

## Chapter 16

### Occupational safety and health – by Felicity Lamm

#### Objectives

- To overview theories and principles behind health and safety and accident compensation changes;
- To present health and safety and accident compensation legislation;
- To identify the shifts between regulatory and self-regulatory approaches;
- To indicate the issues being addressed by current public policy debates.

#### Introduction

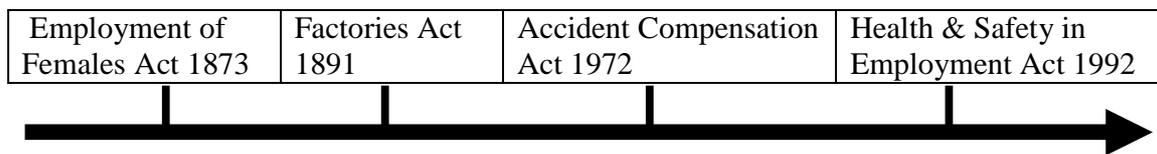
Occupational health and safety (OHS) is concerned with understanding and preventing workplace injuries and illnesses. It covers all aspects of paid and unpaid work and includes all working environments, ranging from an office setting to a building site. There are an array of potential risks facing both employers and employees in which some of the risks will not materialise for many years, such as those associated with asbestos and radio-active substances. OHS is often a good indicator of how well the company is performing and there is growing recognition that good health and safety management can improve productivity (Massey, et al, 2006). Yet, providing a healthy and safe working environment is still not an absolute priority in many New Zealand firms. Negotiating over safer and healthier working conditions, for example, has resulted in treating workplace hazards as an extra payment, or as “dirt money” rather than reducing exposure to the hazards. This is in spite of the fact that there are significant social and economic costs attached to work-related injuries and illnesses. In 2006, it was reported that the annual cost of occupational injuries and illnesses in New Zealand was approximately 4 percent of GDP and amounted to a \$4.2 billion per year, with workers’ compensation payments running at over \$5 billion (National Occupational Health and Safety Advisory Committee, 2006 (NOHSAC); Accident Compensation Corporation, (ACC), 2007).

Endeavouring to understand why New Zealand continues to have a shocking rate of work-related injury and illness, however, is complex and is overlaid by a number of issues. The preoccupation with increasing productivity and the consequential technological advancements have generated a number of OHS problems. For example, as technology has advanced, there have been safety and health benefits for workers, but there have also been new hazards created, particularly illnesses, such as cancers, linked to chemical exposure. In most instances, the OHS regulations to limit human exposure have not been able to keep pace with the avalanche of new chemicals being developed and evidence linking a particular chemical with a disease is often very difficult to establish.

The level of effectiveness of the New Zealand OHS legislation is another dominant issue and New Zealand’s approach to OHS legislation has fluctuated with each major legislative reform, as depicted in the diagram. The legislative approach has swung from

self-regulatory to highly prescriptive and is now a more co-regulatory approach, a position somewhat in the middle. The co-regulatory approach has also meant a change of roles whereby those covered under the Health and Safety in Employment Act, 1992 are required to take on much more responsibility for managing and regulating their workplace hazards than was previously the case. OSH inspectorate's role has also changed from one that was more akin to community policing, enforcing a wide range of regulations, from wages to machinery, to a role that is more targeted towards responding to complaints and dispensing telephone advice.

Figure 1: Time-line of Major Occupational Health and Safety Legislation



Therefore, in order to understand why New Zealand has such a poor occupational injury and illness record, key themes are explored. The first theme is the evolution of New Zealand's OHS legislation commencing with an overview of the historical developments and an outline of the key elements of New Zealand's legislation – the Health and Safety in Employment Act, 1992. A discussion of the Act's limitations and the subsequent reforms that have taken place since 2000 is also presented. The second theme to be addressed is New Zealand's revolutionary workers' "no-fault" compensation scheme and its basic legislative elements. The final theme deals with the more pressing OHS issues facing employers, employees and government agencies, for example what are the health and safety implications of increased productivity?

### **An overview of health and safety legislation**

In spite of the terrible working conditions and the continued exploitation of workers – especially young girls – there was a great deal of political and commercial opposition to any measures that would curb employers' powers. When speaking in the New Zealand Legislative Council on the 1891 Factories Bill, the Hon. Sir George Whitmore stated: 'I say this Bill is a great deal worse than the Victorian Act, and will prove to be one of the greatest barriers to the introduction and fostering of manufacturing industries in the colony' (New Zealand Parliamentary Debates 1891, 73: 719). Nonetheless, the more comprehensive 1894 Factories Act was passed and was accompanied by a similar measure applying to work in shops and offices – the Shops and Shop Assistants Act 1894. In that year, the first woman factory inspector, Harriet Morrison who had earlier formed the Tailoresses' Union and the Domestic Servants' Union, was appointed, apparently reflecting the concern for the working conditions of women. The Liberal Government added to these various measures, regulating the working conditions on ships,

on farms and in mines. Taken together, this array of labour legislation represented a massive piece of government intervention which provided for minimum working conditions in industry and gradually removed some of the more immediate problems from the workplace.

However, efforts both in New Zealand and overseas to control occupational health and safety by law tended to develop in a haphazard fashion and by the 1970s New Zealand's OHS law had become piecemeal, complex and unwieldy. The legislation suffered from a number of limitations. First, much of the legislation was introduced in an ad hoc manner. That is, as new hazards arose, statutes and regulations were passed with no attempt to obtain consistency or overall coherence in the law or connecting policy. Second, the legislation, on the whole, was prescriptive and dealt with specific hazards, activities, and workplaces. As a consequence, the legislation was often overtaken by technology soon after it was enacted. Third, not only was there a legislative overload but the administration of the law was fragmented. For example, by 1980, New Zealand OHS legislation was covered by no less than 31 Acts supported by some 100 regulations and codes of practice and administered by five government departments. Fourth, over 25 percent of the New Zealand workers were employed by government and semi-government organisations and as a result were not covered by the Factory and Commercial Premises Act. Fifth, New Zealand workers were given no statutory powers to participate in their workplace health and safety issues. Finally, as Gunningham states (1985:26) "the traditional occupational health and safety system did not succeed in reducing workplace injuries and diseases to socially acceptable levels".

Other countries suffered similar OHS regulatory deficiencies and in response conducted their own reviews, notably Britain with Lord Robens' Report, *Safety and Health at Work* (1972). The two main features outlined in the Robens' Report were seen as essential to effective administration of, and long-term compliance with, OHS legislation:

- A single Act covering all workers, administered by a single unified inspectorate; and
- The creation of a joint, self-regulatory approach where the responsibility for health and safety is placed firmly back into the workplace. That is, the ownership of 'duty of care for workers' is no longer solely with the State but instead with employers and workers. The participation of workers is formalized via the mechanism of representation on workplace health and safety committees.

The British *Health and Safety at Work Act* 1974, followed the recommendations outlined in the Robens' Report by reversing the traditional onus of proof from the state onto the employer. The Act dictated that if an industrial injury occurs, there is a prima facie case against the employer for breach of duty of care. The inspectorate no longer has to demonstrate that a regulation has been violated. Rather, the employer is required to show that steps were taken, as far as is reasonably practicable; to ensure that work processes and the workplace were safe. There is a duty on the employer to self-regulate their workplace health and safety by identifying problems specific to the work site and devise to appropriate solutions. This does not mean that OHS is the exclusive prerogative of management;

workers are expected to be given a participative role in determining their workplace health and safety.

However, as Australia and Britain were implementing Robins-type models during the 1970s and 1980s, New Zealand directed its attention to a comprehensive 'no-fault' system of compensation of occupational injury and disease. As a consequence of the 'no-fault' compensation philosophy, New Zealand subsequently failed to address the issue of its scattered and often ineffectual OHS legislation. It was not until 1988 that the Labour Government established the tripartite Advisory Council for Occupational Safety and Health (ACOSH), chaired by the then Minister of Labour, the Hon. Stan Rodger. ACOSH committee issued a report, *Occupational Safety and Health Reform: a Public Discussion Paper* (1988), which proposed radical changes to the original structures. Similar to the British Robens' Report, it recommended the replacement of those structures by one Act, implemented and administered by a single Authority, namely the Department of Labour. The report also stated that workers should participate in the decisions affecting their safety and health. The sentiments of one Act, one authority were strongly endorsed by the New Zealand Employers Federation (NZEF) and supported by the bulk of public submissions on the ACOSH Report. Although, the New Zealand Council of Trade Unions (NZCTU) supported the principle of one Act, one authority, they were also adamant that worker participation be included in the Labour Government's Occupational Health and Safety Bill, 1990. The report and the subsequent Bill signalled a radical departure from the traditional prescriptive legislation and enforcement to a more unfettered approach to the employment relationship between the state and business. Indeed, the 1980s policy debates surrounding the OHS reforms have subsequently been seen as a *prelude* to the policy shifts associated with other pieces of employment related legislation (e.g. Employment Contracts Act 1991, Industry Training Act 1992, Human Rights Act 1993 and Privacy Act, 1993).

The Labour Government was unable to present their *Occupational Health and Safety Bill, 1990*, before the House went into recess on the eve of the 1990 general election. The National Government was subsequently elected and introduced its own *Health and Safety in Employment Act, 1992* (HASIE Act). The Act was introduced as part of the National Government's employment package. It was intended to reflect the Government's non-interventionist approach to employment relations and epitomised the dominant political ideology of the late 1980s and 1990s in which deregulation and self-regulation became the mantra of the new right (Lamm, 1994; Kelsey, 1997). When introducing the *Health and Safety in Employment Bill*, the then Minister of Labour, however, stated that it must be viewed in conjunction with the experience-rating provisions of the *Accident Rehabilitation Compensation Insurance Act* (1992) (Birch, 1992). That is, the two pieces of legislation were intended to support a 'carrot and stick' approach to health and safety in the workplace.

### **The Health and Safety in Employment Act 1992**

With the introduction of the *Health and Safety in Employment Act, 1992* (HASIE Act, 1992) began the process of rationalizing OHS by creating one Act, administered by one enforcement authority, covering most workers. The current law is broader than the

previous legislation, which covered only private sector businesses and identified workplaces by the kind of work carried out or machinery or process used. The Act includes all employers whether or not they are principals, self-employed, or control the place of work, and covers most places of work. The principal aims of the HASIE Act are not only to prevent harm to workers while they are at work but also to promote excellence in the management of health and safety. The Act shifted the legislative emphasis from controlling specific hazards to promoting excellence in health and safety management, in particular through promoting the systematic management of health and safety.

In particular, the responsibility and accountability for OHS rests primarily with the employer who, under sections 7 to 10, must do the following:

- Systematically identify existing hazards and new hazards, and regularly assess each hazard to determine whether or not it is significant. This requires the employer not only to set objectives and co-ordinate responsibilities for carrying this out, but also to plan and establish procedures for constant hazard identification.
- If the hazard is significant the employer must take all practicable steps to eliminate it, isolate it or minimise the likelihood that the hazard will cause or be a source of harm to employees. However, this is not an easy task, as the employer must determine what is “a significant hazard”.

The effect of these provisions is that employers are required to establish systems for identifying hazards in places of work and for hazard management. Accident investigation is emphasised as part of an effective management system. For those employers who do not have the ability in-house to carry out accident investigation, private consultants may be able to help in some cases. Other key duties under the Act are listed below.

- Training and supervision are the cornerstones of the Act and require the employer to identify the health and safety training needs on both a group and an individual basis. Under section 13, the employer will have to decide how instructions will be given, for example, by in-house trainers, a buddy system, external courses, etc.
- Monitoring of employee health is to be carried out under section 11 if there is a possibility that a hazard or hazards may cause immediate or long-term harm to the health of the workers. Difficulties can arise, however, when trying to measure the effects of employee exposure to health risks as the effects may not become apparent for many years.
- Under section 25, it is also the employer’s responsibility to ensure that a register is kept of all accidents that occur as well as notifying the Department of Labour of any serious accidents. The Act outlines the procedures surrounding the investigation of accidents.
- The Act stipulates that an employee must be kept informed of all hazards they may encounter while at work and must be told the company’s emergency plan. The employer must also give the results of any health monitoring to the employees. Previous OHS legislation also made provision for employees to be kept informed over OHS issues

through the mechanism of joint management–worker health and safety committees and workers’ representatives.

The Act creates *two types of offence* and increases penalties for failing to follow safe work practices. The *first type* of offence is where a person (a) takes an action knowing that it is reasonably likely to cause death or serious harm and the action is contrary to the provisions of the Act, or (b) does not take action, knowing that inaction is reasonably likely to cause death or serious harm, and the person concerned is required by the Act to take action, and where death or serious harm does, in fact, occur. If convicted, the person could be fined up to \$500 000 or face up to two years in prison, or both. The second type of offence is where a person fails to comply with the provisions of the Act and where the failure causes death or serious harm. If convicted, the person could face a fine of up to \$250 000. If a corporate body fails to comply with the Act, its officers, directors or agents are liable for conviction.

In essence, under the Act if a worker suffers an injury in the course of their work, an employer not only has to prove that all regulations were complied with, but must show that they were *proactive*, as illustrated in the 1994 District Court case (Department of Labour v. Regina Ltd) in which Judge Everitt stated:

... it requires all employers to be proactive; in other words to seek out all hazards and to take steps to prevent injury to workers. Employers are now required to be analytical and critical in providing and 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 principal object of the Act after due analysis and criticism. This is a new duty cast upon employers.

There is also a propensity for the courts to award lump-sum payments, appropriated from fines, to workers as compensation for injuries they have sustained. When the Accident Compensation Corporation abolished its lump-sum payments to victims of injury (although this remedy has been restored), the courts began to regularly award at least 50% and up to 90% of the fines to workers. However, it has been argued that these compensatory payments should not be seen as a ‘de facto compensation system to replace the ACC lump-sum award’ (Judge Saunders, *Masters v. Wanaka Tourist Craft Ltd*, Unreported, DC, 28 May 1996, CRN 500200415849).

There have been a number of cases where the court, under section 28 of the Criminal Justice Act 1985, has paid part of the fine to the victims of the offence, for example, in prosecutions against David Spencer Ltd and Fletcher Challenge Steel Makers. As the court noted in Dept of Labour v Alexandra Holdings Ltd [1994] DCR 50:

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 sections of the community regard as almost contemptuous.

The Act also imposes some duties on employees. Under section 19 of the Act, they are required to take all practicable steps to ensure their own safety while at work and to see that their action or inaction does not cause harm to any other person. This becomes problematic as the limited employee participation under the Act only extends to the development of procedures for identifying and eliminating significant hazards, and for dealing with or reacting to emergencies or imminent danger. If the employer fails to develop the necessary safety procedures then the employee cannot be charged for lack of compliance with section 19. It is also stipulated, under sections 11 and 12, that employees are to be given information regarding emergency procedures, any hazards they may be exposed to, and the results of the monitoring undertaken by or on behalf of the employer. Part III of the Act deals with the establishment of codes of practice and regulations on health and safety standards. Section 20 allows for the development of codes of practice as a recommended means of compliance with the provisions of the Act. Codes should also be made available to the public and may be taken into account by the Court where a person is believed to have failed to comply with the Act or regulations. Regulations may impose a duty on employers and others who control places of work, on employees, owners of plant or manufacturers or sellers; or may involve any other matter considered necessary to operate the Act. They replace industry-specific provisions that were contained in legislation such as the Bush Workers Act 1945 and the Construction Act 1959.

As with the previous legislation, the Act provides for an enforcement agency – the Department of Labour. Its inspectorate has functions and powers similar to those conferred by preceding legislative arrangements. Its primary duty is still enforcement of the legislation and the provision of information and advice to employers, employees and the public in order to improve safety in places of work. Inspectors must also determine whether the Act is being complied with, and take all practicable steps to ensure that it is. Inspectors may enter workplaces at any reasonable time to conduct inspections and investigations. They may take whatever samples are required for their investigations. If an inspector believes that the law is not being complied with, they can issue an improvement notice which specifies what has to be done and by when. Where failure to comply with the law may cause serious harm, a prohibition notice can be issued which suspends work until the hazard has been removed (see sections 39-45 of the Health and Safety in Employment, 1992).

### **Issues, Trends and Legislative Changes**

While the Health and Safety in Employment Act 1992 rationalised the administrative and legal framework, it failed to reduce significantly the level of injuries, illness and fatalities. The number of work-related injuries and illnesses in New Zealand continues to be high compared to other OCED countries and that the rate of fatalities has remained relatively static, as seen in tables 1 and 2. Similar jurisdictions, such as Victoria and Queensland, have half the number of occupational fatalities compared to New Zealand's

rate of fatalities (Victorian WorkCover Authority, 2006; Queensland Department of Employment and Industrial Relations, 2006).

**Table 1: Workplace Fatalities across Countries**

Country	Fatalities	Fatalities Rate per 100,000 workers	Accident Rate per 100,000 workers
Australia	275	3.2	2434
Denmark	90	3.4	2561
New Zealand	61	3.5	2699
Norway	72	3.2	2446
Sweden	77	1.9	1469
United Kingdom	225	0.8	632
United States	6821	5.2	3959

**Table 2: Number of New Zealand Department of Labour Recorded Fatalities**

Industry	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Forestry	9	9	4	7	2	7	9	1	7	5
Construction	17	13	17	8	12	14	6	5	14	13
Industrial/Commercial	15	9	16	7	29	29	30	16	26	15
Agriculture/Horticulture	15	12	17	17	25	22	15	24	17	21
Extractive Industries	-	-	2	0	5	1	2	1	1	1
Total	56	43	56	39	73	73	62	47	65	55

\* Source: the Department of Labour, 2007. However, it should be noted that the number of fatalities investigated by OSH is not an accurate or reasonable indicator of trends over time, nor are they an accurate guide to levels of safety in the workplace. Also the Department of Labour figures do not include fatalities from long latency diseases caused by exposure to hazardous substances.

Critics blamed this on the fact that the Act deviated from the UK Robens' model of one authority administering one Act covering all workers and including joint participation in all health and safety matters. Specifically, the New Zealand Act did not incorporate formalised, joint participation mechanisms nor did it cover all workers and there was growing disquiet over the level of effective enforcement. As a result of these concerns and as part of the general review of the employment legislation, including health and safety, the Health and Safety in Employment Amendment Act, 2003 was enacted in which there were a number of changes. We will examine four major amendments, which are:

- effective enforcement;
- worker participation in health and safety;
- improving coverage and regulatory consistency;
- the inclusion of stress and fatigue.

The changes to **enforcement arrangements** under the Health and Safety in Employment Act focused on extending the limitation period for taking a prosecution, removing the Crown's monopoly on prosecuting breaches of the Act and the creating infringement

notices in the form of “instant fines” that can be issued by an inspector for any breach of the Act or Regulations. The limitation period for bringing a prosecution under the Act has increased to six months from the time when the breach became known or should have become known to an inspector. The rationale for this extension is that taking a prosecution can be a complicated process, sometimes requiring protracted scientific tests.

The Crown monopoly on prosecutions has also been removed and private prosecutions are now possible but only once the Department of Labour has decided not to prosecute and has not issued an infringement notice or sought a compliance order for the same matter. However, critics argue that the Department of Labour is abdicating its statutory responsibility and that New Zealand’s low rate of prosecutions will worsen. In comparable jurisdictions the rates of prosecutions for breaches of the OHS legislation are much higher. For example, Queensland’s Workplace Health and Safety inspectorate carried out 214 prosecutions in 2005, with offenders ordered to pay fines and costs totalling more than \$4.76 million compared to New Zealand’s Department of Labour which undertook only 154 prosecutions, netting a total of \$633,300 (Queensland Department of Employment and Industrial Relations, 2005; New Zealand Department of Labour, 2005).

The few prosecutions in New Zealand, some argue, is as a result of the “self-regulatory” approach that underpins the Health and Safety in Employment Act, 1992, consistent with the Robens’ model (Beck & Woolfson, 2000; Greenberg, 2006). Many OHS commentators believe that successive governments have adopted self-regulation in order to reduce the number of field inspectors (Lamm, 1994; Armstrong, 1999; Bohle and Quinlan, 2000). This approach requires fewer field personnel as the onus is entirely on the employer (and to a lesser extent on the worker) to ensure that they create a healthy and safe workplace. The question arises, though: will the employer know how or what is required to achieve compliance with OHS regulations and will self-regulation actually encourage compliance with the OHS regulations? The point is nicely made by Brooks (1988: 353):

But knowing that one has such an obligation (under the legislation) is one thing. Knowing how to comply is quite another.

Self-regulation is dependant upon the notion of voluntary compliance by the employer. However, studies reveals that the ambiguity of “performance standards” and in particular, the self-regulatory approach are particularly difficult to implement, especially in the small business sector and have done little to reduce the incidence of occupational injury and disease (Shannon, et al, 1997; Bickerdyke & Lattimore, 1997; Mearns, et al, 2003; Barbeau, et al, 2004; Walters, 2001, 2004, 2006). While self-regulation may have the potential to reduce the incidence of occupational injury and disease (although there is still no substantial evidence to show that it does actually have that potential), a combination of key elements are required if it is to succeed – namely, joint participation, total management commitment, robust safety and health systems and an organisational culture that imbues exemplary health and safety practices (Lamm and Walters, 2004; Massey, et. al., 2006). In addition, a general reluctance on the part of certain employers to adopt

safer and healthier work practices highlight the need for mandatory minimum OHS standards in conjunction with self-regulation.

The other major change to the Health and Safety in Employment Act, 1992 was the inclusion of **worker participation in health and safety matters**. Previously, New Zealand deviated from the Robens' model in that it did not stipulate the participation of workers in decisions affecting their health and safety. Instead, it only made vague reference to the involvement of workers in health and safety issues (see section 12, Health and Safety in Employment Act 1992). The fact that formalised worker participation failed to materialise in the legislation was not surprising, given the National Government's preference for employment relations' policies that favoured individualism and self-interest. The lack of formalised worker participation was severely criticised by researchers and health and safety professionals who argued that there is overwhelming evidence to show that worker participation drastically reduces the incidence of occupational injuries and illnesses (Weil, 1991; Campbell; 1998; Frick & Walters, 1998; Walters, 2001, 2004, 2006).

The *Health and Safety in Employment Amendment Act, 2002* now requires employers to ensure that their employees have a reasonable opportunity to participate in work-related health and safety matters. "Reasonable opportunity" is determined by the particular circumstances of each workplace, including things such as: the number of employees employed; the number of workplaces and the distance between them; the potential sources of harm in the place or places of work; the nature of the employment arrangements (e.g. the extent and regularity of seasonal employees); and the overriding duty to act in good faith.

Employers, employees and any union acting on an employee's behalf must also co-operate in good faith to develop, agree and maintain a system that sets out the ways in which employee participation will operate in the workplace. A 'system' can comprise of any matters the employer, employees and their representatives agree on; for example, it may involve electing health and safety representatives, focus groups, toolbox meetings or it may involve establishing a health and safety committee or something else. A system must contain a process for review. If a system is required and there is a failure to develop a system within 6 months, the Act contains default mechanisms that allows employees or their union to hold an election for employee health and safety representatives (either acting separately or as part of a health and safety committee). More importantly, if an employer has 30 or more employees then a participation system must be developed. A participation system can also be established in workplaces with fewer than 30 employees, if the employees request it.

As part of the changes to the provision of worker participation, training of health and safety representatives has also been included. The Act sets out a statutory entitlement of two days paid leave each year for health and safety representatives to attend an approved health and safety training course. The Act provides that health and safety representatives who have undertaken appropriate training will also be able to issue hazard notices, informing the employer that there is a hazard in the workplace that requires systematic

management. Typically, hazard notices are only issued if employer either refuses to discuss the hazard or to take steps to deal with the hazard within a reasonable time. It should be noted that under the *Health and Safety in Employment Act* all employees not only have the right to know about and participate in work-related health and safety matters but also they have the right to refuse work which is likely to cause serious harm.

The third area of change is improving **coverage and regulatory consistency** of the *Health and Safety in Employment Act*, 1992. In spite of the fact that the ACOSH Report and the majority of submissions to the Health and Safety in Employment Bill endorsed the concept of one Act covering all workers (with rare exceptions), there were still anomalies in the way in which:

- government agencies appeared to have immunity from prosecution under the Health and Safety in Employment Act;
- the Act omitted certain industries and occupations, and
- the Act was selectively applied.

Although most public servants were covered by the Health and Safety in Employment Act, in reality the Department of Labour was reluctant to prosecute other government departments. The most notable example was the 1995 Cave Creek tragedy, in which thirteen young student trampers were killed and several severely injured when a Conservation Department's observation platform collapsed, highlighted the lack of government accountability in health and safety matters. Following the tragedy, the government established a commission of inquiry, conducted by Judge Graeme Noble. The inquiry listed six recommendations, three of which related to the removal of the exemption of the Crown from liability under the *Health and Safety in Employment Act* and the *Building Act* and other amendments to the *Building Act*. The public sector immunity from prosecution was removed as an amendment to the *Health and Safety in Employment Act* under the *Crown Organisations (Criminal Liability) Act 2002*.

The Act also omitted certain industries and occupations, in particular workers in the rail and air industries. The 2000 Ministerial Inquiry into Tranz Rail Occupational Safety and Health, led by Bill Wilson, QC, exposed the misconception that the *Health and Safety in Employment Act* covered the majority of workers. The inquiry showed that Tranz Rail employees who worked on the rail services were not covered by the *Health and Safety in Employment Act*, but instead by the *Transport Services Licensing Act 1989* and in particular the *Transport Services Amendment Act 1992*, enforced by the Land Transport Safety Authority. The Land Transport Safety Authority is essentially a licensing authority with little experience of enforcing health and safety standards. In addition, under the *Transport Safety Licensing Act* the emphasis is on *reasonable cost* which places safety in conflict with commercial considerations (Wilson, W.M., 2000: 8). W.M. Wilson's (2000) key observation was that the general provisions of the Health and Safety in Employment Act should apply to all Tranz Rail workers and that the Department of Labour should take full responsibility for enforcing the Act in all aspects of rail operations, consistent with the Robens' model and the ACOSH Committee's recommendations.

Thus, extending the coverage under the Health and Safety in Employment was seen as significantly improving the wellbeing of New Zealand workers. The Act now covers:

- crew aboard ships, crew aboard aircraft and rail worker;
- people who are mobile while they work; and
- volunteers carrying out work activities, 'loaned employees' and persons receiving on the job training or gaining work experience.

There was also criticism regarding the selective application of the *Health and Safety in Employment Act*. This is particularly noticeable in areas of work-related illnesses. Identifying the cause of an occupational illness is typically difficult and as a consequence it is rare for the Department of Labour to prosecute an employer or employee for causing a work-related illness. However, there is increasing scientific evidence that links exposure to certain chemicals with certain diseases; for example, exposure to asbestos particles can lead to the lung disease mesothelioma. Another example is the link between passive or 'second-hand' tobacco smoke and lung cancer and heart disease. Workers employed in industries where tobacco smoking is prevalent, such as the hospitality industry (i.e. restaurants, bars, night clubs and casinos) and the health industry (i.e. psychiatric residential facilities), are more likely to suffer severe ill-health and premature death compared to those in occupations not exposed to tobacco smoke (Woodward and Laugesen, 2000). Although the Department of Labour acknowledges that second-hand tobacco smoke is a significant workplace hazard, it has not yet enforced the Health and Safety in Employment Act in situations where workers are exposed to tobacco smoke and has instead deferred to the Smoke-free Environments Act, 1990 which is administered by the Ministry of Health.

One of the most contentious changes to the Health and Safety in Employment Act was the explicit mention of **stress and fatigue** as potential work hazards and sources of harm. There were several reasons why there was pressure to identify stress and fatigue as potential hazards. The first reason was that controls on the working hours and the stipulated breaks previously set out in the old awards under the Industrial Arbitration and Conciliation system disappeared after the enactment of the Employment Contracts Act, 1990, leaving most New Zealand workers without any protection over how many hours they could work at a stretch. The second and related reason was that there were several high profile cases in which fatigue had been the cause of a number of serious and fatal accidents and where employees had been diagnosed with life-threatening stress-related illnesses as a result of overworking. Many of the employment cases involved public servants (for example *Brickell v A-G* [2000] 2 ERNZ 529). One of the most notable cases was that of Mr Gilbert, a probation officer who was forced to leave his job of over 30 years on medical grounds as a result of years of overwork. In the subsequent court case in June 2000, Judge Colgan upheld the claims of breach of contract and for personal grievance and awarded Mr Gilbert:

- a lump sum for loss of income from the date of resignation for the 14 years of working life before he became entitled to New Zealand superannuation;
- \$75,000 as general damages for humiliation, anxiety and distress;

- \$50,000 for loss of career, employment status and employability;
- \$14,000 approximately, for medical expenses; and
- \$50,000 exemplary damages.

The third reason is that there is overwhelming evidence to show that New Zealanders are working longer and harder. Over the past decade New Zealanders are spending more time at work than many other industrialised countries (Rasmussen & Lamm, 2002; Callister, 2005). Census figures released in 2007 show that the number of New Zealanders working at least 50 hours a week rose by 10,500 in the past five years to 415,600 or 22.7 per cent of the working population, (Statistics NZ, 2007). However, in spite of working longer and harder, New Zealand's level of productivity remains static and indeed studies show that implementing measures to increase productivity may create negative OHS outcomes, as Goetzel, et al (2002: 320) notes:

Instead of feeling empowered, [workers] may feel ... uncomfortable about their new job demands... They may experience increased stress, more worry about their job tenure, heightened feelings of detachment, and diminishing motivation to perform at peak performance... Low morale and poor attitudes about work can become contagious and infect fellow workers, further exacerbating individual productivity and bring about increased turnover and general organisational malaise.

Based on his recent study, James (2006: 11) also observes working longer and harder does not necessarily increase productivity:

The fact that over half of these new cases of work-related ill health stem from ... stress, depression and anxiety, and musculoskeletal disorders, also raises an important issue of policy, particularly when account is taken of the further fact that, against a background of increasing work intensity and declining worker discretion, the prevalence rate for stress and related conditions has recently grown substantially... It also further suggests, given the way in which these conditions are intimately connected to workload levels and the nature of work tasks, that the achievement of reductions of this type will require employers to be placed under much greater pressure to design work tasks and establish workloads that are not detrimental to worker health.

Thus, it would appear that in spite of the opposition to including stress and fatigue in the amendment to the Act, New Zealanders are working longer and harder with negative health and safety consequences.

The Amendment to Act also contains other changes. There is a "designated agency" clause which enables the Prime Minister to designate other government agencies with specialist knowledge to administer the Act for a particular industry, sector, or type of work. The Act also stipulates that employers must provide and ensure the use of protective clothing and equipment for employees, although the amendment allows employees to choose to provide their own protective clothing in certain circumstances.

The Act places duties on those who sell, hire or supply plant or equipment for use in a place of work to ensure that it is safe for its intended use. Finally, the Act requires self-employed people and principals to record incidents and to notify the Department of Labour of serious harm injuries.

In summary, the Health and Safety in Employment Act, 1992 did not stem the rise in workplace fatalities, injuries and illnesses and that there was clearly a need to amend the Act to ensure that it was more aligned with the principles of the Robens' model. Whether or not these changes alone will reduce the number of occupational fatalities is hard to predict. Some OHS commentators, however, argue that one of the reasons why New Zealand's injury and illness rate has not declined is that there been a pre-occupation with compensation instead of prevention (Campbell, 1996). It is the compensation of workplace accidents we will now address.

### **Accident compensation and insurance**

Efforts to provide a healthier and safer workplace by means of statutes, commencing in the mid-nineteenth century, paralleled the struggle to obtain a mandate for compensation where workers had suffered work-related injuries and illnesses. What set New Zealand's workers compensation apart from that of the rest of the world was its innovative and comprehensive application of the principle of 'no fault' compensation that was expanded in 1972 to include all personal injury by accident, regardless of the fault. It was one of the first countries to recognise the detrimental financial and social consequences of workplace injuries. While the core principles of New Zealand's workers' compensation have remained that same since 1972, there have been numerous changes tinkering at: who delivers accident compensation, how it is delivered and what it covers, as outlined in the table below.

**Table 3: Changes to New Zealand's Accident Compensation**

<i>Legislation</i>	<i>Principles for change</i>	<i>Approach</i>
Accident Compensation Act 1972	Woodhouse Report: comprehensive cover, community responsibility, fully funded Scheme	Legislation set broad parameters with significant discretion
Accident Compensation Act 1982	Concerns regarding escalating costs. A desire to move to a pay-as-you-go Scheme	Continued discretion introduced some tighter parameters for decision-making
Accident Rehabilitation, Compensation and Insurance Act 1992	The Government Paper "A Fairer Scheme" raised concerns over escalating costs and a desire to introduce insurance-based principles.	Moved from discretion to a very prescriptive environment with a more regulated framework. Replaced lump-sum compensation with independence allowance
Accident Insurance Act 1998	Introduced competition into workplace accident insurance	Maintained a prescriptive approach with some discretion in rehabilitation. Legislation set the minimum

		requirement for insurers
Accident Insurance (Transitional Provisions) Act 2000	Removed competition from workplace accident insurance	ACC solely delivered the Scheme. Reintroduced Accredited Employers' Programme and CoverPlus Extra for self-employed
Injury Prevention, Rehabilitation, and Compensation Act 2001	Removed insurance-based principles with a desire to return to Woodhouse principles. First step in reforming the Scheme to meet these principles	Increased focus on injury prevention. Greater discretion in rehabilitation while still maintaining prescription to effectively manage other entitlements. Reintroduced lump-sum compensation
Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005	Continued the reform along Woodhouse lines	Introduced no fault to medical misadventure, fairer compensation for self-employed, and greater discretion for rehabilitation; bypasses the normal requirement to prove causation of gradual process injuries or diseases & extension of the list of compensated diseases

Source: ACC, 2005

One of the earliest workers' compensation schemes was implemented after the 1896 Brunner Mine disaster, in which 67 miners died as a result of a mine explosion in Westland. The Liberal Government had a compelling incentive to introduce workers' compensation legislation that attributed no blame. Based on the original German legislation of 1888 and the 1897 British Workers Compensation Act, the 'no fault' Workers Compensation for Accidents Act 1900, was compatible with the Liberal Government's other employee protection legislation. The Hon. John MacGregor's view epitomises the social and economic opinions of the period:

The artisan and the mechanic is like the soldier, in that both run a risk of death or horrid maiming, and that in the interest of others – of the community at large. The soldier has his pension; the industrial soldier should have his. The employer can insure his building against destruction by fire, his machinery against depreciation, and insurance forms a charge on the industry, one of the costs of production. Why should not the workman insure the only instrument of production he possesses – namely his life and limbs – against destruction by exploding firedamp, or unfenced machinery, from depreciation by lead poisoning or phossy jaw? And why should not such insurance constitute an incidental charge on the industries, payable eventually, like the cost of fire insurance by the consumers?  
(Cited in Campbell, 1996: 15).

The notable features of the new Act were that it covered a wider range of workers than did the British Act and that it provided payment, for example, for medical expenses, lump-sum payments and weekly benefits, without the need to prove negligence (Rennie, 1995: 121).

The extension of a no-fault, or absolute liability, scheme to include all individuals in New Zealand was first seriously mooted in 1928 as part of the parliamentary debate that accompanied the introduction of the Motor Vehicles Insurance (Third-party Risk) Act. Almost a decade later, New Zealand came nearer to achieving comprehensive no-fault legislation with a drafted Bill, but in the face of strenuous opposition it was dropped. However, as comprehensive no-fault schemes were operating successfully in parts of Canada and the United States as early as 1946, the issue was again raised by some in the Labour Government. Many Labour politicians were of the opinion that as New Zealand was a signatory to ILO conventions concerning no-fault workers' compensation, the government had an obligation to apply the ILO absolute liability principle to New Zealand workers' compensation legislation. However, such a scheme was not popular among many motorists and efforts to bring about an absolute liability Bill in 1947 were blocked by the Member of Parliament for Palmerston North, who was prominent in the Automobile Association.

During the 1960s there was growing disquiet over the limitations of the workers' compensation scheme in which payments had fallen to 53% of the average weekly wage and which stopped altogether after six years even if the worker was quite incapacitated. In addition, the ILO Absolute Liability Workers' Compensation Convention 121, 1964, provoked considerable interest in New Zealand and inspired the Minister for Labour, the Hon. T.P. Shand to declare:

I frankly believe that the time has come for the abolition of common law claims for accidents in industry, but before contemplating taking away that right we must make up our minds that the alternative compensation provided in workers' compensation legislation must be more generous, full, and fitting than it is today.  
(Cited in Campbell, 1996: 42).

Two years later the Government appointed a Royal Commission, chaired by the Hon. Owen Woodhouse, a Supreme Court Judge, to investigate compensation for personal injury. Numerous submissions were heard and various countries were visited, and the resulting Woodhouse Report went beyond its terms of reference and proposed a universal 'no-fault' system based on the five guiding principles listed and discussed below (Royal Commission to Inquire into and Report upon Workers' Compensation, 1967: 39).

1. Community responsibility. 'In the national interest, and as a matter of national obligation, the community must protect all citizens (including the self-employed) and the housewives who sustain them, from the burden of sudden individual losses when their ability to contribute to the general welfare by their work has been interrupted by physical incapacity.'
2. Comprehensive entitlement. 'All injured persons should receive compensation from any community financed scheme on the same uniform method of assessment, regardless of the causes which gave rise to their injuries.'
3. Complete rehabilitation. 'The scheme must be deliberately organised to urge forward the physical and vocational recovery of these citizens while at the same time providing a real measure of money compensation for their losses.'

4. Real compensation. 'Real compensation demands for the whole period of incapacity, the provision of income-related benefits for lost income and recognition of the plain fact that any permanent bodily impairment is a loss in itself, regardless of its effect on earning capacity.'
5. Administrative efficiency. 'The achievement of the system will be eroded to the extent that its benefits are delayed, or are inconsistently assessed, or the system itself is administered by methods that are economically wasteful.'

Finally, after much debate, Parliament incorporated the five Woodhouse principles into the 1972 Accident Compensation Act. The Act established, for the first time, a "no-fault" scheme that provides one source of compensation for personal injury, irrespective of who was at fault. The right to sue to recover compensatory damages arising directly or indirectly out of personal injury was abolished, although an action for damages could still be taken in a court outside New Zealand. In addition, the Act created the Accident Compensation Commission (ACC) responsible for the administration of the scheme. There were three parts to the overall scheme under the Act.

- The earners' scheme provided cover for 'earners' (whether workers or self-employed persons) who had suffered personal injury by accident whether at work or elsewhere. This scheme was funded from levies paid by employers in respect of wages paid to workers and from levies by self-employed persons as a percentage of their tax assessable income.
- The motor vehicle accidents scheme covered the victims of motor vehicle accidents (whether they were the driver, passenger or a third party) and was funded from levies paid by the owners of motor vehicles.
- The supplementary scheme covered those who did not have cover under the earners or motor vehicle accidents scheme. This scheme was funded by government from consolidated revenues (Rennie, 1995: 124).

Under the earners' (or workers' compensation) scheme, the employer was required to compensate the injured worker for the day of the accident and for the next six days, after which compensation, based on 80% of the normal average weekly pre-accident earnings, was paid by the ACC. Hospital, medical and rehabilitation costs were paid for as well as transport costs associated with hospital or medical treatment. The Act also provided for lump-sum payments for permanent loss or impairment of bodily function and pain and mental suffering. There was provision for compensation for pecuniary loss not related to earnings. In fatal cases, funeral costs were recoverable and surviving spouses and children were catered for with earnings-related compensation and lump-sum payments.

Although widely discredited by academics, practitioners and the Woodhouse Commission, the government introduced an 'experience rating system' under the Accident Compensation Act whereby companies or the industry pay a levy according to the number of accidents that happen. Woodhouse believed that a levy system could not operate equitably and that such financial incentives would be insignificant for any substantial organisation, relatively unimportant for a small one, and non-existent in the public sector. The Report also argued that such a system could be open to corruption.

By the late 1970s, there was growing dissatisfaction with the 1972 scheme among employers who were unhappy about having to contribute toward non-work-related injuries. In addition, there was general discontent with the overall cost of the scheme as the expenditure for medical treatment and lump-sum payments were increasing. In response, the National Government established the so-called Quigley Committee in 1979, to review the costs associated with the accident compensation system. The Committee's recommendations – to restrict compensatory payments and to dissolve the Commission and replace it with a corporate structure – became the basis of the corporatisation of the ACC and of the 1982 Accident Compensation Act. The funding method was changed from a 'fully funded' to a 'pay-as-you-go' system and the three different 'schemes' were amalgamated into a single one, which continued to be funded from the three levy sources. However, Campbell (1996: 55) argues that these reforms did not produce the benefits that the Quigley Committee and National Government claimed, and that the executives, who replaced commissioners, had no understanding or appreciation of the philosophy underlying the Woodhouse Report and the Accident Compensation Act 1972. Indeed, Campbell (1996: 58) states that the 1980s were characterised by 'frequent changes in the management of the organisation and considerable staff turnover'. The long reform process of the ACC generated uncertainty, affected staff morale, and created difficulties for the effective and efficient management of the scheme. The preoccupation of ACC management during the 1980s was the question of how to reduce the cost of workers' compensation; this led its prevention managers to look for injury causation and control models that would be compatible with their corporation's managerial ideology.

By the late 1980s and early 1990s, ACC was totally committed to the loss-control perspective. It developed safety management programmes and supported tertiary degrees in safety management. Nevertheless, there was a steady call from employers – particularly those in large businesses – to reduce workers' compensation costs (rather than bringing about a reduction in accidents, injuries and work-related diseases). In response, the newly elected National Government set about narrowing the compensation categories as a way of reducing the growing ACC debt and the employers' compliance costs. The legislation that followed, namely the Accident Rehabilitation Compensation Insurance Act 1992, was designed to contain the overall costs and reallocate them amongst taxpayers and individuals paying premiums. The principle means of doing this were:

- refocusing the scheme on its insurance origins, particularly by the use of experience rating and user part charges;
- realigning the scheme with new health care provisions to reduce the incentive to shift costs between illness and injury schemes;
- redistributing costs by allocating public health costs to the scheme and introducing a new earners' premium for non-work injuries, and
- containing costs by altering benefits and tightening scheme eligibility (for example, by abolishing lump-sum payments – this would gravely affect asbestos disease sufferers whose life expectancy is minimal) and unless physical injury was present, stress and mental injury were generally not covered.

Furthermore, the most controversial parts of the Act were the alterations to the definitions of accident, work injury, gradual process diseases and infection. The new definitions tightened the scope of claims accepted by the ACC as personal injury by accident. Claims for personal injuries could only be considered if the accident was a result of:

- a specific event external to the human body that results in personal injury but does not include any gradual process;
- the application of an external force or resistance that is abnormal in application and/or excessive in intensity.

Narrowing the compensation categories as a way of restricting compensation entitlements generated widespread criticism. More changes were to come, however. In the late 1990s, ACC allowed accredited employers to manage their claims for up to two years. There was also a distinct policy shift by ACC to reduce the number of long-term ACC claimants. Each person with a significant injury became the responsibility of an individual ACC staff member and greater emphasis was placed on rehabilitation and returning injured workers back into the workforce. The effort by ACC to purge itself of long-term claimants, such as those involving occupational over-use injuries, set the scene for the introduction of private insurers into the workers' compensation market. Moreover, the National Government was keen to introduce competition into the state-run workers' compensation scheme and enacted the Accident Insurance Act in 1998. In effect, the government disengaged itself from workers' compensation altogether by creating a new Crown-owned enterprise in late 1998 specifically for workplace injury insurance, called @ Work Insurance (for more details, see Deeks and Rasmussen, 2002: 407).

However, just as New Zealanders were coming to grips with the new legislation there was a change of government at the end of 1999. The Labour–Alliance Coalition Government introduced its reforms in two parts.

- The Accident Compensation (Transitional Provisions) Act and Accident Insurance Amendment Act were enacted in April 2000. The main purpose of these pieces of legislation is to reintroduce the Accident Compensation Corporation as the sole provider of cover for workplace accidents and remove all competition as well as to introduce incentive programmes for employers to improve their approach to injury and claims management.
- The Injury Prevention, Rehabilitation, and Compensation Act, 2001. The Act reaffirms the Woodhouse principles upon which New Zealand's unique 24-hour, no-fault scheme was founded. To achieve this, ACC and the scheme must focus on prevention, rehabilitation and compensation, in that order. The Act makes it clear that the primary role of ACC and the scheme must be to focus on injury prevention and reducing the incidence and severity of personal injury. In those instances where injuries do occur, the focus will be on rehabilitating claimants to the maximum practicable extent, and facilitating, where possible, a sustainable return to work and

independence as soon as possible. While rehabilitation is occurring, claimants will receive 'fair compensation for loss of earnings from injury'.

The Injury Prevention, Rehabilitation, and Compensation Act, 2001, differs from previous law in that it establishes *injury prevention* as a primary function of ACC. To this end, ACC will be required to promote measures to reduce the incidence and severity of personal injury. The Act also provides for a new information framework across the injury prevention sector to facilitate data collection, aggregation, analysis and dissemination, for such purposes as improving research, policy development, and monitoring of agencies' effectiveness. The Act specifies a new *rehabilitation* principle – namely, that rehabilitation is to be provided by the Corporation to restore the claimant's health, independence and participation to the maximum extent practicable and can make available a lump-sum payment for permanent impairment. The intent of this change is to provide fairer compensation for those who, through impairment, suffer non-economic loss. This includes both physical impairment and mental injury (caused by a physical injury or sexual abuse). The Act further provides: a more *flexible assessment* of loss of earnings; a new formula for setting a minimum level of weekly compensation; more flexible provisions for self-employed people, and simplified regulations concerning premium payment procedures. The Act also incorporates a *Code of ACC Claimants' Rights* as well as allowing for the disclosure of information to the Department of Child, Youth and Family Services and for the reporting of medical errors to the relevant professional body and the Health and Disability Commissioner.

Since 2001, there have been a number of amendments to the Injury Prevention, Rehabilitation, and Compensation Act, 2001, such as extending the no fault principle to medical misadventure and compensation for self-employed as well as greater discretion for rehabilitation. The amendment to the Act also bypasses the normal requirement to prove causation which is required for gradual process injuries or diseases. It also lists 25 additional conditions or diseases to be added to Schedule 2. Although many of the occupational diseases are rare, some are more common, such as noise induced hearing loss, dermatitis and some types of asthma caused by sensitizing agents or irritants inherent in the work process, for example sawdust (ACC, 2005). This change will have the greatest affect on industries where employees may be exposed to the risk of certain illnesses.

Thus, workers' compensation has come full circle. The intention to re-nationalise accident compensation was, together with the Employment Relations Act, the most controversial political issue in the Labour–Alliance Government's first year. It was only after the announcement, in March 2000, that the new accident insurance premium rates would be lower for most companies (compared with the averages of insurance premium rates offered by private sector insurance companies) that the public furor over the changes died down. It will be interesting to see whether the issue of privatisation of accident compensation will resurface in future general elections.

## **OHS, Performance and Productivity**

Underpinning the debates concerning the rates of occupational injuries and illnesses are investigations into the root causes. In particular, OHS researchers are increasingly concerned about the negative and sweeping changes that are impacting on the organisation of work. The changes have resulted in the decline of full-time employment, the rise in precarious work and casualised labour, and consequential poor health and safety of disadvantaged groups of workers (Walters, 2001; Campbell & Burgess, 2001; Tucker, 2002; Quinlan, et al 2001; Quinlan, 2003; Lewchuk et al, 2003; Frick, 2003; Shain & Kramer, 2004; Hannif & Lamm, 2005; James, 2006). Altering the way we work has been propelled, to a large extent, by the voracious need to increase productivity and performance, as noted in Deeks and Rasmussen, (2002: 165-169) and while there are some that would argue that new systems of work organisation offer increased flexibility, responsibility and learning opportunities and are critical in maintaining business competitiveness and increasing productivity and performance, others have focused on the health and safety risks posed by these trends (Landsbergis, 2003; De Greef & Van den Broek, 2004; also refer to The Tokyo Declaration, 1998). Quinlan (1999: 427) summarises the impact of these recent changes:

Over the past 20 years the labour markets of industrialised countries have undergone a series of profound changes. These changes have been associated with significant changes in work processes but until recently no attention was given to the consequences of this for occupational health and safety (OHS) ... available evidence indicates that labour market restructuring is having a significant (adverse) but often hidden impact on OHS. In many cases, these effects are compounded by competition, labour market and health care policies introduced since in the 1980s.

These national and international changes to the organisation of work and their implications for OHS have come to the attention of governments and their agencies. In its 2002 report, the US National Institute for Occupational Safety and Health (NIOSH) describes a range of new organisational practices that employers have implemented to compete more effectively in the global economy but which have negative OHS outcomes, namely:

- Organisational restructuring, such as downsizing and outsourcing.
- Flexible and quality management initiatives (e.g. total quality management, lean production, modular manufacturing and high performance work systems).
- The use of temporary and contingent labour.

In particular, these changes to the organisation of work can directly influence the level of exposure to physical and psychological hazards in the workplace. For example, workers with multiple jobs or extended work shifts might be at risk of exceeding permissible exposure concentrations to industrial chemicals. Long working hours and staff reductions can increase the risk of over exertion injuries. Increased public contact and alternative work schedules (e.g. night work), which are common in the growing service sector, can

expose workers to heightened risk of violence in their jobs (NOHSC, 2002; Shain & Kramer, 2004). As Shain and Kramer (2004: 61) note:

“The connection between the physical and psychological environments, and hence the term “organisation of work”...are both heavily influenced by high level management choices and decisions about how work will be organised. When this interaction between the physical environment (“the safety of places and things”) and the psychosocial (“culture and climate”) is taken into account, their joint impact on health [and safety] is significant.”

Not only has there been a great deal of debate over the impact of the changes to work organisation on occupational health and safety and how to get employees to work more productively, there have also been discussions over how to get employers to invest in better working conditions, which may or may not lead to increased profits (Shearn, 2003: iv). It has been argued that a more persuasive argument is required if managers' behaviour is to change, and that it is easier to justify introducing a safety and health promotion programme to the employer on the basis that it may enhance productivity rather than justifying it solely on the basis that it will contain or lower compensation costs (O'Donnell, 2000; Cowley, 2006).

Smallman and John's (2001) study on the attitudes of British company directors to OHS shows that boardroom views of OHS are evolving from treating it as a legal compliance towards seeing it as a competitive advantage and an essential ingredient in achieving world class performance. They (2001: 237) conclude that:

“If we are to make inroads into the damage that poor OHS management does to the economy ..., then issues around the relationship between wider corporate culture, safety culture and firm performance are [important]. So too the relationship of OHS and corporate aspirations to be ‘world class’ is an important matter – linking corporate social performance, productivity, quality and financial performance are key if we are to establish healthy organisations (balancing employee, directors, managers and owners health).”

These attempts to link improved OHS practices and policies with improved productivity and performance have been driven by government agencies, trade unions and the more enlightened employers. Increasingly enlightened employers, together with trade unions, are striving to provide safer and healthier workplaces which can translate into increased productivity, more job satisfaction, and stronger bottom-line results (Brandt-Rauf, et al 2001; Occupational & Environmental Health Foundation (OEHF), 2004; Boles, et al., 2004; De Greef & Van den Broek, 2004). More precisely, the drive to link productivity with OHS outcomes is underpinned by four core reasons:

1. The need to find more innovative ways to reduce the high rates of workplace injury and illness than has previously been the case.
2. The pressure to reduce the social and economic costs of injury and illness, particularly compensation costs.

3. The need to improve labour productivity which does not result in employees working longer hours and taking on more work.
4. The need to provide good working conditions as a way of recruiting and retaining skilled workers in a tight labour market.

New Zealand examples of how OHS best practice can improve business performance are outlined in the Department of Labour's report by Massey, et al (2006: 68). The main spin-offs of introducing OHS improvements were:

- better quality management systems;
- improved communication processes;
- increased efficiency; and
- enhanced company image and reputation.

Many of the exemplar businesses had successfully addressed their high staff turnover by improving standards of health and safety, thereby improving job satisfaction, retention and performance. The examples also showed that having good health and safety systems in place was simply good business practice which results in good productivity. It also suggests that health and safety as a contributing factor to productivity cannot be viewed in isolation and must be seen as part of the other functions of management.

In spite of the fact that there is compelling evidence that providing a healthy and safe working environment has the potential to increase labour productivity and in turn increase company profits, there is an inherent tension within this literature that cannot easily be resolved. Some commentators argue that productivity gains are often at the expense of workers' health and safety. As businesses typically strive to become more productive, there is a tendency to make their employees work longer, harder and more efficiently, and frequently in hazardous conditions and implement OHS measures only to keep compensation costs down (Mayhew & Quinlan, 1999; Dorman, 2000; Quinlan, 2001). As stated earlier, over the past decade New Zealanders are spending more time at work than many other industrialised countries and as a result stress and fatigue as well as the need to have a work-life balance have become major issues (Rasmussen & Walker, 2008). Thus, it would appear unless OHS is treated as priority, efforts to increase productivity can have poor OHS outcomes.

## **Conclusion**

New Zealanders recognised early on that there were economic as well as social costs associated with workplace injuries, illnesses and fatalities. This prompted a framework of employment legislation from the 1890s onwards, including some of the most progressive occupational health and safety and workers' compensation laws in the world. However, the pendulum swung the other way in the 1980s and 1990s. The 1992 Health and Safety in Employment Act was a thin rendition of the more comprehensive Robens-type models adopted in the UK and Australia. Likewise, the changes to accident compensation

produced whittled-down versions of the original recommendations in the Woodhouse Report. These changes in health and safety and accident compensation go to the root of the political and economic ideologies of the government of the day. In particular, this has been signalled by the public policy debate in the last two decades over self-regulatory or prescriptive, interventionist approaches. Recently, with the election of the Labour–Alliance Government in 1999, the pendulum started swinging away from a self-regulatory, employer-centred approach, to a more co-regulatory and work-employer participative approach to OHS in particular and employment relations in general.

Yet the continuously high level of occupational injuries, diseases and fatalities suffered by New Zealand workers indicates an inability by successive governments to provide a strong, stand-alone, OSH enforcement agency and effective legislative structures (Hannif & Lamm, 2005). There has also been a general absence of a safety culture in New Zealand in which health and safety principles are marginalised or even ignored. Recent efforts to reverse the trend in OSH injuries and illnesses have focused on establishing worker-participation schemes and linking good health and safety practices with good management practices and consequential increased performance and productivity, both of which have shown to be effective. However, endeavouring to reduce the number of workplace injuries and illnesses is complex and requires an integrated and tripartite approach at national, industry and organisational levels.

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