THE EVOLUTION OF ATTITUDES AND APPROACHES TO OCCUPATIONAL HEALTH AND SAFETY IN NEW ZEALAND

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ABSTRACT

The contemporary expression "excellence" in Occupational Health and Safety is mere rhetoric without a genuine commitment by the parties to positive attitudes involving a meaningful desire to protect the worker. Regretfully, attitudes require stimulation and encouragement to ensure positive growth. One important catalyst for growth is a sympathetic political ideology.

In a general sense, New Zealand enjoyed a sympathetic political ideology with the Liberal Government between 1891–1912. The legislation enacted during the first five years of the Liberal Administration was significant and far reaching. The legislative innovations witnessed the face of Industrial Relations being dramatically altered, the embryonic origins of the Department of Labour, the re–focusing of the Trade Union movement and a structure developed for the fledgling Inspectorate. During this era, New Zealand's political ideology was a mixture of socialism, liberalism and pluralism, and was coined as "the social laboratory" by a sceptical international audience.

The legislative enthusiasm of the Liberal Administration was followed by a variety of political ideologicals that were essentially lacklustre in their focus upon Occupational Health and Safety. The casualty was the luckless worker confronted by a bewildering array of legislation that was confusing, heavily prescriptive and very often duplicating. Attitudes of the Inspectorate were confused due to the ill–defined focus and low morale. The Labour Government that was swept into power in July 1984 lacked a real political reforming conviction to alter the status quo and it was not until the National Government came to power in 1990 that dramatic change occurred. The National administration subscribing to a laissez faire doctrine scuttled a century's worth of prescriptive legislation and leaving the worker to fend for himself in a market driven environment, alienated from the hitherto trade union representative by the marginalisation focus of the Employment Contracts Act 1991. As such, the worker can be excused for interpreting the concept of "excellence" with some degree of scepticism.

LIST OF CASES REFERRED TO

LIST OF ABBREVIATIONS

ACC	Accident Compensation Commission (to 1980) Accident Compensation Corporation
ACOSH	Advisory Committee on Safety and Health (NZ)
ARCI	Accident Rehabilitation and Compensation Insurance Act 1992
CRN	Criminal Record Number
CTU	Council of Trade Unions (NZ)
CBI	Confederation of British Industries
DCR	District Court Reports
EC	European Community
ERNZ	Employment Reports of New Zealand
ELB	Employment Law Bulletin
FOL	Federation of Labour (NZ)
HSEA	Health and Safety in Employment Act 1974 (UK)
HSAWA	Health and Safety at Work Act 1974 (UK)
HSE	Health and Safety Executive (UK)
HSC	Health and Safety Commission (UK)
ILO	International Labour Organisation
IUW	Industrial Union of Workers
NZEF	New Zealand Employers Federation
NZLR	New Zealand Law Reports
NZIM	New Zealand Institute of Management
OSH	Occupational Safety and Health (in New Zealand a division of the Department of Labour)
OSHA	Occupational Safety and Health Act 1970 (USA)
TUC	Trade Union Congress (UK)
WHO	World Health Organisation

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PREFACE

This thesis had a somewhat longer gestation period to that which was originally contemplated. In certain respects, the embryonic focus of the thesis evolved during the author's legal sabbatical in England where a Research paper was completed, entitled "Is there a role for the Trade Unions in Occupational Health and Safety?". The conclusions reached within that paper revealed that whilst the New Zealand trade union movement evolved in a different fashion to its British counterpart, its overall effectiveness in promoting the workers' Occupational Health and Safety was questionable.

As a follow on from the research paper the thesis research was ordained in 1992 with its focus towards the involvement of the Trade Unions in the subject of Occupational Health and Safety; in particular, attitudinal positions. Unfortunately, the effectiveness and suitability of the subject focus was severely compromised by the consequences of the Employment Contracts Act 1991 which ravaged the traditional protective legislative cocoon hitherto enjoyed by the Trade unions.

Whilst the set-back was frustrating, it nonetheless provided a unique opportunity of focusing upon the radically new legislation entitled - The Health and Safety in Employment Act 1992. Proceeding upon the assumption that the worker was in part alienated from the Trade Unions due to their marginalisation, the question was posed as to who would advocate on the part of the workers' safety, and similarly, how would the employer groups respond in a non prescriptive environment. As such, to provide answers to these particular questions a logical structure was sought. Accordingly, a detailed survey was undertaken between the months of August and December 1993 involving 75 businesses.

The survey results whilst partially predictable, nonetheless provided ample legitimacy to proceed upon a detailed analysis of attitudes held by the various parties involved in the Occupational Health and Safety equation. To accurately assess contemporary attitudes as to relevance and durability it was considered necessary to evalue attitudes in a historic context. The hitherto attitudes provided the necessary template for comparisons. The final part of the thesis involved a detailed survey of 72 businesses in North Taranaki between November and December 1995 by personal interview. The survey results were rather revealing and are considered to reflect contemporary attitudes towards Occupational Health and Safety as at December 1995.

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INTRODUCTION AND THESIS OVERVIEW

> "Working men ..... the middle classes intend in reality nothing else but to enrich themselves by your labour while they well its produce and to abandon you to starvation as soon as they cannot make a profit by this indirect trade in human flesh. What have they done to prove their professed good-will toward you? Have they ever paid any serious attention to your grievances? Have they ever done more than paying the expenses of half-a-dozen commissions of inquiry, where voluminous reports are damned to everlasting slumber among heaps of waste paper on the shelves of the Home Office?" [1] .

This poignant statement is contained within the introduction to the detailed study by Friedrich Engels on the working conditions of the working class in the early 1840's. In many respects, this thesis poses the question as to whether the attitudes and approaches to Engel's 1840's British working class are evident in contemporary New Zealand society.

England confronted such an examination in 1970-71 when the effective Engels' microscope was utilised by the Royal Commission chaired by Lord Robens. The exacting report of the Commission's findings acknowledged that apart from bureaucratic ineptitude, a major factor affecting efficient Health and Safety management was industry wide apathy [2] . In many respects, the Roben's report acknowledged significant situations akin to the Engels' revelations. The British legislators keenly aware of the phrase "voluminous reports are damned to everlasting slumber", utilised the provisions of the "social charter" and with significant trade union support eventually witnessed the passing of the Health and Safety at Work Act in 1974.

Whilst it is a truism that the worker of last century expected little or no managerial benevolence, one can enquire whether or not today's workers enjoy improved working conditions within a safer environment? Has a change evolved, or does what Engels describes as worker exploitation and government procrastination still prevail? A 1987 education publication would suggest that conditions and attitudes have not significantly improved [3] . An extract from the preface of that publication expresses the following view:

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[1] Engels, F., The Condition of the Working Class in England, Penguin Classic's, page 28.
[2] Roben's Report; Safety and Health at Work, Report of the Committee 1970-72, HMSO, London, para 151.
[3] Work Hazards Group, Death at Work, (UK) Vol. 13, No. 50, June 1987.

> **"Every day people are being killed at work. In some cases these deaths happen suddenly. But in most cases the victims die ten or twenty years later (for example asbestos and radiation victims, and those exposed to cancer-causing chemicals). So why aren't workers, and especially the victims, more angry and active? Because, since the start of the industrial revolution, working people have been brainwashed into accepting workplace injury, suffering and even death as "part of the job". Neither have the trade unions nor the Labour Party really shown serious and sustained interest in occupational health and safety" [4] .**

Akin to the extract from Engels (supra) the above extract from the Hazards Group provides a useful backdrop when examining the New Zealand contemporary scene; especially regarding Department of Labour statistics as at October 1995 [5] .

The apathy reported by the Robens report was certainly no stranger to New Zealand [6] . Notwithstanding the publication of the Roben's report in 1972 of which its significance cannot be underrated, New Zealand effectively stood steadfast for two decades and sanctioned the status quo [7] . New Zealand witnessed numerous examples of effective legislation enacted off-shore [8] but regretfully remained inactive until 1988. In June 1988 the then tripartite Government Advisory Council on Occupational Safety and Health published a discussion paper which identified six basic principles for its proposed new statutory framework for protecting workers safety and health [9] . Alas the poignant words of Engels are apt, namely – *where voluminous reports are damned to everlasting slumber among heaps of waste paper* –. Despite a resounding declaration for effective legislative change, New Zealand failed to move, and appeared to accept the Engels critique. A little over two years after the issue of the ACOSH discussion paper a Bill was introduced; effectively on the eve of an overwhelming election defeat.

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[4] Ibid page 4.

[5] 762 workers are injured at work each week. As at September 30, 1995 99,060 injuries recorded since the introduction of the Health and Safety in Employment Act 1992 I(the Act being in force for 130 weeks) and only 0.64% of injuries resulted in prosecutions. Since the operative date of the Act (April 1, 1993) 796 prosecutions lodged equating to 318.4 per year and of the prosecutions lodged 41% were withdrawn.

[6] Hare, A.E.C., Report on Industrial Relations in New Zealand, Wellington Whitcome and Tombs, 1946, page 195.

[7] To be fair to New Zealand, a Bill was introduced into the House in late 1990 by the then Labour Government entitled The Occupational Safety and Health Bill. Regretfully, it took the Labour Government in excess of six years to introduce the Bill despite election promises in early 1984. The Bill was quickly discarded by the new National Government in early 1991.

[8] – The Occupational Safety and Health Act 1970 (USA)
– The Health and Safety at Work Act 1974 (UK)
– The Occupational Health and Safety Act 1978 (Ontario)
– The Occupational Health and Safety Act 1979 (Quebec)
– The National Occupational Health and Safety Commission Act 1985 (Aust)
(South Australia was the first State to adopt the new style (post Robens) in 1972 followed by Tasmania in 1977, Victoria in 1981, New South Wales in 1983 and Western Australia in 1984).

[9] Advisory Council for Occupational Safety and Health, Occupational Safety and Health Reform, (a public discussion paper) Wellington, June 1988.

The thesis title of "The Evolution of Attitudes and Approaches to Occupational Health and Safety in New Zealand", is a revised topic from that which was originally contemplated, namely, "The Role of the Trade Unions in Promoting Industrial Safety". The topic consideration appeared a logical progression from the Research Paper completed in England in 1991 entitled "Is there a Role for the Trade Unions in Occupational Health and Safety?". Unfortunately, by mid-1992 it became abundantly clear that the Employment Contracts Act 1991 had a far greater effect on the Trade Unions than originally thought, due principally to the marginalisation of the majority of the New Zealand trade unions [10] . With an enthusiasm to critique to sombre revelations of Engels (supra) a detailed preliminary survey was undertaken between the months of August and December 1993. The focus of the Survey was designed to evalue attitudes and to determine a focus for further research.

In many respects the initial set-back was handsomely rewarded due to the then recency of the fledgling Health and Safety in Employment Act 1992. The survey findings in 1993 were revealing. However survey findings in isolation are inevitably subject to adverse comment due to the absence of comparable data and the inability to objectively complete a rudimentary analysis. However, the preliminary survey findings were sufficiently cogent and subjectively exciting to challenge the Engels proposition and compare the contemporary New Zealand scene against the negativity espoused by the Hazards Group (supra). Notwithstanding the dearth of probing academic enquiry into the subject matter of Occupational Health and Safety, it became abundantly clear when evaluing the Preliminary Survey findings that a detailed assessment of attitudes was long overdue. To provide a coherency to further research, it was abundantly clear that an assessment of historic information was an absolute imperative, hence the revised title to the thesis.

As to the structure to the thesis, the same is divided into five parts excluding the within introduction/overview and the conclusion. The structure is as follows:

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[10] Total union membership at the time when the Employment Contracts Act 1991 was enacted (May 15, 1991 was recorded at 603,118, with a density of 41.5%. The membership as at December 1994 was reduced to 375,906 with a density of 23.4%. In the corresponding period the average membership decreased from 7539 to 4585. Source: Harbridge, R., Hince, K. & Honeybone, A., Unions and Union Membership in New Zealand - Annual Review for 1994, NZ Journal of Industrial Relations, Vol. 20, August 1995 page 165.

1. PRELIMINARY SURVEY TO EVALUATE ATTITUDES AND DETERMINE A FOCUS FOR FURTHER RESEARCH:

The preliminary survey was conducted between the months of August to December 1993. The survey involved a total of 75 business organisations in the New Plymouth area. Whilst the survey produced certain predictable results, the survey did nonetheless highlight real problem areas for businesses when dealing with Occupational Health and Safety issues. The survey conclusions definitely encouraged further research in two areas namely:

A. Further Research (Non Survey) - comprising Attitudes towards the Inspectorate, Small firms, Excessive legislation, Penalties and data relating to Information Providers.

B. Comprehensive Survey - comprising attitudes regarding the Designated OSH Person, Methods of Accident reporting, Hazard Identification, Multi-National Companies and finally Small Firms.

2. LEGISLATIVE OVERVIEW 1854-1981:

The period 1854 to 1981 was deliberately chosen for the Merchant Shipping Act 1854 is considered to be the real embryonic origins of New Zealand's industrial safety legislation. The closing of the era is that of the Factories and Commercial Premises Act 1981 being the last significant piece of legislation enacted before the introduction of the Health and Safety in Employment Act 1992.

Part 2.2 is entitled "early legislation" and is concerned with a selective survey involving 22 separate pieces of Industrial Safety legislation from 1854 to 1922. Part 2.3 entitled "More Recent legislation", involves a survey of eight separate pieces of legislation between the period 1937 and 1981. The purpose of Parts 2.2 & 2.3 is designed to provide a framework to illustrate the evolution of legislative attitudes. In order to thread together some analysis of historic legislation Part 2.4 examines five separate pieces of legislation and attempts to identify attitudinal positions.

3. HITHERTO ATTITUDES OF THE PARTIES:

Part 3 is concerned with the identification of attitudinal positions of the central participants within the Occupational Health and Safety arena. The participants under review include the Inspectorate, Judiciary, Trade Unions, Workers and employers. With the employers it is necessary to evalue the attitudes of the major representatives such as the Employers Federation and at the other end of the scale it is necessary to examine the literature relating to Small Businesses.

Under the heading of the Judiciary the inquiry relates to the attitudes as interpreted and reflected by judicial findings and levels of penalties. As trade union views do not necessarily reflect the views of all workers, part 3.4.6 examines the views and reported attitudes of workers as distinct from the Trade Unions. The purpose of Part 3 is designed to provide a framework to assist in the evaluation of contemporary attitudes towards Occupational Health and Safety.

4. THE UNFOLDING OF THE HEALTH AND SAFETY IN EMPLOYMENT ACT 1992:

As the subject matter of the thesis focuses upon the "Evolution of Attitudes and Approaches to Occupational Health and Safety in New Zealand", Part 4 adopts certain significance in that the unfolding of the Health and Safety in Employment Act 1992 witnesses a radical change in the approach to Occupational Health and Safety. As such, the object of Part 4 is to identify the basis philosophical change in deviating from the hitherto prescriptive legislative model to that of the contemporary market orientated ideology. Part 4 seeks to identify the causative and attitudinal change adopted by the parties leading to the introduction of the Health and Safety in Employment Act 1992.

5. CONTEMPORARY ATTITUDES TOWARDS OCCUPATIONAL HEALTH AND SAFETY - A SURVEY: NOVEMBER AND DECEMBER 1995:

Part 5 is concerned with two areas of focus, namely judicial attitudes and a comprehensive survey. The area relating to judicial attitudes is contained with Part 5.2. The Preliminary survey as conducted in 1993 identified the subject area of Penalties as a concern to employers. Accordingly Part 5.2 consists of an evaluation of Judicial attitudes and sentencing tariffs over a 14 month period ending in December 1995. The comprehensive survey was conducted over a five week period during the months of November and December 1995 and involved the personal interviews with 72 firms and organisations from within North Taranaki. Part 5.3 concerns itself with an explanation as to the Survey methodology. Part 5.4 is concerned with a presentation of the Survey finding whereas the summary within Part 5.5 focuses upon the subject areas considered within the Preliminary Survey deserving attention within a Comprehensive Survey namely Attitudes regarding the Designated OSH Person, methods of Accident reporting, Hazard identification, Multi-National Companies and finally Small Firms.

6. CONCLUSIONS:

The conclusion adopts the usual format of providing a synopsis of the various parts to the thesis and produces the necessary conclusions. As the thesis is concerned primarily about attitudes the conclusion considers the various subject areas that were highlighted for attention within Part 1.5 together with certain areas that were identified during the subsequent thesis research. Accordingly there are ten areas that the focuses of the thesis research concludes upon namely: Trade Unions, the Inspectorate, legislative approach, Penalties and Approaches by the Judiciary, Information providers, Employer groups, Designated OSH Person, Multi–National Companies, Small firms and finally the Worker.

PART ONE (1)

PRELIMINARY SURVEY TO EVALUATE ATTITUDES AND DETERMINE A FOCUS FOR FURTHER RESEARCH

1.1 FOREWORD:

As this thesis is primarily concerned with expressed and perceived attitudes towards Occupational Health and Safety, the introduction into law of the Health and Safety in Employment Act 1992 during the early stage of this thesis research provided a unique vehicle to evalue certain attitudes.

April 1, 1993 witnessed the introduction into New Zealand law of the Health and Safety in Employment Act 1992. Somewhat surprisingly, this innovative, if not radical piece of legislation failed to generate any real probing media attention; furthermore the specialist journals and academic publications were remarkably subdued. From anecdotal evidence, the various Newspapers throughout New Zealand suggested that Business simply did not have the available resources to comply with the Hazard Identification provisions of the Act – that the Occupational Safety and Health Service was simply opting out of its Inspectorate function by frightening Industry with huge monetary penalties – the Trade Unions proposing that workplace safety standards would deteriorate.

As the substance of any comprehensive research cannot proceed on media speculation, certain empirical evidence was required to develop a framework for further study. For this framework, a survey of 75 business firms was conducted between the months of August and December 1993. The results of this particular survey were both alarming and extremely profitable in providing raw data to focus upon the parameters for further research.

Part 1.2 is described as "Survey Introduction" and is concerned with an explanation as to the background of the survey and its methodology. Part 1.3 provides an explanation as to the actual survey process and the results as gathered. Part 1.4 is concerned with an analysis of the survey results. Part 1 concludes with a summary as contained within Part 1.5 which incorporates the identification of certain matters deemed to warrant further research.

1.2 SURVEY INTRODUCTION:

In 1991 I completed a Research Paper whilst on a sabbatical leave entitled "Is there a Role for Trade Unions in Occupational Health and Safety?". The research findings concluded that in the United Kingdom the Trade Union movement rank Occupational Health and Safety as a high priority and deemed to be a fundamental agenda item in Collective Bargaining. In contrast, the New Zealand Trade Union movement paid mere lip-service to the subject matter up until the late 1980's. This Research Paper identified that workers engaged in small firms were statistically at greater risk of sustaining a work related injury as opposed to their counterparts working for larger organisations. Furthermore, the Research Paper identified certain empirical evidence supporting the assertion that in times of economic recession the level of Occupational Health and Safety vigilance is compromised.

It is fair to state that the original thinking behind the structure for this thesis was significantly influenced by the research undertaken in England. The structure for the thesis as originally contemplated proposed a comprehensive survey to contrast attitudes towards Occupational Health and Safety between small and large firms. However, it became apparent during the early stages of the thesis research that the proposed structure was flawed. The major deficiency was in the area of substance. Whilst the proposed structure may have generated certain interesting attitudinal comparisons, the conclusions reached would have lacked real value due to the absence of raw analytical data forming the framework to evalue the comparison. In short, the proposal was to compare different sized firms without the parameters clearly defined before the comparison commenced.

Having identified a somewhat basic flaw, it was necessary to develop a model that had a tangible foundation which was capable of producing analysis together with a credible structure for further research. As the principal thrust of the thesis research is concerned with attitudes towards Occupational Health and Safety, it was necessary in light of the earlier difficulties to pose the real question, namely:

> "What are the real attitudes within the workplace as held by Business with respect to Occupational Health and Safety?"

In a real sense, this question/proposition adopted a direct relevancy with the passing into law on April 1, 1993 of the Health and Safety in Employment Act 1992. As the Act has the fundamental aim of preventing harm to workers and others in places of work by defining certain responsibilities, a valuable tool was in the offering to provide legitimacy and relevance to the proposed inquiry. As such, the attendant media attention directed at the Health and Safety in Employment Act 1992 (albeit somewhat subdued) provided an opportunity to enquire of Industry of its thoughts on the new legislation and related Occupational Health and Safety issues. Suffice to state it became readily apparent that the only method to satisfy any inquiry was to specifically go out into Industry and pose the questions. As the focus of the inquiry was to develop a model for further research, the efficiency of time precluded a physical interview technique and thus realistically leaving a questionnaire or telephone survey. The questionnaire was ruled out due to the traditional attrition rate and importantly, the novel nature of the Health and Safety in Employment Act 1992. As such the telephone survey was deemed to be the only realistic survey tool.

To achieve the greatest possible survey yield it was deemed that 100 firms be surveyed. To avoid any contamination or bias, an independent person was commissioned to select 100 firms from the yellow pages of the Taranaki Telephone Directory.

The next step was to develop a questionnaire. It was considered that a lengthy telephone conversation would antagonise many of the proposed survey firms and thus it was considered somewhat fundamental to restrict the questions to issues germane to the central focus of the thesis. With a process of elimination, 10 questions were considered to constitute the barest requirements to achieve the prime objective. These 10 basic questions which made up the survey enquiry were as follows:

A. The number of years in Business
B. The number of workers employed
C. The number of work related accidents in the past 5 years
D. The method employed to record work related accidents
E. The number of visits by the Inspectorate
F. The attitude by the firm towards the Inspectorate
G. The awareness by the firm of the HSE Act 1992
H. The attitude by the firm towards the HSE Act 1992
I. The commitment by the firm to OSH in general
J. Whether any person in the firm is designated to be responsible for OSH.

1.3 THE SURVEY PROCESS AND RESULTS:

The raw results of the preliminary survey are produced within Table 1 (page following). The telephone interview process commenced on August 17, 1993. The initial telephone interview was highly informative and revealing. Alas the second telephone interview was an unmitigated disaster, with the representative of the survey firm accusing myself of being a spy from ACC (Accident Rehabilitation and Compensation Insurance Corporation) and thereafter disengaging the interview. Thereafter, the following 20 telephone interviews produced 17 successful survey firms capable of reporting with a view to comparative analysis. After 22 telephone interviews, 18 were ranked as capable for reporting. With the duration of such interviews taking between 10 and 15 minutes, it became apparent that the ambitious target of 100 reported interviews was unattainable by the close date of December 1993. The initial attrition rate of 19% (4 hostile/non-responses from 22 telephone interviews) whilst diminishing during the latter part of the survey caused consternation. When coupled with the average duration of each telephone interview (12½ minutes) a more realistic target had to be set. With the attrition rate of 19%, it was considered that a revised target of 75 would be more realistic and virtually would entail the telephone contact with almost 90 firms. In the interests of time management, 14 of my Industrial Relations students at the Taranaki Polytechnic were enlisted to survey 14 separate firms, with the data collated in a tutorial on October 25, 1993. The remaining telephone interviews were personally completed. As to the duration of the telephone interviews it is conceded that glib answers may have been sought in (say) five (5) minutes, however, to promote credibility and substance to the raw data attained it was necessary to engage the respondent firm in conversation to cross verify certain of the responses. Suffice to state, the interview of up to 15 minutes was realistic.

TABLE 1

PRELIMINARY SURVEY CONDUCTED BETWEEN AUGUST AND DECEMBER 1993 TO EVALUATE ATTITUDES AND DETERMINE FOCUS OF RESEARCH

NAME OF EMPLOYER (Reference No.)	DATE OF INTERVIEW	NO. OF YEARS IN BUSINESS	NO. OF EMPLOYEES	ACCIDENTS IN PAST 5 YEARS	METHOD OF ACCIDENT REPORTING	NUMBER OF INSPECTORATE VISITS IN PAST 5 YEARS	ATTITUDE TOWARDS THE INSPECTORATE	AWARENESS OF THE HSE ACT	ATTITUDE TOWARDS THE HSE ACT	COMMITMENT TO OSH IN GENERAL	DESIGNATED OSH PERSON
1	17/8	7	45	5	Accident file	2	Indifferent	Reasonable	Ranked highly	Absolute	Supervisors
2	17/8	13	5	1	None	Nil	Have none	Not aware	Have none	Indifferent	None
3	17/8	12	6	2	None	Nil	No contact	Not aware	Not important	Important	None
4	23/8	10	2	1	None	Nil	Have none	High level	Quite important	Absolute	Ourselves
5	23/8	11	4	2	None	Nil	Have none	Not aware	Have none	Not Sure	None
6	3/9	9	9	2	Accident file	Nil	Favourable	High level	Very important	Absolute	Management
7	3/9	4	3	0	None	Nil	Reasonable	Reasonable	Quite important	Seminars	None
8	3/9	25	42	0	Accident file	Nil	Reasonable	Reasonable	Quite important	Important	Everyone
9	3/9	6	4	0	None	Nil	Have none	Not aware	Have none	Indifferent	None
10	7/9	7	7	0	None	Nil	Have none	Vaguely	Unsure	Necessary	None
11	7/9	40	22	0	Accident file	Nil	No contact	High level	Very important	Absolute	Supervisors
12	10/9	7	3	0	Accident file	Nil	Okay	Newspaper	Unsure	Indifferent	None
13	14/10	12	17	3	None	2	Not impressed	Aware	Important	Important	Committee
14	15/10	12	6	2	Accident file	1	Good	Reasonable	Quite important	Important	Foreman
15	15/10	24	40	1	Accident file	2	Excellent	High level	Very important	Absolute	Quality Mgr
16	15/10	20	2	0	If required	1	No problems	Reasonable	Seem Important	Clients	None
17	15/10	1	3	0	None	Nil	Indifferent	Not aware	Unimpressed	Our concern	None
18	15/10	3	2	0	None	1	Good	Reasonable	Important	Important	Ourselves
19	15/10	30	4	0	Accident file	1	No problems	Aware	Unsure	Absolute	None
20	15/10	15	2	0	None	2	Favourable	Reasonable	Seem Important	Is necessary	None
21	15/10	2	2	1	None	1	Hostile	Vaguely	Indifferent	Our concern	None
22	21/10	9	1	1	If required	1	Indifferent	Not aware	Unsure	Is necessary	Myself
23	21/10	3	4	0	None	Nil	No problems	Vaguely	Seem Important	Important	The Boss
24	21/10	8	3	0	Accident file	Nil	Reasonable	Reasonable	Important	Important	Supervisor
25	21/10	7	11	2	Accident file	2	Indifferent	Aware	Seem Important	Important	Supervisor
26	21/10	3	4	0	None	Nil	No contact	Reasonable	Unsure	If required	None
27	22/10	6	3	1	None	1	Excellent	High level	Very important	Important	Everyone
28	22/10	3	7	0	None	Nil	None	Aware	Unsure	Is necessary	None
29	25/10	3	8	1	None	Nil	Reasonable	Aware	Seem Important	Important	None
30	27/10	7	3	2	Accident file	Nil	Not happy	Aware	Indifferent	Our concern	None
31	27/10	7	11	2	If required	2	Indifferent	Reasonable	Unimpressed	Is necessary	None
32	27/10	6	2	1	Accident file	1	Reasonable	Reasonable	Seem Important	Important	Ourselves
33	27/10	6	4	0	Accident file	Nil	Unsure	Vaguely	Seem Important	Is necessary	None
34	27/10	5	1	0	None	Nil	Unsure	Vaguely	Unsure	Necessary	None
35	29/10	3	2	0	None	2	Good	Aware	Important	Important	Ourselves
36	29/10	30	4	0	If required	1	Reasonable	Vaguely	Important	Important	None
37	29/10	15	2	0	None	2	Favourable	Reasonable	Important	Important	None
38	29/10	28	8	2	Accident file	1	Reasonable	Reasonable	Important	Important	Safety Mgr

NAME OF EMPLOYER (Reference No.)	DATE OF INTERVIEW	NO. OF YEARS IN BUSINESS	NO. OF EMPLOYEES	ACCIDENTS IN PAST 5 YEARS	METHOD OF ACCIDENT REPORTING	NUMBER OF INSPECTORATE VISITS IN PAST 5 YEARS	ATTITUDE TOWARDS THE INSPECTORATE	AWARENESS OF THE HSE ACT	ATTITUDE TOWARDS THE HSE ACT	COMMITMENT TO OSH IN GENERAL	DESIGNATED OSH PERSON
39	29/10	20	11	0	If required	1	Reasonable	Aware	Seem Important	Necessary	Safety Offr
40	29/10	55	4	0	Accident file	3	Excellent	High Level	Quite Important	Absolute	Everyone
41	29/10	5	3	1	None	0	None	Vaguely	Very Important	Important	Owner
42	5/11	25	40	0	Accident file	1	Reasonable	High Level	Very Important	Absolute	Safety Offr
43	5/11	60	20	0	Accident file	1	Excellent	Newspaper	High Level	Absolute	Manager
44	5/11	18	35	0	Accident file	0	Good	OSH	Important	Important	Manager
45	5/11	13	50	1	Accident file	2	Sympathetic	Reasonable	Important	Important	Foreman
46	8/11	4	2	0	If required	2	None	Reasonable	Have none	Necessary	Committee
47	8/11	30	1	0	Accident file	1	Good	Reasonable	Important	Important	Ourselves
48	9/11	39	10	1	Accident file	1	Medium	Reasonable	Unsure	Not sure	Foreman
49	11/11	5	4	0	If required	2	No problem	Reasonable	Very Important	Absolute	Owner
50	11/11	50	10	0	None	0	No problem	Reasonable	Important	Necessary	Manager
51	15/11	71	26	0	None	3	Reasonable	Reasonable	Common Sense	Necessary	Owner
52	15/11	27	11	0	None	0	No problem	Reasonable	Important	Important	Manager
53	15/11	5	9	0	None	0	Good	Reasonable	Important	Important	Officer
54	15/11	2	3	0	Accident file	0	No Contact	Reasonable	Good	Reasonable	Manager
55	15/11	2	6	0	If required	0	Nervous	Newspaper	Is relevant	Important	None
56	16/11	5	2	0	None	0	None	Reasonable	Very Important	Important	None
57	17/11	10	8	0	If required	0	Indifferent	Reasonable	Seem Important	Indifferent	None
58	23/11	2	2	0	None	Nil	Indifferent	Newspaper	Unsure	Vital	Ourselves
59	23/11	5	2	0	Accident file	Nil	Unsure	Vaguely	Seem Important	Absolute	None
60	23/11	3	4	1	If required	1	Hostile	Aware	Indifferent	Indifferent	None
61	23/11	1	3	0	None	Nil	Reasonable	Reasonable	Seem Important	Important	Ourselves
62	25/10	4	7	1	Accident file	Nil	Unsure	High level	Seem Important	Is necessary	None
63	25/10	3	4	0	None	Nil	Indifferent	Reasonable	Indifferent	Is important	None
64	25/10	25	37	4	Accident file	2	No problem	High level	Very Important	Absolute	Quality Mgr
65	25/10	5	4	0	None	Nil	A Joke	Vaguely	Indifferent	Our concern	None
66	25/10	15	7	2	Accident file	2	Helpful	High level	Very Important	Important	Foreman
67	25/10	2	4	0	If required	0	Unsure	Reasonable	Unsure	Important	None
68	25/10	9	5	1	None	1	Indifferent	Newspaper	Unsure	Important	Supervisor
69	25/10	3	4	0	None	0	Unsure	Vaguely	Unsure	Our concern	None
70	25/10	8	15	2	If required	1	Favourable	High level	Important	Is necessary	The Boss
71	25/10	4	4	1	If required	0	No problem	Reasonable	Seem Important	Important	Everyone
72	25/10	7	2	0	None	0	Favourable	High Level	Very Important	Absolute	Ourselves
73	25/10	2	4	0	None	0	Not impressed	Aware	Unimpressed	Is necessary	None
74	25/10	7	9	1	None	1	Unsure	Reasonable	Seem Important	Important	None
75	25/10	4	5	2	If required	0	Favourable	Aware	Unsure	Important	None

A further benefit evolving from the comprehensive interview was the opportunity to compare genuine attitudes to Occupational Health and Safety. As the responses were rather revealing, it is considered highly relevant that the key attitudes in the form of expressions made be tabulated for comparative analysis. Table 2 (page following) contains the 75 individual survey firms which correspond to the Employer Reference No. as illustrated within Table 1.

In summary, the preliminary survey occupied a period in excess of three (3) months, namely from August 17 to November 23, 1993 with a total of 84 firms surveyed and producing 75 valid responses.

1.4 ANALYSIS OF SURVEY RESULTS:

Of the 75 firms that produced a valid response as published within Table 1, the average number of employees per survey firm was 9. The average accident rate per firm over the preceding five (5) year period was 0.66 accidents, with the average number of visits by the Department of Labour Factory Inspectorate per survey firm within the preceding five (5) year period being 0.68 visits per firm. An analysis of five (5) key questions as contained within Table 1 have been completed and the results are contained within Table 3 (page following). To expand on the results as contained within Table 3 and comment on certain issues within Table 1, the following observations are considered germane:

TABLE 2

KEY ADDITIONAL EXPRESSIONS MADE BY INDIVIDUAL SURVEYED FIRMS TOWARDS OCCUPATIONAL HEALTH AND SAFETY

NO.	BUSINESS ACTIVITY	EXPRESSIONS/REMARKS
1	Horticultural training	Greater vigilance due to unsophisticated workforce
2	Refrigeration Repairs	Very little attitude - more important things to worry about
3	Engineering Suppliers	Reluctant agreement that some material hazardous
4	Clutch Rebuilders	Only 2 of us in business - can't afford to take risks
5	Auto Painters	We are all experienced - we know what we are doing
6	Auto Painters	Concerned at potential hazards - sought help from Inspectorate
7	Carpet Cleaning	National franchise - received literature - greater awareness
8	Commercial Cleaning	Contracts with oil industry - imposed compliance - economic necessity
9	Window Cleaning	We just clean windows mate!
10	Commercial Cleaning	Everyone is responsible for their own safety so we're told!
11	Engineering firm	Can't afford to lose our skilled staff so OSH vital
12	Concrete Kerbing	No hazardous material - really a common sense approach
13	Roofing Installer	Safety Committee at Head Office - we know what we're doing
14	Insulation firm	The information supplied by manufacturers helpful but too technical
15	Sand blasting	Contracts with Petrochemical industry - necessary for our survival to strictly comply
16	Joinery	Partnership no staff - treat machinery with respect - economic survival
17	Auto Painter	More Government interference, far too many rules - can't keep up
18	Auto electrician	Our experience - can't afford to have any accidents - ongoing bills
19	Joinery	They're always changing the law - what next - however important
20	Wallpapering & painting	Doesn't really affect us, however important to be careful
21	Panel beating	Complete waste of money - only get a slap on the wrist anyway
22	Cabinet maker	I suppose its important but it hardly affects me
23	Electrical Wholesale	No hazards in our business
24	Computer programming	We try to keep abreast of development - rather important
25	Commercial Painters	Not too sure about HSE Act but certainly can't ignore
26	Auto Mechanics	Unsure but concerned about ACC (Experience rating)
27	Auto Mechanics	You never know when an accident may crop up - prevention
28	Supermarket butchery	Governed by what the customer wants
29	Supermarket butchery	Important to comply with Health Department - concern with ACC
30	Transport carrier	The Inspectors are a complete waste of time - far to many laws
31	Transport carrier	We have far more important things to worry about
32	Carpentry	Probably its important but we can't afford to lose time with accidents
33	Hot bread shop	The process is not complicated but nonetheless safety is important
34	Section clearing	Far too many wretched laws in this country - can't keep up
35	Builders supplies	Didn't realise we had hazardous materials until attended a seminar
36	Tank testing	We've been around a long time - however we treat safety as fundamental
37	Dental Technician	We are safety conscious - the Inspectors use us as a model
38	Waste Disposal	Information on hazards vital - can't rely on our clients

NO.	BUSINESS ACTIVITY	EXPRESSIONS/REMARKS
39	Earthmoving	The Inspectors whilst helpful don't know the answers
40	Construction	The HSE Act confusing - frustrating - Inspectors talk about test cases
41	Earthmoving	Don't consider hazardous - However we are careful
42	Construction	We rely upon the clients advice - we are safety conscious
43	Metal pressing	Concerned with the unclear aspects of liability under the HSE Act
44	Engineering	Level of awareness greater since attended an Employers Assn Seminar
45	Civil Engineering	The previous legislation clearer - highly frustrated - complained to local MP
46	Fertiliser Mgfr	Committed to Quality Assurance which involves safety - HSE Act too vague
47	Cabinet Maker	I suppose if I thought about it I would have hazardous materials
48	Furniture Mgfr	Only hazardous material would be lacquers - nothing else
49	Commercial Painters	Rely upon the information supplied by manufacturers about hazards
50	Office Supplies	All employees made aware of the HSE Act and its ramifications
51	Garden Centre	Sprays are hazardous - rely upon the information from manufacturers
52	Plumbing supplies	Hazards are glues and gases - necessary to inform staff
53	Welding services	The fumes are highly toxic - we do the best we can to protect staff
54	Laboratory	Part of our staff training involves OSH
55	Laboratory	Purchasing a copy of HSE Act from Whitcoulls - didn't tell us much
56	Laboratory	We are in a dangerous field so safety is paramount.
57	Radiation testing	Dangerous hazards - we make a deliberate point of subscribing to safety
58	Sign writing	We have to be careful - however not really a dangerous occupation
59	Radiator repairs	We are a bit concerned to hear that our industry is considered hazardous
60	Portable sawmilling	The Bush Inspectors don't know what they are talking about - common sense
61	Landscape gardening	Apart from the bulldozer drivers a relatively safe business
62	Forklift Repairs	The new system seems important - suspicious of ACC
63	Carpet Laying	Doesn't affect us - anyway what's the point of making more laws
64	Fish Processing	Compliance is important - safety standards means we retain our workforce
65	Scrap metal	Just a joke and waste of time - I'll get myself a good lawyer
66	Fibreglass	The produce is hazardous - the Inspectors keep us up-to-date
67	Leather goods	We haven't got a problem with the system
68	Printing	Safety is really common sense - don't see what the fuss is about
69	Sheet metal	Whilst doesn't affect us it will be a headache for contractors
70	Bakery	Can't afford to lose my skilled staff through a silly accident
71	Tyre Dealer	Doesn't really apply to us but nonetheless safety is important
72	Locksmith	Any improvement to make people aware of safety must be good
73	TV & video repairs	Just another Government measure to keep the little man down
74	Ventilation	We look after our workers which is more than ACC is doing
75	Photographic	The old system was working okay - why confuse everyone

TABLE 3

ANALYSIS OF ATTITUDES FROM PRELIMINARY SURVEY										
DESCRIPTION	HOSTILE NEGATIVE		APATHETIC INDIFFERENT		REASONABLE FAVOURABLE		IMPORTANT POSITIVE		TOTAL	
METHOD OF ACCIDENT RECORDING	(35)	46.5%	(14)	19%	(26)	34.5%	--		(75)	100%
ATTITUDE TOWARDS THE INSPECTORATE	(6)	8%	(30)	40%	(29)	38.5%	(10)	13.5%	(75)	100%
AWARENESS OF THE HSE ACT	(6)	8%	--		(57)	76%	(12)	16%	(75)	100%
ATTITUDE TOWARDS THE HSE ACT	(5)	6.5%	(21)	28%	(36)	48%	(13)	17.5%	(75)	100%
COMMITMENT TO OSH IN GENERAL	--		(13)	17.5%	(47)	62.5%	(15)	20%	(75)	100%

Figures in brackets indicates the total number of firms within the survey group that have expressed a particular view within the prescribed category.

EXPLANATION ON SURVEY TERMINOLOGY

1. METHOD OF ACCIDENT REPORTING:
   - 1.1 Hostile/Negative means the Survey firm has no accident reporting system or structure whatsoever.
   - 1.2 Apathetic/Indifferent signifies that the Survey firm is appreciative of the needs to implement a system and indicates that it has a vague unstructured system to call upon.
   - 1.3 Reasonable/Favourable means the Survey firm has a tangible system in place.

2. ATTITUDE TOWARDS THE INSPECTORATE:
   - 2.1 Hostile/Negative means the Survey firm has a pronounced hostile attitude towards the Inspectorate.
   - 2.2 Apathetic/Indifferent means the Survey firm either has no attitude or is simply indifferent.
   - 2.3 Reasonable/Favourable means the Survey firm has a sympathetic and favourable attitude.
   - 2.4 Important/Positive means the Survey firm signified that it had an Excellent or good relationship.

3. AWARENESS OF THE HSE ACT:
   - 3.1 Hostile/Negative means the Survey firm had no knowledge of the Act
   - 3.2 Reasonable/Favourable means the Survey firm had a basic awareness of the Act.
   - 3.3 Important/Positive means the Survey firm had a high level of awareness.

4. ATTITUDE TOWARDS THE HSE ACT:
   - 4.1 Hostile/Negative means the Survey firm signified that either the Act is intrusive or held a hostile attitude
   - 4.2 Apathetic/Indifferent means the Survey firm signified that it was unsure as to its attitude.
   - 4.3 Reasonable/Favourable means the Survey firm considered the Act as important
   - 4.4 Important/Positive means the Survey firm expressed its high approval of the Act and held a positive attitude

5. COMMITMENT TO OSH IN GENERAL:
   - 5.1 Apathetic/Indifferent means the Survey firm signalled that they were .indifferent or it was not their concern
   - 5.2 Reasonable/Favourable means the Survey firm considered OSH to be Relevant or Important.
   - 5.3 Important/Positive means the Survey firm considered OSH to be a priority and expressed total commitment

A. Method of Accident Recording:

Despite the very clear legislative requirement as contained within Section 25(1) of the Health and Safety in Employment Act 1992 for an employer to maintain a register of accidents and serious harm, the survey results under the category of Accident Recording were alarming. The clear requirement under Part IV of the Health and Safety in Employment Act 1992 pertaining to General Provision for Accidents requires employers to:

- Record the incident in a Register of Accident and Serious Harm
- Where serious harm is suffered by an employee as a result of exposure to any hazard the Secretary to be notified
- Provide a written report to OSH as soon as possible

As Table 3 illustrates, 46.5% of the firms surveyed had absolutely no method whatsoever of recording accidents. Of the remaining firms, 19% indicated that if called upon they possibly would complete an accident form. However, these 14 firms had no structured accident recording system in place. The remaining firms (some 26) representing 34.5% of the surveyed firms indicated that they definitely had a system in place and were aware of the legislative requirements of the Act.

B. Attitude towards the Inspectorate:

This particular category within the survey produced some interesting results as Table 3 graphically illustrates. As to the reported 8% of firms displaying a hostile/negative attitude, three (3) of the six (6) firms making up the 8% had no contact with the Inspectorate in the preceding five (5) years. (see Employer reference Nos 30, 65 & 73 within Tables 1 & 2). By explanation for the purposes of the survey, hostility was an articulated dislike of the Inspectorate rather than an impression. At the opposite end of the spectrum, 10 firms or 13.5% of the surveyed firms articulated a highly favourable and positive attitude towards the Inspectorate.

C. Awareness of the HSE Act:

Despite a comprehensive media campaign by the Occupational Safety and Health Service of the Department of Labour, commencing in October 1992 on the introduction of the Health and Safety in Employment Act 1992, the survey result must be viewed as disturbing. The Health and Safety in Employment Act 1992 because law in New Zealand on April 1, 1993, and the survey commenced on August 17, 1993; some three (3) months later. Even allowing for the scant media coverage, some 8% of the surveyed firms articulated total ignorance of the Act, and with several within this group expressing alarm when the ramifications of the Act were explained.

An analysis of Table 1, reveals that the firms that had no knowledge of the Act appeared during the early phase of the survey and after October 21, 1993, all firms surveyed had some knowledge of the Act. In contrast, only 12% of the firms surveyed communicated in an evidential sense, any real tangible knowledge of the Act. The vast middle ground consisting of 76% of the firms surveyed had an awareness of the Act ranging from "I've heard about it" through to "Yes, I have some information on the Act"

D. Commitment to OSH in general:

The survey again produced certain noteworthy results. Table 3 identifies that no firm as surveyed expressed a hostile or negative attitude towards Occupational Health and Safety. However, only 20% of the firms surveyed articulated a real genuine and positive attitude towards Occupational Health and Safety.

E. Designated OSH Person:

The Health and Safety in Employment Act 1992 has no provisions to prescribe a requirement upon Employer's to appoint or nominate a particular person to assume, co-ordinate or monitor Occupational Health and Safety within the firm. However a cursory appraisal of Section 6 of the Health and Safety in Employment Act 1992 (general duties of Employers) would suggest that the barest requirement for even an errant employer would be to have a vague system incorporating someone assuming responsibility; albeit ill-defined. An analysis from the data collected in the survey and produced within Table 1 reveals the following:

(i)	No person responsible	34 firms	(45.5%)
(ii)	Supervisor/Foreperson responsible	9 firms	(12%)
(iii)	Safety Officer/Manager	5 firms	(6.5%)
(iv)	Miscellaneous	27 firms	(36%)
		75 firms	(100%)

The final aspect of the analysis of the Survey results involves a brief interpretation of Table 2. The information within Table 2 is comprised of candid comments made by the interviewee of the surveyed firm during the closing stage of the individual interview when reviewing Table 2 seven (7) themes emerge which can be summarised under the following heading:

1. Very Small Firms: Sole operators and two person partnerships regard Occupational Health and Safety as important. Of the firms surveyed a total of 13 employed two (2) persons and of the 13 firms 10 were partnerships. Comments from the partnership firms, as identified in Table 2, provide a valuable clue to attitudes. Consider the following:

- Only 2 of us in business – can't afford to take risks (Firm No. 4)
- Partnership no staff – treat machinery with respect – economic survival (Firm No. 16)
- Probably is important but we can't afford to lose time with accidents (Firm No. 32).

Of the 13 two (2) person firms, all but one (1) (Firm No. 21) expressed a positive attitude towards Occupational Health and Safety. Of the firms surveyed there were three (3) in which only one (1) person was employed. Two (2) of these sole operators had a distinctly positive attitude toward Occupational Health and Safety, whereas the remaining operator voiced approval. By way of analysis the firms that employed between four (4) and eleven (11) employees did not regard Occupational Health and Safety so vital as the sole operators and two person firms. From the data collected it is reasonable to conclude that the sole operators and two person firms equate safety to economics, and for the maintenance and operational aspects of the firm the participants cannot afford to sustain injury and thus assume a safer working environment. In short, the very small firms regard the personnel as the capital of the firm and that capital cannot be jeopardised.

2. Multi-National standards: Of the total number of firms surveyed there were three (3) firms that were sub-contracted with the Petro-Chemical Industry (Firms Nos: 8, 15 & 57). These three (3) firms indicated that stringent criteria was laid down by industry relating to Occupational Health and Safety and unless they are prepared to assume strict compliance with prescribed standards, their respective contracts will not be renewed. The Multi-Nationals concerned were Shell Todd Oil Services and Methanex New Zealand Limited.

3. Cynicism: Of the total number of firms surveyed there were twelve (12) firms that expressed positive dissatisfaction with the system. The following comments from a number of those particular firms will illustrate the focus of concern:
   - More government interference - far too many rules - (Firm No. 17)
   - Complete waste of money - only get a slap on the wrist anyway - (Firm No. 21)
   - The Inspectors are a complete waste of time - (Firm No. 30)
   - Far too wretched laws in this country - can't keep up - (Firm No. 34)
   - Inspectors talk about test cases - (Firm No. 40)
   - The Bush Inspectors don't know what they are talking about - (Firm No. 60)
   - Just a joke and a waste of time - I'll get myself a good lawyer - (Firm No. 65)

The cynical approach ranged from that bordering on contempt through to exasperation. The Construction industry typified the exasperated response as the majority of firms in this category voiced concern that they were not getting clear answers from the OSH Inspectors, despite intimating their real concerns. From an analysis of the various responses from the twelve (12) firms identified, the responses can be categorised under the following three (3) broad headings:

- Excessive number of laws – creating confusion.
- Ineffectiveness of the Inspectorate – the inspectors are unhelpful.
- Inadequate penalties – small fines, so why worry.

4. Hazard Indifference: Whilst the focus of the survey did not specifically concern itself with hazards or a system of hazard identification, the impression gained from the survey responses is that a significant number of firms were either unaware of the Employers obligations under Sections 7 to 10 of the Health and Safety in Employment Act 1992, or were indifferent. Consider the following four (4) responses as identified within Table 2, namely:
   - No hazards in our business – (Firm No. 23)
   - Didn't realise we had hazardous materials until attended a seminar – (Firm No. 35)
   - Don't consider hazardous – However we are careful – (Firm No. 41)
   - Only hazardous material would be lacquers – nothing else – (Firm No. 48)

5. Designated person and Standards: When correlating Table 1 and 2, a pattern certainly emerges to the degree that those firms that have designated a specific person with the responsibility for Occupational Health and Safety the attitude towards Occupational Health and Safety in general is positive. It will be noted from 1.3E above that a total of 14 firms or 18.5% of the total firms surveyed had a specific person designated to be responsible for Occupational Health and Safety. Whilst this number is unfortunately low, the responses as identified within Table 2 certainly attest to a positive attitude by the subject firm when it employs a designated person. Whilst the conclusions reached are only based upon impressions and not detailed analysis, the conclusions are nonetheless noteworthy.

6. Concern about ACC: Of the total number of firms surveyed, there were four (4) firms that specifically raised the issue of Accident Compensation (see Firm Nos 26, 29, 62 & 74). One (1) particular firm (No. 26) voiced its concern between the relationship of the Health and Safety in Employment Act 1992 with the current Experience rating regime under the Accident Rehabilitation and Compensation Insurance Corporation. Whilst the firm in question was unaware of the provisions within Section 60 of the Health and Safety in Employment Act 1992 (Information provided by Accident Rehabilitation and Compensation Insurance Corporation) the firm was nonetheless deeply suspicious.

7. Information Providers: Of the total number of firms surveyed, there were five (5) firms who confirmed that they sought specific advice or relied upon information provided by manufacturers. One (1) firm stated that it constantly seeks advice from the OSH Inspectors, whereas two (2) other firms attended seminars on the Health and Safety in Employment Act 1992. Whilst the number of firms that indicated that they derived benefit from seeking advice from Information providers was only a small group it is nonetheless significant that certain firms do rely upon professional advice.

1.5 SUMMARY AND STRUCTURE FOR FURTHER RESEARCH:

The Preliminary Survey whilst time consuming, provided noteworthy data in itself. However the real purpose of the Preliminary Survey was to focus upon attitudes towards Occupational Health and Safety, and to determine a focus for further research. As such, the information revealed from the Preliminary Survey is considered immensely valuable in that it has provided the vehicle to charter the route for further research. That route pertains to the shape of the parameters for further research, and identifying the subject criteria to be embodied within the comprehensive survey to be undertaken. As such, the information gathered during the Preliminary Survey and its analysis, presents a coherent structure for the thesis.

The analysis of information produced from the Preliminary Survey has been categorised into various subject areas. Many of the subject areas identified whilst noteworthy fall outside the prime focus of the thesis (e.g. Number of accidents in preceding five (5) years). As the thesis focus is concerned with attitudes towards Occupational Health and Safety, it is considered that the Preliminary Survey has identified that the following subject areas can be incorporated in the further research; namely;

Designated OSH Person	Multi-National Companies
Methods of Accident reporting	Excessive legislation
Attitudes towards the Inspectorate	Penalties
Small firms	Accident Compensation
Hazard Identification	Information providers

The structure of the thesis hereafter concerns itself with an evaluation of attitudes after completing certain research followed by a comprehensive survey of attitudes from selected business organisations throughout Taranaki. The allocation of the identified subject areas from the Preliminary Survey to the two (2) broad areas of the thesis can be summarised as follows:

A. Further Research (Non Survey):

(i) Attitude towards the Inspectorate: As identified within 1.4B, 8% of the firms surveyed were identified as displaying a hostile/negative attitude towards the OSH Inspectors. By contrast, only 13.5% of the firms surveyed articulated a highly favourable and positive attitude towards the Inspectorate.

Of interest is that one (1) particular firm regarded the OSH Inspectors as its prime source of information. As the OSH Inspectorate consider that they have an educative role in the modern sense of a training provider for reward (regarded by some commentator as incompatible with the enforcement role), it is considered that the subject matter of the Inspectorate is rather fundamental for inclusion in the thesis structure.

(ii) Small Firms: As identified within Table 1, the average number of employee's per survey firm was nine (9). At the time of completing this Summary, the Taranaki Times of March 11, 1994 published certain interesting statistics under the heading "Small businesses lead the way". An extract from that article is noteworthy as follows:

> "A massive 98.7 per cent of New Zealand enterprises have fewer than 50 employees. Together, these enterprises employ 51.1 per cent of all those employed by New Zealand businesses."

In the analysis of Table 2, under the heading of "Very Small Firms" it was concluded that sole operators and two (2) person partnerships appeared to regard Occupational Health and Safety as a greater priority than a Small firm with a workforce between four (4) and eleven (11) employees. As New Zealand has an extremely high percentage of small firms, it is considered that an evaluation of attitudes within small firms is vital to the integrity of the thesis. As such, it is considered that certain research ought to be completed on the subject matter of Small Firms per se.

(iii) Excessive Legislation: Certain comments identified within Table 2 are critical of the excessive amount of legislation in the workplace. Whilst the Preliminary Survey was not designed to seek a full explanation of the various comments or criticisms, Occupational Health and Safety legislation has been rounded criticised in New Zealand for being excessive in number and fragmented. Accordingly, to provide a frame of reference for the Health and Safety in Employment Act 1992 it is considered that the thesis ought to concern itself with historic attitudes as reflected through a historic survey of Occupational Health and Safety legislation.

(iv) Penalties: Again certain comments identified within Table 2, two (2) firms indicated that they considered the enforcement aspect of Occupational Health and Safety legislation to be woefully inadequate and no real deterrent. It is unclear just how accurate or credible this view is. However attitudes of the judiciary towards penalties in successful prosecutions can be ascertained by research and a survey of the judiciary. Suffice to state an interesting dimension for inclusion within the thesis.

(v) Information Providers: A revealing aspect which emerged from the Preliminary Survey was the reliance by a small number of firms upon the advice received from Information Providers. In New Plymouth itself there are at least five (5) organisations that provide professional advice to business on the subject matter of Occupational Health and Safety. Clearly the attitudes of these particular Information Providers is important to gauge for completeness of the Thesis itself.

B. Comprehensive Survey:

As identified in the Survey Introduction (1.2), the original thinking for this thesis was significantly influenced by the research undertaken in England. The structure for the thesis as originally contemplated proposed a comprehensive survey to contrast attitudes towards Occupational Health and Safety between small and large firms. Fortunately, the Preliminary Survey has provided raw analytical data that has reshaped the structure of the further Survey. As such, the comprehensive survey will incorporate into its structure the following:-

- Designated OSH Person: Is there any correlation between positive attitudes and low accident/injury rates when a firm employs or designates a specific person for OSH responsibility?

- Method of Accident reporting: Considered important to evaluate commitment and providing a clue to overall attitudes.

- Hazard Identification: It is perceived that many firms are not appreciative of what constitutes a hazard. As such the evaluation of attitudes towards hazards, both real and perceived is considered important.

- Multi-National Companies: The results drawn from the Preliminary Survey suggest that New Zealand firms that have an overseas influence tend to adopt a positive commitment to Occupational Health and Safety. Furthermore, New Zealand firms that sub-contract to Multi-National Companies appear to accept the imposed criteria for compliance. Whether the New Zealand contractors simply comply with the overseas criteria to win the contract, or whether the attitude of compliance is real is somewhat unclear. Suffice to state a vital enquiry for the survey.

- Small Firms: As the Preliminary Survey revealed that the average firm in the survey employed nine (9) workers, it is important to attempt to contrast attitudes between small firms and firms that employ 50 or more workers. Similarly, further investigation is considered warranted upon the preliminary assessment that very small firms have a greater appreciation and a more positive attitude towards Occupational Health and Safety than those small firms that employ between four (4) and eleven (11) workers.

PART TWO (2)

LEGISLATIVE OVERVIEW 1854–1981

2.1 FOREWORD

Traditionally the student of Occupational Health and Safety will readily recognise that the Employment of Females Act 1873, the Factories Act 1891 and the Shops and Offices Act 1904 as the major thrust of early New Zealand legislation designed to impose conditions, and generally implement structures to protect certain categories of workers. However, a closer examination of the early New Zealand statutes reveal a somewhat different situation. Table 4 (page following), graphically illustrates the prolific efforts of the early New Zealand legislators to place Industrial Safety legislation on the statute books.

The period 1854 to 1981 has been deliberately chosen for the Merchant Shipping Act 1854 is considered to be the real embryonic origins of New Zealand's Industrial Safety legislation. The closing of the era is that of the Factories and Commercial Premises Act 1981 being the last significant piece of legislation passed into law before the introduction of the Health and Safety in Employment Act 1992.

Part 2.2 is concerned with a selective survey involving 22 separate pieces of Industrial Safety Legislation and is entitled "Early Legislation". The legislation commences with an analysis of the Merchant Shipping Act 1854 and concludes with the Scaffolding and Excavation Act 1922. The purpose of Part 2.2 which is essentially narrative in form, is designed to provide a framework to illustrate the evolution of legislative attitudes.

TABLE 4

LIST OF NEW ZEALAND LEGISLATION INTRODUCED ONTO THE STATUTE BOOKS BETWEEN 1854 AND 1981 (BOTH INCLUSIVE) HAVING EITHER A DIRECT OR INDIRECT BEARING ON OCCUPATIONAL HEALTH AND/OR INDUSTRIAL SAFETY		
YEAR OF INTRO-DUCTION	SHORT TITLE OF ACT	INDUSTRY AFFECTED AND/OR COMMENT
1854	THE MERCHANT SHIPPING ACT	SHIPPING/STEAM BOILERS
1866	THE STEAM NAVIGATION ACT	STEAM ENGINES
1869	THE DANGEROUS GOODS ACT	EXPLOSIVES
1872	THE QUARTZ CRUSHING MACHINES REGULATION AND INSPECTION ACT	SPECIFIC MACHINERY
1873	THE EMPLOYMENT OF FEMALES ACT	FEMALES IN WORKROOMS
1874	THE REGULATION OF MINES ACT	MINING INDUSTRY
1877	THE SLAUGHTERHOUSES ACT	SLAUGHTERHOUSES & ABATTOIRS
1881	THE DISEASED CATTLE ACT	SLAUGHTERHOUSES
1882	THE EMPLOYERS LIABILITY ACT	WORKERS COMPENSATION
1882	THE EXPLOSIVE ACT	MANUFACTURE OF EXPLOSIVES
1886	THE MINING ACT	SAFETY CONDITIONS IN COAL MINES
1891	THE COAL MINES ACT	COAL INDSTRY
1891	THE MINING ACT	MINING GENERALLY
1894	THE FACTORIES ACT	WORKERS IN FACTORIES
1894	INDUSTRIAL CONCILIATION AND ARBITRATION ACT	FOR UNIONISED WORKERS
1894	THE SHOPS AND SHOP ASSISTANTS ACT	WORKERS IN SHOPOS
1900	THE WORKERS COMPENSATION FOR ACCIDENTS ACT	PROVIDING LIMITED COMPENSATION
1900	THE PUBLIC HEALTH ACT	INSPECTIONS OF WORK PLACES
1901	THE ACCIDENT COMPENSATION ACT	MEDICAL EXAMINATIONS
1901	THE STATE COAL MINES ACT	COAL INDUSTRY
1902	THE INSPECTION OF MACHINERY ACT	MACHINERY IN INDUSTRY
1904	THE SHOPS AND OFFICES ACT	CONDITIONS IN SHOPS
1905	THE WORKERS DWELLINGS ACT	ACCOMMODATION FOR WORKERS
1906	THE SCAFFOLDING INSPECTION ACT	SCAFFOLDING
1907	AGRICULTURAL LABOURERS ACCOMMODATION ACT	STANDARDS OF ACCOMMODATION
1908	THE SHEARERS AND AGRICULTURAL LABOURERS' ACCOMMODATION ACT	STANDARDS OF ACCOMMODATION
1908	THE MASTER AND APPRENTICE ACT	APPRENTICESHIPS
1908	THE KAURI GUM INDUSTRY ACT	KAURI GUM/INSPECTION
1908	THE SCAFFOLDING INSPECTION ACT	REVISED STANDARDS
1910	THE STONE QUARRIES ACT	STONE QUARRIES
1912	THE BARMAIDS REGISTRATION ACT	LIQUOR LICENCING
1912	THE PLUMBERS REGISTRATION ACT	PLUMBING
1915	THE MINERS PHTHISIS ACT	COMPENSATION FOR MINERS
1917	THE SOCIAL HYGIENE ACT	VENEREAL DISEASE
1919	THE SHEARERS ACCOMMODATION ACT	SHEARING INDUSTRY
1922	THE SCAFFOLDING AND EXCAVATION ACT	CONSTRUCTION
1922	THE WORKERS COMPENSATION ACT	COMPENSATION
1923	THE APPRENTICES ACT	APPRENTICESHIPS
1925	THE COAL MINES ACT	COAL INDUSTRY
1926	THE MINING ACT	MINING GENERALLY

1936	THE FACTORIES AMENDMENT ACT	CONDITIONS IN FACTORIES
1936	THE AGRICULTURAL WORKERS ACT	GENERAL CONDITIONS
1937	THE PETROLEUM ACT	INDUSTRIAL SAFETY
1944	THE QUARRIES ACT	QUARRIES
1945	THE BUSH WORKERS ACT	BUSH WORKERS
1945	THE ATOMIC ENERGY ACT	SPECIFIC SAFETY
1946	THE FACTORIES ACT	REVISED SAFETY
1947	THE CONTRIBUTORY NEGLIGENCE ACT	ACCIDENTS
1948	THE TUBERCULOSIS ACT	OCCUPATIONAL HEALTH
1949	THE INDUSTRIAL RELATIONS ACT	UNIONISED WORKERS
1950	THE GEOTHERMAL ENERGY ACT	SAFETY PRECAUTIONS
1950	THE BOILERS LIFTS AND CRANES ACT	SELECTED INDUSTRIES
1950	THE MACHINERY ACT	MACHINERY GENERALLY
1950	THE HARBOURS ACT	CARGO HANDLING
1952	THE DEATHS BY ACCIDENT COMPENSATION ACT	LIMITED COMPENSATION
1952	THE SHIPPING AND SEAMEN ACT	GENERAL CONDITIONS
1955	THE SHOPS AND OFFICES ACT	GENERAL CONDITIONS
1956	THE HEALTH ACT	ASBESTOS & DISEASES
1956	THE WORKERS COMPENSATION ACT	COMPENSATION FOR WORK INJURIES
1957	THE EXPLOSIVES ACT	MANUFACTURING STANDARDS
1957	THE DANGEROUS GOODS	SAFETY STANDARDS
1957	THE HOSPITALS ACT	WORK CONDITIONS
1959	THE CONSTRUCTION ACT	SAFETY IN CONSTRUCTION
1959	THE ELECTRICAL LINEMEN ACT	TRAINING OF WORKERS
1960	THE FERTILISER ACT	PRESCRIBED STANDARDS
1962	THE TRANSPORT ACT	SAFETY ON HIGHWAY
1962	THE STATE SERVICES ACT	PRESCRIBED STANDARDS
1962	THE AGRICULTURAL WORKERS ACT	SAFETY CONDITIONS
1962	THE SHEARERS ACT	CONDITIONS WITHIN INDUSTRY
1963	THE DENTAL ACT	SAFETY STANDARDS
1964	THE BURIAL AND CREMATION ACT	OCCUPATIONAL HEALTH
1964	THE HUMAN TISSUES ACT	OCCUPATIONAL HEALTH
1964	THE CIVIL AVIATION ACT	OCCUPATIONAL HEALTH
1965	THE RADIATION PROTECTION ACT	OCCUPATIONAL HEALTH
1967	THE ANIMAL REMEDIES ACT	SAFETY OF PERSONNEL
1967	THE AGRICULTURAL PEST DESTRUCTION ACT	PRESCRIBED SAFETY STANDARDS
1968	THE ELECTRICITY ACT	ACCIDENT PREVENTION
1971	THE MINING ACT	OCCUPATIONAL HEALTH
1972	THE ACCIDENT COMPENSATION ACT	UNIONISED WORKERS
1972	THE CLEAN AIR ACT	PRESCRIBED STANDARDS
1973	THE INDUSTRIAL RELATIONS ACT	SAFETY STANDARDS
1974	THE DANGEROUS GOODS ACT	REGISTRATION STANDARDS
1975	THE FIRE SERVICES ACT	SAFETY STANDARDS
1976	THE PLUMBERS GASFITTERS & DRAINLAYERS ACT	REGISTRATION STANDARDS
1977	THE AGRICULTURAL WORKERS ACT	SAFETY STANDARDS
1979	THE TOXIC SUBSTANCES ACT	PRESCRIBED STANDARDS
1979	THE PESTICIDES ACT	PRESCRIBED STANDARDS
1979	THE ELECTRICAL REGISTRATION ACT	STANDARDS FOR ELECTRICAL WORKERS
1979	THE COAL MINES ACT	PRESCRIBED SAFETY STANDARDS
1981	THE MEDICINES ACT	HEALTH STANDARDS
1981	THE FACTORIES AND COMMERCIAL PREMISES ACT	PRESCRIBED STANDARDS

Part 2.3 entitled "More Recent Legislation" involves a survey of eight (8) separate pieces of legislation between the period 1937 and 1981. The purpose of Part 2.3 which, again similar to Part 2.2, is narrative in form and designed to illustrate the stagnation in the 44 year period and identifies that the legislation was principally concerned with specific occupations or industrial activities, rather than the embodiment of a comprehensive legislative code to protect all workers Occupational Health and Safety.

The 30 pieces of legislation that are considered within Parts 2.2 and 2.3 are listed within Table 5 (page following). In order to thread together some analysis of the historic legislation, Part 2.4 examines five separate statutory enactments ranging from the Employment of Females Act 1873 through to the Commercial Premises Act 1981 and attempts to identify attitudinal positions. The purpose of Part 2.4 is to examine attitudes towards Occupational Health and Safety. A summary is contained within Part 2.5 which provides an historical summary and a framework for comparative analysis of attitudinal positions relating to subsequent legislation.

TABLE 5

	SHORT TITLE OF STATUTE	DATE INTRODUCED
1.	The Merchant Shipping Act 1854	August 10, 1854
2.	The Steam Navigation Act 1866	October 8, 1866
3.	The Dangerous Goods Act 1869	September 3, 1869
4.	The Quartz–Crushing Machines Regulation and Inspection Act 1872	October 21, 1872
5.	The Employment of Females Act 1873	October 2, 1873
6.	The Regulation of Mines Act 1874	August 22, 1874
7.	The Inspection of Machinery Act 1874	August 31, 1874
8.	The Slaughterhouses Act 1877	November 14, 1877
9.	The Employers' Liability Act 1882	September 13, 1882
10.	The Explosives Act 1882	September 15, 1882
11.	The Coal Mines Act 1891	September 25, 1891
12.	The Mining Act 1891	September 21, 1891
13.	The Factories Act 1891	September 21, 1891
14.	The Industrial Conciliation and Arbitration Act 1894	August 31, 1894
15.	The Shops and Shop Assistants Act 1894	October 18, 1894
16.	The Workers' Compensation for Accidents Act 1900	October 18, 1900
17.	The Public Health Act 1900	October 13, 1900
18.	The Accidents Compensation Act 1901	July 27, 1901
19.	The Shipping and Seamen Act 1903	April 4, 1903
20.	The Shops and Offices Act 1904	November 8, 1904
21.	The Scaffolding Inspection Act 1906	October 29, 1906
22.	The Scaffolding and Excavation Act 1922	October 31, 1922
23.	The Petroleum Act 1937	December 11, 1937
24.	The Quarries Act 1944	October 30, 1944
25.	The Bush Workers Act 1945	December 7, 1945
26.	The Boilers, Lifts and Cranes Act 1950	November 23, 1950
27.	The Machinery Act 1950	November 23, 1950
28.	The Agricultural Workers Act 1977	November 1, 1977
29.	The Toxic Substances Act 1979	October 19,1979
30.	The Factories and Commercial Premises Act 1981	September 3, 1981

2.2 EARLY LEGISLATION (1854 - 1922)

2.2.1 A SELECTIVE LEGISLATIVE OVERVIEW

A survey of the influential authorities on New Zealand history suggest that the embryonic influences towards a comprehensive legislative structure for Industrial Health and Safety in New Zealand evolved from the Socialist leaning of the Liberal Government which was swept into power in December 1890 with significant Trade Union support. The majority of contemporary historic text's suggest that the Factories Act, Coal Mines Act and the Mining Act, introduced in 1891 signalled the introduction of Health and Safety legislation into New Zealand. However, a somewhat more exhaustive enquiry into New Zealand's legislative history, reveals that the 1860's foreshadowed the more intensive thrust of the 1890's. Suffice to state that the clock commenced its rather sluggish movement in 1854.

A. THE MERCHANT SHIPPING ACT 1854:

The long title to this statutory enactment identified as the first piece of legislation having an impact on Industrial Safety in New Zealand was described as:

> "An Act to amend and consolidate the Acts relating to Merchant Shipping".

The Act that was introduced into the New Zealand statute book on August 10, 1854 was essentially a consolidation of English legislation drafted into New Zealand law. The Act contained a massive 548 separate sections, and Part IV of the Act was described as, "Safety and Prevention of Accidents". Section 326 of the Act pertaining to Accidents, contained, inter alia:

> "Whenever any Steam Ship has sustained or caused any Accident occasioning Loss of Life or serious Injury to any Person, ... the Owner or Master shall within 24 hours after the happening of such Accident, or soon thereafter as possible, send to the Board of Trade by letter, a Report of such Accident, and the probable Occasion thereof, ... and if the Owner or Master neglect so to do he shall for such offence incur a Penalty not exceeding Fifty Pounds".

Section 329 of the Act pertained to the Carriage of Dangerous Goods, and contained provisions to prevent the taking dangerous goods on board without due Notice.

B. **THE STEAM NAVIGATION ACT 1866:**

The long title to this statutory enactment which was introduced into law in New Zealand on October 8, 1866 was described as:

> "An Act to regulate Steam Vessels and the Boats and Lights to be carried by Seagoing Vessels".

The Act which comprised some 47 sections was predominately concerned with the survey and certification of steam powered boats.

To a lesser degree the legislation concerned itself with restrictions on the carriage of passenger's and cargo. However, from the focus of Industrial Safety, the legislation was surprisingly comprehensive with respect to the empowering of the Inspectorate and provisions for the investigations of accidents and reporting. Furthermore the Act prescribed certain safety standards, such as water-tight partitions, steamers to carry safety valves, fire hoses and licensed engineers. Two (2) particular Sections of the Act are noteworthy as follows:

(i) Section 33 - Accidents to be reported:

> "Whenever any steam vessel (other than a ship of war) has sustained or caused any accident occasioning the loss of life or any serious injury to any person or has received any material damage affecting her seaworthiness or efficiency either in her full or in any part of her machinery the owner or master or other person having charge of such vessel shall within twenty-four hours after the happening of such accident or damage or as soon thereafter as possible transmit through the Post Office to the Postmaster-General and to the Collector or Sub-Collector of Customs at the nearest port by letter signed by the master or such other person a report of such accident or damage and the probable occasion thereof stating the name of the vessel the port to which she belongs and the place where she is and if such master or other person neglect so to do he shall for such offence be liable to a penalty not exceeding one hundred pounds".

(ii) Section 35 - Powers of Inspectors:

> "It shall be lawful for any such Inspector Surveyor or other person as aforesaid to go on board any steam vessel at all reasonable times and to inspect the same or any part thereof or any of the machinery boats equipments or articles on board thereof to which the provisions of this Act or any of the regulations to be made by virtue thereof apply not unnecessarily detaining or delaying the vessel from proceeding on any voyage and in all cases of accident or damage such Inspector Surveyor or other person may make such inquiries as to the nature circumstances and causes of such accident or damage as he thinks fit and may require answers or returns thereto and may by summons under his hand require the attendance of all persons whom he thinks fit to call before him in any question or matter connected therewith or relating thereto and may administer oaths and examine such persons upon oath ...".

C. **THE DANGEROUS GOODS ACT 1869:**

The long title to this piece of New Zealand Industrial Safety legislation introduced into law on September 3, 1869 was described as:

> "An Act for the amendment of the Laws with respect to the Carriage and Deposit of Explosive and Dangerous Goods".

The Act itself contained 19 sections which was predominately concerned with prescribing certain standards for the carriage and storage of petroleum (including Rock Oil Rangoon).

In a general sense the legislation identified certain products of that era as dangerous and empowered local authorities to grant licenses under the Municipal Corporations Act 1867 to persons or organisations that either imported, or stored such Explosive or Dangerous goods. Predominately the target of the era was petrol or in the definition section of the Act - "an inflammable product that discharges a vapour at less than 110C". The principal mischief of the legislation was designed for Petroleum products and in particular Rock Oil, Rangoon and Burmah Oil together with coal shist, peat and other bituminous substances. The legislation went on to specify that from October 1, 1869, no dangerous goods could be stored in containers of more than 10 gallons (except for private use) without a licence. Section 3 of the Act was somewhat novel in that it declared a particular status to certain goods:

> 3. "The goods or articles commonly known as Nitro-Glycerine or Glonoine Oil shall be deemed to be specially dangerous within the meaning of the Act and Petroleum as herein defined shall be deemed to be dangerous within the meaning of this Act".

From an Inspectorate viewpoint, Section 16 of the Act is interesting. Section 16 authorised the then Inspector of Weights and Measures (or any other person authorised under the Weights & Measures Act 1868) at all reasonable times to inspect and test all petroleum products offered for sale and if found to be in contravention of the Act the offending person shall be liable upon conviction to a fine not exceeding five (5) pounds, together with forfeiture of the confiscated product.

D. **THE QUARTZ - CRUSHING MACHINES REGULATION INSPECTION ACT 1872:**

The long title to this statutory enactment introduced into law on October 21, 1872 was entitled:

> "An Act to provide for the Regulation and Inspection of Machinery and Appliances used in the Extraction of Gold from Quartz and other Substances, and for other Purposes".

The Act contained some 11 sections with the major thrust designed to licence machinery employed in the extracting of gold from any ore or mineral substance. Whilst the statute was essentially a revenue gathering devise, the statute nonetheless provided for the Governor to appoint Inspectors to inspect Machines and Machine premises which included, "the ground and buildings upon which any such machine shall be situate, and all offices and outbuildings used and occupied in connection with any such machine".

E. **THE EMPLOYMENT OF FEMALES ACT 1873:**

The long title to this statutory enactment which was introduced into law in New Zealand on October 2, 1873 was described as:

> "An Act to provide for Employment of Females in Workrooms and Factories".

The Act which the historians often refer to as the "Bradshaw Act" contains a mere seven (7) sections. The Act centres around the restriction on hours of employment, provisions for holidays and ventilation within workrooms. A detailed analysis of this Act is provided in Section 1.3.2 hereof.

F. **THE REGULATION OF MINES ACT 1874:**

The long title to this legislation introduced into law on August 22, 1874 was entitled:

> "An Act to provide for the Regulation and Inspection of Mines".

The Act contained some 42 sections. Part II of the Act provided a comprehensive set of rules applicable to every mine. The rules described as "General Rules", provided a regulatory framework for such matters as - ventilation, gunpowder and blasting, keeping spaces clear, fencing of entrances to shafts, signalling, overhead cover, machinery fencing, safety valves on boilers and inspection.

Part IV of the Act pertained to the regulation of the Employment of Women, young persons and children employed in mines. Part V of the Act provided within six (6) sections, detailed provisions for the Powers and Duties of Inspectors. On the subject of Accidents the following sections are of interest:

(i) Section 36 - Employer to compensate employee injured through non-observance of this Act.

(ii) Section 37 - Notice of Accidents:

> "Whenever loss of life or serious personal injury to any person employed in or about any mine occurs by reason of any explosion or other accident whatever within such mine or any pit or shaft thereof, or any works or machinery connected therewith, the owner agent or manager shall, within twenty-four hours next after such accident, give notice in writing thereof, and of the loss of life or serious personal injury occasioned thereby to the Inspector of the district within which such accident shall have occurred, and shall specify in such notice the probable cause thereof, and such notice may be delivered or transmitted through the post; and every owner agent or manager who neglects to send or cause to be sent such notice within the time aforesaid, shall for every such offence be liable to a penalty not exceeding twenty pounds ...".

G. THE INSPECTION OF MACHINERY ACT 1874:

The long title to this comprehensive piece of Industrial Safety legislation introduced into law on August 31, 1874 was entitled:

> "An Act to provide for the inspection and Regulation of certain kinds of Machinery in the Colony of New Zealand".

The Act contained some 48 detailed sections. Part II of the Act contained five (5) clearly defined sections pertaining to Inspectors and their duties. The Act within Section 40 made provisions for the notification of every accident to be sent to a Inspector of Machinery. The Act was substantially modified in 1882.

H. **THE SLAUGHTERHOUSES ACT 1877:**

The long title to this legislation introduced into law on November 14, 1877 was entitled:

> "An Act to regulate the Slaughter of Cattle and the Supervision of Abattoirs and Slaughterhouses".

Whilst of marginal significance from a Industrial Safety focus, Section 25 of the Act nonetheless provided authority to the then Inspectors of Abattoirs to inspect all Abattoirs and Slaughterhouses together with appurtenances thereto. Thus to a limited degree, the Inspector controlled working and safety conditions.

I. **THE EMPLOYERS' LIABILITY ACT 1882:**

The long title to this legislation introduced into law on September 13, 1882 was entitled:

> "An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service".

The Act which comprised some 11 sections was rather far-reaching when considering the legislation was introduced in 1882. Two particular sections are noteworthy as they demonstrate to thrust and legislative effect of the Act:

(i) Section 3 -

"Where after the commencement of this Act, personal injury is caused to a workman -

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

(2) By reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him, whilst in the exercise of that superintendence; or

(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, where such injury resulted from his having so conformed; or

(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, point, locomotive engine, or train upon a railway -

the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work".

(ii) Section 5 -

> "The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury".

J. **THE EXPLOSIVES ACT 1882:**

The long title to this specific piece of legislation introduced into law on September 15, 1882 was described as:

> "An Act to amend the law with respect to the Manufacturing, Keeping, and Storing of Gunpowder and other Explosive Substances".

The Act contained 20 sections designed primarily to licence factories engaged in the manufacture of gunpowder and imposed certain conditions. Section 5(c) of the Act pertained to the maximum number of persons to be employed in each building in the factory. Whilst not strictly a revenue statute, the Act contained clearly defined provisions for penalties.

K. **THE COAL MINES ACT 1891:**

The long title to this specific piece of legislation introduced into law on September 25, 1891 was described as:

> "An Act to amend the law regulating the Granting of Coal-mines Leases, and to make better provision for the Regulation and Inspection of Coal-mines".

The Act contained 88 sections touching on all aspects of Coal-mining operations. The Act was essentially a consolidation of the earlier legislation (The Regulation of Mines Act 1874) but its scope was more expansive. Interesting enough a boy was defined within Section 2 as - a male person under the age of thirteen years. Section 51 of the Act almost equates to the modern day standard of strict liability. The section provides - "Person committing breach of Act by which any person injured or killed deemed guilty of an offence".

L. **THE MINING ACT 1891:**

The Act described as an Act to consolidate and amend the laws relating to Mines and Mining was passed into law on September 21, 1891 and became operative on January 1, 1892. The Act contained a massive 363 sections. By any stretch of the imagination, the Act was extremely comprehensive both in its descriptive nature and regulatory effect.

Part VI of the Act contained 30 detailed sections pertaining to the Regulation for Working of Mines. A selection of certain sections within Part Vi including:

(i) Section 320 - Limit of hours of persons in charge of steam machinery,

(ii) Section 321 - Who may not work in mines,

(iii) Section 322 - Youth not to be employed as lander or braceman at brace set over shalf-working hours of boys and youths,

(iv) Section 330 - Employees to inform employers of breaches of Act,

(v) Section 333 - In case of accident presumption against mine-owner,

(vi) Section 336 - Notice of accident to be given to Minister,

(vii) Section 337 - Warden to report on condition of mine where accident happens.

M. **THE FACTORIES ACT 1891:**

The long title to this comprehensive enactment which was introduced into law on September 21, 1891 and became operative on January 1, 1892 was described as:

> "An Act to provide for supervising and regulating Factories and Work-rooms".

The Act comprised some 81 sections designed for the registration of Factories, appointment of Inspectors together with the regulatory control of conditions.

In a somewhat Victorian approach the youthful female sex was given limited protection within section 3 of the Act. In that section a "child" was defined as a boy under the age of thirteen years and a girl under the age of fourteen. Three (3) particular sections are noteworthy as they provide an illustration of the regulatory attitudes of that era:

(i) Section 27 - (Accidents) - "Where there occurs in a factory or a workshop any accident which either (a) causes loss of life to a person employed in the factory or in the workshop, or (b) causes bodily injury to a person employed in a factory or in the workshop, and is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with solid, liquid, or molten metal, or other substance, or by explosion, or by escape of gas, steam, or metal, and is of such a nature as to prevent or be likely to prevent the person injured by it from returning to his work in the factory or workshop within forty-eight hours of the occurrence of the accident, written notice of the accident shall forthwith be sent to the Inspector and to the medical authority for the district, stating the residence of the person killed or injured, or the place to which he may have been removed; and if any such notice is not sent within twenty-four hours after the occurrence of such accident the occupier of the factory or workshop shall be liable to a fine not exceeding ten pounds".

(ii) Section 29 - (Sanitary Provisions) - "Every factory or work-room shall be kept in a cleanly state, and free from effluvia arising from any drain, privy, or other nuisance. Where members of both sexes are working in the same factory or work-room, there shall be a separate watercloset or privy for each sex".

(iii) Section 30 - (Overcrowding - Drinking-water) - "A factory or work-room shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, as far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

The owner or occupier of every factory or work-room shall provide a supply of fresh drinking-water. A factory or work-room in which, in the opinion of the Inspector, there is a contravention of this section, and which opinion is signified in writing under the hand of the Inspector, shall be deemed not to be kept in conformity with this Act".

N. **THE INDUSTRIAL CONCILIATION AND ARBITRATION ACT 1894:**

The long title to this radical piece of Industrial Relations legislation which was passed into law on August 31, 1894 and became operative on January 1, 1895 was described as:

> "An Act to encourage to Formation of Industrial Unions and Associations, and to facilitate the Settlement of Industrial Disputes by Conciliation and Arbitration".

Whilst the Act was specifically designed as a Industrial Relations enactment, it did nonetheless have a bearing on Industrial Safety, as can be seen from the expansive definition of "Industrial matters" being:

> "Industrial matters" means all matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or workmen in any industry, and not involving questions which are or may be the subject of proceedings for an indictable offence; and, without limiting the general nature of the above definition, includes all or any matters relating to-
>
> (a) The wages, allowances, or remuneration of any persons employed in any industry, or the prices paid or to be paid therein in respect of such employment;
>
> (b) The hours of employment, sex, age, qualification or status of workmen, and the mode, terms, and conditions of employment;
>
> (c) The employment of children or young persons, or of any person or persons or class of persons in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein".

O. **THE SHOPS AND SHOP ASSISTANTS ACT 1894:**

This enactment which was introduced into law on October 18, 1894 was designed to limit the hours of business in Shops. From an Occupational Health and Safety focus, the Act provided a detailed prescription for the Working Conditions for females. A selection of certain sections is rather delicately revealing and in somewhat of a contrast to the contemporary phase of equal opportunities:

(i) Section 12 - (Hours) - "No woman, or person under eighteen years of age, shall be employed more than five consecutive hours without being granted an interval of not less than half an hour for refreshments.

A woman, or a person under eighteen years of age, shall not, to the knowledge of the shopkeeper, be employed in any shop who has been previously on the same day employed in a factory or workroom for the number of hours permitted by law, or for a longer period than will complete such number of hours".

(ii) Section 13 - (Notice of hours) - "In every shop in which women, or persons under eighteen years of age, are employed a notice shall be kept exhibited by the shopkeeper in a conspicuous place therein stating the number of hours in the week during which women and persons as aforesaid may lawfully be employed therein".

(iii) Section 15 - (Sitting accommodation) - "Every shopkeeper is hereby required to provide proper sitting accommodation for females employed in his shop, and if any shopkeeper fails to comply with the requirements of this section he shall for every week during which he so fails be liable to a penalty not exceeding five pounds.
No shopkeeper shall-

(a) Directly or indirectly prohibit or prevent, or make any rule or regulation prohibiting, any female employed in his shop from being seated when not actually and immediately engaged in the course of her employment;

(b) Require any such female to be so continuously employed in an employment the course of which requires her to remain standing as that reasonable intervals are not allowed to her in each day during which she may use the sitting-accommodation provided;

(c) Dismiss from his employment or reduce the wages of any female on the ground that she has made use of such sitting-accommodation, unless it be proved that she has used it for an unreasonably long time or an unreasonable number of times on any day...".

(iv) Section 17 - (Employer obligations) - "Every shop or business establishment shall be kept in a cleanly state, and free from effluvia arising from any drain, privy, or other nuisance, and shall be ventilated in a practical and efficient manner.

Where members of both sexes are working in the same shop or business establishment there shall be sufficient watercloset or privy accommodation for each sex, separated in such manner as to insure privacy, to the satisfaction of the Inspector".

P. **THE WORKERS' COMPENSATION FOR ACCIDENTS ACT, 1900:**

The long title to this enactment introduced into law on October 18, 1900 was entitled:

"An Act to amend the law with respect to Compensation to Workers for Accidental Injuries suffered in the Course of their Employment".

Like the Factories Act 1891 and the Industrial Conciliation and Arbitration Act 1894 the Workers' Compensation for Accidents Act 1900 was both provocative and extremely progressive for the era. The Act became operative on June 7, 1901.

Whilst the Act only contained 22 sections it may be criticised in a modern context, however, considering the state of the economy in New Zealand at the turn of the century, the Act must therefore be seen as a bold attempt to confront certain basic problems. Section 4 of the Act provided a limitation as to the employment categories as covered under the Act whereas Section 6 imposed a framework of liability. By stretch of the imagination did the Act open the floodgates to compensate injured worker's, the Act was essentially a compromise between the then powerful trade union sector groups, and the insurance companies.

Q. **THE PUBLIC HEALTH ACT, 1900:**

Whilst modelled on the United Kingdom legislation, the Act was comprehensive and in its ambit of 173 sections, attempted to cover all aspects perceived to be germane. Whilst its specific focus was not designed towards Occupational Health and Safety, the framework was nonetheless established. The Act under Part II pertained to Sanitation issues, Cleansing, Nuisances and Offensive Trades. Part III concerned itself with Quarantine provisions, with wide application.

R. **THE ACCIDENTS COMPENSATION ACT; 1901:**

The long title to this enactment introduced into law on July 27, 1901 was entitled:

> "An Act to make Provision for an Independent Medical Examination in cases of Claims for Compensation for Accidents".

To a degree this particular Act compliments the Workers' Compensation for Accidents Act, 1900 by the requirement for a Independent Medical Examination.

S. **THE SHIPPING AND SEAMEN ACT 1903:**

This particular Act incorporated provisions from the Victorian Act enacted several years earlier and sought to modify the earlier Steam Navigation Act 1866. The Act contained a massive 346 sections, and made specific provisions for Industrial Safety. Section 54 pertained to the prescribed number of seamen carried on ships, and sections 110-122 related to provisions for Health and Accommodation whilst employed on ships. Section 214 pertained to the Carriage of Dangerous Goods, and restricted the category of goods, together with a definition of dangerous goods. The sections relating to Accidents are noteworthy:

A. Section 124 - (Deaths and Accidents occurring at Sea) -

(1) "The master shall, on the arrival of the ship at a port in New Zealand, report to the Superintendent any case of death, or of accident totally incapacitating from work for the time being, and the Superintendent shall inquire into the cause of such death or accident, and shall make in the official log an entry to the effect either that the statement of the cause of death or accident therein contained is in his opinion true, or otherwise, as the result of the inquiry requires; and every such Superintendent shall, for the purpose of such inquiry, have the powers of a Marine Inspector appointed under this Act.

(2) If in the course of the inquiry it appears to him that any such death or accident as aforesaid has been caused by violence or other improper means, he shall either report the matter to the Minister, or, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice".

B. Section 195 - (Report of Accidents and Loss of Ship) - "When any ship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency either in her hull or (in the case of a steamship) in any part of her machinery, or has been in collision with another ship, the owner or master shall, within twenty-four hours after the happening of the accident or damage, or as soon thereafter as possible, transmit to the Minister, by letter signed by the owner or master, a report of the accident or damage, and of the probable occasion thereof, stating the name of the ship, her official number (if any), the port to which she belongs, and the place where she is".

T. **THE SHOPS AND OFFICES ACT 1904:**

This particular enactment contained 48 sections designed to regulate the hours of employment of assistants in shops and offices, with special provisions for those employee's working in hotels and restaurants with a maximum working week of 40 hours. The Act specified a minimum rate of remuneration, and a minimum hourly rate of payment for overtime work together with prescribed limitations on overtime work. The Act made specific provisions for sanitary rules within section 28 and section 43 provides for comprehensive rules for the Inspectorate.

U. **THE SCAFFOLDING INSPECTION ACT 1906:**

This enactment which contained a mere 9 sections foreshadowed progressive legislation enacted after WWII. The Act provided for the appointment of inspectors, the notification of all "scaffolding", the making of regulations, the issuing by the inspectors of directions, cease work orders, appeals against the directions to the Minister of Labour, and for a penalty of twenty pounds.

The Hon. Mr Millar, the Minister of Labour in the 'Lib-Lab' Government that held office until 1912, in moving the second reading said that:

> "Buildings in the colony were getting higher and higher every year and there was no system of inspection anywhere. Local bodies had made spasmodic efforts but nothing general had been done. The Bill had been submitted to the workers concerned and also to the Employers' Federation".

Mr Edward Tregear, the first Secretary of Labour, in reviewing the first few months of operation of the Act stated in his 1907 Annual Report that:

> "Under the Scaffolding Inspection Act, Inspectors have been appointed in the four chief cities, and have been diligently carrying out their duties. The appointments will be of great service in guarding life and limb from injury in building operations and the Act is one which meets with much approval from the workers".

V. **THE SCAFFOLDING AND EXCAVATION ACT, 1922:**

The long title to this comprehensive piece of legislation which repealed the earlier Scaffolding Inspection Act 1906 and 1908 and having its operative date set at April 1, 1923 was described as:

> "An Act to make Better Provision for the Prevention of Accidents in connection with the Erection and Use of Scaffolding and the Making of Excavations".

The Act whilst having only 18 sections was far-reaching in its application and specific focus of providing a framework designed to identify hazards and legislative thrust of accident prevention. From the interpretation section, the following definitions are certainly noteworthy due to the comprehensive nature of what the draftsman attempted to incorporate:

"Scaffolding" means any structure or framework used or intended to be used for the support or protection of workmen engaged in any building-work, and includes any swinging-stage used or intended to be used for any of the purposes aforesaid:

"Excavation" means any work in connection with preparing or excavating foundations for buildings, or for sewerage, gas, water, or electric supply where such work is more than five feet in depth from the top of excavation:

"Gear" includes ladder, plank, rope, fastening, hoist, block, pulley, hanger, sling, brace, bracket, chain, waling, shores, struts, and props used in connection with scaffolding or the timbering of excavations, and any appliances used or intended to be used for any purpose instead of scaffolding:

"Crane" includes any engine, hoist, lift, derrick, apparatus, or contrivance of a like kind used on any building for the hoisting, lowering, carrying, or removing from place to place of material, goods, or workmen, and worked by steam, electric, or hand power, or in any other manner, but does not include any machine or boiler by which the motive power of a crane is generated if a certificate for such machine or boiler is required under the Inspection of Machinery Act, 1908".

The Powers of the Inspectorate was similarly comprehensive with Inspector's required to pass examinations designed to test the Inspectors knowledge of the erection and use of scaffolding and building-appliances. Section 4(1) of the Act detailing the powers of the Inspector provided, inter alia:

"At any reasonable hour by day or by night enter any building or place wherein is kept or erected any scaffolding, crane, or gear, or any place wherein he has reasonable cause to believe that any scaffolding, crane, or gear is kept or erected, and may then and there inspect such scaffolding, crane, or gear in order to ascertain whether the provisions of this Act or the regulations thereunder have been or are being complied with -"

4(2) "Whenever any Inspector gives any directions as aforesaid he may also, at the same time or subsequently, order any persons forthwith to cease to use any such scaffolding, crane, or gear, or to cease any such work as aforesaid, until such directions have been complied with, and for this purpose may post up such notices as he thinks fit".

4(3) "In any case in which the Inspector considers that the use of any scaffolding or crane would endanger the life of any person, or that any gear is unsuitable for use, he may, after making or causing to be made such tests as he thinks fit, -

(a) Condemn such scaffolding or crane and direct it to be dismantled; or

(b) Condemn such gear, either for all purposes under this Act or for such particular purposes as he may indicate;

(c) Brand such gear and, in such manner as he thinks fit, cause it to be rendered incapable of being used for any purpose for which it has been condemned;

and shall give notice thereof to the owner or person in charge of such scaffolding, crane, or gear, and to such other persons as he thinks fit:

Provided that no gear shall be so rendered incapable of being used until, in the case of an appeal as hereinafter provided, a Magistrate has made an order condemning such gear, or until the period for appeal has expired without an appeal being lodged".

2.3 MORE RECENT LEGISLATION (1937 - 1981)

A. THE PETROLEUM ACT, 1937:

The long title to this enactment which became operative on January 1, 1938 was described as:

"An Act to make Better Provision for the Encouragement and Regulation of Mining for Petroleum, and to provide for Matters incidental thereto".

The Act containing 47 sections focused upon the issuing of Licences, Land Right Entry and Royalties. From a Industrial Safety focus the Act contained two (2) comprehensive sections (34 and 35) of which the germane aspects are as follows:

33(2) Power of Inspector "Every Inspector shall have such powers as may be necessary to carry into effect the provisions of this Act or as may be prescribed. In particular, every Inspector shall, with respect to the machinery (other than steam-engines and boilers) in any petroleum-works, have all the powers of an Inspector under the Inspection of Machinery Act, 1928; but nothing in this Act shall be deemed to abridge or annul any of the provisions of the Inspection of Machinery Act, 1928, or to affect the duties of any Inspectors appointed under that Act.

(3) In the exercise and performance of his duties and functions every Inspector shall at all convenient times have free access to any petroleum-works, and it shall be the duty of every licensee and of every person employed by a licensee to afford all such assistance as may be reasonably required for facilitating the inspection of any mining operations or petroleum-works.

(4) If any workman or other person employed in mining operations makes a complaint in writing to any Inspector in relating to the conduct of the mining operations, it shall be the duty of the Inspector forthwith on receipt of the complaint to make inquiry into the subject-matter thereof, and to report thereon to the Under-Secretary. The name of the person making any such complaint shall not be divulged".

Notice of Accident 34. "Where, in or about any petroleum-works or in connection with any mining operations, any accident occurs which-

(a) Causes loss of life, or a fracture of the skull or of any limb, or any dislocation of a limb, or any other serious bodily injury to any person; or

(b) Is caused by an explosion or ignition of gas or other explosive, or by electricity, or by fire, or by such other special cause as may be prescribed, and causes any bodily injury whatsoever to any person, -

the licensee shall forthwith notify the Inspector for the district by telegraph of the accident, and shall in addition forthwith send to the Inspector a written notice in the form and containing the particulars prescribed. Where the accident involves loss of life the licensee shall also forthwith notify the Minister thereof by telegraph".

B. **THE QUARRIES ACT, 1944:**

This enactment which was introduced into law on October 30, 1944 contained 28 sections and essentially complimented the Mining Act 1926. Whilst the Act is described as "An Act to make Better Provision for the Regulation of Quarries", the Act contained a comprehensive code of practise for Industrial Safety. In point of fact it can be argued that the prime focus of the Act was designed toward Industrial Safety. Sections 4-5 pertained to the Inspectorate provisions. Section 16 is specifically entitled "Safety Provisions", and provided for detailed general rules. Sections 17-20 were devoted to "Accidents in Quarries", whilst section 21 pertained to the restrictions on employment of females and boys in quarries. By definition section 20 prohibited the employment of a female person of any age and a boy was any person under the age of sixteen (16). Two (2) sections are noteworthy in their extent, namely sections 17 and 20 of which the germane aspects are detailed as follows:

17. Accidents in Quarries -

(1) Where, in or about any quarry or in connection with any quarrying operations, any accident occurs which-

(a) Causes loss of life to any person; or

(b) Causes any fracture of the skull or of any limb, or any dislocation of a limb, or any other serious bodily injury to any person, -

the manager or other person for the time being in charge of the quarry shall forthwith by telegraph give notice of the accident to the Inspector and shall also, within seven days after the happening of the accident, furnish to the Inspector,

in duplicate, such particulars of the accident as may be required in accordance with forms to be provided by the Inspector for the purpose".

20. Inspector may Prohibit Operations

(1) "Where, in the opinion of an Inspector, the condition of a quarry or of any part thereof, or any practice in use in the working thereof, is immediately dangerous to life, he may, by notice in writing addressed to the occupier or manager of the quarry and delivered at the quarry, or forwarded by telegraph or registered letter, require the occupier or manager to withdraw all workmen from the quarry or part thereof (other than such workmen as may be required to make the quarry safe), or, as the case may be, to discontinue the dangerous practice".

C. **THE BUSH WORKERS ACT, 1945:**

The long title to this particular piece of legislation introduced into law on December 7, 1945 was described as:

"An Act to make Provision for the Safety and Protection of Bush Workers".

Whilst the Act contained a mere 19 sections, the prime focus of the Act was designed to protect Bush Workers from Industrial accidents within that industry. Five (5) sections are certainly noteworthy and the germane aspects are provided hereunder:

5.(1) Powers of Inspectors: "Every Inspector may-

(a) Enter, at all reasonable times, upon any land or premises or on in which any bush worker may be employed, for the purpose of ensuring the effective carrying-out of the provisions of this Act:

(b) Require the production by any employer of any book, record, list, or other document which the employer is by this Act required to keep, and inspect, examine, and copy the same:

(c) Make such examination and inquiry as he deems necessary in order to ascertain whether the provisions of this Act have been or are being complied with as regards any bush undertaking or the persons employed therein:".

9.(1) Safety of Bush Workers -

"No employer in any bush undertaking shall cause or permit any plant, whether fixed or movable, to be used in or in connection with the undertaking unless-

(a) It is soundly constructed of good material, and is free from any patent defect:

(b) It is under the general supervision of the employer or of a manager, foreman, or other responsible person appointed in that behalf by the employer.

(2) Every employer who acts in contravention of or fails to comply in any respect with the provisions of this section commits an offence against this Act".

12.(2) Inspector to give Directions

"If in the case of any bush undertaking the Inspector considers that the use of any plant might endanger the life of any person, or that any plant is unsuitable for use, he may, after making or causing to be made such tests as he thinks fit,-

(a) Condemn that plant and direct that it cease to be used, either for all purposes in connection with the undertaking or for such particular purpose or purposes as he may specify:

(b) Brand that plant and, in such manner as he thinks fit, cause it to be rendered incapable of being used either for all purposes as aforesaid or, as the case may require, for any purpose so specified:"

14.(1) Procedure in case of Accidents

"In every case where there occurs in a bush undertaking an accident which causes death or serious bodily injury to any bush worker the employer or person for the time being in charge of the undertaking shall forthwith, and not in any event later than forty-eight hours after the occurrence of the accident, serve written notice thereof on the Inspector, specifying the nature of the accident, the name and residence of the person killed or injured, his age, and the place (if any) to which he has been removed.

(2) For the purposes of this section the expression "serious bodily injury" means an injury which is likely to incapacitate the sufferer from work for at least forty-eight hours.

(3) As soon as practicable after receiving notice of an accident to which this section applies the Inspector shall make full inquiry into the nature and cause of the accident, and the nature and extent of the injuries.

(4) Every employer or person in charge of any bush undertaking who fails to comply in any respect with the provisions of this section commits an offence against this Act".

15.(1) First aid equipment

"Every employer shall provide and maintain first-aid appliances and requisites to the satisfaction of the Inspector, or, when a standard is prescribed, shall provide and maintain first-aid appliances and requisites of the prescribed standard.

(2) Every employer who fails to comply with the provisions of this section commits an offence against this Act".

D. **BOILERS, LIFTS AND CRANES ACT, 1950:**

The long title to this piece of legislation introduced into New Zealand law on November 23, 1950 and becoming operative on January 1, 1951 states:

> "An Act to make provision for the Inspection and Certification of Boilers, Lifts, Cranes, and certain other Machinery, for the Safety of Persons working with Boilers or Machinery to which the Act applies, and for the Qualification of Persons Operating any such Boilers or Machinery".

The Act contained some 60 sections which in many instances overlapped with similar provision of the Machinery Act 1950, which was similarly introduced into law on November 23, 1950. The difficulties with the Act is in its administration; namely the Ministry of Transport rather than the Labour Department, and the attendant problems with interpretation. Section 2 defines "premises", as any yard, place, house or building and any farm, paddock, field, road, or place, in which any boiler or machinery is kept, worked, or used, or is in operation.

Section 2 pertaining to the Interpretation provisions of the Act defines, inter alia: Boiler, Crane, Hoist, Lift, Machinery, and Winding engine. To add further confusions with the different Government agencies, the definition of "Winding engine" illustrates the confused picture when viewing the Coal Mines Act 1979 and the Mining Act 1971, which are both administered by the Ministry of Energy:

2. "Winding engine" - means any machine by means whereof persons are drawn up, down, or along any shaft, pit, or inclined plane or level in any mine or coal mine or by means whereof material is raised or lowered when a shaft is being sunk in any mine or coal mine.

E. **MACHINERY ACT, 1950:**

The long title to this specific piece of Industrial Safety legislation that was introduced into New Zealand law on November 23, 1950 states:

> "An Act to make provision for the Inspection of certain kinds of Machinery and for the Safety of Persons working with machinery to which the Act applies".

The Act containing some 41 sections is administered by the Labour Department.

The Act replaced the Inspection of Machinery Act 1928 in part. The other provisions of that Act were incorporated in the Boilers, Lifts and Cranes Act 1950. One objective of this Act was to transfer the responsibility for safety of machinery from the Marine Department to the Labour Department. The Act was drafted so as to parallel the provisions of the Factories Act 1946 insofar as such matters as requisition orders etc., were concerned. There was however, one important change in principle, namely abandoning the practice of certification of machinery.

The 1928 Act provided that where the inspector was satisfied that the machine was adequately fenced and guarded, in good repair and safe to use, a certificate may be issued, which certificate was to be displayed in the vicinity of the machine. This was considered undesirable as changes could well take place in the intervening time before the machine was reinspected. Thus those in the workplace could be led into a false sense of security.

The principal purpose of the Act is to provide for the guarding of prime movers, transmission machinery and other machinery, and the inspection thereof.

F. **AGRICULTURAL WORKERS ACT, 1977:**

The long title to this specific piece of legislation that became operative on November 1, 1977 states:

> "An Act to provide for the improvement of Industrial Relations between agricultural workers and their employers and to consolidate and amend the law relating to employment, and safety, health, welfare, and accommodation of agricultural workers".

The Act contained (since repealed by the Health and Safety in Employment Act 1992) some 62 Sections. Part 1 deals with the appointment of Inspectors together with their powers. Part 5 specifically pertains to Accommodation for Workers, whereas Part 6 provides a detailed code for the Health, Safety and Welfare of Agricultural Workers.

The key provision for protecting the worker is contained within Section 56 which provides, inter alia:

56. Safety and Health of Workers:

(1) Every employer shall take all reasonable precautions for the safety and health of workers employed by him.

(2) Every employer shall take all reasonable precautions to ensure that no worker employed by him undertakes any work without being adequately instructed as to the dangers likely to arise in connection with it and the precautions to be taken against them, or unless either he is a person with a sufficient knowledge and experience of the work or he is being adequately supervised by such a person.

(4) ... every employer shall provide for workers engaged in any process or activity that involves a risk of bodily injury to them, or a danger to their health, from flying particles or fragments, or from falling objects, or from corrosive, irritant, toxic, or explosive substances, or from harmful radiation, or from any similar cause, such protective clothing and equipment as may be necessary to afford them reasonable protection against that risk or danger.

(5) Every employer shall take all reasonable steps to ensure that workers employed by him use the ear protection devices, protective clothing, and protective equipment provided by him in the circumstances in which they are required to be provided; and every worker shall in those circumstances use the ear protection device, protective clothing, or protective equipment, as the case may be, provided for him.

G. **TOXIC SUBSTANCES ACT, 1979:**

The long title to this comprehensive piece of legislation introduced into New Zealand law on October 19, 1979, states:

> "An Act to make better provision for the control of toxic and other harmful substances, and to consolidate and amend the Poisons Act 1960 and its amendments".

From an Occupational Health and Safety focus, the concept of harmful substances is germane. Unfortunately the Act lacks real direction for the protection of workers. Consider the effect of Section 43 which provides, inter alia:

> "Notice to be given of imported toxic substances-
>
> (1) Where any toxic substance is to be brought into New Zealand by sea, the owner or master of the vessel shall, at least 48 hours before the goods are due to be landed or (if this is not practicable) as soon as practicable thereafter, give written notice to the proper authority of:
>
> (a) The identity of every such substance,
>
> (b) The quantity of each such substance being imported,
>
> (c) The seaport to which the vessel is to arrive.

The difficulties with the provisions of Section 43 is the perception of what people considers toxic to mean, and a report submitted several days after the delivery has been made is of little comfort to a worker exposed to the hazard of a imported toxic substance.

Only Part II of the Act became operative on January 1, 1980, whereas the balance of the Act became belatedly operative on August 1, 1983. The Act is administered by the Health Department.

H. **FACTORIES AND COMMERCIAL PREMISES ACT, 1981:**

The long title to this specific piece of Occupational Health and Safety legislation that was introduced in New Zealand law on September 3, 1981 and became operative on February 1, 1982 states:

> "An Act to consolidate and amend certain Acts of the General Assembly relating to the safety, health, and welfare of certain classes of worker".

The Act now repealed by the Health and Safety in Employment Act 1992 contained some 74 Sections and administered by the Labour Department. Part IV of the Act pertains specifically to "Safety, Health, and Welfare", and comprises some 36 Sections. There are two (2) Sections which are noteworthy, namely Section 18 "Safety generally", and Section 50 "Codes of Practice". These two (2) Sections are reproduced hereunder:

18. Safety generally -

(1) The occupier of an undertaking shall take all reasonable precautions for the safety and health of workers, and persons lawfully on the premises of the undertaking.

(2) No person employed in or about an undertaking shall, without reasonable cause, do anything likely to endanger himself or any other person.

(3) No person employed in or about an undertaking shall, without reasonable cause, interfere with or misuse any appliance, apparatus, clothing, convenience, device, equipment, guard, or other thing whatsoever, provided for securing the health, safety, or welfare of persons employed in or about that undertaking.

(4) Every person employed in or about an undertaking shall, so often as the circumstances for which it is provided arise, use any appliance, apparatus, clothing, device, equipment, guard, or thing, provided as aforesaid.

(5) None of the following provisions of this Part of this Act shall limit the generality of subsection (1) of this section.

50. Codes of practice -

(1) The Chief Inspector may from time to time issue recommendations as to all or any of the following matters:

(a) Safety practices:

(b) The establishment of voluntary safety and health committees:

(c) The functions and procedures of such committees:

(d) The voluntary appointment from among the workers employed in those undertakings of safety representatives, for the purpose of maintaining and improving the safety and health of persons engaged or employed in those undertakings:

(e) The functions of such representatives - in respect of all undertakings, or in respect of undertakings of specified kings, or in respect of specified processes or activities carried on in undertakings; and may from time to time amend or revoke any such recommendation.

(2) Without limiting the generality of subsection (1) of this section, a code of practice may include a description of any commodity, phenomenon, process, or practice, by reference to its nature, quality, strength, purity, composition, quantity, dimension, weight, grade, durability, origin, age, intensity, duration, or other characteristic whatsoever, or any 2 or more of them, and may also include a glossary of terms, definitions, and symbols, or any of them.

2.4 AN ANALYSIS

2.4.1 INTRODUCTION:

After spending many weeks amongst a 127 years of dusty tomes, the overwhelming impression of New Zealand's early legislation was one of sophistication and clarity of expression employed by the early draftsmen. Like most dabbler's in New Zealand's history I was aware that there were several pieces of legislation specifically enacted with a prime focus upon Industrial Safety. By way of illustration, both myself and the majority of historical authorities traditionally recognise the Factories Act 1891 and the Shop and Shop Assistants Act 1894 as the embryonic origins of New Zealand's Occupational Health and Safety legislation; the acknowledged exception being the Employment of Females Act 1873.

The survey of the legislation between 1854 and 1982 tends to support the notion that New Zealand's Occupational Health and Safety has evolved in a sluggish fashion. However, Table 4. certainly reveals that the concept of Industrial Safety was not an indifferent consideration to the early New Zealand law maker's. During the 128 years from 1854 to 1981 I have identified more than 90 pieces of legislation that either touches upon, or specifically deals with the concept of Industrial Safety and Occupational Health legislation (see Table 4).

Unfortunately much of the legislation is fragmented, vague or ill-defined and its overall effectiveness compromised with different Governmental agencies administering over-lapping legislation.

Within the previous section's I have identified 30 separate pieces of individual legislation that have a focus upon Industrial Safety, and Occupation Health. The purpose of this identification is twofold, namely, to provide an illustration of the evolution of Industrial Safety Legislation and to assess legislative attitudes; and secondly, to provide a useful compendium for other researchers. Whilst the majority of legislation as identified within the previous sections is certainly noteworthy, it is naturally beyond the scope of this thesis to provide a comparative analysis, and as such, a realistic selection must be made. The choice, being somewhat deliberate, is limited to five (5) pieces of legislation, namely:

A. The Employment of Females Act 1873.

B. The Factories Act 1891.

C. The Scaffolding Inspection Act 1922.

D. The Agricultural Workers Act 1977

E. The Factories and Commercial Premises Act 1981.

2.4.2 **THE EMPLOYMENT OF FEMALES ACT 1873:**

To provide a useful framework to this legislation, the following extract from the Encyclopaedia of New Zealand is noteworthy:

> "The first legislative control over working conditions in factories in New Zealand was the Employment of Females Act of 1873 applying to factory employment. This Act dealt with hours of work, holidays, sanitation and ventilation, but was largely ineffective through lack of enforcement machinery" (1).

Whilst other influential historians have supported the claim that the Act was the forerunner to Industrial Safety legislation (Factories Legislation), I submit that a more detailed investigation into the early New Zealand legislation may not support that particular view. Roth and Hammond refer to the Act as the "first protective labour legislation passed by the New Zealand Parliament" (2). Sutch, expresses similar views (3).

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1. McLintock, A.H; An Encyclopaedia of New Zealand, Vol 2, R.E. Owen, Government Printer, Wellington, 1966, page 250.

2. Bert Roth, and Janny Hammond, Toil and Trouble (The Struggle for a Better Life in New Zealand), Methuen Publications (NZ) Limited, (1981), page 20.

3. Sutch, W.B: Poverty and Progress in New Zealand (A re-assessment), Wellington, (1969), page 118.

A. **WHAT DID THE ACT ACTUALLY SAY:**

The long title to this particular piece of legislation that was introduced into New Zealand law on October 2, 1873 was described as:

> "An Act to provide for Employment of Females in Workrooms and Factories".

As the Act is relatively short in volume and scope, the Act is reproduced as Appendices 1. Similarly, within the context of this section the contents of Sections 3 to 7 are reproduced hereunder:

3. No person shall employ any female at any time between the hours of six in the afternoon and nine in the morning, or for more than eight hours in any one day.

4. Every female shall have holiday on every Saturday afternoon from two o'clock, and on Sunday, Christmas Day, New Year's Day, Good Friday, Easter Monday, and any other day set apart as a public holiday, without loss of wages.

5. Every workroom shall be properly ventilated.

6. If any employer of females commits a breach of this Act, such employer shall be liable for each offence to a penalty not exceeding fifty pounds. The penalty may be recovered before any two Justices in a summary way by any person who may sue for the same.

7. For the purpose of carrying out the provisions hereof, any person authorized in writing by a Resident Magistrate may enter and inspect any workroom at any time during working hours.

B. **WHY WAS THE ACT INTRODUCED?**

A simplistic explanation would argue that the Act was required to combat the evils of female exploitation. However, a closer analysis of history reveals a somewhat different picture. The alternative view suggests that the Act was passed into law amongst a background of indifference and apathy and with a small number of supporters. The Act is commonly referred to as "Bradshaw's Act" named after its sponsor J.B. Bradshaw, the Parliamentary member for Waikaia. McLintock (4), describes Bradshaw as a person who waged a relentless war on social abuse wherever he found it, and deservedly won recognition as the pioneer of much of this country's labour legislation.

Bradshaw was encouraged to persevere with his plans for social reform and the introduction of the Act by Sir John Richardson a former Superintendent of Otago and the then Speaker of the Legislative Council. McLintock describes Richardson as a staunch provincialist and social reformer (5).

A reading of the relevant Parliamentary Debates of 1873 is somewhat confusing as to whether Bradshaw was the actual architech of the Act or merely the sponsor of similar legislation borrowed from Victoria (Australia).

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4. Abid; footnote 1, Vol. 1, page 235.

5. Abid; footnote 1, Vol. 3, page 75.

In the Lower House the Bill was read a first and a second time without a sentence being spoken. The journals of the House show that it was committed, amended in three particulars, and reported; but the Hansard staff did not apparently think these incidents worthy of notice, for it did not record them (6). It was read a third time after two short speeches, and then went to and through the Legislative Council without a word being said by any one in that then unsuspicious body. The solitary opponent to the Bradshaw Bill was T.L. Shepherd the Member for Dunsdun who is reported as making the following comments in the Lower Chamber during the third reading:

> "... It was rather a precautionary measure than anything else. In Melbourne there were factories where thousands of girls and children were employed; but he knew of very few factories in New Zealand. In Auckland there were some places where a few females were employed; and in Dunedin, there were drapers who employed a few girls in making up clothing ..." (7).

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6. W. Pember Reeves; State Experiments in Australia and New Zealand, Vol. II, 1902 London, page 36.

7. N.Z.P.D; Vol. 15, (1873), page 1303.

C. **WAS THE ACT EFFECTIVE?**

Whilst the Act signalled a rather sluggish step forward, it regrettably was not dynamic, innovative nor effective. By the expression effective, the question posed is whether the Act had any effect on the mischief to which the Act was designed to prevent. The mischief being the exploitation of females employed in Workrooms and Factories. Whilst the Act dealt with hours of work, holidays, sanitation and ventilation, the Act made no reference to accidents, was vague on description, severely limited in scope and contained hopelessly inadequate inspectorate provisions. Taking these four (4) major deficiencies in turn the following observations are made:

(i) No reference to accidents: It will be noted in Section 1.2 hereof that the first piece of Industrial Safety legislation identified (The Steam Navigation Act 1866) contained within Section 33, reasonably comprehensive Accident reporting provisions. Unfortunately, the Employment of Females Act 1873 contained absolutely no reference to accident, accident reporting, or safety whatsoever.

(ii) Non descriptive terminology: Whilst the long title to the Act refers to Employment in Factories, the Act contained no definition to what constituted a "factory". Furthermore, the definition of "Workroom" was ascribed the unworkable and legally unsound description of "... any place in which females are so employed".

As the Interpretation Section of any Act govern's its application it is legally proper to argue that the definition of "Workroom" within the Act could be construed to mean a tent, or perhaps, in the open air. After all Section 5 of the Act simply states that every Workroom shall be properly ventilated. Consider Central Otago in the middle of winter.

(iii) Limitation in Scope: The definition of employment in Section 2 of the Act is restricted to employment in the preparation or manufacturing of articles for trade or sale. Preparation and manufacturing have their own special meaning which does not include the manual application with raw product, nor warehousing or retail sales.

(iv) Ineffective Inspectorate: Section 7 of the Act pertaining to the Inspectorate provisions, did not specify the Inspectorate unlike the provisions of the Steam Navigation Act 1866 and the Quartz Crushing Machine Regulation Inspection Act 1872 which were quite specific and detailed. Roth and Hammond comment on the inadequate inspection provisions as follows:

> "... It was left to local police constables to check on the enforcement of the Act, in addition to their many other duties. A Royal Commission in 1878 was told how employers evaded the Act by asking girls to take work home, or posting sentries while working beyond the legal hours. In 1881, the New Zealand Times reported from Auckland: "The results of the police inspection of factories was that not a single employer of female labour had complied with the provisions of the Employment of Females Act" (8).

D. SUBSEQUENT DEVELOPMENTS TO THE ACT:

In the 11 years following the passing of the Act in 1873 the Act attracted five (5) principal amendments together with a Royal Commission appointed in 1878 which extended the scope of the Principal Act. The notable developments were as follows:

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8. Abid; footnote 2.

(i) 1874 (Employment of Females Act 1873) amended)

The Employment of Females Act 1873 was amended to extend its scope to include all contract or piece work.

Other changes involved the extension of the hours of work for women permitting the start time to be brought back to 8.00am from 9.00am; an overall limitation of eight hours per day was retained with the proviso that starting and finishing times were to be determined by the employee and employer within the parameters of 8.00am and 6.00pm. Statements detailing the hours worked by female employees were required to be forwarded to the resident Magistrate, the local Police, and copies had to be posted in the factory itself.

(ii) 1875 (Employment of Females Act 1873 amended)

A significant development was an amendment to the Act to extend it to include male children. Factory employment for children under 10 years-of-age was banned and for those between 10 and 14 years-of-age, only half-time employment on successive days was permissible, or full-time employment on alternate days.

A retrograde aspect of the amendment was a further extension of the hours between which women could be employed in woollen mills; a 6.00am start was permitted by the amendment; the proposal emanated from Donald Reid, the Member for Taieri, who argued that shareholders in the Mosgiel Woollen factory were being denied full benefit from their investment by virtue of the fact that machinery was not being fully utilised.

(iii) 1877 (Employment of Females Act 1873 amended)

An amendment was introduced to further extend the hours worked by females in woollen mills, to 54 per week.

The proposal was resisted by Robert Stout and by other Members, who expressed their concern that such legislation could lead to a situation where the health of factory workers was imperilled; Grey noted that the employment of women at night could result should the amendment be enacted.

(iv) 1881 (Employment of Females and Others Act)

Employment of Females and Others Bill was passed, largely, in the words of a Dunedin Member, Mr Thomas Dick, as a -

> "... condensation and consolidation of three Acts on the subject which were passed in the sessions of 1873, 1874 and 1875 - measures which had met with the support of the House in those sessions and which had been proved to be very useful in their operation" (9).

The only comments in the debate of real significance related to the question of enforcement, that had been raised in the Royal Commission's report and the view seems to have been that the Police were dealing with the matter adequately.

Although Mr Dick's comments largely delineated the scope of the legislation, there were some new provisions widening the scope and increasing the specificity of factory legislation; most significant was the raising of the minimum age at which young children could be employed in factories to 12 years. In addition, the Act extended previous legislation to include boys under 18 and a basic definition of factory was included as -

> "Any manufactory, workshop, work room or other establishment or place of business where any female, child or young person shall be employed".

(v) 1884 (Employment of Females and Others Act Amended)

The Amendment Act of this year simply corrected an anomaly in the 1881 Act whereby, despite the fact that children under 12 could not be employed in factories, the Act still contained a definition of child as any boy or girl between 10 or 14 years of age.

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9. N.Z.P.D., Vol. 39, (1881) page 189.

2.4.3 THE FACTORIES ACT 1891:

A. BACKGROUND SYNOPSIS:

Between 1881 and 1890, economic depression was accompanied by a steady worsening in conditions of employment until, in response to increasing public pressure, the Government set up a Royal Commission in 1890 to inquire into allegations of sweated labour. The Commission recorded a considerable number of cases of exploitation of workers (such as girls working 18 hours a day for 7s. to 8s. a week, a baker working 108 to 112 hours a week for 25s., seven women working in a cellar 12 ft x 8 ft x 8 ft), but it did not agree that cases of exploitation were general enough to be described as a "sweating system".

Following upon the findings of the Royal Commission, the Factories Act 1891 was passed, the first measure to include adequate provision for inspection and enforcement. McLintock states that in the first three (3) months of operation inspectors required improvements and alterations in 913 factories (10).

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10. Ibid; footnote 1, page 250.

B. EVOLUTION AND ATTITUDES LEADING UP TO THE PASSING OF THE ACT

(i) A sweeping commentary on the evolution of the Act would suggest that the Rev. Waddell's celebrated sermon "The Sin of Cheapness", initiated the formation of the Sweating Commission of 1890, of which such recommendations established the framework for the Act. This simplistic scenario is not too far removed from the truth of the situation. A complimentary scenario is that the newly elected Liberal Government that was swept into power with significant trade union support introduced the Act as an election promise. To evalue the Waddell/Sweating Commission scenario it is necessary to examine in some detail the characters involved and the substance of the particular recommendations.

(ii) THE SIN OF CHEAPNESS:

With the severe economic depression experienced in New Zealand during the 1880's public feeling was definitely aroused. Sinclair, states that conditions were so bad in New Zealand that unemployed workers unsuccessfully petitioned the President of the United States of America in 1880, and the House of Representatives in Victoria in 1885, for assistance to migrate (11).

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11. Sinclair, Keith; A History of New Zealand, Penguin Books (1969) page 162.

In September 1888 the Reverend Rutherford Waddell preached a sermon on "The Sin of Cheapness" in St. Andrew's Presbyterian Church in Dunedin. Waddell, according to Sutch (12) gave shocking examples from his own investigations of sweated labour. The sermon according to McLintock was fiery and outspoken and was received by a stunned congregation with almost disbelief (13). Waddell was himself a interesting character for according to McLintock, Waddell brought into the Church a prophetic radicalism and introduced so many innovations that he was on one occasion forced to defend himself against a charge of heresay (14).

The sermon was followed up by the Otago Daily Times which assigned its senior reporter Silas Spragg to investigate the substance of Waddell's allegations. The findings of the newspapers investigations were published in January 1889 and described even worse cases of sweating. Sutch cites an illustration of sweating as follows:

> "... a woman who collected a load of cotton material from a contractor, took it home, worked for 12 hours, trudged back with her work - 151 oatmeal bags - and was paid 8d, the price for a gross"(15).

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12. Ibid; footnote 3, page 108.

13. A.H. McLintock, An Encyclopaedia of New Zealand, Vol 3 (1966) Wellington page 499.

14. Supra.

15. Ibid; footnote 3, page 108.

(iii) SWEATING COMMISSION:

The results of Waddell's continuous campaigning about sweating (a euphemism for gross exploitation of labour, particularly that of women and children) led to the appointment of a Royal Commission in January 1890 to examine conditions of employment in shops, wholesale and retail trading, places of manufacturing, and in hotels and licensed houses. Geare (16) suggests that trade union support was an important pressure group that lobbied for the establishment of a Royal Commission.

Among the nine commissioners were the Reverend Waddell and D.P. Fisher of the Wellington Wharf Labourers' Union, who was president of the Maritime Council.

The commission took evidence throughout New Zealand early 1890. To induce witnesses to come forward, the commission offered to hold private hearings in the evenings. Some witnesses moreover were identified by letters only in the printed report, but even this did not prevent some of them from being victimised and losing their jobs.

The commission reported that sweating, as known overseas, did not exist in New Zealand, though a minority, including Waddell and Fisher, dissented from this view.

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16. A.J. Geare; The System of Industrial Relations in New Zealand; Butterworths Wellington (1988), page 29.

The commission revealed many abuses, such as long and irregular hours of work, poor sanitary conditions, and a prevalence of child labour. It pointed out that "in whatever branch of industry a union has been formed the condition of the operatives has improved, wages do not sink below a living minimum, and the hours of work are not excessive".

The commission had completed its consideration of submissions by May 1890 and released its report on May 5, 1890. McIntyre and Gardner (17) list the following important findings:

> "8. The evidence as a whole goes to show that in whatever branch of industry a union has been formed the condition of the operatives has improved, wages do not sink below a living minimum, and the hours of work are not excessive...
>
> 11. Any new or amended Factory Act should include amongst others the following provisions -
>
> All factories, workrooms, and places where work for hire is executed, irrespective of the number of workers employed, shall be registered, and the Inspector shall satisfy himself as to the sanitary and other arrangements necessary for the health and morals of the workers; and without his sanction no factory shall be registered.
>
> 12. A certain number of cubic feet, as determined by expert evidence, shall be allowed for each worker.
>
> 13. The Government shall provide the Inspectors of Factories under the Acts with a form of table to be forwarded with their annual reports, showing the number of adults and young persons employed in each factory or workshop, distinguishing the sexes, the number of cubic feet of space for each person, as also the sanitary arrangements in connection with all establishments under their supervision.

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17. W.D. McIntyre, & W.J. Gardner; Speeches and Documents on New Zealand History; Oxford, Clarendon Press (1971) page 195.

14. Penalties shall be imposed in cases of workrooms being kept open for working purposes during meal-hours.
15. No boy or girl shall be allowed to work in any factory under the age of fourteen years...
17. The Inspector shall have the right to enter any factory at any reasonable hour. Any obstruction to him shall be punishable by fine.."

(iv) INTRODUCTION OF FACTORIES AND SHOPS BILL

As a direct consequence of the findings of the Royal Commission, the Hon. Mr T.W. Hislop (Minister of Education) introduced a "Factories and Shops" Bill requiring minimum sanitary conditions, inspection and registration of factories and restriction of hours of work. On speaking to the Bill on July 22, 1890 in the House, Mr Hislop said:

> "... almost every clause in the Bill has been taken from the Acts in force in England, or from the Victorian Act. In fact, with regard to legislation of this sort, instead of being, as we sometimes congratulate ourselves upon being, in advance of others, we are somewhat behind them" (18).

Hislops Bill became the victim of the politic's of the day and effectively lapsed with the defeat of the Atkinson ministry at the 1890 general election.

(v) ATTITUDES TO INTRODUCTION OF THE FACTORIES ACT 1891:

Following the elections in 1890 the new Government introduced both a Shop Hours Bill and a Factories Bill. In June 1891 the Hon. W. Pember-Reeves made mention in the House of the reception accorded to Hislops Bill as follows:

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18. New Zealand Parliamentary Debates (1890) Volume 68, page 79.

> "When this Bill was introduced last year it was very sharply criticised outside the House, and attacks were made upon it by employers of labour, and one might have imagined from the tone of some of those attacks that this Bill was really to cripple and ruin manufacturers" (19).

Its smooth passage through the House notwithstanding, the Factories Bill quickly attracted vehement opposition in the Legislative Council. In his opening comments in the second reading of the Bill in the Council, the Attorney General and Colonial Secretary (the Honorable P.A. Buckley) attempted to placate Members by referring to the Bill as being:

> "... practically on the lines of a similar Act in operation in Victoria, and particularly on the lines as what is known as the English Act on the subject. It is very nearly the same thing, and it proposes to make our legislation nearly the same as that of England..." (20).

The passage of the Bill through the Legislative Council was far from smooth. Both oppositions members in the House roundly condemned the Bill, as with certain Employer groups. Sutch commenting on employer reaction states:

> "... Wellington employers contended that the provisions of dining rooms for workers in factories would drive capital out of the colony" (21).

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19. New Zealand Parliamentary Debates (1891) Volume 71, page 151.

20. New Zealand Parliamentary Debates (1891) Volume 7, page 598.

21. Sutch, W.B; Poverty and Progress in New Zealand, Wellington (1969) page 118.

Speaking in opposition to the Bill the Hon. Sir George Whitmore described the Bill as follows:

> "... this Bill, bristling as it does with all sorts of obligations on the employers, bristling as it does with fines for every possible and conceivable thing... is likely to prove a curse to the community and to prove destructive to anything like manufacturing industry in the country" (22).

The Hon. Mr Pollen in supporting the statements of Sir George Whitmore focused his criticisms of the Bill on the grounds of restricting employment opportunities. Pollen is reported as stating:

> "... opportunities of employment for young people in factories and in the interests of the trade unions, to establish a monopoly and confine employment in factories to man, for the purpose of maintaining such a rate of wages as the Trades and Labour Council may choose to impose on the employer" (23).

When the Bill returned to the House, Pember-Reeves moved that the amendments made by the Legislative Council be disagreed with and that a conference be requested on the Bill. A conference was duly held and a report from the Managers was finally agreed to in the House on 15 September 1891.

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22. New Zealand Parliamentary Debates (1891) Volume 73, page 319.

23. New Zealand Parliamentary Debates (1891) Volume 73, page 320.

Essentially, compromises were reached in a number of respects, with it being agreed that a factory would constitute a place in which three or more persons were employed. As regards cubic space in work rooms, it was agreed that this would be fixed by regulation with the Inspector being able to discriminate. An hours of work limitation of 48 hours per week for woollen mills and eight hours per day for other factories was written into the Bill.

C. **THE FACTORIES ACT 1891:**

This Act which was eventually passed into law on September 21, 1891 and became operative from January 1, 1892 contained 81 sections designed for the registration of Factories, appointment of Inspectors and the imposition of limitation of hours of work, together with conditions of employment. A brief synopsis to the Act has been provided in Section 1.2.1 (M) hereof where three (3) aspects were identified, namely: Accidents, Sanitary Provisions, and Overcrowding. The previous sub-section deliberately left alone the issue of the inspectorate, which the Factories Act 1891 specifically tackled. It is considered that those earlier Inspectorate provisions are noteworthy together with the legislative attempt to restrict the hours of work for certain categories of workers. The germane aspects of these two (2) matters are considered noteworthy and are commented upon as follows:

(i) INSPECTORATE:

The powers of inspectors were authorised by Sections 14 - 18 of the Act. In Section 14 we find that the inspector was given authority to -

> "... enter, inspect and examine at all reasonable hours, by day and night, a factory or work room ..."

In addition, the inspector was empowered to take with him a constable, to assist him in the execution of his duty, and he was given the authority to examine any document required to be kept under the Act and to interview factory employers and workers. Provisions relating to the obstruction of inspectors were also introduced and taken in their entirety, these measures mark the beginning of the powers inspectors of factories are able to exercise today.

Although the first Sections of the Act largely related to its administration, their significance should not be underestimated. A consistent pattern and deficiency since the enactment of the Employment of Females Act 1873 was that Inspectors had considerable difficulty in enforcing legal requirements due to the inadequacy of the powers that they were given.

In 1891 this was finally recognised and the Inspectors' powers were strengthened in three important area's, namely:

1. Inspectors were given rights of entry to factories and the right to interview people found in such premises; and

2. Certain information had to be kept by factory occupiers and the Inspector had access to this information.

In Section 9, the particulars of a factory had to be forwarded to the local Inspector and later in the Act, Sections 20-26 required further documentation. Under latter Sections, the occupier was required to keep a record of his employees, their ages if under 20 years, and a record of the kind of work in which they were engaged. Notices also had to be posted, giving the name and address of the local Inspector as well as the addresses of the local medical authority and Board of Health. Holidays and working hours in the factory also had to be recorded.

3. The Act addressed itself briefly to the procedure to be followed in the event of an accident in the factory causing death or serious injury. Essentially, the matter had to be reported to the Inspector and investigated by the local medical authority. Again, this provision foreshadowed the notification of accident requirements that exist to this day.

With respect to the effectiveness of the Inspectorate provisions, Howe (24) records that in the first three (3) months of the Acts operations, the small number of factory inspectors enforced employers to attend to 913 improvements and alterations.

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24. Howe, K.R, Singer in a Songless Land: (A Life of Edward Tregear, 1846-1931), (1991) Auckland University Press, page 84.

(ii) RESTRICTIONS:

The last part of the Act dealt with hours of work. There was an absolute prohibition against children being employed in factories or workshops and boys under 16 years-of-age were not to be employed for more than 48 hours in a week with females being limited to eight hours per day, between 8.00am and 6.00pm. A Certificate of Fitness was required for persons under 16 years-of-age and this requirement again survived until the passage of the F. and C.P. Act. Provision was made for five paid holidays a year, these being Christmas Day, New Year's Day, Good Friday, Easter Monday, and Queen's Birthday. The last Sections of the Act cover penalties to be imposed for breaches.

(iii) INNOVATIONS OR PROGRESSION:

McIntosh (25) in his excellent analysis of early Industrial Safety legislation contends that the Factories Act 1891 contained a much more comprehensive range of provisions than had previous statutes in this area. Whilst McIntosh was referring to the Employment of Females Act 1873 and the ill-fated Factories and Shops Bill 1890, a closer scrutiny of the earlier legislation would support the view that the Factories Act 1891 was the Factories Act 1891 was hansomely progressive rather than boldly innovative.

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25. McIntosh, P.M; A History of Factories Legislation in New Zealand; 1879-1981, (1983) Research Project, Palmerston North; Massey University, page 17.

The basis of this proposition is that many of the earlier statutes pre-dating the 1891 Act contained comprehensive provisions for the Inspectorate and restrictions on employment, namely:

A. The Steam Navigation Act 1866 (refer Section 1.2.1 A hereof) contained comprehensive provisions pertaining to Accident reporting and the Powers of the Inspectorate.

B. The Dangerous Goods ACt 1869 (refer Section 1.2.1 B hereof) contained within Section 16 detailed provisions for the Inspectorate.

C. The Inspection of Machinery Act 1874 (refer Section 1.2.1 F hereof) contained detailed provisions for accident reporting and powers for the Inspectorate.

D. The Regulation of Mines Act 1874 (refer Section 1.2.1 E hereof) laid down a comprehensive Safety Code, restricted the employment of females and young persons in mines and provided detailed provisions for the Inspectorate.

In summary, the Factories Act 1891 was important, due to its wider application towards Occupation Health and Safety rather than the specific Industries or activities to which the earlier legislation focused. As such, the Factories Act 1891 must be seen as the forerunner of modern Occupation Health and Safety legislation having a general application to Industry.

2.4.4 THE SCAFFOLDING AND EXCAVATION ACT 1922:

A. BACKGROUND SYNOPSIS:

Cornish in his thesis reveals that the unfortunate catalyst of change was the death of four (4) painters (26). On the 1st of February 1922, at Endean's Buildings Auckland, a beam on which scaffolding had been erected gave way and four (4) painters fell some 75 feet to their death. The beam had been placed on its "flat" instead of on edge and thus failed due to overloading.

In a subsequent claim for compensation arising out of the accident a special jury added a rider to the verdict drawing attention to the Labour Department's neglect in enforcing the provisions of the Scaffolding Inspection Act 1908. However the Department had already called a conference of Inspectors and representatives of the employers and unions. This led in the same year to the passing of the Scaffolding and Excavation Act 1922.

B. FOCUS AND PURPOSE OF THE ACT:

As identified in Section 1.2.1 U hereof, the year 1906 witnessed the passing into law the Scaffolding Inspection Act. That particular piece of legislation contained a mere nine (9) sections with a prime focus upon safety reinforced with comprehensive Inspectorate provisions.

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26. Cornish; James, W; Construction Safety Law, (1979) Submitted for the degree of L.L.M, at Victoria University of Wellington, page 15.

In 1908 a fresh Act was introduced which effectively was a consolidation of the 1906 Act, and it was this Act which came under intense scrutiny as a consequence of the Endean's Buildings facilities.

As can be seen from Section 1.2.1 V hereof, the Scaffolding and Excavation Act 1922 was far reaching in its scope and application. The Act covered all operations in connection with the erection, demolition, or alteration of buildings as well as excavations for foundations, sewerage, gas, water and electric supply. It did not, however, apply to excavations made directly by any local authority or public body.

The requirement under the 1908 Act that notice of intention to erect scaffolding over 16 feet in height was to be given to the inspector was altered to provide that notice was to be forwarded before any person began to do any building work where there was a risk of any person falling 12 feet or more, or before the erection of a crane, or before making an excavation more than 5 feet in depth. The person supervising the erection of scaffolding exceeding 25 feet in height, or a crane, was required to be certified by the inspector as to his competence. Each inspector was empowered to order safeguards for the protection of the workmen and the public, and to condemn and brand any gear that he considered unfit to use.

Workers as well as employers were made liable for breaches for the first time and the onus was placed on the defendant to bring himself under exemption, proviso, excuse or qualification. For example if an inspector laid an information that the stiles of a timber ladder were less than the equivalent of 3 inch by 2 inch timber as required by the regulations the defendant would be required to prove that the actual ladder contained this equivalent timber.

The scaffolding and excavation Act 1922 and Regulations made thereunder remained in force for almost forty years, during which period New Zealand underwent extensive industrialisation and urbanisation. Associated with this rapid urban development, the building and construction industry likewise experienced considerable change; multi-storey projects became the norm on inner city sites, and building techniques and machinery became increasingly more sophisticated. A direct result of this trend was increased exposure by construction workers and the public to risk of injury, both in terms of frequency and severity.

2.4.5. THE AGRICULTURAL WORKERS ACT, 1977:

At the time when the Agricultural Workers Act was introduced into New Zealand law (October 19, 1977), there were around 32,000 farm workers in New Zealand[27]. The Agricultural Workers Act 1977 is effectively both an Industrial Relation Act and a piece of safety legislation. Thus sections 39 and 40 repeat (with some interesting but minor variations) sections 117 and 150 of the Industrial Relations Act, thereby giving protection against unjustifiable dismissal and victimisation. The safety provisions make it an offence for employers not to take reasonable steps for the avoidance of injury (including injury by noise) to their workers, by giving proper instruction and supervision, and where appropriate supplying safety equipment. But they also make it an offence for the worker not to use the safety equipment provided. This is not unusual - the Health and Safety at Work Act 1974 imposes the same duty on workers in the United Kingdom - but the fact that the same maximum penalty applies to each class of offenders is. Both are subject to fines of up to $1,000, increasing by $50 for each day the offence continues, (increased to $5,000 and $250 respectively by Section 2 of the Agricultural Workers Amendment Act 1983). Finally, the Act imposes an obligation on employers to provide suitable accommodation for all workers other than those who are married and have families, but does not attempt to deal further with the problems that arise from tied housing for farm workers.

When viewing the target subject of the Act itself, it is to be appreciated that in New Zealand, farm workers do not make up a permanent employee class, per se. The majority of farm workers are invariably children of the farm owner with a strong desire to own their own farm, or take over the family farm. A secondary aspect is the nature of the farm workers' relationship with their effective employer, which naturally is quite different to that between, say, a factory worker and the large company that the worker is contracted to. It is fair to state that both sides of the farming industry will assert that their work is more in the nature of a team effort, untarnished by class conflict, and the traditional forty-hour, five day a week work pattern is by necessity quite alien to the Agricultural sector.

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(27) Judith Reid; (1979) New Zealand Universities Law Review Vol. 8, page 85.

From a critical appraisal of the Act, it is my assessment that whilst the intentions of the Act are commendable the practicalities of enduring compliance coupled with exemptions and confusion with overlapping provisions with other legislation seriously questions the effectiveness of this legislation. An illustration of the ineffectiveness can be highlighted as follows:

(i) **The New Zealand Employment Law Guide states that the safety law is not as stringent for farming as it is for other industries, for practical reasons. For example, farmers are exempt from specific guarding requirements on machines that have a motive power of less than 4.5kw. (Section 3(3) Machinery Act 1950)[28]. The question posed is simply whether farm workers are immune from injury as opposed to their urban counterparts?**

(ii) **Szakats[29], quite rightly, identifies an inconsistency with the protective provisions when dealing with children. The Agricultural Workers Act 1977 prohibits the employment of a child under the age of 15 years only during such time as the child is required to attend school, or for more than eight (8) hours a day, or where the performance of the task is likely to be injurious to health. What then is to prevent a farmer from insisting that his 14 year old son works on the farm performing scrub cutting activities for seven (7) hours a day seven (7) days a week for reward during the school vacation. Section 57 of the Agricultural Workers Act 1977 does not prevent such activities, whereas Section 12(i) of the Machinery Act 1950 forbids the employment of any person under the age of 15 in working, or assisting to work, with any machinery, including tractors. Clearly one safety law for the urban child, with no corresponding provision for the rural child. So much for Rural Occupational Health and Safety[30] .**

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[28] New Zealand Employment Law Guide; Commerce Clearing House New Zealand Limited (1988) para: 35-300

[29] Szakats, A; Introduction to the Law of Employment, Butterworths, 1988 3rd edition, page 229

[30] A commentary from Mazengarb's, The Industrial Laws of New Zealand, Butterworths, 1947, 2nd edition, page 430, reveals that pursuant to Section 88 of the Factories Act 1946 a fine shall be imposed on a parent who permits a person under the age of sixteen (16) years to be employed in a factory.

(iii) Under Section 2 of the Agricultural Workers Act 1977, an Agricultural worker is defined as a person employed for hire or reward in the keeping and care of animals on any farm or station or in agricultural, pastoral, silviculture, flaxmilling, bush working, or sawmilling work of any kind..... .

When examining the workplace of flaxmilling or sawmilling, the provisions of the then Factories Act 1946 have specific coverage. Furthermore, the activity of bush working has specific coverage under the provisions of the Bush Workers Act 1945, with different Inspectorate provisions. Why duplicate corresponding legislation?

(iv) Despite the classification of an Agricultural worker, there were certain categories of workers that were excluded from coverage, namely:

- Any shearer within the meaning of the Shearers Act 1962
- A farming cadet training at any institution established for training purposes
- An apprentice pursuant to the provisions of the Apprenticeship Act
- In certain instances, a sharemilker within the meaning of the Sharemilking Agreements Act 1937
- A Bush worker, pursuant to the provisions of the Bush Workers Act 1945 – for example bush undertaking includes, inter alia: – the thinning, pruning, and topping operations in connection with silviculture. The CCH publication[31] , correctly states that persons involved in bush undertakings are bound by the Bush Workers Act 1945.

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[31] abid; footnote 28 at para 35–460.

In viewing the Agricultural Workers Act 1977 against the backdrop of attitudes towards Occupational Health and Safety, it is my assessment that the Act is a classic illustration of a confused piece of legislation that evolved from compromise. On the one hand the farming industry (predominantly Federated Farmers) was implacably opposed to industrial unionism. Suffice to state that it was not by incident that farmers and their sons become Massey's cossacks in 1913. On the other hand was the fledgling Farm Workers Association who were largely ineffective, but desired certain protection. The Government which had completed the legislative framework for the Aircrew Industry Tribunal, and the Waterfront Industry Tribunal, drafted an Industrial Relations framework for the Agricultural industry, centred around the Agricultural Tribunal and conveniently tagged onto the end of the legislation, an Occupational Health and Safety requirement. From my experience growing up in the Rural sector, neither the farmers nor farm workers understood the Act, and grass-roots feelings neither supported the passing of the Act. In summary, it is my contention that the Occupational Health and Safety provisions within the Act was foisted on an Industry that was unprepared, and lacked the sophistication and desire to implement the Occupational Health and Safety provisions of the unwelcomed Act.

2.4.6 THE FACTORIES AND COMMERCIAL PREMISES ACT 1981:

A. BACKGROUND SYNOPSIS

Campbell[32], correctly identifies that the Factories and Commercial Premises Act 1981 contains provisions more properly regarded as Industrial legislation, which paradoxically, during the passage through the House those clauses seemed to get an undue share of attention. Part of the reason for this situation as advanced by Campbell, may have been the lengthy time the Bill was before the Select Committee. Despite the time devoted to this Act Campbell, maintains that the Act hardly ranks as an earth shattering measure[33].

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[32] Campbell, I.B., Safety Legislation and the Workplace, Massey University, page 88
[33] Supra

The Parliamentary debates on the Factories and Commercial Premises Bill highlight the inadequacies of the research, deliberations and consultations that resulted in the draft Bill and the fact that little of substance was added as a consequence of the Select Committee's extended consideration of the measure tends to confirm that the submissions made at that stage were predicated on the limited scope of the material in the Bill and did not go further to suggest new directions in occupational safety and health that could have been incorporated into an innovative dynamic and forward looking Act.

New Zealand had an excellent opportunity of evaluating the comprehensive single piece legislation introduced in England in 1974 with the passing of the Health and Safety at Work Act 1974. That particular Act followed in the main the recommendations of the Robens Report(34) , and as part of the "Social Contract" between the UK Government and the TUC the Safety Representatives and Safety Committee Regulations were passed into law on October 1, 1978(35) . Why then did New Zealand continue to ignore the realities from overseas experience that a single dedicated all embracing piece of Occupational Health and Safety legislation was more effective than the fragmented multi-functional legislation as New Zealand continued to accumulate? Perhaps an explanation, can be the then Government's reluctance to develop a structure in which the Trade Union movement is required to participate. Consider the following passage from the Parliamentary Debates reporting comments from Kerry Burke (West Coast) during the second reading of the Bill:

> **"Had the Government grabbed the opportunity to provide for what might have been the first step in the development of a genuine industrial democracy in New Zealand it would have provided for improved industrial relations, and for an improved economic performance such as that shown by countries that practise worker participation.." (36)**

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(34) Robens report, Safety and Health of Work, Report of the Committee 1970-72, July 1972, HMSO, London

(35) Dewis.M. The Law on Health and Safety at Work, MacDonald & Evans London, 1978, page 170.

(36) N.Z.P.D. (1981) Vol. 440, page 1052

B. HOW EFFECTIVE WAS THE ACT?

The Minister of Labour boasted at the beginning of the debate during the second reading of the Bill as follows:

> **"The Bill represents a considerable achievement in updating and modernising New Zealand's approach to occupational safety, health and welfare ..."** (37)

However when the Act in its final form is contrasted with the Health and Safety at Work Act, 1974 (UK), the Factories and Commercial Premises Act 1981 pales into insignificance, as follows:

> **"Section 18(i) of the Act provides that the occupier of an undertaking shall take all reasonable precautions for the safety and health of workers and persons lawfully on the premises of the undertaking."**

In contrast, the Health and Safety at Work Act 1974 (UK) has six (6) functions as follows:

- **It completely overhauls and modernises the existing law dealing with safety, health and welfare at work.**
- **It puts new general duties on employers, ranging from providing and maintaining a safe place of work to consulting with their workers.**
- **It creates a new Health and Safety Commission**
- **It reorganises and unifies the various Government inspectorates into a body called the Health and Safety Executive**
- **It provides new powers and penalties for the enforcement of safety laws**
- **It establishes new methods of occupational safety and health and new ways of operating future safety regulations**(38)

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(37) N.Z.P.D. (1981) Vol. 438, page 1042

(38) Safety and Health at Work, TUC Handbook, London, 1978, page 8

Section 1 of the Health and Safety at Work Act 1974 states that the general purposes of Part 1 of the Act, is aimed at:

(a) **maintaining or improving standards of health, safety and welfare of people at work;**
(b) **protecting other people against risks to health and safety arising out of work activities;**
(c) **controlling the storage and use of dangerous substances;**
(d) **controlling certain emissions into the air from certain premises**

It will be readily seen that the Health and Safety at Work Act 1974 is a unifying piece of legislation designed to protect all workers. However a concerning feature of the Factories and Commercial Premises Act 1981 is the exclusion of a vast number of work places from coverage under the Act. The New Zealand Employment Law Guide lists 25 places of work in which the worker has no coverage under the Act [39]. To illustrate the wide ranging exceptions, the following list is noteworthy:

- *A crushing plant associated with a mine or a quarry*
- *A place where gold or any other mineral is dredged for*
- *Any place occupied by a harbour board*
- *An occupational therapy workshop operated by a hospital board*
- *A place where wool is classed*
- *A water pumping station*
- *A shearing shed within meaning of the Shearers Act 1962*
- *A hotel, restaurant, cafeteria, canteen, where food is consumed thereon*
- *A place where combustible gas is produced from biological materials*
- *A building in the course of construction*

In conclusion the Factories and Commercial Premises Act 1981 can be regarded as notable is for its lack of innovation; the legislation has its origins in the 19th Century and in its provisions it looks back to the Industrial Revolution rather than forward to the working environment that is technologically innovative and espouses team-work.

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[39] Ibid, footnote 28 at para 35-015 (see also Section 2 of the Act)

2.5 SUMMARY OF PART TWO (2):

2.5.1 **Part 2 has provided a synopsis of 30 statutory enactments having an origin in 1854 and culminating with the Factories and Commercial Premises Act 1981. Throughout the survey period encompassing 127 years Table 4 identified more than 90 statutory enactments either dealing directly with Occupational Health and Safety, or having a consequential effect on the subject matter of Occupational Health and Safety.**

2.5.2 **The purpose of this summary is to somehow (attempt) summarise the 127 years of legislative activity and explain this dimension in the context of "attitudes", towards Occupational Health and Safety. To present a coherent explanation or summary, it is necessary to condense the summary within a brief summation which encompasses the following five (5) sub-areas; namely:**

- **A. The Response to Tragedy**
- **B. The Persistence by strong willed individuals**
- **C. Industry based with a narrow focus**
- **D. Growth of the Inspectorate**
- **E. Duplication of legislation and administrative function**

A. RESPONDING TO TRAGEDY:

As Cornish[40] revealed, the catalyst leading to the introduction of the Scaffolding and Excavation Act 1922 was the fatality involving the four (4) unfortunate painters who fell to their death whilst working on the Endean's Building site in February 1922.

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[40] Ibid; footnote 26

The resultant enquiry into the deaths identified deficiencies with the Scaffolding Inspection Act 1908 and many of the recommendations from the enquiry formed the basis of the new Act. In like fashion, the Inspection of Machinery Act 1874 followed a fatal boiler explosion on the Thames gold field. On Mining legislation, Campbell states that the first legislation with respect to mines; the Regulation of Mines Act 1874 was introduced into law as a consequent of 34 miners losing their lives in the Kaitangata mine disaster. In like fashion the Brunner mine disaster of 1896 involving 67 miners was a powerful influence behind the passing of the Workers Compensation for Accidents Act 1900[41] .

B. PERSISTENT INDIVIDUALS:

From my assessment of the early phase of the survey period, individuals rather than lobby groups or the trade union movement featured as the instrument promoting change.

I can recall reading some article several years ago which suggested that the trade union movement was influential in effecting change in Industrial Safety legislation last century. From my reading of historic events, there is no evidence to support that proposition. However, individual trade union officials were influential.

As identified with the Employment of Females Act 1873 its sponsor J.B. Bradshaw, was the principal moving force behind the introduction of the Act. As previously stated, Bradshaw has been described as a person who waged a relentless war on social abuse wherever he found it. Whether Bradshaw was a zealot, social reformer or moralist, his individual pursuits witnessed the passing of the Bradshaw Act. Another persistent individual was the Rev. Rutherford Waddell, whose untiring efforts, witnessed the passing of the Factories Act 1891. Waddell commenced his campaign with the preaching of his sermon in Dunedin in September 1888. Thereafter Waddell utilised the trade union movement as a vehicle, becoming the President of the Tailoresses Union in July 1889, thus ensuring that he was successfully nominated as a commissioner on the Sweating Commission in 1890. William Pember-Reeves, clearly must be identified as an influential individual in the 1890's.

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[41] Campbell, I.B; An Historical Survey of the Regulation of Workplace Health Hazards in New Zealand; Massey University (1992), page 2.

Whilst originally the Minister of Education in the first Liberal Government, Pember-Reeves was a dominant force behind the passing of the Factories Act 1891, and a major supporter of the Coal Mines Act 1891 and the Mining Act 1891. Pember-Reeves as a Socialist, was committed to change as evident by his dominating influence in promoting the Industrial Conciliation and Arbitration Act 1894 which was first introduced into the House in 1891.

Hamer[42] maintains that J A Millar, described as New Zealand's first full time trade union Secretary (Seamen's Union) and later a Liberal politician was extremely influential in promoting the improvement of worker's conditions. Millar was a driving force behind the ill-fated Factories and Shops Bill 1890.

C. <u>INDUSTRY BASED WITH NARROW FOCUS</u>:

Apart from the Factories Act 1891, the bulk of the legislation as enacted between 1854 and 1981 (see Table 4 for comprehensive list) had a target Industry or specific activity as its prime focus. It was not until the introduction of the Factories and Commercial Premises Act 1981 that a single piece of legislation attempted to provide a comprehensive coverage for a wide sector of the working community.

Much of the early legislation was simply the grafting or adaptation of similar oversea's legislation, (eg., Shipping, Dangerous Goods, Inspection of Machinery and Mining legislation). It is fair to conclude that New Zealand was content to adopt oversea's legislation into original law, and as particular pressure grew, amendments were made to the changing circumstances.

With respect to the Factories Act 1891, the analysis within Section 2.3.3 hereof identifies a New Zealand flavour to the legislation, having evolved from a somewhat controversial background. In the early legislation, the Factories Act 1891 marked the first attempt to pass into law a comprehensive code governing factory employment. It is rather noteworthy that many of the provisions and phraseology of the 1891 Act have continued for more than a century, until the passing of the Health and Safety in Employment Act 1992.

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[42] Hamer, David; <u>The New Zealand Liberals</u>: (The Years of Power, 1891-1912) Auckland University Press, (1988), page 138.

D. GROWTH OF INSPECTORATE:

As identified in Section 2.3.3(D) hereof, the Factories Act 1891 was the first attempt to introduce a comprehensive code pertaining to the Inspectorate. Whilst little is written on the effectiveness of the Inspection provisions of pre 1891 legislation, I consider it reasonable to conclude that the provisions lacked administrative support, and thus the effectiveness of any form of enforcement must be questioned. The classic example is the Employment of Females Act 1873, in which Roth and Hammond (see footnote 8) identify the ineffectiveness of both the Inspectorate and enforcement. In contrast, Howe (see footnote 24) records that during the first three (3) months operations of the Factories Act 1891 913 enforcement notices were issues to employers.

In more modern times, the Bush Workers Act 1945 contained comprehensive provisions for the Inspectorate. A clue to its effectiveness derives from the focus of the long title namely:

> **"An Act to make Provision for Safety and Protection of Bush Workers".**

Whilst the bush Workers Act 1945 focused upon single industry the legislation itself clearly provided a well written and comprehensive code. Parliament certainly recognised that the effectiveness of the Act was dependant upon the Inspectorate. In essence, the Bush Workers Act is a prescriptive piece of legislation which placed its integrity on the Inspectorate provisions within an Industry where the participants are hard working, unsophisticated individuals. Suffice to state, the language employed with the Bush Workers Act is commendable.

The final statute under scrutiny is the Factories and Commercial Premises Act 1981. The Inspectorate provisions of this particular Act are confusing. Whilst the Factories and Commercial Premises Act subscribed to a regime of "Codes of Practices", the non-descriptive procedure for the Inspectorate was in direct contrast with the carefully defined specifications contained within the Agricultural Workers Act 1977, Dangerous Goods Act 1974, Boiler's Lifts and Cranes Act 1950, Bush Workers Act 1945, Coal Mines Act 1979, Construction Act 1959, and Shipping and Seaman Act 1952.

E. DUPLICATION OF LEGISLATION AND ADMINISTRATIVE FUNCTION:

In 1985 Mazengarb[43] notes that Occupational Safety in New Zealand was regulated by 30 Acts with 40 sets of subsidiary regulations, administered by five separate departments of State. A similar situation confronted England in 1970 and the following observations by Selwyn, articulate the difficulties confronted by New Zealand in the 1980's; namely:

> **".. much of our law was obscure and unintelligible to those whose actions it was intended to influence. There was a haphazard mass, intricate in detail, difficult to amend, and frequently out-of-date. Furthermore, the various enforcement authorities had overlapping jurisdictions which caused some confusion ..."[44]**

The statements by Mazengarb and Selwyn paint a negative picture and the question must be posed as to how this situation was allowed to develop in New Zealand by the mid 1980's. From the viewpoint of "attitude", I conclude that politically the successive New Zealand Governments merely paid lip service to Occupational Health and Safety, with no deep over-riding philosophical commitment to improve the lot of the workers' health and safety. Similarly, the trade union movement during the survey period failed to provide the necessary catalyst to force the hand of Government.

An example of New Zealand's haphazard Occupational Safety legislation is as follows:

(i) Toxic Substances Act 1979 which makes provisions for the control of toxic and other harmful substances is administered by the Health Department and has overlapping provisions with the Dangerous Goods Act 1974, which is administered by the Labour Department.

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[43] Mazengarb's; Employment Law Butterworths, Wellington, 1994, para 6000.1

[44] Selwyn, N; The Law of Health and Safety at Work, (1982) London, Butterworths, page 3

(ii) The Mining Act 1971, the Coal Mines Act 1979 and the Quarries and Tunnels Act 1982, which are administered by the Ministry of Energy have numerous overlapping provisions designed to achieve similar purposes, and in many instances, conflict with certain provisions of the Construction Act 1959 which is administered by the Labour Department and the Boilers Lifts and Cranes Act 1950 which is administered by the Marine Division of the Ministry of Transport.

(iii) A farm worker depending upon the particular activities to which they are engaged may be covered by the Agricultural Workers Act 1977, the Bush Workers Act 1945, the Construction Act 1959 or the Factories and Commercial Premises Act 1981 and clearly by the Accident Compensation Act 1982 which is administered by the Accident Compensation Corporation.

As identified earlier within this summary (2.5.2C) the preponderance of Occupational Health and Safety legislation was Industry based with a narrow focus. To a degree, the legislation focused more on setting standards for the physical environment rather than on human and organisational factors such as the influence of work systems on attitudes and behaviour. In effect the successive Governments created their own straight-jacket by assigning the responsibility for the administration of Occupational Health and Safety to seven (7) agencies, namely: The Departments of Labour and Health, the Ministries of Transport, Energy, Works, Agriculture and Fisheries, and the Accident Compensation Corporation.

In conclusion, the injured worker could be forgiven for charging successive New Zealand Governments with an indifferent attitude towards his Occupational Health and Safety throughout the survey period, in contrast to the Health and Safety at Work Act 1974 (UK) and the Ontario Occupational Health and Safety Act 1978.

PART THREE (3)

HITHERTO ATTITUDES OF THE PARTIES

3.1 FOREWORD:

In order to critically evaluate and assess contemporary attitudes towards Occupational Health and Safety it is necessary to stand back somewhat and identify attitudes and perceptions held by the participating parties prior to the introduction of the Health and Safety in Employment Act 1992. To a significant degree this assessment requires a review of the literature focusing upon the positions of the parties over a number of decades leading up to the formulation by the New Zealand Labour Government of the Occupational Safety and Health Bill in 1990. As the New Zealand literature during this review period is somewhat scant, reference to overseas literature is deemed somewhat essential.

As such, Part 3 is concerned with the identification of attitudinal positions of the central participants within the Occupational Health and Safety arena. The participants under review are the Inspectorate, Judiciary, Trade Unions, Workers and employers. With the employers, it is necessary to evaluate the attitudes of the major representatives such as the Employers Federation and at the other end of the scale it is necessary to examine the literature relating to Small Businesses. Under the heading of the "Judiciary" the inquiry relates to the attitudes as interpreted and reflected by judicial findings and levels of penalties. As trade union views do not necessarily reflect the views of all workers, part 3.4.6 examines the views and reported attitudes of workers as distinct from the Trade Unions.

Finally, Part 3 is designed to provide a framework to assist in the evaluative process of the Survey within Part 5 of the thesis, namely, the assessment of contemporary attitudes towards Occupational Health and Safety.

3.2 THE INSPECTORATE:

3.2.1 Introduction:

Despite the pious statements and governmental rhetoric as to the effectiveness of protecting the worker's Occupation Health and Safety, a universal debate has raged since the early 1970's as to the proper role of the Inspectorate. In essence, the debate is ideological. At one extreme, the proponents of the debate argue for tougher sanctions and the promotion of the Inspectorate as "Industrial Policemen", whereas at the other end of the debate, the proponents argue for "self regulation" and promote the Inspectorate as Educators/Advisors. For practical purposes, the functional aspects of promoting the worker's Occupational Health and Safety has been delegated to the governmental Inspectorate; traditionally described as Factory/Safety Inspectors.

The debate involving the ideological role/function of the Inspectorate in Occupational Health and Safety, can be illustrated by contrasting various documented views. The strict enforcement/rigid sanctions school of thought can be illustrated from the following extract:

> *"Always remember that our employers capital is its balance sheet whereas our capital is our health. It therefore behoves us to protect ourselves. The only way to advance our cause and protect our capital is to continually petition Parliament for harsher penalties, document every violation against our members health and safety, and to vigorously campaign our local MPs to ensure that the HSE prosecute rather than issue futile notices. Prohibition notices are worthless. The only way to protect our capital is to attack the employer's capital"*[1].

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[1] Flaherty, J. The Protection of our Safety, Scullion Publications, Londonderry, (UK) 1987 (Introduction), page 7

At the opposite end of the ideological debate is the "self regulation" argument [2] . Self regulation has been coined from the Robens Report. To provide an authoritative account, the following extracts from the actual report will provide a useful focus for this aspect of the argument, namely:

"para 59 *We have stressed that the promotion of safety and health at work is first and foremost a matter of efficient management ... We believe that if work people are to accept their full share of responsibility – they must be able to participate fully in the making and monitoring of arrangement for safety and health at their place of work. Moreover, if the new inspection approaches – are to work, increasing reliance will have to be placed on the contribution that work people themselves can make towards safety monitoring.*

para 60 *... Other ways in which employees can take a direct part in the actual work of safety assessment and accident prevention are by participation in exercises such as safety sampling and hazard spotting.*

para 260 *... From discussions we had it was obvious to us that many doubts exist within the inspectorates as to the value and efficacy of prosecution as a means of promoting acceptable standards of safety and heath at work ...*

para 261 *The fact is – and we believe this to be widely recognised – that the traditional concepts of the criminal law are not readily applicable to the majority of infringements which arise under this type of legislation. Relatively few offences are clear-cut, few arise from reckless indifference to the possibility of causing injury, few can be laid without qualification at the door of a particular individual. The typical infringement or combination of infringements arises rather through carelessness, oversight, lack of knowledge or means, inadequate supervision or sheer inefficiency. In such circumstances the process of prosecution and punishment by the criminal courts is largely an irrelevancy* [3] .

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[2] For a discussion on "Self regulation" see Campbell, NZJIR (1983) Vol. 8, page 90, and Safety Legislation and the Workplace, Massey University (Monograph); Dalton, Health and Safety (An agenda for Change) Workers Educational Assn. Vol 16 June 1991; Davis, The Law on Health and Safety at Work, MacDonalds & Evans (UK), 1978, and Selwyn, The Law of Health and Safety at Work, Butterworths, London (1982)

[3] Roben's Report: Safety and Health at Work, Report of the Committee 1970–72 HMSO London published July 1972, paragraphs as noted.

The "self regulation" concept has attracted considerable academic debate. From my reading of the literature, the debate appears to fall into two camps; the "cynical approach" and the "participative approach". The cynical approach appears to receive favour with the radical theorist which castigates the findings of the Robens report as naive and divorced from reality. Dalton (1991) subscribing to the radical camp states:

> *"... its failure to recognise the inequality of labour and capital – since safety is a question of putting people before production ... One of the first companies allowed to inspect themselves was the large construction company Costains. A death on that site which was inspecting itself soon stopped this madness; as did press, public and union outcry. By 1989 a major academic study (Safety at Work – the limits of self regulation) had exposed the folly of this approach and the 1989–90 HSC Plan of Work admitted that the idea of self regulation was "dead" because of opposition by both trade unions and employers"* (4) .

The "participative approach" receives its support principally from Canada. In New Zealand Campbell argues that "self regulation" is misconstrued and summarises the participative approach as follows:

> *"... if the (Robens) report is read carefully it is evident that the self-regulatory approach was intended to supplement the regulation"* (5) .

Another view of expressing the 'self regulation' (participative approach) versus the strict enforcement approach is the socialist versus capitalist approach involving the Inspectorate as follows:

> *"Differences in the enforcement systems in the two counties influence both the Inspectors and the tenor of their inspectors. American inspections are designed more as formal searches for violations of regulations; Swedish inspections are designed as informal, personal missions to give advice and information, establish friendship ties between inspector and inspected, and promote local labour–management co–operation"* (6) .

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(4)Dalton, A. Health and Safety, (An Agenda for Change) WEA, (UK) June 1991, page 17

(5) Campbell, I.B. Occupational Health and Safety Legislation, NZ Journal of Industrial Relations (1986), Vol 11, page 183

(6) Kelman, S. Regulating America, Regulating Sweden, 1981, Cambridge Mass: MIT Press, page 203.

3.2.2 Certain Observations:

The purpose of this section is to simply document three (3) commentaries which recognise the role of the Inspectorate and are helpful in providing data necessary for determining attitudes.

The first commentary is contained in a study entitled "2,000 Accidents" carried out in Britain in 1971:

> *"We would like to see the Factory Inspectorate increase its staff in an effort to spread its expert knowledge. Although the Inspectorate (and other bodies) issue booklets of safety technology, these do not reach the shop floor. An enlarged Inspectorate would be able to extend its role to include teaching and to maintain more frequent contact with training-and-safety officers. Additionally, frequent visits could do much to convince management generally that safety is important and that government cares about it. All factory inspectors will, of course, need to be sufficiently familiar with training technology to be able to talk to trainers on their own terms. They will also need knowledge of system design, and a diploma of competency would be appropriate to the future factory inspector"* (7).

The second commentary derives from a statement by Ison when commenting on the New Zealand Accident Compensation Scheme:

> *"The roles of education and exhortation, and of enforcement ought to be combined in the same agency or department. It is suggested that either the ACC should abandon its occupational health and safety programme, leaving it to the Department of Labour, or that the inspection and enforcement role should be transferred from the Department of Labour to the ACC. If there is a willingness to use penalty levies as a sanction for unsafe or unhealthy conditions, the latter course would be preferable"* (8).

The final commentary derives from the 1975 report on Factory Inspection in Britain:

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(7) Powell, P.I., Hale, M., Martin, J., Simon, M., 2,000 Accidents - a Shop Floor Study of their Causes, National Institute of Industrial Psychology, Report No. 21, London, 1971, page 44.

(8) Campbell, I.B. Safety Legislation and the Workplace Massey University, page 24 (original source Ison, T.G., (1980) Accident Compensation: A Commentary on the New Zealand Scene, London, Croom Helm 179.

"The other side of this coin is that inspectors still report that they are sometimes used as tools in a dispute between managers and workers where Health and Safety is peripheral to the main issue. In such cases the role of the inspector is to make a strictly professional assessment of the possible hazards, to advise on possible solutions and to enforce the law. There are also a good many instances where, because they have received little training, worker representatives still require considerable guidance in distinguishing between those problems which are immediate and should be dealt with urgently and on the other hand those which do not present an imminent risk and where a little time can be allowed to think through and discuss the best solution" [9].

3.2.3 The New Zealand position:

An excellent coverage of the early New Zealand Inspectorate is provided by Howe in his authoritative account of the Life of Edward Tregear [10]. Howe records that Tregear was appointed Chief Inspector of Factories in 1891 and his initial job was to arrange for the gazetting of the country into sixty two industrial districts and the appointing of inspectors to each one. By 1896 New Zealand had 163 Factory Inspectors of which only four (4) were paid officers of the Department of Labour with the balance being predominantly policemen and several clerks of the Court of Arbitration [11]. In 1978 a Review of the Factory Inspectorate completed by the Department of Labour and the State Services Commission called for the number of Factory Inspectors to be approximately 315 [12].

In order to place the number of Factory Inspectors in New Zealand in some form of context, Table 6 (produced on the following page) was designed. The statistical information within Table 6 was principally extracted from the New Zealand Year Books [13].

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[9] HMSO; (Health and Safety: Industry and Services (1975) Report on the Work of HMFI, page 14

[10] Howe, K.R. Singer in a Songless Land (A Life of Edward Tregear 1846-1931) Auckland University Press

[11] Supra, at page 84

[12] Duigan, P; Occupational Health and Safety in New Zealand: (problems and solutions) 1983, Vol. 8 New Zealand Journal of Industrial Relations, page 98

[13] Whilst the statistics are accurately translated from the Year Books caution ought to be exercised when completing a comparative analysis on the basis that the statistical basis for gathering base statistics altered several times during the various years surveyed

TABLE 6

RELATIONSHIP OF INSPECTORATE TO STATISTICS							
YEAR	No. of Factory Inspectors	No. of Bush Inspectors	No. of Safety Inspectors	Number of Factories	Fatal Work Accidents	Fatal Farm Accidents	RATIO OF FACTORY INSPECTORS TO FACTORIES
1896	163	--	--	4600	--	--	1:28
1951	--	--	--	8547	71	31	--
1955	--	--	--	8515	63	45	--
1960	104	6	20	8734	84	48	1:84
1965	125	5	30	9753	90	37	1:78
1967	123	7	30	10395	76	46	1:84
1970	123	7	30	10573	74	55	1:86
1973	122	8	41	7690	60	48	1:63
1975	121	9	42	8532	--	--	1:71
1977	140	10	47	9019	--	47	1:64
1980	176	10	55	--	212	33	--
1981	168	14	58	--	178	34	1:59
1983	172	14	59	9870	--	22	1:74
1985	188	16	58	12760	--	25	--
1987	169	16	52	19563	--	--	1:116

SOURCE: New Zealand Official Yearbooks, for the years indicated; and Howe, K R, (The Life of Edward Tregear) for 1896 (page 83)

Whilst the compilation of information within Table 6 was time consuming, the statistics simply reinforce the obvious. The alarming feature of the exercise in compiling the data, was the confusing presentation of statistics in the Year Books. Clearly what is apparent is the rejection by numerous Governments on the aforementioned recommendation that New Zealand ought to have 315 Factory Inspectors. A translation of the inadequate number of Inspectors can be found in the following report:

> *"The Department appreciates the need for close control of public spending. However, it views with some concern, the long term effect that will inevitably stem from inadequate surveillance on working conditions and foresees a general lowering of the standards affecting the safety, health and welfare of the workforce as a consequence"* [14].

In many respects, the situation is no different in New Zealand to that of England where the recommendation from the HSE to Government was to increase the HSE staffing to 4,400 in 1979; in September 1987 the number had been reduced to 3,542. Furthermore the recommended number of HM Factory Inspectors in the 1986/87 report of 575 witnessing the actual number down to 545 in March 1988 [15].

Referring to Table 6, the Year Books distinguish between the Factory Inspectors per se as distinct from the Bush Inspectors. Other statistics, combine the two groupings. The figures used within Table 6 have separated the two types of Inspectors, with the Bush Inspectors identified by the Year Books as those Inspectors who specialise in Bush Undertakings. Interesting enough, I have at the time of completing this thesis represented the interests of no less than five (5) personnel who have worked on average seven (7) years in forestry undertakings (the longest being 15 years) and none of these forestry workers (all ACC claimants) have ever met a Bush Inspector, nor know what they represent. Another feature which Table 6 alludes to is the number of Inspectors to establishments.

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[14] Department of Labour, Annual Report, 1980, page 28

[15] Alternative HSE Report (see Reproduced References No. 1)

What is often conveniently left out of the statistics is the relationship of the Factory Inspectorate to the Agricultural accidents. Table 6 reveals that in 1970 there was one (1) Inspector to 86 Factory Establishments and in that particular year there were 55 fatal farm accidents. These farm fatalities are quite distinct from work accident fatalities in factories. In 1970 the number of farm establishments in New Zealand was 70,000, and by 1983 the number of farm establishments had increased to 75,745. Interesting enough, Health and Safety in respect of the Agricultural sector has always remained a low priority in New Zealand despite the high accident/fatality rate. Consider the following historic comment:

> *"The Agricultural Labourers' Accommodation Act 1907 to some extent helped improved living conditions, particularly for ploughmen who often lived in primitive 'plough-camps' away from the homestead. But inspection proved ineffective and low standards of accommodation were still common"* (16).

The Review of the Department of Labour in 1988 recognised the severance between Factory and Bush Inspectors and recommended that the Bush Inspectors should use their particular and specialised expertise in bush undertakings and not inspect factories, including registered saw-mills (17).

Focusing upon the Inspectorate, the 1988 Review made the following interesting comments under the heading "Confusion of Roles":

> *"... confusion has arisen about the role of almost all of the Department's many activities and there is a demand from staff for a clearer sense of 'what business we are in', and about what needs to be achieved. - In the occupational safety and health area 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"* (18).

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(16) Martin, J E; Glimpses of the Past, (The first 50 years of the Labour Department), 1991, Department of Labour publication, page 5

(17) Review of Department of Labour activities (Report of the Review Team) March 1988, page 188

(18) Supra, @ page 4

3.2.4 Attitudes of the Inspectors:

To accurately evalue the attitudes of the Inspectorate, as distinct from the Department, a comprehensive survey would need to be conducted of the actual Inspectors themselves. That in itself, would certainly warrant a separate research paper. Notwithstanding the shortcomings of real tangible evidence, there is a wide selection of anecdotal evidence suggesting that the Inspectorate in both New Zealand and England suffer from low morale and hold a negative attitude to their imposed role and function.

In identifying the context, the term Inspectorate is restricted to actual field Factory Inspectors as opposed to the Inspectorate administrative body. Without diminishing the importance of ideology and perceived functional roles for the Inspectorate, there is sufficient evidence to argue that there exists a fundamental difference between the stated and/or perceived roles of the Inspectorate and what occurs in reality. These differences translate into professional attitudes. The basis of this conclusion derives from an inquiry into stated attitudes from four (4) particular areas. The subject matter of inquiry is utilised as an evaluative tool in an attempt to assess attitude. These four (4) areas are:

A. Comments from the former Scottish Director of the HSE
B. Summary of interview with a Senior HSE Inspector
C. Extracts from certain publications
D. Summary of interview with a former NZ Inspector

A. Comments from Stephen Grant: [19]

> *"In its publicity HSE says that 'Policies so agreed tend to stick'. This sounds alright until you realised that in the real world there are growing numbers of establishments which display no statutory notices, have never seen a Factory Inspector and have never heard of any of the policies agreed by the Commission.*

[19] Grant, S. The Inspector's Story, (The Health and Safety Executive – its capabilities and limiations) Hazards Bulletin, (UK) June 1990, page 7

We are thus moving by degrees to a situation where very large areas of work activity are reached neither by the Commission's policies nor by the Executive's enforcement inspectors and the result is a widening gap between the few who progress in the absence of inspection and the many who deteriorate.

Inspectors cannot, for the moment, increase their numbers to match the increasing tasks placed upon them but attention needs to be drawn to the extensive areas of work activity where self regulation is not practised and advice not heard. These are the areas where, as a Chief Inspector recently said, 'the inspector stands as the last bastion against exploitation and injury'. The basic requirements of safety legislation have to be enforced with firmness and good humour.

They cannot be enforced without regular inspection. Nor should inspectors be diverted from basic inspection by esoteric exercises such as the completion of complex pro formas which stand traditional inspection methods upside down. The purpose of basic inspection is to pinpoint undeniable failures, to enable the inspector to put management rather than the inspectorate on the defensive. I would prefer that the inspector spent one hour going round the premises with his eyes and ears open that I would he spent a week talking to the management about theoretical policies which are probably ignored on the shop floor anyway."

B. Summary of Interview with HSE Inspector:

During my sabbatical in England in 1991 I was fortunate enough to attend a seminar conducted by the Health and Safety Executive on June 11, 1991. The seminar was conducted by two (2) senior Factory Inspectors over a three (3) hour period. A synopsis of the two (2) Inspectors views are indicative of their particular attitudes.

(i) Frustration due to Employer arrogance: *Despite clear rules to leave an accident site undisturbed, an employer in Bristol completely removed a machine after a fatal accident on June 7, 1993 and when the inspectors arrived they found four (4) bolts protruding from the floor. The employer proclaiming ignorance of the law, the HSE decided that the real cost of a prosecution outweighed the penalties that could be pursued. Both Inspectors expressed real frustration of powerlessness. This apparently was not an uncommon occurrence.*

(ii) Impotency: *The power to shut down a factory is a myth. Despite the strong rhetoric, the HSE espouses the support of jobs within Industry and politics compromise a hard nosed approach. One of the Inspectors voiced his exasperation by stating that in reality "we are only bandaids to the problem".*

(iii) Disillusionment:

- *under-reporting of accidents, common belief that National average is in the region of 50%*
- *HSE fearful of prosecutions being thrown out – so do nothing!*
- *hopeless understaffing – recruitment policy to employ only 30 Inspectors each year from applications by 4500 applicants Nationally*
- *unrealistic qualifications – minimum qualification being Honours degree or Ph.D's for Inspectors – concern that new breed of Inspector out of touch with reality*
- *Small employers – can't afford to comply with the recommendations*
- *Underfunding – Nationally only 4% of accidents are investigated – will always investigate a fatality – constrained by funding*
- *Lack of focus – one of the Inspectors spent all of 1990 inspecting primary schools – considered this focus unrealistic and diverted his function away from more pressing commitments.*

C. Extracts from Certain Publications:

(i) *"The inspectorate needs to be focused on enforcement rather than attempt to carry out an education function. Inspectors should carry out a vigorous and targeted enforcement program to ensure compliance with minimum standards. This is because inspectors, per se, have no particular skills as educators. They are not recruited for such skills. If there was a need for education then it should be provided by those who do have the appropriate expertise"*[20].

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[20] Ibid, footnote 17 @ page 62 (Labour Department Review 1988)

(ii) *"The AFL-CIO's industrial union department, estimates that the "targeting" directive will exempt 75 percent of all manufacturing firms employing some 13 million workers from inspection - organised labour is concerned at the tremendous cuts in the OSHA budget - (notable) -*

- *total compliance inspections down 21 per cent*
- *complaint inspections down 32 per cent*
- *follow up inspections down 72 per cent*
- *wilful citation down 79 per cent*
- *failure to abate penalties down 78 per cent"* (21).

(iii) *"To return to this standard IPMS estimate an extra 103 factory inspectors would be required. In some areas, like agriculture, the situation is even worse. If you are lucky enough to work in one of the larger farms or agricultural premises you will see an inspector once every 9.8 years. If you are in one of the estimated 200,000 premises run by up to four family or self-employed. An HSE survey, released in December 1990, showed that four out of ten farmers and agricultural workers reported health problems caused by their work such as injuries, infections, problems with dusts and chemicals). The healthy life down on the farm is a myth. "* (22).

(iv) *"The Factory Inspectorate is understaffed, low in morale and four years behind in its inspections schedule. The "revelations" contained in a leaked copy of the management review of HM Factory Inspectorate's field force will come as no surprise to Hazards Bulletin readers. The review highlights a 16% staff shortage, and says whilst there should be an average four yearly inspection cycle for most premises, the inspectorate have not met their quotas for several years in succession, resulting in a four year backlog of overdue inspections"* (23).

D. Summary of Interview with former NZ Inspector:

During the period in which the preliminary survey was conducted I had an occasion to discuss on an airflight from New Plymouth to Auckland the attitudes of the New Zealand Factory Inspectorate with a former Senior Factory Inspector who is now involved in Human Resource Management. This particular Inspector had 22 years experience with the Labour Department. A summary of his comments are as follows:

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(21) Campbell, I.B., Symposium: Occupational Health and Safety, New Zealand Journal of Industrial Relations (1988) Vol 8 page 89, (statistics refer to the year 1981)

(22) Ibid, footnote 4 at page 14 (Dalton: An agenda for a Change)

(23) Hazards Publications, Don't wait for the Inspector's call!, Hazards Bulletin, (29) June, 1990, page 9 (PO Box 199 Shelfield, SI.IFO.)

(i) The majority of Inspectors shared a sense of frustration of not really knowing what their real job was. This was due to a combination of reasons, but in the main derived from the constantly changing policy directive in the 1970's and the 1980's.

(ii) Concern at the lack of training in all areas. In essence would come to grips with one (1) aspect (i.e. holiday provisions in certain Awards) and then be expected to run seminars on Industrial Safety. Sharing a sense of inadequacy due to the vast amount of information they were supposed to know and the reality of no backup nor clear guide lines.

(iii) A feeling of ineffectiveness due to the shocking under-reporting, duplication from other Departments, no real co-operation from ACC, and the Government only paying mere lip service to Accident prevention.

(iv) Insufficient time to do justice to the job. The bulk of our time was tied up with Policing Awards, Administration, Reports and very little time to go out into Industry and hopefully improve the Accident statistics.

(v) Paid very little for the responsibility we had; the feeling around the Country of - why should we bust a gut when no one really appreciates what we are doing - concedes that in the 1980's when he resigned - morale within the Inspectorate was extremely low and many senior inspectors looking at enhanced early retirement because of possible restructure.

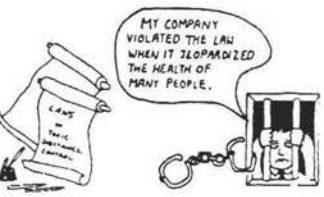
ALTERNATIVE HSE REPORT

recently issued *alternative HSE report* ıblished by the union representing pro- ssional, scientific and technical HSE aff, warns of a breakdown in some HSE rvices unless the trend of *under- sourcing* is reversed.

ıe report, by the Institution of Profes- ɔnal Civil Servants (IPCS), shows how ıce 1979, HSE has been subjected to a ıole series of cuts, reduced staff ceilings ıd systematic underfunding, while trying cope with increased responsibilities ıd legislation.

ne 1974 Health and Safety at Work, c.. Act provided a new framework for ealth and safety and created the Health ıd Safety Commission and the Health ıd Safety Executive. There was also a ɔnsensus on the need to expand the aff from 3,500 to 4,400 to cope with ıe new responsibilities.

Vith some slippage the programme was roceeding broadly on schedule until 979, when HSE staffing levels reached peak of 4,200. There was also a corre- ponding decline in accident rates from 974 to 1979. But since 1979 staff evels have been cut systematically and by eptember 1987 had been reduced to ,542, virtually back to 1974 levels.



Good laws are meaningful only when they are beyed and enforced.

The number of inspectors, employed by HSE, fell by 213 from 1,444 in April 980 to 1,231 in April 1986. By April 987 the total stood at 1,133 and by April 1988 this had been further reduced o 1,098. This is the sum total of all nspectorial staff.

The position of individual Inspectorates s:

a) HM Agricultural Inspectorate. Of the 151 Inspectors in 1988, a de- crease of 4 from the previous year, 139 are in the field. IPCS says these numbers are completely inadequate to cover al- most 300,000 premises, and nearly 700,000 workers. It is estimated that Inspectors will call only once in every 9.8 years, and only once every 25 years in the case of self employed establishments.

(b) HM Factory Inspectorate. The 1986/87 report acknowledged the need to *support 575 inspectors by the end of the year.* By the end of March 1988, the number was down to 545. Even follow- ing a period of intense recruitment the number is only 562.5, back to where it was in 1986. The Inspectorate covers some 16 million workers in about 400,000 registered premises.

(c) Mines and Quarries Inspectorate. The rate of accidents in coal mining still remains the highest of any industry with a rate of 8,324.3 incidents per 100,000 employees. The Inspectorate has respon- sibility for about 9,600 premises and just 72 Inspectors.

(d) Nuclear Installation Inspectorate. This is the only Inspectorate to have in- creased its numbers and met its target for inspector numbers. In 1987 the number stood at 100.5 and by April 1988 that figure had reached 119.5. The Advisory Committee on the Safety of Nuclear Installations recommended 150 inspec- tors. The Treasury has not provided any extra money to fund the higher salaries needed to bring NII more into line with the Electricity Supply Industry.

(e) Medical Division. The failure of most of industry in this country to set up occupational health services has not resulted in a strengthening of the role of the Employment Medical Advisory Serv- ice (EMAS). The number of doctors and nurses employed by EMAS has now reached a dangerously low figure of about 80; or about one doctor to every half million workers. The arguments for al- lowing ordinary GPs to do more of the work on employment related ill-health seem to be re-emerging, but given the current level of training for doctors in oc- cupational health this would be a retro- grade step of enormous proportions. At one medical school doctors only did two hours occupational medicine in a five year undergraduate training period.

(f) Research and Laboratory Services. The IPCS believes that the point has been reached where the ability to carry out research effectively under Section 11(2) of HSW Act, is doubtful. From a total of just over 600 staff in 1980 the total stands at about 400 with the numbers of scientific and technical staff falling by about 25% in the same period. The introduction of the COSHH Regulations and the Single European Act has not been supported by additional funds or scientific staffing.

(g) Technology Division. This was set up in 1985 with the aim of establishing a centre of technological expertise. But there has been . . . *an imbalance in the work of the Inspectorate sufficient to give cause for concern.* A written Parliamentary an- swer revealed the vast gaps that exist in the various inspector disciplines. There are just 13 Explosive Inspector posts and two are vacant. Out of the 20 Construc- tion Inspector posts, nine are vacant. In the Mechanical Engineer discipline there are 11 vacancies out of 54 posts. There are nine Chemical Inspector vacancies out of 86, and in Electrical Engineering four out of 22 posts are unfilled. The Division has been unable to recruit any electrical specialists at all, and therefore work on micro-electronics and robotics cannot be carried out. In the next five years 50 Specialist Inspectors will reach retirement age, a lost of almost 25% of the staff. For the Channel Tunnel Project and the Sellafield Audit retired Inspectors were re-employed so that vital work could continue.

(h) Information Services. The Direc- torate of Information Advisory Services (DIAS) has had increasing demands for its services. In the years 1983/84 there were 516,000 requests for information. By 1986/87 this had risen to 877,000 and by 1987/88 had gone beyond 1m. Pres- sure for information and publications has increased in recent years. In 1983/84 the number of leaflets requested was 285,000, but by 1986/87 this had risen to 4.2 million. In 1980 there was a total of about 60 specialist staff, but the present level is less than 40, a reduction of one third.

Conclusion

At the back of the Report, IPCS publishes a list of some 35 hefty pieces of legisla- tion, not including COSHH, enacted since 1974. This increases workload plus the cuts in staffing levels leaves the HSE incapable of carrying out its inspection role. The IPCS firmly believes that until the number of inspectors is significantly increased, no adequate preventative in- spection programme is possible.

The union therefore calls for:

1. Agricultural Inspectorate should be in- creased by a minimum of 100 to make 260 in total, to meet its responsibilities under the Food and Environment Protec- tion Act and the COSHH Regs.

2. Factory Inspectorate needs to be in- creased by some 370 inspectors to carry out a minimum programme of preventa- tive inspection once every four years.

3. Mines and Quarries Inspectorate should be increased significantly in order to make more frequent inspections of private mines.

4. Nuclear Installations Inspectorate should be increased to 200 bearing in mind the programme for decommissioning the Magnox power stations.

5. Medical Division staff need to be doubled just to restore staffing to 1979 levels. Sci- entists need to be substantially increased.

6. Research and Laboratory Services needs to be increased to about 390, around 1980 staff levels. RLSO spent £0.75m investigating the Kings Cross fire, with no cost to the Department of Transport.

7. Technology Division needs to recruit over 50 specialists.

8. Information Services needs 55 in total to restore a fully effective communica- tions system.

The contradiction between profit and health needs to be resolved.

The IPCS is also high critical of the level of fines in the courts. It says: *The fine of £750,000 laid on BP following the accident at their Grangemouth Refin- ery was by no means typical.* The fines imposed on a number of persistent of- fenders - British Steel Corporation (9 prosecutions, average find £1,106): ICI (3 prosecutions, average fine £900); and GEC (3 prosecutions, average fine £1,000 - are much more representative. The union calls for a considerable increase in the level of fines available to magistrates and echoes the Select Committee recom- mendation that where death or danger to life is provable, cases should proceed to the Crown Court.

(Source: IPCS)

3.3 PENALTIES AND JUDICIAL ATTITUDES:

3.3.1 Introduction:

Whilst practitioners in the field of Occupational Health and Safety have constantly reported and acknowledged a concern at the low levels of penalties imposed by the Courts for safety violations, it was interesting to note that the Preliminary Survey conducted for this thesis, identified a small number of employers who voiced their disillusionment with the low level of penalties imposed by the Courts for safety violations. Suffice to state, a painfully extended application pursuant to the Official Information Act 1982 would produce statistics to support the concerns of the Employer group as to low penalties. However, the evident statistics would need a context, and any development of the same could be interpreted as convenient. Suffice to state, penalties in the past have been pitifully inadequate [24] . For the purposes of the substantive survey as evidenced within Part 5 hereof, it is necessary to evalue the germane literature in order to develop a framework for comparative purposes.

3.3.2 Synopsis Of What The Literature Reveals About Penalties:

"... [penalties] should be set high enough to accomplish their purpose. To achieve this purpose, the expected cost of sanction must be set to be greater than the opportunity cost of compliance if economically rational employers are to be motivated to correct the violations ... " [25] .

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[24] Duignan (see footnote 26) provides an illustration of a not uncommon situation where a typical fine was imposed during the 1980's whereby a young worker was killed when the abrasive grinding wheel he was using disintegrated and a fragment struck his head. The grinding machine was a converted circular saw bench which was unsuitable for this type of work and the governor on the wheel was not working properly. The firm was fined $400 for failing to guard the transmission machinery and the abrasive wheel. (See Table 7 on following page as to Convictions and Penalties under the Health and Safety at Work Act (UK) 1974 and Breaches under the New Zealand Leglislation (1986/87)

[25] Gleason, J M, and Barnum, D T, Effectiveness of OSHA Sanctions in Influencing employer behaviour: Single and Multi-period Decision Models, (1978) 10 *Accident Prevention and Analysis* 35–49, 49.

TABLE 7

Convictions and Penalties under HSW Act

	Convictions				Average penalty per conviction £			
	1986/ 87	1987/ 88	1988/ 89 (p)	1989/ 90 (p)	1986/ 87	1987/ 88	1988/ 89 (p)	1989/ 90 (p)
Agriculture, forestry, fishing	335	310	297	327	166	178	282	250
Energy and water supply industries	17	14	13	8	343	54288(a)	604	981
Extraction of mineral ores other than fuels; manufacture of metals, mineral products and chemicals	100	123	149	124	715	573	633	1227
Metal goods, engineering and vehicles industries	329	316	368	417	381	470	529	794
Other manufacturing industries	294	454	433	448	448	403	526	1252(c)
All manufacturing industries	723	893	950	989	454	450	544	1056(d)
Construction	461	654	600	659	488	471	588	756
Service industries	151	153	207	256	480	483	629	873
Unclassified	62	15	6	4	556	354	500	1075
All industries	1750	2039	2073	2243	413	786(b)	528	829(e)

Note: (a) Includes BP fines totalling £750,000. The average fine without these convictions would be £836. (b) Includes BP fines totalling £750,000 in March 1988. The average fine without these convictions would be £420. (c) Includes a fine of £250,000 against Tate and Lyle. The average fine without this conviction would be £696. (d) Includes a fine of £250,000 against Tate and Lyle. The average fine without this conviction would be £804. (e) Includes a fine of £250,000 against Tate and Lyle. The average fine without this conviction would be £718. (p) = provisional
Source: HSC annual report 1989/90

Breaches of New Zealand Legislation 1986–87		
	Breaches rectified	*Prosecutions*
Factories	28,724	14 (convictions)
Other undertakings	1,492	--
Machinery	18,648	53
Bush work	809	6
Agricultural work	203	--
Shearing	311	--
Construction work	17,128 *	23 **
	*breaches only	**12 convictions

Sources: Safety Management Vol 6. No. 10, 1990 (HSE published figures)

Report of the Department of Labour for the year ended 31 March 1987.

"The current penalties for employers who breach health and safety regulations and put workers health at risk are far too low. The absence of significant penalties leads to a breakdown in the safety of the working environment. Without any economic pressure to improve the work environment, it is most unlikely, particularly in times of economic stringency, for money to be outlayed on improvements. " (26).

"It is OSHA inspectors, rather than penalties, that appear to be most instrumental in encouraging compliance. If the cost of individual penalties were boosted by a factor of 100 or more, OSHA's inspectors, rather than penalties, that appear to be most instrumental in encouraging compliance. If the cost of individual penalties were boosted by a factor of 100 or more, OSHA's penalties would become a significant enforcement factor" (27).

"The probability that an employer will be cited for safety and health violations varies drastically between federal and state administrations as well as among OSHA regions. For example, the Allied Industrial Workers Union analysed 1973 inspection results in plants where they represent the workers. In the states where both federal and state officials had enforcement powers, 62 percent of the firms were not cited in state inspections, although only 17 percent of the firms were not cited in federal inspections" (28).

"As Professor W G Carson, who has spent many years studying the enforcement of the law by the factory inspectorate since its inception in 1833, has written, "It is not that the criminal law has failed in the area of health and safety; it has never been seriously tried in any realistic fashion" (29).

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(26) Duignan, P. Occupational Health and Safety in New Zealand (problems and solutions) NZ Journal of Industrial Relations (1993) Vol 8. page 100.

(27) Viscusi, W K, The Structure and Enforcement of Job Safety Regulation, (1986) 73 *Law & Contemporary Problems* 127–150, 149.

(28) Petersen, D & Goodale, J. Readings in Industrial Accident Prevention, 1980, McGraw–Hill Inc., USA, page 387.

(29) Ibid, footnote 4 @ page 12, (Dalton: An Agenda for a Change).

3.3.3 Judicial Attitudes:

Up until the mid 1970's the principal legal text books on the general coverage of Industrial Law (Employment Law) provided scant coverage on the subject matter of Industrial Safety/Occupational Health. In point of fact the leading New Zealand text book on Industrial/Employment Law in the 1970's, made no reference whatsoever on the topic of Industrial Safety or Occupational Health (30). When interpreting the legal position regarding safety legislation it is important to appreciate that the principles established under the hitherto Worker's Compensation regime have been determined to have little relevancy under the statutory regime pertaining to Industrial Safety and Occupational Health. Personally, I subscribe to the rationale that experienced gained under the Worker's Compensation regime have pertinent considerations for the regulatory framework of the statutory regime. From a jurisprudential approach, regulatory codes are designed and interpreted in a restrictive mode which unfortunately disregards an employer's exemplary conduct.

As a broad statement, the voluminous scope of legislation pertaining to Industrial Safety/Occupational Health has been regarded as restrictive legislation in that it contrasts somewhat radically from the common law and imposes an absolute requirement, duty or obligation to strictly conform to the requirements enshrined within the codified law.

The significance of imposing a rigid legislative standard was judicially formulated in the following words:

> *"It is no longer left to the chance opinion of a jury to decide whether the precautions may properly be omitted. The legislature decides the question for them, and accordingly non-compliance with the provisions of the statute carried with it the same consequences that a verdict of negligence would do"* (31).

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(30) Mathieson, D.L., Industrial Law in New Zealand, Sweet & Maxwell (NZ) Ltd Wellington (1970).
(31) David v Brittanic Merthyr Co. (1909) 2 KB 146, 164, per Fletcher-Moulton L J.

Whilst Szakats [32] subscribes to the concept of statutory negligence the judiciary display a more pragmatic approach which can be evidenced from the following three (3) decisions, namely:

"Once it had been shown, however, to be dangerous and to have needed fencing, it seems to me that he should, under the general intention of the Act, be potentially liable to all employees who suffer from that failure. There is nothing to justify the view that the Act of 1937 intended its protection for only the slightly stupid or slightly negligent, and intended to withdraw all protection from the utterly stupid and utterly negligent. Of course, when contributory negligence comes to be considered, the utterly stupid or utterly negligent man may find that a large proportion (or when the whole) of the fault is laid on his shoulders, so as to diminish or extinguish his damages" [33].

"... I must remember that the Factories Acts are intended not only for the protection of careful, intelligent and obedient workmen but also of those who are stupid, careless, unreasonable or disobedient." [34].

"... bearing in mind that when one considers what is a 'reasonably foreseeable risk' one must have regard not only to the foreseeable conduct of a skilled worker intent on his task but also to the foreseeable conduct of careless or inattentive workers. The statutory provisions are designed to protect, to that degree, not only the competent careful workman but the careless workman ... I have explained for the meaning of the word 'securely' – that the purpose of this provision is to protect both the careful and the inadvertent or inefficient employee from foreseeable – that is, reasonably foreseeable – risk of injury" [35].

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[32] Szakats, A. Introduction to the Law of Employment, 3rd edition, Butterworths, Wellington, (1988) page 203

[33] Howell v Caxton Printing Works (1971) NZLR 1068, 1073, per McMullin J.

[34] Leach v Standard Telephone and Cables Ltd (1966) 2 All ER 523, 531 per Browne J.

[35] Ralph v Henderson and Pollard Ltd (1968) NZLR 759, 761, per Richmond J.

3.4 ATTITUDES OF WORKERS AND THEIR REPRESENTATIVES:

3.4.1 Introduction:

In 1991, I was fortunate enough to enjoy a seven (7) month sabbatical in England where I completed a research paper pertaining to the role of the Trade Union movement in the area of Occupational Health and Safety. The summary of that role within the Conclusion to that Research Paper provided:

> *"In summary the role of the trade unions in Occupational Health and Safety, whilst ill-defined, centres around education and effective communications. The pupil is the worker at all levels together with management: The syllabus is designed to increase the level of awareness. To perform its role effectively the individual trade unionist is required to assimilate a considerable amount of complex information and have the ability to communicate this effectively. Clearly there is a role for the trade unions in Occupational Health and Safety and in the words of Herbert Roth: "... with all their shortcomings, warts, abscesses and other deformities, unions remain the workers' best friend". (The State of the Unions: NZJIR 1983, page 56)* (36).

Whilst the Research Paper focused upon the role of the Trade Union movement, the parameters of this thesis is centred around "Attitudes", which naturally necessitates a shift in focus. To effectively create a yardstick, to evalue contemporary trade union attitudes towards Occupational Health and Safety, it is necessary to observe where the trade unions were placed before the advent of the Health and Safety in Employment Act 1992. This exercise by necessity becomes a review of the literature and observations on statements made.

The secondary aspect of this part of the thesis pertains to the attitude of workers. In this context, it must be noted from the onset that there is a complete dearth of material on the views and attitudes of individuals towards the subject matter of Occupational Health and Safety.

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(36) Henderson, J.B.M. Is there a role for the Trade Unions in Occupational Health and Safety? Research Paper, Gloucester, October 1991, Massey University, page 75

Whilst the summary of this part of the thesis (3.6) will attempt to thread together a broad synopsis of attitudes and stated views, the evidence to support a conclusion is essentially derived from the literature.

3.4.2 Trade Union's Approaches (Selected Views):

"Because of its particular historical circumstances, the involvement of the New Zealand trade union movement in occupational health and safety issues has been sporadic" (37).

"In the next few years it is likely that organised labour will make a determined effort to see greater progress; in fact it has already begun. As Gunningham (1984, p. 368) in commenting on the current Australian scene states: ..... Given the conflict between rigorous safety legislation and employer self-interest, the power of the industrial lobby, and the reluctance of governments to take action ..... radical reform is inconceivable in the absence of forceful and sustained pressure from the trade union movement" (38).

"In 1974 I was asked to do my first health and safety school for the TUC, and in the TUC library at that time the material on health and safety compared to that on compensation was almost non-existent ..... In 1974 I don't think a single union had someone working full-time on health and safety, although there were people dealing with compensation. By 1979 at least half a dozen unions had each appointed a person to co-ordinate health and safety work.

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(37) Ibid, footnote 26 on page 103

(38) Campbell, I.B. Occupational health and safety legislation: (possibilities for future development), New Zealand Journal of Industrial Relations, (1986) Vol II page 187.

Only one union, the GMBATU, had gone further and appointed full-time officers at local level ..... Have the ten years of the Health and Safety Commission been a success? No, I don't think so. On balance I think that most of the innovative changes have not come about as a result of pressure from within this system but from outside it. For example, the new regulations on the control of substances hazardous to health (COSHH) have come about as a result of EEC directives" (39).

"Another crucial area of union neglect has been health and safety at work. At least 1,400 workers are killed at work every year with another 300,000 suffering injuries bad enough to keep them away from their jobs for over three days ..... These figures make for depressing reading, but no concerted action to combat death and injury at work has ever come from the unions ..... To its credit, the TUC has been concentrating many of its limited resources on education for the unions on the new safety law" (40).

"The Trade Union viewpoint can be summarised briefly. Any initiative designed to reduce the toll of accidents in industry deserves the closest possible co-operation of all Trade Unionists. Here at least is one field in which the respective interests of employers and employees undoubtedly coincide. The motive of a safety conscious employer may be largely economic, but should motives concern us so long as the result is the provision and maintenance of a safe and healthy workplace? In the pursuit of industrial safety there is no room for barriers, no place for the 'them and us' mentality. Joint consultation and effective co-operation aimed at curing industry of the accident malaise represents enlightened self interest at its best" (41).

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(39) Hazzards Bulletin for Safety Reps, The Trade Unionist's Story, Hazzards Bulletin (Ten Years On, by Sheila McKechnie) (1985) No. 5, page 5

(40) Taylor, R. The Fifth Estate (Britain's Unions in the modern world) Revised edition (1980), Pan Books London, pages 367-370

(41) Handley, W., Industrial Safety Handbook, McGraw-Hill Book Company (UK) Limited, 2nd Edition (1977) London, page 446.

"Health and safety at work have mattered comparatively little to unions in Britain, as in the USA. The number of genuine health or safety officials employed by British unions is still very small; no more than thirty union people can be gathered by the TUC to discuss health or safety issues, and many large unions, such as the Transport and General Workers' Union, have no real health or safety experts on their staffs. Only a minority of union officers and officials in Britain have shown passionate concern for safety and health at work ..... Unions also share the brief endemic in British health and safety policy circles that there are narrow limits to the enforceability of health and safety legislation. Although the TUC has often criticised the low number of factory inspectors and the small number of prosecutions brought by the inspectorate each year, it generally shares the belief that the intransigence of employers can not be overcome by the law. If regulations are to be effective, therefore, they must be accepted by the vast majority of employers. A small minority of bad employers can be coerced by the law; a large percentage cannot, for reasons to be discussed in the chapter on enforcement. One might as well recognise, therefore, that employers' consent is necessary by giving them a veto over new regulations at the outset" (42).

"Working people in the UK owe a tremendous debt to trade union health and safety representatives. In the hostile industrial relations environment of the past twelve years, they have had an uphill struggle to achieve safer and healthier workplaces. The UK record on health and safety over this period has been poor and without their work it would have been disastrous ..... Bill Simpson, the first Chairman of the Health and Safety Commission, said that the trade union representative was the watchdog in the workplace" (43).

"The trade union role must always be to help prevention. That is their traditional role. After all, it is workers' agitations which brought in factory legislation for the safety of workers. Fortunately, we have reached the stage where we have good employers. What we want now is a share in the actual planning of safety in the works. Unions have got to play a more important part in the safety field and have more consultation in the provision of safety equipment" (44).

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(42) Wilson, G.K. The Politics of Safety and Health (Occupational Safety and Health in the United States and Britain) Clarendon Press–Oxford (1985) pages 114 & 116

(43) Walters, D.R. Worker Participation in Health and Safety (A European Comparison) Institute of Employment Rights, Centurion Press (UK) August 1990, page 4

(44) Safety magazine (British Iron & Steel Federation) Vol. 1, No. 1, June 1958, page 12 (Joe O'Hagan: Gen. Secretary of the National Union of Blastfurnacemen)

"Trade unions have traditionally played a reactive role in industry. In relation to health and safety, trade unions want to access to influence decisions before they are made. They want to be involved in determining the level of acceptable risk in the workplace" (45).

"Workers and union are increasingly saying that they don't want employers and scientists accepting certain levels of risk on their behalf. They want a minimum level of risk enforced for all workplaces and to have a real input into determining those safety standards" (46).

"Protecting people from the hazards of their work is an unremitting task for all active trade unionists. It requires dedication, patience, skill, determination – as well as a detailed knowledge of workplace hazards and how to overcome them. But it is also one of the most worthwhile tasks that any trade union member can undertake – for no one should ever forget the sense of anger, frustration and despair that follows a futile accident or disease at work which could have been prevented by taking simple precautions" (47).

"In the United States the struggle for safer work has been carried out primarily through the unions. And it may be that the struggle for better working conditions with its emphasis on worker rights at the point of production will help rekindle the US labour movement. More and more people are realising that big money is worthless if you are too sick and tired to spend it, and that a good pension becomes null and void" (48).

"Because of its particular historical circumstances, the involvement of the New Zealand trade union movement in occupational health and safety issues has been sporadic. But some individuals within the union movement have placed great emphasis on this area of work and have attempted to bring about changes which would improve the working environment" (49).

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(45) The Safety Practitioner (The Safety Committee – a trade union view) December 1984, page 36

(46) Wilson, R. Occupational Safety and Health: the union perspective. New Zealand journal of Industrial Relations, 1989, Vol. 14, page 197

(47) TUC: Guide to Health and Safety, TUC Publication, August 1988, Foreword. (Norman Willis: TUC General Secretary)

(48) Berman, D.M. Death on the job, (Occupational Health and Safety Struggles in the United States Monthly Review Press, New York, 1978, page 117.

(49) Duignan, P. Occupational health and safety in New Zealand: problems and solutions NZ Journal of Industrial Relations, 1983, 8, page 103.

"Some of the blame for the toll of death and disease lies with the unions themselves. Companies have learnt to expect an easy ride from union officers, keen to collect the subs and do nothing much else. They are there to help with a compensation claim, but doing next to nothing at site level to stop the accident happening in the first place" (50).

"Another crucial area of union neglect has been health and safety at work ..... but no concerted action to combat death and injury at work has ever come from the unions. Few unions responded in a positive way to the coming of the new legislation (HASAWA) until recently" (51).

3.4.3 Trade Unions – Changing Approaches and Views:

On March 18 1991 I had the pleasure of conducting a lengthy interview with the late Herbert Roth of Auckland (52). The purpose of the interview was part of the research gathering exercise for the Massey Research Paper (see footnote 36 supra). My central question to Herbert Roth inquired to why there was so little information available prior to the mid-1980's as to the Unions role in Occupational Health and Safety? To this rather broad question Herbert Roth considered that there were principally three (3) reasons, namely:

(i) State Paternalism: **Unions apparent reliance upon the Government for protection – unions in effect being creatures of legislation (53).**

(ii) Non Awareness of Occupational Disease: **Apart from a limited number of exceptions the Trade Union movement in New Zealand was concerned primarily with Industrial Safety as it pertained to workplace accidents. Prior to the 1980's, health issues apparently were not a serious agenda item. The notable exceptions being:**

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(50) Hazards Bulletin, No. 22 (Where are the Unions) Feb, 1989, page 4

(51) Taylor, R. The Fifth Estate, Pan Books (1980) London, page 267

(52) Herbert Roth (Dec 1917–May 1994) – best known as a Labour Historian, and his many trade union histories. Author of the Chronicle to the NZ Journal of Industrial Relations from 1977 until his death, and author of the Industrial Summary to Employment Law Bulletin for many years – see Tribute in NZ Journal of Industrial Relations (1994) Vol 19, page 115, and Obituary in Butterworths Employment Law Bulletin (1994) June, page 67.

(53) Roth, H. The State of the Unions, New Zealand Journal of Industrial Relations (1982) Vol 8. Herbert Roth commented on this article which expands significantly on the brief comment.

- Miners' phthisis, in which the State Insurance in 1929 attempted to force x'rays on mine worker resulting in Industrial action (54).
- Watersiders in 1930 protesting at handling basic slag. Union agitating to have various matters included in a schedule for compensation.

(iii) Concerns after the Auckland ICI fire: The ICI fire in the early 1980's causing chronic dermatological disease and respiratory complications to the firemen due mainly to the lack of immediate decontamination facilities, signalled concern to the trade union movement. The concern being hazard awareness, and the ramifications of Occupational Health. Herbert Roth considered that the ICI fire was effectively the turning point and witnessed a new approach by the Unions which focused upon prevention (health prevention and occupational disease) as opposed to the earlier approach of safety and compensation.

The evolutionary change did not occur over night. The FOL Policy Draft for 1985 contained a brief section on Health and Safety within the general Heading of Conditions of Work. Under the heading of General Principles, the Policy Draft document provided:

> "The FOL endorses the principle that the collective experience and opinion of the workers in the particular workforce should determine any question of safety despite the continued attacks of many employers on the matter of job safety ... " (55).

A significant attitudinal change was witnessed by the publication of the combined FOL/CSU Report in 1985 entitled "Occupational Health and Safety in New Zealand". To a large degree the Report owes its recognition to its co-ordinator, Dr Bill Glass of Otago University Medical School. From an Occupational Health and Safety framework, the Report contains an Occupational Health and Safety Charter which is significant and noteworthy. In the interests of brevity an abridged aspect of the Charter is provided as follows (56).

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(54) Original source: Miners' Phthisis pensions: Government Printer, Wellington (1929) Goldfields & Mines Committee: Report on Petition of Inangahua Gold 14p (AJHR J-4A)

(55) Federation of Labour Policy Draft - 1985 (Summary of Policy 1973-85) paragraph 4.5 (Health and Safety) page 23.

(56) FOL/CSU Report, Occupational Health and Safety in New Zealand 1985 Wellington, Section 10

Occupational Health and Safety Charter:

The trade union movement seeks for all workers work environments which fully meet their social, psychological and physical needs. It recognises that throughout history, workers have been exposed to extreme conditions of noise, chemicals, temperature, physical hazards, stress, shiftwork and systematic exploitation. Particular groups of workers have been subject to especially harsh conditions of work, and women workers, young workers and workers who are aged and near retirement have been particularly badly affected.

The trade union movement in New Zealand believes that in order to improve this situation there must first be a recognition of the basic rights of all workers, as follows:

Basic Rights:

- *The right to a safe, healthy, clean, well designed and pleasant working environment.*

- *The legislatively protected right to stop work if they believe their safety or health, or that of anyone else, is in danger.*

- *The right of full information or hazardous substances handled or transported in the workplace, and full information on hazardous work situations and processes.*

- *The right to full trade union organised training in all aspects of occupational health and safety within the industry and work environment.*

- *The right to the provision of adequate basic health care for workers in all workplaces.*

- *The right to prompt full compensation and rehabilitation when disabled through injury or illness.*

- *The right to an effective system for the protection of the work environment, including efficient regulatory agencies and significant penalties against employers who don't comply.*

- *The right to a full representation in occupational health and safety decisions through a system of union health and safety delegates and workplace or factory based health and safety committees organised in such a way that workers in large, medium and small and other workplaces are covered.*

- *The right to effective education in the principles of safe and healthy work throughout the education curriculum, through public education media and in the workplace.*

- *The right to determine the level of risk within which work will be carried out.*

- *The right to protection and compensation for the individual or community for injury or damage to the environment by any defective product or production method.*

3.4.4 Safety Provisions in Awards and Collective Agreements:

From a statistical view point, a document published in 1985 provides a useful overview as o the effectiveness by the trade union movement in New Zealand of bargaining on matters of Occupational Health and Safety (57) . The document is essentially a review of some 751 awards/collective agreements as published in the New Zealand Book of Awards between the period 1981–83. The data collected and collated had as its prime focus a specific reference or relevance to safety. To provide an illustration of the scope and extent of safety provisions that were negotiated into the Industrial documents, two (2) tables have been reproduced in a slightly amended format. These tables (8 and 9) are produced on the page following.

3.4.5 Trade Union attitudes:

Despite several years of research, the search for a dissertation and/or analysis of trade union attitudes toward Occupational Health and Safety had proved highly elusive. The most comprehensive treatment found today on the subject is contained within an Australian recommended text (58) . The text book authors when commenting on union attitudes and approaches to the acceptance by the unions as to inevitability of injury and disease list four (4) reasons as follows –

(57) Accident Compensation Corporation "Safety Provisions in Awards and Collective Agreements" Corporate Affairs Division (1985)
(58) Quinlan, M. & Bohle, P., Managing Occupational Health and Safety in Australia, (A Multidisciplinary Approach) (Griffith University) (1991) The Macmilliam Company of Australia Pty Ltd

"First, many workers and unions appear to have been willing to accept a trade-off between safety, and opportunities to secure better pay through hazard allowances or bonus payment systems. Even unions who vigorously opposed incentive payment systems on health grounds, such as the Boilermakers and Blacksmiths' Society appear to have accepted hazard allowances.

A second factor inhibiting industrial initiatives by unions in relation to OH&S was ignorance and the exaggerated aura of technical expertise which has enshrouded the subject. As we have noted in earlier chapters, medical and epidemiological research as well as other information on OH&S has been limited in terms of quantity, narrow in terms of focus, and seldom made readily available to unions, especially in a form which they could use.

A third factor inhibiting union initiatives, which has already been established, was the historical reluctance of industrial tribunals to entertain such claims because they were seen to impinge on both managerial prerogative and state OH&S legislation.

A fourth and final factor has been the general refusal of employers to concede OH&S as an area for industrial negotiation. Employers have tended to see the standards laid down in state OH&S legislation as setting both minimum and maximum requirements, and have vigorously opposed the right of tribunals to impose additional requirements" (58).

(58) Ibid @ page 361

TABLE 8

PROMINENT SAFETY PROVISIONS WITHIN
AWARD/COLLECTIVE AGREEMENTS

Top 20 'safety' provisions

Provision	No. of documents	% of 751
1. Safety footwear	518	69.0
2. First-aid assistant	376	50.1
3. Protective gloves	316	4.21
4. Eye protection	162	21.6
5. Respirators, etc	146	19.4
6. Limit on temperatures	138	18.4
7. General provision for safety equipment	136	18.1
8. Ventilation systems	126	16.8
9. Face masks	124	16.5
10. Limit on weights to be lifted	105	14.0
11. 'Misconduct' – liable for dismissal	103	13.7
12. Safety helmets	97	12.9
13. No 'work' on machines etc when operating	93	12.4
14. Safeguards for portable electrical equipment	91	12.1
15. Medical examination	84	11.2
16. Access to phone	77	10.2
17. Obligation to use safety equipment	73	9.7
18. Electrical welding safeguards	73	9.7
19. Ear protection	62	8.3
20. Health Department for various jobs	57	7.6

SOURCE: Ibid footnote 57 @ page 7

TABLE 9

MEDICAL AND OCCUPATIONAL HEALTH FACTORS

Provision	No. of documents	% of 751
1. First-aid assistant	376	50.1
2. Ventilation systems	126	16.8
3. Medical examination	84	11.2
4. Health Department regulations	57	7.6
5. Barrier cream/oil provided	31	4.1
6. Milk provided on certain jobs	21	2.8
7. First-aid room available	17	2.3
8. Instruction in resuscitation	14	1.9
9. Disinfectant available	13	1.7
10. Ambulance provided	12	1.6
11. Electrocution chart displayed	10	1.3
12. Noise abatement	7	0.9
13. Salt tablets provided	6	0.8
13. Notifiable disease etc precautions	6	0.8
15. Antidotes available	5	0.7
16. Asbestos regulations	5	0.7
17. Hair shampoo available	4	0.5
18. Use of VDUs	4	0.5
19. Lead – precautions in use of	3	0.4
20. Vibrators – time limit	2	0.3
21. Safety shower provided	1	0.1
22. Colour vision test	1	0.1

Medical and occupational health factors	**Paid first-aid assistant, Health Department regulations, medical examination, ventilation systems, barrier cream/oil, milk provided on certain jobs, first-aid room, electrocution chart, instruct in resuscitation, ambulance provided, salt tablets, antidotes, etc, noise abatement, hair shampoo, safety shower, colour vision test, lead – use of, notifiable diseases, asbestos regulations, VDU's usage.**

3.4.6 Attitudes of the worker:

Apart from a rather dated publication from the Industrial Relations Centre (59) , there is a disappointing lack of real information from both New Zealand and England on attitudes held by workers on the subject of Occupational Health and Safety. In the main, the traditional approach to worker attitudes can be summarised by Williams as follows:

> *"In many respects the attitude of the average worker to problems of industrial safety leave a great deal to be desired – Fundamentally, the old attitude that risk of the job must be accepted remains; although as in other groups exposed to danger, the individual hopes and assumes he will not be involved. Even if some would want to object to certain dangers they may be influenced by concern that colleagues may take a critical view of their weakness – Again the individual worker is in a dilemma if he feels that his complaints on safety matters will prejudice his prospects of continued employment or promotion. Or he may get caught up in a production drive based on piece work or bonus payments which encourages risk for the sake of a larger pay packet"* (60) .

In many ways, the observations made by John Williams (supra) from research findings in the 1950's are validated by research conducted by Leopold and Beaumont in 1981/2 drawing on a sample of safety committee members in 51 plans in the United Kingdom manufacturing industry(61) .

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(59) Seidman, J. Attitudes of New Zealand Workers, Industrial Relations Research Monograph No. 1, (1975) Victoria University of Wellington

(60) Williams, J.L. Accidents and Ill-Health at Work, (Attitudes to the Problem) (1960) Staples Press, London, page 51.

(61) Leopold, J.W. and Beaumont, P.B. Health, safety, and industrial relations, (a United Kingdom study) NZ Journal of Industrial Relations, 1983 Vol 8, page 143.

Leopold and Beaumont recorded the low priority accorded to health and safety issues by individual members as against other bargaining issues. Reproduced hereunder is the statistical evaluation which evidenced the conclusion that safety is clearly seen as less important than the central issue of wages and redundancies (62).

TABLE 10

Percentage of trade union respondents estimates of how their members viewed the importance of health and safety issues compared to a range of collective bargaining issues

	Safety is more important than: (%)	Safety is about equally important as: (%)	Safety is less important than: (%)	N
Wages	10.1	24.2	65.7	99
Grievance	28.3	41.4	30.3	99
cases	36.4	18.2	44.4	99
Overtime	39.4	29.3	31.3	99
Discipline	15.2	17.1	67.7	99
Redundancies				

From the scant amount of literature available on the subject matter of worker attitudes, the evidence supports the view of worker indifference. Ross Wilson when addressing the New Zealand Institute of Safety Management Seminar in 1989 effectively concluded that to counter the sophisticated market driven "risk by choice" advocated by management, the worker would only be protected by participation within the workplace and the union was the only realistic vehicle to achieve this safeguard.

(62) Ibid footnote 61

However, Wilson conceded that in the interim the individual workers attitude towards safety was of concern *(63)*. Wilson highlighted one particular theory to explain his position; namely, the "Careless Workers" theory which was expressed as follows:

> *"No doubt unsafe acts by some workers do contribute to some accidents, but there is overwhelming evidence that inexperience, inadequate language comprehension, insufficient training and information, production pressures, fatigue, stress and monotony are among the most common explanations of human error rather than carelessness or apathy"* *(64)*.

As mentioned earlier, the leading New Zealand survey which I have identified *(65)* was undertaken in 1975 by the Industrial Relations Centre at Victoria University. The focus of the research was designed to discover the attitudes of workers in New Zealand towards their work. The survey involved a comprehensive survey involving 98 individual sections which sought attitudes on the 98 separate areas. Of the 98 individual sections, only one (1) focused upon the subject matter of Occupational Health and Safety. As the survey table and total commentary is brief, I have for the sake of completeness, reproduced the total survey result as it pertains to our enquiry as Table 11 (page following) ". The thrust of the survey findings were indirectly verified in a subsequent New Zealand survey*(66)*.

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(63) Wilson, J.R. Safety & Health in the Deregulated Society, (A Union View) New Zealand Institute of Safety Management Seminar 1989 Palmerston North (29 June 1989)

(64) Supra at page 5. In addition to the "Careless Workers" theory, there abounds a number of other theories regarding worker indifference toward Occupational Health and Safety. A selection is reproduced within footnote 67

(65) Ibid; footnote 59 at page 34

(66) Smith, A.M.C., and Firth, M.A., Communicating by employee reports: a survey of employee attitudes, NZ Journal of Industrial Relations, 1987, Vol. 12, page 125. The survey involved three large New Zealand Companies with a combined workforce of approximately 11,600 persons. The survey itself related to an analysis of the factual information derived from the actual employee reports as compiled by the companies and promulgated within the respective statutory annual reports. The survey results observed that safety and accident information received a low ranking. The authors observed that the low ranking perhaps reflected a view that historical data is of little use or relevance to employees and that safety issues are likely to be closely monitored by trade unions.

TABLE 11

Attention to Safety										
	Metal working		Wood products		Sawmill		Construction		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Attention sufficient	66	56.5	69	80.2	53	82.9	32	45.7	220	65.3
Attention insufficient	30	25.6	12	14.0	7	10.9	31	44.3	80	23.7
Don't know	15	12.8	5	5.8	2	3.1	4	5.7	26	7.7
No response	6	5.1	0	0.0	2	3.1	3	4.3	11	3.3
Total	117	100.0	86	100.0	64	100.0	70	100.0	337	100.0

Criticism on the score of safety was most pronounced among construction employees, who were almost equally divided as to whether or not their employer paid sufficient attention to safety. At the other extreme both the sawmill and the wood products employees were widely agreed that safety received sufficient attention in their plants, only relatively small minorities dissenting. The employees of the metal working plant took an intermediate view, with a little over half believing that sufficient attention was paid to safety, as against a quarter of the staff who held the contrary view.

The factors stressed most, by employees in the four enterprises viewed as a group, were the need for more safety education and for full-time, efficient safety officers. Other suggestions frequently made included stricter enforcement of safety rules, increased supply of safety gear, better care of machinery and equipment, and keeping of walkways clean. The construction workers emphasised the improvement of scaffolding. Other suggestions included a monthly meeting on safety, prompt reporting of defects in machinery, more guard rails, appointment of more first aid officers, and keeping the sites cleaner.

Wilson's stance favouring worker participation was earlier recognised by Jack Harrop, a then Safety Controller with the Accident Compensation Corporation. In recognising worker attitudes, Harrop referred to the "Three Thirds Rule" *(67)* **. Finally, Donnell in an early publication identified three (3) further attitudes to describe New Zealand worker attitudes** *(68)* **.**

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(67) Harrop, J.K. Employee Involvement in Safety Programmes, Safety Management Magazine, Vol. 1, No. 1, Nov/Dec 1984 (Wellington) at page 8 – The Three Thirds Rule proposes that a third of the workforce will jump at the opportunity to be involved in a safety programme, another third will possibly be a little sceptical and be rather reluctant to 'jump in' but will usually become involved at a later date. Finally there is the remaining third that really don't want to be involved and there is no use endeavouring to coerce them as they will only negate the employer's sincere efforts.

(68) Donnell, R.G. Effectiveness of Industrial Safety Legislation in New Zealand, dissertation for LL.B(Hons), Univ. Of Auckland (1975) at page 27. The "Sissy" Syndrome recognises that in New Zealand the attitude that it is "sissy" to make hard work safe and enjoyable. The average New Zealand factory worker, particularly male, tends to consider it of primary importance to preserve his tough masculine image in front of his workmates even at the risk of exposing himself to danger and injury. This is perhaps the biggest reason for the complacent acceptance of the status quo among the majority of New Zealand workers. As a result, typists sit in chairs which are uncomfortable, and go home with sore backs, necks, and shoulders, assembly workers carry out repetitive muscle movements and develop strained tendons, foundry workers make awkward lifts and go off work with strained backs, and so on. The "Don't-Make-Trouble" Doctrine An approach which is probably as prevalent as that described above is that in which workers decline to bring complaints to the attention of union or management simply because they do not wish to be trouble-makers and hold the job up, or they wish to keep their jobs and get ahead, or both. The idea persists that if you make trouble you will get a bad reputation with management and will be the first to go when times get hard or the job nears completion. The "Do-it-Yourself/She'll-be-Right" Approach It is said that New Zealand is a nation of ingenious improvisers who are willing to undertake any job for which they may not be trained, or for which they may not have the proper equipment, in order to save trouble and expense. While this may be a somewhat admirable approach for work around the home, it unfortunately often extends onto the factory floor or workplace. Many workers are reluctant to ask for help in doing a particular job, work with inadequate or badly-maintained tools, or fail to take reasonable precautions in order to get the job done.

3.5 Attitudes of the Employer:

(A) General:

The attitudes typically held by the employer in the pre 1992 era were succinctly expressed by David Farlow in 1988 as follows:

> *"Employers do not want to see legislation giving what might be termed "extra rights" to employees – they would certainly regard that as a negative outcome of the reform process – Employers do not want to see reform as an excuse for putting in another layer of bureaucracy – Perhaps most importantly of all, employers do not want to have to carry the financial costs of reform"* (69).

To a limited degree the expressed views of Farlow have support from the findings of the Committee of Enquiry into Industrial Democracy(70) . From my own research the traditional approach as expressed by Gunningham accurately reflects employer attitudes namely:

> *"that accidents are caused by workers' carelessness rather than defective plant or production pressures"* (71).

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(69) Farlow, D. Occupational safety and health: the employers' perspective, NZ Journal of Industrial Relations (1989) Vol 14, page 193
Note: David Farlow remains the Occupational health and safety advisor to the New Zealand Employers Federation – formerly a member of ACOSH. Farlow further held that employers do not want to see legislation giving what might be termed as "extra rights" to employees – they would regard that as a negative outcome of the reform process (pae 194)
(70) Report of the Committee of Enquiry into Industrial Democracy, (The meaningful participation of workers in decisions affecting their working lives) October 1989, Wellington page 3
(71) Gunningham, N. Safeguarding the Worker (1984)

To reinforce the position whereby Management "knows best", or managerial paternalism, Employers have been subjugated to a degree by believing in the rhetoric of the managerial prerogative. Support for the view or attitude, that its all the workers fault and it is best to do nothing can be taken from the following extracts:

> *"It is now generally agreed that health and safety must be managed just like any other business function with responsibility and accountability resting with management"* (72).

> *"While there may be some case for legislation setting out the basic rights of workers with regard to health and safety issues, the optimal legislation need not involve disclosure rules ..."* (73).

> *"It is felt by many knowledgeable safety professionals that the safety committee is not needed and is actually undesirable. The alternative to the safety committee is well trained management from top to bottom that assumes and discharges their safety responsibilities. These safety professionals feel that management should not delegate their safety responsibilities to committees anymore than they should delegate quality, production, or financial decisions"* (74).

The traditional view held by Management and in particular the Employers Federation(74A) from the following two extracts which lend support to the sanctity of the managerial prerogative which contends that Occupational Health and Safety is clearly a management function.

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(72) Farlow, D.W. Occupational health and safety: (a comment on Mullens) NZ Journal of Industrial Relations, 1991 Vol. 16, page 185

(73) New Zealand Roundtable, Regulating Occupational Safety and Health, (1988) Wellington, page 17

(74) Baley, J.W. A Guide to Effective Industrial Safety, Texas, 1977, page 5

(74A) Employers Federation (1990a) Submissions on the Labour Relations Amendment Bill, Wellington Employers Federation at page 4 states "Employees display all the expressions of low self esteem lethargy and hostility ... Going the extra step can be tantamount to betrayal of one's colleagues, an Uncle Tom of the industrial system ...
Communication tends to be formal and cliche ridden, mistrusted and directed downwards. Upwards communication is likely to be through the political voice of the job delegate or union official. The subject generally is a wage demand, a personal grievance, or an alleged infringement of long held rights... "

"The attitude of the trade unions' to safety over many years has been disappointing ..... they were and are in the main, apathetic when it comes to safety at site level. The industry is aware that a tremendous amount of lip service is paid by the unions to safety" (75).

"Therefore, when management is trying hard to fix responsibility for safety, it may be found that union – management safety committees provide an easy way for supervisors to duck their responsibility for safety and that responsibility is avoided by the committee too. Hence, in view of the modern concept that supervisors must have full responsibility for safety, it would appear advisable not to use union – management safety committees" (76).

In England, notwithstanding the harsh observations made by the Robens report (77), **Management steadfastly clung to its attitudes until the passing of the Health and Safety at Work Act 1974 where legislation attempted to alter hardened attitudes.**

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(75) Hazards Bulletin, Where are the Unions, article by Len Dodds, Chief Safety Adviser to Balfour Beatty Limited Feb (1889), No. 22 page 3

(76) De Reamer, R. Modern Safety Practices, New York (1959) page 73

(77) HMSO Safety and Health at Work, Report of the Committee 1970–72 (Robens report), July 1972. Much to the horror of British management the Robens report observed at para 59, that the promotion of safety and health at work is first and foremost a matter of efficient management; but it is not a management prerogative – real progress is impossible without the full co–operation and commitment of all employees. (Page 18 of Report). On this aspect, the typical managerial attitude of it being our prerogative was supported by Powell, et al; in a comprehensive investigation involving a shop floor study of the causes of 2000 accidents based on 42 months' continuous observation: Source Powell, 2000 Accidents, National Institute of Psychology, London (1971) @ page 32

(B) The Small Firm:

Research from England during the 1980's supports the claim that small firms are exposed to a greater risk of safety breaches than larger workplaces and an increased vulnerability for work accidents. In discussing the statistics, Dalton *(78)* considers that the majority of small firms have poor health and safety standards. A HSE study of small firms showed that people employed in a workplace with under 50 employees had a 20% greater chance of having an accident than those employed in establishments with 100–1000 employees and there was a 40% increased risk in those employing more than 1000 *(79)* (see Table 12 on page following). Thomas *(80)* and Walters *(81)* whilst somewhat more analytical than Dalton, certain support the claim that statistically a worker in a small firm has a greater susceptibility for endangerment to their individual safety.

In New Zealand, Wilson summarises the situation when he states that the problem in New Zealand is the number of small firms. Using Labour Department figures from 1987 Wilson observes that of the total of 24,300 registered factories in New Zealand, only 490 employ 100 or more workers and about 88% of registered factories employ less than 20 workers *(82)* . To place the matter in some context an analysis of business size in New Zealand is reproduced as Table 13 (page following). In addition, complementary statistics are reproduced at the foot of Table 13.

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(78)) Dalton, A. An Agenda for Change, WEA, (UK) June 1991, page 26 the author maintains that about 90% of the workplaces registered with the HSE employee fewer than 50 people and on average about 70% less than 10.

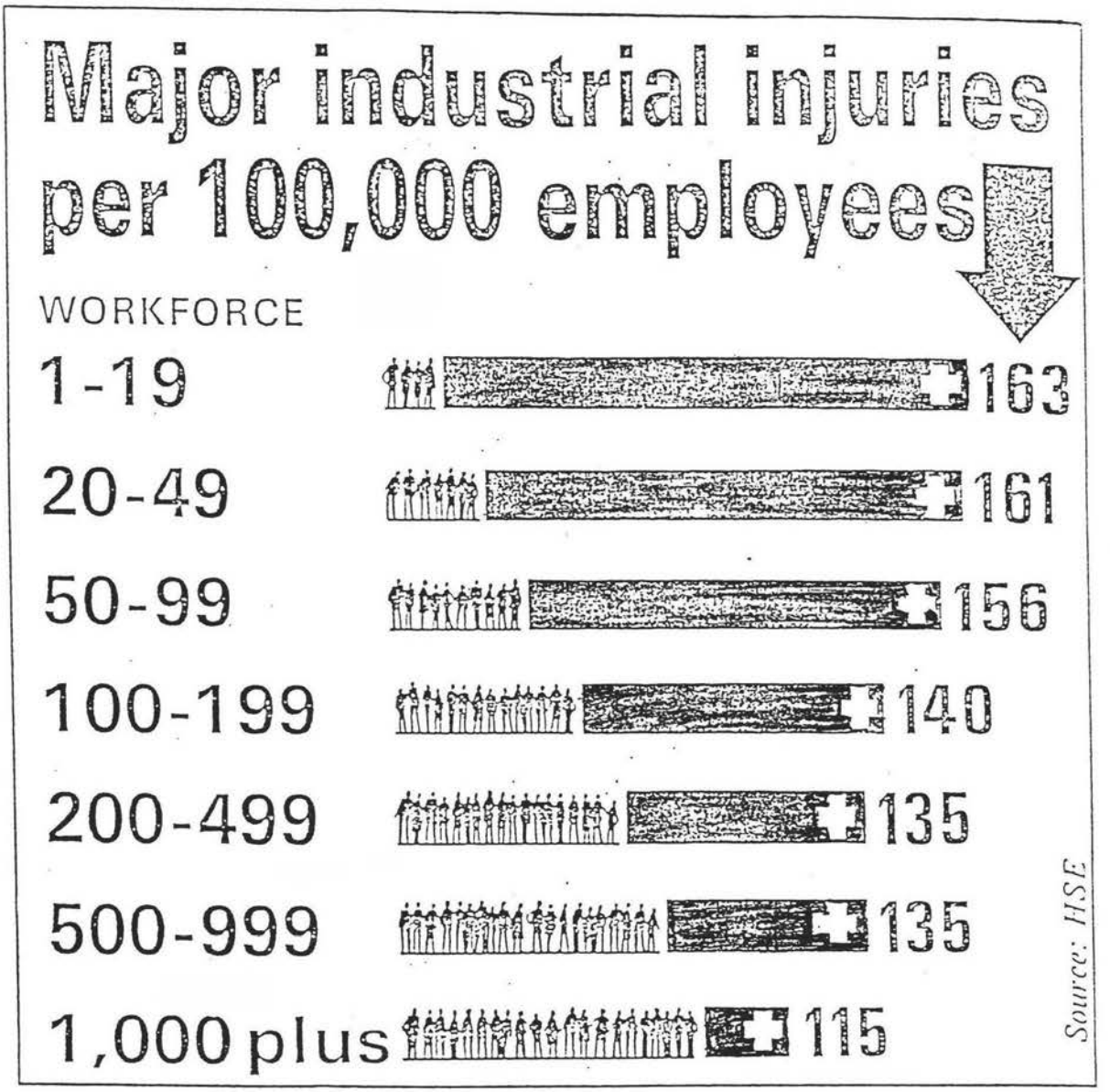
(79) Safety Management, Small firms are Unsafest, Vol 6, No. 10, November (1990) London, page 10.

(80) Thomas, P. Safety in smaller manufacturing establishments, Employment Gazette January 1991 at page 21. The article by Thomas a statistician with the HSE illustrates that employees in manufacturing establishments of under 50 people appear to be some 20% more at risk of major injury than those in medium to large establishments.

(80) Walters, D. Health and Safety and trade union workplace organisation – (a case study in the printing industry) British Journal of Industrial Relations. Vol. 18, No. 1 (Spring) 1987 at page 47

(81) Wilson, R. Occupational safety and health, (the union perspective) NZ Journal of Industrial Relations, Vol. 14 (1989) page 197. Mullen suggests that in New Zealand 28% of the workforce is employed in firms employing less than 10 people, and in the Building and Construction Industry the average is 5.5%: Source NZ Journal of Industrial Relations, Vol. 15 (1990) page 137

(81)
(82)



SMALL FIRMS MEAN HIGH CASUALTIES

Concern about small firms stems from a HSE report that shows a far higher accident incident rate when compared with larger businesses. As the table indicates companies employing fewer than 50 people show a major injury rate of more than 161 per 100,000 employees, while a company with 500–1000 shows a rate of 135. At employment rates in excess of 1000 the injury rate reduces to 115.

Reference Source: Safety Management, November 1990, page 10

TABLE 13

SIZE DISTRIBUTION OF FIRMS (ACTIVITY UNITS) IN NEW ZEALAND						
Persons Engaged (Size Group)	0–5	6–9	10–49	50–99	100+	Total
Activity Units	135,202	16,171	18,614	2,044	1,313	173,344
percent %	79.9%	9.3%	10.7%	1.2%	0.8%	100%
Persons Engaged	277,121	115,709	360,135	139,155	349,055	1,241,175
percent %	22.3%	9.3%	29%	11.2%	28.1%	100%

Activity Unit: A separate operating unit engaged in New Zealand in one or predominantly one kind of economic activity from a single physical location or base from which work is carried out.

Source: Business Patterns, Department of Statistics

The number of persons engaged in activity units of under 40 persons is estimated at 662,931 or 53.4 per cent of the work force.

(83)

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(83) Reference Source: Report of the Committee of Enquiry into Industrial Democracy, New Zealand Government Printer, October 1989, page 44 (Appendix 3).
Glass, W.I.G. Health and Safety at Work, The problems of the small workplace – Occupational Safety and Health; Proceedings of a Seminar, Wellington Industrial Relations Centre, Victorian University of Wellington, 1985. Dr Glass an Associate Professor in Occupational Health at Otago University referred to the following statistics. Ninety percent of New Zealand industrial units employ fewer than 50 people. If one looks at the manufacturing industry in particular and the numbers employed in this group, then it is seen that only 2% of factories in the manufacturing sector employ more than 100 workers, with 88% employing 20 or less. However the 2% accounts for about 50% of the total manufacturing workforce. Overall, slightly less than 50% of all New Zealand workers work in small workplaces or small working groups.

The inquiry relating to Occupational Health and Safety within Small firms in New Zealand between 1970 and 1990 has proved somewhat elusive. In point of fact research findings relating to Small Firms per se has been somewhat frustrating. Hines, in his foreword to Devlin's Occasional Paper on Small Businesses acknowledges the dearth of information(84) . In an attempt to identify certain common features as they relate to the subject matter, reference is made to three (3) publications of which the germane features are collated and presented within Table 14 (page following). The sources being: (85) (86) (87) .

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(84) Devlin, M.H. The Needs and Problems of Small Businesses (some research findings). Occasional Paper, Massey University, February 1977: Professor Hines comments that despite the fact that a very large majority of business firms in New Zealand are classified as "small business", there has been only a modest research effort directed towards this important segment of the National economy.

(85) Glass, W.I.G. Health in the Workplace in the Small Work Site, NZ Nursing Journal, April 1987, page 17

(86) ibid footnote 82, at pages 7–17

(87) Farlow, D.W. A Safety Management System for Small Companies, Sessional Paper No. 15 (Safety Management Systems) Asia–Pacific Congress on Occupational Health and Safety, Massey University November 17–20, 1986

TABLE 14

PREVIOUSLY SURVEYED FEATURES AND CHARACTERISTICS RELATING TO THE DIMENSION OF OCCUPATIONAL HEALTH AND SAFETY IN SMALL FIRMS IN NEW ZEALAND

Features of the small workplace	Reduction of losses
• Undercapitalised • Inferior environmental conditions • Greater chemical exposure • Unlabelled and cheaper raw materials • Higher injury rate • Higher occupational illness rate • Inferior inspection • Inferior occupational health services • Under–unionised/lower pay rates • Longer working hours • Award conditions ignored	• Inability of small companies to afford to carry surplus plant or extra skilled staff • The complete lack of an effective recording system • The need for the development and implementation of a management system with a focus upon – – communication – keep things simple – plan – the worthwhileness of a OSH plan – delegation – involving the distribution of the workload and knowledge and expertise (Farlow '86)

Results from Devlin's Otago survey – 1977

- Ownership – never sought advice from outside the firm = 84%
- No idea of succession, or retiring = 75%
- Firms dependant upon family for direct assistance = 65%
- No forward plans nor budgets = 75%
- Directly and adversely affected by Government short term policies = 66%
- Ownership profile – less than 4 years secondary education = 84%
- Findings: Business exercised a tight personal control over business and seldom delegates to subordinates. Infrequently seeks advice and rarely implements it. Knowledge of advisory services poor to negligible – viewing such services as irrelevant.

3.6 SUMMARY OF PART 3:

Part 3 of this thesis has as its focus the design to provide a framework to assist in the evaluative process of the Survey within Part 5 of the thesis, namely, the assessment of contemporary attitudes towards Occupational Health and Safety. In assessing attitudes, the inquiry concerned itself with the Inspectorate, Judiciary, Trade Unions, Workers and employers.

With the Inspectorate, the research revealed the dilemma involving the confusions of roles, namely the Industrial Policeman versus the Educator/Advisor. The review of literature and interviews clearly evidenced that the institution of the Factory Inspector in both New Zealand and the United Kingdom had individual pride but suffered from low morale and held negative attitudes towards their imposed role and function. The negative attitude derived from a feeling of impotency exacerbated by chronic understaffing, bureaucratic intermeddling, lack of clear direction and legislative focus and inadequate resources. Anecdotal evidence supports the view that despite the quality of the Factory Inspector, their effectiveness is somewhat marred by negative attitudes and frustration.

As to attitudes relating to the Judiciary, the evidence is somewhat ambivalent. It would appear that the judiciary have little difficulty in establishing fault on the civil test (balance of probability), however the sentencing or penalty application observes no real pattern.

In the absence of any cogent evidence it is arguable that the judicial attitude towards Occupational Health and Safety has been influenced significantly by the economic realities of the earlier Workers Compensation regime and latterly by the Accident Compensation scheme. In short, the jurisprudential rationale of the "no fault" doctrine tends to discourage penalty.

Against this background the prevailing attitude detected was one of criticism towards the judiciary because of the very low penalties imposed and the inconsistent application of enforcement.

Part 3.4 concerned itself with the attitudes of workers and their representatives. Firstly, as to Trade Union attitudes towards Occupational Health and Safety. Notwithstanding considerable research since the findings of a comprehensive research paper completed in 1991 (see footnote 36) I am unconvinced that the Trade Union movement during the survey period (focusing 1960-1990) had the zealotry that rhetoric would have us to believe. Despite the weighty publications promulgated by the Trade Union movement in New Zealand during the 1980's, the real tangible influence by the Trade Union movement towards Occupational Health and Safety is highly questionable. In short, I conclude that the Trade Union's attitude towards Occupational health and Safety whilst concerned, was ineffectual and very often utilised as a negotiating item.

As to the individual worker's attitude towards Occupational Health and Safety, the available evidence tends to suggest that the attitude ranged somewhere between mild concern to that of complete indifference and apathy. The accurate interpretation of worker attitudes was difficult due in part to the dearth of material, and the complex psychological aspects determining both attitudes and individual preferences. Collectively the attitudes of workers may be determined under the heading of Trade Union attitudes.

Part 3.5 concerned itself with the attitudes of employers. Clearly the statement that accidents are caused by workers' carelessness rather than defective plant or production pressures is too broad-sweeping to represent the totality of employer attitudes. However, as a broad statement, there is a tension between the large employer operating an effective Occupational Health and Safety environment.

This tension as the literature suggests has its origins in the traditional challenge by the Employer's Federation to the Trade Union movement's attempts to usurp the managerial prerogative. Despite the influence from certain large overseas employers, the traditional attitude of the majority of New Zealand employers towards Occupational Health and Safety was one of "management" knows best.

The final group within the analysis of part 3 is the small business, or small firm. Whilst New Zealand is yet to conduct comparative surveys between large and small employers, the overwhelming evidence form England is that workers in small firms have a greater susceptibility for endangerment to their safety. Despite the fact that in New Zealand survey period, 88% of registered factories employed less than 20 workers, the absence of real data as to attitudes by employer and worker is regretfully indicative of indifferent and negative attitudes.

PART FOUR (4)

THE UNFOLDING OF THE HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

4.1 FOREWORD

As a general statement the introduction of the Health and Safety in Employment Act 1992 (HSEA) into New Zealand Law on April 1, 1993 failed to attract any real robust academic commentary, witnessed a guarded endorsement from the major employer groups and a somewhat lacklustre response from the trade union movement.

The HSEA heralded a bold and radical departure from the 19th Century British factory legislative model to which New Zealand as identified in Part 2 of the thesis, slavishly followed and emulated in the repealed Factories and Commercial Premises Act 1981. As previously identified, relevant New Zealand legislation in the past was industry/occupation focused and largely prescriptive. In contrast, the HSEA subscribes to a non-prescriptive legislative model and with its introduction, repeals the majority of the then Occupational Health and Safety legislation.

As the subject matter of the thesis focuses upon the "Evolution of Attitudes and Approaches to Occupational Health and Safety in New Zealand", Part 4 adopts certain significance in that its subject matter observes a radical change in the approach to Occupational Health and Safety. As such, the object of Part 4 is to identify the basic philosophical change in deviating from the hitherto prescriptive legislative model to that of the contemporary market orientated ideology. Part 4 seeks to identify the causative and attitudinal change adopted by the parties leading to the introduction of the HSEA. Furthermore, Part 4 attempts to provide a synopsis of the major features of the HSEA to which the survey within Part 5 attracts its focus.

4.2 GENERAL BACKGROUND - AN OVERVIEW

In 1988 the tripartite Government Advisory Counsel on Occupational Safety and Health (ACOSH) published a discussion paper which identified six basic principles for its proposed new statutory framework for protecting workers safety and health in New Zealand: [1]

"(1) The present toll of injury and disease can be reduced by appropriate preventative measures. These may be applied at all levels, from the workplace to the Government.

(2) A preventative strategy needs to focus on underlying work systems and not solely on making workers and employers 'aware'. Accidents and diseases do not necessarily occur because of 'apathy' or carelessness but also through unsafe and unhealthy systems, processes and tools.

(3) For economic and social reasons, a basic level of safety needs to be imposed by the las on all enterprises.

(4) Lax enforcement of the law undermines the position of employers who responsibly abide by these minimum legal standards. The law should hitherto be adequately, uniformly and equitably enforced, through a system of inspection and the imposition of penalties for contravention.

(5) Because occupational health and safety is an issue affecting employers, workers and the Government, the establishment of policy and the determination of the basic standards of safety and health secured by law should involve a statutory tripartite process at national level. In addition, it is through these tripartite structures that any conflicts which may arise between employers and unions over health and safety issues can be resolved.

(6) Although the provision of a safe and healthy workplace is a management responsibility, workers need to be involved collectively in applying and maintaining safe and healthy conditions and practices in the workplace".

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[1] Advisory Council for Occupational Safety and Health, Occupational Safety and Health Reform (a public discussion paper), June 1988

According to Hampton[2] the discussion paper generated 118 submissions and, almost without exception the submissions endorsed the need for some reform in the area of occupational safety and health. In response to the supportive stance the then Minister of Labour established a consultative group comprising representatives of the Employers Federation and the Council of Trade Union to assist the official working party. In addition, other officials were seconded from the Department of Health, the Ministries of Transport, Energy and Environment, the Treasure and the State Services Commission.

The recommendations of the consultative group and working party were promulgated in a report to Government which proposed radical changes to the legislative structure involving the then identified 31 statutes by the replacement of one Act implemented by a tripartite Commission and administered by a single Authority. However that was as far as the consensus endured. Tensions emerged between the Trade Unions (supported by the Department of Labour) and the Employers Federation as to the role of Government and the consultative approach on the shop floor. According to Deeks et al[3] the Employers Federation argued that the government's role ought to be primarily facilitative rather than directive and by providing education, information. The Employers Federation's view as articulated by Farlow[4] proposed the "self-regulatory" approach whereby standard procedures and practices are appropriate to a particular workplace and developed by those responsible for that workplace.

A contrary view was taken by the Department of Labour and the trade union movement. The basis of their argument was that government intervention is justified to promote occupational safety and health because, left to itself, the market fails to allocate sufficient resources to accident prevention and this leads to socially unacceptable levels of work-related death, injury and illness. The rationale of the contrary view was articulated as follows:

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(2) Hampton, C. Occupational Safety and Health: the policy issues, NZ Journal of Industrial Relations, 1989, Vol 14 page 181. The author of the article was the then General Manager, Occupatonal Safety and Health of the Department of Labour.

(3) Deeks, J. Parker, J. Ryan, Rose, Labour and Employment Relations in New Zealand (2nd edition) 1994, Longman Paul, page 447

(4) Farlow, D. Economic Development Commission, 1989

- some firms and employees are unable to assess hazards and take action because of problems of obtaining (particularly in small firms) or interpreting information;
- one party may have incentives to withhold information about hazards to avoid possible costs;
- hazards may occur unpredictably and the parties are unable to accurately assess risks, particularly for hazards which occur infrequently;
- the risks associated with particular hazards may not be known, with long time-lags before effects become apparent and/or there may be multiple causal factors;
- society has different preferences from individuals about acceptable levels of risk;
- the risks associated with the hazard may extend outside the workplace;
- the risks and/or the incidence of hazards may fall disproportionately on some groups, to an extent not acceptable to society;
- the various costs and benefits of safety and health problems and initiatives, particularly the personal and social factors (eg, the costs of suffering, the detrimental effect on families), may be difficult or impossible to quantify.

In the 1989 Budget the Government – indicated that, although it would proceed with the single Act to cover occupational safety and health, it would not give the proposed tripartite Authority responsibility for policy advice on occupational safety and health. The Government proposed that policy responsibility would lie with the Department of Labour. In a statement accompanying the Budget, the Minister of Labour announced his decision to establish a bipartite (union/employer) Occupational Safety and Health Advisory Commission. The Minister separately advised union and employer representatives on ACOSH that "The primary role of the new commission would be to give advice on the law and its administration .... The Department of Labour would not be formally represented on the commission but senior official would attend meetings in an *ex officio* capacity to advise members and report on departmental activities.

After considerable procrastination and some academic scepticism[5] the Labour Government introduced in 1990 a bill entitled "The Occupational Safety and Health Bill". The Bill provided for a commission of employer and union representatives to provide input into Government policy and standard setting, and a system of elected safety and health representatives and committees at workplace level derived from a voluntary Code of Practice which had been developed by ACOSH and issued by the Government in 1987. The prime aim of the 1990 Bill was to consolidate safety and health provisions in the workplace and to provide a generally applicable Code and to repeal Health and Safety legislation considered to be superseded.

The long title of the Bill set out its objects; being "An Act to –

(a) Promote the safety and health of workers; and
(b) Promote consultation and co-operation between workers and employers in relation to matters affecting the safety and health of workers; and
(c) Promote the protection of workers against hazards; and
(d) Promote the protection of members of the public against hazards present or generated in workplaces; and
(e) Help workplaces become and remain safe and healthy for workers and the public; and
(f) Promote the minimisation of risks to workers and the public from hazards present or generated in workplaces; and
(g) Promote the elimination at source of hazards to workers and the public present or generated in workplaces; and
(h) Stimulate employers, other persons with control over workplace conditions, and workers to be more responsible for the safety and health of people at risk from hazards present or generated in workplaces and
(i) Provide for the regulation and control by subordinate legislation of specific matters affecting safety and health of workers"[6].

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[5] Dr Szakats a well respected Industrial Relations and Employment Law authority (currently an Emeritus Professor of Law at the University of Otago) argued that the proposed legislation may be regarded as unnecessary if the then Factories and Commercial Premises Act 1981 was strictly enforced and the voluntary Codes of Practice sensibly recognised. Szakats maintained that if the powers of enforcement are not exercised in the proposed legislation, it like the existing statutes, would be "writ on water", merely a further volume gathering dust on the bookshelves: see Szakats, A. New Legislation – Why are the present Statutes Not Enforced? Industrial Law Bulletin (Mazengarb's) Editorial, Issue No. 5, August 1990, page 54

[6] The Occupational Safety and Health Bill provided for three worker rights which have been an integral part of comparable Canadian legislation namely: The right to know about the hazards with which they are working and the precautions to be taken against them; The right to participate, if they elect to do so, in decision-making on safety and health matters in the workplace; The right to refuse to work where there is an immediate and serious danger to safety and health. For a succinct evaluation of the Canadian legislation see Campbell. 1,B, Legislating for Workplace Hazards in New Zealand: Overseas Experience and Our Present and Future Needs, Occupational Health and Safety unit, Massey University, Stylex Print, 1987, page 30

The Bill itself was prescriptive in the obligations it created on employers and workers and creative in the provisions for a mandatory "safety statement" and provisions relating to Safety Committees and Safety Representatives. In the interest of historic comparison a synopsis of the important provisions is provided as follows:

Duties of Employers: Employers must take all reasonably practicable steps to ensure safe and healthy conditions and eliminate risk of injury or illness. Every person controlling a workplace must: take steps to establish systems for workers' protection, employ people to train workers to become qualified to advise and help in respect of injury or illness, and provide proper procedures for emergency. All workplaces must have appropriate facilities, structures, plant and substances for workers' and the public's protection, entrances and exits, access ways, passages, stairs, etc, must not put people using them at risk of injury. In general, all hazards are to be eliminated. Workers must be trained and supervised to protect themselves and the public from risk of injury, and must be instructed about possible hazards, ways to minimise risk and about the location and use of safety clothing, safety equipment and devices. No worker is to be allowed to use plant or handle any substance unless he or she has enough knowledge and experience of the relevant work and is adequately supervised. In general workers must be adequately trained in the safe use of all plant, objects, substances, protective clothing and equipment that they might use or handle.

Protective clothing must be supplied. Every worker must be instructed about conduct in case of emergency and given the results of monitoring of conditions and exposure to hazards. Workers must be supplied with names and locations of management representatives who will deal with safety problems, and told which health and safety legislation applies: cls 5–13.

Duties of workers: Workers too must take all reasonably practicable precautions to prevent risk or injury. They must not interfere with or damage any safety devices; must remedy situations posing risk of injury or illness; must not create safety risks by modifying plant; must comply with lawful directions of an Assessor and must not obstruct any person exercising power under the Act.

Workers must not be affected by alcohol or drugs to an extent which poses risk of injury or illness to themselves or to fellow workers or the public. They must report hazardous situations and use safety devices, protective equipment and processes correctly: cl 19.

Safety statements: Regulations may require every employer to prepare a written statement of the employer's intentions to promoting safety and health. Such statements are to be prepared in light of any relevant code of practice. A statement must describe the employer's intentions and also arrangements that have been or are to be put in place.

In preparing a statement the employer must consult with and consider the views of any relevant safety committee or safety representative, or the union representing the workers. A new statement must be prepared annually. A copy must be given to the worker. If a person is charged with contravening or failing to comply with the Act or regulations the Court may have regard to the relevant statement. An occupational safety Assessor may grant exemption from the safety statement requirement: cls 20–22.
(Assessors may be appointed from persons who have passed the prescribed examinations or acquired the prescribed experience in occupational safety and health: cl. 67).

Safety Committees and Safety Representatives: The employer may voluntarily, or at the request of the worker, establish a safety committee or arrange for the election of safety representatives. A safety committee's duty is to investigate any matter relating to safety and health, perform any agreed function, and make recommendations. A safety representative has similar functions, with the addition of investigating injury or illness, advising workers on safety and making representations to the employer.

Safety representatives may inspect the workplace, accompany the Assessor in inspecting the workplace, examine and copy documents and be present at safety related interviews. Information, especially trade secrets must not be disclosed. Worker members of safety committees are to have the same functions and powers as safety representatives: cls 25–34.

With the overwhelming defeat of the Labour Government in late 1990, the new National Party administration wasted little time in implementing its particular ideological tenets on Occupational Health and Safety. It came as no surprise, for the National Party in its election promises stated unequivocally that it would remove the Occupational Safety and Health Bill from legislative process in its entirety. Kiely and Langton[7] cite that the reasoning behind the new administration's purpose in adopting a shift in legislative focus and proceeding expeditiously can be reduced to three objectives, namely: a shift in financial responsibility from government to employers, a need for stricter enforcement, and a centralisation of the law. In contrast to the Labour Government which procrastinated for over two years after receiving comprehensive recommendations and receiving a draft format bill, the National Government had drafted its legislative framework in less than six months. Accordingly on December 18, 1991 the then Minister of Labour (Bill Birch) formally introduced into Parliament the Health and Safety in Employment Bill. The Bill was described as changing the emphasis from detailed control of specific hazards to "managing risk" in relation to work activities[8] . Clause 5 of the Bill (being the objects clause) set out the specific objects of the bill which prescribed the following:

"(1) This Act's principle object is to provide for the prevention of harm to employees.

(2) For the purposes of attaining its principle object, this act has the following additional objects:

(a) To prescribe, and impose on employers and others, duties in relation to the prevention of harm to employees:

(b) To promote excellence in health and safety management by employers:

(c) To provide for the making of regulations, and the development of codes of practice, relating to hazards to employees, and in particular (but without limiting the generality of the foregoing) to significant hazards).

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[7] Kiely, P & Langton S. The Health and Safety in Employment Act 1992 – an overview, NZ Journal of Industrial Relations, Vol. 19, August 1994, page 195

[8] Hughes, J. The Health and Safety in Employment Bill, Industrial Law Bulletin, (Mazengarbs) Butterworths, Issue No. 1, February 1992, page 3

(3) This Act has the following additional objects:

(a) The prevention of harm to people at work:

(b) The prevention of harm caused by people at work to other people."

In a Department of Labour publication[9] issued at the time when the Bill was introduced the underlying philosophy of the Bill was expressed as follows:

> Comprehensive coverage for all work situations – All workers and work situations should be covered. The Bill focuses on the employer–employee relationship, regardless of the industry or sector. It is binding on the Crown as an employer.
>
> Clearly defined responsibilities – The Bill identifies the responsibilities for each affected party: employers, employees, self–employed, contracts and principals.
>
> Promotion of excellent health and safety performance – The Bill sets out, in the specific duties of employers, a framework for good practice.
>
> Improved hazard identification and control methods – The Bill promotes systems for identifying hazards in the place of work, and for dealing with significant hazards once identified.
>
> Internal communication of health and safety issues – For risk management to be effective, it must involve co–operation between employers and employees.
>
> Health and safety training and education – Training of individuals in how to manage their own work as safely as possible is essential. The responsibility lies predominantly with management, but OSH inspectors also have a role in providing advice and training.
>
> Dual approach of incentives and penalties – Reform of the Accident Compensation system will enable a closer link between the levy paid by an employer and the costs of harm occurring to the employees of that employer. High penalties are needed to discourage exposures, events or accidents that have the potential to cause death or serious harm to both employees and the public.

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[9] Department of Labour, A Guide to the Health and Safety in Employment Bill, December 1991, Wellington, page 4.

Notwithstanding the frenetic pace of legislatives enactment of the National Government in 1992, the Administration allocated a select committee to evalue the implications of its Health and Safety in Employment Bill and invited submissions on the Bill. The submissions and public sentiment was in stark contract to the submissions and general consultative process experienced in 1988–89 period. From its formative stages the Health and Safety in Employment Bill was passed into law on October 27, 1992 and assumed its legislative effectiveness on April 1, 1993.

In accordance with government rhetoric glossy publications were issued to explain the effects of the legislation. In the case of the Health and Safety in Employment Act, the government published a guide[10] in which the Minister proclaimed within the forward as follows:

> *"The Health and Safety in Employment Act brings almost all occupational safety and health legislation under one Act. It also promotes excellent in managing safety and health in places of work.*
>
> *It completes the package of industrial relations reform which this Government began to implement soon after coming into office in 1990. The process began with the Employment Contracts Act, and has followed into reform of the accident compensation system and industry training legislation.*
>
> *The Health and Safety in Employment Act joined this other legislation in instilling a new attitude of responsibility in New Zealand employers, employees and others.*
>
> *I know the Health and Safety in Employment Act will be greeted positively in places of work and that people will respond well to their new responsibilities. I look to the new Act as a major step towards making New Zealand workplaces safer and healthier".*

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[10] Department of Labour, A Guide to the Health and Safety in Employment Act 1992, October 1992, page 3.

4.3 PRAGMATISM OR AN IDEOLOGICAL SHIFT:

In contrast to the relatively stable Industrial Relations environment experienced during the construction of the "think big" methanol gas to gasoline plan project at Motunui during the 1980's the expansion of the Whangarei Refinery at Marsden Point witnessed a hostile Industrial Relations environment [11] . In response to an effective work standstill at Marsden Point the then National Government on June 12, 1984 introduced into law the Whangarei Refinery Expansion Project Disputes Act 1984. The long title to that Act provided as follows:

> *"An Act to make provision for the resumption and continuation of work on the expansion of the Whangarei Refinery at Marsden Point and for compliance with the terms and conditions of employment applying in relation to that work and for the resolution of industrial disputes arising in relation to that work".*

Section 3 of that Act prescribed an obligation of workers to report to work on June 13, 1984 and Section 4 prescribed an obligation of project employers to allow workers to resume work. In total contrast to the Whangarei Refinery Expansion Projects Disputes Act 1984 the National Government on May 15, 1991 introduced into New Zealand law the Employment Contracts Act 1991. The long title to that Act provided inter alia:

An Act to promote an efficient labour market and in particular –

(a) To provide for freedom of association:

(b) To allow employees to determine who should represent their interests in relation to employment issues:

(c) To enable each employee to choose either:–

  (i) to negotiate an individual employment contract with his or her employer, or –

  (ii) to be bound by a collective employment contract to which his or her employer is a party.

(f) To repeal the Labour Relations Act 1987.

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[11] For an account of the Motunui project and a superficial commentary on safety issues, see Cammock, P. Industrial relations at Motonui – an examination of a successful industrial relations strategy on a large construction project, NZ Journal of Industrial Relations (1987) Vol. 12 page 71.

The ideological focus of the Whangarei Refinery Expansion Projects Disputes Act 1984 and the Employment Contracts Act 1991 is utterly incompatible. The Whangarei Refinery legislation can be explained as a classic example of the Governmental theory in Industrial Relations whereas the Employment Contracts Act subscribes to the Managerial or Market theory. In general terms, the Governmental theory subscribes to Governmental intervention in the interests of public good. In a simplistic sense the interventionist role of the Government has been described as Egalitarian Pluralism [12] whereas a non governmental role in Industrial Relations can be loosely described in the extremes as Corporatism, or more favourably as Laissex-faire Pluralism [13] . Contemporary New Zealand probably sits somewhere between Corporatism and the Laissex-faire model. Suffice to state that the ideology enshrined within the Employment Contracts Act 1991 is a complete anathema to the Economic Stabilisation Regulations 1973 and the Wage Freeze Regulations 1982.

The Employment Contracts Act 1991 has been challenged by one of New Zealand's leading authorities on Employment Law as undemocratic and effectively paving the way for statutory minima in such areas as health and safety legislation [14] . The Employment Contracts Act 1991 as introduced into law on May 15, 1994 was in essence the first wave of legislative reforms of the National Government that was elected into power in late 1990. Despite seemingly wide support for the Employment Contracts Act from large employers, and in particular from the New Zealand Business Roundtable, not all employers were convinced [15] .

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[12] Deeks, J. Parker, J. Ryan, R., Labour and Employment Relations in New Zealand, 2nd edition (1994), Langman & Paul Limited, page 313

[13] Political philosophies as they attempt to explain the dimensions of Industrial Relations which to a lesser degree incorporate Occupational Health and Safety are in a constant state of academic tension. The sceptic would argue that theories are transportable to accommodate the occasion. With respect to contemporary theories, the Employment Contracts Act 1991 and the Health and Safety in Employment Act 1992 are illustrations of Unitarism and concepts of the "new right". Essentially unitarism has long been the major countervailing framework to pluralism. The unitary framework is essentially that of capital and at the heart, it is an assertion of the supposed unilateral right of the owner of capital to manage that capital in whatever way is seen fit, in particular, without interference by outside parties.

[14] Hughes, J. Mazengarb's Employment Law (1995) Volume I (Introduction) Service No. 60 Butterworths, Wellington, page Intro. 22

[15] McAndrew, I & Hursthouse, P. Reforming Labour Relations – what Southern employers say: NZ Journal of Industrial Relations (1991) Vol. 16 page 16. The survey results found little support for the contention that unions or the award system placed significant restraints on smaller or medium sized firms. In addition the survey found that many of the Southern employers were unsympathetic towards the demands by the Employers Federation for the labour relations reforms.

Whilst not obviously stated, anecdotal evidence certainly supports the view that ostensibly the purpose of the Employment Contracts Act was to marginalise the trade union movement in New Zealand [16] . Support for this contention derives from studies completed by Harbridge and Hince [17] , Henning [18] and Harbridge et al [19] . Whilst condensed within the footnotes the significance of the Employment Contracts Act on Union Membership is significant as revealed from a comprehensive survey conducted by Hince and Harbridge [20]. Another example of decisive reforming and consolidating legislation that was enacted at a meteoric pace was the Resouce Management Act 1991, designed to radically reform the regulatory aspects pertaining to the use of land, air and water. The Resource Management legislation is somewhat akin to the Health and Safety in Employment Act 1992 in that the Labour Party released a number of policy documents prior to its election success on July 14, 1984, relating to both subject matters [21] .

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(16) The Minister of Labour (Bill Birch) told a London audience in mid-October 1992 that "union scaremongering" has fueled fears that wages would fall following the passing of the Act. Source: Rt Hon. Bill Birch, Address to the Confederation of British Industry, London 20 October, 1992 page 11.

(17) Harbridge, R. & Hince, K. Unions and Union Membership 1985-1992, NZ Journal of Industrial Relations (1993) Vol. 18, page 18.

(18) Henning, J. The Employment Contracts Act and Work Stoppages, NZ Journal of Industrial Relations (1995) Vol. 20, page 77. The author summarises that the incidents of work stoppages has a direct correlation with the decline of unionism.

(19) Harbridge, R. Hince, K. Honeybone, A. Unions and Union Membership in New Zealand: Annual Review for 1993, NZ Journal of Industrial Relations (1994) Vol. 19, page 175. The authors consider that during 1993 collective bargaining was continuing to decline and union membership decline by 20,000 members.

(20) Hince, K & Harbridge, R. The Employment Contracts Act: An interim Assessment, NZ Journal of Industrial Relations, (1994) Vol. 19 page 235. The authors on page 239 note: Soon after compulsory unionism was reintroduced in 1984 union membership surged, despite increasing unemployment. To peak at 683,006 in December 1985. The number of unions had been declining gradually over time; the average size and concentration of membership had been changing slowly. However, the impact of the 1,000 member minimum rule for union registration introduced by the Labour Relations Act 1987 was both immediate and dramatic. The number of unions declined from 253 to 80 between December 1986 and May 1991. Average size increased, with membership concentrated in fewer, larger unions. By May 1991 only four unions of less than 1,000 members remained and 72 percent of unionists were organised in the largest (10,000 plus) unions.

The impact of the Employment Contracts Act 1991 was even more dramatic. The Act ended compulsory unionism, abandoned registration of unions, and attacked the traditional rights (and obligations) accorded to unions. Between May 1991 and December 1993 union membership fell from 603,118 to 409,112 members, with the bulk of this fall (to 428, 160 members) occurring in the first 17 months of the life of the statute. Whilst the number of unions continued to decrease (to 58 in 1992) this trend has reversed in the most recent data. The pattern of concentration has also begun to reverse, albeit for the moment only marginally, and average size has begun to decline (Harbridge, Hince and Honeybone, 1994).

(21) Fisher, D.E. Environmental and Policy Developments in New Zealand, Environmental and Planning Law Journal, (1984) page 388.

Just as the Labour Government procrastinated for years over reforms in Occupational Health and Safety legislation, a similar inept performance was conducted in the arena of Resource Management. Rather than reforming Resource Management the Labour Government left the Town and Country Planning Act 1977 intact despite election promises to the contrary and enacting duplicating legislation in the form of the Environment Act 1986 and the Conservation Act 1987 [22] . The jurisprudential rationale behind the Resource Management Act 1991 is similar to the rationale behind the Health and Safety in Employment Act 1992 in five key aspects namely:

1. Non prescriptive
2. Reforming and repealing existing legislation.
3. Strict liability: Section 341 of the Resource Management Act 1991 make provisions for the prosecution not having to prove that the defendant intended to commit the offence. A similar provision is contained within Section 53 of the Health and Safety in Employment Act 1992.
4. Penalties: Section 339 of the Resource Management Act 1991 provides for a schedule of hitherto unthinkable fines, the highest being $200,000 and if the offence is a continuing one, to a further fine not exceeding $10,000 for every day during which the offence continues. In addition certain offences expose a defendant upon summary conviction to imprisonment for a term not exceeding two years.
5. Personal liability: Section 340 of the Resource Management Act provides for liability of principals for acts of agents. Similar provisions are contained in the Health and Safety in Employment Act 1992 – see Section 56 relating to personal liability for directors.

When the Health and Safety in Employment Act 1992 was passed into law the political ideology of the Government had significantly shifted from that of the Labour Government which introduced the Occupational Safety and Health Bill in late 1990. The consultative egalitarian pluralist model of the Labour Government was replaced by a market driven corporatism model which virtually ignored the consultative approach and enacted wide sweeping legislative reform.

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[22] The focus of the Environment Act 1986 was the management of natural resources whereas the concern of the Conservation Act 1987 was with the management of Crown land.

The zealotry of the new National Government in its reforming legislation [23] and its frenetic pace caught the Political opposition off-guard. With the passing of the Employment Contracts Act 1991 which devastated smaller unions and marginalised the larger unions, and the passing of the Resource Management Act 1991 with its jurisprudential focus on strict liability, personal liability and hefty penal provisions the climate was established for the enactment of the Health and Safety in Employment Act 1992 on October 27, 1992 and becoming operative on April 1, 1993 [24] .

4.4 ATTITUDES TOWARDS THE HEALTH AND SAFETY IN EMPLOYMENT BILL:

In stark contrast to the 118 submissions received in response to the Labour Government's Occupational Safety and Health Bill 1990, the response to the introduction of the Health and Safety in Employment Bill 1992 was subdued. Of the small number of responses, I propose to comment on three deriving from the New Zealand Law Society, New Zealand Engineering Union Incorporated and a combined submission from the National Union of Railway Workers, NZ Harbour Workers Union, NZ Seafarers Union and the NZ Waterfront Workers Union. Taking these three submissions in turn, the following comments are considered apposite:

4.4.1 New Zealand Law Society:

The Law Society focused its submission on two principal areas, namely

- the use of the word 'practicable' in defining the duties imposed under the bill may raise problems of consistency in application.
- the regulation making powers widely expressed, and leave extensive scope for subordinate legislation.

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[23] Examples of reforming legislation with a distinct bais towards Corporatism and touching upon Occupational Health and Safety can be illustrated by the following enactments: Employment Contracts Act 1991, Accident Rehabilitation and Compensation Insurance Act 1992, Resource Management Act 1991, Privacy Act 1993, Industry Training Act 1992, Human Rights Act 1993, Building Act 1991, Companies Act 1993 and Ship Registration Act 1992.

[24] The delayed implementation of the Act was in part, an effort to create a compliance period during which the relevant parties and the Department of Labour could prepare themselves for the impact of the new legislation - see Report of the Department of Labour to the Labour Select Committee, July 1992, page 6.

With respect to the vexed issue of taking all 'practicable steps, the Society made a rather vague submission [25] , but on the issue of regulations, a real concern was voiced [26] .

4.4.2 The Combined Unions:

The Combined Unions then representing 2300 Railway Workers, 1200 Harbour workers, 1200 workers from the Seafarers Union and 1300 Waterfront workers (a combined total of 6000 workers) made a submission to the Labour Select Committee. The submissions highlighted the hazardous nature of the respective workplaces and incorporated within its submission a publication completed in 1990 entitled "Towards Safer Ports" [27] . Whilst the reception of "Towards Safer Ports" had a captive audience in 1990, Governmental ideology and attitude had dramatically changed in 1992. In my opinion the Combined Unions failed to address the essential requirements of a submission, namely to succinctly identify what parts of the proposed legislation that creates concern and thereafter to propose recommendations to address those concerns.

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[25] New Zealand Law Society, Submissions on the Health and Safety in Employment Bill, July 21, 1992 – "this is perhaps by definition a necessarily vague concept. It is however pivotal to much of the concept of duties under the bill. It also plays an important role in prosecutions under the bill. Rather than a Court in a criminal prosecution to have regard to a code, it would be preferable to enact that compliance with any code in force will be prima facie a defence to a charge under Clause 44"

[26] The Society notes that the provisions for making the Codes of Practice are in line with those endorsed by the Legislation Advisory Committee. The Minister is required to make codes after consulting interested parties and giving sufficient notice to allow comment or challenge to aspects of the document. It is however not entirely clear what these Codes of Practice can cover apart from the comment in the definition section that the Code of Practice means "a statement of preferred work practices or arrangements". This definition means that these Codes of Practice are only guidelines to compliance and therefore do not attract liability for non-compliance or any of the penalties set out in the Bill.
It would however, be preferable that the scope of such codes would be made clear in the legislation. This would ensure that they remain as giving guidance to compliance and set enforceable standards but go no further in imposing duties or liabilities.

[27] Towards Safer Ports, A report of the Ports Industry Health, Safety and Training Overview Committee Project. In early 1990 on the initiative of the NZ Harbour Workers Union, a Ports Industry Health and Training Overview Committee was established with the following membership: Ross Wilson representing Harbour Workers, Ian Campbell as an Independent Expert, David Farlow representing the Port Companies, Joe Harkness representing Watersiders, Ron Bird representing Stevedoring Employers and Dave McLean a Researcher and Committee Secretary. The report was detailed, thoroughly researched and realistic in its conclusions. However prior to its release David Farlow withdrew his endorsement on the descriptive parts of the report (sections 5 to 8).

In the case of the Combined Unions, the submissions were largely ineffectual and whilst no doubt genuinely held, the submissions were addressed to a by-gone era. The conclusion to the Combined Unions submissions was brief and touched on two areas [28].

4.4.3 New Zealand Engineering Union Incorporated:

The submission by the Engineers Union was comprehensive and balanced. Somewhat surprisingly, the submission supported a considerable number of the clauses within the Health and Safety in Employment Bill. Certain clauses were highlighted for their perceived deficiencies and a rewritten clause was recommended. Within the section relating to "Specific comments" the submission contained an "Introduction" which is certainly worthy of reproduction as follows:

"As a general comment the union would like to point out that while many of the principles outlined in the Bill have a sound theoretical basis for the management of occupational safety and health, that in practice in this country of mainly small workplaces the legislation as written will not be workable. The effect of this self regulation may in the end result in higher accident statistics and lower health and safety standards especially in the small workplace.

There will also be a compounding effect of the experience rating proposals under the Accident Rehabilitation and Compensation Insurance Act. The paying of bonuses or imposition of penalties based on the accident statistics of workplaces does not automatically improve the workplace health and safety conditions but instead creates an incentive for the unscrupulous employer to suppress evidence of accidents. In small New Zealand workplaces the experience rating system will be statistically unsustainable.

Large well organised and managed workplaces will already have put in place many of the principles outlined in the legislation.

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[28] Conclusion (clause 7) – Firstly in cl. 7.01: The Unions are jointly concerned that in the high risk areas of railways and the waterfront employers have turned their back on earlier co-ordinated and participator health and safety arrangements and are in many ports and areas of the railway simply ignoring protection for workers. Secondly include. 7.02: As demonstrated by this submission there is a real and urgent need for an effective system for injury prevention co-ordinated on an industry basis. Experience has shown that employers in this industry are very unlikely to implement such a system on a voluntary basis and the unions submit that the Bill should be amended to encourage an industry strategy such as the joint strategy adopted in the 'Towards Safer Ports' Report.

Small workplaces in which there are an employer and four or five workers will not have the resources to even start to address many of the issues raised in this Bill. In this situation there is no substitute for prescriptive legislative standards with effective government enforcement.

The union sees that this position is the only sustainable one for the New Zealand situation consisting of a majority of small workplaces" [29].

Whilst the Submission dealt with a significant number of well founded recommendations there were four specific recommendations made that specifically dealt with the Occupational Health and Safety issues concerning the Unions membership. These four recommendations are reproduced hereunder and certainly evidence a changing attitude of one Trade Union movement towards the changed Political environment.

Clause 5 Objects
The objects clause of this Bill only acts to provide for the prevention of harm to employees, it does not state that the law needs to be formulated to improve safety and health conditions for those people at work to the highest practicable level.

The object of the Bill needs to state clearly that the aim is to improve health and safety at work.

The clause should be rewritten as follows:

5. Objects
(1) This Act's principal object is to provide for the improvement of the health and safety conditions for employees to the highest practicable level.

There needs to be an additional sub clause.

(3) (c) To promote consultation and co-operation between employees and employers in relation to matters affecting the safety and health of employees.

Clause 6 Employers to ensure safety of employees

This clause states that the safety of employees is ensured. It is clear from the definitions that this includes both health and safety, but anyone reading the Clause in isolation could gain the impression that safety alone must be ensured.

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[29] New Zealand Engineering Union, Submission on the Health and Safety in Employment Bill, March 31, 1992, page 10.

The clause needs rewriting as:

6. Employers to ensure health and safety of employees
Every employer shall take practicable steps to ensure the health and safety of employees

(a) Provide and maintain for employees a safe and healthy working environment;

Clause 13. Training and supervision

The NZEU supports the concept of training and supervision under this clause.

The importance of this clause cannot be overstated. There have been many accidents in this country that could have been prevented if employers had made sure that their legal obligation to train workers under the present legislation had been carried out. It is very important that this requirement is stressed in the HSE Bill.

However there is a further training issue which needs addressing.

This union runs a comprehensive health and safety training programme for its health and safety representatives and delegates and supports the positive outcome that good health and safety training has on the workforce.

The union would urge the provision of 2 days paid training leave per annum for 1 elected workplace representative in the new HSE legislation so that this training is available to the workforce.

Clause 14 Employers to involve employees in development of health and safety procedures.

In practical terms, employees on their own cannot consult with their employer over major health and safety issues. [30]

Individual issues such as the provision of personal protective clothing and equipment can be dealt with on a one to one basis. However, most employees on their own do not have the ability to negotiate with their employer for such items as improved ventilation systems, safe work systems or procedures.

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[30] Whilst a long standing argument by the Trade Union Movement the rationale has wide support in the International Community. As the Joint Industrial Safety Council of Sweden put it: "... not even the most elaborate safety legislation can give the desired results unless it is supported by active collaboration between employers and employees. Organised, voluntary co-operation between the firm and its employees, supported and promoted by the central organisations, fosters a sense of responsibility and interest in safety. Undertakings freely given by employees and employers have much greater moral force than legal impositions". Source: SAF-LO
Promoting Mutual Interests on Sweden's Labour Market, Stockholm, 1961, page 9.

The workforce affected by the health and safety issue needs to be consulted over its resolution. To do this efficiently and effectively there needs to be a consultation mechanism in place.

The Code of Practice for Health and Safety Representatives and Committees provides such a consultation mechanism.

The New Zealand Engineering Union believes that a system of elected health and safety representatives and committees will enhance the management of occupational health and safety in the workplace and enable safety standards to be raised in an atmosphere of consultation and co-operation[31].

4.4 The Legislation Itself:

In keeping with contemporary legislation the Health and Safety in Employment Act 1992 (HSEA) is a relatively brief piece of a statutory enactment comprising 62 sections which are divided into four parts. The HSEA became operative on April 1, 1993. At the time when the HSEA was introduced into legislation the then glossy publications indicated that 13 major pieces of legislation specifically dealing with issues of Occupational Health and Safety would be affected with the passing of the HSEA [32]. The reality was that pursuant to Section 62 of the HSEA precisely 100 statutory enactments and 52 Orders in Council and attendant Notices were repealed [33]. The heart of the HSEA or its ideological core is contained within Part 2 which comprises 19 sections. Part 2 is entitled: Duties Relating to Health and Safety in Employment. Other features of the HSEA deserving particular merit are contained within Sections 49 and 50 relating to offences and penalties, Section 53 relating to strict liability and Section 56 relating to offences by bodies corporate. To provide a brief exposition of the important features of the HSEA as they relate to attitudinal positions, the following is considered apposite:

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[31] The Engineers Union also made recommendations that clauses be inserted in the HSE Bill protecting employees against discrimination and also for the right of employees to refuse dangerous work.

[32] Department of Labour, A Guide to The Health and Safety in Employment Act 1992, published by the Occupational Safety and Health Service, Wellington, October 1992, page 8.

[33] The Third Schedule to the HSEA lists 100 statutory enactments that are consequentially repealed. The Fourth Schedule of the HSEA relates to Orders in Council and the attendant Notices. Suffice to state, the reference to the HSEA repealing only 13 pieces of legislation is quite erroneous. Whilst the 100 pieces of separate legislation as identified within the Third Schedule to the HSEA superimpose upon parent legislation, the fact remains, that in October 1992 the legislation then identified clearly recognises the voluminous legislation in existence at that particular time.

A. Duties in relation to health and safety:

Part II of the HSEA establishes duties relating to safety and health in employment. In addition to a general duty to take all practicable steps to ensure the safety of their employees at work, employers are under a number of particular duties in relation to the working environment. These centre on the provision and maintenance of facilities for the safety and health of employees at work, ensuring that machinery is safe and that employees are not exposed to hazards (s 6).

Sections 7 to 10 establish a hierarchy of actions in relation to significant hazards. Specific duties are established in relation to systems for identifying existing and new hazards and the monitoring of hazards (s 7), the elimination of significant hazards (s 8) and the isolation of workers from such hazards that cannot be eliminated (s 9). A "significant hazard" is one which may cause serious harm (a concept to be elaborated by Order in Council, but including death), or harm – the severity of which depends on the frequency of exposure (for example, burns from an arch welder) or harm which cannot be detected until a significant time after exposure (for example, radiation poisoning or asbestosis). Serious harm is defined by reference to the First Schedule to the Act. Where a significant hazard cannot be eliminated, and employees cannot be isolated from it, all practicable steps are to be taken to minimise the likelihood of harm (s 10). As well as covering steps to minimise the likelihood of harm, s 10 requires action to provide protective clothing and equipment, where appropriate, and to monitor employees' health and exposure to the hazard. The result is that systems must be put in place to identify hazards and to deal with them. Employers are required to give employees the results of the monitoring of themselves or of the place of work (s 11). Employees are to be given information about work hazards, emergency procedures, potential hazards to others and the location of safety equipment (s 12). Proper training and supervision is to be provided (s 13).

B. The duty to consult with employees:

Section 14 of the HSEA provides for employers to involve employees in development of health and safety procedures. The section specifically provides, inter alia:

S. 14 – Every employer shall ensure that all employees have the opportunity to be fully involved in the development of procedures developed for the purposes of –

(a) Complying with sections 7 to 10 of this Act; or

(b) Dealing with or reacting to emergencies or imminent dangers.

It is noteworthy, that when closely examining S14, there are no direct means of actually enforcing this "obligation" under the HSEA. This unfortunately is rather deliberate, and derived from the ideological basis of the Governmental policy and certainly highlights a particular attitude[34] . In contrast to the Occupational Health and Safety Bill 1990 which contained 11 clauses covering the establishment of joint employer/worker safety committees and the provisions for the election of employee safety representatives, the HSEA provides for no such accommodation and in the words of the Minister, deliberately so [35] .

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[34] Under the OSH Bill employers would have been required to allow employee members of safety committees three days' paid training leave. The Robens Report, on which key features of the HSE Act are based, had seen employee participation as a necessary element in developing the "self-regulation" in occupational health and safety, which the HSE Act aims to provide. The Government's objection to an enforceable right of employee participation and to health and safety committees – and that of many employers and their organisations – centred largely on objection to union involvement in the workplace. The Minister of Labour described safety committees as aspects of a "Stalinist" industrial relations framework and as "grind[ing] machinery to a halt at the slightest whim" (Press Release, 14 August 1991). This opposition to union involvement as such was later translated into an argument that such committees would have stacked competing interests against one another and resulted in responsibility for health and safety matters being avoided with the blame for failures being laid by each party at the other's door (Minister of Labour, "Keynote Address to the Occupational Safety and Health Reform Conference", 6 March 1992).

[35] The Hansards reports of the Minister (Hon. Bill Birch) in 1991 & 1992 certainly reveal a particular attitude towards the holism approach to Occupational Health and Safety. In 1991 the Minister when addressing the OSH Bill stated inter alia: – "The Bill was extremely prescriptive and did not conform to the present Government's approach to industrial relations. It also instituted health and safety committees that compromised good management practice and responsibilities. In that way it tried to counterbalance poor health and safety management practice by a system that encouraged the potential for confrontation. Birch, Hon W F (1991) New Zealand Parliamentary Debates, 521, 6396. Again the Minister of Labour in introducing the HSEA mentioned that joint management–labour committees "encouraged the potential for confrontation". Birch (1992) New Zealand Parliamentary Debates, 6396. Other Government speakers were equally derisive after referring favourably to Total Quality Management which involves considerable worker participation commented on a labour–management health and safety committee as "some silly committee that is set up to dictate how the business will run its affairs on the factory floor." Revell, I (1992) New Zealand Parliamentary Debates, 6408).

The interesting aspect of s 14 of the HSEA, is the deliberate reference to s 52 within the HSEA (Failure to comply with section 14). Section 52 is vague and simply refers to a discretion of the Court to take into consideration the failure of the employer to involve its workers to be fully involved in the development of procedures when assessing penalty. As there is no prescriptive formula to determine what an employer has to do with respect to compliance with s 14 the High Court in Christchurch in 1994 did not mention in a fairly exhaustive and thorough list of appropriate factors for consideration in sentencing principles the existence of s 14 [36] . Notwithstanding the rhetoric of the Minister of Labour, Hughes maintains that the Government argued at the time of the introduction of the HSEA there was nothing to prevent the establishment of Safety Committees [37] .

C. The General Duty:

Section 6 of the HSEA is an all encompassing provision whereby the employer is under an obligation to "take all practicable steps to ensure the safety of employees while at work". In particular, the employers are required to "take all practicable steps" pursuant to s 6 to:

- provide and maintain a safe working environment [s6(a)]
- provide and maintain facilities for safety of employees at work [s6(b)]
- ensure that machinery and equipment in the place of work is designed, made, set up and maintained to be safe for employees [s6(c)]

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[36] Department of Labour v. De Spa and Co. Ltd et al, (unreported) High Court, Christchurch March 31, 1994 (AP.12/93), Tipping & Fraser JJ (Full Court) – (1994) ELR, 50.

[37] Hughes, J. Mazengarb's, Employment Law, Butterworths, Wellington 1994, page N7. In addition to the commentary as made by John Hughes it should be noted that while the Government argued that nothing in the HSE Act prevented the establishment of committees where these were seen as being appropriate, New Zealand employers had a poor record in terms of observance of the ACOSH *Voluntary Code of Practice for Health and Safety Representatives*, at a time when employees enjoyed markedly more negotiating strength than they do under the regime introduced by the EC Act (see Elizabeth A Mullen, "Voluntarism in Occupational Health and Safety: The New Zealand Response", (1990) 15 NZ Jo of Ind Rel 129 and the ensuing comment by D W Farlow and reply at (1991) 16 NZ Jo of Ind Rel 185–192). Those employers not participating were identified as being mainly small employers, who comprise the bulk of New Zealand's business community and whose enterprises have been perceived as carrying a heightened accident risk (see W Glass, "The Problems of the Small Workplace", in Kevin Hince (ed), *Occupational Safety and Health*, Industrial Relations Centre, VUW, 1985).

- ensure that employees are not exposed to hazards in the course of their work, either at work or near their place of work which is under the employer's control [s6(d)]
- develop procedures for dealing with emergencies that may arise while employees are at work [s6(e)]

This general duty is not simply limited to employers. The obligation extends to self employed persons (s17), persons in control of workplaces (s16) and principal as the situation relates to sub-contractors [38].

The interpretation of "practicable steps" and the standard of that duty, albeit general, is by no means precise. It is likely that it will be interpreted as having a very high standard and will be applied on a case by case basis.

The term "practicable steps" is used throughout the legislation. It is the critical benchmark against which an employee's and employer's actions will be judged. As such it is necessary to afford it some definition. There are three useful guides by which it may be interpreted.

Firstly, Section 2 of the Act is a useful but by no means exhaustive guideline. It provides a definition of all practicable steps being those which have regard for:

(a) the nature and severity of the harm that may be suffered if the result is not achieved; and
(b) the current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
(c) the current state of knowledge about harm of that nature; and
(d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each; and
(e) the availability and cost of each of those means.

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[38] Section 18: The application of Section 18 depends on a definition of contractor. Section 2 provides that a contractor is one who is "engaged by any person (otherwise than as an employee) to do any work for gain or award whilst a sub-contractor is one engaged by the contractor".

The employer must determine what harm may arise and take steps to minimise the likelihood of it arising. The definition also recognises that employers are not required to minimise risk at all costs. The Act acknowledges that the objective of the Act, to provide a safe working environment must be balanced against the economic cost of doing so and what is practicable in the circumstances.

Secondly, the overall legislative intent and the Act's primary objective "to provide for the prevention of harm to employees at work", must be taken into account (s5). And thirdly, prosecutions dealt with by the District Court establish the relevant standards required. In *Department of Labour v De Spa Company Limited* [39] . The District Court Judge considered the situation from an "in hindsight" point of view. He held that where the employer had undertaken health and safety measures following the accident the relevant hazard was adequately minimised or isolated. By identifying what procedures were, or could have been employed in the circumstances, he found that the employer had not taken all practicable steps leading to the accident. The employer was convicted and fined.

In *Mair v Regina Limited* [40] , a prosecution for a breach of Section 6, a chute guard had been fitted to a machine on the recommendations of the Department of Labour. Because certain processes were difficult to carry out the guard was removed and inadvertently not refitted. The company produced expert evidence to show that the machine did not pose any danger if it was operated in a well regulated environment and the employees had regard for their own safety. However, although the operators knew that reaching down to the machine rollers was dangerous and was an extremely unusual occurrence, Everitt DCJ. Ruled that:

> *"In the context of this prosecution it is not conducive to meeting the requirements of the Act to adopt an attitude as evidenced by [the defendant witnesses] that potential hazards could only arise if someone acted irrationally and were determined on self destruction. Once a perceived hazard has been pointed out, the obligation on the employer is to take all practicable steps to eliminate such hazards. "*

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[39] CRN30090213/93, Christchurch District Court, 8 October 1993, Holderness DCJ
[40] CRN 3045004405, Dunedin District Court, 22 February 1994, Everitt DCJ

His Honour observed the nature of the obligation as follows:

> *"the obligation is placed by the Act on the defendant company to take all practicable steps ... the Act contains a new philosophy ... it requires employers to be pro-active ... employers are now required to be analytical and critical in providing or maintaining a safe working environment. It is not just a matter of meeting minimum standards and codes laid down by statute. It requires employers to go further and to set down their own standards commensurate with the principle object of the Act, after due analysis and criticism. This is a new duty cast upon employers."*

Thus the mere vagueness of the concept "practicable steps" will not enable an employer to plead ignorance or uncertainty. A successful defence needs to point to some evidence of health and safety systems which had been put in place; whether that will amount to "Practicable Steps" is a question for the Court.

D. Additional duties:

Duties are placed on employers to take all practicable steps to ensure that employees at work do not harm themselves or other people (s 15), and people with control of places of work are required to ensure that people in or near those places are not harmed by hazards arising there (s 16). Self-employed people are required to take all practicable steps to ensure that they do not harm themselves or other people (s 17), and correspondence duties are placed on principals of subcontractors (s 18). Employees are required to take all practicable steps to ensure their own safety, and the safety of others at work (s 19).

E. The HSE Act creates two categories of serious offence. The first arises where a person takes action forbidden by the Act, knowing that it is reasonably likely to cause serious harm, or with the same state of mind, fails to take an action required by the Act. The penalty is a year's imprisonment, a fine of up to $100,000, or both (s 49).

Under s 50, failure to comply with any provision of the Act (other than that requiring employers to involve employees in the development of health and safety procedures) is an offence giving rise to a maximum fine of $50,000 if the failure caused any person serious harm (meaning death or harm of a kind or description to be specified by Order in Council). In the case of breach of other provisions, a fine of up to $25,000 may be imposed (s 50). Failure to comply with s 14 (relating to employees' involvement in the development of health and safety procedures) may be taken into account in determining the penalty imposed for certain other offences, but is not an offence in itself (s 52).

It is not necessary to prove that a defendant intended to fail to comply with the provision of the Act in respect of which the alleged offence arises (s 53). The marginal note to s 53 refers to this as "strict liability", although on its own terms the substantive content of s 53 is equally consistent with absolute liability. The difference between the two classes of liability is that, under strict liability a defence of absence of fault is allowed, the onus of proof being on the defendant whereas no such defence lies in the case of absolute liability. Given the compelling extrinsic aids to interpretation, and current judicial policy, the likely outcome remains the imposition of strict liability, and the Courts have taken this approach under the legislation.

If a corporate body fails to comply with the provisions of the Act, any of its officers, directors or agents who "directed, authorised, assented to, acquiesced in, or participated in" the failure is a party to and guilty to the failure, and liable on conviction to the relevant punishment. This is so whether or not the corporate body itself has been prosecuted or convicted (s 56).

4.5 SUMMARY OF PART 4:

Despite election promises made by the New Zealand Labour Party in 1984, it took the Labour Government over six years to introduce the reforming legislation on Occupational Health and Safety. The long awaited Occupational Safety and Health Bill 1990 was essentially a compromise between the guiding principles as identified by the tripartite Government Advisory Counsel on Occupational Safety and Health in June 1988, certain trade unions, the Department of Labour and the New Zealand Employers' Federation. Notwithstanding the various divisions, the OSH Bill 1990 was generally greeted with enthusiasm by the parties for it effectively proposed to consolidate existing legislation into a single Act and promoted the consultative and participatory approach.

In contrast, the National Government took less than two years to actually pass in law its reforming Occupational Health and Safety legislation in the form of the Health and Safety in Employment Act 1992. The Department of Labour in November 1993 made the following observations:

> *"The changes contained in the health and Safety in Employment Act 1992 are consistent with those contained in the Employment Contracts Act 1991, Accident Rehabilitation and Compensation Insurance Act 1992 and the Industry Training Act 1992. In particular, the Health and Safety in Employment Act has put increasing emphasis on enterprise level decision making, where employers and employees determine the best solution to meet the performance requirements of the Act"* [41].

The tangible attitudinal positions of the parties had changed dramatically between 1988 and 1992. The ramifications of the Employment Contract Act 1991 had marginalised the trade union movement and thus its collective voice was muted.

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[41] Department of Labour, An Introduction to the Department of Labour, November 1993, page 88. In the same publication, the Department noted that the Government had three principal tools available, in the field of preventing occupational injury and illness, namely –
"– the creation of financial incentives to encourage desired outcomes. This includes the use of the experience rating of ACC premiums based on claims performance;
– the provision and enforcement of socially acceptable minimum safety standards in legislation (including regulations), imposing penalties for non–compliance;
– the provision of information to increase knowledge of best practice generally or for specific hazards, and to ensure that people who work with hazards are as well informed as those managing them. "

The attitude of the major employer groups became bolder and found a receptive audience with the Government. Any pro-active attitude by Government Agencies was severely curtailed due to restructuring, and the Government being committed to an ideological position which aimed at the removal (so far as was possible) of any effective statutory role for unions in the workplace created an environment which witnessed the passing of the 1992 legislation without any robust criticism or opposition. In short, the attitude of the Government towards Occupational Health and Safety was fashioned in the mold of its ideology, essentially subscripting to a unitary model; the days of Egalitarian pluralism having long gone. In many respects, the Health and Safety in Employment Act 1992 is about the changing of attitudes of the participants in the Occupational Health and Safety arena. From the Government's perspective the legislation (HSEA) adopts a "carrot and stick" approach. The "stick" consists of the increased penalties similar to the approach with the Resource Management Act 1991. The "carrot" materialises in the form of attractive incentives for employers in adjustments to their basic ACC premiums based upon Section 104 of the Accident Rehabilitation and Compensation Insurance Act 1992.

PART FIVE (5)

CONTEMPORARY ATTITUDES TOWARDS OCCUPATIONAL HEALTH AND SAFETY - A SURVEY: NOVEMBER AND DECEMBER 1995

5.1 FOREWORD

Part 5 is the final investigative phase of the thesis. The preceding parts of the thesis were essentially designed as a backdrop for a focus on contemporary attitudes towards Occupational Health and Safety. The backdrop as such, provides a useful analytical tool to evaluate contemporary attitudes.

Part 5 is concerned with two areas of focus, namely judicial attitudes and a comprehensive survey. Part 5.2 consists of an evaluation of judicial attitudes and sentencing tariffs over the preceding 14 months. That particular time span was elected due to a significant increase with media recognition of the subject matter from late 1994 and with the nominated but-off date at the end of December 1995 elected to facilitate the analysis of data and presentation of the thesis within the current academic year. Part 5.3 concerns itself with an explanation as to the Survey methodology involved in the survey of 72 firms and organisations from within the North Taranaki area as conducted by personal interviews.

Part 5.4 concerns itself with an analysis of the personal interviews with the 72 firms and organisations conducted over a five week period ending on December 7, 1995. A detailed summary of the various survey investigations is contained within part 5.5.

5.2 EVALUATION OF CURRENT JUDICIAL AND INSPECTORATE ATTITUDES:

Introduction

General media comments, anecdotal evidence and direct evidence from the within final thesis survey support the view that the majority of New Zealand employer's are somewhat sceptical of the sentencing tariffs imposed by the judiciary. Furthermore the same evidence is critical of the current prosecution philosophy of OSH. To provide a structural framework for the evaluation of attitudes by employers towards the current prosecution philosophy of OSH and the sentencing tariffs, it is necessary to briefly identify the subject matter of the "Offence and Penalty" provisions of the Health and Safety in Employment Act 1992. To promote substance to the findings, it is necessary to examine the current prosecution philosophy of OSH and to finally evalue the sentencing rationale imposed by the judiciary in order to gauge attitudes.

5.2.1 Offences and Penalties

As the Health and Safety in Employment Act 1992 is a relatively new piece of legislation, the penalties imposed on parties in breach must be the subject of continuous monitoring. The Department of Labour had demonstrated a willingness to enforce the Act which has reflected in the significant increase in penalties in comparison to those under the previous pieces of legislation[1] . There are two principal provisions relating to offences under the Act, namely:

Section 49

Section 49 creates the two most serious offences under the HSE Act. The first offence is committed when a person takes any action forbidden by the Act knowing that it is reasonably likely to cause serious harm. The second offence occurs when a person fails to take an action required by the Act knowing that failure is reasonably likely to cause serious harm. The penalty is imprisonment for term of up to one year or a fine of $100,000, or both. A person charged under s 49 may be convicted of the less serious offence created by s 50, as if they had been charged under that section.

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[1] Under the penalty provisions of the Factories and Commercial Premises Act 1981 a fine of up to $10,000 could be imposed upon conviction of the occupiers default where an accident caused serious injury or death. In other situations the maximum penalty was $5,000 and in the case of a continuing offence, $250 for every day on which the offence continued. Table 7 indicates the pathetic prosecution statistics for 1986–87 which is perplexing considering that in 1988–89 New Zealand recorded 58,000 Accidents and with 115 fatal accidents. As indicated within footnote 24 to Part 3 a typical fine in a serious accident situation was a modest $400.00.

It should be emphasised that an offence under Section 49 of the Act will be successfully defended if the prosecution cannot prove that the employer intended or had knowledge of that action. To that extent two component parts of the offence must be proved:

(a) That the action was taken (actus reus); and

(b) That it was intended to be taken (mens rea)[2] .

Section 50

The second offence provision is Section 50. Section 50 deals with all offences under the HSE Act other than the offence created by s 49, specifically listed as offences constituted by failure to comply with the provisions set out in paras (a) to (c) of s50. There is a maximum fine of $50,000 if a person has been seriously injured and $25,000 in all other cases. Serious harm is defined within the First Schedule to the HSEA[3] .

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[2] Mens rea offence in respect of serious harm

The use of the word "knowing" in s49 makes clear that this is a mens rea offence and the prosecution is required to prove the necessary state of mind (ie "knowing" that the action or inaction was reasonably likely to cause serious harm) beyond reasonable doubt.

There have been few prosecutions under this section and in *Dept of Labour v Westland Funeral Services Ltd* 14/12/94, Judge Costigan, DC Greymouth CRN 3018004685, the Court dismissed a charge of breach of s49. The evidence was that a week after a health and safety inspector had visited the company's premises and asked the company to take steps to make safe a hood guard on a circular saw, a worker using the saw cut off a finger because of the faulty guard. The company then had an engineer design a guard and it was fitted within a day at a cost of $200. No prohibition notice had been served by the inspector. Dismissing the charge under s49, the Court said the Crown must prove three elements: first, that the defendant was required to take action; secondly, that the defendant failed to take action; and thirdly that the defendant knew that the failure was reasonably likely to cause serious harm. The Court held it:

> "could not be satisfied that the defendant company failed to take action in the absolute sense. It had agreed to take action; it was understood that time would be allowed for this and that there would be further communication between the company and the inspector as to what had been suggested and agreed on during the course of his visit. On the evidence adduced by the informant, I could not go so far as to find in these circumstances that the defendant knew that the failure was reasonably likely to cause serious harm. "

This case illustrates the possible consequences of the Labour Department's policy of prosecuting at last resort, and the failure of the inspector to issue a prohibition notice, although it is difficult to see why the inspector's decision not to issue a prohibition notice under s41 is relevant to the issue of whether the employer had knowledge that the failure to take action was reasonably likely to cause serious harm.

[3] "1. Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function; respiratory disease, noise induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculo-skeletal disease, illness caused by exposure to infected materials, decompression sickness, poisoning, vision impairment, chemical or hot metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.

2. Amputation of body parts.

3. Burns requiring referral to a specialist registered medical practitioner or specialist out-patient.

A person who fails to comply with the provisions of the Act or regulations could face a fine of up to $25,000, irrespective of whether serious harm or death results.

Section 50 is a strict liability offence and may be defended successfully where a person who has allegedly breached the Act can prove total absence of fault. In this sense it is not an offence of absolute liability. It is irrelevant whether the offender intended his actions or was ignorant of the facts, only that he did the act. Nevertheless, an employer may escape liability where it can prove on the balance of probabilities that it was wholly without fault.

The important feature of Section 50 is the application of Section 53 of the Health and Safety in Employment Act 1992 which provides as follows:

53. Strict liability – In any prosecution for an offence against section 50 of this Act, it not necessary to prove that the defendant –

(a) Intended to take the action alleged to constitute the offence; or (as the case may be)

(b) Intended not to take the action, the failure or refusal to take which is alleged to constitute the offence[4] .

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4. Loss of consciousness from lack of oxygen.
5. Loss of consciousness, or acute illness requiring treatment by registered medical practitioner, absorption, inhalation, or ingestion of any substance.
6. Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within seven days of the harm's occurrence. "

[4] In strict liability offences it is not necessary for the prosecution to prove that the accused intended to breach the provision of the Act in respect of which the alleged offence arises. Once the prosecution has established the existence of the prohibited conduct on the accused's part, the burden of proof shifts to the accused, who must prove on the balance of probabilities that he or she was not at fault (*Civil Aviation Department v McKenzie [1983] NZLR 78; Millar v Ministry of Transport [1986] 1 NZLR 660)*. It is yet to be decided whether this "reverse onus" is consistent with s25(c) of the New Zealand Bill of Rights Act 1990, which states as a general principle that all people are innocent until proven guilty. Given the pragmatic basis of strict liability, and particularly the well-recognised difficulties for the prosecution in adducing evidence in regulatory legislation, it may be that the reverse onus is a "reasonable limit" within s 4 of the 1990 Act.

The defence has been variously described as being one of "total absence of fault", "due diligence", or as simply requiring an absence of negligence. The standard to be applied is the familiar objective standard of the reasonable person, unaffected by "subjective considerations affecting the individual concerned", such as the accused's own perception of reasonableness, and drawn from the law of negligence (*Police v Starkey* [1989] 2 NZLR 373). Whilst the various descriptions of the defence suggest that some action must be taken by the accused, in some circumstances it might be a defence that there were reasonable means of avoiding the occurrence; so long as this is not attributable to some earlier blameworthy conduct on the accused's part (*Department of Health v Multichem Laboratories Ltd* [1987] 1 NZLR 334).

5.2.2 Sentencing policy under Section 50

An article appearing in the Dominion of February 27, 1995 proclaimed "Most fines for workplace accidents under $5,000" [5] . A similar scathing report was issued by the NZ Council of Trade Unions[6] . Before examining the sentencing policy it is noteworthy to observe the official Department of Labour figures, which are reproduced within Table 15 (page following).

Mistake of law will not suffice for a defence of absence of fault, a major consideration in this area where detailed standards are likely to be prescribed by regulation (*Waaka v Police* [1987] 1 NZLR 754; *Inspector of Factories v Tarbert Street Food Centre (1985) Ltd* [1989] DCR 471). However, a reasonably mistaken belief in facts which – if true – would have led to there being no offence will provide the basis for a defence of absence of fault (*Finau v Department of Labour* [1984] 2 NZLR 396).

[5] The Dominion article (at page 3) stated that three–quarters of the fines imposed against employers for workplace accidents since [the] new health and safety laws came into force nearly two years ago were under $4,000.00, latest Labour Department figures show –

"Of the 216 prosecutions from April 1993 till last week that resulted in a conviction and fine, 163 were fined less than $4000.

Forty–five of the cases resulted in fines of less than $1000 and 55 of fines between $1000 and $2000.

There were 25 prosecutions where fines of $2000 to $3000 were imposed and 35 cases resulting in fines of $3000 to $4000.

The lowest fine imposed was $95 and the highest was $21,000.

In some accidents where workers had lost a finger or fingers and part of a leg, awards of $500 and less were imposed.

Department occupational safety and health spokesman Charles Pitt said yesterday it was disappointing district court judges were still imposing low fines.

Fines of $95 and $200 made taking up a prosecution a waste of time for the department.

He said in time the level of fines should rise because, in making their rulings, judges were warning employers that they could not expect further leniency.

The majority of the prosecutions stemmed from accidents caused by unsafe conditions. Fines of $2000 or more were usually awarded after accidents involving multiple injuries that required hospital treatment. "

[6] NZ Council of Trade Unions, "The Dupes of Hazard", May 1994. The CTU was critical of the average level of fines under the HSEA ($2679 as at March 15, 1994) and observed:

"The government's stated policy has been to impose fines at a high enough level to send a clear message about employer's responsibility for health and safety. The level of fines imposed under the HSE Act to date are not sufficiently high to give any credibility to this policy. "

TABLE 15

PROSECUTIONS STATISTICS					
Year	1988/89	1989/90	1990/91	1991/92	1992/93
Prosecutions Initiated	79	125	133	168	317
Convictions (see note below)	70	99	78	107	166
Note: A number of convictions relate to prosecutions initiated in the previous year					

As at 16 November 1994, the Department of Labour prosecution statistics were as follows:

For breach of section	Prosecutions lodged	Dealt with	Highest Fine ($)
6	174	144	20,000
7	34	16	7,000
8	2	1	--
9	2	2	--
10	13	6	3,000
12	17	6	3,000
13	78	48	9,000
15	10	5	5,000
16	8	9	7,000
17	7	9	500
18	22	12	6,000
19	5	6	1,750
23	1	1	500
25	41	31	1,500
26	3	8	1,250
39	5	3	800
43	1		--
TOTAL	423	307	

SOURCES (1) Department of Labour statistics
(2) Mazengarb's Employment Law, Butterworths Service 65, 1995.

General principles as to sentencing policy were outlined in *Department of Labour v De Spa & Co Ltd, Westland Funeral Services Ltd, and Gordons Wool and Skins Ltd* [1994] 1 ERNZ 339, Tipping and Fraser JJ ([1994] ELB 50). In each of these three appeals a fine imposed by the District Court was argued to be manifestly inadequate. The first instance decisions involving the first two defendants were noted at [1994] ELB 45 - 47. Because of the nature of the case, the Court sat as a Full Court and its judgment is obviously likely to be of lasting significance.

Each of the three respondents was convicted of an offence under s50 of the HSE Act. Where serious harm is caused, as it was in each of the relevant cases, the maximum penalty under s50 is $50,000. In the *De Spa* case an employee was killed when he was trapped in a wool bale elevator. The defendant was fined $6500. In *Westland Funeral Services*, a fine of $2000 was imposed after an employee suffered the amputation of part of a finger and lacerations when a circular saw was not properly guarded. A fatal accident to an employee caught under a pneumatic outfeed gate in *Gordons Wool & Skins Ltd* attracted a fine of $5000.

The outcome of the appeal was that the fine in *De Spa* was increased from $6500 to $15,500, the Court indicating that a $20,000 fine could not have been challenged as too high. The fines in the other two cases were described as being on the low side, but within the Judge's discretion, and not manifestly inadequate.

In terms of the general principles, the Court attached relevance to the ten-fold proportionate increase in maximum fines under the HSE Act, but did not think too much should be made of it. While the Court accepted that Parliament was signalling to the Courts that penalties in this area should be made of it. While the Court accepted that Parliament was signalling to the Courts that penalties in this area should be increased it was important to remember that sentencing was not a mathematical exercise: "[w]hile the underlying philosophy behind the increases must be carefully borne in mind, the circumstances of the individual case are all important".

The High Court listed nine factors or criteria that it considered important with respect to sentencing. The nine factors are listed hereunder and as the criteria are binding on District Court Judges, I have expanded on the criteria within footnote 7 hereof:[7]

- **the employer's degree of culpability;**
- **the degree of harm resulting to the employee;**
- **the financial circumstances of the employer;**
- **the employer's attitude, eg, remorse, co-operation, and taking remedial action;**
- **a guilty plea by the employer;**
- **the need to deter other employers;**
- **the safety record of the employer**
- **compensation awarded to the employee under sec 28 of *the Criminal Justice Act 1985*; and**
- **the facts of the case.**

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[7] The nine criteria (albeit not exhaustive) listed by the High Court (Full Court) in determining the appropriate level of fine were:
"1 The degree of culpability. This must be assessed by a careful appraisal of the circumstances in which the breach took place.
2 The degree of harm resulting. A case of serious harm is, within the Act itself, regarded as more serious than one not involving serious harm: see the distinction between s 50(d) and s 50(e).
3 The financial circumstances of the offender. This is an obvious point but is underlined by s 27 of the Criminal Justice Act 1985. A fine at a particular level will obviously bear differently upon a small impecunious employer as opposed to a large financially strong employer.
4 The attitude of the offender both with regard to remorse, co-operation with the authorities and the taking of remedial action. Section 55(4) provides that, in addition to any penalty imposed, the Court may require the offender to remedy any relevant matter. The fact that an offender has promptly and voluntarily taken remedial action must be relevant in the overall assessment as against a case where the Court has to make an order.
5 A plea of guilty, if entered, will, in accordance with ordinary principles, be relevant of the level of fine.
6 The need for deterrence both particular and general must be borne in mind. The weighting of this factor will differ according to the circumstances
7 ... [The] positive duty on a Court in applicable cases to consider whether to award part of the fine to the victim by way of compensation [under s28(1) of the Criminal Justice Act 1985] ... the section speaks of an offence 'arising out of any act or omission' (our emphasis). At least prima facie this appears to catch failures to observe safety standards such as are in issue in these appeals.
8 The safety record, both specific and general, of the employer will be material. It was suggested by counsel that an absence of previous relevant convictions was a mitigating factor. The point is certainly relevant but we regard it as more logical to say that it is really the absence of a circumstance of aggravation. If an employer has a previous relevant conviction that would ordinarily make the instant offence more serious and more culpable. We appreciate that it is conventional to regard absence of previous convictions as a matter of mitigation: see *Hall on Sentencing* (Butterworths, 1994) at pp B/77 and B/92. However, in this field at least we would prefer to say that the presence of a relevant previous conviction is likely to be a matter of aggravation.
9 Such other matters as may in the particular case have relevance. We add this because the foregoing list is not intended to be exhaustive and there may well be additional factors present which must be weighed."

In dealing with individual cases before it, the Court went on to make further observations on sentencing. Some aspects were in addition to the above list, others expanded on aspects of that list. These were, first, that cases such as these were not susceptible of a stated starting point to be adjusted upwards or downwards according to the balance of aggravating or mitigating factors: "[p]ut shortly, we do not think that one can reasonably say that for a death case the starting point should be X dollars". However, the purpose of a maximum penalty is to cover the worst possible case and "there must be some relationship between the instant case and the theoretically worst possible case".

Secondly, in relation to culpability, it is no excuse that the accident was contributed to by the employee concerned since the onus to eliminate hazards is on the employer. However, in the *Wool & Skins* case, where an employee overlooked safety steps which would have avoided the accident, the Court held that the circumstances were at "the lower end of the range of culpability":

> "While the Act requires employers to take active steps to identify and eliminate hazards, there must be a reasonable limit. As earlier indicated, the duties of an employer must recognise that employees will sometimes be careless of their own safety. It is, however, very relevant to an employer's culpability, when found in breach of the Act, that the offending machinery or system did have two steps designed to prevent the harm which occurred."

Thirdly, in relation to general deterrence:

> "... for present purposes [this] requires a fine at a sufficient level to encourage other employers to take seriously their obligation actively to seek out hazards and to deal with them. No room must be left in the community for the view that it is easier to wait until an accident happens, pay the fine and try to do better in the future."

Fourthly, in relation to deterrence in the individual case the Court is entitled to consider factors such as remorse, steps taken to remedy the situation which led to the accident and whether the employer is still in business.

Deterrence, however, was simply "one of a number of matters which must be borne in mind when deciding what is the appropriate level of fine for the particular case".

The *De Spa* decision was followed in *Department of Labour v Otago Power Ltd*, unreported, 17 May 1994, High court, Dunedin, AP 24/94. Employees of the respondent were laying power poles. One employee was operating a truck-mounted crane which came into contact with an overhead 11,000 volt power line. He received a severe electric shock and burn injuries. The truck was not fitted with a metal plate or bonded screen for the protection of the operator. If the injured employee had been standing on such a screen he would have escaped injury. The case was an appeal against a sentence in respect of a $1,500 fine which, the Crown argued, was manifestly inadequate.

In upholding the appeal, and substituting a fine of $10,000 (half of which was to be paid to the employee)[8] , Fraser J had regard to a number of consideration.

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[8] Payment of all or part of a fine to the victim: Under the HSEA it is common for the Courts to order part of the fine to be paid to the injured worker/victim. Whilst the HSEA does not specifically make provision for this aspect. Section 28 of the Criminal Justice Act 1985 allows for payment of all or part of the fine to any victim. Because of this provision, it was not necessary to include any equivalent to s 62(2) of the Factories and Commercial Premises Act 1981 (see Perfect Poultry Products Ltd v Inspector of Factories [1967] NZLR, 69), or s 30 of the Machinery Act 1950, allowing part of the penalty to be awarded to the victim. In *Department of Labour v Alexandra Holdings Ltd*, 12 November 1993, District Court, Otahuhu, CRN 3048020814-5 ([1994] ELB 47) the defendant pleaded guilty to two charges under s 50(a). An employee had lost two fingers of his left hand when they were trapped in a 15 tonne punch and forming press. He was a welder by trade, not having worked on the machine before, but had been directed to use the machine by someone in authority when his own work temporarily dried up. He had not been trained. On a charge of failure to guard the trapping area, the defendant was fined $7,500. On that of failure to train, a $1,500 fine was imposed. On the effect of s28 of the Criminal Justice Act 1985, Judge Moore noted:
"This unfortunate man, in trying to be a good employee, has suffered a serious loss for which, one has to say, Accident Compensation will not adequately compensate him ... Whereas, in earlier years, accidents of this sort normally attracted very substantial common law damages or, later on, resulted in quite sizeable lump sum payouts of Accident Compensation such payouts have now ceased or become reduced – in many cases – to a level which many section os the community regard as almost contemptuous. "
Emphasising that the level of the fine was not being fixed as some sort of exercise in compensation, Judge Moore ordered that $5,000 of the $7,500 fine and $1,000 of the $1,500 fine be paid to the employee.
The decision attracted some publicity as a case in which – or so it is argued – fines have the potential to "bypass" the abolition of lump sum payments for pain and suffering under the Accident Rehabilitation and Compensation Insurance Act 1992 (*The Dominion*, 12 March 1993). It was apparently for this reason, among others, that the Government abruptly reversed its earlier policy position that any party affected should be allowed to initiate prosecution action for breach of health and safety provisions.
Although is has been a common practice for the Court to award half of the fine to the injured employee, in *Roberts v Port of Napier Ltd* 14/6/94, Judge Adeane, DC Napier CRN 3041009399, the Court awarded $18,000 of the $20,000 fine to the dependent family of the deceased employee.
Also in *Health and Safety Inspector v Perriam* 25/5/94, Judge MacDonald, DC Alexandra CRN 302004421-22 $3,000 of the $3,500 fine was directed to be paid to the injured person, and in *Health and*

Against the respondent, the level of culpability was high – the respondent was "a major public utility with special expertise in this very field" and it would have been simple to provide an appropriate screen. The degree of harm was serious. The respondent could afford to pay an appropriate fine. Further, deterrence was an important aspect. On that aspect Fraser J held:

> **"Unlike earlier legislation where enforcement generally depended on inspection by officials and compliance by employers with specific requirements, the approach under this Act is that positive duties are case on employers. They are required to seek out and eliminate or mitigate as far as possible hazards in the workplace. One way in which this statutory policy and approach is reinforced is by the imposition of appropriate penalties by the Court when breaches occur."**

After comparing the circumstances with the fines imposed in *Department of Labour v De Spa & Co Ltd* [1994] 1 ERNZ 339 ([1994] ELB 50 Fraser J came to the conclusion that the fine was manifestly inadequate; and substituting a fine of $10,000 Fraser J held:

> **"While the relevant mitigating factors require to be kept in mind the major factor in this case seems to me to be that a simple protective device which could and ought to have been fitted was not provided and that the employee concerned suffered quite serious harm because of the employer's breach of duty."**

Safety Inspector v Richmond Ltd 9/3/94, Judge Adeane, DC Hastings CRN 302011701, the whole of the $5,000 fine was directed to be paid to the injured person. The highest total award to an employee at the date of this update was $21,000 in *Health and Safety Inspector v Butch Pet Foods Ltd* 14/11/94, Judge Deobhakta, DC Auckland, where the employer was fined $7,000 on each of the charges under s13(a), 13(b), and 7(1)(a) after an employee was blinded and severely burned when a caustic solution "blew back" on her.

In *Burt (Health and Safety Inspector v Punt Painting and Waterblasting Ltd* 2/6/95, Judge Walker, DC Nelson CRN 4042004416,17,5799, the Court declined to order that any portion of the fine be paid to any victim because the defendant had, through its insurers, settled with the house owner and paid compensation of $60,000, which included settlement of claims of harm to the house owner's children who had suffered lead poisoning, and the house owner had declined to pay for the sandblasting work which the defendant had carried out. (For further discussion of this case see HS15.06.).

Up to 29 August 1995, statistics from the Occupational Safety and Health Service of the Department of Labour show that 119 injured workers had received payments averaging $3,087 each (single awards ranging from $300 to $15,000).

5.2.3 Sentencing: The apparent end of the honeymoon:

On November 12, 1993, Judge Moore stated:

> **"There is an element of adapting to a new statutory framework. In those circumstances, over a period of time, fines will tend to rise within the statutory maximum. I would not like it to be thought that a year or two down the track fines of the level I imposed today would necessarily apply"[(9)].**

On June 14, 1994 Judge Adeane in a case involving a fatal work accident where a worker was crushed to death between two bales of wood pulp held:

> **"In relation to the working environment in which Mr Baker's death occurred and the system of work which caused it, the defendant can point to no step taken to ensure or attempt to ensure the safety of employees.**
>
> **The system of work and the resulting work environment were demonstrably devoid of precautionary safety systems or features though the potential hazards therein were self-evident – the real purpose of the Health and Safety in Employment Act 1992 is to impose duties and obligations on employers not employees. No amount of employee education or information can shift from the employer to the employee the primary obligation to establish and maintain safe systems of work. One is left with the feeling that Port of Napier Ltd expended rather too much energy informing its employees of obligations under the new Act and too little on questions of management led compliance in practical respects"[(10)].**

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(9) Department of Labour v Alexandra Holdings Ltd District Court, Otahuhu CRN 3048020814–5 12/11/93 at page 4 of the judgement.

(10) Roberts v Port of Napier Ltd (unreported) District Court, Napier 14/6/94 CRN 304009399 – see also Butterworths Employment Law Bulletin August 1994, page 98 for commentary, namely Judge Adeane's comment that employers cannot shift the practical responsibility for workplace safety onto employees is timely given the anecdotal evidence of a tendency amongst some employers towards superficial compliance with the requirements of the Act. Ironically, given the deliberate removal by the present Government of the power of employees to stop work in dangerous situations, conferred by the earlier Occupational Safety and Health Bill, the supervisor in the present case stated that he had no authority to stop work or to send employees off a job considered by him to be unsafe.

The company was fined $20,000 with an order under Section 28 of the Criminal Justice Act 1985 that 90% of that fine to be paid to the deceased employee's estate.

On June 19, 1995 in a charge arising from the sandblasting of old lead-based paint from a private house where two young children who occupied the house with their parents suffered from lead poisoning Judge Walker imposed a fine of $2,000. In fixing the fine, the Judge found that the level of culpability was not high; the degree of harm was of "real concern"; the defendant was a small family company with working proprietors; deterrence was not a major consideration since "the Act is still relatively young" with the level of fines in other cases being "modest"; and the house owners had settled a civil action against the defendant by payment of $60,000[11].

In an appeal against the imposition of a $20,000 fine in the District Court Justice Tipping in the High Court at Christchurch reduced the fine to $14,000 and took the view, that the District Court Judge had not sufficiently borne in mind the appellant's financial position having noted that a fine of $20,000 represented 50 per cent of the company's gross income for the previous income year. Tipping J held:

> **"The fine would have the appellant either sell all its assets and thus presumably have to stop work or borrow up to the full limit of its shareholders' funds, a proposition which I doubt any commercial lending organisation would immediately warm to. I do not think the circumstances here were so serious that a fine at this level simply had to be imposed in the public interest ... To require the company to sell all its assets to pay the fine is an enormous penalty. Similarly I doubt very much whether it could borrow the whole fine"[12].**

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[11] Burt (Health and Safety Inspector) v Punt Painting and Waterblasting Ltd, June 19, 1995, District Court Nelson, CRN 4042004416,17,5799. The commentary in Butterworths ELB September 1995 at page 107 is noteworthy namely –

The comments made during sentencing reflect a generally held view among District Court Judges that the 1992 Act is still "bedding in" and that employers must be allowed some time for an educative process to take place. However, this approach is at odds with a recent OSH survey which shows that in some key areas (such as identifying and assessing hazards) employers' knowledge of their obligations was actually less in 1994 than it was in 1993, and that in other areas there was little change in the levels of employers' knowledge.

[12] Debro Transport Ltd v Department of Labour (unreported) June 15, 1995, High Court Christchurch (AP 110/95) Tipping J on commenting about the Accident Compensation Scheme had this to say – "There must be resisted ... any suggestion, conscious or unconscious, that the fine should be increased so as to

Finally the comments of Judge Everitt in the District Court in Dunedin on April 28, 1995 are apposite. Judge Everitt noted during what he referred to as "a settling in period" for the 1992 Act fines have been "extremely modest", adding that:

> **"it may well be at the point in time when the Courts are now going to ratchet up the level of fines again to ensure that factory owners and employers have had the benefit of a honeymoon period with the Act and that is no longer seen to be the case"[13].**

5.2.4 Prosecution Philosophy – (confusing policies and under reporting

The Department of Labour has publicly stated that enforcement of the HSE is a last resort in most cases [14]. This particular policy appears to represent the ideological stance of the Department of Labour prior to the introduction of the Health and Safety in Employment Act 1992 [15]. Mazengarb's identify a change in the policy when interpreting the Occupational Safety and Health Officers' Handbook which states that:

> **"... Court proceedings must be the initial option considered where non-compliance has been identified and evidence to sustain a prosecution exists. The use of enforcement action or a decision not to instigate Court proceedings must be based on sound and reasonable grounds"[16].**

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give better compensation to the victim. If there is a view in certain quarters that the benefits which are now available under the Accident Compensation Scheme are less than what they might be, I do not consider it to be any part of the court's criminal jurisdiction, that is to say the imposition and fixing of fines, to remedy any such perceived deficiency".

[13] Department of Labour v Asian New Zealand Meat Co. Ltd and Command Pacific (NZ) Ltd (unreported) April 28, 1995, CRN 4/14001, f/14002-4.

[14] Department of Labour Health and Safety in Employment Bill: Report of the Department of Labour to the Labour Select Committee, July 1992, page 122. That report contends that, "encouraging employers to be effective managers of health and safety in places of work is the first option used to improve New Zealand's safety and health at work record".

[15] Walker, J.K. Occupational Safety: Inquiry into Co-ordination of Legislation on Industrial Safety, Health and Welfare, State Services Commission Wellington 1981. The Walker report concluded at page 35 that – "it is generally contended that the correct role of the safety inspector is to advise and persuade, rather than to prosecute for breaches of safety regulations. Punishment or Court action is an indication of failure".

[16] Mazengarb's, Employment Law, Butterworths, Wellington, Health and Safety in Employment Act 1992 para 6054.4 (page N/168) Service No. 55 – July 1994.

The *Handbook* contains what appears to be inconsistent guidance on the threshold requirement as to the nature of the conduct demanding prosecution. Reference is made variously in the *Handbook* to "cases of serious non-compliance ... exposure to hazards ... or negligence" (at p3), "clear culpability ... or ... gross negligence" (at p3) and "deliberate or callous disregard for safety or ... a need for the defendant to face public accountability" (at p4), without attaching these descriptions to the different offences under the HSE Act. The need for deliberate disregard is, of course, confined to offences under s49.

In a local newspaper article the Taranaki manager of OSH is quoted as saying:

> **"We haven't been tough enough in the past with prosecutions. OSH's patience is now up - Employers should be under no illusions that the service will, under the circumstances, take prosecution action in these cases without further warning" [17].**

And on the question of under reporting accidents, the local OSH manager in the same newspaper article stated:

> **"The Labour Department is cracking down on Taranaki employers, most of whom are not reporting accidents - we estimate that OSH Taranaki [is] being notified of less than 10% of work accidents or work related illnesses as required under the present legislation".**

In an address to an Occupational Safety and Health conference in Auckland on August 17, 1995 the Rt Hon. Helen Clark (Opposition spokeswoman for health) maintained that it is estimated that as few as 10 to 20 per cent of workplace accidents were reported[18]. The incidents of under reporting is certainly not a recent phenomenon as a Listener article in 1989 reveals[19].

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[17] Daily News, Wednesday March 3, 1995 "OSH warns employers it has lost patience", page 2

[18] NZ Herald, Friday August 18, 1995 "Accident rates understated"

[19] NZ Listener, July 8, 1989, "Safety Catches", article by Alistair Thompson, page 14.
The article concludes that despite a clear statutory obligation on employers to report accidents, less than 20 percent of accidents are reported to the Department of Labour.
Notwithstanding the task of both ACC and the Department of Labour of preventing accidents and promoting safe work practices there is no effective exchange of information between the two governmental agencies. Both agencies in the article argue that poor communications appear to go beyond the lack of a co-ordinated information policy.

5.3 EXPLANATION AS TO SURVEY METHODOLOGY

A. PRELIMINARY

The Preliminary Survey that was completed between the months of August and December 1993 identified five subject areas deserving attention in a subsequent comprehensive survey. The five subject areas being Attitudes regarding the Designated OSH person, methods of Accident reporting, Hazard identification, Multi-National Companies and finally Small firms. The Preliminary Survey was completed by way of telephone conversation and with the survey firms selected at random from the yellow pages of the telephone directory. To accurately assess contemporary attitudes and approaches it was necessary to go out to industry and pose a range of questions. The method of approach was in part determined after reading the New Zealand Institute of Management's (NZIM) report published in the month of July 1994[20] . That particular report involved a questionnaire that was mailed to 2000 New Zealand companies and generated 296 completed responses. Not all respondents answered every question and thus a 14.8% response must be seen as somewhat disappointing. Whilst many of the survey questions within the Report were inappropriate for a postal survey, they were eminently suitable in a personal interview situation. Accordingly, with the need for a survey firmly established it was considered that with the historically poor response rates generated from postal surveys and the impersonal nature of a telephone survey, the only realistic survey approach was by personal face to face interviews. As to the range and composition of the survey questions to be posed, the task was made comparatively simple by combining the subject areas deemed appropriate for further research from the 1993 Preliminary Survey and a selection of questions taken from the NZIM report (supra). An Occupational Health and Safety Questionnaire was completed and comprised some 28 groupings of questions. A copy of the Questionnaire is contained within the Appendices herein. Of the total number of questions within the questionnaire (79) there were 36 Yes/No questions designed for comparative purposes.

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[20] New Zealand Institute of Management (Inc.) – Report of Collated Results of the "Survey" Conducted by the New Zealand Institute of Management (Inc.) using the Chief Executive Officer's Checklist, July 1994. The full report is contained within the Appendices herein.

B. SELECTION OF SURVEY FIRMS

As the 1993 Preliminary Survey results revealed that a comprehensive survey could profitably examine attitudes from Multi-National Companies and Small firms it was necessary to select industries that incorporated a wide spectrum of size. In addition, it was considered necessary to identify particular industries that attracted a reasonable number of employers for the purposes of comparison. From local knowledge it was known that the Engineering and Manufacturing industries were significantly numerous in North Taranaki, to warrant consideration. Taranaki being the home to the Oil and Gas industry dictated the inclusion of that particular industry. With the focus upon identifying industries with numerous employers of different size a careful analysis of Business Directory identified that the Distribution industry, Service Industry and Transport industry were capable of fulfilling the prerequisite requirements. Finally another industry that is inherently hazardous is found on the waterfront. Accordingly, the Stevedoring industry was singled out.

With the survey questionnaire completed, it was determined that the industries to be surveyed would derive from the following categories:

- Oil and Gas Industry
- Specialist Distributors (preferably servicing the oil industry)
- Transport Industry
- Engineering Industry
- Manufacturing Industry
- Service Industry
- Stevedoring

5.4 SURVEY FINDINGS:

A. General:

The survey itself involved the personal interviews with senior management and/or owner operators drawn from 72 business organisations in the New Plymouth area between November 1 and December 7, 1995. Table 16 (page following) provides a profile of the businesses surveyed and certain key indicators drawn from the Yes/No aspect of the Survey questionnaire. Table 16 allocates a firm identification number for further reference, together with staff numbers and the duration of the interview. One particular aspect of the survey which was revealing was the duration of the interviews and the eagerness and enthusiasm displayed by all survey respondents. Whilst a number of firms were a little apprehensive when initially approached, that apprehension was dispelled when confidentiality was assured and a letter from Massey University was provided to attest to the authors credentials. It was intended that 75 firms be surveyed and 77 were approached. Only two firms declined the survey opportunity which in itself was rather remarkable considering that all firms were informed that the interview would take approximately 45 minutes. Of the 75 firms that confirmed a willingness to participate three firms through various reasons desired to postpone the scheduled interview. Unfortunately with the much longer interview duration being experienced and the end of the year looming it was considered that the 72 firms constituted a highly credible survey group. Of the firms surveyed nine derived from the Service Industry, 10 from Transport, three Stevedoring firms, 14 Engineering firms, 17 from the Manufacturing industry, eight firms specialising in distribution, seven firms from within the Oil and Gas industry and four miscellaneous firms including a training providor. Of the 72 firms surveyed, 32 firms were categorised as Small firms (and for the purpose of this thesis a small firm employed between 1–10 workers) and the average workforce size of these 32 firms was 5.7 workers. A total of 29 medium sized firms were surveyed (employing between 11–50 workers) and the average size workforce within this group was 24. The remaining 11 firms were categorised as Large firms (employing 51 plus workers) with the average size workforce calculated at 159 workers.

TABLE 16

PROFILE OF BUSINESSES SURVEYED AND CERTAIN KEY INDICATORS								
Firms Nominated Identification Numbers	Number of Employees	Duration of Interview (in minutes)	Business Activity	Designated Safety Officer	Written OSH policy	Involvement of Staff in OSH planning	Trained First Aiders	Existence of Safety Committee
1	147	45	Manufacturing	No	Yes	Yes	Yes	Yes
2	40	135	Drilling Contractors	Yes	Yes	No	Yes	Yes
3	170	55	Power Generation	Yes	Yes	Yes	Yes	Yes
4	18	90	Crane hire and rigging	Yes	Yes	Yes	Yes	Yes
5	10	100	Training provider	Yes	Yes	Yes	Yes	Yes
6	2	55	Electrical Supplies	Yes	Yes	Yes	Yes	Yes
7	136	45	Sawmilling	Yes	Yes	No	Yes	No
8	16	60	Manufacturer	Yes	Yes	No	No	Yes
9	4	90	Manufacturer	Yes	Yes	Yes	Yes	No
10	39	60	Stevedoring	No	Yes	Yes	Yes	Yes
11	16	65	Cool store operator	Yes	Yes	Yes	Yes	Yes
12	7	70	Fabricators	Yes	Yes	No	Yes	No
13	6	75	Stevedoring	Yes	Yes	No	Yes	No
14	6	70	Specialist valve supplies	Yes	Yes	Yes	Yes	Yes
15	9	60	Building suppliers	Yes	Yes	Yes	Yes	No
16	6	65	Specialist valve fitters	Yes	No	No	Yes	Yes
17	8	55	Stevedoring	Yes	Yes	Yes	Yes	Yes
18	30	95	Engineering	Yes	Yes	Yes	Yes	Yes
19	32	55	Warehousing	Yes	Yes	No	Yes	Yes
20	54	100	Manufacturing	No	Yes	No	Yes	Yes
21	27	75	Printers	No	No	No	No	Yes
22	32	65	Seed distributors	Yes	No	No	Yes	No
23	6	90	Industrial Coatings	Yes	Yes	No	Yes	Yes
24	11	55	Liquid Waste	Yes	No	No	No	No
25	11	55	Chemical Formulation	Yes	Yes	Yes	Yes	Yes
26	30	105	Scaffolding/Rigging	Yes	Yes	Yes	Yes	Yes
27	95	95	Oil Industry	Yes	Yes	Yes	Yes	No
28	2	75	Manufacturing	Yes	No	No	No	Yes
29	7	55	Transport	No	No	No	No	No
30	2	90	Manufacturing	Yes	Yes	Yes	No	No
31	9	70	Forklift Hiring	Yes	Yes	Yes	No	No
32	26	105	Manufacturing	Yes	Yes	Yes	Yes	Yes
33	21	90	Oil Exploration	Yes	Yes	No	Yes	Yes
34	11	70	Transport	Yes	Yes	No	Yes	Yes
35	10	70	Wireline Testing	No	Yes	No	No	Yes
36	12	90	General Engineering	Yes	Yes	No	Yes	No

Firms Nominated Identification Numbers	Number of Employees	Duration of Interview (in minutes)	Business Activity	Designated Safety Officer	Written OSH policy	Involvement of Staff in OSH planning	Trained First Aiders	Existence of Safety Committee
37	5	65	Hydraulic Sales	No	No	No	No	No
38	2	65	Engineering Suppliers	Yes	No	No	No	No
39	3	95	Fibre Glass Work	Yes	No	No	Yes	No
40	5	90	Precision Engineering	No	No	Yes	No	No
41	9	95	Transport	Yes	No	Yes	Yes	Yes
42	16	110	General Engineering	No	No	No	Yes	No
43	2	110	Sandblasting	Yes	No	No	No	No
44	38	95	Transport	Yes	Yes	Yes	Yes	Yes
45	25	130	Heavy Engineering	No	Yes	Yes	No	No
46	1	70	Service Engineering	Yes	No	No	No	No
47	7	40	Engineering distributors	Yes	Yes	No	Yes	Yes
48	5	115	Saw Doctor	No	No	No	No	Yes
49	8	40	Engineering	No	Yes	Yes	Yes	Yes
50	16	55	Fibreglass	Yes	Yes	No	Yes	Yes
51	12	90	Distribution	Yes	No	No	No	No
52	30	175	Engineering	Yes	Yes	No	Yes	Yes
53	30	135	Timber Merchants	Yes	Yes	Yes	Yes	No
54	13	85	Engineering	Yes	Yes	No	Yes	Yes
55	7	95	Couriers	Yes	Yes	No	No	No
56	8	65	Transport	Yes	No	No	Yes	No
57	22	70	Engineering	Yes	No	No	No	Yes
58	100	95	Process Engineers	Yes	Yes	No	Yes	No
59	4	100	Precision Engineering	Yes	No	No	No	No
60	5	90	Warehousing	No	No	No	No	No
61	34	80	Civil Engineering	Yes	Yes	No	Yes	Yes
62	8	75	Equipment Suppliers	Yes	No	Yes	No	Yes
63	20	90	Transport	Yes	No	No	Yes	No
64	35	85	Road Construction	Yes	Yes	Yes	Yes	Yes
65	70	70	Transport	No	Yes	No	No	No
66	34	120	Engineering	Yes	Yes	No	No	No
67	210	95	Poultry Processing	Yes	Yes	No	Yes	Yes
68	6	55	Oil Field Supplies	Yes	Yes	No	No	Yes
69	4	85	Transport	Yes	No	No	Yes	No
70	550	95	Manufacturing	Yes	Yes	No	Yes	No
71	150	155	Oil/Gas Services	Yes	Yes	No	Yes	Yes
72	270	110	Heavy Engineering	Yes	Yes	No	Yes	Yes

B. The Findings Themselves:

The Survey questionnaire posed 36 questions capable of a yes or no answer. Several of the yes/no questions were relatively innocuous and designed to attest to the veracity of comments made to in-depth questions. An analysis of the 36 yes/no questions is presented within Table 17 (page following). In a break from the traditional format, it is considered appropriate in the circumstances to present the key survey findings in Table form. Table 18 (following Table 17) consists of a synopsis of the Survey findings and incorporating certain key comments. Table 18 whilst not strictly in a table format, nonetheless is a succinct encapsulation of the key elements of the Survey. Table 18 focuses upon the following 15 aspects, namely: Safety officers, aspects relating to a written policy on Occupational Health and Safety, the understanding of the objectives of the Occupational Health and Safety policy, the provisions relating to a safe working environment, Hazards, the implementation of change, Accident recording system, attitudes towards the OSH inspectorate, Penalties, Consultation with employees, Safety committees, attitudes toward Trade unions, Accident Compensation, the concept of Excellence in Health and Safety management and finally the attitudes towards Occupational Health and Safety since the introduction of the Health and Safety in Employment Act 1992.

As mentioned within Part 5.3(B) seven specific industries were targeted and Table 19 (following Table 18) presents a comparison between the seven industries based on nine key yes/no questions from the survey questionnaire and effectively verified from other in-depth questions. Whilst the Stevedoring Industry survey group only comprised three firms, the results were predictable due to that industry's long association with hazard management. The interesting aspect with respect to the Stevedoring Industry was that industry's focus on compliance. Excellence in Occupational Health and Safety was not designed to impress the OSH Inspectorate, nor to attract reduced levies from experience ratings, but simply for economic survival. All three Stevedoring firms made no secret of the fact that their very existence in Port Taranaki was governed by their slavish and meticulous compliance with client dictates; in particular the exacting detail prescribed by Shell Todd Oil Services and the Methanex Corporation relating to safety handling procedures and policies on Occupational Health and Safety.

TABLE 17

ANALYSIS OF THE YES AND NO SURVEY QUESTIONS				
QUESTION	SHORT FORM OF PARTICULAR QUESTION	YES (%)		NO
2.1	Utilisation of a shift system	26	(36%)	46
2.2	Working of extended shifts	17	(24%)	55
2.4	The payment of penalty rates	45	(62%)	27
2.5	The provisions of a canteen in the workplace	9	(12%)	63
3	Employment of a designated Safety Officer	58	(80%)	14
3.2	Formalised training for Safety Officer	45	(62%)	27
3.4	Existence of a formal audit procedure	46	(64%)	26
3.6	Other functions performed by Safety Officer	60	(83%)	12
4	Existence of a written OSH policy	49	(68%)	23
4.2	Discussions with individual workers	41	(57%)	31
5	The understanding of OSH objectives	59	(82%)	23
5.1	The involvement of staff in OSH planning	26	(36%)	46
7.2	Communications regarding Hazards	68	(94%)	4
8	The management of Hazards	54	(75%)	18
8.3	The revision of the Hazards plan	53	(74%)	19
10	Management awareness of legal responsibilities	49	(68%)	23
10.1	Awareness of personal liability	51	(71%)	21
10.3	Availability of indemnity insurance	15	(21%)	57
12	Existence of a formal induction process	46	(64%)	26
13	Ongoing OSH training	51	(71%)	21
14	Employment of qualified first aiders	48	67%)	24
15	Whether organisation holding copy of HSE Act	44	(61%)	28
15.2	Whether management holding a copy of Act	16	(22%)	56
15.3	Availability of HSE Act to individual workers	42	(58%)	30
16	Existence of Codes of Practice	63	(87%)	9
17	Whether any changes to operating procedures	61	(85%)	11
18	Discipline – policy for non–compliance with OSH	52	(72%)	20
19.1	Existence of an accident recording system	66	(92%)	6
20.3	Awareness of improvement/prohibition notices	36	(50%)	36
21	Awareness of offences and penalties	62	(86%)	10
23	Existence of a safety committee	39	(54%)	33
24	Completion of an accident cost assessment	28	(39%)	44
24.1	Effect of the HSE Act on assessment	22	(30%)	50
25	Whether a role for trade unions	31	(43%)	41
26	Positive/Negative attitudes towards ARCI Act	42	(58%	30
28	Attitudes towards OSH since HSE Act	64	(89%)	8

TABLE 18

SYNOPSIS OF SURVEY FINDINGS AND CERTAIN KEY COMMENTS	
Question	
3.	SAFETY OFFICER Of the 72 firms surveyed 58 firms (80%) indicated that they had designated Safety Officers. Only 4 firms employed Safety Officers engaged full-time with Occupational Health and Safety. Whilst 45 firms reported that their Safety Officers had formal training, the level of training is considered somewhat shallow. In the main the training involves first aid courses and the occasional lecture provided by OSH. Of the 72 firms only 8 firms sent their Safety Officers on formal training courses. With respect to reporting structures for Safety Officers there was little evidence of a formalised structure. OBSERVATIONS The level of training is extremely low. A significant number of designated safety officers have simply been appointed to the role without consultation. In point of fact two particular firms during the survey interview specifically called into the office certain managers (i.e. project manager and a production manager) and announced that they were the new Safety Officer. Whilst 46 firms stated that they had a formal audit procedure it is considered that the figure is highly inflated and little evidence was produced to verify any form of formality. It is estimated that fewer than 15 firms had a real commitment to a formal audit procedure.
4.	WRITTEN POLICY ON OCCUPATIONAL HEALTH AND SAFETY Whilst 49 firms (68%) indicated that they had a written policy on OSH less than half have a detailed policy specifically designed for their individual requirements. Of the remainder, the bulk were in an incomplete state and generally purchased from consultants with the policy being of a general nature. The information gained during the survey certainly revealed that the policy was not circulated.

OBSERVATIONS

Generally the policies were poorly understood and those policies purchased from outside consultants were criticised by OSH as being inadequate and lacking in real depth as far as Hazard identification. In many respects certain firms simply adopted a policy due to the requirements of certain clients; especially in the Petro chemical and oil industry. Another alarming trend was the belief that once a policy was acquired then the firm considered its obligations complete.

5. THE OBJECTIVES OF THE OCCUPATIONAL HEALTH AND SAFETY BEING REALISTIC AND UNDERSTOOD

Whilst 49 firms (68%) indicated that their objectives were realistic and understood only 26 firms (36%) involved their staff in discussions upon OSH or input into the planning. These statistics appear to conflict with Question 4.2 (Is the policy discussed with Individual employees) where 41 firms (57%) indicated that they had discussions with their staff.

OBSERVATIONS

It certainly appears that Managements commitment to discussing and involving its employees in OSH policies is lacking. In many of the larger firms the autocratic management style of "Top down" is clearly evident and sadly reflects on contemporary management style. Regretfully the provisions of Section 14 of the HSE Act are being compromised by managements inability or reluctance to communicate with its workforce.

6. PROVISION FOR A SAFE WORKING ENVIRONMENT

Generally the firms surveyed demonstrated a positive approach in the creation and maintenance of a safe working environment. With new staff the majority of firms employed an induction process followed up by strong supervision. The majority of employers acknowledged that with the high levels of unemployment the calibre of new recruits was inevitably high. With smaller firms the almost universal comment was that business survival and competitiveness required the employment of experienced and sensible people.

7. HAZARDS

This particular aspect of the survey posed the greatest difficulties. Almost all the firms surveyed, expressed concern about hazard identification. Question 7 related to a comment about the most significant hazard in the particular organisation and the majority had little difficulty in identifying a precise hazard, such as a petroleum product, a chemical, machinery etc. The difficulties expressed was the inability by almost all firms in reconciling the OSH explanation that the workers themselves must be regarded as a potential hazard. Very few firms could accept this explanation, arguing that the workers were trained. It will be seen from Table 17 that the response rate for hazard identification and management is not significant.

	OBSERVATIONS To prove a point the majority of personnel interviewed argued that there were no hazards in the office. However after explaining and demonstrating the opening and closing of a desk drawer, the personnel concerned reluctantly acknowledged that the person themselves must be seen as a hazard after pondering upon the implication. The thrust of the survey responses to hazards supported the view that the majority of firms whilst concerned about hazards, approached the subject matter in an unplanned and unstructured way.
17	IMPLEMENTATION OF CHANGE Question 17 related to whether any changes were implemented since the introduction of the HSE Act. 61 firms (85%) acknowledged that changes were implemented. Only one firm acknowledged that it thought through the factory layout and considered it necessary to revise the layout. The majority of firms acknowledged that the changes only consisted of the purchase of safety equipment and the insistence that workers wear or use the same.
	OBSERVATIONS No great changes were implemented, although the majority of firms acknowledged a need to carefully consider implementing change, although many firms did not know how such changes would be implemented. Several firms indicated that they were working on the problem. Appears to be no great commitment.
19	ACCIDENT RECORDING SYSTEM 66 firms (92%) confirmed that they had an accident recording system in place. 6 firms (8%) had no system in place. As to the form of reporting the larger firms had their own in-house forms whereas the smaller firms had purchased the standard forms published by OSH and purchased for $10.00 in a booklet form. With respect to steps to be implemented when an accident occurs the responses were highly disappointing especially for the medium and small firms. As with the accident reporting aspects, the responses were mixed. Those firms having a connection with the oil and gas industry gave forthright answers and explanations, due to historical experience. However the majority of other firms were somewhat guarded in their responses. In the main, the small firms were generally aware of who they had to report to.
	OBSERVATIONS Whilst there was no direct evidence of under-reporting the impression gained was that only serious accidents would be considered for recording. Many firms eagerly displayed their Accident record system and of those examined 75% had no information recorded whatsoever.

20.	<u>OSH INSPECTORATE</u> **From the yes/no answers, only 36 firms (50%) indicated that they were aware of improvement/prohibition notices. As to visits by the Inspectorate 31 firms (43%) admitted that they had received a visit in the last two years, although the majority of firms admitted that the visits were within the last 6 months. In almost all cases the OSH Inspector advised that the visit was purely social and very little time was spent on an inspection. The majority of firms that received a visit considered the same to be public relations exercise and with OSH inviting the firms to avail themselves of their pamphlets. As to attitudes by firms to OSH, this aspect was rather revealing.** **The attitudes essentially fall into two groups namely those firms that have had nothing to do with OSH or have received a social visit, and those firms that have sought information from OSH or who have had official dealings with the Inspectorate. The first group generally illustrated no particular reference nor hostile/positive attitude. The attitude of the second group was rather revealing and overall the attitude of this group ranged between negative to hostile, and including frustration. Certain key comments from particular firms will illustrate the point, namely:** **(1.)** (Engineering – Firm No. 18) – *Uneducated in this industry. Difficulty in getting information of a specific item in this industry. This industry has so many standards it is impossible for one person to have the knowledge needed.* **(2.)** (Heavy Engineering – Firm No. 22) – *Overworked – under resourced. Gestapo agents – there are some who are doing their best though.* **(3.)** (Timber merchants/sawmilling – Firm No. 53) – *The company feels they are trying to hang something on you – this creates fear – Personally found them helpful – OSH informed the company that they were impressed that the company asked for assistance.* **(4.)** (Engineering – Firm No. 52) – *Lack of competent staff. We would welcome qualified and constructive comments. There is no middle ground. The employer is in the view of OSH guilty. An accident is a subjective aspect, same with hazards.* **(5.)** (Fibre glass Manufacturers – Firm No. 28) – *Frustration, not specific when answers required.* **(6.)** (Oil Industry – Firm No. 27) – *Bunch of arseholes, more so on hearsay from others. One stated that he was a F..... pay clerk before he became an inspector.*

	(7.) (Feed Manufacturer – Firm No. 67) – *Understaffed, don't have the teeth and are inconsistent.* (8.) (Road construction – Firm No. 64) – *If they act like policemen then our attitude will change towards them.* (9.) (Transport industry – Firm No. 65) – *As long as they stay advisors and not become totally enforcers our attitude will be okay.* (10.) (Civil Engineering – Firm No. 61) – *Some Inspectors are more approachable than others – their approach etc leaves a lot to be desired – the problem is nailing them down to specifics.* (11.) (Technical & Industrial manufacturers – Firm No. 38) – *Too picky – all they are trying to do is putting the onus on individuals. Just another revenue collecting agency. Overreaction to basic problems of industry.* (12) (Structural & general engineering – Firm No. 36) – *Necessary evil – lack of industry knowledge and experience and understanding of the industry's work requirements as it relates to the practical aspects of the job. Bureaucratic restrictions – plus the cost burden that cannot be passed on.*
21.	<u>PENALTIES</u> 62 firms (86%) advised that they were aware of the penalty provision within the HSE Act. The secondary aspect to question 21 was attitudes by the survey firms towards penalties. Apart from 4 firms that considered that the penalties were reasonable (one firm stating that the level of fines were too low) all other firms expressed varying degrees of concern. The following comments are considered representative of the views expressed: (1) (Manufacturing – Firm No. 9) – *For large companies it is not enough but for small companies it can close your doors.* (2) (Stevedoring – Firm No. 13) – *the penalties are unfair – too many grey areas.* (3) (Pipe & valve fitters – Firm No. 16) – *they should be scaled to be more fairer.* (4) (Oil and Gas drilling – Firm No. 71) – *a little outrageous for companies who are doing something about Health and Safety issues – you are still wrong no matter what –* (5) (Building material supplies – Firm No. 15) – *on an individual basis ridiculous – should be scaled.*

(6) (Heavy Engineering – Firm No. 72) – *Inconsistently applied in relation to other offences – e.g. criminal – they are out of proportion –*

(7) (Aluminium Fabrication – Firm No. 12) – *The penalties – they are too high – scary situation.*

OBSERVATIONS

The responses clearly reveal that small and medium sized firms are genuinely concerned with the level of fines and believe they are unjust. Furthermore the small firms consider that there ought to be some form of scaling of fines. For larger firms they consider the fines unfair having regard to the efforts they have gone to in complying with the provisions of the HSE Act.

22. CONSULTATION WITH EMPLOYEES

The responses generated to this particular question were interesting. By in large, the smaller firms appeared to appreciate the benefit of consulting with its workers albeit in an informal manner. However the medium and larger firms appeared to pay mere lip service to the consultative approach. This can be evidenced by the responses to Questions 4.2 and 5.1. In 4.2 only 57% of the firms surveyed acknowledged that they had discussions with individual workers and in question 5.1 only 36% of the firms acknowledged that they involved their staff in OSH planning. It is considered that the above percentages are generous.

OBSERVATION

The ironical aspect is that with the smaller firm the level of consultation is real, notwithstanding the absence of formal structures. On the other end of the scale the medium and larger firms whilst having formal structures in place do not consult and regard the issuing of memos and discussions to constitute the requirements for the consultative approach.

23. SAFETY COMMITTEES

39 firms (54%) indicated that their organisations had a Safety Committee. As to the composition of these Committees there appeared to be no consistency with the structure of these Committees throughout the industries surveyed. A trend emerged within larger firms where departmental meetings took place without any apparent co-ordination from above. Furthermore worker participation was alarmingly absent with the majority of committees comprised of management level. A number of medium sized firms admitted having a brief discussion on Friday afternoons over a few beers where the subject matter of OSH was discussed. As to frequency, the majority of firms that subscribed to Safety Committee met informally on a monthly basis.

OBSERVATIONS

Those firms that had a Safety Committee did not implement any real structure to the Committee and in general the process was extremely informal. Certain firms admitted that the only reason why they established a Safety Committee was to present the appearance of compliance with the HSE Act.

25. TRADE UNIONS

31 firms (43%) considered that there was a role for the Trade Union Movement in New Zealand With respect to question 25.1 (What is your attitude towards Trade Unions) the response was rather incredible having regard to the negative media comments on Unions. The surprising aspect was that from the 72 individuals interviewed, only 8 (11%) expressed a negative view or attitude towards the Unions. This of course contrasts with the official organisational view.

Accordingly, whilst 64 individual managers/owners expressed a positive and/or supportive view, the majority did nonetheless qualify their support for Unions by voicing certain reservations. In the main, the supportive attitudes were towards the principles of Unionism but the administration and agendas of certain unions were of concern (e.g. lack of communication skills of union officials, lack of business understanding by officials and officials having political agendas).

OBSERVATIONS

Since the introduction of the Employment Contracts Act 1991 the managerial class have experienced a degree of vulnerability. Many of the managers interviewed hinted at the lack of job security and the additional responsibilities forced upon them with the impact of the HSE Act. In addition, the market place economic climate creating its own anxieties.

26. ACCIDENT COMPENSATION

42 firms (58%) indicated that since the introduction of the ARCI Act 1992 the organisations attitude to OSH has altered in a positive way. However when pressed to explain precisely in what way had the organisations attitude changed, nearly all the 42 firms that indicated a positive response could not adequately explain how their attitude had changed. With respect to question 26.2 (Experience rating) no firm indicated a favourable attitude towards experience rating. What was surprising was the large number of firms that had little or no knowledge of experience rating and many firms were not aware of any changes to Accident Compensation. Of the firms that indicated a reasonable knowledge of experience rating, the attitude expressed was unfavourable. A sample of certain responses are as follows:

(1) (Manufacturer – Firm No. 8) – *How do you stop employees from faking injuries so as to attend rugby games etc – that affects your ratings.*

(2) (Poultry supplies – Firm No. 32) – *It stinks it has gone back to the old compo system where workers are bringing back to work the accidents suffered off the job – the rebate size is no incentive to reduce accidents.*

(3) (Engineering – Firm No. 18) – *More aware, more fairer, but needs to be more user paid driven – the medical professional should be more accountable – too easy to sign a medical certificate without understanding the industry – the medical professional should discuss the workers predicament with industry so that industry can accommodate the injured worker – the scale needs to be revised because the rebate is a pittance.*

(4) (Engineering – Firm No. 52) – *our attitude towards them has deteriorated because of the lack of discrimination towards claims. Doctors and professional persons standards and ethics should be seriously questioned. – ACC has attributed two cases against my company – they are refusing to take responsibility but both these men informed the company that the accidents happened at home in the weekend – My two workers said that ACC said to them that the injuries must have started at work in the first place and now ACC are holding me responsible – the rebate is shit – there is no incentive.*

(5) (General Engineering – Firm No. 42) – *the rebate was a pittance – there is no incentive – should be looked at more closely (e.g. performance scaled based on individual businesses).*

27. <u>EXCELLENCE IN HEALTH AND SAFETY MANAGEMENT</u>

This aspect of the survey posed considerable thought by the respondent. The responses appeared to fall into three distinct camps. With respect to the small firms, the approach reflected almost a survival aspect focused upon business survival, namely that an accident to a worker would have a significant effect upon the business itself. The majority of small firms stated that they couldn't really survive a serious accident. Accordingly in an unstructured and informal manner the small firms proclaimed that for business survival they had to take safety very seriously. The catch cry being that we have to be very careful.

	With respect to the medium sized firms (i.e. between 11–50 employees) they considered that by merely putting in place a Health and Safety policy and a safe working procedure, they considered that excellence was complied with. Within the medium sized firms there were a significant proportion that considered that just good "house keeping" equates to promoting excellence with respect to the large firms, 18 firms simply proclaimed that they had done everything to achieve excellence. In point of fact the standard answer was "*we have done all of the above in relation to questionnaire*". OBSERVATIONS Small firms: Business survival dictates that in an informal manner these firms essentially practice realistic aspects of Health and Safety procedures. Any procedures put into place are unstructured and generally unsophisticated. Medium to large Firms: Notwithstanding the existence of apparent structures designed for the prevention of accidents and so–called excellence in Occupational Health, the majority of medium sized firms had little understanding of the requirement of the Act. In the main the OSH policy was purchased from a consultancy. A secondary group within the medium sized firm group that simply rely upon good traditional house–keeping practices but knowing that they have eventually to do something about it – namely – whilst we cannot completely understand the problems, we have survived to date, ("touch wood"), and we will eventually get around to it. These comments must be taken with a grain of salt in that the majority of the managers in the medium size firms essentially lack the educational ability to realistically understand the requirements of the HSE Act (i.e. the interpretation aspects and perplexity within the Act) and accordingly the problem goes back into the too hard basket. Larger Firms: Excellences to the majority of larger firms simply attests to their traditional approach that they have always promoted excellence in Health and Safety Management.
28.	ALTERATION OF ATTITUDES TOWARDS OSH 64 firms (89%) indicated that their attitudes towards OSH have altered since April 1993. In general, the responses from the small and medium sized firms indicated two common responses, namely, a greater degree of awareness and accountability, and apprehension. With respect to the larger firms, the attitude shifted to a greater understanding of the implications of the HSE Act and in particular –

	- the implication of having an accident claim on insurance aspects - premiums - public relations – credibility with clients - reputation in the market place - the costs – compliance costs - respectability with compliance - protection against prosecution - apprehension regarding civil liability.

TABLE 19

COMPARISONS BETWEEN CERTAIN INDUSTRIES AS SURVEYED								
SURVEY QUESTION NUMBER		SERVICE INDUSTRY	TRANSPORT INDUSTRY	STEVEDORING	ENGINEERING	MANUFACTURING	SPECIALIST DISTRIBUTORS	OIL & GAS INDUSTRY
--	Number of firms involved (68)	9	10	3	14	17	8	7
		%	%	%	%	%	%	%
4	Existence of a written OSH policy	55	40	100	57	88	62	86
4.2	Discussions with individual workers	55	50	100	43	65	62	57
5	Understanding of OSH objectives	55	60	100	100	76	62	71
5.1	Staff involvement with OSH planning	55	20	66	28	41	25	28
14	Qualified first aiders	55	60	100	57	76	75	57
15	Organisation holding copy of Act	55	40	100	57	76	37	71
15.2	Managers having a copy	55	0	100	21	18	12	43
15.3	Availability of Act to workers	55	40	100	57	59	37	71
23	Existence of a Safety Committee	44	30	33	50	59	37	86

From the analysis within Table 19, the Oil and Gas Industry failed to produce the high result that anecdotal evidence would suggest. In general, the Oil and Gas Industry produced rather mediocre responses and principally this can be attributed to the current dilemma confronted by Multi-National Companies which is discussed within Part 5.5.

The final table is Table 20 (page following) which involves a comparison between various sized firms.

The comparison involved all 72 surveyed firms and related to the key 19 yes/no questions from the survey questionnaire. It will be noted from Table 20 that the survey comprised 32 Small firms (average number comprising 5.7 workers), 29 Medium sized firms (average number comprising 24 workers) and 11 Large firms (average number comprising 159 workers). A quick analysis of Table 20 will reveal that the Small firms have produced the least positive response percentage, but certainly by no significant degree. This would belie the popular misconception that Small firms are inherently dangerous and do not subscribe to safe management practices with Occupational Health and Safety. Small firms are discussed within Part 5.5. The other interesting aspect when viewing Table 20 is that overall, there is no radical difference between the attitudes demonstrated between the Medium sized firms and the Large firms.

TABLE 20

COMPARISONS BETWEEN VARIOUS SIZED FIRMS				
QUESTION NUMBER	DESCRIPTION OF SURVEY QUESTION	SMALL FIRMS (0-10)	MEDIUM FIRMS (11-50)	LARGE FIRMS (51+)
	Number of Firms Involved (72)	(32)	(29)	(11)
3	Existence of Safety Officer	25 – 78%	25 – 86%	8 – 73%
3.2	Whether formal training undertaken	16 – 50%	22 – 76%	8 – 73%
3.4	Existence of a formal audit procedure	17 – 53%	17 – 59%	10 – 91%
4	Existence of a written OSH policy	16 – 50%	22 – 76%	11 – 100%
4.2	Discussions with individual workers	14 – 44%	19 – 65%	8 – 73%
5	Understanding of OSH objectives	18 – 56%	22 – 76%	9 – 82%
5.1	Staff involvement with OSH planning	13 – 41%	11 – 38%	3 – 27%
7.2	Workforce informed about hazards	32 – 100%	26 – 90%	10 – 91%
10.3	Existence of indemnity insurance	6 – 19%	8 – 27%	1 – 9%
12	Existence of formal induction process	14 – 44%	22 – 76%	11 – 100%
14	Existence of qualified first aiders	16 – 50%	22 – 76%	10 – 91%
15	Organisation holding copy of HSE Act	14 – 44%	19 – 65%	11 – 100%
15.2	Managers/Supervisors having a copy	5 – 16%	7 – 24%	4 – 36%
15.3	Availability of HSE Act to workers	14 – 44%	17 – 59%	11 – 100%
19.1	Existence of accident recording system	27 – 84%	28 – 96%	11 – 100%
23	Existence of a Safety Committee	13 – 41%	20 – 69%	6 – 54%
25	Whether a role for trade unions	12 – 37%	14 – 48%	6 – 54%
26	Positive attitude towards ARCI Act	18 – 56%	19 – 65%	5 – 45%
28	Positive attitude towards OSH	27 – 84%	28 – 96%	9 – 82%

5.5 SUMMARY OF SURVEY AND ANALYSIS RELATION TO SUBJECT AREAS:

The survey of the 72 firms was effectively ordained from the conclusions drawn from the Preliminary survey conducted in 1993. The size distribution of the firms is considered appropriate for the purposes of analysis. The survey questionnaire was specifically designed to incorporate the various subject areas identified within the Preliminary Survey. In part, the Survey conducted in November and December 1995 provides a vehicle to assess whether attitudinal positions or approaches have altered within the two year period. The Preliminary survey identified five areas to which a comprehensive survey could profitably focus, namely: Designated OSH person, Method of Accident Reporting, Hazard Identification, Multi-National Companies and Small firms. Whilst the Prelminary Survey was completed two years ago, it is considered that the five subject areas identified still remain highly germane for the purposes of assessing general and contemporary attitudes towards Occupational Health and Safety. Accordingly, the within summary directs its focus upon the five subject areas as follows:

A. Designated OSH Person (Safety Officer):

Of the 72 firms surveyed in 1995, 80% indicated that they had a specific person designated within the firm who was responsible for Occupational Health and Safety. Apart from five firms, the designated individual was described as the "Safety Officer". In stark contrast, the Preliminary Survey conducted in 1993 and involving 75 firms, revealed that a mere 18.5% of firms employed a person that was specifically designated to be responsible for Occupational Health and Safety. The 1995 survey revealed that 20% of the firms surveyed had no person designated whereas the 1993 survey revealed that 45% of the firms had no specific person designated to be responsible for the Occupational Health and Safety aspect. Of significance, is that the remaining 36% of the firms within the 1993 survey argued that whilst they did not have a designated person, either the boss or everyone was responsible.

The begging question is why is there such a dramatic increase in a two year period in the number of firms that currently designate to a specific employee the functional role of Safety Officer? From the survey responses, it is considered that there is a threefold explanation, namely:

(i) Greater awareness and genuine concern/fear as to penalties.
(ii) Increased media information and knowledge.
(iii) To present the illusion of compliance.

Turning to the 1995 survey, the general impression gained that apart from four firms that employed full-time Safety Officers specifically in that role, the remaining 54 firms that designated certain employees as part-time Safety Officers failed to comprehend the real role and functions of a Safety Officer. Whilst the full-time Safety Officers attended formal training, only four firms from the 54 firms sent their part-time Safety Officers on formal training courses. Accordingly it is considered that these 54 firms have simply failed to provide the tools to its designated Safety Officers to carry out their specified functions. In short, the vast majority of Safety Officers had no real training, nor was any training projected. A further impression gained was that a significant number of firms simply appointed Safety Officer as mere window dressing and as a method of passing responsibility undesired by Senior Management.

B. Method of Accident Reporting:

Of the 72 firms surveyed 92% confirmed that they had an accident recording system in place. This can be contrasted with the results from the 1993 survey which revealed that only 34.5% of the firms indicated that they definitely had a system in place and were aware of the legislative requirements of the Act. It is indeed with the greatest respect to the majority of the 92% of the recently surveyed firms, who proclaimed that they were fully aware of the requirements of Section 25 of the Health and Safety in Employment Act 1992, did in fact comprehend the full implications the Section and elected to feign knowledge of an employee who "might have been harmed".

Again it is with respect, that it is utterly delusional to consider that an employer would record in an Accident register, a potentially hazardous situation, or a "near miss" for the wording within Section 25 of the HSE Act specifically provides "... or might have been harmed". Apart from suspicion, the majority of employers were keenly aware of "experience rating", and in certain cases, the audit procedure of their clients. As mentioned within Table 18 whilst there was no direct evidence of "under-reporting", the responses provided would tend to corroborate to a degree that fewer than 10% of accidents are reported (see footnotes 17 & 18 to this Part). A significant number of medium and large firms used the impression throughout the various interviews of accidents going "underground". Again as observed within Table 18, the audit procedures were either lacking or cosmetic; apart from four firms.

Accordingly, it is considered that the majority of firms do have a system in place other than that anticipated by the Act. The compliance aspect is considered as follows:

(i) Greater concern with Accident Compensation
(ii) Need to comply with the audits of certain clients
(iii) To present the appearance of compliance

C. Hazard Identification:

The 1993 survey concluded, "It is perceived that many firms are not appreciative of what constitutes a hazard". With respect to the 1995 survey a mixed response was communicated about hazards. 75% of the firms surveyed indicated that they had a system in place regarding hazard management and in contrast 94% of the firms indicated that they conducted communications regarding hazards, yet the same survey group declared that only 36% involved their staff in OSH planning.

Despite the media attention on penalties, the 1995 survey results do not disturb the conclusions reached in 1993 in that the majority of firms have not fully understood the concept of hazards. It is considered that there are numerous reasons for the failure to realistically identify hazards which can be partially explained under the following headings?

(i) Education:

The HSE Act prescribed concepts such as "excellence in Health and Safety Management", "strict liability" and "consultation", but what do they really mean? At the lower end of the scale two firms indicated that they had difficulties with their respective supervisors who proclaimed that they simply could not understand the relatively straightforward "Hazard Identification form". It transpired that both supervisors left school at aged 15 and worked their way through the system. Another example was given that a highly regarded fitter/turner refused to complete a standard form and upon investigation was found to be illiterate. At the other end of the scale which encompasses management, the problem appeared to be the conceptual aspect of "hazard" and how it could be defined. Needless to state, a significant number of firms simply passed on the traditional hazard identification pro-forma prescribed by OSH, or simply replicated a pirated copy from a confused colleague. The general impression gained from senior and intermediate management was that the previous system of a prescriptive nature was beneficial in that they could rely upon the expansive definitions made available. In summary, the 1995 survey highlighted a deficiency with the system, namely that of a literacy nature and comprehension aspect.

(ii) Management:

The "open door" policy subscribing to open management has confronted conceptual difficulties since the modern thinking of "flat management". With the drive to reduce the management structures, the question is posed, as to what level within the organisation is Occupational Health and Safety relegated to? Whilst the majority of the medium to large sized firms expressed that notwithstanding the somewhat radical restructurings over the past three years, Occupational Health and Safety still featured prominently.

(iii) Apathy and Indifference:

The phrase "excellence in Health and Safety management" is seen as an abstract concept by the survey participants in both 1993 and 1995. Whilst there is absolutely no evidence to suggest that firms totally ignore hazards, it was alarming to note that 25% of the surveyed firms in 1995 stated that they did not have a Hazards Management plan. Overall the impression gained was the vast majority of firms had difficulties conceptualising hazards and thus the subject matter went into the "too hard" basket. In other cases the firms relied upon the experience of its workforce to sort the problem out, but alas, did not consult. For the above reasons, it is concluded that in a defacto sense, the majority of firms surveyed are guilty of being indifferent towards hazards.

D. MULTI-NATIONAL COMPANIES:

A popular notion suggests that large multi-national companies are better equipped to manage Occupational Health and Safety. The recent survey would not support that notion. Of the 72 firms surveyed, 15 firms (21%) had a head office in either Auckland or Wellington, or were a subsidiary of an overseas organisation. The three firms that reported to an overseas head office indicated different problems to that of their New Zealand head office counterparts. The three firms with overseas offices all reported frustration in communicating the serious way in which the New Zealand authorities were regarding Occupational Health and Safety. One particular firm produced a thick wad of facsimile messages where the local manager was attempting to seek clarification on a safety aspect within the oil drilling industry. The overseas response was to refer to the Safety Manuals, without explanation. Accordingly, the impressions gained with the overseas companies is that an International Manual on Safety is sufficient, whereas the local manager confronted by a non-prescriptive legislative regime felt incredibly isolated and vulnerable.

With respect to the New Zealand head office situation, the majority of responses tended to indicate that the local firm did not know the "thinking" of Head Office and were more or less left to their own devices. In part this situation can be explained from the resultant effects of the "Flat Management" structures and devolution of authority. Whilst the local managers did not have the same feeling of isolation, they did nonetheless express similar feelings of frustration due to lack of input from Head Office. In all cases, it certainly appeared that the impression from Head Office was that the local firm or branch had the local knowledge and ought to be able to identify its own peculiar problems and sort them out. Accordingly, it is concluded that Multi-National Companies do not have any greater advantages over locally owned organisation with respect to Occupational Health and Safety.

E. SMALL FIRMS:

The Preliminary survey concluded that there was a difference in attitudes towards Occupational Health and Safety between very small firms employing between one and three workers as those firms that employed greater than four workers. In general the Preliminary concluded that whilst Small firms had virtually no systems in place, they practised and subscribed to a safe form of working; effectively for economic survival. From the analysis of the 32 small firms as surveyed in 1995 a number of changes have taken place; albeit somewhat cosmetic. However the significant change within the two year period is the overwhelming commitment to employ experienced and safe workers. The vast majority of the small firms (including a significant number of the medium sized firms that employed up to 30 workers) made no secret that they did not have the resources to train workers and considered that the only way to prevent accidents was to employ highly trained workers from the dwindling pool of such experienced personnel.

Several small firms had advertised overseas in preference to local labour. Accordingly, the intervening two year period has witnessed a change within small business in that it now seriously evalues its workforce and is increasingly discriminatory, notwithstanding the provisions of the Human Rights Act 1993. In short, the conclusions regarding Small firms is whilst they have few formalised structures or procedures in place, they as a group rely heavily upon the experience of its workforce to adopt safe working practices for the economic survival of the firm.

CONCLUSION

This thesis has as the title indicates, a focus upon the Evolution of Attitudes and Approaches to Occupational Health and Safety in New Zealand. In many respects, the passing into law of the Health and Safety in Employment Act 1992, on April 1, 1993 provided a unique vehicle to evaluate attitudes and various approaches adopted by the parties involved with Occupational Health and Safety. The structure of the thesis has adopted an evolutionary approach for it was considered that such an approach would provide periodic yardsticks to evaluate progress and ultimately sufficient information to access contemporary attitudes. As the thesis is concerned with attitudes and approaches, the focus of this conclusion is to thread together the attitudes and approaches of the key participants towards Occupational Health and Safety, namely: the Trade Unions, the Inspectorate, the legislative approach, Penalties and Approaches by the Judiciary, Information provides, Employer groups, Designated OSH person, Multi-National Companies, Small firms and finally, the Worker. Prior to embarking upon a concluding Summary of the 10 subject areas, it is necessary to provide a brief observation regarding the five parts to the thesis as follows:

Part one involved a Preliminary Survey to evaluate attitudes and to determine a focus for further Research. At the time when the Survey was undertaken (between August and December 1993) it was somewhat surprising that the innovative, if not radical Health and Safety in Employment Act 1992 failed to generate any real probing media attention; furthermore, the specialist journals and academic publications were remarkably subdued. The survey involved the analysis of 75 firms selected from the telephone directory in North Taranaki. The survey findings were alarming. For example, 46.5% of the firms surveyed had absolutely no method whatsoever of recording accidents despite the very clear legislative requirement contained within Section 25(1) of the Health and Safety in Employment Act 1992. Of the remaining firms, 19% indicated that if called upon, they possibly would complete an accident form.

As to awareness of the Health and Safety in Employment Act 1992, 8% of the firms surveyed had no knowledge of the existence of the Act. Of particular concern, only 20% of the firms surveyed articulated a real genuine and positive attitude towards Occupational Health and Safety. After completing an analysis of the survey findings, it was considered that there were 10 subject areas that ought to be evalued within further research; five of which to form part of a comprehensive survey. The 10 subject areas were identified as follows:

Requiring further research:	Inclusion within comprehensive survey:
Penalties	Attitudes regarding designated OSH person
Excessive legislations	Methods of Accident reporting
Accident Compensation	Hazard identification
Information providers	Multi–National companies
Attitudes towards the Inspectorate	Small firms

Part two involved a review of legislation between 1854 and 1981. Traditionally the student of Occupational Health and Safety will readily recognise that the Employment of Females Act 1873, together with the Factories Act 1891 and the Shops and Offices Act 1904 as the major thrust of early New Zealand legislation designed to impose conditions, and generally implement structures to protect certain categories of workers. The period 1854 to 1981 was deliberately chosen for the Merchant Shipping Act 1854 is considered to be the real embryonic origins of New Zealand's Industrial Safety legislation. The closing of the era was that of the Factories and Commercial Premises Act 1981 being the last significant piece of legislation that was passed into law before the introduction of the Health and Safety in Employment Act 1992. The summary within Part 2 concluded that were five areas which conveniently encapsulated the attitudes and approaches encompassing the 127 years survey period. The five areas being

- The Response to Tragedy
- The Persistence by strong willed individuals
- Industry based with a narrow focus
- Growth of the Inspectorate
- Duplication of legislation and administrative function

With respect to the response to tragedy, it was somewhat revealing that several pieces of significant legislation were introduced as the result of fatalities. To name certain legislative enactments the Inspection of Machinery Act 1874 followed a fatal boiler explosion on the Thames gold field. The Regulation of Mines Act 1874 was introduced as a consequence of 34 miners losing their lives in the Kaitangata mine disaster. Workers Compensation for Accidents Act 1900 as a result of the Brunner mine disaster of 1896. The Scaffolding and Excavation Act 1922 was introduced shortly after four unfortunate painters fell to their death whilst working on the Endean's building site in February 1922. Again the Construction Act 1959 arose out of a tragic event when two pedestrians were killed when a verandah collapsed on the D.I.C. building in Wellington. With respect to the persistence of strong willed individuals, it was significant during late last century that New Zealand enjoyed the vision and tenacious character of certain individuals. Reformers such as J.B. Bradshaw and William Pember-Reeves can be identified as playing a significant part in developing Industrial Safety legislation as opposed to a dominant political ideology. In a non-political sense two other individuals certainly stamped their dominance in the area of Occupational Health and Safety, namely Edward Tregear the first Secretary of Labour and Dr Tom Garland who was a pioneer in Occupational Health. Unfortunately, the political environment over the past four decades has witnessed a confrontational climate which regrettably is unsympathetic towards individuals with a reforming zeal and commitment. With respect to the legislation being Industry based and with a narrow focus, the bulk of the legislation enacted between 1854 and 1981 had a target industry or specific activity as its prime focus. To a degree, the legislation focused more on setting standards for the physical environment rather than on human and organisational factors. By the mid 1980's, successive Governments created their own straight-jacket by assigning the responsibility for the administration of Occupational Health and Safety on no fewer than seven agencies, namely: The Departments of Labour and Health, the Ministries of Transport, Energy, Works, Agriculture and Fisheries, and the Accident Compensation Corporation. The perplexing aspect with the legislation was that much of it was duplicated within other legislation and several Government agencies being allocated responsibility to the same legislation.

New Zealand was certainly not alone in this confusing picture as the Roben's report graphically illustrated in 1972. A quotation from Selwyn (footnote 44) was apposite for several generations of New Zealand workers up to 1993, namely:

> "... much of our law was obscure and unintelligible to those whose actions it was intended to influence. There was a haphazard mass, intricate in detail, difficult to amend, and frequently out-of-date. Furthermore, the various enforcement authorities had overlapping jurisdictions which caused confusion"

Part three concerned itself with the Hitherto Attitudes of the Parties. In assessing attitudes, part three examined the Inspectorate, Judiciary Trade Unions, Workers and Employers. With respect to the Inspectorate, the research revealed the dilemma involving the confusions of roles, namely the Industrial Policeman versus the Educator/Adviser. The review of literature and interviews clearly evidenced that the institution of the Factory Inspector in both New Zealand and the United Kingdom had individual pride, but suffered from low morale and held negative attitudes towards their imposed role and function. With respect to the Judiciary, the evidence was somewhat ambivalent. It appeared that the Judiciary had little difficulty in establishing fault on the civil test, however the sentencing or penalty application observed no real pattern, except insofar as that the penalties throughout the 1970's and 80's were remarkably modest. The conclusions reached with respect to the Trade Unions considered that the attitudes held were sincere but regrettably ineffectual. Despite the weighty publications promulgated by the New Zealand trade unions during the 1970's and 80's the real tangible influence by the trade unions towards Occupational Health and Safety is highly questionable. As to the individual workers attitude towards Occupational Health and Safety, the available evidence tended to suggest that the attitude ranged somewhere between mild concern to that of complete indifference and apathy. On the employer's side, the large firms demonstrated a hostile attitude toward the Trade Unions, and any recommendation by the Unions towards improving Occupational Health and Safety was greeted with suspicion and at times derision. Regretfully the suspicions between the two groups compromised Occupational Health and Safety to the degree that the conclusion drawn was that large employer groups did not have a positive or encouraging attitude towards Occupational Health and Safety.

Part four concerned itself with the Unfolding of the Health and Safety in Employment Act 1992. Part 4 observed that despite election promises made by the New Zealand Labour party in 1984, it took the Labour Government over six years to introduce reforming legislation in the form of the Occupational Safety and Health Bill 1990. Despite some resistance by Employer groups the 1990 reforming legislation had widespread support, and the consultative approach was genuinely pursued. In contrast, the National Government took less than two years to actually pass into law its reforming Occupational Health and Safety legislation in the form of the Health and Safety in Employment Act 1992. It was observed that the tangible attitudinal positions of the parties had changed dramatically between 1988 and 1992. The ramifications of the Employment Contracts Act 1991 had marginalised the trade union movement and muted its collective voice. The attitude that changed was one of political ideology. State paternalism was replaced with a unitary model that encouraged competition. The days of egalitarian pluralism were relegated to the history books. In many respects, the Health and Safety in Employment Act 1992 is about the changing of attitudes of the participants in the occupational Health and Safety arena. From the Government's perspective, the Health and Safety in Employment Act adopts a "carrot and stick" approach. The "stick" consists of the increased penalties, whereas the "carrot" materialises in the form of attractive incentives for employers in adjustments to their basic ACC levies.

Part five concerned itself with a survey of judicial attitudes and approaches together with a comprehensive survey of 72 New Plymouth firms conducted by personal interviews between November and December 1995. With respect to judicial attitudes, the survey clearly revealed that the approach adopted by the judiciary was hardening towards breaches of the Health and Safety in Employment Act 1992. Penalties had increased significantly. By early 1994 the average fine was $2679 which can be contrasted to average fines being less than $400 a decade earlier. By late 1995 the average fine had increased, with the highest recorded at $21,000. By mid 1995, the judiciary announced that the "honeymoon" was over and that the Courts are now going to ratchet up the level of fines. With respect to the Comprehensive Survey, the summary within Part 5.5 directed its focus upon five subject areas, namely, Designated OSH Person (Safety Officer), Method of Accident reporting, Hazard Identification, Multi-National Companies and Small firms.

As mentioned at the beginning of this Conclusion, a prime focus of the conclusion is to thread together the evolution of attitudes and approaches of the key participants towards Occupational Health and Safety. As such the conclusion is as follows:

THE TRADE UNIONS:

As mentioned earlier in this thesis, the author completed a research paper in England whilst on a legal sabbatical. The title to that paper was "Is there a role for the Trade Unions in Occupational Health and Safety?". The conclusions reached within the research paper were in the affirmative, after reviewing a considerable amount of international literature. In the affirmative view that there was a role or function for the trade unions in Occupational Health and Safety, it was considered that the role whilst ill-defined must be seen at three different levels; namely, the specific role performed by the individual unions at a local level, secondly, the functions at a National level and thirdly, the corporate role of the trade union movement such as embodied in the TUC and the NZCTU. With respect to the individual unions, it was considered that their role was somewhat paradoxically analogous to that of the factory inspector. The basis of that conclusion derived from the fact that in New Zealand as with the United Kingdom the inspectorate suffered from deplorable understaffing and by default the union safety representatives had become the de facto inspector. At the second level involving the National office the research conclusions ascribed the function of the National office to that of the engine room affording protection to the members workplace, health and safety. In facilitating this role or function, the national office adopted the role of an educator in its widest sense. At the third level, the trade union movement assumed a corporate role of an educator and lobbyist. As to the effectiveness of the various levels of the perceived roles or functions the research paper drew a sharp distinction between the British union and the New Zealand trade union movement. The research findings considered that in 1991 the New Zealand trade union movement demonstrated much the same attitude towards the Occupational Health and Safety of its members as the British unions ascribed to, pre 1970. The catalyst in England that witnessed the profound attitudinal change with the Unions towards Occupational Health and Safety were essentially threefold, namely, the findings of the Royal Commission headed by Lord Robens (Robens report 1972), the significant reforms taking place in Scandinavia (particularly Sweden) together with the encouraging statements from the then fledgling European Community on Industrial Safety reform and finally and significantly, the introduction in 1974 of the Health and Safety at Work Act in Britain.

Turning to the approaches and attitudes of the New Zealand trade unions, a particular view can be expressed that New Zealand by its isolation did not have the luxury of directly observing the opportunities enjoyed by their British Union counterparts. However that simplistic view fails to recognise two extremely important aspects which significantly differentiates the New Zealand trade unions from the majority of their international sisters. The differential is two-fold, namely, the radically different evolutionary development of the New Zealand trade union movement from its British counterpart and secondly, the profound effects of the Employment Contracts Act 1991 on the New Zealand trade unions. Taking these two aspects in turn, the following observations are considered apposite:

(i) Legislative protectionism

In stark contrast to the British trade unions which Weddeburn succinctly epitomised the view of British trade unions (that the British worker and trade unions want nothing more of the law than it should leave them alone) the New Zealand trade union movement have since 1894 to 1991 slavishly relied upon legislation and the legal process as an integral aspect of their very existence. The then provocative Industrial Conciliation and Arbitration Act 1894 was highly seducive to a battle scarred fledgling union movement which suffered devastational membership losses following the Maritime Strike of 1890. Under the umbrella of enticing legislation (notwithstanding the existence of the Trade Union Act 1878) union membership grew under the IC&A Act 1894 (whilst precise figures are elusive it is generally accepted that in 1891 there were approximately 3000 trade union members and this figure swelled to approximately 65,000 by 1912). The first criticisms towards the New Zealand trade unions reliance upon legislation rather than the traditional collective bargaining model are acknowledged by Herbert Roth (Trade Unions in New Zealand, 1973) when two overseas apparent experts made comments in the early 1900's. These noteworthy comments are as follows:

> (Ramsey MacDonald) claimed "a trade union in New Zealand exists mainly to get an award out of the Arbitration Court –"
>
> (V.S.Clark) claimed "unions here were litigious rather than militant organisations, thus the creatures and instruments of state regulation –"

The umbrella of legislative protectionism towards the trade union movement continued unabashed through to the Labour Relations Act 1987 which subscribed in minutiae the functional role and the administrative requirements for New Zealand trade unions. In the intervening period the achilles heel of the union movement was increasingly tenderised by a number of events namely:

- Welfare constraints - The case of Oninemuri Mine & Batteries Employees (IUW) v. Registrar of Industrial Unions case [1917] witnessed a situation involving a group of workers seeking registration of an informal association into a registered union. The application was declined because the proposed rules incorporated provisions to make available benefits to injured and deceased members of the proposed union. The proposal was declared by the High Court to be incompatible with the existing benefits made available in New Zealand to accident victims and that trade unions relied upon Government to provide assistance. Accordingly, it was agreed that it was not the place of a trade union to consider entertaining a form of benevolence or welfare to its members as that was the role of Government. This state of affairs would not be tolerated by a then British trade union movement.

- Compulsory Unionism - The first Labour Government introduced compulsory unionism by law in 1936. However in 1951 (and again in 1961) when the National Party threatened to abolish compulsory unionism they found that both the Federation of Labour and the Employers' Federation favoured its retention. It was not until the 1980's that the Employers' Federation changed its view and began advocating voluntary unionism. In 1961 the National Government did abolish legally imposed compulsory unionism but replaced it with a provision that an "unqualified preference clause" that could be inserted in an award or agreement. In effect, this was compulsory unionism by agreement. From 1961-84 virtually every union in New Zealand chose to have the unqualified preference clause inserted. The effect of the clause was that should a worker covered by an unqualified preference clause fail to join the union the employer was entitled to dismiss the worker or alternatively face a $500 fine. Notwithstanding various tinkerings with the system, the union movement enjoyed a highly protective existence (albeit substantially regulated) up until May 15, 1991.

Despite the existence of a "Union Membership Exemption Tribunal", the New Zealand worker was content to work under a compulsory regime. To highlight this aspect the Department of Labour report for 1987 recorded that only 80 applications for exemption were granted (predominantly on religious grounds) and 14 applications were declined.

(ii) The Effects of the Employment Contracts Act 1991:

The Employment Contract Act listed a number of objectives within its long title and in particular recited within (a) and (b) respectively the following

(a) To provide for freedom of Association
(b) To allow employees to determine who should represent their interests in relation to employment issues

The effects of the Employment Contracts Act has witnessed a substantial decline in the number of unions and union membership. Between 1991 and 1994 the number of large unions with 10,000 or more members has declined dramatically to just 10 unions. Union membership affiliated with the NZCTU witnessed a decline in union numbers in 1991 of 43 to 27 as at December 1994. In the same period, the actual membership dropped from 445,116 to 296,959.

In 1983, the late Labour Historian Herbert Roth, proclaimed "... *with all their shortcomings, warts, abscesses and other deformities, unions remain the workers' best friend*" (The State of the Unions: NZJIR [1983], page 56). Sadly that statement may have reflected a particular view in the 1980's but regrettably, the Employment Contracts Act 1991 has shattered the hitherto legislative cocoon. As the research findings completed by this author on the Role of Unions in Occupational Health and Safety in 1991 concluded that whilst the New Zealand trade unions had a positive (albeit ineffectual) attitude towards Occupational Health and Safety, the ravaging effects of the Employment Contracts Act 1991 have unfortunately rendered the New Zealand trade union movement an impotent force in contemporary New Zealand society when focusing upon effective Occupational Health and Safety.

THE INSPECTORATE:

When examining the approaches and attitudes of the OSH Inspectorate prior to the introduction of the Health and Safety in Employment Act 1992 the conclusion reached, placed the New Zealand factory inspector in much the same position as their British counterpart in that notwithstanding individual pride, both Inspectorates suffered from low morale and held negative attitudes towards their imposed roles and functions. The negative attitude derived from a feeling of impotency exacerbated by chronic understaffing, bureaucratic intermeddling, lack of clear direction and legislative focus and inadequate resources. The frustration aspect for the New Zealand Inspectorate was and continues to be the hopeless understaffing. In 1978 a Review of the Factory Inspectorate completed by the Department of Labour and State Services Commission called for the number of Factory Inspectors to be approximately 315. In 1987 with increased complexities after the introduction of the Factories and Commercial Premises Act 1981 and increasing numbers of factories and workplaces, the number of Factory Inspectors decreased to 169. The Health and Safety in Employment Act 1992 posed increased difficulties for the New Zealand Inspectorate. Their head office was radically restructured together with the withdrawal of backup services. They became a service division of the Department and renamed the OSH Inspectorate. Their role became increasingly blurred when the assumption of information providers was enforced upon their shrinking numbers. As identified within Part 5.2.4, the OSH Officers' Handbook presents inconsistent guidance on the threshold requirement as to the nature of the conduct demanding prosecution. Perhaps the most compelling evidence which highlights the dilemma currently confronting the Inspectorate is contained within an article published by the New Zealand Herald on December 22, 1995, and headed "Work Injuries Lead to few Prosecution", provided inter alia;

> *"Occupational safety inspectors are under union fire for prosecuting fewer than 1 per cent of employers of people lodging work injury claims. The Labour Department's occupational safety and health service prosecuted 657 employers in the first 25 months of new workplace safety legislation, the Engineers' Union said yesterday.*

This compared with almost 83,000 work injury claims lodged in the two years to June with the Accident Compensation and Rehabilitation Insurance Corporation.

The union's health and safety officer, Hazel Armstrong, said it spoke a lot for the effectiveness of the service that only 0.8 per cent of employers involved had been prosecuted. She said the union knew of many cases in which the service failed to act against negligent employers. These included what she said was a failure of the service to investigate an Auckland company after a worker had his foot crushed by falling steel in September, and its withdrawal of charges after a woman worker was electrocuted in Christchurch.

Only 17 prosecutions had been taken under a section of the 1992 Health and Safety in Employment Act enabling the courts to fine employers up to $100,000 if convicted of knowingly allowing employees to work in conditions which may cause death or serious harm. A spokesman for the safety and health service, Mr Geoff Wilson, said that prosecutions were only one form of a number of "interventions". It inspected 21,000 workplaces in the year to June, issuing 36,100 notices of required improvements, of which 84 per cent were made within three months. Mr Wilson confirmed that the service, of which he is operations policy manager, was negotiating protocols with the accident compensation corporation for the transfer of information about claims against specific employers. But he said the legislation would allow such information to be used only as an aid to improving safety rather than for enforcement purposes.

An ACC spokesman, Mr Fred Cockram, said that I already provided the Labour Department with a wide range of "generic" information but there were issues of commercial sensitivity to be addressed. Hazel Armstrong said that the corporation seemed to have no such compunction about passing information about individual workers to the Inland Revenue Department and the Income Support Service".

Another aspect which impacts on the low morale of the OSH Inspectorate is the open criticism by other government departments. In an article by the Daily News of September 27, 1995 the Ministry of Agriculture publicly criticised the Labour Department for failing to respond to suggestions for improvements, or indeed receiving conflicting advice.

In summary, the Inspectorate considers itself misaligned from its political masters, suffering from low morale due to understaffing, unappreciated by employer groups and alienated from the public service due to its restricted autonomy. The feeling of isolation is compounded when the judiciary dismisses a prosecution for want of evidence. Perhaps the realisation of the biparte (union/employer) Occupational Safety and Health Advisory Committee and establishment of safety committees together with comprehensive Codes of Practice as proposed by the Labour Government's Occupational Safety and Health Bill may have created an environment to which the Inspectorate could profitably contribute. Alas, that did not happen and one can only conclude that Occupational Health and Safety in contemporary New Zealand is the poorer for it.

LEGISLATIVE APPROACH:

As observed throughout the thesis the legislation culminating with the Factories and Commercial Premises Act 1981 was heavily prescriptive and predominantly industry focused. The current legislation adopting the "carrot and stick" approach is appealing in theory, but unfortunately, significant anecdotal evidence together with the conclusions drawn from the 1995 Comprehensive survey suggest that the current legislation is not working. Non prescriptive legislation can only function effectively if the target audience comprehend the purpose and intent. It is considered that the "carrot and stick" approach of the Health and Safety in Employment Act 1992 is not having the desired effect.

As discussed within the Comprehensive survey, a significant number of employers consider the ACC rebates insufficient to warrant going the extra distance. Added to this approach, employers can take comfort from the New Zealand Herald's article (supra) that OSH Inspectors are only prosecuting fewer than 1% of employers of people lodging work injury claims. If the incidents of "underreporting" are correct (less than 10% of accidents reported) one must seriously question the effect of the current legislation in promoting "excellence" in Occupational Health and Safety.

PENALTIES AND APPROACHES BY THE JUDICIARY:

To a large degree the judiciary adopted a cautious approach to the Health and Safety in Employment Act 1992 when it became law on April 1, 1993. That view is endorsed by Judge Moore who stated on November 12, 1993 that "there is an element of adapting to a new statutory framework ... over a period of time fines will tend to rise within the statutory maximum". In a sense the judiciary were well aware of the modest level of fines imposed under the previous pieces of legislation. However Justice Tipping and Fraser 12 months latter in the De Spa case maintained that a fine of $6500 when an employee was killed when he was trapped in a wool bale elevator was manifestly inadequate and increased the fine to $15,500. Whilst the current levels of fines is considered in some quarters to be low, the 1995 Comprehensive survey concluded that the majority of employers considered them to be high. The other significant approach adopted by the judiciary is the increasing utilisation of Section 28(1) of the Criminal Justice Act 1985 by directing the payment of all or part of the fine to the victim. Whilst there is no direct evidence that the judiciary are compensating victims due to the abolition of lump sum compensation under the current Accident Compensation Scheme, anecdotal evidence would suggest that the judiciary are keenly aware of the vulnerability of accident victims. In conclusion, it certainly appears that the judiciary are in effect, de facto educators by issuing deterrent lessons through significantly increased penalties, hitherto undreamed of a decade ago.

INFORMATION PROVIDERS:

Perhaps the most scandalous aspect of the Health and Safety in Employment Act 1992 has been the unrestricted growth of Information providers. The 1995 Comprehensive survey revealed that the growth of the so-called "Consultant" was staggering. In many cases the consultant had absolutely no training in Occupational Health and Safety. One particular Transport firm stated that shortly after the introduction of the legislation, his firm was visited by no fewer than five individuals who were anxious to audit the first aid cabinet and provide advice.

In many respects the majority of the Information Providers are little short than charlatans preying upon the gullibility of confused employers. Three firms within the Comprehensive Survey had purchased the same Health and Safety policy from one particular organisation. The only difference was the name of the firm on the front page and the prices ranged from $450 to $1250. The tragedy being that all three firms could not understand the standard policy, but felt that they were complying with the provisions of the Act. Whilst there are of course excellent Information providers and consultants offering valuable advice to industry, their numbers are few. Whilst the OSH Inspectorate are quick to provide criticism about the deficiencies within the private sector, Information Providers, OSH itself by default, have encouraged the current unsatisfactory situation.

EMPLOYER GROUPS AND MULTI-NATIONAL COMPANIES:

Throughout the history of New Zealand's Occupational Health and Safety development employer groups have displayed a hostile attitude towards any interference with the Managerial prerogative. As far back as June 1891 the Wellington Employers' group argued that "the provisions of dining rooms for workers' in factories would drive capital out of the colony ... that the Bill (Factories Act 1891) was really to cripple and ruin manufacturers". It appears that this particular attitude continued throughout the years and attitudes typically held by the employer in the pre 1992 era were succinctly expressed by David Farlow in 1988 as follows:

> "Employers do not want to see legislation giving what might be termed "extra rights" to employees – they would certainly regard that as a negative outcome of the reform process ..."
> and in 1991:
> "It is now generally agreed that health and safety must be managed just like any other business function with responsibility and accountability resting with management".

It would be incorrect to state that all Employer groups share similar approaches and attitudes towards Occupational Health and Safety. Clearly the voice of very larger Employers is communicated via the Employers' Federation and the New Zealand Business Roundtable. The 1995 Comprehensive Survey concludes that whilst the majority of surveyed firms failed to have comprehensive structures in place, they did nonetheless display an anxious attitude and frustration with the unknown. Perhaps in a global sense, a clue to employer attitudes can be found in the traditional indifference toward bureaucracy. For example a local newspaper (North Taranaki Weekender) published on February 19, 1995 an article headed "Fire evacuation apathy". The article found that only 5% of buildings in Taranaki had an approved evacuation scheme or procedure under the Fire Safety and Evacuation of Buildings Regulations 1992. Is this simply "Apathy" or an inability to comprehend, or is it a dogged attitude of "we know best and we don't need these time wasting rules"? Regretfully the evidence from the 1995 Comprehensive survey would suggest that the majority of New Zealand employers subscribe to cosmetic compliance without real commitment, and a plea to leave us alone.

On the subject of Multi-National Companies -

> A popular notion suggests that large multi-national companies are better equipped to manage Occupational Health and Safety. The recent survey would not support that notion. Of the 72 firms surveyed, 15 firms (21%) had a head office in either Auckland or Wellington, or were a subsidiary of an overseas organisation.
>
> The three firms that reported to an overseas head office indicated different problems to that of their New Zealand head office counterparts. The three firms with overseas offices all reported frustration in communicating the serious way in which the New Zealand authorities were regarding Occupational Health and Safety.

One particular firm produced a thick wad of facsimile messages where the local manager was attempting to seek clarification on a safety aspect within the oil drilling industry. The overseas response was to refer to the Safety Manuals, without explanation. Accordingly, the impressions gained with the overseas companies is that an International Manual on Safety is sufficient, whereas the local manager confronted by a non-prescriptive legislative regime felt incredibly isolated and vulnerable.

With respect to the New Zealand head office situation, the majority of responses tended to indicate that the local firm did not know the "thinking" of Head Office and were more or less left to their own devices. In part this situation can be explained from the resultant effects of the "Flat Management" structures and devolution of authority. Whilst the local managers did not have the same feeling of isolation, they did nonetheless express similar feelings of frustration due to lack of input from Head Office. In all cases, it certainly appeared that the impression from Head Office was that the local firm or branch had the local knowledge and ought to be able to identify its own peculiar problems and sort them out. Accordingly, it is concluded that Multi-National Companies do not have any greater advantages over locally owned organisation with respect to Occupational Health and Safety.

DESIGNATED OSH PERSON (SAFETY OFFICER):

Of the 72 firms surveyed in 1995, 80% indicated that they had a specific person designated within the firm who was responsible for Occupational Health and Safety. Apart from five firms, the designated individual was described as the "Safety Officer". In stark contrast, the Preliminary Survey conducted in 1993 and involving 75 firms, revealed that a mere 18.5% of firms employed a person that was specifically designated to be responsible for Occupational Health and Safety.

The 1995 survey revealed that 20% of the firms surveyed had no person designated whereas the 1993 survey revealed that 45% of the firms had no specific person designated to be responsible for the Occupational Health and Safety aspect. Of significance, is that the remaining 36% of the firms within the 1993 survey argued that whilst they did not have a designated person, either the boss or everyone was responsible.

The begging question is why is there such a dramatic increase in a two year period in the number of firms that currently designate to a specific employee the functional role of Safety Officer? From the survey responses, it is considered that there is a threefold explanation, namely:

(i) Greater awareness and genuine concern/fear as to penalties.
(ii) Increased media information and knowledge.
(iii) To present the illusion of compliance.

Turning to the 1995 survey, the general impression gained that apart from four firms that employed full-time Safety Officers specifically in that role, the remaining 54 firms that designated certain employees as part-time Safety Officers failed to comprehend the real role and functions of a Safety Officer. Whilst the full-time Safety Officers attended formal training, only four firms from the 54 firms sent their part-time Safety Officers on formal training courses. Accordingly it is considered that these 54 firms have simply failed to provide the tools to its designated Safety Officers to carry out their specified functions.

In short, the vast majority of Safety Officers had no real training, nor was any training projected. A further impression gained was that a significant number of firms simply appointed Safety Officer as mere window dressing and as a method of passing responsibility undesired by Senior Management.

SMALL FIRMS:

The research from England during the 1980's supports the claim that small firms are exposed to a greater risk of safety breaches than larger workplaces. In 1990 the HSE published statistics that displayed that workers employed in a workplace with under 50 employees had a 20% greater chance of having an accident than those employed in establishments with 100–1000 employees. In New Zealand approximately 88% of registered factories employ less than 20 workers.

The Preliminary survey concluded that there was a difference in attitudes towards Occupational Health and Safety between very small firms employing between one and three workers as those firms that employed greater than four workers. In general the Preliminary concluded that whilst Small firms had virtually no systems in place, they practised and subscribed to a safe form of working; effectively for economic survival. From the analysis of the 32 small firms as surveyed in 1995 a number of changes have taken place; albeit somewhat cosmetic. However the significant change within the two year period is the overwhelming commitment to employ experienced and safe workers. The vast majority of the small firms (including a significant number of the medium sized firms that employed up to 30 workers) made no secret that they did not have the resources to train workers and considered that the only way to prevent accidents was to employ highly trained workers from the dwindling pool of such experienced personnel.

Several small firms had advertised overseas in preference to local labour. Accordingly, the intervening two year period has witnessed a change within small business in that it now seriously evalues its workforce and is increasingly discriminatory, notwithstanding the provisions of the Human Rights Act 1993. In short, the conclusions regarding Small firms is whilst they have few formalised structures or procedures in place, they as a group rely heavily upon the experience of its workforce to adopt safe working practices for the economic survival of the firm.

THE WORKER:

The popular catchcry by the Employer groups is that accidents are caused by workers' carelessness rather than defective plant or production pressures. Whilst little research has been completed in New Zealand on worker attitudes it is considered that the "Careless Workers" theory espoused by Ross Wilson, and the "Three Thirds Rule" referred to by Jack Harrop realistically provide a yardstick for worker attitudes as at 1992. The "Careless Workers" theory states:

> "No doubt unsafe acts by some workers do contribute to some accidents, but there is overwhelming evidence that inexperience, inadequate language comprehension, insufficient training and information, production pressures, fatigue, stress and monotony are among the most common explanations of human error rather than carelessness or apathy"

The dimension of worker attitudes to Occupational Health and Safety is complex. However two newspaper articles do in some way provide a partial answer to the contemporary approaches by workers towards safe working practices and attitudes generally. The first article appearing in the New Zealand Herald of December 1, 1994 is headed "Job strain injury up 40% in a year". The article recorded that reported cases of Occupational Overuse Syndrome (OOS) had increased 40% in the past year and 50% of all cases of notifiable disease were OOS.

With the incidents of "under reporting" the question can be posed as to what are the real statistics? Anecdotal evidence, especially from the Medical Profession would explain that because of decreased penalty pay rates, workers are working longer hours. This would be supported from the dramatic decrease in permitted sick leave provisions within Employment Contracts since the introduction of the Employment Contracts Act 1991.

In an article by the Daily News of May 30, 1995 headed "Alarm over truckies' hours" the article reported that there were some quite serious breaches of the Transport legislation and cited three instances where drivers had been working for more than 150 hours before a 24 hour break. In essence, an explanation can be provided that many workers are working longer hours and are prepared to absorb discomfort for economic reasons.

The other relevant article appearing in the Daily News of July 12, 1995 is headed, "Fatal accidents blamed on lack of skilled staff". That particular article reported the views of the CTU that lack of experience and inadequate training are to blame for the high number of fatal accidents among Works Civil Construction staff. The article recorded that five staff have been killed in accidents during the past 18 months. It was reported that many staff were being employed on short-term contracts and that they did not have the experience to work with heavy machinery in hazardous conditions. Whilst the Small firms surveyed in the 1995 Comprehensive survey explained that they relied upon the skill and experience of their workers for compliance with the Health and Safety in Employment Act 1992. However, the disturbing trend is that since the advent of the Employment Contracts Act 1991, a growing segment of the workforce is becoming casualised and employed on part-time or on short term engagements. The hefty redundancies due to business restructurings since the early 1990's has witnessed a profound exit of skilled and experienced employees from the workforce. In short, there is ample evidence to conclude that a sizeable portion of the New Zealand workforce is both inexperienced and unskilled.

In conclusion, it is considered that whether or not a worker displays a negative attitude towards Occupational Health and Safety, the workers' attitude is a redundant consideration in the contemporary New Zealand workplace. The reasoning can be summarised as follows:

- The hitherto legislative framework that prescribed to a prescriptive model since 1854 has been totally dismantled leaving the worker to ponder upon standards.

- The dramatic decline in trade union membership since the introduction of the Employment Contracts Act 1991. Herbert Roth's "workers' best friend" has been legislatively divorced from the worker.

- The market place economy appears to be unsympathetic toward ensuring workers are adequately trained, and for economic reasons, workers are prepared to assume risk and absorb discomfort and injury.

- Notwithstanding the provisions of Section 14 of the Health and Safety in Employment Act 1992 (Employers to involve employees in development of health and safety procedures) only 36% of the firms surveyed in the 1995 Comprehensive survey involved their staff in discussions upon OSH or input into the planning.

- With respect to "excellence" in Occupational Health and Safety management, the sick, lame and lazy can take little comfort from the discriminatory provisions of the Employment Contracts Act 1991 (personal grievances) and the Human Rights Act 1993 (complaints) when an employer adopts a broad view of the Health and Safety in Employment Act 1992. It would be an extremely benevolent and courageous employer who currently would consider employing a worker with an accident record or displaying a physcial or mental disability and confirming a placement on a production line or other non-sedentary activity.

APPENDIX ONE (1)

NEW ZEALAND INSTITUTE OF MANAGEMENT INC

CHIEF EXECUTIVE OFFICER'S CHECKLIST

REPORT

OF COLLATED RESULTS OF THE "SURVEY" CONDUCTED BY THE NEW ZEALAND INSTITUTE OF MANAGEMENT INC USING THE CHIEF EXECUTIVE OFFICER'S CHECKLIST.

N Z I M

The Management Resource

NATIONAL SAFETY COUNCIL OF AUSTRALIA NSCA SOUTH AUSTRALIAN DIVISION LIMITED

July 1994

$20.00 (including G.S.T)

INTRODUCTION

The Chief Executive Officer's Checklist was developed in association with the New Zealand Institute of Management, by the National Safety Council of Australia, South Australian Division Limited, as an investment into New Zealand's "Management of the Future" to :

INITIATE A MISSION STATEMENT GOAL OF "BEING RESPONSIVE AND ORIENTATED TO THE MANAGEMENT COMMUNITY'S NEEDS".

ACTION A NZIM BUSINESS PLAN OBJECTIVE FOR ORGANISATIONS TO :

1. "Fully understand the level of organisational awareness of Employer Health and Safety obligations."

   and then -

2. Integrate Occupational Health and Safety Systems into day to day organisational Management structures.

This was actioned through a multi-purpose document that would initiate a Survey result for future Management direction by :

- Creating an awareness of the O.H.&S. Legislative requirements;
- Introducing the Health & Safety in Employment Act 1992 through a checklist approach to the Chief Executive Officer;
- Initiating a Chief Executive Officer internal organisation "responsibility" check;
- Initiating a Chief Executive Officer Self Audit;
- Initiating an appraisal by the "Responsible Officer" of in-house practices relevant to Policies and Procedures in the critical area of O.H.&S.

The Checklist

The checklist identifies some of the key factors of Systems Management relating to Corporate Policy affecting the Health, Safety and Welfare of employees in the workplace, eg :

- Assignment of Responsibility
- Knowledge and Understanding of Legislation
- Involvement of Employees in O.H.&S. through consultation
- Hazard Management
- Informing employees so they understand
- Training and Supervision
- Medical monitoring
- Emergency Planning.

Many of the questions directly relate to an Organisation's legal responsibilities under the HEALTH AND SAFETY IN EMPLOYMENT ACT 1992.

The responses received being the basis for the New Zealand Institute of Management to :

"Assist Employers to cope with the commitments which the Act demands and to assist Management generally to appreciate the importance of good health and safety practices within the workplace."

PRINTING AND CIRCULATION BASIS

The Chief Executive Officer's Checklist was printed by the New Zealand Institute of Management and mailed to 2,000 New Zealand companies of diversified interests within the Industrial and Commercial business sector.

Response Information

Two hundred and ninety-six completed responses were received from the period of mailing 30 August 1993 to 30 November 1993, when the checklists were collated per question to give the results that follow in this Survey report.

Not every one of the two hundred and ninety-six respondents answered every question of the Survey Checklist, but all the questions answered have been collated to give the results. The results on the questionnaire format show in the left hand column a total respondent number to the questions, and then each question has been identified to show the YES responses and NO responses with percentages against the question total received.

Special Note

The New Zealand Institute of Management would like to thank all those Chief Executive Officers/Managers who took the time to answer the questionnaire Survey paper, this in itself showing the importance of a commitment to the future of New Zealand's organisational management.

From the actual responses, the New Zealand Institute of Management has developed a Forward Plan direction to encompass Occupational Health and Safety Management within Organisational Management Practices. This approach is seen as an Institute investment into "The Management of the future", considering the Global Direction of Occupational Health and Safety assessed by the S.A. Division of the National Safety Council of Australia, considering Occupational Health, Safety and Welfare Programming, stated as follows.

GLOBAL DIRECTION

A. Occupational Health, Safety and Welfare Organisational Programmes should :

   (i) be documented to manage the specific Key Elements of Health, Safety and Welfare relevant to an organisation;
   (ii) be measurable;
   (iii) be subject to an annual review;
   (iv) initiate Continuous Improvement.

B. Such Occupational Health, Safety and Welfare Programmes will only be successful with :

   (i) Management commitment;
   (ii) systems in place to manage them;
   (iii) procedures to implement the systems;
   (iv) effective training to ensure the procedures happen; and
   (v) a monitoring process to maintain and initiate Continuous Improvement.

C. Currently overseas, it is considered "if you don't have it in writing ... you don't have it", therefore there is a need to have documented Systems, Procedures, Training and Monitoring, supported by an initial foundation statement of commitment namely an Occupational Health, Safety and Welfare Policy.

D. Other findings in global direction have realised that fines on organisations are often highest where no records are kept or maintained.

It should also be noted that if an organisation needs to comply ... they should comply, and that there is no substitute for "Self Area Management" through practical checklists that enable the responsible person/s to manage their specific area of Safety, Health and Welfare responsibility.

It should also be noted that training records of employees should be documented as proof of effective training given.

ADDITIONAL OUTCOMES OF THE SURVEY

Additional outcomes of the "Survey" proposed from the initiating objectives are to create to the Responsible Officer an awareness to :

- Integrate Health and Safety into the Management function;
- Introduce Health and Safety accountability through responsibility assignment;
- Create the awareness to develop and introduce systematic management to control Health and Safety defining the two major areas of management needed within an organisation namely :
  - the people who manage
  - the system to manage;
- Identify and seek resources to help and assist Health and Safety Management.

Direction

Further to this report the New Zealand Institute of Management Inc will develop a Strategic Plan to enable outcomes to happen. This will assist organisations to initiate Health and Safety Continuous Improvement by building O.H.&S. into Management practices utilising "Self Area Management".

Report Detail Information

The following pages of this report categorise the two hundred and ninety-six (296) responses received from the surveyed New Zealand Chief Executive Officers.

- Column 1 Total number of responses received
- Column 2 The question detail asked in the Survey
- Column 3 The Positive (YES) responses (number received against the total)
- Column 4 The Negative (NO) responses (number received against the total)
- Under each question is a guide opinion relevant to the actual question.

Not everyone of the two hundred and ninety-six (296) respondents answered every question, but all questions answered have been collated to give the following results.

1	2	3	4
295	1. Do you have a written Occupational Health, Safety and Welfare Policy and is it circulated and made known to all employees?	YES ☐ 195 66.1%	NO ☐ 100 33.9%

Question 1 Comments:

1. An Organisation's Occupational Health and Safety Policy developed in consultation with the employee lays a foundation on which to build a practical O.H.&S. programme. It is recommended that it be promoted to all employees through induction and or awareness sessions to be the basis of the programme.

292	2. Is it signed and dated by the Chief Executive Officer?	YES ☐ 157 53.8%	NO ☐ 135 46.2%

Question 2 Comments:

2. The Occupational Health and Safety Policy should be signed by a consultations representative and master signed as the Companies commitment by the "Chief Executive Officer". It should be dated and identified with its next review date to enable current commitment at all times.

282	3. Do you have a plan of action and measurable Corporate Objectives to support the fulfilment of the Occupational Health, Safety and Welfare Policy?	YES ☐ 163 57.8%	NO ☐ 119 42.2%

Question 3 Comments:

3. A Company plan of Action (developed annually) should initiate how the Occupational Health and Safety Policy is to be implemented, maintained and monitored within an Organisation. The plan should initiate Key Objectives and Key Strategies for achievement, each complimented by responsibility assignment and time parameters.

287	4. Are the OH&S objectives measurable?	YES ☐ 186 64.8%	NO ☐ 101 35.2%

Question 4 Comments:

4. The Occupational Health and Safety Objectives should be practical achievable and measurable and be subject to a minimum 3 monthly review at Management Team or Committee meetings to assess achievement and identify additional resources allocation.

288	5. Have your Supervisors been involved in their planning?	YES ☐ 175 60.8%	NO ☐ 113 39.2%

Question 5 Comments:

5. Supervisors should be involved in the planning of the Occupational health and Safety Objectives relevant to their area of responsibility to initiate "ownership".

289	6. Do they report to you monthly of the plan and objectives progress?	YES ☐ 110 38.1%	NO ☐ 179 61.9%

Question 6 Comments:

6. Regular reports should be sought from Supervisors regarding their O.H.&S. objectives and status relevant to their responsibility. Recognition of achievement through accountability measurement will be identified by this Management process.

260	7. Do you monitor the plan to see it happens?	YES ☐ 138 53.1%	NO ☐ 122 46.9%

Question 7 Comments:

7. The "Chief Executive Officer" should regularly monitor the overall O.H.&S. plan relative to their Organisations objective and achievements. Random on floor inspection visits to enable the Supervisors to "show and tell "should also be a part of this monitoring.

289	8. Do your Managers and Supervisors manage hazards and risks in a planned approach?	YES ☐ 216 74.8%	NO ☐ 73 25.2%

Question 8 Comments:

8. Management and Supervision should have a planned approach to manage hazards and risks relevant to their area. This should be addressed by identifying the risks and hazards through a comprehensive survey. "Self Area Management" should then be initiated to eliminate, control and monitor them. Employees should be involved in this practical process.

	9. How do they do it?	

"Responses Received" Question 9

- Written procedures through ISO 9002
- Job induction and consultation with employees
- Action hazard listing generated by inspections
- Loss control policy and programme with defined accountability
- Work area committees
- Critical incident recall
- Systematic hazard identification programme through auditing
- Ad hoc approaches
- Analyse problems and develop action plans
- Monthly checklists with reports
- Encouraged hazard reporting and investigation
- Departmental meetings
- I.S.R.S. International Safety Rating System
- Planned Housekeeping checklists
- Statistical reports to identify trends
- Occupational Health and Safety Committee
- O.H.&S. Programme with set methods and procedures per Element
- Regular Branch and Departmental Audits by external consultants
- Recording near-miss incidents

- Accident review committee
- By crisis
- Concentrated audit focus initiating improvement plans
- Liaison with Health and Safety work groups
- Compliance programme for O.H.&S.
- Job safety analysis and task assessment
- Team talks and involvement
- Prioritised safety audit programme
- Dupont STOP Programme
- Hazard forms and (M.B.W.A.) Management by Walking Around
- Training by Department of Labour
- Weekly crew meetings
- Management monitoring
- Good training programme from a needs analysis
- Critical path feasibility studies initiating action plans
- Enterprise Self Management
- Good training to fulfill responsibilities
- Safe operating procedures registered with a review process
- Checklists per project
- Hazard register and action plan
- Compulsory induction to a set plan
- Regular inspection and follow-up
- Personnel Management meetings with Safety Representatives and Supervisors
- Direct management delegation and follow-up
- Management Improvement Programme
- Well trained supervision
- Planned inspections with a follow-up action plan
- New Zealand Legislative guides
- Employee interviews
- Risk removal programme
- Safety team training
- Annual Business Plan with reviews of achievement
- Self Priority objectives
- Hazard spotting competition
- Good Occupational Health and Safety Policy with procedures for action.

287	10. Have you trained them to do it effectively?	YES ☐ 167 58.2%	NO ☐ 120 41.8%

Question 10 Comments:

10. Managers and Supervisors should be trained in line with their responsibilities for O.H.&S. Hazard identification and Hazard Management to assist within a "Self Area Management" programme. A planned approach must be developed by the Organisation for Managers and Supervisors integrating management practices, consultation and "shop floor" Safety Ownership.

290	11. Do you have responsibilities and accountabilities documented for delegated Management and Supervisor positions within your Organisation, including OH&S responsibilities?	YES ☐ 200 68.9%	NO ☐ 90 31.1%

Question 11 Comments:

11. Management and supervision hold delegated responsibilities and accountabilities on behalf of the Organisations' Chief Executive Officer. These should be documented and include all relevant departmental and legal responsibilities from the Health and Safety in Employment Act. The responsibility statements should be cross referenced to the Occupational Health and Safety Policy. This will ensure the Policy is able to be achieved and monitored through delegated responsibilities.

288	12. Are these accountabilities used to develop career path training for the individual and evaluated annually in staff appraisals to set direction for employees and the Company?	YES ☐ 107 37.1%	NO ☐ 181 62.9%

Question 12 Comments:

12. The individual documented accountabilities should be used to initiate discussions to appraise measure and recognise the relevant individual. (Suggested 6 monthly) This approach develops career path planning as well as job accountabilities and responsibility updates. It will also initiate an agreed training personnel development plan that benefits the Company and the individual concerned.

286	13. Is the subject of Occupational Health, Safety and Welfare on the Agenda at all Board/Senior Management and Team meetings to discuss strategies and monitor objectives and plans?	YES ☐ 122 42.6%	NO ☐ 164 57.4%

Question 13 Comments:

13. Occupational Health and Safety Objectives should be an integral part of an Organisation's annual "business plan" and therefore, should be subject to status reports and monitoring discussions at Management team meetings and the Board level considering "Due diligence".

293	14. Is Occupational Health, Safety and Welfare given a high profile and commitment by Management through written communication material such as Annual Reports, in-house magazines, etc?	YES ☐ 164 55.9% NO ☐ 129 44.1%

Question 14 Comments:

14. An Organisations Occupational Health and Safety should be given a "major profile" through its promoted statement of commitment the (Policy). The overall success of safety through "ownership" can only be brought about by "all" employee participation. This can be initiated through good communication and feedback mediums within Company publications, magazines and Annual Reports.

293	15. Are Department/Section Heads fully aware of their personal and Corporate responsibilities under statutory law and common law on your behalf as a "Responsible Officer"?	YES ☐ 219 74.7% NO ☐ 74 25.3%

Question 15 Comments:

15. Training for Management and Supervisors should include and spell out the "delegated responsibilities and accountabilities" the individual holds on behalf of the "Chief Executive Officer". The documented job responsibility statement should be cross referenced to ensure training initiated is relevant to the job role.

	16. Are your first-line supervisory personnel adequately trained considering :	
290	· Responsibilities/accountabilities?	YES ☐ 209 72.1% NO ☐ 81 27.9%
288	· Acts, Rules and Regulations that apply to them?	YES ☐ 165 57.3% NO ☐ 123 42.7%
292	· Hazard Management?	YES ☐ 192 65.8% NO ☐ 100 34.2%
286	· Accident Investigation?	YES ☐ 176 61.5% NO ☐ 110 38.5%
288	· Safe Systems of Work?	YES ☐ 216 75.0% NO ☐ 72 25%

Question 16 Comments:

16. Supervisory personnel hold "one of the most important jobs" industry and commerce has to offer therefore these personnel should be adequately trained to ensure they understand the Industry concepts and Organisational specifics relevant to Occupational Health and Safety

Eg:

- Responsibilities and Accountabilities of the job role
- Any Acts, Rules and Regulations that applies to their role
- Organisational Hazard Management from identification techniques to monitoring through "Self Area Management" and Site Specific Checklists
- All Incident Investigation from reporting to remedial action planing and follow up.
- The Safe System of Work principles and how they are applied
- Job observation to evaluate the System of Work
- Work practice reviews
- Developing Safe Systems of Work

287	17. Do you have effective channels of communication between all levels of employees in your Organisation?	YES ☐ 263 91.6%	NO ☐ 24 8.4%

Question 17 Comments:

17. Effective Communication throughout an Organisation will keep people informed, promote good consultation and participation, allow feedback, recognise effort and promote positive attitudes. It can also be used to advise people with confidence of what is happening when, how it will happen and who will be involved.

285	18. Do Safety Committees, joint consultation meetings etc, focus on proper practical OH&S safety objectives, allowing for employee involvement as a valued resource of input?	YES ☐ 209 73.3%	NO ☐ 76 26.7%

Question 18 Comments:

18. Any Committee should have a reason to meet "a purpose". Integrated within the purpose should be the aims and objectives with ground rules." A formal constitution will maintain a measurable approach. O.H.&S. objective monitoring can be integrated into the committees role and responsibilities.

284	19. Are you continually briefed as to current status and actions of the Safety Committee?	YES ☐ 172 60.6%	NO ☐ 112 39.4%

Question 19 Comments:

19. The Chief Executive Officer should be on the "distribution" list of all Safety Committee meeting minutes. Briefings of meetings should be planned to keep the CEO up to date regarding planning development and direction of O.H.&S. as well as any proposed recommendations. This approach will also identify contribution recognition and future commitment needs.

289	20. Are all accidents reported to you within 24 hours for your action?	YES ☐ 171 59.2%	NO ☐ 118 40.8%

Question 20 Comments:

20. Accident Incident reports to the CEO should be part of the Accident and Incident reporting procedure. All accidents and incidents should be reported to the "Chief Executive Officer" within 24 hours of them happening. This enables the Responsible Officer the opportunity to follow them up, personally, to show care, concern and commitment on behalf of the Organisation.

287	21. Do you see all accident report forms to assess your Responsibility as the "Responsible Officer"?	YES ☐ 139 48.4%	NO ☐ 148 51.6%

Question 21 Comments:

21. The Chief Executive Officer should see all completed accident incident report forms. The CEO assessment of these forms can be used to evaluate the effectiveness of delegated responsibilities and training and overview the investigation process used to pinpoint any Management Systems failure. These reports should also outline any commitment to Remedial action required.

292	22. Do you have an accident reporting, recording and investigation procedure/system that determines real causes of accidents and not just allocates culpability?	YES ☐ 238 81.5%	NO ☐ 54 18.5%

Question 22 Comments:

22. An Organisation should have in place a documented all type incident accident procedure. It should include reporting, recording and investigation requirements and formats to identify real causes. The procedure should be subject to in house awareness sessions and induction and subject to an annual review.

287	23. Does the investigation develop a remedial action plan to include method, material or machinery changes and training required to prevent its re-occurrence?	YES ☐ 222 77.4%	NO ☐ 65 22.6%

Question 23 Comments:

23. The Incident Accident Investigation should initiate positive strategies for remedial action. Outcomes of the investigation should include proactive approaches and information that can be used in future Organisation approaches.

Eg
- Inclusion in future inductions
- Inclusion within employee training
- Evaluation of the System of Work
- To Initiate a change of Policy
- Awareness sessions for employees
- Material assessments or Changes
- Work environment and area changes
- Plant equipment changes and or modifications
- Protective equipment and clothing updates
- Medical Monitoring requirements
- Inclusion in Supervisor training and responsibilities
- Inclusion within the Self Area Management programme

286	24. Do you use accidents investigation to initiate SOPs (Safe Operating Procedures)?	YES ☐ 208 72.7%	NO ☐ 78 27.3%

Question 24 Comments:

24. A good incident Accident investigation will identify the need for a review of existing Safe Operating Procedures (S.O.P.s) or identify the need for developing one. Safe Operating Procedures (S.O.P.s) should be written to a Standard Procedural criteria for use throughout the Organisation. All Standard Operating Procedures should be on a register and should be subject to a review frequency.

	25. Is this remedial action then monitored through information, instruction, training and supervision to :		
286	· Employees?	YES ☐ 203 71.0%	NO ☐ 83 29.0%
287	· Supervision?	YES ☐ 215 75.0%	NO ☐ 72 25.0%

Question 25 Comments:

25. The remedial action plan should also integrate the outcomes of basic legislative requirements for employees and supervision eg information, instruction, training and supervision.

	26. Are accident statistics compiled and used to :	
291	· Determine Occupational Health, Safety and Welfare programme emphasis?	YES ☐ 164 56.4% NO ☐ 127 43.6%
292	· Evaluate the programme's effectiveness?	YES ☐ 157 53.8% NO ☐ 135 46.2%
287	· Identify trends?	YES ☐ 202 70.4% NO ☐ 85 29.6%
291	· Identify training and awareness requirements?	YES ☐ 200 68.7% NO ☐ 91 31.3%
285	· Evaluate employee responsibility?	YES ☐ 154 54.0% NO ☐ 131 46.0%
287	· Update the Occupational Health, Safety and Welfare programme?	YES ☐ 168 58.5% NO ☐ 119 41.5%
291	· Update Employee induction?	YES ☐ 161 55.3% NO ☐ 130 44.7%

Question 26 Comments:

26. Good useable Incident Accident statistics can be initiated from an effective reporting procedure. This will be complimented by reporting the following Incident types that can be collated for trend assessment.

- First aid treatments
- Near misses
- Damage incidents
- Medical treatments
- Injury causing incidents
- Lost time incidents

Statistics from the above can be used to evaluate the O.H.&S programme and identify trends that may require work practice review, or specific project approaches eg: eye safety and manual handling etc. They can also identify training and or awareness requirements eg, Ladder use, Chemical handling, housekeeping, driver awareness etc. They can also identify areas and levels of responsibility and profile requirements that should be included within induction and training.

294	27. Are accident statistics calculated or expressed in monetary terms for the valued employee resource loss and/or replacement?	YES ☐ 60 20.5% NO ☐ 234 79.5%

Question 27 Comments:

27. Accidents and Incidents in most Organisations are aligned to "direct costs" in dollar terms, only considering Lost time in hours per employee and then multiplied by an hourly production rate. Resource loss and associate incident unplanned costs should be identified to give true costs.

296	28. Do you cost accidents?	YES ☐ 58 19.6%	NO ☐ 238 80.4%

Question 28 Comments:

28. If Accident Incidents are costed to identify both "direct" and "indirect" cost, the Organisation will identify a major previous hidden cost area namely indirect costs.

291	29. Are your accident costs, direct and indirect known?	YES ☐ 50 17.2%	NO ☐ 241 82.8%

Question 29 Comments:

29. Direct costs of an Incident Accident are traceable. Indirect cost require a specific project criteria to enable identification.

290	30. Do you know what your indirect cost ratio is?	YES ☐ 30 10.3%	NO ☐ 260 89.7%

Question 30 Comments:

30. The Chief Executive Officers Financial adviser will be able to identify "direct" accident incident cost and no doubt will have in place a procedure to uncover "hidden costs", "indirect costs" or "absorbed costs". This will initiate an Organisation cost ratio (indirect to direct) relevant to incidents. Effective Accident Incident costing can be built into established accounting procedures and realise the following benefits to;.

- present a realistic measure (dollars) of incidents
- expose previous acceptable hidden costs
- put incidents into perspective relevant to cost
- develop Accident Incident reporting to be a major source of information

275	31. Are all direct costs associated with all accidents charged to operating cost centres or departments and focused to draw attention to the monetary cost of accidents by department?	YES ☐ 73 26.5%	NO ☐ 202 73.5%

Question 31 Comments:

31. Cost centre accounting focuses on expenditure per area or department within an Organisation. When Accident Incident "direct" and "Indirect" cost are aligned to this process, it can and will identify the need for resource allocation to initiate corrective measures.

274	32. Is care, concern and assistance used in your Organisation to Manage the injured employee and their claim?	YES ☐ 249 90.9%	NO ☐ 25 9.1%

Question 32 Comments:

32. Organisations should have in place a complimenting Claims Management procedure that will personalise their Companies approach and show care, concern and support to an injured employee. The procedure should align to the actual claim process in place and be integrated into the Rehabilitation Policy.

233	33. If you have a Safety Officer/Loss Control Manager, is he or she afforded the same status as other staff personnel such as the Accountant, Industrial Relations Officer?	YES ☐ 137 58.8% NO ☐ 96 41.2%

Question 33 Comments:

33. The Safety Officer and Loss Control Manager has a major support role in an Organisation for O.H.&S Systems Management. A direct ongoing report process to the CEO enables a focus for resource allocation, commitment and recognition of achievements as well as keeping the CEO up to date regarding the Organisations' Safety Management Systems.

232	34. Have they been formally trained for the position?	YES ☐ 112 48.3% NO ☐ 120 51.7%

Question 34 Comments:

34. A job description (documented) should be developed for the Safety Officer and Loss Control Manager within an Organisation. Training can then be assessed and developed for the role enabling personal growth as well as Organisational development.

226	35. Does this person have authority to match accountability and directly report to you?	YES ☐ 114 50.4% NO ☐ 112 49.6%

Question 35 Comments:

35. The Safety Officer and Loss Control Manager should be a direct report to the CEO. Proactive and immediate responses can often be of great benefit in relation to this role. This approach removes "buffer zones", delays and also overcomes interpretations through levels of responsibility.

238	36. Do these responsible people realise they carry responsibilities from you as the "Responsible Officer" under the law?	YES ☐ 162 68.1% NO ☐ 76 31.9%

Question 36 Comments:

36. The Safety Officer and Loss Control Manger job description should encompass as its basis the Occupational Health and Safety Policy. This role co-ordinates the commitment within the O.H.&S Policy on behalf of the Organisation and Chief Executive Officer who has signed it.

	37. Does your Organisation train employees in :	
293	· Training in hazards?	YES ☐ 233 79.5% NO ☐ 60 20.5%
291	· Safe use of chemicals?	YES ☐ 234 80.4% NO ☐ 57 19.6%
279	· Forklift Operation?	YES ☐ 188 67.4% NO ☐ 91 32.6%
290	· Manual Handling?	YES ☐ 214 73.8% NO ☐ 76 26.2%
289	· Fire Protection and Prevention?	YES ☐ 226 78.2% NO ☐ 63 21.8%
182	· Isolation Systems?	YES ☐ 151 82.9% NO ☐ 31 17.1%

Question 37 Comments:

37. An Organisation should identify the skills required for the employee to do the job, firstly to develop a Safe System of work and secondly to maintain it. This should include the hazards relevant to the job. It may include specifics, eg, Safe use of chemicals whereby the Material Safety Data Sheet should be used as an initial resource for information. Other areas: forklift training should consider the four major areas of integrated operation: the machine, material being moved, the work areas and the operator. Fire Prevention and protection and Isolation systems training should be Organisation specific relevant to the operation.

272	38. Do you have a formal induction (documented)?	YES ☐ 167 61.4% NO ☐ 105 38.6%

Question 38 Comments:

38. A documented formal Induction is the best opportunity to introduce a new or transferring employee to an Organisation or department. This process will allow for the Company perspective to be given regarding "The Company" and its Occupational Health and Safety policy rules and procedures. Inductions should be responsibility based and be subject to regular reviews to maintain currency.

256	39. Do you meet selection and placement responsibilities for employees?	YES ☐ 183 71.5% NO ☐ 73 28.5%

Question 39 Comments:

39. It is the Organisation (Employer) responsibility to have in place selection and placement criteria when hiring employees. This would be part of the Recruitment Policy and procedure which would have built in standards to assist selection.

292	40. Do your employees have pre-employment medicals?	YES ☐ 88 30.1%	NO ☐ 204 69.9%

Question 40 Comments:

40. To assist in selection and placement, an Organisation should assess and consider pre-employment medicals for new and transferring employees. Some medical clinics have in place such proformas, however, it is important that such medicals are Organisational Specific to assist selection and placement relevant to the Safety Health and Welfare of the Employee.

288	41. Are all your employees properly inducted and trained to do their jobs safely in accordance with the Safe System of Work relevant to plant, equipment, materials and environment of your organisation?	YES ☐ 222 77.1%	NO ☐ 66 22.9%

Question 41 Comments:

41. The hiring and initial placement of the employee should include a formal Induction (Organisational and departmental) and job specific training for the Safe System of Work. The following elements that make up the System of Work should be managed to create a "Safe System of Work".

- Machinery Plant and Equipment
- Materials
- The Working Environment and Area
- The Employee
- The Work Method, Job task demands, and skills required
- Job Procedure in place
- Training required and responsibility for it
- Proficiency standards to be met
- Personal protective clothing and equipment
- Emergency responses, procedures

282	42. Do you randomly attend Safety Committee Meetings to measure their effectiveness and give them support?	YES ☐ 121 42.9%	NO ☐ 161 57.1%

Question 42 Comments:

42. Safety Committees are a valuable resource to an Organisations Occupational Health and Safety Development. Attendance by the CEO to meetings shows commitment to this resource as well as the opportunity to measure effectiveness and assess attitude direction and participation.

281	43. Is there ongoing Occupational Health and Safety training of managers, supervisors and employees?	YES ☐ 184 65.5%	NO ☐ 97 34.5%

Question 43 Comments:

43. A career path plan for job responsibility areas developed from annual appraisals should be developed. This will initiate a training plan that can be implemented over a twelve month period enhancing Organisational continuous Improvement through individual development.

291	44. Are your first-aid facilities and medical facilities adequate to the needs of your organisation and meet the requirements?	YES ☐ 267 91.8%	NO ☐ 24 8.2%

Question 44 Comments:

44. An Organisation should assess through consultation the Medical Emergencies that could arise. These requirements then should be measured and assessed against current first aid and response facilities in place as well as the minimum legal requirements to ensure facilities enhance an emergency should it occur.

296	45. Do you have trained first-aiders to cover all operations and shifts?	YES ☐ 245 82.8%	NO ☐ 51 17.2%

Question 45 Comments:

45. Trained certified first aiders should be sufficient in numbers to cover departmental, shift, and field operations considering back ups for leave, holidays and absenteeism. Facilities and kits together should be integrated into a First aid Systems Management programme.

294	46. Do you personally Audit your Organisation in relation to Occupational Health and Safety to set directions and objectives by (walk around) management?	YES ☐ 181 61.6%	NO ☐ 113 38.4%

Question 46 Comments:

46. Personally conducted audits by the Chief Executive Officer are a valuable means of assessing "what is going on" relevant to good Safety Systems management. Through feedback directions can be set towards objective achievement.

291	47. Do you have an audit checklist for Occupational Health and Safety?	YES ☐ 142 48.8%	NO ☐ 149 51.2%

Question 47 Comments:

47. An Organisation should develop an overall approach to "Self Area Management" by developing and having in place an O.H.&S. key element checklist that considers legislative requirements as a minimum standard.

242	48. Would you like one?	YES ☐ 179 74.0%	NO ☐ 63 26.0%

Question 48 Comments:

48. A guide checklist will be developed as part of the N.Z.I.M. Inc Strategic plan for O.H.&S. integration into Management Systems.

	49. Do you, in your walk around, talk to all employees about Health, Safety and Welfare seeking :	
278	· Their perspective?	YES ☐ 144 51.8% NO ☐ 134 48.2%
278	· Their ideas?	YES ☐ 155 55.8% NO ☐ 123 44.2%
272	· The effectiveness of your OH&S programme?	YES ☐ 107 39.3% NO ☐ 165 60.7%
270	· Their concerns?	YES ☐ 152 56.3% NO ☐ 118 43.7%

Question 49 Comments:

49. By walking around the "coal face" of an Organisations' operation areas, the CEO can assess through discussion with employees feedback relevant to Safety management, and ideas for improvement. It is also an opportunity to assess first hand, the working environment and physical conditions. It will also avail Safety perspectives and perception concerns, thereby, presenting an overview of the O.H.&S. Programmes approach and effectiveness.

284	50. Do you have a formalised OH&S programme?	YES ☐ 149 52.5% NO ☐ 135 47.5%

Question 50 Comments:

50. A formal O.H.&S. programme enables a Systems Management approach to be applied to key element areas of safety. An example is the "Foundation Programme" that has 35 key element areas of Safety to Manage. (The Foundation Programme has been developed to assist the N.Z.I.M. Inc Strategic plan for O.H.&S. Management integration.) Specific elements make Safety manageable. This approach allows for consultation, participation and involvement from directly related personnel. Another example of a programme approach is the I.S.R.S. (International Safety Rating System).

	Resources	
294	51. Does your Organisation have a copy of the Health, Safety and Employment Act?	YES ☐ 269 91.5% NO ☐ 25 8.5%

Question 51 Comments:

51. Organisations should have in its resource reference library a copy of the Health and Safety Employment Act 1992. It should be the basis of the Organisations' Systems Safety Management (Minimum Standard).

235	52. Does your Organisation have copies of relevant regulations?	YES ☐ 202 85.9% NO ☐ 33 14.1%

Question 52 Comments:

52. Organisations should assess the "regulations" that apply to them and have them as part of their resource reference library to enable operations assessment and compliance.

286	53. Does your Organisation have copies of relevant N.Z. Standards?	YES ☐ 216 75.5%	NO ☐ 70 24.5%

Question 53 Comments:

53. Organisations should assess the New Zealand standards that apply to them and have them as part of their resource reference library to enable operation assessment and compliance.

288	54. Does your Organisation have copies of relevant Codes of Practice?	YES ☐ 236 81.9%	NO ☐ 52 18.1%

Question 54 Comments:

54. Organisations should assess the Codes of Practice that apply to them and have them as part of their resource reference library to enable operation assessment and compliance.

292	55. Do you have a personal copy of the Health, Safety and Employment Act?	YES ☐ 149 51.0%	NO ☐ 143 49.0%

Question 55 Comments:

55. It is recommended the "Responsible Officer" Chief Executive Officer have a personal copy of the "Act" to compliment the understanding of it and the areas delegated from it.

288	56. Do you know what an improvement notice is?	YES ☐ 159 55.2%	NO ☐ 129 44.8%
286	57. Do you know how it would affect your Organisation?	YES ☐ 155 54.2%	NO ☐ 131 45.8%
275	58. Do you know what a prohibition notice is?	YES ☐ 161 58.6%	NO ☐ 114 41.4%
270	59. Do you know how it would affect your Organisation?	YES ☐ 158 58.5%	NO ☐ 112 41.5%

Questions 56 - 59 Comments:

56 - 59 The Health and Safety in Employment Act 1962, defines what an Improvement Notice and Prohibition Notice is as well as outlining how it would effect the Organisation.

	60. The Health, Safety and Employment Act applies to your Organisation defining legal obligation to achieve "The Acts" objectives.	
286	61. Do you promote Health and Safety management excellence?	YES ☐ 190 66.4% NO ☐ 96 33.6%
	How?	

"Responses Received" Question 61

- Management by Objectives
- I.S.R.S. International Safety Rating System
- Commitment to improvement objectives of O.H.&S.
- Open meetings to promote communication and good O.H.&S.
- Active Management commitment and accountability forums
- Responsibility assignment with delegated duties
- Safety rules
- T.Q.M. Total Quality Management application
- We include Occupational Safety and Health in all procedures
- Health checks on employees
- Staff publications for information
- Awareness sessions for all employees
- Total workforce training to a plan
- Audits involving employee participation
- Common sense
- Elimination strategies for hazards identified, with action planning
- Occupational Health and Safety Programme with Key Elements
- Good housekeeping
- Initiate and monitor control plans of Safe Work Practices
- Positively working towards Statutory requirements
- Active Safety Officer
- Safety inspections
- Welfare of employees first priority
- Rewarding success with an incentive programme
- Annual awards

- Awareness sessions to a plan
- In-house magazine to promote O.H.&S. plans and achievement
- Benchmarking
- Safety planning
- Pre-job meetings involving employees
- Inter-branch competitions
- Incentives on O.H.&S. ideas
- Training of Supervision with responsibility assignment
- Performance Management Programme
- Incentive teams for safety excellence
- Challenge meetings
- Walk-around Management
- Good O.H.&S. policy with monitored procedures
- Continuous improvement programme to O.H.&S.
- Integrate Safety into T.Q.M. ISO 9000 series
- Annual bonus reward scheme
- Performance reviews measuring responsibility
- Accident prevention training
- Awareness campaign to set monthly themes integrating safety
- Informal discussions with staff
- Good working relationship with factory inspectors
- Promoting theme "safety days"
- Systems approach to cover requirements of Act
- Training in line with responsibility
- Comprehensive O.H.&S. Manual reviewed annually for Continuous Improvement
- Good effective practical Supervision by well trained personnel

289	62. Are you aware of the Act and that it prescribes and imposes on your Organisation's duties in relation to the prevention of Harm to Employees?	YES ☐ 269 93.1%	NO ☐ 20 6.9%
290	63. Do you know what the duties are?	YES ☐ 241 83.1%	NO ☐ 49 16.9%

Questions 62 - 63 Comments:

62 - 63 The Act should be assessed to the Organisations responsibility level in relation to the "prevention of harm to Employees". The principles relevant to the Safe System of work should also be included in this assessment. It is important that Management and Supervision are aware of the duties that carry accountability.

292	64. Do you provide and maintain for employees a safe working environment?	YES ☐ 280 95.9% NO ☐ 12 4.1%
	How?	

"Responses Received" Question 64

- Systematic O.H.&S. Programme and plan
- Planned inspections
- Common sense
- Constant planned monitoring
- Consultation with employees
- Monitoring the work environment - dust, noise, heat
- Formal loss control programme with specified elements for monitoring
- Regular audits including the environment
- External Third Party audits
- Integrate ergonomics into projects
- Control systems
- Dress standards and protective clothing with accountability for use
- No Smoking areas
- Encourage and supervise safe practices and safe systems of work
- Budgeting programmes to achieve planned objectives
- Accident trend analysis from reported incidents
- External consultant involvement
- Physical inspection programme per Department
- Awareness of responsibility through effective training
- System of planned improvement involving employees
- Machine guarding checks
- Include employees in audits and action planning meetings
- Work team briefings
- Responding to audit results to show our commitment
- HAZAN (hazard analysis)
- Good manual handling programmes
- Awareness sessions promoting responsibility
- Job safety rules developed in consultation with employees
- Employee networking
- Provide protective clothing and equipment against assessed needs
- Good area specific induction programmes utilising a checklist
- Standard Operating Procedures
- Monitoring incident statistics
- Working environment monitoring programme
- Purpose developed working environment
- Work practice monitoring

292	65. Do you provide and maintain for employees, while they are at work, facilities for their safety and health?	YES ☐ 279 95.6%	NO ☐ 13 4.4%

Question 65 Comments:

65. The Organisation should assess the need for facilities at work to ensure employee safety health and welfare.

293	66. Do you consider that plant used by any employees at work is so arranged, designed, made and maintained, that it is safe for the employee to use?	YES ☐ 279 95.2%	NO ☐ 14 4.8%
	How?		

"Responses Received" Question 66

- Eliminate, isolate hazard, or introduce Personal Protective Equipment
- Housekeeping audits
- Hazard reporting through operator input
- Design specifications that include safety factors
- Adequate spacing of equipment in layout and design
- Suggestion scheme involvement
- Regular maintenance inspections followed by a servicing programme
- Risk management systems approach "HAZAN" (hazard analysis)
- Ergonomic design applied to plant and equipment
- Preventative planned maintenance programme
- Experience of operators
- Hazard signing and monitoring
- Good induction to relevant employees
- Employee input to job design and modification
- In-house assistance through a project team
- All employee feedback
- Ergonomic furniture
- Plant maintenance schedule
- Safe system of work development and review
- Process design review
- HAZOP (Hazard operability) on plant
- Skill pre-requisites through task analysis
- Operating handbook for employees
- Specification development encompassing O.H.&S.
- Purpose-built machinery from employee input
- Plant and equipment spaced in layout through consultation

- Design standards
- Standard Operating Procedures to a planned format
- Operator training and regular checks through job observation
- Pre-start checklists
- Authorisation of employees to operate
- Competency training of employees
- Planned maintenance programmes
- Task analysis of related jobs
- Design and procurement specifications considering O.H.&S.
- Job observation
- Monthly inspections of all plant and equipment
- Employee involvement in selection and installation
- Operator consultation
- Project safety reviews
- Legislative standards
- Annual equipment risk assessment
- Machinery certified for safe use
- O.S.H. Survey (Occupational Safety and Health Survey)
- Employee idea programme
- Annual top-up training against appraisal of performance
- Qualified supervision able to fulfill responsibility
- Engineering design project programmes
- Experienced leadership

280	67. Do you have machinery checklists to maintain equipment and plant in safe condition?	YES ☐ 193 68.9%	NO ☐ 87 31.1%

Question 67 Comments:

67. To assist an Organisation to maintain machinery plant and equipment in safe operable condition, it is recommended that checklists for them be developed through employee consultation. This approach initiates ownership and responsibility and involves employees in direct Safety Management.

282	68. Do you have pre-commissioning checks for new or modified equipment considering safety?	YES ☐ 192 68.1%	NO ☐ 90 31.9%

Question 68 Comments:

68. Pre-commissioning checklists should be developed within an Organisation to address as a minimum regulatory standards and Codes applicable. The same checklist also can be used "up front" when developing plant equipment and machinery specifications prior to purchase.

281	69. Do you have training programmes for plant and equipment operators?	YES ☐ 244 86.8% NO ☐ 37 13.2%

69. Training programmes for plant and equipment operators should be initiated from a formal job Safety analysis considering the principles of the Safe System of Work (previously referred to in this report in Question 41). Training should utilise Safe Operating Procedures (S.O.P.s) that are documented. This approach enables a consistency to training.

	70. Do you ensure that while at work, employees are not exposed to hazards for :	
292	· arrangement of plant, materials, workplaces?	YES ☐ 271 92.8% NO ☐ 21 7.2%
283	· disposal of equipment, plant, chemicals?	YES ☐ 258 91.2% NO ☐ 25 8.8%
272	· transportation?	YES ☐ 247 90.8% NO ☐ 25 9.2%
278	· storage?	YES ☐ 259 93.2% NO ☐ 19 6.8%
290	· processing?	YES ☐ 264 91.0% NO ☐ 26 9.0%
289	· maintenance?	YES ☐ 266 92.0% NO ☐ 23 8.0%

Question 70 Comments:

70. To identify if employees are exposed to hazards, an Organisation must conduct a hazard identification programme to assess plant equipment machinery materials work environment and job methods for hazards. Once this has been conducted a "Hazard management" process can be developed.

280	71. Do you have a documented safe isolation procedure for plant when being maintained?	YES ☐ 124 44.3% NO ☐ 156 55.7%

Question 71 Comments:

71. Plant equipment and machinery maintenance methods in an Organisation must be assessed to ensure the work is carried out safely. To help in this, isolation procedures should be introduced that define the purpose, methods, responsibilities and time parameters for safe systems of work relevant to maintenance.

266	72. Do you have a documented safe confined space entry procedure?	YES ☐ 85 32.0%	NO ☐ 181 68.0%

Question 72 Comments:

72. All Confined Space Entry tasks should be assessed by the Organisation. Upon identification Confined Space Entry Safe Entry procedures should be developed in compliance to the relevant Standard considering the Safe System of work principles.

270	73. Do you have Earth leakage fitted to power distribution outlets?	YES ☐ 183 67.8%	NO ☐ 87 32.2%

Question 73 Comments:

73. Earth leakage protection fitted to electrical power distribution sources or outlets is a proactive step to managing electrical hazards. It is recommended that an Organisation discuss the positive advantages in relation to the Safe System of Work.

	74. As a legal duty as an Employer, does your Organisation have methods for :		
288	· systematically identifying hazards to employees?	YES ☐ 213 74.0%	NO ☐ 75 26.0%
287	· systematically identifying any new hazards associated with change of method, plant, materials?	YES ☐ 204 71.1%	NO ☐ 83 28.9%
286	· regularly assessing each hazard identified?	YES ☐ 203 71.0%	NO ☐ 83 29.0%

Question 74 Comments:

74. Organisations should develop a Hazard Management programme that includes training to initiate basic steps eg;

- To identify the hazard
- Determine the degree of exposure and a method of Control or Elimination in compliance to minimum regulatory standards

These should be complimented by "Strategy" assessments that include Elimination, Substitution, Engineering Standards, Protective programmes and Systems Management control.

289	75. Have you formally assessed the need for personal protective clothing and equipment?	YES ☐ 246 85.1%	NO ☐ 43 14.9%

Question 75 Comments:

75. An Organisation should assess each job or task in consultation with employees to identify the need for and type of personal protective clothing and equipment that will enhance the System of Work.

287	76. Do you provide it to the employee?	YES ☐ 266 92.7%	NO ☐ 21 7.3%

Question 76 Comments:

76. The Organisations' responsibility regarding the provision of personal protective clothing and equipment aligns to the provision of a "safe system of work".

289	77. Do you purchase it to a Standard?	YES ☐ 249 86.2%	NO ☐ 40 13.8%

Question 77 Comments:

77. There is a need for the organisation to purchase protective clothing and equipment to relevant standards compliance that are in place.

282	78. Do employees use and wear personal protective equipment and clothing?	YES ☐ 268 95.0%	NO ☐ 14 5.0%

Question 78 Comments:

78. If a job or task has been assessed for the need to use protective clothing or equipment, it should be included within the Safe System of Work and the Safe Operating Procedure relevant to it. The non use of it, identifies that the Safe System of Work is not being followed or managed, thereby exposing employees to risks.

	79. If not, why not?	
288	80. Do you monitor employees' exposure to hazards?	YES ☐ 197 68.4% NO ☐ 91 31.6%

Question 80 Comments:

80. Risk exposures should be assessed by an Organisation to identify the need relevant to monitoring of the overall risk and the risk to the employee. Areas to be considered include:

- Dusts, fumes, gases, mists and vapours
- Asbestos
- Lead
- Noise
- Temperature
- Illumination
- Vibration
- Ionising and non ionising radiation
- Ergonomics
- Biological

	81. How often?	

285	82. Do you monitor employees' health where they are exposed to hazards?	YES ☐ 182 63.9%	NO ☐ 103 36.1%

Question 82 Comments:

82. The monitoring of the Employee exposed to Risks will be initiated from the Risk assessment relevant to question 80.

291	83. Do you have an Emergency Plan documented?	YES ☐ 195 67.0%	NO ☐ 96 33.0%

Question 83 Comments:

83. An Organisation should identify its Emergencies and develop a plan to address the potentials. It should be documented with responsibility assignment and training.

287	84. Do your employees know what to do if an emergency occurs?	YES ☐ 261 90.9%	NO ☐ 26 9.1%

Question 84 Comments:

84. As part of the Emergency Plan response, strategies should be put in place to consider the hours of operation, neighbours, and the need for employees to know what to do should an emergency occur.

286	85. Do you have drills across the shifts relevant to emergencies?	YES ☐ 212 74.1%	NO ☐ 74 25.9%

Question 85 Comments:

85. Drills should be conducted across the shifts of an Organisations' operations in line with the Emergency Plan. The first drill of the plan should initiate an organised "walk through", this serving as response training initially. Evaluation of drills should initiate immediate plan updates and an overall review should be scheduled annually.

	86. What are your major emergencies?	

"Responses Received" Question 86

- Machinery accident
- Chemical inhalation
- Machinery mis-use
- Dust explosion
- Carbon Monoxide
- Wind storm
- Tidal wave
- Robbery
- Electrocution
- Destruction of documents
- Fire
- Dog attacks
- Vehicle accidents
- Flood
- Gas explosion
- Gas leaks
- Toxic fumes

- Unsecured loads
- Hazardous substance spillage
- Ladder accidents
- Caustic spillage
- Neighbouring factory
- Oil spills
- Pesticide poisoning
- Road tanker accidents
- Ammonia leaks
- Molten metal spill
- Equipment failure
- Pollution of environment
- Assault
- Burns
- Power cuts
- Collapse
- Gas fire
- Earthquake
- Bomb threats
- Helicopter crash
- Product leak/Environmental damage
- Lightning
- Sabotage
- Personnel shortage
- Power lines
- Infection outbreak
- Volcano
- Aircraft accident
- Hurricane
- Sewage failure
- Chlorine gas
- Confined space working
- Machinery isolation
- Working at heights
- Chemical handling

289	87. Do you inform employees of the hazards relevant to their jobs?	YES ☐ 261 90.3%	NO ☐ 28 9.7%

Question 87 Comments:

87. Employees should be informed of the hazards relevant to their jobs. They should also understand the process used by the Organisation to develop a Safe System of Work. This will then assist in hazard identification to identify the System breakdown. This approach also involves employees within the Safety Management System.

268	88. Is your Supervision trained relative to hazard awareness and how to manage hazards through elimination and monitoring for your particular hazards?	YES ☐ 189 70.5%	NO ☐ 79 29.5%

Question 88 Comments:

88. Organisations should develop a Hazard Management programme that includes training to initiate basic steps eg;

- To identify the hazard
- Determine the degree of exposure and a method of Control or Elimination in compliance to minimum regulatory standards

These should be complimented by Strategy assessments that include Elimination, Substitution, Engineering Standards, Protective programmes and Systems Management control. A Standard procedure should be used throughout an Organisation.

289	89. Do you have a written induction programme for all new employees including supervision?	YES ☐ 171 59.2%	NO ☐ 118 40.8%

Question 89 Comments:

89. Induction Programmes should be developed in Organisations for Employees' Supervision and Management to include the areas of responsibility relevant to the job role.

282	90. Do you advise employees of their duties under the Act?	YES ☐ 188 66.6%	NO ☐ 94 33.4%

Question 90 Comments:

90. Employees should be made aware of their legal responsibilities (under the Act) to the Organisation as well as to fellow employees. This information should be integrated into the Induction programme and further promoted by awareness sessions.

291	91. Do you know of the responsibilities you have to the public and visitors?	YES ☐ 255 87.6%	NO ☐ 36 12.4%

Question 91 Comments:

91. An Organisation should have in place a policy and procedure to ensure the Health Safety and Welfare of visitors and public associated with the Company and or its operational risk exposures. Contractor involvement should also be integrated.

290	92. Do you have a register of accidents that occur on your premises?	YES ☐ 270 93.1%	NO ☐ 20 6.9%

Question 92 Comments:

92. A register of Accidents Incidents should be maintained by an Organisation to record and identify the incident. It can then be used to control claims, investigations and remedial action plans. It can be used also to identify the need for specific projects relevant to trends.

287	93. Do you report them when required to the Occupational Health and Safety Department?	YES ☐ 267 93.0%	NO ☐ 20 7.0%

Question 93 Comments:

93. Section 25 of the Health and Safety in Employment Act identifies the need for an Organisation to report "accidents of a kind or description required by regulations".

288	94. Do you know the functions and powers of entry Inspectors have?	YES ☐ 246 85.4%	NO ☐ 42 14.6%

Question 94 Comments:

(The Health and Safety in Employment Act should be assessed to understand "the powers of entry Inspectors have.)

	95. Do you know that offences under The Act could cause :		
294	· Imprisonment to a term of not more than one year?	YES ☐ 265 90.1%	NO ☐ 29 9.9%
284	· A fine of not more than $100,000?	YES ☐ 261 91.9%	NO ☐ 23 8.1%
290	· Or both imprisonment and a fine?	YES ☐ 262 90.3%	NO ☐ 28 9.7%

296	96. Do you know that the Body Corporate can be subject to prosecution for failing to comply with the provisions of the Act?	YES ☐ 273 92.2% NO ☐ 23 7.8%

Questions 95 - 96 Comments:

95 - 96 Offences and penalties under the "Health and Safety in Employment Act" are referenced in Sections 49 and 50 of the Act and are stated as follows:

Offences and Penalties

49. Offences likely to cause serious harm *- (1) Where -*

(a) A person who, knowing that any action is reasonably likely to cause serious harm to any person, takes the action; and

(b) The action is contrary to a provision of this Act, -

the person commits an offence against this act

(2) Where -

(a) A person who, knowing that failure to take any action is reasonably likely to cause serious harm to any person, fails take the action; and

(b) The person is required by this Act to take the action, -

the person commits an offence against this Act

(3) Every person who commits an office under this section is liable on conviction to -

(a) Imprisonment to a term of not more than 1 year; or

(b) A fine of not more than $100,000; or

(c) Both

(4) A person charged with an offence under this section may be convicted of an offence against section 50 of this Act as if the person had been charged under that section.

50. Other offences*- Every person who fails to comply with-*

(a) Any provision of Part II of this Act other than section 14; with -

or

(b) Section 25, section 25, section 37 (2), section 39 (5), section 42 (1), section 43, section 47, section 48, or section 58 of this Act; or

(c) Any provision of any regulations made under this Act, or continued in force by section 24 of this Act, declared by those regulations to be a provision to which this section applies, -

commits an offence, and is liable on summary conviction to-

(d) A fine not exceeding $50,000, if the failure caused any person serous harm:

(e) A fine not exceeding $25,000, in any other case.

Overall percentage of YES responses 68.23%
Overall percentage of NO responses 31.77%.

	Having completed this Checklist, would you like assistance in developing a systems approach to Manage Occupational Health, Safety and Welfare relative to :		
296	· Training	YES ☐ 96 32.4%	NO ☐ 67.6%
296	· Advisory assistance	YES ☐ 87 29.4%	NO ☐ 70.6%
296	· Hazard Inspections	YES ☐ 104 35.1%	NO ☐ 64.9%
296	· Developing Safe Systems of Work	YES ☐ 99 33.5%	NO ☐ 66.5%
296	· Developing Site Specific Checklists to Manage O.H. & S.	YES ☐ 108 36.5%	NO ☐ 63.5%

This report was compiled by the National Safety Council of Australia, South Australian Division Limited, Principal Consultant Gavin Johnson, in association with the New Zealand Institute of Management Inc National Director Mr David Chapman.

APPENDIX 2

OCCUPATIONAL HEALTH AND SAFETY QUESTIONNAIRE

1. How many workers are employed by your organisation and what is the major activity undertaken by your organisation.

2. With respect to work conditions what are the usual hours of work within your organisation?

   2.1 Does your organisation operate a shift system? YES | NO

   2.2 Are workers permitted to work extended shifts? YES | NO

   2.3 If extended shifts are worked what provisions are there for breaks, meals, etc?

   2.4 Are penal rates payable in your organisation? YES | NO

   2.5 Does your organisation have a canteen? YES | NO

3. Does your organisation have a designated safety officer? YES | NO

   3.1 How is this person ranked in the organisation?

   3.2 Has this person been formally trained for the position? YES | NO

   3.3 What training was undertaken?

   3.4 Does this person have a formal Audit procedure? YES | NO

   3.5 Who does this person report to?

   3.6 Does this person have any other function in the organisation? YES | NO

4. Does your organisation have a written policy on Occupational Health and Safety? YES | NO

   4.1 How widely is this policy circulated?

   4.2 Is the policy discussed with individual employees? YES | NO

5. Do you consider that your Occupational Health and Safety objectives are realistic and understood? YES | NO

5.1 Have your staff been involved in the planning of the Occupational Health and Safety policy? YES | NO

5.2 How do you measure whether the policy is effective?

6. Apart from ensuring that the plant used by any employee is safe for employees to use what provisions are made by your organisation to create and maintain a safe working environment?

7. What are the most significant hazards in your organisation?

7.1 How did you identify these hazards?

7.2 Have you informed your workforce about these hazards? YES | NO

7.3 If you have, how is this information communicated?

8. Does your organisation and staff manage hazards and risks in a planned approach? YES | NO

8.1 How is this approach implemented?

8.2 Who monitors the plan?

8.3 Is the planned approach revised? YES | NO

9. If your organisation acquires new technology (i.e. product, machinery, equipment, etc) what consideration is given to Occupational Health and Safety?

10. Are the various supervisors and departmental managers within your organisation fully aware of their personal and Corporate responsibilities under current legislation and common law? YES | NO

10.1 Are they aware of their personal liability? YES | NO

10.2 To what extent are they aware of their liability?

10.3 Having regard to Section 56 of the Act do any of your Directors and Responsible Officers hold indemnity insurance? YES | NO

11. To what extent does your organisation train its employees in the activities to which the individual is specifically tasked to their particular employment.

12. Does your organisation have a formal induction process? | YES | NO |

12.1 If so what degree does Occupational Health and Safety feature in this process?

13. In your organisation is there ongoing Occupational Health and Safety training of managers, supervisors and employees? | YES | NO |

13.1 If so, how frequent?

14. Does your organisation have trained First–Aiders to cover all operations and shifts? | YES | NO |

14.1 To what extent has your organisation verified whether the first–aid facilities are sufficiently adequate?

14.2 How experienced are the first–aiders?

15. Does your organisation have a copy of the Health and Safety in Employment Act 1992? | YES | NO |

15.1 How many copies?

15.2 Do your managers and supervisors have a copy? | YES | NO |

15.3 Is the Act available to individual employees? | YES | NO |

16. Does your organisation have copies of Codes of Practice and other documentation relating to Safe Handling Procedures? | YES | NO |

16.1 What documentation does your organisation have?

17. Since the coming into force of the Health and Safety in Employment Act 1992 has your organisation made any changes to its operations and operating procedures? | YES | NO |

17.1 If so what changes were implemented?

18. Does your organisation have Disciplinary procedures or House Rules that cover the non-compliance with safety procedures and/or equipment and clothing? YES | NO

18.1 What do these procedures specify?

19. Section 25 of the Health and Safety in Employment Act 1992 provides for the recording and notification of accidents and serious harm.

19.1 Does your organisation have an accident recording system? YES | NO

19.2 What form does this recording take?

19.3 If an accident occurs at work what steps does your organisation implement?

19.4 Under the notification provisions of the Act, who is notified of the accident?

20. When was the last time your organisation received a visit from a OSH Inspector?

20.1 What was the reason for the visit?

20.2 What is your attitude towards the OSH Inspectorate?

20.3 Are you aware of the implications of an improvement or prohibition notices? YES | NO

21. Is your organisation aware of the penalty provisions with the Health and Safety in Employment Act 1992? YES | NO

21.1 What is your attitude towards these penalties?

22. Section 14 of the Health and Safety in Employment Act 1992 makes provision for employers to involve employees in development of health and safety procedures. To what extent does your organisation consult with its employees?

23. Does your organisation have a Safety Committee? YES | NO

23.1 What is the composition of this committee?

23.2 How does this Committee function?

23.3 How often does it meet?

24. Has your organisation ever assessed the direct and indirect costs of accidents? | YES | NO |

24.1 If yes, has this assessment altered since the introduction of the Health and Safety in Employment Act 1992? | YES | NO |

24.2 In which way?

25. Since the passing of the Employment Contracts Act 1991 does your organisation see a role for the Trade Union Movement in New Zealand? | YES | NO |

25.1 In a general sense what is your attitude towards the Trade Unions?

26. Since the introduction of the Accident Rehabilitation and Compensation Insurance Act 1992, has your organisation's attitude towards Occupational Health and Safety altered? | YES | NO |

26.1 If so, in what way?

26.2 What is your attitude toward "experience rating"?

27. Section 5(2)(a) of the Health and Safety in Employment Act 1992 provides that for the purpose of attaining the principal object of the Act (prevention of harm to employees at work) employers are required to promote excellence in health and safety management. How is this achieved by your organisation?

28. Since the coming into force of the Health and Safety in Employment Act 1992 (April 1, 1993) has your organisation's attitude towards Occupational Health and Safety altered? | YES | NO |

28.1 If so, in what way?

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