs when the costs of a policy are borne chiefly by a small group, and the benefits are generally conferred upon all (Wilson,

1980:370-71). In New Zealand, the actions of the union and employer representatives seem to fit the description of "interest group politics", while the actions and influence of officials and politicians, fit the description of "entrepreneurial politics".

Apart from the 'boundary' problems in Lowi's (1964, 1972) and Wilson's (1980) taxonomies, there is no mechanism in their models to describe and explain the increase in the pace of reform in New Zealand once the Minister of Labour became personally involved early in 1988. In sum, the New Zealand evidence supports the criticisms in the literature concerning the "static" nature of taxonomic models (Kjellberg, 1977; Wilson, 1973; Oppenheimer, 1974; in Kellow, 1988:714).

Another way of describing and explaining the policy process in the general policy literature is through a 'process model' (Dye, 1987:24-26). Process models focus upon discovering identifiable patterns of activities, and actors involved in policy making. The most common models view the policy process as a linear series of political activities focussing upon control of the problem agenda, formulation of solutions, legitimation of preferred solutions, implementation of the solution, and evaluation (Dye, 1987:24-26). In the context of public policy in New Zealand, Hawke (1993) presents several examples of such models that are currently used by government agencies to guide the development of their advice for politicians. From a process perspective, the DoL position as the organisation responsible for servicing ACOSH, the Officials Working Party, and the Labour Select Committee, would be seen as the determining factor in explaining the eventual change outcomes because it gave the Department control over the agenda formation process. Evidence for such a conclusion can in fact be found. In 1987 the General Manager of the ACC wrote to the Secretary of Labour that:

> "I am sure your staff aim to remain neutral in relation to ACOSH but it is obvious from attendance at ACOSH that some agencies see ACOSH as an arm of your Department and feel they are not full partners" (ACC letter to DoL, 31 August 1987, in DoL file, HO 19/9/93).

On 23 September the Secretary of Labour replied:

> "...Turning now to your comments about ACOSH, I accept that some participants may feel that it has not been the dynamic force hoped for. However, the responsibility for this rests as much with the organisations represented on the Council as with the Chairman. It is unfortunate that the efforts of the Department of Labour to meet its responsibility in this regard have been interpreted by some as an attempt to dominate proceedings. That was never our intention. We would have been happy for other members to have contributed well-researched background papers and for there to have been vigorous debate on the issues raised. With the exception of the contributions from the Federation of Labour and the Employers Federation concerning health and safety representatives and committees, this has not occurred. Even in that area, ACOSH has relied on this department to provide the necessary research and leadership" (DoL letter to ACC, 23 September 1987, in DoL file, HO 19/9/93).

The problem with concluding that the determining factor in the policy process was solely the Department of Labour's perceived ability to influence the agenda setting process and to counteract any undesirable policy solutions, is that it overlooks evidence that points to the importance of other events in the wider system. In sum, while process models may inform about what goes on "within the system" (Dye, 1987:24-26), they tend to overlook the impact of the wider system. In addition, the linear nature of such models does not reflect the reality of the process of developing policy advice in New Zealand which has been described as often "messy" and "circular" in nature (Hawke, 1993:29-30). The New Zealand occupational safety and health policy process described in the previous chapters can certainly be characterised as "messy" and "circular". Particularly in the way that policy

issues were constantly relitigated, and policy decisions were questioned and revisited through other forum.

As for proposition three concerning the origins of change, evidence for the applicability of the 'crisis of rationality' explanation can be found in pluralist explanations, and in historical social-legal studies, and industrial relations analyses by Gunningham (1984), Creighton and Gunningham (1985), Mathews (1993), Quinlan (1993), Quinlan and Bohle (1991) and Beaumont (1983). For example, the literature reviewed, and the New Zealand experience of change, indicates that in the 1970s in industrialised nations around the world rank and file unionists and business actors at the organisational level became frustrated by institutional practices that were perceived as being restrictive and outdated. The frustration led to pressure upon the institutionalised union and business leadership to seek change in the institutional administration of occupational safety and health. At the same time as pressure for change was rising at the organisational and institutional level, at the social level of historicity, tension rose between the welfare orientations of many welfare state societies - including New Zealand - and the available economic resources. It could also be argued, that the 'rationality' of the existing regimes were being questioned because of the occurrence of "anticipatory critical change" in the way that injury causation and prevention was being thought about by academics and practitioners.

In terms of 'crisis of integration' explanations for the origin of change, these are typified by marxist accounts which argue that occupational safety and health is intrinsically a fundamental social problem involving contradictions in the organisation of work in capitalist economies. Consequently, change in policy occurs when social integration breaks down as conflict erupts between employers and employees over working conditions.

The fourth proposition concerns the assessment of the significance of occupational safety and health policy change. One way in which the assessment could be made would be to apply Sass' (1989) distinction between "strong" and "weak" workers' rights to analysis of the legislation. For example, if the legislation included 'positive' statements of workers' rights, then this would signal that a significant change had occurred (or was mooted) in moving the balance of power from employers to workers over control of occupational safety and health in the workplace. Another method of assessing the significance of any policy change involves recognising the import of Doern's (1977) warning concerning distinguishing between "form and substance" in types of administrative arrangements.

In terms of classifying the degree of change that occurred, if a significant change is deemed to have occurred using both criteria, then change may be characterised as 'revolutionary critical action' that might be representative of a diachronic shift at the level of historicity. Change that is more modest may be characterised as 'critical action' representative of synchronic change at the lower institutional level. It must be noted though that, in strict theoretical terms, no single occupational safety and health policy shift on its own could truly be classed as revolutionary critical action at the level of historicity. For the label of revolutionary critical action to be justifiably applied, the changes seen as 'revolutionary' would also have to be reflected in similar changes in other institutional arrangements. However, satisfactory classification of occupational safety and health policy change is highly problematic, as there are three serious issues that must be overcome.

The first difficulty that arises in assessing the overall significance of any occupational safety and health policy change, is the traditional treatment of occupational safety and health as a

policy and legal issue distinct from 'traditional' industrial relations concerns such as wages and dismissals. The problem here is that any change in occupational safety and health policy that may be characterised as 'revolutionary critical action', may not be reflected in other industrial relations policy areas. For example, strong workers' rights may be recognised in occupational safety and health but not in regard to other aspects of the organisation of work. The result is that in terms of the overall theoretical schema, the change that has occurred cannot be classed as 'revolutionary', even though for occupational safety and health policy the change is revolutionary.

In contrast to the above situation, revolutionary change may be seen to have occurred across a range of institutions, but the change that has occurred in occupational safety and health policy may be deemed to be only critical at the institutional level or not to have resulted in any substantive change at all. For example, the institutional changes that have occurred across New Zealand's general system of historical action since 1984 could arguably be called revolutionary critical action at the level of historicity. James (1986, 1992) has characterised the general changes in New Zealand as "the quiet revolution", the word "radical" has been used by Boston *et al* (1991:ix) to describe the restructuring of the state, and Holland and Boston (1990:1) have labelled the range of institutional changes as "radical politics" and a New Zealand variation of "perestroika". However, while the overall changes in New Zealand since 1984 may be classed as revolutionary, this need not be the case for occupational safety and health policy. In the case of New Zealand for example, the legislative changes of 1992 resulted in no fundamental change in the social relations of control, and the administrative changes that took place in the late 1980s were ones of 'form' rather than 'substance'. The issue of distinguishing between form and

substance constitutes the second barrier to assessing the significance of any occupational safety and health policy change.

The problem posed by the question of 'form' and 'substance', is that while a policy change may be seen initially as more one of 'form' representing a symbolic change only, over time, the symbol can acquire some substance (Calavita, 1983). In the case of the changes that have occurred in New Zealand from 1981 to 1992, some researchers may decide that the administrative changes, while initially more of form and largely symbolic, have become substantive over time. It is also possible that other researchers, using a different point of comparison and historical period, may argue that the changes introduced in New Zealand are actually substantive and not symbolic.

The third major difficulty that needs to be overcome in classifying the significance of any changes, is the problem of appropriate comparisons. The difficulty here is that the conclusions reached about the origin and significance of any given change can depend upon what is being compared, and the time frame being assessed. In many ways, the problem is one of methodology, of validity and spuriousness in analysis. The clearest example of the differences in analysis that may occur because of a different time frame of analysis is Navarro's (1983) disputation of Kelman's (1980, 1981) conclusions concerning the differences in occupational safety and health policy between the United States and Sweden. In relation to New Zealand occupational safety and health policy, an initial comparison of the differences between the Health and Safety in Employment Act 1992 (HSE Act) and the Occupational Safety And Health Bill (OSH Bill) 1990 using the criteria suggested above, indicates that the OSH Bill would have represented a revolutionary critical change in the way that occupational safety and health was thought about and

administered in New Zealand. This is because the OSH Bill would have given significantly more power to workers to control their health and safety, and it would have set up new tripartite administrative organisations that were not directly amenable to political control and class capture. However, if the HSE Act is compared to the Factory and Commercial Premises Act 1981 (F and CP) then the changes between 1981 and 1992 can be characterised as being at best representative of critical change at the institutional level, and even then one more of form than substance if one separates out the political rhetoric surrounding the change. This is because the HSE Act did not significantly alter the social relations of power between workers and employers from that which existed under the F and CP - as discussed in Chapter Four. Furthermore, although the administrative consolidation that took place resulted in changes in form, no substantive change in the methods of operation or senior management personnel of the OSH Service have taken place.

The fifth proposition, should not be controversial as the same groups of actors have been reported in all the literature reviewed. In New Zealand the core social actors in the period under study are the Council of Trade Unions, the Employers Federation, the Department of Labour, the Department of Health, the Accident Compensation Corporation, Treasury, and the individual Ministers of Labour within the Labour and National Party Governments.

Regarding proposition six about understanding the behaviour of organisational actors, ample evidence for this can be found in the literature and in the New Zealand experience of change. In terms of the literature reviewed, Wysong (1992; 1993), Mendelof (1979), Boehringer and Pearse (1986), and others, have all shown how occupational safety and

health policy alters as organisations modify their behaviour in response to that of other organisations, and shifts in the patterns of power between them. The analysis in the previous chapter of the behaviour of employers' representatives and officials, particularly after 1988, shows clearly that all were reacting to each other and to changes in the political situation.

Summary of discussion

The above examination of the propositions concerning the process of change in occupational safety and health policy demonstrates the utility of the theory and propositions outlined, and the efficacy of the account given in the previous chapter of the New Zealand experience of change. This is not to say that the other forms of explanation are 'wrong', but that they are too "simplistic" and "historically selective" (Curran, 1984:6). The theoretical model used to guide the explanation presented provides a wholistic view that incorporates many of the insights offered by the literature, yet it also discriminates between explanatory factors. The comparison also indicates that many of the explanatory emphases found in the occupational safety and health policy literature also exist in New Zealand. The only exceptions are a rejection of explanations that point solely to the role of social values, and the openness of the democratic process in explaining differences in policy outcomes between nations.

Discussion of the propositions about the policy issues

Proposition seven defines occupational safety and health policy and aims to fill the lack of such a definition in the occupational safety and health policy literature. The definition is based upon the discussion in Chapter Three concerning the debates in the general policy literature about definitions of 'policy'. By providing a definition that differentiates between two components of an occupational safety and health policy (legislative and administrative),

and by applying the synchronic and diachronic concept, it is suggested that greater analytical clarity can be achieved when comparing changes in policy over time and between nation-states. The utility of this approach for generating more informed insight, has been demonstrated in the description of the changes in New Zealand between 1981 and 1992 provided in Chapter Four.

Proposition eight can be likened to the agenda-setting stage of a process model of policy formation. The proposition suggests that debate about occupational safety and health policy is fundamentally influenced by the outcome of debates about 'why' and 'how' government, employers, and employees should intervene in the control of workplace injuries and illnesses. At the most general level of analysis, these debates can be seen as constituting philosophical questions about the 'nature' of people, the basis of law, and the 'role' of government in society. In terms of occupational safety and health policy, these general debates are reflected in the terms "types" and "levels" of activity. The term "type", when applied to government occupational safety and health activity, refers to debates about whether government should impose performance standards or technical standards, whether government should adopt a more educative role or a more enforcement-oriented approach, and refers to the administrative model chosen to implement the decisions made. The word "level" means the amount of human and financial and resources that government is willing to commit to implementing the policy. However, when applied to the activity of employers and employees, the terms refer to the forms of statutory responsibility imposed upon the actors (e.g. strict or absolute), and the degree and form of recognition accorded to workers' rights and their implementation in the workplace.

Proposition nine specifies the particular context within which debate about occupational safety and health policy takes place in advanced industrialised countries. Proposition ten reflects the theoretical position informing this chapter.

Similarities in policy experience between New Zealand and other advanced industrialised nations

What propositions eight to ten represent most of all, is the existence of a high degree of similarity between the New Zealand experience of occupational safety and health policy change and the experience of other advanced industrialised nations - particularly those which have inherited the British (Anglo-Saxon) model of industrial relations and legal system. Ashford (1976:535) has concluded that conflict is inherent in United States occupational safety and health policy because of competing self-interests, lack of knowledge, differences in values, conflicts over governmental jurisdiction, and differences in disciplinary perspective. Doern (1977:16) in relation to Canada has expressed similar sentiments. Mendeloff (1979:22) has observed that "debates over procedural and substantive issues often revealed underlying differences in perceptions of management behaviour and the workings of the labour market". Boehringer and Pearse (1986) have pointed out that Australian Commonwealth policy since the 1920s has seen the development of a dichotomy and conflict for domination between the domains of medicine and industrial relations, between health as a Health Department responsibility and safety as a Labour Department responsibility. All these observations are equally applicable to the New Zealand experience between 1981 and 1992.

A number of other similarities between New Zealand and other Anglo-Saxon countries can be discerned. One item is the growth in perception amongst union members in the late 1970s and early 1980s that existing legislative and administrative arrangements were not reducing the toll of injury and illness, and were incapable of coping with the new hazards

arising out of new technologies and production methods. At the same time, employers were increasingly exacerbated with government regulation of their businesses practices. Another common feature that New Zealand shares with other industrialised countries is the contention between employers and unions over the issue of workers' rights. Business organisations were stridently opposed to granting any rights to workers, especially the right to stop dangerous work. In additon, a debate about the role of government in occupational safety and health has been a feature of nations sharing a British heritage. In these debates unions in New Zealand have supported mechanisms that would promote stronger standards and better enforcement. Employers have supported a shift towards performance standards rather than strict technical specifications, and wanted more emphasis upon education about mechanisms to prevent workplace injuries and illnesses rather than prosecution. The DoL supported measures such as the application of "strict liability" rules that would make enforcement easier. Treasury argued for a minimalist system that would allow parties to negotiate their own level of occupational safety and health related risk in employment contracts, that would be enforced through the freedom of individuals to take punitive tort actions in the courts. As with other nations, progress on occupational safety and health reform in New Zealand was slow as politicians dealt with other policy areas deemed of greater importance. Another commonality that exists between New Zealand and other countries, is the subsuming of the occupational health perspective under that of industrial safety and the 'Labour Market'.

In the context of the debates about New Zealand's administrative arrangements, Doern's (1977:27) comment that, in Canada, the key issue is really the level of "political will and resources available to the organisation rather than...any superficial or stylish preferences for the 'board' or the 'departmental' model", seems to be particularly relevant. The question

has to be asked did union representatives in New Zealand in pressing for controversial administrative changes make a mistake? It could be argued that it is possible that pressure for more favourable legislative changes, and for more resources for the DoL may have met with more success, and have been of real benefit. As one interviewee observed, "if we'd stopped perhaps pushing the one authority and plugged for the one act, I think we'd have made a lot more progress" (Interview 4, 1995:220-23). Doern's comment is also relevant when assessing the "significance" of the administrative changes. In Chapter Four it was noted that the administrative changes were significant in that they unified government activity in occupational safety and health under one government department. However the changes weren't significant in that no new resources where allocated as the result of the changes. If anything, resources were lost in the transition process. Another observation made by Doern (1977:27) about Canada - and which has been made in relation to Britain (Drake and Wright, 1983:36) - that is applicable to New Zealand, is the occurrence of inter-departmental conflict which derives from "empire building". And more simply the historical fact that most departments had been given many functions by past governments.

A number of observations by another Canadian, Robert Sass (1986; 1989: 1993), also have a resounding echo in the New Zealand experience. Sass (1989:157) pointed out that during the 1970s occupational safety and health law in Canada broadened to include the issue of workers' rights. The same could be said for New Zealand albeit ten years later, and with different results. Sass (1989:158) identifies the source for this "broadening of concerns" as Sweden and Norway, the same Nordic countries that the Walker Report referred to in 1981, and which inspired the first union moves to incorporate workers' rights into New Zealand legislation. In drawing attention to this similarity, it must not be forgotten that the legislative examples of the Australian States of Victoria and South Australia were actually

more influential in the end in shaping the Labour Government's OSH Bill of 1990. Sass' (1989:165) comment that Canadian "management generally favoured the 'right to know', felt more reserved about 'effective' health and safety committees or the workers' right to participate, and definitely opposed the workers' 'right to refuse' dangerous work", effectively describes the attitude expressed by New Zealand employers' representatives on the same issues. The last observation made by Sass (1989:163-164) that has a resonance in New Zealand is his observation that occupational safety and health policy in Canada, particularly in relation to workers' rights, is discussed in the context of "management prerogatives" and "liberal utilitarian concept of justice and not upon democratic criteria". The resonance is heard most clearly in the policy positions espoused by Treasury and the New Zealand Business Roundtable. Sass' observation also fits with the observations by Hepple and Byre (1989), Eberlie (1990), Miller (1991), Fitzpatrick (1992), Williams (1995), Barrett and Howells (1995) and Burrows and Mair (1996) concerning the importance of differences between the English (Anglo-Saxon) approach to industrial relations and health and safety law, and continental European legal traditions. The Anglo-Saxon tradition emphases the primacy of property rights and managerial control, whereas the Scandinavian tradition, and parts of the Romano-German tradition, give more heed to collective human rights and democratic participation. The differences are reflected in the nation's respective health and safety legislation towards workers' rights. In nations inheriting the Anglo-Saxon tradition there is a strong tendency for the health and safety legislation to, at best, incorporate weak statements of worker's rights. The weakness of the statements stands in strong contrast to Scandinavian legislation.

Proposition nine also reflects the fact that the New Zealand experience supports the argument in the literature concerning the absolute fiction of the "traditional hegemonic

ideology" associated with occupational safety and health, that occupational safety and health is divisible from industrial relations (Carson 1970; 1974; 1979; 1980; 1982; 1985; 1989; Carson and Henenberg, 1988; Carson and Johnstone, 1990; Quinlan, 1993:140-150; Creighton and Gunningham, 1985:3-5; Beaumont, 1983). The separation of occupational safety and health from industrial relations as a policy issue is a fiction particularly encouraged by employers. The purpose of the distinction can only be seen as an ideological one that promotes employers' goals, as it serves as a useful negotiating tactic to limit any gains by workers in one arena of industrial relations from being transferred to another. In New Zealand the fiction has no basis in reality, as indicated by the comments made by employers' representatives in the interviews reported, and the fact that both political parties in New Zealand, throughout the period under study, have explicitly situated their occupational safety and health policy within their industrial relations policy.

Gunningham's (1984) analysis of safety law in Australia is also mirrored in the New Zealand policy debates between Treasury and DoL officials in 1991. Of particular interest is his discussion of the methods of prosecution that can be adopted, and the form of establishing guilt for occupational safety and health offences (Gunningham, 1984:77-87, 275-297). The most important issue to be faced by government policy, says Gunningham (1984:264-65), "is whether employers should be allowed to decide for themselves what action, if any, to take in relation to workplace safety, or whether the state should intervene to ensure compliance with prescribed minimum standards". It is at this point that the policy question arises as to how government should intervene. Should employers be compelled by "weaker forms of [legal] intervention such as liability rules.... [or] whether...to intervene more directly by creating stringent preventative safety standards, administered and enforced by government inspectorates" (Gunningham, 1984:276). The central issue

between the two forms of intervention is the method employed in establishing guilt. Gunningham's discussion of the alternative forms of liability reads as a script for the arguments put by Treasury and the DoL to Government in August 1991. Treasury argued for the application of negligence and liability rules, whereas the DoL argued for strict liability. The confluence here of Gunningham's discussion with the New Zealand debates highlights the common British legal heritage that both countries share and the influence that it has upon how occupational safety and health legislation is framed. The necessity of recognising the existence and influence of such historical links in shaping policy has already been noted.

Given the commonalties in policy debates and policy positions taken by actors across all advanced industrialised nations, Kelman's (1981) thesis that national differences in social values and institutional forms determine the content of occupational safety and health policy must be rejected - as argued by Graham Wilson (1985:18-20, 30-31). It is clear that at the heart of debates about occupational safety and health policy in advanced industrialised nations, there is a dispute about control of the social relations of health and safety at work, and the forms in which the control will be exercised in terms of workers' rights and the extent and form of government intervention. The determination of where the balance will lie, depends upon the balance of power between the conflicting class interests at any given time, irrespective of differences in forms of national political arrangements or dominant social values of "deference" or "self-assertiveness" (Kelman, 1981:221). This is not to say that such "social values" are unimportant in shaping policy outcomes, only that they do not necessarily determine policy outcomes. Rather, who holds the balance of political power and the values, knowledge, and experience of key administrative officials determine policy debates. To quote Wilson (1980:393): "To the

extent an agency can chose, its choices will be importantly shaped by what its executives learned in college a decade or two earlier."

Summary of discussion

Discussion of propositions eight to ten reveals that there is a high degree of convergence between the policy debates in New Zealand and those overseas - irrespective of cultural differences and institutional arrangements. Various comments by observers of the occupational safety and health policy process and debates in the United States, Canada, Great Britain, and Australia, can be seen to have direct relevance to New Zealand. The clear link between these countries is that they all have inherited the British legal system and ideas about industrial relations and property rights. The comparison highlights the fact that at the core of occupational safety and health policy in advanced industrialised nations there is conflict, inherent within the capitalist system of production, over the forms of control of the social relations of health and safety in the workplace. At the centre of this conflict are the representatives of workers and employers. Equally important in the policy debates are the views of the representatives of government administrative organisations and politicians, whose job it is to mediate and adjudicate between the competing views.

Discussion of the propositions about the relationship between policy and workplace management

The last group of propositions is fundamentally informed by Dwyer's (1991) analysis of the social production of industrial accidents. Dwyer (1991) argues that the rate at which industrial injuries and illnesses are produced varies according to the form of social relations extant within a workplace. Four general types of social relation are identified: reward, command, organisation, and the individual (Dwyer, 1991:Chapter Three). The relation of 'reward' refers to the use of various payment systems to increase worker effort (Dwyer,

1995:254). The 'command' relation involves the use of power by employers to influence worker behaviour (Dwyer, 1995:255-257). The 'organisational' relation refers to the way in which work tasks are organised, controlled and executed by managers and workers (Dwyer, 1991:257). It is this social relation that Dwyer (1991:257) thinks results in the most accidents. The area least responsible for the occurrence of accidents is the 'individual' relation. The 'individual' relation refers to the small space available to the worker to act for himself or herself in a manner of their own choosing (Dwyer, 1995:259-260). Dwyer has also hypothesised, that where either workers or managers have a high degree of control over a workplace, and act to reduce the dangers of the workplace, the safer the workplace will be. Furthermore, where more emphasis is placed upon a particular form of social relation for the control of accidents, "then the greater the proportion of accidents produced" by that social relation. However, Dwyer says very little about how the institutional level of analysis influences social relations at the workplace.

Given the theoretical argument outlined earlier that decisions at the institutional level of analysis influence the behaviour of actors in the next level down, propositions eleven to fourteen combine Dwyer's ideas to show how policy decisions made at the institutional level of analysis will influence activity at the next level down. The veracity of these propositions will require further research.

An important point to note about propositions eleven and twelve, is the implication for policy that what matters is not whether workers' rights are recognised; rather, what matters is that either employers or workers are encouraged and empowered to act effectively to control the incidence of workplace injuries and illnesses.

Summary and conclusions

This chapter has attempted to coherently synthesise, through a theory of the middle range, the wide sweep of explanatory factors found in the occupational safety and health policy literature. The main problem with the existing approaches to understanding the process of change in occupational safety and health is that they can be criticised for placing emphasis upon a single explanatory point over another. The theoretical approach outlined overcomes this problem. The theory and propositions outlined are informed by the work of Touraine and Dwyer.

The key premise underpinning the propositions concerning the change process, is that a better understanding can be achieved via a theoretical integration of the key factors identified by both pluralist and marxist analyses while discriminating between the roles played by each factor. The New Zealand experience clearly supports the need for a more nuanced theory of change in occupational safety and health policy than offered solely by pluralist or marxist theory. It is clear that the New Zealand experience could be explained solely from a Marxist perspective, in that the direction of reform was ultimately determined by the balance of power between the competing class interests. It could equally be argued, from a pluralist perspective, that the outcomes were determined by the attitudes and level of knowledge of key individual actors within specific government agencies. However to emphasise one perspective over the other, obscures the fact that both were important in different ways. A more subtle analysis is required. An accent in emphasis upon the shifts in the balance of power between the representatives of unions and employers in the political system is justifiable in explaining the general policy direction of the New Zealand policy outcomes between 1990 and 1992, but not in terms of the provision of the operational policy details. The pluralist emphasis upon the values, and level of knowledge,

of various officials within key government agencies is more appropriate for explaining the final details of the policy outcomes.

The propositions about the policy issues highlight the conclusion that there is a high degree of similarity between the New Zealand experience of occupational safety and health policy change, and the experience of other advanced industrialised nations particularly those who have inherited the British (Anglo-Saxon) model of industrial relations and legal system. Various comments by observers of the occupational safety and health policy process and debates in the United States, Canada, Great Britain, and Australia, can be seen to have direct relevance to New Zealand. The clear link between these countries is that they all have inherited the British legal system and ideas about industrial relations and property rights. The comparison also highlights the fact that at the core of occupational safety and health policy in advanced industrialised countries there is conflict, inherent within the capitalist system of production, over the forms of control of the social relations of health and safety in the workplace irrespective of national cultural differences and value systems. At the centre of this conflict are the representatives of workers and employers.

The last set of propositions generated concerning the link between government policy and the management of occupational safety and health in the workplace, intimate that in terms of policy solutions what matters is not whether workers' rights are recognised; rather, what matters is that either employers or workers are encouraged and empowered to act effectively to control the incidence of workplace injuries and illnesses.

The explanatory utility of the theory and propositions has been demonstrated by making comparisons with the forms of explanation found in the literature. The propositions make

an original contribution to current knowledge about occupational safety and health policy by clearly stating for the first time, what occupational safety and health policy means, what the key policy issues are, and how they are related to other policy areas in New Zealand and other advanced industrialised nations.

CHAPTER 8: SUMMARY AND CONCLUSIONS

At the core of this research are two objectives. The primary objective is to accurately describe, analyse and explain the process of change in occupational safety and health policy that occurred in New Zealand between 1981 and 1992. The secondary objective is the development of a theory about change in occupational safety and health policy in advanced industrialised countries that is more precise about the policy issues, social regularities, and specificities that exist, than the current accounts of change on offer in the literature.

Two research strategies were employed to reach the objectives. The first strategy involved conducting an analysis of the literature describing and explaining the process of change in occupational safety and health policy in other countries and New Zealand. The second strategy involved, firstly, holding detailed interviews with representatives of the main social actors who participated in the New Zealand change process between 1981 and 1992. Secondly, additional evidence about the New Zealand change process was gathered by examining primary documents recording the debates that took place and the decisions that were made during the period under study.

Analysis of the literature resulted in the development of a taxonomic system, illustrated in Chapter Three in Figure 3-1, that organises the material according to a number of discursive factors, and into four literature streams. The discursive factors identify the forms of research question being asked and highlight the explanatory points emphasised by each literature stream. The four explanatory streams identified in the literature are pluralist theories, marxist theories, historical-legal accounts, and industrial relations oriented

analyses. Pluralist theories emphasise the conditioning influence of constitutional and institutional arrangements, point to the importance of particular individuals within the political system, and highlight the conflict that occurs over values and ideas. In contrast to pluralist analyses, marxist accounts emphasise the role played by class groups, and identify class conflict over the control and ownership of the means of production as the main explanatory factors for change in policy. Historical-legal accounts tended to eschew theory for method, and point to the historical and legal contingencies and specificities that exist between occupational safety and health policies in various countries. Industrial relations analyses have very little to say about the change process.

Three notable gaps in the literature were identified. The first is the absence of any definition of what 'occupational safety and health policy' means. A brief review of the general public policy literature indicates that the question of definition is important, because how 'policy' is defined will reflect not only the disciplinary origin of the researcher, it will also shape the type of research questions asked, the methodologies adopted, and the theoretical perspectives considered. Defining what 'policy' means though is difficult. However, in recognition of the gap in the literature examined, and in acknowledgement of the importance of defining what occupational safety and health policy means; occupational safety and health policy is defined in this dissertation as referring to the range of legal and administrative instruments available to, and used by, the central government of a particular nation-state for the control of workplace injuries and illnesses in that country. The term "legal instruments" refers to the pertinent statute and common law relating to the regulation of workplace health and safety. The term "administrative instruments", refers to the bureaucratic systems of government that are used to implement and enforce the "legal instruments". Furthermore it is argued in Chapters Six and Seven that, debates about

occupational safety and health policy cannot be separated from industrial relations policy. And that in New Zealand, currently, debate about occupational safety and health policy is closely connected to policy debates concerning the labour market and accident compensation.

The second gap in the occupational safety and health policy literature concerns the absence of any vigorous discussion of criteria for measuring what distinguishes "significant" change from a "minor" change in occupational safety and health policy. The problematic of assessing the "significance" of any change has been outlined by Cates (1979) in her commentary on the work of Lindblom (1979). Cates (1979:529) observes that "debates about differences between big and little decisions, or incremental versus fundamental decisions are difficult in practice because "appearances are deceiving". The only studies that refer to assessing the significance of change in occupational safety and health policy are those by Doern (1977) and Calavita (1983). Doern (1977) has noted that, in terms of administrative arrangements, what matters is not the 'form' of the structure but the level of resources allocated by government. Calavita (1983) has argued that 'symbolic' change can over time come to represent 'substantive' change. Irrespective of the problems that must be overcome in assessing the 'significance' of change in occupational safety and health policy, in Chapter Four it is argued that the question of 'significance' can be answered by using two criteria. The first criterion involves judging change in terms of alterations in the social relations of control at the workplace. The second criterion assesses the degree to which thinking by bureaucrats and professionals about occupational safety and health policy has changed.

The third conspicuous gap in the literature is the absence of 'process' theories, and explanatory theories that are consciously of the 'middle-range'. Chapter Seven aims to overcome the absence of a theory of the 'middle-range', by building a theory informed by the work of Touraine and Dwyer, and the evidence gathered on New Zealand's recent experience.

In spite of the gaps in the occupational safety and health literature, and the fact that it is heavily fractured along disciplinary and theoretical lines, a high degree of convergence exists concerning what the main occupational safety and health policy debates are, and where the origins of change lie in advanced industrialised countries.

One factor that stands out from the literature, is the close association between the origins of change in many industrialised nations and the resurgence of union activism in the late 1960s and early 1970s regarding health and safety. This resurgence, in its derivation, has a strong resemblance to the circumstances behind the original legislative developments early last century. The recurring themes are the advent of new technology, a rise in concern about the effects of the technology, agitation from rank and file union members for action, concern about a long-term rise in injury rates, and the occurrence of major industrial catastrophes that prompted people to act.

It must be noted though that, while historical similarities can be seen concerning the origins of change, the outcomes sought by unions in the 1970s appear to be of a qualitatively different type from that advocated for in the last century. In the last century the initial legal outcomes aimed for were compensation for harm done, and the promotion of prevention through state action and criminal sanction in the event of an incident

occurring. Since the 1970s, union activists have emphasised the introduction of better prevention systems rather than compensation. It is at this point of changed emphasis that debate over policy reappears. For instance, is better prevention to be gained by strengthening the role of the factory inspectorate, or strengthening the role of employees through acceding rights to workers, or through the withdrawal of the state leaving the "free market" to act as regulator, or through the promulgation of performance regulations aimed at employers, or would prevention of injuries and illnesses be best promoted through highly prescriptive technical standards?

In terms of policy debate, there is a remarkable consistency across all the countries that have been studied, and theoretical perspectives, about what the key issues are. The most commonly recurring issue, irrespective of the dominant political ideology, type of legal system, the particular experience of industrialisation, or country examined in the literature, is that of workers' rights. It is around this issue that the most conflict appears to occur. It is abundantly clear from the literature, and analysis of recent New Zealand experience, that business interests in advanced industrialised nations, but particularly in Anglo-Saxon countries, are uniformly and resolutely opposed to the granting of rights to workers, especially the right to stop dangerous work. However, while debate about workers' rights is common in all advanced industrialised nations, how the debate is resolved varies between nations.

Another recurring theme is the debate about the extent to which the state should intervene in regulating occupational safety and health. The question of 'extent' means the degree to which government should be involved in health and safety. In other words, what level and

type of resources should government commit to the control of injuries and illnesses in the workplace?

Closely related to the issue of the 'extent' to which government should intervene, is the question of how government should intervene. At this point the discussion about which prevention system to use returns. For instance, should government have nothing to do with health and safety at work and leave employers and employees to work it out between themselves? Or should the state set specific criteria in statute by which the performance of employers and employees would be measured? Alternatively, the state could intervene by promulgating highly detailed sets of prescriptive technical regulations that would be rigorously enforced. The state could also intervene, by empowering workers and or their representatives to act on their own behalf.

Implicit in the debates about 'how' and to what 'extent' government should intervene in occupational safety and health, are debates about the legal 'standard of care' that should be imposed upon employers and employees. Debates about the standard of care to be imposed appear most often in countries inheriting a British legal heritage. In these countries the debate revolves around the question of ease of enforcement versus the rights of defendants. Should the standard of care be an "absolute" standard, or a lesser one of a "strict" duty of care that provides for a defence of "all reasonably practicable"?

Linked to the above issues are two others. The first concerns the matter of resource allocation by government for implementation of policy. This issue is particularly relevant for the administrative agency responsible for implementing the decisions made by the political process. The second issue concerns the form of organisational structure to be

used for the administration of occupational safety and health policy. There are two aspects to this particular debate. The first involves the constitutional issue of 'ministerial responsibility', and the second the perceived efficiency and effectiveness of various administrative forms.

Although similarities in policy debates between nations can be seen, how the debates are resolved, varies between countries. Recent literature emanating from Britain and the European Community has highlighted national variables such as different legal systems and ideologies surrounding industrial relations practices as being particularly important in explaining the difficulties that Britain has had with the European Community over 'harmonising' health and safety standards. It has been suggested in this thesis that a theory of the 'middle-range' offers a better explanation than exists so far for the different outcomes. The question has to be asked though, how does such national difference's impact upon debates over "mutual recognition" or "harmonisation" of national standards between nations? The question is germane not only for Britain and the European Community, but also for New Zealand and Australia as they move towards establishing common standards over safe and healthy working conditions in an era of 'closer economic relations'. Research in this area would have the benefit of extending investigation of the process of change in occupational safety and health in to the international arena, and it has the potential to provide more in-depth knowledge of the occupational safety and health policy processes within individual countries.

Turning to understanding New Zealand's recent experience of change in occupational safety and health policy, a multi-factored methodology was employed in developing the description and explanation presented in Chapter's Five and Six. Data collection consisted

of gathering multiple instances of detailed semi-structured interviews with representatives of the social actors at the core of the change process, and analysis of primary documents. The interview questions focused on identifying from the respondent's perspective, who the key participants were, what the determining events were, and what the main issues were. Well over one thousand archival documents, drawn from a number of sources, were assessed. All the documents studied recorded aspects of the process, the debates over issues, and the decisions made between 1981 and 1992. The documents gathered included letters exchanged between actors, policy position papers, minutes of both public and private meetings between actors, Cabinet committee minutes and memoranda, speeches, and press releases. In assessing the material, matrices were developed that allowed internal and external comparisons between the sources of information to be made.

Analysis of the material gathered leads to the conclusion that researcher's need to be more discriminating when characterising the New Zealand changes. Glib characterisations of policy as "self-regulation" etc. are only partially accurate; they do not do justice to the differences and continuities than can be seen to exist, as illustrated in Chapter Four in Figure 4-1. A better classification system of the New Zealand changes is one which recognises that regulation still exists but in a different guise. At the beginning of the period under study, the situation in 1981 can best be described as system of "Government Management", by 1990 a system of "Tripartite Management" had been partially introduced, in 1992 a new system of "Employer Hazard Management" replaced existing arrangements.

In terms of the origins of change in New Zealand, the conclusion reached is that change began in the perception amongst union and employer organisations that there was a crisis

of integration and rationality in the functioning of New Zealand's occupational safety and health policy. The change process itself represents an institutionalised process of decision-making. It is also evident that the general direction of the reforms were determined by changing patterns of power between the representatives of the two opposing social classes (union and employer organisations) and their agents in the political-institutional sphere of action (respectively the Labour Party and National Party Governments). The detailed content of the reforms though, reflects the particular rational reconciliation by policy advisers within the OSH Service of the competing ideological and material demands upon them from all participants in the process. Furthermore, the dynamics of the process can be characterised as a continual series of reactionary responses by actors to the behaviour of others active in the debates and decision-making process.

The behaviour of officials at the centre of the debates in the late 1980s came under severe criticism by representatives of union and employer groups. From the perspective of the officials though, their behaviour can be seen as "reasonable" and "rational" (Van de Ven, 1983; in Hall and Quin) given the "environmental constraints" (Rainy and Millward, 1983; in Hall and Quin) they were operating under.

The administrative changes that took place throughout the period which resulted in the consolidation of government administrative activity within the OSH Service in 1990, is remarkable for the fact that it went against earlier government reports and went against the wishes of both employer and union representatives. The outcome can be explained as the unintended consequence of the actions of officials reacting to political pressure for greater accountability and efficiency in government agencies. Unintended in that the outcome was not directly related to considerations of what was best for occupational safety and health,

nor to what other participants wanted, but to concerns about cost control and the propriety of administrative structures in the context of new public sector management models.

Legislatively, the 1990 and 1992 outcomes, in the form of the OSH Bill and the HSE Act respectively, demonstrate the existence of class politics in New Zealand. The weak statements of workers' rights in the HSE Act were the direct result of the antipathy employer representatives felt towards earlier legislative proposals, in the form of the OSH Bill, that threatened their control of health and safety in the workplace. As for the significance of the changes, the conclusion reached in Chapter Four in terms of the relations of social control, is that there appears to be little change between the policy situation that existed in 1981 and that which exists now. However, in terms of how occupational safety and health is thought about, the changes that have occurred represent a significant transformation in the way occupational safety and health policy is formulated and administered. For example, official policy development in New Zealand in 1981 largely followed English precedents, mechanisms for developing policy were largely ineffectual, and union and employer policy statements were informal - if they existed at all. However, by 1992 unions, employers, and government agencies had all developed formal policy statements, and the government agency responsible for occupational safety and health policy, the OSH Service, had developed coherent mechanisms for the future development and evaluation of occupational safety and health policy appropriate for the New Zealand situation. Legislatively, in 1992 a framework was put in place which was independent of overseas examples and which directly reflected the dominant ideology and forms of occupational safety and health knowledge and practice current in New Zealand.

In conclusion, there is a high degree of convergence between the policy debates in New Zealand and those occurring overseas - irrespective of cultural differences and institutional arrangements. Various comments by observers of the occupational safety and health policy process and debates in the United States, Canada, Great Britain and Australia, can be seen to have direct relevance to New Zealand. The clear link between these countries is that they all have inherited the British legal system and ideas about industrial relations and property rights. The research highlights the fact that, at the core of occupational safety and health policy there is conflict, inherent within the capitalist system of production, over the forms of control of the social relations of health and safety in the workplace. At the centre of this conflict are the representatives of workers and employers. The political party in power ultimately determines resolution of the general direction of the debates. Equally important though, are the views of the representatives of government administrative organisations whose job it is to mediate and adjudicate between competing views, advise government, and provide the policy details.

A number of perspectives can be found in the occupational safety and health literature that attempt to make sense of the policy change process and outcomes in advanced industrialised nations. However, a number of problems with the literature exist. For example, the perspectives are theoretically diverse offering different explanations for the origins of change and the outcomes that eventuate, and the literature lacks specificity about what constitutes occupational safety and health policy.

The research in this dissertation suggests that a better insight into the process of change in occupational safety and health policy in advanced industrialised nations can be achieved through a theory of the "middle range". The theory that is developed, is more nuanced

and specific about what occupational safety and health policy is, what the policy issues and contexts are, and how the debates are resolved. The utility of the theory for providing a more insightful analysis of change in occupational safety and health policy has been demonstrated by assessing the veracity of the propositions against the evidence in the literature and the New Zealand experience of policy change between 1981 and 1992.

It seems that currently, the policy problem of how to control the occurrence of injuries and illnesses in advanced industrialised nations, particularly in nations with a British heritage, is not so much a problem of individual psychology, or the lack of technical knowledge and practicability, or even of agreeing about objectives for policy outcomes. It is rather a problem of how to reconcile conflicting ideologies, and balancing power relationships between competing social groups. The policy process has more to do with the mediation of conflict, and of questions about who benefits and who pays.

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