

**Occupational Health and Safety Reforms in New Zealand:  
Tripartite Views on the Health and Safety at Work Act 2015**

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## **Attestation of Authorship**

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person except that which appears in the citations and acknowledgements. Nor does it contain material, which to a substantial extent, I have submitted for the qualification for any other degree of another university or other institution of higher learning.

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## **Abstract**

The aim of this small-scale qualitative study was to explore the views of representatives from the Employers and Manufacturers Association (Northern), WorkSafe New Zealand, and the trade unions regarding the new Health and Safety at Work Act 2015 (HSWA) in order to evaluate the effectiveness of the Act and its impact on New Zealand workplaces. Due to the exploratory nature of this research, a qualitative methodology was adopted as it is most appropriate where the events being evaluated have no clear, single set of outcomes (Yin, 2003). Data collected from six semi-structured interviews were supplemented by additional material, such as relevant submissions from government select committees, in order to provide validity and enable a deeper understanding of the topic (Meyer, 2001). The findings show that while all interview participants were well aware and supportive of the health and safety reforms, there was confusion about the new terminology introduced by the Act and frustration regarding the absence of detailed supporting guidelines to achieve compliance. The key finding of this study is that despite the requirements for workers' participation pursuant under HSWA, that the interviewees believed that the levels of work participation had not risen and some cases, were actually lower than under the old Health and Safety in Employment Act 1992.

## Chapter 1: Introduction

It is a well-established that it is almost impossible to achieve compliance in health and safety legislation in industrialised countries without the cooperation and normative consensus of employers and employees (Gunningham & Kagan, 2005). Since the 1970s, New Zealand has had a poor health and safety record compared with other OECD countries (Lamm, 2012). This was dramatically highlighted by the Royal Commission's on the Pike River Coal Mine Tragedy (2012), which found that confusing and weak regulations, lack of enforcement and worker engagement, and absence of adequate data or measurement of health and safety issues had made the Health and Safety in Employment Act 1992 (HSEA) ineffective. It was only after the 2010 explosion at the Pike River Coal Mine, which resulted in the deaths of 29 miners, that the New Zealand Government came under public pressure to initiate occupational health and safety (OHS) reforms. These reforms reflected the recommendations of the Royal Commission's and the Independent Taskforce on Workplace Health and Safety (2013).

The area of OHS has undergone many changes in New Zealand over the last century, with multiple policy reforms. Most of these developments occurred after major incidents that have led to multiple deaths of workers caused by the failure of the health and safety system where the state must take action due to public pressure (Almond, 2015). However, in the last four decades there has been and continues to be a lack of a concrete theoretical framework in New Zealand describing the regulation process within the area of OHS (Wren, 2009).

As noted by Wren (2009), there are very few studies that have devoted extended coverage to OHS reforms and their definite impact on the New Zealand workplace. This dissertation focuses on the Health and Safety at Work Act 2015 (HSWA), (the legislation that replaced the Health and Safety in Employment Act, 1992, (HSEA)) and which aims to improve current OHS conditions and reduce occupation-related injuries by 20 per cent by 2020. This research seeks to provide a deeper understanding of the current OHS legislation and how effective it is perceived to be by key stakeholders. It also offers suggestions for developing informed enforcement and compliance strategies for key government agencies, employers, and workers (WorkSafe New Zealand, 2015). It proved beneficial, therefore, to explore the introduction of a new

regulation process as represented by HSWA through the lens of stakeholder theory (Freeman, 2010).

This study used semi-structured interviews as the primary method of collecting data. Secondary data in the form of submissions to the Parliamentary Select Committee regarding HSWA were analysed to minimise possible errors or bias and to achieve validity and reliability for the study.

### **1.1 Aim of the Study**

The objective of this study was to assess how key OHS stakeholders from the Employers and Manufacturers Association (EMA), WorkSafe New Zealand and trade unions perceive the changes made in HSWA. Hence, the main research question of the study is:

- How do key OHS informants from the EMA, WorkSafe New Zealand and the trade unions perceive HSWA?

The following related sub-questions were also investigated:

- What do these informants think has worked well and what has not?
- Which aspects of the legislation have been easy or difficult to implement?

### **1.2 Structure of the Dissertation**

The dissertation is structured as follows:

- Chapter 2 presents an overview of OHS in New Zealand from colonial times to the present day. It details the circumstances under which the current legislation, HSWA, was introduced and outlines three key changes introduced by the Act which the dissertation will focus on.
- A review of the relevant literature is presented in Chapter 3 and introduces stakeholder theory in order to gain a deeper understanding of the key stakeholders in OHS in New Zealand. This chapter also focuses on the impact of HSWA on the social and employment dimensions; examines the role of the state; and explores the economic and ideological issues surrounding the OHS policy-making process.

- Chapter 4 outlines the methodology adopted for this research, which takes the form of a qualitative study informed by the realist paradigm. Given that the key interviewees represented employers, employees and the state while exploring one particular event, a case study methodology was applied to tease out complex responses within the tripartite context (Yin, 2003).
- Chapter 5 presents the findings of the study, namely the perceptions of representatives of key OHS stakeholders – the EMA, WorkSafe New Zealand and the trade unions – who were directly involved with workplace health and safety matters before and after the HSWA was introduced. Their interview data provided detailed explanations around the key changes that HSWA has introduced. Their opinions on whether the Act has made a positive or negative impact on OHS conditions for New Zealand workers are also presented.
- Finally, Chapter 6 first discusses and summarises the key findings of the research in relation to the existing literature before outlining the limitations of the study. It also presents the contribution of this dissertation to achieving a better understanding of the positive and negative aspects of the current OHS reforms, as well as directions for future research within the OHS realm.

## **Chapter 2: Background**

### **2.1 Introduction**

The purpose of this chapter is to present a brief review of occupational health and safety (OHS) in New Zealand prior to the introduction of the Health and Safety at Work Act 2015 (HSWA). OHS legislation in New Zealand has been heavily influenced by industrial relations in the United Kingdom (Lamm, 2009), and more or less all reforms in the field have followed the UK equivalents. In particular, the most influential development in the last 50 years was the publication of a report by UK Committee on Safety and Health at Work, known as the Robens report, in 1972. This advocated for shifting responsibilities from the state to the main 'duty holders' – that is, employers.

New Zealand was relatively slow to adopt the recommendations of the Robens report, but the Health and Safety in Employment Act 1992 (HSEA) marked the beginning of new era of OHS in New Zealand. This Act contained no statutory provision for worker participation in OHS. In the following decade the number of health and safety inspectors was reduced dramatically nationwide (see Table 2 in Chapter 5). The Health and Safety in Employment Amendment Act 2002 (HSEAA) attempted to fix the HSEA's shortcoming by establishing the principle of worker participation based on a "good faith" (Poroshina-Nicolas, 2016). But these measures did not fix ongoing problems, and only after the Pike River Coal Mine Tragedy in 2010 were substantial OHS reforms initiated, which led to introduction of HSWA.

### **2.2 History of OHS in New Zealand**

Due to New Zealand's colonial past, its legal system, including its OHS framework, is based on the UK model, where the state is seen as the main regulator of OHS-related matters (Lamm and Walters, 2004; Lamm,2009). The first significant OHS reform in New Zealand took place in 1873, with the introduction of the Employment of Females Act which established the first working condition requirements for women, including limiting working hours, guaranteeing holidays and ensuring building ventilation (Anderson & Quinlan, 2008; Lamm, 2010). This Act was heavily influenced by the UK equivalent, as well as the Inspection of Machinery Act 1874, which enabled inspection and certification of boilers and steam-driven and water-powered machinery.

In 1894 the Factories Act was passed in New Zealand, which provided more suitable provisions for factory inspection and measures for health and safety enforcement; this legislation was subsequently amended nearly 50 years later in 1943 (Lamm, 2009). The Factories Act was also influenced by the heavily industrialised United Kingdom, and emphasised certain aspects and kinds of work but neglected others of greater importance in a colonial society, such as agriculture. There was an undeniable inconsistency with the declared motives of the UK factory legislation, which aimed to abolish sweating. The realities of workplace conditions in New Zealand, with its colonial society that was largely dependent upon agriculture and a range of extractive and primary processing industries, were ignored (Martin, 1997).

Nevertheless, New Zealand's factory legislation was established in a form that would remain until the second half of the 20th century. There were gradual reductions in the hours for both male and female workers towards the 40-hour week, which was achieved in 1936. During this period improvement of conditions in manufacturing workplaces was in the hands of a government-appointed inspectorate (Lamm, 1994). This was followed by the establishment of a professional inspectorate and legislation that covered all factories that was well suited to New Zealand's small-scale, scattered and diverse industrial workplaces (Martin, 1997).

During the second half of 20th century, New Zealand's OHS regulations were instigated on an ad hoc basis without any strategic planning, which has ultimately led to inconsistent and costly processes (Lamm, 2010). For example, by the 1970s, New Zealand's legislation in the area was heavily prescriptive, with 14 principal acts covering OHS, the responsibility for which was split between several government agencies (Department of Labour, 2001). This situation led to calls for OHS reform and a new legislative framework to remove the complications caused by the existing regulations (ACC, 2005).

Meanwhile in the United Kingdom, following a series of industrial disasters, the newly elected Conservative government commissioned Lord Alfred Robens, the Chairman of the National Coal Board, to carry out a root-and-branch review of the United Kingdom's health and safety law (Sisson & Marginson, 2001). A Committee on Safety and Health at Work was formed in 1970, which gathered evidence over the next two years, and reported their findings in July 1972. The core recommendation of the

Robens report was the introduction of a self-regulating system for business owners and employees. The report described the existing legislative norms as outdated and dogmatic and its proposed solution was based on one legislative act which would in general regulate less descriptive terms and conditions of workplace health and safety to achieve a more efficient and more adaptable OHS structure (Lamm, 2009; Robens, 1972; Sisson & Marginson, 2001). The first attempt at major OHS reforms in New Zealand was undertaken by the Fourth Labour Government, which proposed the Occupational Safety and Health Bill in 1990, which was intended to replace all earlier regulations. The regulatory concept offered full coverage for all and featured three major components: one Act with the supporting guidelines and provisions; an independent health and safety agency; and regulatory prerequisites for engagement and selection of workplace safety committees (Constantine & Emery, 2014; Wren, 2009).

The Bill was fiercely criticised by employers, who believed it would increase the power of the unions and lead to health and safety matters being used as an industrial relations manipulation tool (Wren, 2008). With an election looming, the Bill was not passed. In 1992 the National Government began its own OHS reforms with the introduction of the HSEA, which strongly reflected the government's non-interventionist approach to employment relations, with an emphasis on deregulation and self-regulation (Lamm, 1994).

The main features of the HSEA were based on the Robens model, with a single Act covering all workers and enforced by one inspectorate, but with responsibilities for OHS placed back on the workplace, yet without stipulating the participation of employees (Lamm et al., 2013). The broad duties of employers were to provide a safe and healthy working environment, assess risks, carry out health and safety inspections, and manage their workers' and their representatives' participation in health and safety matters (Walters & Nichols, 2009).

Underpinning the Act was the concept of self-regulation which was seen as a solution for the problem facing the area of OHS, where a business would uphold high values and standards in order to preserve their reputation and meet communal expectations (Grumadaite & Jucevicius, 2014; Sisson & Marginson, 2001). However, it was also argued that self-regulation could involve a conflict of interest as the business is subject

to external control from its stakeholders with the demand to cut costs and increase revenue, where the OHS compliance may not be seen as an important matter (Norman, 2011).

In addition, the implementation and the enforcement of the HSEA occurred to be problematic due to the regulatory model of the Act imposing broad duties and with a regulator and employers formulating the specific technical standards (Wren, 2009). Furthermore, poorly defined concepts in the self-regulatory context caused complications in adapting to the new approach, and it has not had a positive impact on the country's poor OHS record (Lamm, 2010; Lamm & Walters, 2004; Walter, 2004; Sisson & Marginson, 2001), also noted that the introduction of the Robens model occurred later in New Zealand than in the UK and constituted a "much lighter version" than in other jurisdictions.

Despite the reforms of the 1990s, OHS in New Zealand still had major drawbacks, such as a weak regulator, poor worker engagement, insufficient data and measurement, and inadequate leadership. However, one fundamental weakness that stood out above all of the others was absence of formalised worker participation, despite the fact that there was proven evidence that an efficient and engaged workforce significantly decreases the incidence of occupational injuries and illnesses (Lamm, 2010; Walter, 2008).

Thus, the HSEA effectively weakened the position of workers in workplaces as employers were provided with more control over OHS matters while workers' contributions to health and safety matters in their immediate workplace were very limited. This view is consistent with other Commonwealth states where workers' voices are represented through trade unions and collective bargaining (Bennett, 2015; Haynes et al., 2005).

Then, Health and Safety in Employment Amendment Act (2002), (HSEAA) was introduced by a Labour Coalition Government in an attempt to include worker participation (among other items) in health and safety matters. The HSEAA also introduced a number of other changes, including extending cover for stress and fatigue as a work-related hazards, increasing the powers of the Department of Labour's health and safety inspectors, and raising the penalties for breaching the law. Nonetheless, the 2002 amendments did not do what the government intended them to do, as the

occupational fatality rate did not fall and the gap between New Zealand and other countries in OHS increased (Cunningham, 2015; Lamm, 2009:2012).

A decade later, increasingly open borders and global migration, as well as fierce market competition, have impacted New Zealand's OHS environment, and ineffective regulations have increased the vulnerability of a sizeable proportion of workers (Anderson & Tipples, 2014). The cause of vulnerability in many cases was due to increased use of casual workers and contractors. This peripheral labour force now constitutes a significant proportion of the total workforce (Lamare et al., 2014). This trend has negatively impacted workplace health and safety conditions. For example, between 2010 and 2015, there were on average 52 workplace deaths annually in New Zealand, with more than 28,000 serious workplace accident claims and more than 600 deaths related to workplace disease (Statistics New Zealand, 2013; WorkSafe New Zealand, 2015).

There were few subsequent attempts to address weaknesses in the OHS law and it was only after the Pike River Coal Mine tragedy in 2010, in which 29 miners were killed, that a Royal Commission's was appointed by the Crown to undertake a thorough investigation into the root causes of the explosion (Constantine & Emery, 2014; Lamare et al., 2014; Royal Commission on the Pike River Coal Mine Tragedy, 2012). Its report found that the mining industry suffered from very low health and safety standards, absence of proper enforcement agencies, lack of inspection and control, and inadequate mine designs. These, together with the need to increase productivity, were the key reasons for the tragedy (Challies & Murray 2008; Lamare et al., 2015; The Royal Commission on the Pike River Coal Mine Tragedy, 2012).

Furthermore, the Royal Commission report established that New Zealand had inferior health and safety performance compared with other OECD countries due to its fragmented and ineffective legislation that lacked proper enforcement mechanisms. This, combined with a weak employee consultation system, had made THE HSEA unsuccessful (Royal Commission on the Pike River Coal Mine Tragedy, 2012).

The Taskforce (2013) that was established by the Minister of Labour in June 2012 has concluded that the present regulatory setup was ineffective due to many vital flaws including the lack of accountability of senior managers. This was seen as one of the

reasons for the poor OHS outcomes in New Zealand. Thus, there was a need for significant changes to improve overall OHS nationwide (Richards & Gordon, 2013). Furthermore, according to the Taskforce Report (2013), the issues lay not with the Robens model but with its fractured adoption in New Zealand. It also has suggested that the most viable option to resolve current OHS problems in New Zealand was to adopt the Australian Act also known as the Model Health and Safety Act 2011 (Tooma, 2017). This was an updated version of the Robens model and was widely held to be the most economic and practical approach to OHS (Constantine & Emery 2014; Independent Forestry Safety Review, 2014; Rudman, 2015).

As a result of the findings of the Royal Commission and Taskforce, a new Crown agency, WorkSafe New Zealand, was established and the new HSWA was passed into law. However, the changes made in the Act did not provide improved opportunities for employees to participate effectively in health and safety matters. Their participation could only be through their respective unions in establishing policies, processes and other arrangements related to their everyday work. Another inconsistency with recommendations of the Royal Commission's and Taskforce was the character of the newly established WorkSafe New Zealand board which, despite the detailed, clearly worded and repeated recommendations in the Taskforce report, did not have a tripartite basis since the unions were not given proportional representation (Campbell, 2016; Taskforce, 2013).

The other concern is that In spite of the fact that both the Taskforce's and Royal Commission reports had emphasised the importance of both worker participation and a well-trained workforce, funding for training is in doubt (Fenton, 2014; Humpage, 2015). The main funding body Accident Compensation Corporation (ACC) is no longer subsidising health and safety training, which in turn has created a great deal of uncertainty around the sustainability of training worker representatives. A more detailed discussion regarding worker participation and worker representation, however, will be presented below along with other key changes, namely the creation of a new category of duty holder – person conducting a business or undertaking and the introduction of risk management.

### **2.2.1 Person Conducting a Business or Undertaking (PCBU)**

Section 32 of HSWA alters the definition of employers, including directors, owners and trustees, who are liable for workplace health and safety. The categorisation of “Duty Holder” adopted in the HSEA was substituted with the broader term “Person Conducting a Business or Undertaking” (PCBU), which was designed to capture a broader scope of working practices within New Zealand.

In many cases, there will be several PCBUs working at the same workplace (for example, construction firm, principal contractor, contractor and sub-contractor). All parties will be PCBUs under the New Act and expected to manage the health and safety of those below them in the chain. A positive due diligence duty on those with governance roles extended to Chief Executives and Directors of companies who will be personally liable in the event that they fail to perform their duties. (Lane Neave Lawyers, 2014, p. 2)

Among other duties under the new Act, section 34 requires all employers/PCBUs to consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter, and to exercise due diligence, which includes taking reasonable steps to acquire and maintain up-to-date knowledge of OHS matters (Campbell, 2016; McVeagh, 2014). This is a very brief introduction of changes imposed on employers by the Act; more detail on employers’ positions and functions in relation to OHS can be found in the “Employer’s Role” section of Chapter 3.

### **2.2.2 Risk Management**

Another key change in the HSWA concerns the area of the risk management. The literature defines risk as an unpredictable event mostly associated with negative impacts (Brun, 1994). Studies have shown that effective workplace risk management is achieved through methodical investigation, including the strengths and weaknesses of different types of organisations and thorough information exchange with reference to cross-national and cross-organisational variations in risk management in the public and private sectors (Smallman, 1996). Under the HSWA, PCBUs to required

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable. (HSWA s30)

While THE HSEA's risk management strategy was based on a three-tiered approach – eliminate, isolate and minimise risk – the HSWA's is based on a two-tiered approach, requiring PCBUs to eliminate risk, and where this is not reasonably practicable, to minimise risks. Isolation, as defined by the HSEA, is no longer recognised as a separate measure. Instead, isolation is now part of minimising risks (HSWA s30). This duty to manage risks is limited by the extent the PCBU has the ability to influence and control the matter to which the risks relate (New Zealand Transport Agency, 2016).

Furthermore, the HSEA's "all practicable steps" clause is replaced in HSWA with a new "reasonably practicable" standard, defined as "that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters" (HSWA, s22). The new standard is broadly similar to the "all practicable steps" clause, except that the assessment of costs must only be taken after the assessment of the risk and the ways to eliminate that risk. This means that costs will only take precedence over safety when the cost of taking a step is "grossly disproportionate" to the risk. "Grossly disproportionate" is not defined in the HSWA, but the concept used by court is based on the risk test being considered insignificant in relation to the cost (WorkSafe New Zealand v Ministry of Social Development, 2016).

Overall, HSWA implies that employers are responsible for managing workplace risks; this area is examined more thoroughly in the "Employers' Responsibilities" of Chapter

### **2.2.3 Worker Participation**

The HSWA gives health and safety representatives' stronger functions and power to be represented compared to the preceding legislation. It allows for them to make recommendations on health and safety matters and to attend training for their roles during paid work time.

According to the Act, employers must, so far as is reasonably practicable, engage with workers

- (a) who carry out work for the business or undertaking; and
- (b) who are, or are likely to be, directly affected by a matter relating to work health or safety (HSWA s58).

However, the HSWA ensures that employers can limit powers to a particular work group or health and safety representatives, confining their roles to health and safety purposes and setting some specific limits, for example access to information (Pashorina-Nichols, 2016; Pashorina-Nichols et al., 2017).

A more detailed description of worker participation and the related OHS challenges can be found in the “Concept of Workers in OHS” section of Chapter 3.

### **2.3 Conclusion**

This chapter has briefly traced the history of OHS in New Zealand from colonial times to the present day. Initial attempts to regulate workplace health and safety in the 1870s were based on UK models that were designed for a very different industrial environment. Over the course of the next century the growth of the economic sectors nationwide made the inadequacy of existing OHS regulations increasingly obvious; they were highly prescriptive without providing full coverage to all in need (Lamm, 2009). The introduction of the HSEA in 1992, which partially adopted the Robens (1972) model, was seen as a modern solution that would provide a flexible framework for the ever-changing workplace health and safety landscape. Despite these intentions, New Zealand OHS record continued to worsen and by the beginning of the 21st century the need for substantial OHS reforms was urgent. The HSWA introduces the new terminology of PCBU (formerly Duty Holder), aims to improve regulations around risk management, and introduces an updated concept of worker participation.

The next chapter will carry out a literature review on public and regulatory policies in the area of OHS, the concept of stakeholders and stakeholder theory, and the respective roles of the state, employers and workers.

## Chapter 3: Literature Review

### 3.1 Introduction

As noted above, since the 1970s, the area of OHS has undergone many changes in New Zealand, with multiple policy reforms. During this time public policy and regulation have also been extensively researched and a number of theoretical concepts have been developed to better understand how policies are made and implemented. However, there has been and continues to be a lack of a concrete theoretical framework describing the regulation process within the area Occupational Health and Safety (OHS) (Wren, 2009).

The literature review in this chapter draws on Rasmussen et al's (2009) description of key actors in Employment Relations in order to gain a deeper understanding of the key stakeholders in New Zealand OHS. The aim of this chapter therefore is to provide the necessary background and the subsequent exploration of the roles and perspectives of key stakeholders on the new Health and Safety at Work Act 2015 (HSWA) while examining the economic and ideological issues surrounding the OHS policy-making process.

### 3.2 Context of Regulatory Policy

Schneider and Ingram (1990, p. 77) state that "policies are the instruments through which societies regulate and control themselves." Furthermore, public policy process is the product of a system that is affected by the social, political, and economic environment in which it operates (Birkland, 2016). OHS regulatory policies are defined as "the range of legal and administrative decisions made by governments at the highest political level concerning the control of workplace injuries and illnesses in a nation state" (Wren, 2009, p. 49).

Lowi (1972) has identified four different categories of public policy:

1. *Constituent policy* – implies that the general public is employing a particular business entity or an individual as an agent. For a state, a constituent policy is linked mostly with the establishment of new state agencies to perform

- specific duties or provide necessary communal services, internal allocation of resources and instructions for public servants (Kreis & Christensen, 2013).
2. *Distributive policy* – permits the state to deliver communal goods or services nationwide while using community funding. The main characteristic of distributive policy is that it does not compete commercially with other businesses (Kreis & Christensen, 2013).
  3. *Redistributive policy* – reallocates taxation findings to vulnerable part of population to decrease public problems such as poverty. However, redistributive policies potentially could be used to give advantages to some social groups, through taxation laws and different financial manipulations (Lowi, 1972).
  4. *Regulatory policy* – stipulates instructions and rules for whole community or particular groups in order to maintain social order and stability (Lowi, 1972).

Constituent and regulatory policies entailing that the state or it's representatives are performing duties to regulate, manage and improve workers' well-being at workplaces are most applicable to OHS.

Since the research topic of this study linked to the stakeholders perception of new HSWA 2015 Act the focus of this section will be mainly dedicated to exploring main characteristics of the regulatory policy accrued in a OHS policy-making wide theoretical framework that concentrates on key stakeholders, social movements, and economic and ideological factors that impact health and safety in the workplace (Lloyd, 2000; Wren, 2008). Policy-making is complicated as it involves many interests and opinions, some of which are not official and some which have their own hidden agendas (Zamboni, 2007). Stakeholders are individuals or organisations with a stake in an issue who seek to influence or shape its policy development (Shaw & Eichmann, 2010).

One of the simplest models of the policy-making process is the input-output model (McConnell, 2010). The inputs are the diverse topics, economic and political movements, and social and communal needs on which key stakeholders should take action (Ahmed & Dantata, 2016; Birkland, 2016). The outputs, meanwhile, are the product of the public policy-makers' actions or inactions on the topics in question (Birkland, 2016; Ding & Zao, 2014; Kosaka, 1994). The biggest task when viewing a

regulation as an outcome of a coordinated structure involves comprehending the ways policy-makers convert complex matters of inputs into practical and viable outputs (Kosaka, 1994; Leontief, 1984).

Another model that is regularly discussed when examining policy-making is Easton's (1965) black box systems model, which presumes that there is some link or translator that coordinates the inputs and outputs of policy-making. However, the actual functions or phenomena of this link and the components that make it work remain indistinguishable (Easton, 1967). The major criticism of this model, however, is that political systems are seen as a structure without clear functioning attributes, which makes this model difficult to comprehend (Birkland, 2016; Knill, Schulze, & Tosun, 2012).

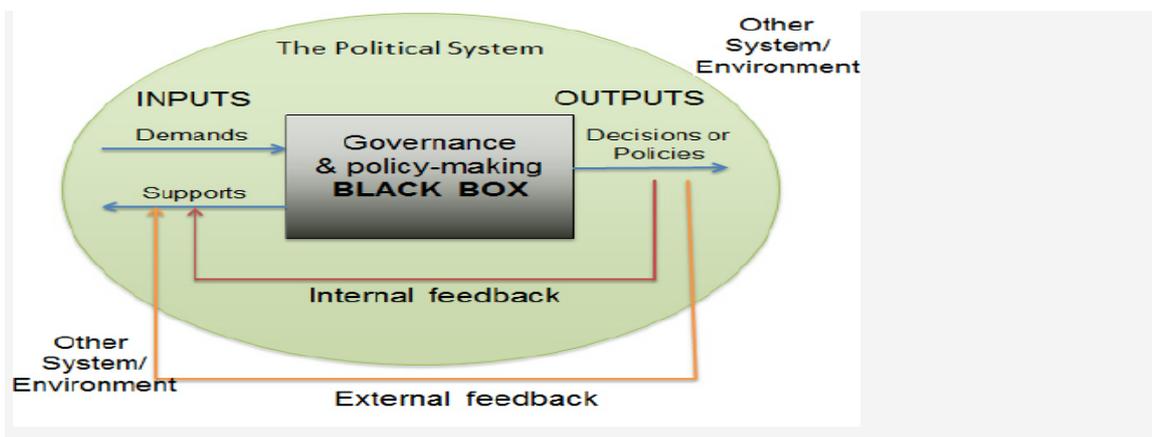


Figure 1: The black box model of a political system (adapted from Easton 1965).

### 3.3 Regulation Theories and Concepts

In some cases the policy-making process can be controversial and involve extensive debate over the content, implementation and enforcement processes, as well as the ideological values that the policy represents, distribution of resources, and the proper role of the state in the economy and individuals' lives (Shaw & Eichmann, 2010). Furthermore, during the creation of a policy, conflicts may surface between different stakeholders unless the potential policy satisfies all of their concerns (Dye, 2000).

All these elements of policy-making require careful evaluation and must be built into the strategy when developing regulations. The process must also consider the resources available, the structure and strategies of the regulatory agency, compliance

costs, industry size, and the economic and political climates (Gunningham et al., 2005; Hardy, 2011; Johnstone & Sarre, 2004).

There are many theoretical models that were developed to outline all the circumstances under which public policy is made, including the role of the state and economic and ideological underpinnings (Den Hertog, 1996, 2010). For example, pluralist theory states that it is the role of the government to mediate and maintain a power balance between different social groups (Buchholz & Rosenthal, 2004). Radical pluralist theory (also known as Marxist theory), by contrast, claims that the state promotes and protects the interest of a few – the wealthy and influential class (Jessop, 1990; Marx & Engels, 2016). Specifically, under the Marxist theory, the stakeholders are described as the affluent and powerful class and they influence policies so that the resulting regulation favours their own class (Samuelson, 1967). French regulation theory (also known as the economic theory of regulation), meanwhile, was created during the economic crisis in Europe in the 1970s with the aim of predicting and preventing overproduction in the future. French regulation theory was strongly critical of Marxist philosophy (Simpkins, 2014).

But the most relevant theoretical perspective on the process of public policy and regulatory law creation to this study is the theory of regulatory capture (also known as political interest theory) (Bernstein, 1955). Under this theory, the elite, or the socially and politically dominant class who hold government positions, will attempt to influence and push the laws and regulations that will help them to gain more social and economic advantages and stronger political positions.

The capture theory of regulation suggests that the public policy-making process is dominated by the economic and political interests of different groups, where the role of the state is reduced to protect the economic interests of influential groups while ignoring the well-being of the overall population (Bernstein, 1955; Laffont & Tirole, 1991; Lamm et al., 2013; Stigler, 1971). This statement appears to be acceptable when reviewing the content of HSWA, for instance, the NZ Select Committee during the policy making process has gathered views from the various stakeholders, which then led to tweaks in the Australian Model Law such as the limitation on the right to having a health and safety representatives (Bills Digest, 2017)

However, some academics disagreed with the essence of the capture theory. For example, Kalt and Zupan (1984) after exploring voting preferences on a particular topic related to the environment or free market community have argued that the main motivator for the majority of policy-makers is to support, endorse and vote for a regulation which will improve the social well-being of the whole. Supporters of the economic theory of regulation, who are mainly associated with political behaviour paradigms and the economic climate of a country, criticise public interest theory, by describing it as unrealistic and divorced from the actual process that surrounds policy-making (Peltzman, 1976; Stigler, 1971).

### **3.4 Creating Regulations**

Wren, 2009, has noted the limited academic work dedicated to OHS process and interventions comparing the general stream of knowledge expending understanding of public policy. There is, however, some empirical evidence that the success or failure of a new regulation depends largely on the presence of an appropriate policy-making process with a successful implementation (Sandfort, 2014). This confirms that the mere existence of a policy, communal law or moral standard, or any other commanding instruction does not guarantee that the target group will act in accordance with it (Axelrad & Kagan, 2000, Bluff & Gunningham, 2003).

In the present literature there are two approaches that are commonly applied when analysing the implementation of a new regulation; they are: the top-down approach, which is based on the belief that regulations must comprise of distinct measurable objectives as well as tools for implementation and sufficient resources (Birkland, 2016); and the bottom-up approach, which implies presence of not a single but multiple acts or regulations, and must be analysed from the bottom level moving upwards to identify the strengths and weaknesses of the process of policy enforcement (Khan, 2016).

Both these approaches have been criticised for their limitations such as absence of a 'black box' for unpredictable issues, as in top to bottom approach or too many variable linked to the outcome in the bottom to top approach (Goggin et al., 1990; Sabatier, 1988). Moreover, successful enforcement is also subject to many factors, such as the role and influence of trade unions, which in some European countries play a strong

role in the economy and are an accepted part of public policy decision-making group. This necessitates a cooperative enforcement model (Tompa et al, 2016). An effective enforcement model will therefore be influenced by the economic, political and social context in which it operates (Gunningham, Kagan & Thornton, 2003; Kagan & Axelrad, 2000).

Among the most popular approaches applied when assessing the effectiveness of OHS intervention is Ayres and Braithwaite's (1992) concept of the enforcement pyramid which states that a judicious mix of persuasion and punishment is likely to achieve the optimal enforcement strategy. The enforcement pyramid describes escalating measures of enforcement that can be applied depending on the nature of the offence, the harm done, the prevalence of the risk, the response by the perpetrator, and community expectations (Gunningham & Johnstone, 1999; Pagura, 2016). Ayres' and Braithwaite's enforcement pyramid has been adopted by the New Zealand regulator, WorkSafe NZ. This enforcement pyramid also known as responsive regulation, which aims to compromise between intense state regulation at the top of the pyramid and self-regulation at the base (Baldwin and Black, 2008).

The concept of self-regulation, where the control of a practice or activity of the business are taken by the individual or corporations rather than by an external establishment such as government overall, presents more adjustability to external conditions and efficiency than government regulation. However, according to literature, self-regulatory principles are usually ineffective and lacks in reliability (Gunningham, 2011).

Additionally, a risk-based approach is where enforcement resources are allocated based on an assessment of the risks that a regulatee poses to regulatory goals also well recognised in the literature. The main components of this approach are appraisals of the risk of non-compliance and calculations regarding the impact that such an activity will have on the regulator's capacity to achieve its objectives (Hutter, 2005). The above two approaches are accepted as the norm for enforcement and implementation in New Zealand (Tombs & Whyte, 2013).

The major criticisms of these approaches however are: the oversimplified role of the stakeholders and their motivation to act, as well as inability to predict behaviour components of the main actors which will lead to success or failure of the regulation (Scholz, 1997; Gezelius, 2002; May, 2005).

### 3.5 Stakeholders

The significant role of stakeholders was first recognised by Freeman (1984) in his book dedicated to strategic management. Since then Freeman's ideas have gained recognition in multiple industries, but mostly those associated with business management and corporate social responsibility (Freeman, 2010). However, there is no universally accepted definition of "stakeholder" in the literature, nevertheless one of the most commonly used is that proposed by Freeman and Reed (1983, p. 88): 'A stakeholder is a member of the groups without whose support the organization would cease to exist' (see Buchholz & Rosenthal, 2004). Stakeholder theory (ST) initially was suggested as theoretical frame of reference of moral code and obligation faced by the modern corporation (Freeman, 1984). Along with the approaches adapted from management theory on how to administer and endorse ethical values, Freeman suggested approaches for corporations to protect and promote the interests of stakeholders. The following principles express the essence of ST and its implications for to business and society:

1. ST is *descriptive* by providing a clear communication and explanations the nature of businesses, and effect of corporation on the community and environment. Thus, it allows making strategic planning and forecasting to build effective relationships with the stakeholders.
2. ST is *normative*; hence all stakeholders play roles recognised by the regulations and inherent interest in business actions.
3. ST is *instrumental* implying that effective stakeholder control and administration ought to positively correlate with business objectives in different forms; such as higher productivity, reduced costs and improved financial performance (Donaldson & Preston, 1995, p. 66).

ST therefore accepts that all stakeholders in the business pursue their own interests within the limits outlined by the business goals and objectives or relevant legislation (Buchholz Rosenthal, 2004).

Since its inception, ST has been the subject of continuous critical attention and there have been a number of attempts to redefine concepts proposed by Freeman. For example, Key (1999) argued that ST does not take into account the rapidly changing economic environment and overlooks many contributive elements of business operations. Furthermore, she stated that ST oversimplifies the role of the business in the community and environment in which it operates (Key, 1999). Further criticism has concerned the absence of precision provided by ST while planning business objectives or resolving daily operational- or people-related matters. It has also been implied that Freeman's theory does not meet the criteria of a theory and should be considered as scientific approach (Agel & Woods, 1997; Donaldson & Preston, 1995).

Suggestions for overcoming ST's shortcomings have included the introduction of new terms. For example, whereas a stakeholder is one who holds a stake, a "stakewatcher" is one who watches a stake and a "stakekeeper" one who keeps the stake (Fassin, 2009, p. 128). Overall, the broadness of the concepts of ST appears to be its main weakness (Accorsi et al., 1998; Fassin, 2009). Yet despite the shortcomings of ST listed above, the theory is appropriate for and able to inform the current research. The theoretical concept of stakeholder is therefore adopted in this study, which also employs the "key stakeholders" selection criteria based on the Employment Relations theoretical framework (Rasmussen, 2009).

### **3.6 Identifying Key Stakeholders**

The focus of this section is on identifying and justifying the selection of the key stakeholders selected for this study. Based on the model proposed by Freeman (2010), classification of stakeholders depends on their role played within an organisation and whether they have legitimate/default influence on the overall business performance (Simpson, 1994).

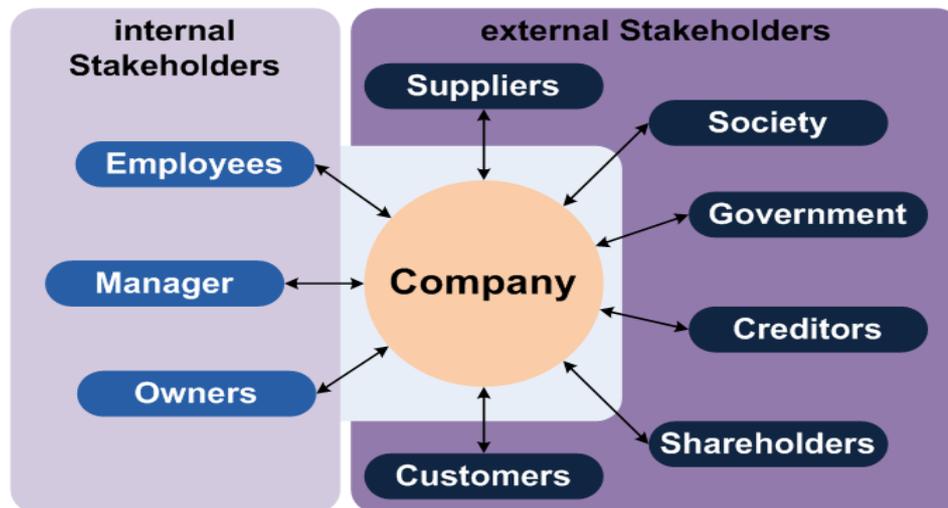


Figure 2. Stakeholder theory (Freeman, 2010, p. 24).

Freeman's (2010) model clearly divides the stakeholders into external and internal groups based on the role they play. Mitchell et al.'s (1997) model, by contrast, separates stakeholders into three separate groups: constituency (stakeholder); pressure groups (stakewatchers); and regulators (stakekeepers).

However, for this study, the researcher has used the Employment Relations key actors framework which divides stakeholders in three groups: the state, employers, and workers, as outlined in Rasmussen's book (2009). This model is equally applicable to OHS because the laws, standards and programs related to OHS aim to make the workplace better for workers, co-workers, family members, customers and other stakeholders (Mitchell et al., 1997). The selection of key stakeholders was also based on the notion of tripartism in the Employment Relations model: the tripartite contracts of business, labour, and state association within a country. When discussing OHS regulations each party is expected to cooperate, consult, negotiate and compromise in order to create public policy (Marsh & Grant, 1977; Rasmussen, 2009; Stanger, 2006).

### 3.7 The Roles of the State, Employers and Workers

#### 3.7.1 Role of the State

The OHS literature recognises that the state's role is "the legal and constitutional institutions, through which legitimate power are exercised" (Wilson, 1996, p. 133). In New Zealand the government is responsible for creating and maintaining a safe and healthy working environment by monitoring and managing all probable hazards and

taking preventative measures (Johnsen, 2005; Lamm, 1994; Rasmussen et al., 2009; Wren, 2009). One of the main debates in the literature concerns the appropriate degree of regulatory involvement by government agencies (Pirili & Pirili, 2015; Rasmussen et al., 2009; Wren 2009). Normative theory, for example, suggests the degree of state interference in employment relations requires careful consideration and assessment of the state's role (Pirili & Pirili, 2015, Dwyer, 2004). Normative theory also refers to what the government and society perceive as being good or desirable behaviours that should be encouraged through legislation, while ensuring collective decision-making, as required by the social contract (Pigou, 1932; Wilson, 1996).

The idea of the government as a subject in public and regulatory relationships when representing collective or particular group interests that affect and shape the community as a whole is the foundation for the "strategic-relational state" theory (Frieden, 2013; Heino, 2013). The key characteristics of this theory that impact public policies are:

1. Modern societies are the product of complex interactions between sub-systems, none of which can be determined precisely as a confirmed model.
2. The state is, on one hand, simply one institution amongst others. On the other hand, it is vested with responsibility for the cohesion of all institutions and society at large.
3. The state provides laws and regulations but does not exercise power as such; it is broader class and social forces that actualise power through the state's materiality (Jessop, 1990, 365–367).

The literature also shows that the role of the state in New Zealand OHS legislation not only indicates the government's position towards employment law and regulations, but the ideological agenda of the political party in power (Lamm, 1994, Wren, 2008). For instance, since 1980th the era of globalisation, increased competition and rapid change of modern work arrangements, as well as ideological hype regarding the notion of common interests in the workplace; the end of the 20th century was marked by a radical shift to neoliberalism where the philosophy of free economic market started to dominate the political agenda, and the state was no longer seen as a central player

representing the communal and economic interests of the country (Gunningham & Kagan, 2005; Walters, 2005).

Lamm, (2009) also noted prior to the neoliberal reforms of the 1980s and 1990s, the role of the state in New Zealand was shaped by public policy instruments whereby the state itself or its agencies supplied the regulatory directions and legal procedures. Government agencies have undertaken the task of the regulator by ensuring the enforcement of governmental requests, and the role of the advisor by providing rational tools, such as codes of conducts, instructions, educational assistance to help businesses achieve compliance (Lamm & Walters, 2004). Thus, Lord Robens's (1972) concept of self-regulation was based on the assumption that employers and employees will cooperate and resolve all OHS-related problems together, with the government's function being to set standards without providing detailed instructions (para. 70) has established that the role of the state is mostly perceived as a guiding entity or an educator rather than an enforcement agent (Hart, 2010; Robens, 1972).

As was noted by Walters (1998), the passing of THE HSEA finalised the transformation of New Zealand's OHS landscape by making business owners exclusively responsible for OHS-related duties, since the Act has minimised responsibilities of state inspectorates and made the regulations very basic instead of the detailed and prescriptive policies of the past (Wren, 2008).

This model is also known as a decentred regulation where the legislation provides the general rules that are enforceable through criminal penalties; and the technical specific details are left to the regulator and employers to work out (Pashorina-Nichols, 2016). In New Zealand, the government has established and delegated some of its powers to maintain safe workplaces and to create technical regulation to WorkSafe NZ, a stand-alone Crown entity. This action was perceived by many academics not as a fundamental change to the government's non-intervention position since all the responsibilities still remain with the duty holders or persons conducting a business or undertaking (PCBUs) (Gunningham, 2015; Humpage, 2015; Legg et al., 2017).

### **3.7.2 Worker Participation**

OHS literature does not provide a clear definition of worker participation. There are several interpretations, with "worker participation" being used interchangeably with

terms like “employee engagement” and “high-involvement human resource management”, depending on the topic or philosophical setting where these terms are discussed. The term “worker participation” is more commonly used because it has a wider coverage of general and very specific functions that include or impact workers in real life (Geare, 1988; Weil, 1991). Some of these functions include everyday work-related interactions, formal consultations with the executive management, union negotiations, and workers’ assistance programmes (Paroshina-Nichols, 2016; Simpson, 1994).

There is sufficient evidence to show that if workers are given an opportunity to participate in matters concerning OHS, the rates of injuries, illnesses and fatalities would be considerably reduced (Cunningham, 2015; Walters & Nicholas, 2009). The International Labour Organization Convention No. 155: Occupational Health and Safety (1981) states that in order to prevent or reduce workplace injuries it is essential to have a well-established relationship between workers and business owners and management. This means that staff and their representatives should be actively taking part in identifying and managing workplace risks, as well as participating and contributing in setting objectives, action plans and goals associated with workplace health and safety (Alli, 2001; Soehod, 2008).

The literature also outlines several favourable settings that are required to achieve successful worker participation, such as effective regulations and external control, senior management commitment, resource availability, and independent workers’ representation with union support (Fenwick & Olson, 1986). Walters and Nichols (2007) have suggested the following forms of worker engagement:

- Direct participation, where workers are engaged by their supervisors and managers regarding health and safety matters on an individual basis;
- Formal processes, within organisational hierarchies and representatives or collective participation made through formal arrangements supported by legislation or on a voluntary basis where interests of the workers are represented by selected committees or unions.

Statutory provisions enable workers and employees, and health and safety representatives or union delegates, to exercise their rights up front by ensuring that all

relevant legal rights and protections are prescribed in the regulations (Flick & Wren, 2000; Gunningham, 2008).

In New Zealand, before the neoliberal reforms of the 1980s and 1990s it was the role of the government to provide rational guides and monitor worker participation in workplace health and safety matters. However, the introduction of the HSEA in 1992 instigated direct communication between employer and employee, with the expectation that both parties will act in “good faith” (Bennett, 2015; Wren, 2002; HSEA 1992, p 2A). The Act did not include statutory provision for worker participation, largely because it had been strongly resisted by employers. The HSEA significantly weakened workers’ voices in health and safety matters (Campbell, 1992). Many would later argue that not only was the legislation on worker participation inadequate, but, in general, the actual concept was not clearly established in the Act (Cunningham, 2008; Haynes et al., 2005; Walters & Nichols, 2007; Royal Commission of Inquiry on the Pike River Coal Mine Tragedy, 2012; Taskforce, 2013).

For example, there is evidence that health and safety representatives were often unsupported in their role and responsibilities, and that they therefore rarely made a significant impact on workplace health and safety outcomes (Cunningham, 2015; Taskforce, 2013; Walters & Nicholas, 2007). Furthermore, many employers were not fully supportive of the role of safety representatives and ignored their obligations to provide those representatives with necessary coaching or with enough time to fulfil their safety functions (Hovden et al., 2008; Ochsner & Greenberg, 1998).

The new Act (HSWA) places “twin duties” on employers to engage workers as well as establishing their participation practices. Furthermore, these obligations on employers to involve workers are seen as a positive sign, despite the fact that the Act allows any business in a non-high-risk sector with fewer than 20 workers to refuse any request for worker participation arrangements (HSWA, s.58; Paroshina-Nichols, 2016).

Overall, it has been perceived that the HSWA gives health and safety representatives stronger functions and power to participate, to make recommendations on health and safety matters, and to attend training for their roles during paid work time (Legg et al., 2017; MacLennan, 2015).

### 3.7.3 Employers' Prerogatives and Responsibilities

As stated above, stakeholder theory is used widely to analyse the perceptions and motivations of the business owners and management of the organisation. Freeman's (1983, 2010) ST theory states that the main objective of a business is to create a surplus for the stakeholders and the main responsibility for achieving this goal sits with the employers. In the employment relations and OHS literature this is also called the "managerial prerogative". Rasmussen et al. (2009, p. 294) state that "in a capitalist society, the owners of business – or the managers to whom owners have delegated their authority – have right to determine how their business are run". The literature also explores the roles of the management team who are involved OHS by means of using laws, rules and instructions to educate employees at the operational level to prevent potential harm and promote a healthy working environment (Adams, 1995; Hopkins, 2004; Svedung & Rasmussen, 2000).

According to ST, the main function of the employer is to improve performance of the organisation by increasing productivity and to reduce OHS costs in organisations (Rasmussen et al., 2009.) Luria et al. (2008) recognised two main approaches promoted to achieve that goal. The first approach is safety engineering, which is a dominant concept in the safety literature and includes mechanical features for accident prevention and other features such as non-slip surfaces railings, barriers for dangerous mechanical parts, and noise insulation. Here safety issues are more of an engineering challenge than a managerial or behavioural concern. The second approach is the behavioural approach, which aims to improve safety through tools such as safety training compensation and organisational safety behaviour interventions. In these approaches, management tries to improve organisational safety by influencing employee behaviour rather than by changing the physical settings (Luria et al., 2008).

The OHS literature notes the importance of having a compliance system that includes a mixture of behavioural and normative regulations created to manage an inter-reliant cluster of actions in a rational and acceptable way (Lamm 2009; Young, 2010). Overall, compliance in the OHS literature relates to a set of prescribed regulations and polices activities that aim to manage work-related risks. Workplace compliance is expected to promote and control desired behaviours, not just to ensure regulatory obedience but also to respect social and moral norms (Svedung & Rasmussen, 2000). Johnstone

(2004) and Lamm (2009) noted that workplace compliance may depend on multiple contributory aspects, including available funds, effective policies and processes, skilled and engaged employees, ongoing training and motivated leadership team. For example, Young (2010, p. 5) outlined three types of direct management interventions that set about to persuade individuals to make compliant, rather than non-compliant, behavioural choices:

1. Punishments and rewards.
2. Inspection systems to control and identify unlawful behaviours and practices.
3. The keeping of public records so that non-compliant behaviours are documented and can be used as a reference in the future against violators.

OHS compliance is expected from every business not only by legal requirement but also by the pressure of social norms. However, business compliance will not be reached unless the organisation has the necessary means to meet required objectives. Should compliance-related expenditure offset its benefits or cause other difficulties to the business, the company owner could, in order to close compliance gaps, consider offshore manufacturing, subcontracting or partial outsourcing (Hardy, 2016; Hutter, 2005). Three broad categories of motivations for compliance are commonly used:

- *Calculated motivations* propose that achieving full compliance is only possible when the fear of exposure is real and consequences are significant and fast.
- *Normative motivations* are based on the assumption that businesses are keen to comply due to ideological and moral standards of the nation-state it operates in.
- *Social motivations* to comply are founded on the assumption that the good reputation of the business and public support are essential for the owner of the business or an organisation (Winter & May, 2001).

It is noted that OHS compliance is not a one-off event where the subject of the regulation obeys a new policy according to pre-set standards, but rather an ongoing process that will require time and resources to achieve (Lamm, 2009; Rasmussen, 1997). Risk management is vital to achieving an effective and viable health and safety compliance strategy (Oltedal et al., 2004; Rasmussen & Svedung, 2000). Hence risk-based principles are mainly employed by a regulatory agency when selecting enforcement instruments of tools for a given business segment or industry being

regulated. This approach permits the regulator to achieve better results while using restricted state funds (Johnstone et al., 2005; Scarrow, 2016).

The HSWA had altered the definition of employers, including directors, owners and trustees, who are liable for workplace health and safety. The classification of “Duty Holder” accepted in previous legislation was substituted with the broader term “Person Conducting a Business or Undertaking” (PCBU), which was designed to capture broader scope stakeholders with the influence and material interest on the business outcome within New Zealand. The Act also clarifies the primary duty of care where a business holds key responsibility for the health and safety of workers and others influenced by operation (HSWA 2015, s36) Furthermore, the term officers’ ‘Due Diligence Duties’ was introduced to ensure that those in charge of a business would be directly accountable for the PCBU meeting their OHS obligations (HSWA 2015, s44).

### **3.8 Conclusion**

OHS public policy and regulation is a complex area that has been well researched. The literature also shows that OHS policy-making is complicated and difficult as it involves many interests and opinions (Robichau & Lynn 2009; Skilling, 2016). This is particularly apparent when key actors with a stake in an issue seek to influence or shape policy development (Shaw & Eichmann, 2010). A brief review of the different theoretical models and frameworks of enforcement and compliance was carried out to inform understanding of the implementation of the recently introduced legislation, HSWA. This provides important background information for understanding complex issues surrounding key stakeholders’ motives and their legal/social rights and obligations (Penny et al., 2001; Metzgar, 2016). The literature review has demonstrated that policy implementation and compliance and enforcement are best accomplished by linking compliance-promotion activities with the availability and use of deterrent sanctions for major crimes and misconduct. Effective OHS reform can only be achieved if the new legislation is practical and suitable for the given context of stakeholders because no amount of enforcement will achieve compliance if social and moral norms are not respected (Kay & Boxall 2015).

## **Chapter 4: Methodology**

### **4.1 Introduction**

This small-scale study aimed to evaluate key stakeholders' perceptions of the recent changes to New Zealand OHS law, namely the introduction of HSWA, which contains a variety of modifications and changes to the country's health and safety legislation. Hence, in order to achieve the objectives of the study the following questions were formulated:

1. How do key OHS informants from the Employers and Manufacturers Association, WorkSafe New Zealand and the Trade Unions perceive the new Health and Safety at Work Act 2015 (HSWA)?
2. What do these informants think has worked well and what has not? Which aspects of the legislation have been easy or difficult to implement?

This chapter outlines the methodology adopted for this study including the philosophical assumptions of the researcher, the selection of interview participants, and the methods used to analyse and interpret the data.

### **4.2 Epistemological and Ontological Assumptions**

The objective of any scholar is to understand and produce data reflecting reality while directed by a belief system or research paradigm (Wynn & Williams, 2012). A researcher aims to answer a research question according to the ontological position of the research paradigm he or she has adopted; the epistemology of a study influences the evaluations and explanations of the research data; whilst the selected methodology of a study guides the steps taken to gather necessary information (Scotland, 2012).

However, everyday life consists of endless components that are very hard to predict and systemise due to complex environmental factors, in other words, reality represents an open system. The realist paradigm helps to explain the complexity of social existence by analysing the patterns of common social development shaped by an event, especially where institutions have a major impact on personal choice. Realism allows for the employment of a more or less empirical approach that takes the multiple ever-changing factors of society into account (Pawson, 2006).

The traditional realist researcher seeks to explain programme outcomes and so does not ask 'does this programme work?' but instead asks 'what is it about this programme that works for whom, in what circumstance and why?' (Hewitt, Sims, & Harris, 2012, p. 255).

However for this study, the critical realist paradigm has been adopted as the best paradigm to overcome the variations between the theoretical beliefs of positivism and interpretivism in actual health and safety studies (Smith, 2016). Critical realism is the most suitable paradigm for this case study research because the main research question is closely related to a recent event for which inductive theory; conventional codes and hypotheses have not been established or are noticeably insufficient (Hunt, 1991; Sobh & Perry, 2006). Therefore, critical realism with its capability to clarify how and why particular outcomes emerge from certain interferences in a given context has been selected as an appropriate approach to evaluating the current Health and Safety reforms in New Zealand (Houston, 2005; Pawson & Tilley, 1997).

Since the aim of study is to evaluate current events in which it is impossible to isolate all the systems that may be at play, critical realism offers more explicit link based on the role of personal agency, structural effects to construe the interpretations of the key stakeholders view (Bhaskar & Danermark, 2006). Hence, while designing the interview questions and the theming of the findings, the researcher did apply some rational ideas to practice the critical realist ontological position that compose and generate assumptions that are real, and have real impacts on working conditions and the overall social system.

In summary, the critical realist approach supplies the most appropriate methodological framework for this qualitative study. Its ontological standpoint accepts the autonomous existence of reality independently from the researcher or research participants, since each individual has a unique perception and interpretation of external events (Healy & Perry, 2000). This mixture of ontological positivism and epistemological interpretivism provides the perfect philosophical position to carry out this small-scale study as it offers methods to analyse topics related to particular social and occupational events (Maxwell, 2012).

### 4.3 Qualitative Approach

In consideration of the objectives of this study, a review of the relevant literature showed that a qualitative approach will allow the accumulation and review of multiple levels of information and examine events in terms of the meanings that research participants associate with them (Creswell, 2013). Figure 3 below presents Bryman and Bell's (2011) six steps in qualitative research, which can vary depending on the nature and subject of a qualitative study.

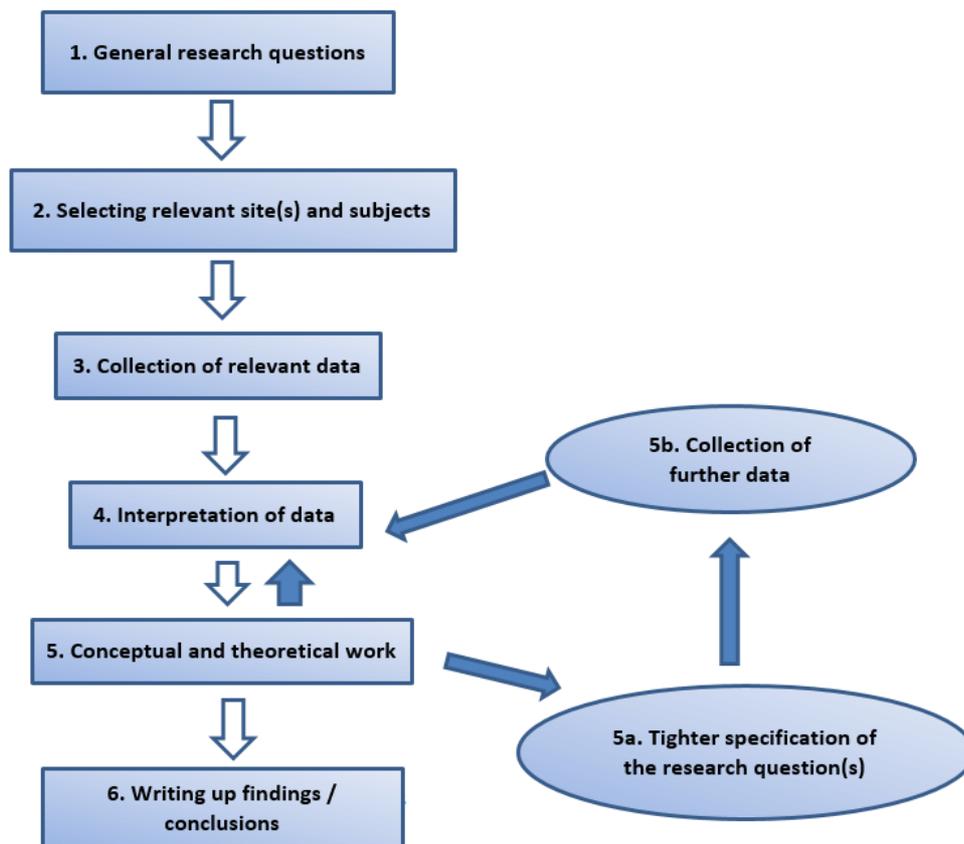


Figure 3. The six main steps in qualitative research (Bryman & Bell, 2011, p. 390)

This approach allows the researcher to seek deeper meanings and collect richer information through conversations, real life experiences and personal feelings (Bryman and Bell, 2011; Corbin & Strauss, 2008). For this particular study, the qualitative approach allowed the primary researcher to communicate with the key stakeholders (interview participants) directly to discuss their perceptions, views and experiences regarding workplace Health and Safety matters. Furthermore, based on key stakeholders' perceptions, the primary researcher was able to gather new ideas while applying existing theoretical frameworks (Murphy & Dingwall, 2003).

The case study is a well-known methodology for researching a complex issue within special milieu (Baxter & Jack, 2008). The use of a case study methodology helps the researcher to better answer the research questions based on the participants' responses, communication styles and worldview within the specific setting of OHS, where the boundaries between different interests of key stakeholders are often not clear (Yin, 2003). This approach is also very popular within the business management field, where the anticipated data collection take the form of interviews and other direct interactions with the research participants (Bryman and Bell, 2011). Thus, case study methodology permits an in-depth exploration of multiple data sources and cases, which makes it a very suitable approach to use within the realist paradigm framework (Pawson, 2006).

Hence, a qualitative case study methodology offers the researcher practical tools to examine a variety of attributes in the given context. It also enables the analysis of apparent and hidden trends and themes through multi-dimensional 'lenses' that are not only explanatory but also objective and unbiased and draws theoretical thoughts on the topics and arguments obtained from the interview data (Baxter & Jack, 2008; Zainal, 2007).

#### **4.4 Research Participants**

Generally dissertations of this size (45 points) would only include the analysis of secondary data due to the amount of the work and limited time-frame (Perry, 1998). However, this case study design involved conducting semi-structured interviews with stakeholders, in order to provide richer understanding and contributions towards the general body of knowledge. The identification of the key stakeholders within tripartite agencies was initiated when applying the stakeholder theory as an underpinning of this study (Fassin, 2009).

Thus, for this study, the researcher has applied the Employment Relations key actors framework which divides stakeholders in three groups: the state, employers, and workers (Rasmussen, 2009). Consequently, participants from WorkSafe NZ were chosen to represent the state due to their responsibilities and expertise to enforce HSWA. Union members were selected since they support and help workers with information and advice about work-related issues by acting as an advocate for them

collectively. Finally, to represent New Zealand business, members of the Employers and Manufacturers Association (EMA) were selected due to its role to help constituents with employment relations advice and advocates on behalf of them to bring change in contentious areas such as Employment Law or H&S reforms.

The most important selection criteria of key stakeholders who were either members of the EMA, trade union representatives or workers in government agencies were that they were actively involved in health and safety matters and had adequate regulatory knowledge to comprehend and analyse the current OHS reforms. The inability to directly approach potential research participants because of the 'gate-keeping' role of red tape and officialdom were the real obstacle faced by this researcher (Sanghera & Thapar-Bjorkert, 2008). Thus, communicating with some potential interview participants proved rather difficult. Setting up interviews with PCBUs (business owners and managers) was reasonably easy. However, the most challenging aspect of the interviewee recruitment process was gaining permission from senior WorkSafe public servants for their staff to be involved in this study which meant that this study would have had to rely solely on information located on WorkSafe's website. It was fortunate, therefore, that permission was finally granted.

The following sampling methods were used in order to fulfil the objectives of the research: *purposeful sampling*, which is used when the study is required to establish and select informed research participants and involves identifying and selecting individuals or groups of individuals that are especially knowledgeable and skilled with regards to the research topic (Cresswell & Plano, 2011); and *snowball or chain sampling*, which identifies cases of interest from people who know which cases are information-rich, that is, who would be a good interview participant (Creswell, 2013).

Table 1. Research participant details

<b>Affiliation</b>	<b>Interviewee role</b>	<b>Gender</b>	<b>Length of interview</b>	<b>Type of interview</b>	<b>Pseudonym</b>
EMA member	Business Owner and H&S Officer	Male	45 min	Face-to-face	Participant A
EMA member	Manager and H&S rep	Male	30 min	Face-to-face	Participant B
Trade Union	H&S Programme Leader	Male	55 min	Face-to-face	Participant C
WorkSafe NZ	H&S Inspector	Male	30 min	Face-to-face	Participant D
WorkSafe NZ	H&S Inspector	Female	65 min	Face-to-face	Participant E
Trade union	H&S Specialist	Male	55 min	Face-to-face	Participant F

As stated above, there was a greater reluctance to be interviewed among WorkSafe staff compared to the other stakeholder interviewees (Denitch, 1972). Eventually, however, through official referrals and much effort spent in putting respondents at ease during the interviews, the process of data collection was completed. All interviewees were assured that their identities would remain confidential and that the results would be presented in an anonymous form and would be used only in academic research (Rivera et al., 2002).

#### 4.5 Data Collection Methods

Data collection in qualitative descriptive studies is usually focused on collecting responses related to participants' behaviour or knowledge to determine their fundamental beliefs and nature. Thus, collecting information for a qualitative study commonly involves the use of open-ended or structured individual or focus group interviews (Sandelowski, 2000).

This study also gathered additional information from a number of sources in order to achieve some form of triangulation. That is, along with the interviews, supplementary data was collected from the Royal Commission on the Pike River Coal Mine Tragedy (2012) and Independent Task Force on Workplace Health and Safety (2013) reports, as well as information contained in government and legal commentaries and public law seminars was included. These measures were undertaken in an attempt to verify that

the information collected was consistent and adequate to answer the research questions, and also to minimise the possibility of misconceptions and potential biases.

The interview questions were generated after a review of the relevant literature and in consultation with health and safety practitioners. To ensure the semi-structured interviews were effective, the interview process was carefully planned and documented. This approach enabled the primary researcher to cover multiple matters and subjects in the course of each interview, which enabled a bigger picture of the topics relating to the research questions to be constructed (Gillham, 2000).

In order to reduce possible misinterpretation, all the interviews were audio-recorded, and the primary researcher also took notes relating to the behaviour, tone and body language of the participants (Harvey-Jordan & Long, 2001). The primary researcher was given the option of additional assessment by her research supervisor with regard to privacy and confidentiality matters (Harvey-Jordan & Long, 2001). This research study consisted of six semi-structured interviews with each interview taking from 30 to 70 minutes. All six interviews were carefully transcribed by the researcher.

As was mentioned above, the key features of any case study research is the utilisation of different sources for research data collection and analysis to enhance research reliability (Yin, 2003). The case study method of data collection, therefore, assists the researcher to uncover issues and background information of the community or business entity, along with hidden ideological or power-seeking agendas promoted by key actors (Meyer, 2001). This data collection strategy, however, has limitations due to time and funding constraints, and it has proved time consuming to find the right interview participants (Meyer, 2001).

#### **4.6 Data Analysis**

The interview data was collected and transcribed by the primary researcher. The data analysis was conducted manually due to the small size of the study ( $N=6$ ). The decision to manually analyse data was made after consultation with experts, where it was suggested this study did not have enough research data to make use of the benefits of research software. The content analysis method was used to assist with the

classification of the research information into particular themes and subthemes (Moretti et al., 2011).

Drawing on Gray's (2013) recommendations, the analysis of the research information in this study consisted of the following phases:

1. Identifying the interrelated sections of the interview transcripts,
2. Generating categories, and
3. Forming and verifying themes.

The first phase involves distinguishing the units of analysis before commencing the data reduction process. The researcher selects the information to be examined while identifying specific characteristics of the interview recordings that were linked to the research questions (Cho & Lee, 2014).

To begin this process, the audio-recorded information was listened to by the researcher multiple times, and then transcribed. The transcriptions were then compared with written data to identify corresponding and conflicting categories. An extensive literature review and assessment of secondary data was then performed in order to clarify and distinguish the emerging themes.

After completing a preliminary examination of the interview data an Excel spreadsheet was created where all the significant discoveries for each research participant were recorded in separate sections, reflecting the concerns of the research questions. This included an additional review of the literature and supplementary information in order to develop distinct concepts and the reasoning for them.

Once the creation of categories was completed and the transcribed data was arranged into less content-related sections by organising common topics in the text and analysing the perspective of initial themes, the researcher had to ensure the data was accurately categorised (Cho & Lee, 2014). This step was very challenging as some themes could be allocated to two or more categories during the analysis process. For example, "skills and expertise" was initially allocated under the Policy Design theme, before it was moved to the Worker Participation category, and finally was set under the Key Stakeholders Perception of Employers Responsibility category.

Eventually, the identified themes were linked with subthemes to connect the key underpinnings of the topic (Graneheim & Lundman, 2004). Unrelated and eliminated information was then reviewed to ensure that no significant ideas or subject topics were overlooked. Short narratives discussing the findings related to each of the themes are presented in the next chapter.

#### **4.7 Ethical Considerations**

One of the main objectives of this study was to ensure all research participants and information provided by them are treated with the utmost respect, following Auckland University of Technology (AUT) guidelines as well as satisfying all the recommendations outlined in the AUT Ethics Committee approval form (see Appendix 1). Hence all research participants were provided with an information sheet with an explanation of the nature of the study and its purpose (see Appendix 2). They were also requested to give their written consent (see Appendix 3) to take part in the research by signing a participant acknowledgement form. Additionally, participant safety was addressed by holding the interview at the participants' work premises.

The following points were enforced while conducting the research as it involved human interaction: any data collected during this research is to be accessed only by the researcher and her primary research supervisor. Any individual participating in a research study was given an assurance that their privacy will be guaranteed (Gray, 2013). In addition, the researcher has to guarantee the anonymity of any individual's or a company's sensitive information (AUT, 2015). Finally, a researcher has acquired sufficient knowledge regarding the social and cultural context of the participants as well as the requirements of the Treaty of Waitangi through life and work experiences as well as facts obtained during the completion of the AUT Ethics Committee Approval Form (AUT, 2015).

#### **4.8 Summary**

The data collection and analysis methods, including the number of interviews, were influenced by the nature of the research question and practical limitations such as the time frame of the research and the available resources. The researcher attempted to overcome the well-recognised limitations attributed to the qualitative case study methodology by adopting the realist paradigm with a combination of ontological

positivism and epistemological interpretivism, which provided a variety of rational strategies to research particular aspects of OHS features (Maxwell, 2012).

In order to allow the interview participants to express their views and knowledge, semi-structured interviews were employed. The researcher was then able to analyse better quality data by following the participants' thoughts and feedbacks. The interview questions were created based on a review of the relevant literature regarding New Zealand's OHS history and publicity related to the Health and Safety Reform Bill as well as media coverage of HSWA 2015 (see Appendices 4–6). The aim of the questions was encourage the stakeholders to express their perceptions about the adequacy and effectiveness of HSWA 2015.

The selection of the key stakeholders was based on the application of the stakeholder theory and on their knowledge and skills. The themes identified from the interview data, which are presented in the next chapter, were derived from the stakeholders' experiences and perceptions.

## Chapter 5: Findings

### 5.1 Introduction

To answer the main research question of how key stakeholders perceive the Health and Safety at Work Act 2015 (HSWA), this chapter presents a cohesive and logically structured interpretation of the data collected. In order to answer the main research questions, the findings are organised thematically based on the key stakeholders' perceptions of current OHS reforms (Marcus, 1998). Each theme is split into interconnected subthemes which clarify different aspects of the Act and its implementation.

A comprehensive review of the findings is presented, comparing and contrasting the findings from the literature review and OHS background information to provide more informative debate. Overall, the findings focus on whether the Act's content, implementation process and enforcement and compliance methods as per key stakeholders perception did reflect the overall health and safety reforms' objective of reducing workplace fatalities and injuries in New Zealand by 20 per cent in 2020 (WorkSafe New Zealand, 2015).

### 5.2 Theme: Regulation Design and Implementation

#### 5.2.1 Regulation Design

All interview participants noted that, overall; HSWA is not significantly different from previous legislation. During the interviews, some participants expressed their concerns regarding terminology, for example:

*[..] previous definition of serious harm was not helpful, while the new definition of notifiable incidents and injury are also not overly helpful in terms of wording. If it was written in a more user-friendly way in the Act, it would help people to understand what is what. It is not clear otherwise. (Participant E)*

There are a number of public available resources explaining the new terms in the Act, but the terminology still appears to be confusing for many people (WorkSafe New Zealand). It should be remembered that the success or failure of a regulation does not depend only on its wording or content, but on detailed implementation strategies and enforcement methods (Sandfort, 2014).

*They did remember there is a new terminology for employer, but couldn't say PCBU and had very limited understanding of what is different. (Participant C)*

While arguing that the legislation has not brought any noticeable changes, some of the stakeholders interviewed thought this reform could be difficult for small businesses to find all the necessary tools and information.

*It is a very straight forward legislation. Basically you have to follow rules and document everything. Perhaps small companies of 2 or 3 staff, could be difficult, if they haven't got the process set prior. They probably need to some work, and find how, which could be difficult. (Participant B)*

It is important to note that any regulation, but particularly one dedicated to improving challenging issues within community, will be effective if it resolves or minimises the problems that were at the root of the initiation of the policy process, while considering all the potential outcomes (Coglianese, 2012).

Stating that the main target of the legislation was four high-risk industries identified by government agencies (WorkSafe New Zealand, 2015), a participant from WorkSafe New Zealand thought that the introduction of the Act nationwide was a positive move:

*I think it has been very successful and has drawn lots of attention towards health and safety which is always great. In terms of the Act, it is similar to the old one with only a few new things. There were a few myths people were saying without doing much research. (Participant E)*

It should be noted that these interview excerpts show that the key stakeholders perception have varied depending on their worldview, experience and occupation.

### **5.2.2 Implementation of the Act**

While preparing for the fieldwork, the researcher anticipated that the implementation theme would be most important and informative. Reading the Act's related documentation, which states its goal to significantly reduce work-related illnesses and fatalities, one would hope that this is based on well-identified issues and solutions to achieve this goal. The public policy-related literature suggests that to achieve a very specific goal, which in this case is 20 per cent injury reduction nationwide by 2025 as pledged by WorkSafe New Zealand (2015), a very careful analysis of all feasible

models, technical problems, and human phenomena would have been considered and communicated to all relevant actors to solve all associated complications to achieve these goals (Jans, 2007).

All interview participants expressed similar views that once the Act came into effect and the accompanying media campaign, the general public and business community showed some initial interest in health and safety issues however, the intense interest in the Act has begun to tail off.

*When the Act first come out we had lots of hits and interests from companies asking for advice and guidelines, but that has not eventuated into sales [insurance]. But there is a growing interest from businesses. (Participant B)*

Overall, the research participants agreed the Act does not give clear detailed explanations on what it means by a “compliant business” and how to achieve this. However, interviewees did note that that “good businesses” had nothing to fear regarding the new Act, but if things went wrong there would be severe consequences.

*Well, the implementation of the Act wasn't hard, but what we find lacking is the regulations. Specially around testing of hygiene requirements, hazard substances [...]. I haven't heard anyone quoting to the regulation.. (Participant C)*

According to the top-down approach applied in this study to review the implementation of HSWA, specific quantifiable goals as well as tools for implementation and sufficient resources must be carefully planned (Birkland, 2016). However, the top-down approach's biggest weakness is the absence of a “black box” for unpredictable issues, such as the role and influence of the government agency and resources available for successful implementation (Tompa et al., 2016).

### **5.2.3 Skills and Resources**

As Brooks (1988, p. 353) states, “*Knowing that one has such an obligation (under the legislation) is one thing. Knowing how to comply is quite another.*” The Independent Taskforce on Workplace Health and Safety's (2013) report also states that the unsatisfactory knowledge of workplace health and safety regulatory requirements, including the rights and obligations of the main actors, is one of the root causes of New Zealand's poor OHS record.

In order to close the gap between the legislation and people's understanding of it, WorkSafe New Zealand's HSWA implementation strategies were based around three components:

1. Engage: health and safety inspectors contact PCBUs and other health and safety practitioners and representatives nationwide to raise awareness and improve their risk management.
2. Educate: making resources and support materials available to all key stakeholders.
3. Enforcement: these tools are to be used only if there is a firm assumption of real danger or risk (Ministry of Business, Innovation and Employment, 2016).

We would therefore expect the interviews to uncover how WorkSafe New Zealand has started to address the issue with health and safety education in the workplace. However, the interview data shows that this is not the case. The training and education of workers is still at the PCBUs' discretion.

*Workers have the same level of knowledge; there was a spike of interest last year but not anymore, a bit more training provided. But training is no longer subsidised by ACC [...], also the employees' health and safety trainings based on PCBU preferences, so only "good" ones attend. (Participant F)*

The participants representing the EMA, which has been one of the main players in the OHS training sector, felt frustrated at being excluded from the regulatory communication process, and expressed dissatisfaction over the lack of consultation and implementation of tools and resources from the relevant government agencies.

*I haven't seen anybody from ACC or WorkSafe NZ or Labour Department. Only thing available is the WorkSafe NZ website, which is supposed to make me understand, good luck with that. Trying to find somebody to talk to other than accidents is impossible. [...] All because the legislation has gone more draconian, businesses have to buy more safety equipment. And now you see on the side of the road more people putting cones and signs, but workers fixing the road still face the same hazards. So in my opinion it has made all the industry slower. (Participant A)*

As a continuation of previous findings, this study also demonstrates that there is an ongoing lack of more advanced training for health and safety representatives because most PCBUs are not keen to invest in their development of their employees, as this

expense is no longer subsidised by ACC. Moreover, the absence of accreditation for health and safety practitioners has created an additional problem for business and government agencies since there is no standard qualification among those who offer their consulting services to the businesses.

### **5.3 Theme: Role of State/Government Agency**

All the stakeholders interviewed believed that the state (i.e. WorkSafe) should ensure that workplaces are safe for everyone and hazards eliminated, minimised or isolated (Lamare et al., 2014). WorkSafe New Zealand (2015) stated that along with ensuring compliance, it will also play a crucial role in educating, training, guiding and advising businesses to motivate them to comply with the legislation (Parker & Nielsen 2012). However, when it came to the role and the performance of WorkSafe, the results were mixed. For example, trade union interviewees' perceptions of WorkSafe New Zealand were positive, except regarding workers' participation.

*I think this side is working well. But we would like more standards of course. Things are positive except around workers' participation. Work Safe NZ could do more, they could support more. They could have a register of reps who are trained, they could promote the concept more. But they are dictated by this government and their ideology around health and safety. They need deeper understanding of why workers need representation. (Participant C)*

According to EMA interviewees, health and safety inspectors only pay attention in the case of a serious event; otherwise they exist in a parallel universe and are nowhere to be seen.

*WorkSafe NZ? I'm sceptical about people with the clipboards, who do not produce anything, [...] But I guess they are a necessary evil [...]. Health and safety inspectors, if something big happens they will turn up. Look I guess they perform necessary things. But will they stop big tragedies like the Pike River, I don't know. Here we just have to stop people running around with the scissors. (Participant B)*

Under the new legislation, WorkSafe New Zealand has issued more than 3000 prohibition and improvement notices, which is about the same number issued in 2014 under previous legislation (WorkSafe New Zealand, 2017). In 2016 however, fatalities in high risk industries increased over previous years. In 2017 by June there were already 28 fatalities nationwide, which were addressed by media while reviewing

workplace health and safety under HSWA 2015 (New Zealand Herald, 2017). The reason for this poor performance perhaps is the number of enforcement officers working on the field; there are only a very limited number of health and safety inspectors nationwide. Table 2 shows the number of health and safety inspectors in New Zealand over the period 1988–2016.

Table 2. Number of OHS inspectors 1988–2016

	1988	1998	2008	2013	2016
Number of OHS inspectors	317	168	130	129	169
Size of the NZ business population	247,143	471,100	470,050	472,600	515,050

Source: Lamm (2009) and WorkSafe New Zealand statistics.

## 5.4 Theme: Employers' Responsibilities

Most interview participants agreed that the Act was taken very seriously by many business owners (PCBUs) due to the severity of potential punishment, but the lack of clear guidelines and severity of the potential fines was still very unsettling for many.

*So I rely on them [workers] to pick up things on the floor, or drive the car responsibly. But then they [workers] have a meltdown one day and I'm responsible. Now I am responsible until the law says otherwise. But it could cost me 100K to get to adequate court decisions, which is the scary part. (Participant A)*

According to the interviewees representing the trade unions' perspective, monetary implications appear to be motivating the business community:

*But definitely more discipline we find, less tolerance for rule breaking or corner cutting, I don't know if any big capital spending has taken place, I think WorkSafe NZ is enforcing more [...]. So PCBUs are doing more towards workplace health and safety. Fear of fines is out there. (Participant C)*

But as noted by Almond and Gray (2016) and May (2005), one enforcement tool is not going to be effective for long and will not help make permanent changes in human perception and behaviour. This reality was confirmed by the interviewees.

*We have sent all forestry inspectors out, they have issued prohibitions notices and things have improved. But as soon as we relaxed a bit, the injury rates start to climb up again. Seems when we are there the workers take notice, as soon we move our attention elsewhere these people are naughty again. In terms of the Act in NZ, again proactive companies especially the big ones take it very seriously, and if they screw up it is a system failure not an attempt to take economical advantage. (Participant E)*

There appears to be an absence of comprehensive measures to motivate and educate businesses, and to change safety culture in New Zealand.

*I think once something serious happens and WorkSafe NZ will take them to court and prosecute and make an example. But until then most people are just ticking boxes. (Participant B)*

Most participants believed that major OHS reform would only occur if there was a serious health and safety failure and the government is forced to apply harsher measures.

#### **5.4.1 Risk Management**

Most stakeholders recognised the importance of a proper risk management, however their thoughts were mainly associated with hazard management. PCBU participants were concerned about the new terminology in HSWA and increased fines, but otherwise they generally felt that nothing has changed.

*Risk management has been there before, and I don't think it has changed; it is what everyone supposed to do in first place. But it has become more onerous. Now we need to buy more safety gear, implement processes [...] and as for small and medium businesses, you just don't know where they start and where to finish to be safe. (Participant A)*

A participant from WorkSafe was able to provide more details regarding their experience when auditing businesses across New Zealand:

*I think risk management is heart of everything. But what we tend to see is 'here is our paperwork' concept, literally dusting it off. [...] If I*

*was a PCBU I would have all my paperwork to cover myself, but some people go overboard. I as an inspector am not interested in paperwork, I know it is cruel, but I'm more interested how it is actually managed. For example, I may grab a worker and ask what the risks at his/her workplace are, and if he/she doesn't know to my satisfaction I would ask the PCBU how come the worker doesn't know. Risk management is still a work in progress for many businesses. (Participant E)*

A trade union representative, meanwhile, was able to refer to the new Act and compare the terminologies of the THE HSEA and HSWA:

*The shift from hazard to risk management was easy for most companies, especially Australian owned companies. It did give them a bit of a leeway. Well, the big difference is under the old act the cost could be taken into consideration but under new law cost is only taken into account if only grossly disproportionate to the risk. It is so important, cause it was so easy to get away just by saying it is too expensive. So the wording is stronger now, but we haven't seen any court cases yet. (Participant C)*

Overall, the interview data makes clear that the change from hazard management to risk management has not impacted workplaces yet. It was stated by most participants that this change is still a work in progress. However, the above analysis does reveal insights into some of the confusion and miscommunication happening between the key actors in OHS after the introduction of the Act.

### **5.5 Theme: Concept of Worker Participation**

Worker participation was a much debated topic during the drafting of HSWA, with different parties having diametrically opposite views on the subject regarding the degree of worker participation in the workplace. An interviewee from WorkSafe New Zealand suggested that the Act made the position of unions and workers much stronger:

*Union and workers can issue PINs [Provisional Improvement Notices] and Stop Notices, and workers are taking more responsibilities. They can approach the management with their concerns. So there are very positive signs. (Participant D)*

However, a union representative contradicted this by saying that the Act had made work situations more vulnerable for employees and harder for trade unions. The trade

union interviewee argued that the Act does not contribute positively towards stronger worker participation in health and safety matters (Alexander, 2015).

*Many employers want to work directly with workers and not through unions. Because it is easy to deal with the workers, without going through collective phases. And the Act make it worse for us to organise around health and safety, it gives us more of rules than the old legislation. Before we could insist on collective participation, but it has fallen away. They used to deal with us in good faith. But now no good faith, no more union participation system being engaged, no more expectations about representatives. Only if workers asked for, but workers don't know how to ask for it. Cause legislation doesn't say. And WorkSafe is not supporting it at all, all they do is say, it is an option. They're really sitting on the fence in this regard, because employers won't like it. (Participant C)*

As stated, worker participation produced polar opposite views and perceptions. For example a WorkSafe New Zealand representative thought the Act has strengthened workers' positions in health and safety matters:

*They (workers) had power under old Act but it is called differently, but was not used too often, because there was no protection for the reps under the old Act. New Act offer more protection. It's called adverse behaviour, so PCBUs cannot take action against the whistle blower. That's good. (Participant E)*

This is in direct contrast to this union participant's position:

*Lots of representatives experience intimidation, particularly in low skill workplaces, people don't want to lose their jobs [...]. So the Act did not impact the worker consultation in general. Workers are still little guys with limited power. (Participant F)*

While the Act offers more protection for workers who report health and safety breaches, realistically, the power imbalance commonly seen in the workplace and a declining or lack of union presence have made workers' voices weak, and in some cases weaker than under the Health and Safety in Employment Act 1992 (HSEA). Wagstaff (2017) has noted that worker engagement in the health and safety area has actually got worse since the introduction of the Act. The number of formally elected number of health and safety participants declined from 38 per cent in 2013–14 to 31 per cent in 2015–16, while the number of informal health and safety participants

declined from 44 per cent in 2013–14 to 35 per cent in 2015–16 (Ministry of Business, Innovation and Employment [MBIE], 2017).

Not only has the number of health and safety representatives declined since the Act was introduced, but their involvement in decision-making regarding work safety matters has also dropped (Wagstaff, 2017). This was confirmed by the 2015–16 National Survey of Employers, which showed that worker participation in decision-making fell from 23 per cent in 2012–13 to 16 per cent in 2015–16 under the new regulation (MBIE, 2017).

## **5.6 Conclusion**

Overall, the literature suggests that optimal results in terms of compliance and enforcement can best be achieved by combining broad compliance-promotion efforts with well-targeted controls, and the availability of deterrent sanctions for serious breaches. Furthermore, effective compliance can only be achieved if regulations are realistic and adequate for a given country, since no amount of enforcement will make unrealistic rules work (May, 2005).

As the above study analysis shows, the findings of this study are mixed. Notwithstanding, all participants thought that OHS is a very important subject and were well aware of the changes introduced by HSWA. However, the participants did not consider these changes to be significant enough to make a real impact on New Zealand workplace fatalities and injuries. They also expressed concern about the complicated terminology introduced in HSWA; confusing concept of risk management, the poor level of worker consultation in the drafting of the Act; and the limited resources available to SMEs to implement cohesive health and safety strategies

## Chapter 6: Discussion and Conclusion

### 6.1 Introduction

The aim of this study was to assess the Health and Safety at Work Act 2015 (HSWA) and its ongoing implementation by collecting interview data from six key stakeholders representing the Employers and Manufacturers Association, WorkSafe New Zealand and the trade unions. This chapter first discusses the findings of this research and highlights both the positive and less optimistic sides of HSWA and its implementation from the perspectives of the interviewees. It then outlines the implications of the study's findings, its limitations and recommendations for future research, before presenting the conclusions of this dissertation.

One of the key changes introduced by HSWA was the concept of *risk* management replacing that of *hazard* management. The findings of this study reveal that stakeholders' perceptions vary on this change, and that the shift has had no apparent impact on workplaces yet. WorkSafe New Zealand stakeholders stated that the implementation of the updated concept of risk management is still a work in progress, and that it's too early to assess its effectiveness.

Three key themes emerged from the data analysis and comparison of this study's results with those of previous research. Firstly, while all stakeholders perceived HSWA positively in general, they all noted that the Act had not introduced any significant changes to New Zealand workplaces at the time of data collection. They also foresaw potential problems associated with the ambiguity of the new terminology and standards introduced by HSWA.

Secondly, the OHS literature (e.g., Robson et al., 2007; Sabatier & Mazmanian, 1980; Scholz, 1997) notes the importance of effective two-way communication channels when implementing regulatory reforms and to ensure stakeholders having the necessary skills and knowledge and resources execute changes to the OHS law. While still in progress, the implementation of HSWA appeared to all interviewees as fragmented and not very well planned. All key stakeholders were very aware of the severity of the potential consequences of poor implementation, but only WorkSafe New Zealand participants were knowledgeable about details and differences (subtle or

otherwise) between the Health and Safety in Employment Act 1992 (HSEA) and HSWA.

Thirdly, while there was a great deal of debate occurred on the subject worker participation in OHS during the drafting and introduction HSWA, Person Conducting a Business or Undertaking (PCBU) stakeholders displayed little understanding of or interest in the topic of worker participation (unlike the trade union representatives). In this their behaviour was consistent with the managerial prerogative concept (Challies & Murray, 2008). The WorkSafe New Zealand interviewees suggested that in general all workplaces are unique and effective worker participation depends on multiple factors, and should be resolved through mature dialogue between PCBUs and workers.

This final chapter first reviews and discusses the key findings of the tripartite interviews in relation to the existing OHS literature before summarising the limitations of this research. It also describes the contribution of this study to improving our understanding of the impact of the current OHS reforms in New Zealand, as well as directions for future research within the OHS field.

## **6.2 Key Findings**

### **6.2.1. Stakeholders' Perceptions on the Adequacy and Effectiveness of HSWA**

The study participants all agreed that OHS is a very important topic, but were concerned that the implementation of HSWA was not as efficient as it could have been. A particular shortcoming identified was the fact that the legislation does not explicitly define all key terminology or guidance, and hence there is room for multiple interpretations, which could potentially lead to clashes between stakeholders and miscommunication between different agencies.

The stakeholders also felt that most businesses were taking health and safety matters more seriously. Furthermore, it was also believed by some interviewees that the changes effected by HSWA had been needed for a while, but the Act, they felt, was introduced not through a rational and well-thought-out process but under political and social pressure. This finding is confirmed by the academic literature on OHS interventions in New Zealand, which tend to occur as reactions to severe incidents that cause serious damage or loss of life, where the state or an organisation is forced into

immediate action due to legal requirements or social pressures (Hudges, 2015; Poroshina-Nicols, 2016).

Particular themes were consistent across the interview data from different groups of stakeholders. While the six stakeholders had different levels of involvement in the development and implementation of OSH legislation and policies, they all stated that at the time of data collection the new Act had not greatly altered New Zealand workers' knowledge or work conditions (Table 3).

Table 3. Stakeholders' perceptions on changes introduced by HSWA

<b>Participant A (PCBU)</b>	People are talking about the Act since its conception [...] However since I started business in 1998, nothing has really changed.
<b>Participant B (PCBU)</b>	I think there is no public perception until WorkSafe NZ penalise someone and make an example of them.
<b>Participant C (Trade Union)</b>	If they (representatives) remember anything, it is there is a new law. And these are Health and Safety representatives, not just ordinary people.
<b>Participant F (Trade Union)</b>	Very small proportions of people are very well informed normally union delegate or older workers [...]. But most union members have a very sketchy knowledge.
<b>Participant D (Government Agency)</b>	I don't have stats, but from working on the field you can feel that health and safety mentality has improved.
<b>Participant E (Government Agency)</b>	So the foundation is the same, only changes of language and words. I think the basic principles are good

The comments above reflect the concepts of stakeholder theory, with the interviewees arguing that HSWA is not significantly different from previous legislation from the perspective of their own or their group's interests (Freeman, 1986, 2010).

### 6.2.2 Stakeholders' Perceptions on Implementation of HSWA

There is empirical evidence that the success or failure of a new regulation depends on the presence of an appropriate policy-making process and successful implementation (Sandfort, 2014). Hence, the mere existence of a regulation does not guarantee that the target group or groups will act in accordance with it (Axelrad & Kagan, 2000; Bluff & Gunningham, 2003). The implementation of HSWA followed a top-down approach,

which is based on the belief that regulations must be comprised of distinct measurable objectives as well as tools for implementation and sufficient resources (Birkland, 2016).

A key finding of this dissertation, however, is that the implementation of HSWA has been fragmented and has focused on the four high-risk industries, namely forestry, mining, construction and manufacturing, while not paying much attention to small- and medium-sized enterprises (SMEs) nationwide. It has been noted that in many cases there were struggles for small businesses to meet health and safety requirements due to lack of time, resources and skills under the previous legislation (Legg et al., 2008). As for the participants in this study, the apparent attitude of the regulators towards SMEs has not changed under HSWA.

This is worrisome because, while for experienced OHS practitioners the information available on the WorkSafe New Zealand website and other sources provides a sufficient base to build a competent and safe workplace, many small business owners and their employees will not have the necessary expertise to fully comprehend and comply with the Act (WorkSafe New Zealand, 2017). As the implementation of the Act is still in progress and there have been no significant court cases yet related to the legislation, there is sense of fear among PCBUs as to what interpretations judges will apply to the new terminology and content of the Act, and as to what the actual penalties will be. The trade union stakeholders interviewed for this research were very sceptical that punishments will actually be applied.

Under THE HSEA there were only a few court hearings and sentencings due to serious breaches. It is believed by many that the self-regulatory approach adopted and promoted by the former legislation was the cause of the lack of investigations ( Alexander 2015; New Zealand Herald, 2017). In 2016, under the new legislation, fatalities in high-risk industries increased over previous years (New Zealand Herald, 2017). The reason for this poor performance is possibly the low number of enforcement officers working on the field; there are only a very limited number of health and safety inspectors nationwide (see Table 2). Another reason might be the pro-business ideology which currently dominates in New Zealand (Gunningham 2015; Lamm, 2008; Wren, 2009).

Overall, it is well established that compliance and enforcement require expertise and experience; key stakeholders must be knowledgeable and possess the relevant skills – otherwise the effectiveness of the implementation process could be greatly reduced (Gunningham, 2015). The interview data reveal that PCBUs, particularly in SMEs, are disappointed about the lack of resources and poor communication from WorkSafe New Zealand in their attempts to comply with the Act.

### **6.2.3 Stakeholders' Perception on Worker Participation in OHS Matters under HSWA**

The report of Independent Taskforce on Workplace Health and Safety (2013; hereafter "Taskforce") identified one fundamental weakness that stood out above all others in relation to New Zealand OHS: poor worker participation. And this was despite the existence of empirical evidence that an efficient and engaged workforce significantly decreases the incidence of occupational injuries and illnesses (Lamm, 2009; Walter, 2004).

This study found that in many cases, due to fear of severe punishment by the state, business management has taken over OHS duties. While this is a positive sign that PCBUs are taking these issues seriously, it also weakens workers' voices. HSWA states that PCBUs must allow worker representation if there is a request from the relevant party (workers) or their representatives (unions) but, as highlighted by Participant C, workers simply do not know their rights, particularly in low-skilled workplaces where union presence is weak or non-existent.

The minimal impact of HSWA on worker participation in OHS matters is another key finding of this study. The reports by the Taskforce and the Royal Commission on the Pike River Coal Mine Tragedy (2012) both highlighted the importance of worker participation in preventing work-related tragedies and strongly recommended including provisions to strengthen this aspect in new legislation, but the reality after the introduction of the Act is different. The comments listed in Table 4 below clearly highlight key stakeholders' views and agendas on this topic, which depend on their personal or group interests.

Table 4. Stakeholders' perceptions on worker participation

<b>Participant A (PCBU)</b>	You want your workers to be engaged and safe. You want them to follow procedures. But as reps goes it is 30 of us so it easy to get together and get a management in it. But If you have 5 people, for example why do you have to have a committee?
<b>Participant B (PCBU)</b>	H&S committee used to be represented by people from different department, but now it is taken over by higher management because it is more serious.
<b>Participant C (Trade Union)</b>	<p>What is happening is now the message from the bosses is "If you misbehave I go to a prison, so if I find you misbehaving I will fire you". This is an interpretation lot employers are taking now. This is completely against what it was intended. The Act is backfiring on them [workers] since employers are sabotaging it with more disciplining and rules.</p> <p>They [WorkSafe New Zealand] don't know about power relationships in the business environment. When an inspector interviews workers and the boss is next to them it doesn't mean anything.</p>
<b>Participant F (Trade Union)</b>	H&S reps' trainings are no longer subsidised by ACC, but money is not a barrier, it is not expensive, the resistance is more ideological, PCBU don't want to send their employees or their priorities are different.
<b>Participant D (Government Agency)</b>	Union and workers can issue PINS and stop notice. They can approach the management with their concerns. So there are very positive signs.
<b>Participant E (Government Agency)</b>	It depends on the workplace and reps, because what I have seen from my experience, it is very hard to get it right. You have to have the right people in the right places. And if it is right it is a really, really powerful tool [...]. Even if PCBUs are interested in engaging workers, the workers do not want to be reps. And if you have someone volunteering it is mostly union delegates, then you have whole health and safety being used as Employment Relations tool. I think New Zealand society needs to mature regarding work safety; it is very difficult to get everyone working together otherwise.

The findings of this study are broadly consistent with the theory of regulatory capture associated with the work of Stigler (1971). This theory holds that the public policy-making process is dominated by the economic and political interests of different groups, where the role of the state is reduced to protect the economic interests of influential groups while ignoring the well-being of the overall population (Bernstein, 1955; Laffont & Tirole, 1991; Lamm et al., 2013; Stigler, 1971).

### 6.3 Implications of the Research

As noted above, relatively few studies that have investigated the tripartite stakeholders' perceptions of OHS in New Zealand. Hence it is the researcher's belief

that the findings of this study have practical implications for OHS in New Zealand. The limited review of the literature on regulations in the OHS that the success or failure of a new regulation depends largely on the presence of an appropriate policy-making process with an effective implementation plan (Axelrad & Kagan, 2000; Sandfort, 2014). Overall, the literature suggests that optimal results in terms of compliance and enforcement can best be achieved by combining broad compliance-promotion efforts with well-targeted controls, and the availability of deterrent sanctions for serious breaches. Furthermore, effective compliance can only be achieved if regulations are realistic and adequate for a given country, since no amount of enforcement will make unrealistic rules work (Hudges, 2015). Hence this study provides important background information for understanding complex issues surrounding key stakeholders' motives and their legal/social rights and obligations, offering a more comprehensive understanding of OHS compliance and enforcement processes in New Zealand.

#### **6.4 Limitations of This Study**

Like all studies, this one is not without its limitations. Firstly, the study sample was small ( $N=6$ ), which means the findings cannot be generalised to other contexts. Initially the intention was to interview trade union representatives who were directly involved in workplace health and safety issues, however it was almost impossible to find union members with sufficient health and safety and regulatory knowledge.

Secondly, while covering many general concepts and theoretical frameworks, the literature review was limited due to the restricted time frame of this research, the nature of a small-scale study, and the scarce academic work available on HSWA.

Thirdly, interview data were collected and analysed solely by the primary researcher. While all interview transcripts were carefully analysed and reviewed, there is a small possibility of unintentional misrepresentation of the data. Also, the data was collected over a short period of time and thus may not present an accurate picture of key stakeholders' perceptions.

## 6.5 Recommendations for Future Research

The literature review identified an apparent lack of New Zealand OHS-related studies that present tripartite views of the key stakeholders in the manner of this research. This dissertation has contributed to filling that gap in knowledge, but it should be noted that collecting data from government agencies is challenging, and the data provided by was very sensitive to critique. This could present challenges for future studies of a similar nature.

The interview questions in this research were designed to briefly cover many complex topics, such as the role of the state, risk management and worker participation under HSWA. In order to uncover additional trends and insights it would be beneficial to research in-depth each of these topics separately. For example, a future study could perhaps use a mix of quantitative and qualitative methods to concentrate on both high-risk and low-risk industries and determine whether the changes introduced by HSWA have increased or decreased worker participation in OHS in New Zealand.

## 6.6 Conclusion

This study has presented tripartite views of key stakeholders regarding the effectiveness of HSWA and its implementation process, collected by means of six semi-structured interviews.

Firstly, a comprehensive review of New Zealand OHS history described the complex and ever-changing landscape of workplace health and safety. When introduced in 1992, THE HSEA dramatically changed the ideological underpinning of OHS in New Zealand by shifting all responsibilities to business owners. THE HSEA promoted self-regulation whereby employers and employees mutually agree to resolve all OHS matters among themselves (Hart, 2009). Two decades later New Zealand continued to show a very poor OHS record despite these changes (Lamm, 2012). After the Pike River Coal Mine Tragedy in 2010, a new OHS reform process commenced that led to the introduction of HSWA in 2015, the Act which has been the main subject of this research.

The literature review carried out in Chapter 3 revealed that the design, implementation and enforcement of new regulation policy is a very complex matter that involves multiple key actors and conflicting interest groups (Walters, 2005). This

complexity is compounded by the many viewpoints and conflicting ideologies found in the different forums (Wilson, 2015). Furthermore, there is also the conflicting role of the state in OHS: acting as a regulator while representing the interests of the electorate; consider, for example, the pro-business agenda of current government (Rasmussen et al., 2009; Strauss, 2006).

The results of this study highlight that assessment of the effectiveness of OHS reform is a complicated topic. Due to the continuous protests and debates emanating from pro-union groups on one hand, and the constant statements of regulations performing very well with promising outcomes from government agencies on the other, it is very hard to derive reliable conclusions on the matter.

The key findings of this study are ultimately mixed: on a positive note, the attitude of business owners towards OHS has significantly improved, and public awareness of workplace health and safety has increased. On the negative side, however, the findings showed that the stakeholders were in general not impressed with the changes brought about by HSWA and doubted their positive impact on New Zealand workplace fatalities and injuries. Also the trade union stakeholders (unlike the PCBU or WorkSafe New Zealand stakeholders) expressed their concern about alarming signs of the managerial prerogative becoming dominant in OHS matters, due to increased harshness of fines and punishments under HSWA, while the level of worker participation and involvement continues to decrease.

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## Appendix 1: Ethics Application Approval Letter



### AUTEC Secretariat

Auckland University of Technology  
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 T: +64 9 921 9999 ext. 8316  
 E: [ethics@aut.ac.nz](mailto:ethics@aut.ac.nz)  
[www.aut.ac.nz/researchethics](http://www.aut.ac.nz/researchethics)

19 July 2017

Felicity Lamm  
 Faculty of Business Economics and Law

Dear Felicity

Re Ethics Application: **17/24 Occupational Health and Safety Reforms in New Zealand: The tripartite views of the new Health and Safety at Work Act, 2015 (HSWA).**

Thank you for providing evidence as requested, which satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC).

Your ethics application has been approved for three years until 18 July 2020.

#### Standard Conditions of Approval

1. A progress report is due annually on the anniversary of the approval date, using form EA2, which is available online through <http://www.aut.ac.nz/researchethics>.
2. A final report is due at the expiration of the approval period, or, upon completion of project, using form EA3, which is available online through <http://www.aut.ac.nz/researchethics>.
3. Any amendments to the project must be approved by AUTEC prior to being implemented. Amendments can be requested using the EA2 form: <http://www.aut.ac.nz/researchethics>.
4. Any serious or unexpected adverse events must be reported to AUTEC Secretariat as a matter of priority.
5. Any unforeseen events that might affect continued ethical acceptability of the project should also be reported to the AUTEC Secretariat as a matter of priority.

Please quote the application number and title on all future correspondence related to this project.

AUTEC grants ethical approval only. If you require management approval for access for your research from another institution or organisation then you are responsible for obtaining it. You are reminded that it is your responsibility to ensure that the spelling and grammar of documents being provided to participants or external organisations is of a high standard.

For any enquiries, please contact [ethics@aut.ac.nz](mailto:ethics@aut.ac.nz)

Yours sincerely,

Kate O'Connor  
 Executive Manager  
 Auckland University of Technology Ethics Committee

Cc: [uzgulajulia@gmail.com](mailto:uzgulajulia@gmail.com)

# Appendix 2: Consent Form



## Appendix 2

### Consent Form

For use when interviews are involved.

Project title: *Occupational Health and Safety Reforms in New Zealand: the tripartite views of the new Health and Safety at Work Act, 2015 (HSWA).*

Project Supervisor: *Felicity Lamm*

Researcher: *Julia Bolotbaeva*

- I have read and understood the information provided about this research project in the Information Sheet dated dd mmmm yyyy.
- I have had an opportunity to ask questions and to have them answered.
- I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without being disadvantaged in any way.
- I understand that if I withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I wish to receive a summary of the research findings (please tick one): Yes  No

Participant's signature: .....

Participant's name: .....

Participant's Contact Details (if appropriate):  
.....  
.....  
.....  
.....

Date:

**Approved by the Auckland University of Technology Ethics Committee on 19 July 2017 AUTEK Reference number 17/24**

*Note: The Participant should retain a copy of this form.*

## Appendix 3: Participation Information Sheet



### Appendix 3

### Participant Information Sheet

**Date Information Sheet Produced:**

dd mmmm yyyy

**Project Title:**

Occupational Health and Safety Reforms in New Zealand: the tripartite views of the new Health and Safety at Work Act, 2015 (HSWA).

**An Invitation:**

Dear Participant,

I invite you to participate in the research study entitled Occupational Health and Safety (OHS) reforms in New Zealand: the tripartite views of the new Health and Safety at Work Act, 2015 (HSWA). I am currently enrolled in the Master in Business program at Auckland University of Technology (AUT) and in the process of writing my Master Dissertation. The purpose of the research is to explore the perception of New Zealand's recent OHS reforms by different parties involved in OHS matters at workplace, how effective is the enforcement and how compliance is being achieved.

Your participation in this research project is completely voluntary. You may decline altogether, or refuse to answer any questions during the interview without any explanation. There are no known risks associated with participating in this study beyond those encountered in everyday life. Your responses will be confidential and your identity will remain anonymous. Data from this research will be kept under lock and key and reported only as a collective combined total. No one other than the researchers will know your individual answers to this interview schedule.

If you agree to participate in this project, please reply via email, text message or phone call:

Julia Bolotbaeva -Primary Researcher  
 Email address: [uzguliajulia@gmail.com](mailto:uzguliajulia@gmail.com)  
 Mobile: +64 212254849

If you have any questions about this project, feel free to contact Associate Professor Dr Felicity Lamm, Co-Director of the Centre for Occupational Health and Safety Research, at [felicity.lamm@aut.ac.nz](mailto:felicity.lamm@aut.ac.nz) or +64 9 921-9999.

Thank you for your assistance in this important endeavor.

Yours sincerely,

Julia Bolotbaeva

**What is the purpose of this research?**

The purpose of this research is to gain a deeper knowledge around policy making, sociology of law and health and safety legislation as a result of examining the personal opinions and perceptions of the research participants regarding the new OHS reforms.

In particular, the study aims to capture and describe OHS reforms by evaluating the HSWA 2015, which aims improve current OHS conditions and reduce occupation-related injuries by 25% by 2020 (WorkSafe New Zealand, 2015). This study will be beneficial as it involves key informants with varying backgrounds in OHS. It will also provide a deeper understanding of how effective the current OHS legislation is as well as the providing evidence for developing informed enforcement and compliance strategies for the key government agencies and employer and trade union organisations.

**How was I identified and why am I being invited to participate in this research?**

The participants for this study represent key stakeholders from the Employers and Manufacturers (Northern) Association, Worksafe NZ and New Zealand Council of Trade Unions selected on the basis of their expertise in OHS, including developing safety policies and procedures. Your contact details as a potential participant were collected from the publically available websites.

**How do I agree to participate in this research?**

Your participation in this research is voluntary (it is your choice) and whether or not you choose to participate will neither advantage nor disadvantage you. You are able to withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data that is identifiable as belonging to you removed or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

Written consent form will be signed on the day of the interview before the discussion will commence.

**What will happen in this research?**

The research will be conducted in form of a face-to-face interview, which will take approximately 1 ½ hours to complete. If you agree to take part in it, the researcher will call you to ask a few questions regarding your eligibility and confirm information related to the interview. The telephone conversation will be recorded in writing. At the end of the telephone call, we will ask you whether you would agree to be interviewed face-to-face by the researcher. If you agree to be interviewed, the researcher will come to your working premises at the most convenient for you time, but within normal business hours.

**What are the discomforts and risks?**

The proposed methodological tools do not bear any obvious risk to the physical or psychological well-being of the participants involved. There is, however, a marginal probability that respondents may feel uncomfortable with some aspects, topics or themes raised during the interviews/discussions, hence creating unease amongst the respondents. This, however, is unlikely to amount to significant distress.

**What are the benefits?**

The main benefit for the researcher is to complete and obtain the qualification of Master in Business. In addition, the researcher will obtain deeper knowledge around policy making, sociology of law and health and safety legislation as a result of examining the personal opinions and perceptions of the research participants regarding the new OHS reforms.

This study will be beneficial for all participants involved and the wider community it will also provide a deeper understanding on how effective the current OHS legislation is as well as the providing evidence for developing informed enforcement and compliance strategies for the key government agencies and employer and trade union organisations.

**How will my privacy be protected?**

As a primary researcher, I will attempt to provide full confidentiality by ensuring that information or data collected about individuals will be appropriately anonymised by using pseudonyms where individual responses and/or their organisations are referred the dissertation. Furthermore, the researcher will not use any physical or personality or professional characteristics that may suggest the participant's identity. However, due to the small pool of the potential participants the level confidentiality provided could be diminished slightly.

**What are the costs of participating in this research?**

The participants of this research will not receive any financial compensation,

**What opportunity do I have to consider this invitation?**

Please respond within seven work days

**Will I receive feedback on the results of this research?**

Yes, all research participants will be invited to comment on their interview transcript as to whether or not the final themes and concepts accurately reflected the phenomena under investigated. Also, all interview participants will be offered a short summary of the findings once the study is completed.

**What do I do if I have concerns about this research?**

Should you have ANY concerns regarding the nature of this project please contact the Project Supervisor - The Project Supervisor - Associate Professor Dr Felicity Lamm, Co-Director of the Centre for Occupational Health and Safety Research, at *felicity.lamm@aut.ac.nz* or (09) 921-9999.

Any concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, Kate O'Connor, *ethics@aut.ac.nz*, or (09) 921 9999 extension 6038.

**Whom do I contact for further information about this research?**

Please keep this Information Sheet and a copy of the Consent Form for your future reference. You are also able to contact the research team as follows:

***Researcher Contact Details:***

Julia Bolotbaeva – AUT Student and Primary Researcher  
Email address: *uzguliajulia@gmail.com*

***Project Supervisor Contact Details:***

The Project Supervisor - Associate Professor Dr Felicity Lamm, Co-Director of the Centre for Occupational Health and Safety Research, at *felicity.lamm@aut.ac.nz* or (09) 921-9999.

## Appendix 4: Interview Guide for Trade Unions

### Interview Questions for Trade Unions

#### **Health and Safety at Work Act 2015:**

- How well do you think your union members and workers understand the roles of Health and Safety Representatives and PCBUs under this Act?
- From your observations, do workers have better knowledge about the relevant Health and Safety policies since the HSWA 2015 has been introduced? Are there more training around H&S available for them presently?
- What are your thoughts on how difficult or easy the implementation of the Act has been at workplaces, including your organisation?
- How do you feel the Act is impacting NZ workplaces? Are there any noticeable decrease or increase in work related accidents/injuries since the Act has been introduced? Why do you think this has happened?

#### **Person Conducting a Business or Undertaking (PCBU):**

- Do you think that employers/PCBUs are more involved in H&S matters since the Act has been introduced?
- Do you think employers/PCBUs are more engaged with workers and trade union delegates since the HSWA 2015 has been introduced?
- Is it easier to deal with the employers/PCBUs regarding H&S matters since the Act has been introduced.

#### **Risk Management:**

- Why do you think risk management is important for businesses?
- Have you noticed any significant changes to the risk management systems after the HSWA 2015 has been introduced? Do you think it is more effective?

#### **Worker Consultation:**

- How important is it that H&S representatives and trade union delegates are involved in the decision-making processes to improve or prevent future H&S issues?
- Do you believe that H&S representatives are having more impact on workplace Health and Safety conditions after the Act has been introduced?
- Do you think that the issues raised by H&S representatives are being addressed more promptly by their employers/PCBUs since the Act has been introduced?

#### **Governing Agency:**

- What are your thoughts about WorkSafe NZ?
- What are your thoughts about health and safety inspectors' roles before and after the HSWA 2015 was introduced?
- What have been the public's reactions to the HSWA 2015 and WorkSafe NZ performance? Were they positive responses or negative?

## Appendix 5: Interview Guide for WorkSafe NZ

### Interview questions for WorkSafe NZ

#### **Health and Safety at Work Act 2015:**

- What are your thoughts toward the implementation of the Act nationwide? Do you think it has been a success or failure or a work in progress?
- In your opinion, what parts of the legislation was easy and difficult to implement?
- How do you feel the Act is impacting NZ workplaces? Are there any noticeable decrease/increase in work related accidents and injuries since the Act has been introduced? Why do you think this has happened?

#### **Person Conducting a Business or Undertaking (PCBU):**

- Do you think that all the employers/PCBUs are more involved in H&S matters since the Act has been introduced?
- As an enforcement officer, what processes could you employ to assess the PCBUs' health and safety performance? Have they been effective?

#### **Risk Management:**

- Why do you think risk management is important for businesses?
- Have you noticed any significant changes to the risk management system at workplaces after the HSWA 2015 has been introduced? Do you think it is more effective? How have these changes been regulated?

#### **Worker Consultation:**

- From your observations, do you think that Health and Safety Representatives and union delegates have a stronger voice regarding H&S conditions at work since the HSWA 2015 has been introduced?
- Do you think that the issues raised by H&S representatives are being addressed more promptly by their employers and PCBUs since the Act has been introduced?

#### **Governing Agency:**

- Do you think that H&S Representatives and PCBUs around NZ are well aware of what WorkSafe NZ's main functions are?
- What are your thoughts about health and safety inspectors' roles before and after the HSWA 2015 was introduced?
- What have been the public's reactions to the HSWA 2015 and WorkSafe NZ's performance? Were they positive responses or negative?

## Appendix 6: Interview Guide for Employers (EMA)

### Interview questions for Employers (EMA)

#### **Health and Safety at Work Act 2015:**

- How well do you think employers and workers around NZ understand the role of Health and Safety Representatives and PCBUs under this Act?
- What are your thoughts toward the implementation of the Act nationwide? Do you think it has been a success or failure or a work in progress?
- In your opinion, what part of the legislation was easy or difficult to implement?
- How do you feel the Act is impacting NZ workplaces? Are there any noticeable decrease or increase in work related accidents and injuries since the Act has been introduced? Why do you think this has happened?

#### **Person Conducting a Business or Undertaking (PCBU):**

- What your thoughts on the processes prescribed by the Act to ensure that all PCBUs fulfil their health and safety responsibilities? Are these processes effective?
- Do you think there are enough resources and help available for PCBUs to meet their responsibilities under the Act?
- In your opinion, what tools and methods can be used to encourage PCBUs to improve and maintain acceptable H&S conditions in their respective organisations?

#### **Risk Management:**

- Why do you think risk management is important for businesses?
- Do you think that the risk management systems at workplaces including your business are more effective after the HSWA 2015? Why do you think this is?

#### **Worker Consultation:**

- How do you feel businesses can engage with their workers and H&S representatives on health and safety matters and the decision-making process?
- Do you believe that H&S representatives have positive impact on workplace Health and Safety conditions after the Act has been introduced?
- In your opinion, how easy or hard is it to engage, develop, and maintain the experienced H&S representatives base in NZ workplaces as required by the Act?

#### **Governing Agency:**

- What are your thoughts about WorkSafe NZ?
- What are your thoughts about health and safety inspectors' roles before and after the HSWA 2015 was introduced?
- What have been the public's reactions to the HSWA 2015 and WorkSafe NZ's performance? Were they positive responses or negative?