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Reporting on Occupational Health and Safety in Annual Reports: A Look at Disclosure Practices in New Zealand

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Abstract

Many organisations in New Zealand have begun to voluntarily disclose health and safety information in their annual reports. This paper considers the rationales for such disclosures and reviews the disclosure practices of 100 of New Zealand's largest employers. It utilises an index adapted from Morhardt (2002) and good practice guidance developed by the Health and Safety Commission in the United Kingdom (HSC, 2000) to evaluate the quantity and quality of reporting.

Introduction

In recent years many organisations in New Zealand have begun to voluntarily disclose health and safety information and other employment-related indicators in their annual reports. This is in line with overseas developments, where the practice of disclosing information on social and environmental factors in addition to financial performance is becoming relatively commonplace. This practice is often described as "triple bottom line" or "sustainable development" reporting. Various industry groups, civil society organisations and regulatory agencies have promoted this activity and issued a variety of guidelines designed to improve the quality of reporting.¹ Professional accounting bodies are also beginning to pay attention to this area.² A number of reporting awards schemes have been instituted in an effort to encourage best practice.³

This paper focuses on the disclosure of occupational health and safety (OHS) information in New Zealand. Section 2 considers the rationales for OHS reporting, placing the issues in the context of wider debates about the appropriate conceptual foundations for social and environmental accounting. Section 3 establishes a framework for analysing the OHS disclosure practices of New Zealand's largest employers and benchmarking them against

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international reporting guidance. It utilises an index adapted from Morhardt (2002) and good practice guidance developed by the Health and Safety Commission in the United Kingdom (HSC, 2000) to evaluate both the quantity and quality of reporting. Section 4 reports the results of our review. Benchmarked against the index developed, the authors conclude that there is considerable scope for improving the standard of OHS reporting in New Zealand. Section 5 discusses the types of initiatives that might be used to progress developments in this area. Section 6 contains our concluding remarks.

Rationales for OHS Reporting

There are a number of conceptual frameworks for approaching social and environmental accounting. They may be broadly summarised into three categories: the business case, stakeholder-accountability and critical theory perspectives (Brown & Fraser, forthcoming). Proponents of these approaches have different views about why and how this area should be developed. In this section we focus on how these debates are played out within the OHS context.

Business Case Approach

The focus in the business case approach is on highlighting the economic benefits available to employers from systematic OHS management and reporting practices. A number of overseas regulatory agencies have taken this approach. The HSC in the United Kingdom has been particularly active. In 2000 it issued a “challenge” to the top 350 businesses to report to a common standard on health and safety issues by the end of 2002 (HSC, 2000: paras 42-46). It has also set up a “Ready Reckoner” website to promote the message that “good health and safety is good business”.⁴ Case studies demonstrate the potential cost savings available through, *inter alia*; less lost time, reduced absenteeism, lower regulatory costs and enhanced business reputation. In New Zealand, business case themes are also emphasised by the NZ Business Council for Sustainable Development, the Sustainable Business Network and the Ministry for the Environment (see, e.g., NZBCSD, 2002; SBN & MFE, 2003).

The “safety pays” approach is contentious. Cutler and James (1996) observe that it is premised on the assumption that there is no inherent conflict between the goals of workplace health and safety and organisational profitability. It is simply a matter of “educating” employers on the merits of using an accounting based approach to OHS. However, while raising awareness of the costs of injury and illness may yield benefits for workplace safety, identification of costs *per se* does not justify a conclusion that it will be “economically rational” for employers to improve OHS performance (ibid: 758).

A number of studies have pointed to threats to employee health and safety posed by production pressures (e.g. Nelkin & Brown, 1984; Hutter, 2001). Much also depends on the firm’s perceptions of its OHS risks (Hopkins, 1999). Cutler and James (1996: 758)

charge that, in some situations, (for example, industries characterised by low pay and low profit margins), cost benefit calculations might encourage employers to accord safety a lower priority. This is reinforced by research that suggests that, due to information and bargaining power asymmetries, employees themselves often underestimate OHS risks and do not factor the full costs they bear into their employment decisions (Nelkin & Brown, 1984; McGarity & Shapiro, 1996).⁵

A similar analysis applies with respect to decisions about OHS reporting. Research suggests that voluntary disclosures in annual reports are often a response to changed societal expectations and public policy pressures; providing firms with a means of legitimising corporate activity and warding off regulation (Walden & Schwartz, 1997; Stewart & Collins, 2004). Voluntary reporting is also viewed as a way of building reputation capital, signalling ethical leadership and risk management to shareholders. The reporting of “bad news”, however, may provide the seeds for more strained stakeholder relationships and regulatory attention. Disclosure may also lead to increased employee/union bargaining power:

“Taking a rational and cost/benefit approach to voluntary disclosure [firms] disclose only that information they perceive will increase the value of the firm. Where the perceived harm of information outweighs the benefits, the information is unlikely to be provided.” (Chan & Milne, 1999: 267)

While firms may be happy to share OHS information in ‘win-win’ situations it seems unlikely they will rush to volunteer information likely to adversely impact future cash flows. This may help to explain the research that suggests that companies which report internally sometimes place a low priority on providing disclosures to external parties (Tilt, 2001). There are also considerable dangers in over-estimating the business case for OHS. In particular, it may encourage regulators (and the public) to overestimate the efficacy of a voluntary approach. Even if the “safety pays” lobby is correct, there is evidence that some employees at least remain sceptical, a point brought home graphically in the following quote:

“I’ve been at meetings where they’ve discussed the cost of killing someone versus the cost of a repair... I’m working at the moment on loss risk assessments... it is cheaper for someone to die than for us to do something... I’m sure it happens in a lot of industries.” (HSE, 1999: 21).⁶

A further difficulty with the business case approach is that it encourages a framing of issues from a narrow perspective. The “optimal” health and safety and reporting levels are measured from the point of view of costs and benefits to employers. Costs and benefits to employees and local communities are only factored into the analysis if there are agency implications for the employer (e.g. in terms of lost productivity, regulatory costs or reputation effects). It thus privileges private efficiency over social efficiency

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(Cooper & Sherer, 1984). This is problematic given that research indicates that the bulk of OHS costs fall on employees, their families, and the wider community (Dorman, 2000; Hopkins, 1999).

It is considerations such as these that have led a number of commentators to favour a stakeholder-centred approach to social and environmental accounting (Gray, et al., 1996). Stakeholder theorists view much current reporting practice as having little to do with any genuine attempt to be accountable, (O'Dwyer, 2003; Christian Aid, 2004). External reports that are provided are often viewed as self-serving public relations documents with little substantive content.

Stakeholder-Accountability Approach

Stakeholder-accountability proponents view corporations as institutions with public obligations. Accountability in a participative democracy means “those controlling resources provide accounts to society of their use of those resources” (Gray *et al.* 1996: 37). It involves “the duty to provide an account (not necessarily *financial*) or reckoning of those actions for which one is held responsible” (ibid: 38, emphasis in original).

The starting point for this approach in OHS is that employees have a right to a safe and healthy workplace. This needs to be backed by rights to quality information to allow employees and other stakeholders to make informed decisions and to secure the accountability of employers for OHS performance. Social and environmental accounting is a mechanism that can help to internalise currently externalised OHS costs into decision-making. It also has the potential to create new visibilities, to facilitate dialogue and debate and to promote more open and transparent decision-making (Boyce, 2000).

The United Kingdom's Centre for Corporate Accountability (CCA) has urged the HSE to encompass the *social* as well as *business* benefits of public reporting. The CCA observes that statutory disclosure could:

“... Allow... stakeholders to assess [employer] commitment to effective health and safety risk and how alert [they] are to the need to monitor and improve [their] health and safety performance.” (CCA 2001, para 3)

The CCA has also called for the linking of performance data with national targets,⁷ and emphasised the importance of establishing accountabilities (e.g. identifying directors with particular responsibility for health and safety) and getting disclosure of “bad” news (e.g. enforcement notices and convictions for OHS offences) as well as “good”.

From the stakeholder-accountability perspective, relevant OHS disclosures allow employees and their representatives to make more informed decisions about “employers of choice”. Such disclosures also enable them to monitor compliance with existing

OHS legislation, relevant collective bargaining provisions and voluntary codes of conduct. Disclosures are also viewed as an essential prerequisite for more participatory “stakeholder” systems of governance (Trades Union Congress, 1996).

Stakeholders can respond to the information provided by applying rewards and sanctions through their market decisions, direct engagement with corporates and/or lobbying for legislation (Tilt, 1994; O’Rourke, 2003). Accountability reporting also helps to engender a sense of trust where employers demonstrate willingness to have their actions monitored by stakeholders. Leaving employers to develop, implement and evaluate disclosures unilaterally runs too much risk of the exercise descending into a ‘public relations’ exercise. Genuine stakeholder engagement, backed by statutory information rights and audit provisions, helps to establish the credibility of the reporting process.

Stakeholder-accountability proponents view organisations from a pluralist perspective, with employers and employees having interests in common *and* separate interests. They have no difficulty with the idea that social accounting can result in ‘win-wins’ for employers and employees where interests overlap. Workplaces that demonstrate their commitment to good employment practices may well find it easier to attract and retain quality staff. However, cracks appear in the business case where separate interests prevail. Stakeholder-accountability proponents point to research that indicates that firms are very selective about the disclosures they make and typically only present information favourable to their image (Deegan & Gordon, 1996). These findings hold even when it is clear that firms do have “bad performance” to report (Christian Aid, 2004; Deegan & Rankin, 1996).

Regulatory authorities overseas are starting to respond to calls to go “beyond the business case” to OHS reporting. The HSC in the United Kingdom, for example, is raising issues of accountability and social responsibility more frequently (HSC, 2003). In the United States, a variety of “right to know” legislation has been introduced aimed at providing better access to OHS-related information. The Emergency Planning and Community Right-to-Know Act, 1986 introduced the Toxics Release Inventory, which requires companies to publish estimated emissions of potentially hazardous chemicals. Gunningham et al. (2002) report that this has created strong incentives for firms to reduce the use of chemicals in order to preserve their “reputation capital” as well as empowering community groups.

In the New Zealand context, a District Court judge recently ordered Nuplex Industries Ltd to publish details of a conviction for air pollution in its annual report, to make environmental issues a mandatory item at all board meetings for a period of 24 months, and to publish a notice to its employees detailing its breach and previous convictions.⁸ The Judge noted that the company had presented itself as “environmentally responsible” and that its reporting of the incident in the 2002 annual report was misleading. Triple bottom line reporting requirements have also recently been introduced in the Local Government Act

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2002.⁹

From the perspective of Governments and regulators, social and environmental accounting can be viewed as a way of infusing expectations arising from national legislation and international obligations. In the OHS arena, it provides a lever to encourage increased “ownership” of health and safety by corporate boards and managers and a stimulus to strengthen employee participation in the ongoing management of workplace health and safety. There is recognition that transparency can be a key driver of social change.

Critical Theory Perspective

Critical theorists view accounting as deeply embedded in broader societal relationships and conflicts. Accountants and annual reports do not merely “report reality”. Rather accounting systems are ideological tools used to shape agendas and debates and “to mediate, suppress, mystify and transform social conflict” (Guthrie & Parker, 1989: 351). From this perspective, social accounting is driven “by the demands of powerful interests in society” (Puxty, 1986: 95). Employers do not merely respond to stakeholder demand for information, but actively seek to construct a particular organisational image (Neu, et al., 1998); one that favours the interests of capital and helps to entrench its power. They may engage in voluntary disclosure so as to appear socially responsive and thereby pacify socio-political demands (Guthrie & Parker, 1990: 166) and control the CSR agenda. Strategies may be expected to change as power relationships in the wider socio-economic environment change. For critical theorists, the fact that accounting information is so often taken at face value:

“Makes its role as a mystifier of social relations and a legitimator of power and domination the more insidious and threatening.” (Puxty, 1986: 98)

Critical theorists are particularly wary of “green-wash”, where business attempts to promote an image of being socially responsible but this is merely a facade for more sinister corporate agendas. From this perspective, OHS disclosures may be used symbolically to publicly indicate interest and concern from the ‘top’ of the organisation but at the same time disguise hidden agendas to preserve managerial prerogative (Hutter, 2001: 139). It may be seen as a “tool of regulatory resistance”; with audits and cost benefits analyses becoming “as much a form of mystification as an analytical tool” (ibid).

Rather than relying on concepts such as “stakeholder dialogue”, which fail to take account of the imbalances of power between capital and labour, critical theorists prefer to utilise “anti-reports” and similar mechanisms to expose the fundamental contradictions of capitalism (Tinker, et al., 1991).

A Framework for Analysing OHS Disclosures

The analysis aimed to determine the current level of OHS reporting activity among New Zealand's largest employers, and to assess the quality of the information reported.¹⁰ An essential stage in all content analysis studies, however, is deciding which documents to analyse (Krippendorff, 1980). There has been little methodological consistency between different studies assessing the content of corporate social reporting (Milne & Adler, 1999). Social accounting content analysis has focused on annual reports "due to the high degree of credibility they lend to information ... their use by a number of stakeholders ... and their widespread distribution" (Unerman, 2000: 669-670). However, a substantial proportion of social and environmental reporting is published in documents other than annual reports (ibid.: 674). Studies that limit their examination to annual reports risk underestimating the volume of reporting companies are engaged in (ibid.: 673; see also Gray, et al., 1995).

Issues regarding quantification in content analysis studies largely concern whether to count sentences or words, whether differences in grammar between authors could skew results and what to do about non-narrative information such as photographs or charts. Unerman (2000: 669) observes that a key assumption underlying much CSR content analysis "is that quantity of disclosure signifies the importance of the item being disclosed". Different measurement approaches may lead to different impressions of the relative importance of disclosure categories (ibid.: 674). Various hypotheses have also been advanced regarding the location of CSR information within corporate reports.¹¹

To reflect the trend of issuing standalone environmental and/or social impact reports, this study did not focus exclusively on annual reports. Letters sent to Chief Executives requested any *publicly available* monitoring information, including but not limited to, annual reports, triple bottom line reports, corporate social responsibility reports and environmental or health and safety reports.

Data Collection

A sample of 100 employers was deemed sufficient for the analysis, based on available resources and the amount of data it would generate. A list of New Zealand's 200 largest employers using FTE employees was provided by ACC. The initial response rate to the first 100 letters and follow up phone call was 50%. Using letters, phone calls and internet searches, reports for 89 employers from the first 100 were obtained. Four organisations stated their reports were not publicly available; four were subsidiaries and shared material with other employers on the list, and three did not make any material available within the time frame for collection. The second batch of 100 letters used the same contact methods. Eleven reports were used from this second batch, to bring the total number of reports to 100.¹²

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The sample of 100 employers fell into four size ranges:

- 6 employers had 10 000+ FTEs;
- 14 employers had 5001 – 9999 FTEs;
- 75 employers had 1000 – 4999 FTEs; and
- 5 employers had less than 1000 FTE employees.

The largest industry in the sample was government administration and defence, with 21 employers, followed by manufacturing, with 19 employers. No employers in the final sample were from the agriculture, forestry and fishing, or mining, or electricity, gas and water supply or accommodation, cafes and restaurants industry groups.

Data was extracted from the reports as outlined in the next section and analysed using an Access database.

Table 1: Industry type and number in sample

Government administration and defence	21
Manufacturing	19
Health & community services	16
Education	10
Property and business services	8
Finance and insurance	7
Transport and storage	5
Communication services	4
Personal & other services	3
Retail trade	3
Cultural & recreational services	2
Construction	1
Wholesale trade	1

Data Analysis

The similar OHS legislative frameworks between New Zealand and the United Kingdom meant the published HSC guidance for OHS reporting provided a good basis for comparison with New Zealand reporting. This study also used the 2000 guidance (HSC, 2000). Later versions of the guidance (now a draft standard undergoing consultation, HSE, 2004) became more proprietary and localised, referring to UK specific legislation and requiring significant alterations if it was to be used in the New Zealand context. Based on previous Department of Labour research, a limited number of OHS indicators were added to provide specific, supplementary information on New Zealand's workplace practices (Department of Labour, 2003).

It was decided to bypass issues surrounding methods of quantifying CSR and instead assess the reports against established guidance. The HSE UK guidance had very broad and vague criteria by which to rate quality. Therefore, it was decided that this scoring approach was too open to interpretation and subjectivity.

The Pacific Sustainability Index (PSI) developed by Morhardt (2001; 2002; et al, 2002) incorporates the Global Reporting Initiative GRI 2000 (updated, 2002) guidelines and other international standards such as the ISO 14031 environmental performance evaluation standard.¹³ Because the PSI covers various areas of sustainability, workplace health and safety was insufficiently detailed for the purposes of this study. However, the PSI scale (and its rules for assigning score levels) was used with the HSC guidance to score the New Zealand reports.

The PSI scale avoided a common problem experienced with scoring systems. Similar mid-level aggregate scores for two reports can obscure that one reports in detail on a few items, while the other covers a wide range in vague terms (Milne et al., 2003: 7). The PSI instead rated the information for the quality and depth of the information provided, apart from its inclusion. Moreover, the PSI scale included clear and complete descriptions of the categories and items along with comprehensive criteria and guidelines for scoring each item. These were used to compare the information against the HSC guidance. Further criteria from the 2003 stock-take indicators were developed by repeating either the PSI criteria, or including similar criteria. Further rules for interpretation were developed during the quality control process, where every tenth report was coded independently, any divergence discussed and an approach agreed upon.

The first level of data analysis summarised results by question, aggregating results across the entire sample. Particular points of interest were broken down into industry groups to provide more detailed comparison. Data quality was assessed using Morhardt's PSI scale (Morhardt, 2001, 2002, et al 2002). Results are presented below.

Disclosure Practices of Top 100 New Zealand Employers

Principles

Nearly 60% of employers provided a broad statement about their OHS policy. The most common principles given for considering health and safety are a concern for the safety, health and welfare of employees, and a concern to provide a safe place to work (21 and 18 examples respectively). The next most common example is recognition of the legal requirement to address OHS issues (mentioned in 13 reports).

While 40 employers report on current progress or forthcoming plans, fewer reported on their goals against which progress might be measured (25 examples). According to the HSC Guidance (HSC 2000), a goal of no accidents/zero injuries was not acceptable

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as a stand-alone statement. Only 14 employers reported the significant risks faced by employees. Thirty-one employers reported on the arrangements they made for consulting employees.

The overall quality of the sample's data in this area was below average. As Figure 1 shows, most employers did not mention this data at all. Of the planning, policy and progress data that was included, 'progress towards health and safety goals' was the most commonly scored as maximum quality, while a lower percentage scored the maximum on describing significant risks faced by their employees, and arrangements for consultation.

Figure 1: Health and safety planning, policy and progress: overall quality of the sample



Figures 2 – 6 describe the quality of planning, policy and progress by industry group. In addition, outlining their OHS policy, reports were required to also note a contact person and how the policy was implemented to score the maximum. The results on Figure 2 show that no employer scored the maximum 2 points for this data, but employers from all industry groups (except wholesale) scored an average mark.

Figure 3 shows that manufacturing was the only industry group to feature a comprehensive outline of the risks their employees faced, and the strategies in place to control the risks. Most reports did not mention this data at all, while all of wholesale trade and a minority of other employers did mention significant risks, but were marked 'formally addressed but limited or not very clear'. A third of the 'personal and other services' group mentioned risks briefly.

Figure 2: The broad context of the health and safety policy: quality

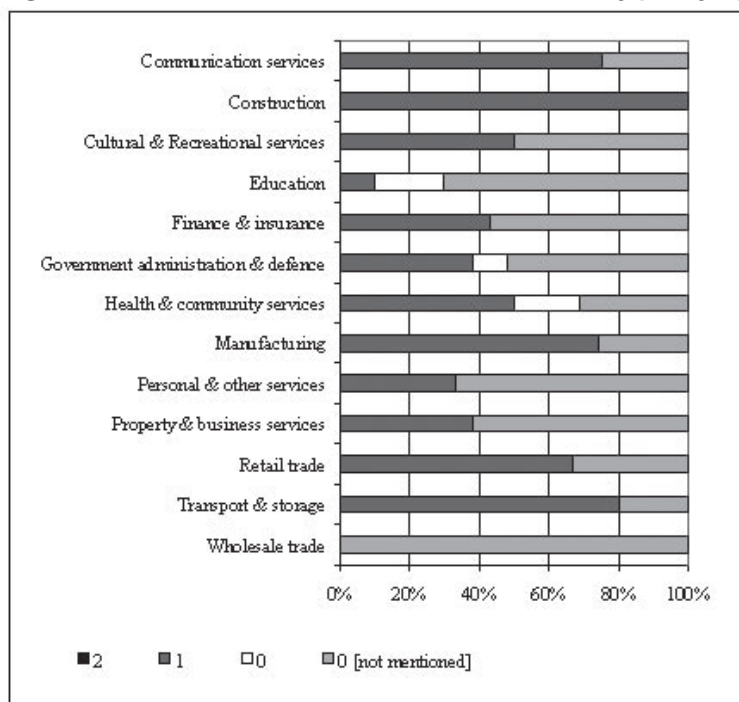


Figure 3: Significant risks and the strategies in place to control the risks: quality

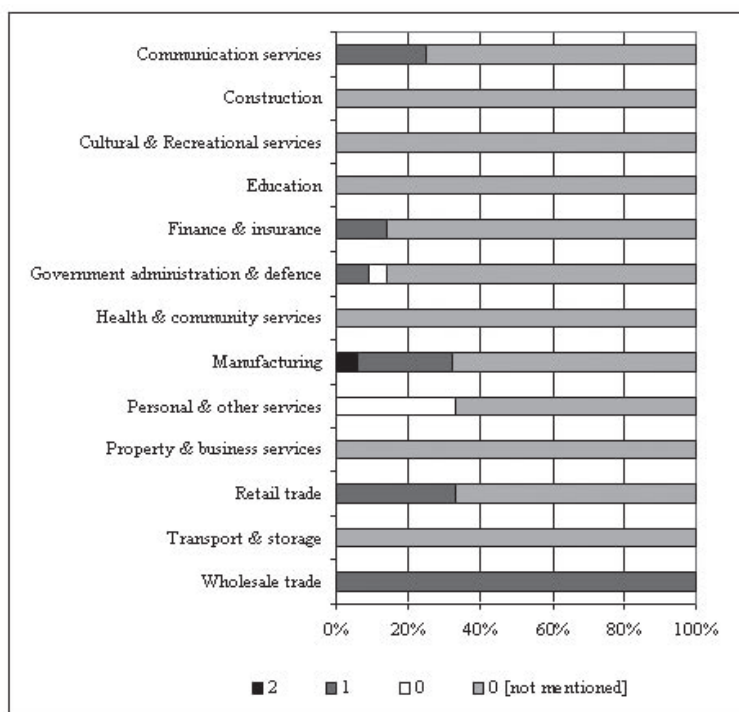


Figure 4: Health and safety goals: quality

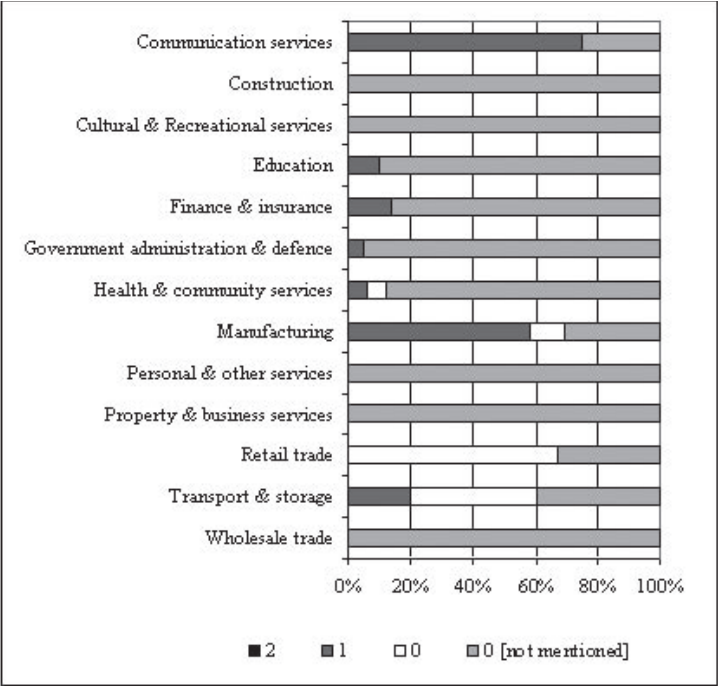
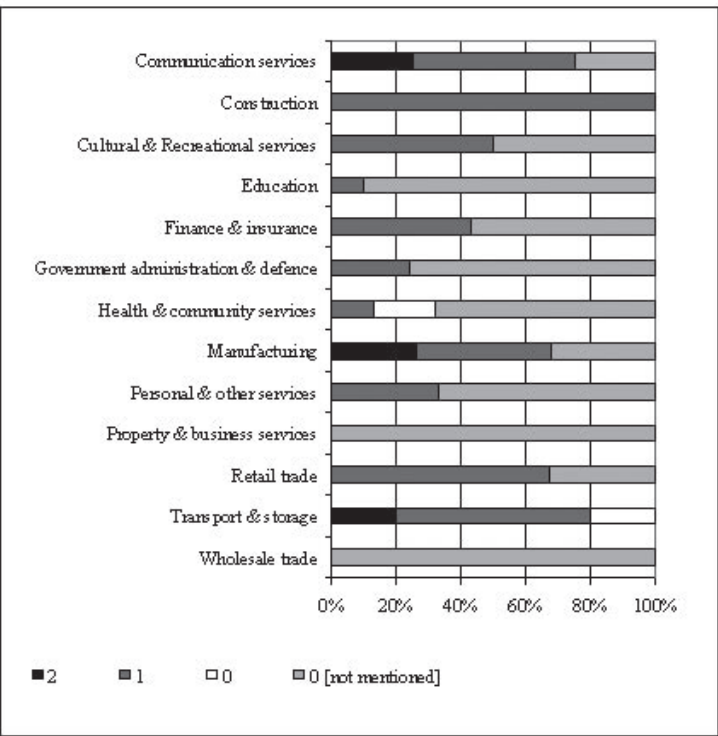
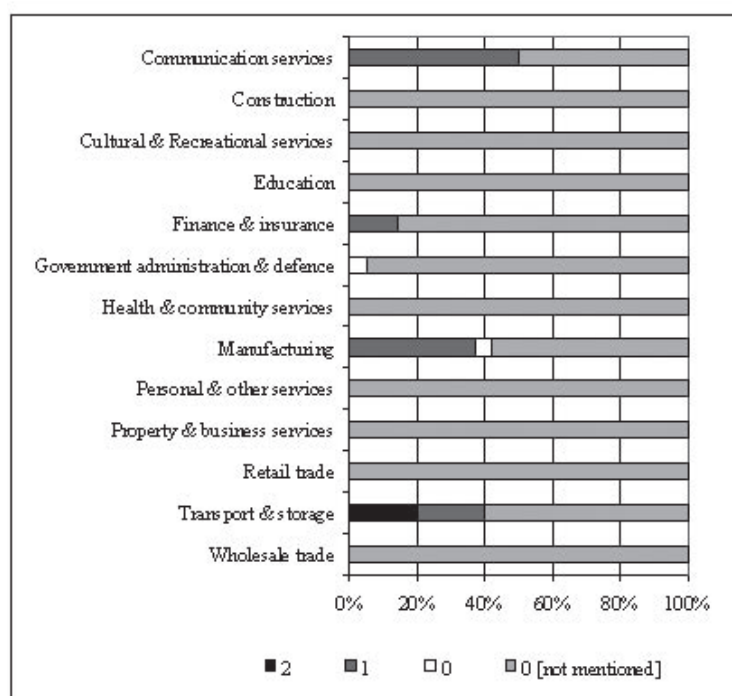


Figure 5: Progress towards achieving health and safety goals: quality



The overall data quality levels were low. Most industries did not mention their goals at all, and those that did, were described as being 'formally addressed but limited, or not very clear'. However, descriptions of progress towards achieving OHS goals (Figure 5), were a lot clearer and comprehensive. Most industries scored either maximum points ('appropriate detail, clear presentation') or slightly lower ('formally addressed but limited' or 'not very clear'). These results do not carry through to statements about targets for forthcoming years. The HSC Guidance (HSC, 2000) required that this statement included a numerical target as well as a date or timeframe. Many reports, if they disclosed this information at all, included a vague statement with no dates or numerical targets (Figure 6). The manufacturing and communication industry groups did score the maximum for some of their reports, as did transport and storage.

Figure 6: Statement of the targets or objectives for the forthcoming years: quality

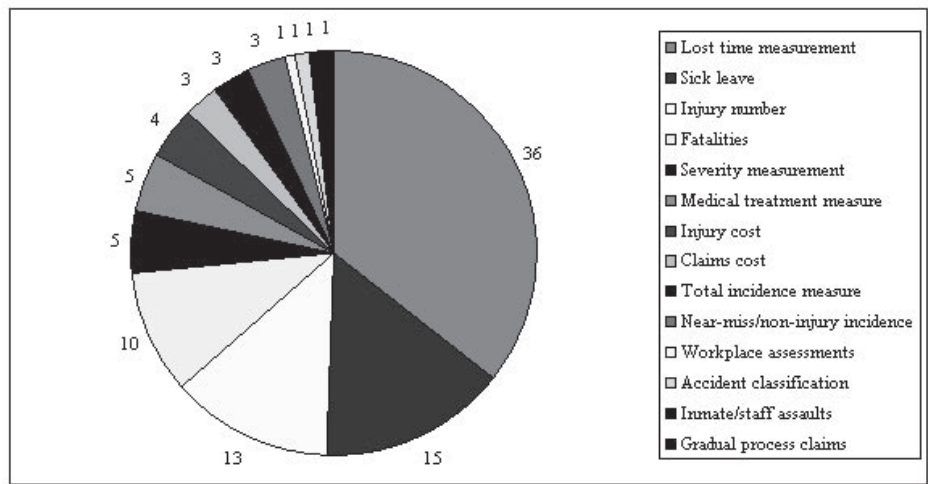


Monitoring

Monitoring is reported across injuries, sick leave, convictions and OHS performance. Approximately a third of the sample group report injuries, most often as Lost Time Injuries (LTI), but this is not a single consistent method of measurement. It is given as a number or a rate, and the method of calculating the rate varies from report to report.¹⁴ While Lost Time Injury was the most commonly noted method (36 examples), the majority of these (34) were scored as "formally addressed but limited, or not very clear." The next most common methods of monitoring are by sick leave, injury number (using a range of

denominators) and by fatality, (Figure 7). Whereas injuries (lost time or otherwise) are reported across a range of industry types, sick leave is largely reported by the health and community services industry (67%), and fatalities by the manufacturing industry and the similar high-risk industries, communication services, construction, and transport and storage (together 90%). Five employers mention OHS enforcement notices or convictions, and more often it is the lack of notices or convictions that is reported. Only one mentioned enforcement notices (and had not received any), whereas all five mentioned convictions (two received one each). While there were 100 examples of methods used to monitor OHS performance (in 47 reports), 80 were scored as “formally addressed but limited, or not very clear”. Five reports (24%) of the government and defence group, and six reports (32%) of the manufacturing group, as well as two from health and community services, and one each from property and business services, and transport and storage, provided “appropriate detail and clear presentation”.

Figure 7: Methods of Monitoring



The number or rate of injuries was used across nine industry groups. The two reports scoring maximum points were in the government administration and defence, and the manufacturing industries. *However, the majority of reports (78) did not mention the number or injury rate at all.* Two thirds of the reports did not use employee days lost as a measure of their OHS performance. Just over one third used this measurement but the data quality was average, “formally addressed but limited, or unclear”. Again, the two reports with ‘appropriate detail and clear presentation’ were in government administration and defence, and manufacturing.

While fatalities are statistically rare, the HSC guidance (HSC 2000) did include whether any fatalities occurred, plus any details. However, ninety reports did not mention whether any fatalities had occurred. Ten reports did include this information although with average results: 8 scored “formally addressed but limited, or not very clear”. The only report to score the maximum for data quality was in the manufacturing industry.

Details of OHS enforcement notices were also very rarely mentioned. The one that did was from the manufacturing industry. The situation was largely the same for quality of OHS convictions information (95 examples). Full marks were awarded to one retail report, in addition to one 2 and three 1's given to four reports in the manufacturing industry group.

Table 2: Health and safety performance

Industry type	Number or rate of injuries, illnesses and dangerous occurrences	Details of any fatalities and preventative actions	Number of employee days lost (lost time injuries)	Details of any health & safety enforcement notices	Details of any health & safety convictions	Total number of employers by type
Communication services	50%	50%	75%	0	0	4
Construction	100%	100%	100%	0	0	1
Cultural & recreational services	0	0	0	0	0	2
Education	0	0	0	0	0	10
Finance & insurance	14%	0	14%	0	0	7
Government administration & Defence	24%	0	19%	0	0	21
Health & community services	25%	0	56%	0	0	16
Manufacturing	32%	26%	58%	5%	21%	19
Personal & other services	0	33%	0	0	0	3
Property & business services	13%	0	38%	0	0	8
Retail trade	0	0	67%	0	33%	3
Transport & storage	0	20%	40%	0	0	5
Wholesale trade	0	0	0	0	0	1

Other Indicators

Twenty-nine employers reported on staff turnover. Of these, 9 were government administration and Defence, and 10 were Health and community services. Of the 85 employers in the ACC partnership programme, 33 (39%) mention their participation. Of the 16 employers from the health and community services industry, 4 report on the achievement of the Ministry of Health's Health and Disability Safety standard (NZS

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8134:2001), and 8 on the National Mental Health Sector standard (NZS 8143:2001). Thirty-one employers reported on the arrangements they made for consulting their employees.

The data quality was widely spread. Of the 33 (39%) employers who noted their participation in the ACC Partnership programme, 16 scored the maximum, with data that was of “appropriate detail and clear presentation”. This high score was spread across almost all industry groups.

Of the 16 employers in the Health and Community services, one scored maximum points for information on the Health and Disability safety standard, three scored 1 for data that was “formally addressed but limited, or not very clear”, while the majority (12 examples) did not mention the Standard at all. The Mental Health sector standard fared slightly better with one scoring the maximum, while seven scored 1 and eight scored 0.

Absenteeism is becoming an established measure of health – in terms of both the workplace itself and the health of its workforce. Sick leave is measured in a variety of ways, as noted above. The three employers who scored the maximum 2 points were from the Government administration and Defence, and Health and community services industry groups. Twelve employers scored 1 each, from the Government administration and Defence (2 examples), Health and community services (8), and Manufacturing (2) industry groups respectively. The remaining reports scored did not mention sick leave at all.

Voluntary turnover data was of slightly better quality. Three employer types scored the maximum 2 points, from the Government administration and Defence (3 examples), Health and community services (3 examples), and Manufacturing (1 example). Twenty-two employers scored 1 for data quality that was “formally addressed but limited, or not very clear”.

Under the HSE Act amendment 2002, employers are required to have an employee participation system if they employ more than thirty staff. One third (31) of employers provided some information about their methods for consulting employees, with 24 of these scored as “formally addressed but limited or not very clear.” The two reports that scored 2 were in the Government administration and Defence, and Transport and storage industry groups.

Programmes

Half the sample groups report on OHS programmes or actions. The largest type of programme is auditing, with 49 examples. Most of these are internal standards, policies or guidelines (10 examples), internal auditing (9), and reporting to management (9). The second largest type (42 examples) is education or training programmes. Within that

group, the largest single programme, with 25 examples, is “staff training in health and safety”, rather than specific courses such as first aid or fire warden training (four and three examples each). The third largest type is for employee participation (39 examples), most of which are OHS committees (16) or representatives (13). After “staff training in health and safety”, these are the second and third largest single example.

As a proactive programme, the use of OHS awards, whether internal or external, is almost exclusively limited to the manufacturing industry, who provide five examples of each – the construction industry is the only other industry to mention awards (one example of the use of external awards).

Improving the Quality of OHS Reporting in New Zealand

There are a number of ways in which OHS reporting, and indeed employee-related reporting more generally, might be improved. We consider that a tripartite approach - involving government agencies, employers and unions – offers the best prospects for advancement. Other parties that could usefully be included in stakeholder engagement processes include representatives from ethical investment funds, consumer organisations and NGOs (e.g. those with a focus on human rights).

In particular, the quality and completeness of reporting needs to be addressed. At present many important dimensions of OHS performance are omitted. Engaging workplace representatives (e.g. unions and health and safety committee representatives) and OHS professionals in the process of developing indicators should help to ensure more balanced reporting. Ideally, a standardised set of definitions and performance measures might be developed, with room for sector-specific considerations. This might also include differential reporting guidance (e.g. simplified reporting regimes for SMEs). There are a number of established international reporting frameworks that could be of assistance here.¹⁵ A full set of indicators could be formulated for internal use (e.g. by health and safety committees), with summary information provided in annual reports. A joint approach to the development and monitoring of OHS indicators would cohere well with the concept of workplace participation which the Health and Safety Employment (HSE) Act seeks to encourage.¹⁶

Government agencies have an important role to play in this process. The Department of Labour is currently following the lead of the HSE in the United Kingdom (see, e.g., HSC 2000, 2003) and promoting efforts to raise both the quantity and quality of OHS reporting through its government-wide Workplace Health and Safety Strategy. This involves co-ordinating stakeholder initiatives aimed at encouraging more consistent, complete and credible reporting on employment issues. It is currently gathering information on international developments and best practice examples from New Zealand and overseas to disseminate through its website as part of the Strategy (Department of Labour 2004). The Accident Compensation Corporation could require employers to establish OHS

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reporting systems to qualify for ACC levy discounts through the Partnership Programme and Workplace Safety Management Programme. Government agencies could publish league tables of the top 100 New Zealand employers, both in terms of the quality of reporting and OHS performance itself. The government is currently building in social and environmental reporting requirements through a range of sustainable development initiatives, including government procurement policies.¹⁷

For the reasons canvassed in Section 3, we are not convinced that a voluntary approach to OHS reporting is sufficient. The “business case” will take disclosure only so far. Regulators need to consider a broader range of costs and benefits (including costs borne by employees, local communities, taxpayers and future generations) and to remain cognisant of the accountability issues at stake. Employees have OHS rights and, arguably, a right to information that enables them to assess employer performance and participate effectively in workplace decision-making. Shareholders, consumers and NGOs are also showing increasing interest in this area. We consider that a strong argument can be made for listed companies to be legally required to disclose standard OHS indicators in their annual reports as part of a wider set of employment-related indicators. This would provide a useful supplement to the information rights that currently exist under the HSE Act and the good faith requirements of the Employment Relations Act (Davenport & Brown, 2002).

Requiring employers to report on certain indicators would help counteract the current lack of ‘negative outcome’ reporting. Evidence of such reporting was lacking in the 100 reports analysed. Aside from noting sick leave, there were no examples of negative health outcomes, such as noting how many employees suffered from work-related long latency illness. Reports were more inclined to mention a limited range of positive initiatives, largely confined to flu vaccinations. There were, however, more negative outcomes of injuries or fatalities reported.

Although monitoring employees’ health is a legislative requirement, there is little evidence of monitoring apart from sick leave or voluntary turnover in a limited number of reports. There were employers in the list that were highly likely to use hazardous chemicals, or employed a large number of office-based staff. There was however, no disclosure on the monitoring of hazardous chemicals and just one mention of gradual process; both increasingly featuring in both local and international health statistics.

Concerns about disclosure bias and the incompleteness of reporting also highlight the importance of paying attention to verification and audit issues. Independent, third party assurance is widely recognised as a requirement to enhance the quality and credibility of the disclosure process. AccountAbility recently released its AA1000 *Assurance Standard: Guiding Principles* (2003) together with a set of guidance notes in response to growing concerns about the quality of disclosures in annual reports. They are designed to help ensure that reports provide accurate and balanced representations of organisational

performance and underlying systems and processes. Stakeholder engagement is emphasised as a way of improving accountability and performance.¹⁸

In 2002, the Institute of Chartered Accountants of NZ established a taskforce to investigate sustainable development reporting. The taskforce identified several key issues, including the extent to which such reporting fits within the existing conceptual framework for external reporting and auditing of financial information (ICANZ 2002). A sub-committee of the Financial Reporting Standards Board has been established to pursue these issues. Hopefully this will also contribute to informed development of the area. However, as Gray (2004) observes, the accounting profession has not exactly led the charge in efforts to lift corporate social reporting standards. Indeed some elements are quite hostile to the idea of expanding the realm of accounting beyond the arena of shareholders and the capital markets. The Institute of Chartered Accountants in England and Wales has lobbied against attempts to include mandatory reporting on OHS and other elements of 'human capital management' in annual reports (ICAEW 2003). Thus it would seem unwise to leave this activity to accountants alone.

Concluding Remarks

While it is encouraging to see employers disclosing OHS information in their annual reports, we consider that disclosure practices in New Zealand still have a long way to go in terms of both the quantity and quality of reporting. There is considerable room for improvement in terms of completeness, consistency, verifiability and comparability (see also Milne *et al.* 2003, on triple bottom line disclosures in New Zealand more generally). Attention needs to be paid to both the content of reports and the reporting process (e.g. in terms of stakeholder engagement and audit). We hope this article will provide organisations and interested stakeholders with some ideas for taking reporting practices forward. We consider that much can be gained by drawing on existing frameworks and guidelines for sustainable development reporting and auditing (e.g. the GRI and AA1000 frameworks). We have provided examples of the types of initiatives that might be pursued to progress developments in this area.

Growing numbers of writers are pointing to the fact that social reporting has been treated as something of a poor cousin to environmental reporting (Deegan 2002: 285), in terms of both theoretical and practical developments. There is increasing recognition that the employment arena is one with considerable research potential. We encourage ongoing monitoring by employers, workplace and community stakeholders, policymakers and researchers of national and international developments in this area.

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Footnotes

- 1 See e.g., the Global Reporting Initiative sustainability reporting guidelines (GRI, 2002) and the Accountability AA1000 framework of social accounting standards (Accountability, 1999, 2003).
- 2 In New Zealand, the Institute of Chartered Accountants of NZ has issued a *Report of the Taskforce on Sustainable Development Reporting* (ICANZ, 2002).
- 3 One of the longest standing awards schemes is offered by the Association of Chartered Certified Accountants in the UK (see ACCA, 2004). ICANZ offers awards in sustainable development reporting and human resource reporting (see <http://www.icanz.co.nz> for details).
- 4 <http://www.hse.gov.uk/costs/index.asp>
- 5 The situation is exacerbated by long latency occupational illnesses where symptoms may not be evident until decades following initial exposure.
- 6 See also Nelkin and Brown (1984).
- 7 These include targets established by the UK Government (HSC 2000) and related union participation agreements (e.g. HSE 2002).
- 8 *Auckland Regional Council v Nuplex Industries Limited*, DV AK CRN 2004066321 [18 March 2003].
- 9 The 2004 amendment required councils to report on the social, economic, environmental and cultural well-being of the community (see Part 3 of Schedule 10).
- 10 The HSE UK has undertaken this type of study twice. See HSE 2002b and 2003.
- 11 For example, including OHS statistics in the financial and operational highlights or a 'review of the year' may imply it is seen as integrated into the company's activities and is more than a 'personnel' issue, which may be the impression given if it is located in the 'people' section (Gray *et al* 1995).
- 12 Full details of the methodology used, including demographic details of the total population from which the sample of 100 employers was taken and a copy of the survey instrument, are available in the conference proceedings referred to in Footnote 1.
- 13 Used with permission from the author. The PSI is also available on the internet: <http://www.mckennaroberts.edu>.
- 14 Lost Time Injuries use the total time lost to injury divided by a variety of denominators e.g. days (full day, shift day, including or excluding weekends); hours (one hundred hours, one million hours, etc.).
- 15 See, e.g., European Industry Council (1998), Accountability International's SA8000 scoring system (<http://www.sa-intl.org/SA8000>), National Occupational Health and Safety Commission (2003), World Business Council for Sustainable Development (2004), Global Reporting Initiative (2004). Despite New Zealand being a nation of small to medium enterprises, enterprise size is not necessarily an impediment to integrating sustainable practices. Seven employers are part of the GRI programme; one of these – Tall Poppies – has seven employees. <http://www.globalreporting.org>.
- 16 Under Section 19 of the HSE Act places of work with more than 30 employees must develop health and safety worker participation systems.
- 17 See, e.g., the Ministry for the Environment's Govt³ programme (<http://www.mfe.govt.nz/issues/sustainable-industry/govt3/index.html>).
- 18 See Owen, Swift and Hunt (2001) on the importance of this being *genuine* dialogue.

Occupational Stress in the Hospitality Industry - An Employment Relations Perspective

KAREN LO & FELICITY LAMM*

Abstract

This article endeavours to draw attention to occupational stress amongst workers in so-called 'low risk industries' – namely the service and hospitality industries - and to explore their perceptions of stress, their attitudes to managing stress and their responses to the recent inclusion of stress in the Health and Safety in Employment Amendment Act, 2002. It is also the intention to broaden the scope of analysis by investigating a range of employment factors – such as heavy workloads, interpersonal relationships and organisational factors - which can contribute to occupational stress amongst workers. Findings from two case studies are reported and they indicate that working in the hospitality industry can be stressful and that many workers are vulnerable in terms of their poor working conditions and low wages. Consistent with other studies, it was also found that there was low trade union presence and a high rate of casualisation and staff turnover. At the same time, there was a lack of overt conflict between management and workers, with an apparent close alignment of goals between the two parties and a style of management that could be described as unitarist.

Introduction

There has been growing recognition in the literature over the past twenty years that occupational stress can contribute to work-related ill health, with negative effects on both physical and psychological well-being (Caplan, Cobb, French, Harrison, & Pinneau, 1975; Perrewé & Anthony, 1990; Bohle and Quinlan, 2000; Smith 2003). Occupational stress has been associated with reduced work output and can contribute to increased accidents, absenteeism, employee turnover and poor employee performances (Caplan, Cobb, French, Harrison, & Pinneau, 1975; Perrewé & Anthony, 1990; Spector, 2003). Moreover, it has the potential to spill over to affect employees' private life, causing marital, friendship or community problems (Kahn & Byosiére, 1992; Sauter, Murphy, & Hurrell, 1990). These outcomes of occupational stress can result in significant economic and social costs for both employers and employees (Watkins, 2003).

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Recently, there has been a great deal of public attention on occupational stress in New Zealand as a result of the Health and Safety in Employment Amendment Act, 2002. In this Amendment, occupational stress is officially recognised as a 'hazard' (refer to Section 8). Such changes have been largely informed by significant developments in New Zealand's common law as demonstrated in two leading decisions from High Court and Court of Appeal respectively – namely *Brickell v Attorney-General* and *Attorney-General v Gilbert* (Caisley, 2004; Scott-Howman & Walls, 2003). In essence, these cases confirmed that the employer has a general duty of care to safeguard their employees not only from physical harm but also from *mental harm* (Scott-Howman & Walls, 2003). Furthermore, more recent New Zealand and UK court cases – for example, *Hatton v Sutherland* [2002] 2 All ER 1 (CA) – have supported the notion that counselling alone is not sufficient to allow an employer to discharge his/her obligations under both statute and common law, (Scott-Howman & Walls, 2003). There has to be demonstrable evidence that the employer has endeavoured to eliminate or isolate or minimise the sources of stress. Therefore, the inclusion of stress and fatigue in the Amendment to the Health and Safety in Employment Act has meant that all employers must be cognizant of the employment conditions of their workers, irrespective of the type of work, and must implement systems that treat stress and fatigue as any other workplace hazard (Department of Labour, 2003).

Although it is generally acknowledged that occupational stress can be a contributing factor in workplace illness and injury rates, little is known about the extent of occupational stress in so-called 'less hazardous' industries that rely on 'emotional labour', such as the hospitality industry. This lack of knowledge is of concern given that hospitality workers now constitute 6.0% (102,620 workers) of the total surveyed workforce in New Zealand (Statistics New Zealand, 2004a). In the literature, this fast-growing industry is characterised by non-standard and precarious work arrangements, low-wages, excessive work demands, intensive customer interaction and a rapidly changing work environment (Haynes & Fryer, 1999; Bernhardt, Dresser & Hatton, 2003). There is also the issue of 'emotional labour': a requirement for employees to act in an empathetic, positive and friendly manner at all times when dealing with customers in order to make them feel wanted and welcome (Anderson et al., 2002; Grandey, 2003; Lashley, 2001).

The purpose of this article, therefore, is to examine the attitudes of those working in the hospitality industry to both occupational stress and the recent legislative changes. For several reasons, the focus in this article will be on large-sized, metropolitan hotels. First, there is general agreement in the literature that there is a lack of knowledge of occupational stress across a range of industry sectors, including the hospitality industry, and across a variety of occupations and organisational levels (see Singer, Neale, & Schwartz, 1987). Second, larger hotels are more likely to have established health and safety committees and a greater unionised workforce compared to small hotels restaurants, bars and cafes (Whatman, Harvey, & Hill, 1999) and, therefore, may present more evidence of the role of health and safety representatives in dealing with occupational stress (refer to S19 of the Health and Safety in Employment Amendment Act, 2002). Finally, the majority of large

hotels in Auckland (as in many other parts of New Zealand) are in overseas ownership (Haynes & Fryer, 1999) and this could offer comparative insights to overseas and local management of occupational stress.

The article commences with a brief profile of the New Zealand hospitality industry and an overview of the research on occupational stress. Based on the extant literature, a more comprehensive model is presented that incorporates the core employment relations features and levels of analysis with the orthodox psychosocial elements. Using the model as an underlying framework, the key findings from a study of two large hotels are presented. The implications of the findings are discussed further in a thematic manner and the concluding remarks propose areas for further research.

The Hospitality and Hotel Industries

The hospitality industry is categorised as the Accommodation, Cafes and Restaurants sector (division H57) under the Australian and New Zealand Standard Industrial Classification (ANZSIC). This sector employs approximately 6.0% of the New Zealand's working population and represents 3.5% of New Zealand businesses, see Table 1. For the year ending February 2004, the Accommodation, Cafes and Restaurants sector generated \$28,085.30 of revenue, which represents around 2.8% of the New Zealand's total industry gross earnings (Statistics New Zealand, 2004b). Although cafes and restaurants represent the largest number of businesses in the hospitality category, accommodation businesses (ANZSIC subdivision H57 10) are the second largest group, making up 35.3% of the hospitality industry. In the accommodation industry, the hotel sector represents the largest group, as shown in Table 2, and accounts for approximately 51.6% of the industry's total employment.

Table 1: Profile of New Zealand's Accommodation, Cafes and Restaurants Sector

Type of Business	Number of Enterprises	Geographical Units	Number of Salaried/Waged Earners
Accommodation	4,045	4,396	30,060
Pubs, Taverns and Bars	1,407	1,524	12,930
Cafes and Restaurants	5,609	6,298	55,650
Clubs (Hospitality)	397	402	3,990
<i>Total Accommodation, Cafes & Restaurants</i>	<i>11,458</i>	<i>12,620</i>	<i>102,620</i>
<i>Total All Industry</i>	<i>324,293</i>	<i>354,440</i>	<i>1,640,980</i>

(Source: Statistics New Zealand, February 2004 b)

Table 2: Profile of New Zealand's Accommodation Businesses

Type of Accommodation	Number of Enterprises	Geographic Units	Number of Salaried/Waged Earners
Hotels	487	542	15,500
Motels and Motor Inns	1,623	1,688	7,700
Hosted Accommodation	923	956	1,210
Backpacker and Youth Hostels	335	397	1,430
Caravan Parks and Camping Grounds	372	419	1,670
Accommodation not elsewhere classified	305	394	2,540
Total Accommodation	4,045	4,396	30,060

(Source: Statistics New Zealand, February 2004b)

Over the past decade, a major feature of the hotel industry has been the rise of global players and the intensifying competition. This has caught hotels in a strategic bind: trying to minimise costs through applying a range of cost-cutting strategies and, at the same time, attempt to improve the quality service by implementing customer orientation programmes, etc. (Bernhardt, Dresser, & Hatton, 2003; Korczynski, 2002; Peccei & Rosenthal, 2000). According to Bernhardt, et al (2003: 7), strategies to reduce personnel, freeze wages and conditions, eliminate or combine job categories and increase hours of work have had enormous implications for those working in the industry. There has also been a growing trend to subcontract out services and administrative functions, such as valet, cleaning, laundry, payroll and benefits processes, compliance and systems maintenance (Fox, 1998). Employers have benefited from subcontracting and outsourcing the work in terms of lower labour costs, lower utility and water costs and less scrutiny from regulatory agencies (Francis, 1998; Lattin, 1993; cited in Bernhardt et al., 2003). However, the subcontracting of work has also hastened the decline in the number of unionised workers and shifted many of the compensation claims to outside organisation (Haynes, 2005).

Because of the dichotomous nature of the hotel industry (i.e. fluctuating financial profits and tight margins *versus* the pressure to deliver quality services), the literature suggests that working in the hotel industry can be stressful and has raised a number of concerns. Typically, these concerns are associated with shift work and fatigue as a result of working long hours, unpredictable shifts, few breaks, heavy physical demands (manual handling heavy loads, etc), and mental and emotional demands (Wallace, 2003). Inherent in this fast-paced, competitive service industry are the high levels of casualisation and high employee turnover (Bernhardt et al., 2003; Haynes, 2005). Low pay is also a concern since work is remunerated on the basis of qualification standards which tend to be set lower in relation to other service industries like nursing and policing (Haynes & Fryer, 1999).

Previous Research on Occupational Stress

One of the major weaknesses of orthodox research on occupational stress is that it has been dominated by psychological and medical approaches. This has meant that occupational stress is largely attributed to *individual behaviours* such as personality traits and therefore, coping mechanisms are primarily initiated and managed by the individual (Cartwright, Cooper & Murphy, 1995; Semmer, 1997; Parkes and Sparkes, 1998). Authors who pursue these lines of inquiry have been criticised for their narrow focus on the individual and for fostering a 'victim-blaming ideology' rather than recognising other environmental sources of stress and investigating underlying problems and solutions that incorporate a wider number of factors (Otto, 1985; Cox, 1988; van der Hek & Plomp, 1997; Cartwright & Cooper, 1997; Cooper, Dewe & O'Driscoll, 2001; Hart & Cooper, 2002).

In addition, there has been a growing recognition that managing occupational stress is complex and multifaceted, and therefore requires a more holistic approach. There is also recognition that *employment* factors (e.g. wages and conditions, employment relationships, company policies, etc.) as well as the roles played by the different interests groups (employers, trade unions and government agents) are important in understanding the complex nature of occupational stress (see Bohle & Quinlan, 2000; Smith 2003; Bohle, 2004; Gold, 2005).

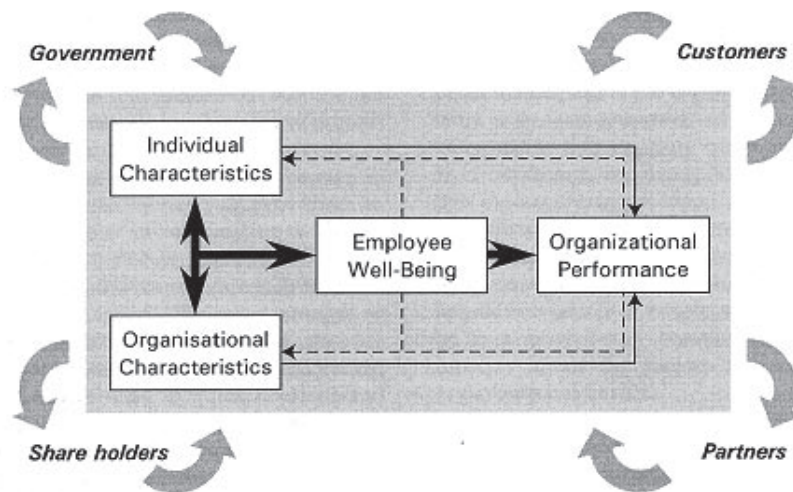
Taking a more multi-dimensional view of stress, Cooper, Dewe and O'Driscoll, (2001) argue that sources of stress can be grouped into three broad categories: job-specific sources, organisational sources and individual sources. The first two categories are external to the individual and are frequently referred to as "environmental" sources of stress. Cartwright and Cooper (1997) identified six environmental sources as follows:

1. Factors intrinsic to the job itself
2. Roles in the organisation
3. Relationships at work (with supervisors, colleagues, and subordinates)
4. Career development issues
5. Organisational factors (e.g. organisational structure and climate)
6. The home-work interface.

Cox (1998) and Hart and Cooper (2002) have incorporated the six environmental sources together with some employment relations features to create a new model, as illustrated in Figure 1. The key strength of their model is that it expands the notion of occupational stress by marrying some of the best aspects of psycho-medical perspective and employment relations. Unlike conventional psycho-medical approaches, this model not only recognises the interaction between individual and organisational factors and their effects on the employee's well-being at the micro level, but it also incorporates a strong

link to organisational performance. Moreover, although a number of researchers have highlighted the negative impacts of occupational stress on organisational performance in terms of the quality of the working environment and employee attitudes and behaviours, this factor has often been overlooked in stress research (Kompier, Geurts, Grudemann, Vink & Smulders, 1998; Reynolds & Shapiro, 1991). At the macro level, external factors, such as government legislation and share holders' demands, influence the core elements of the organisation, such as employee performance (Hart & Cooper, 2002). The core elements are also inter-related and can influence each other. For example, the organisation's policies and practices will influence how the team operates under certain conditions.

Figure 1: Factors that Impinge on Occupational Stress



Source: Hart, P. M., & Cooper, C. L. (2002).

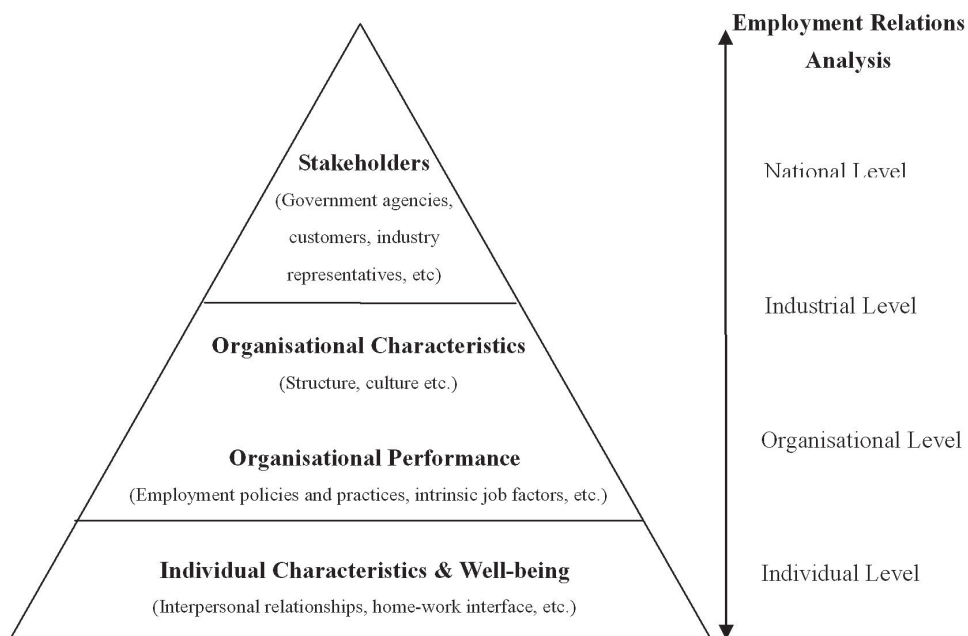
Although Cox (1988) and Hart and Cooper's (2002) model is useful in that it attempts to broaden the investigation on occupational stress, it only incorporates *some* of the employment relations features and it does not include the employment relations' levels of analysis (that is, workplace, organisation, industry, region, etc). Therefore, it is necessary to provide a more in-depth approach to occupational stress within the hospitality industry by focusing on the following levels:

- *The level of the employee:* work-related factors, such as the level of pay, hours of work, etc., as well as non-work aspects of the person's life (Duxbury & Higgins, 2002);
- *The organisational level:* the company's OSH policies and systems within the context of performing services in which many of the tasks involve emotional labour (i.e. interpersonal interaction with primarily clients, colleagues and supervisors).

- *The level of the industry:* the characteristics of the industry and pressures from the key stakeholders, such as representatives from the employers and employees associations and human resource managers operating in the industry.
- *The national level:* The legislation that governs occupational health and safety as well the enforcement agency – the Department of Labour's OSH Service.

By amalgamating Hart and Cooper's (2002) model with Cartwright and Cooper's (1997) six environmental sources as well as incorporating the employment relations' levels of analysis, it is possible to create a framework sufficiently robust to investigate stress in the hospitality industry as shown in Figure 2 below.

Figure 2: Employment Relations Analysis to Stress in the Hospitality Industry



Unlike psycho-medical models that focused on 'cause and effect' interactions between stress factors, the employment relations framework applies a wider perspective to occupational stress at different levels of analysis. The triangular model in Figure 2 demonstrates that the key elements to stress can be viewed as interconnected rather than as separate factors.

Methodology

As stated previously, given the growing academic interest in the working conditions in the hospitality industry and the increased attention occupational stress is currently receiving, the scarcity of information on the level of occupational stress in this industry is surprising. Thus, it was the intention of this study to investigate the following research questions:

- What are the experiences of occupational stress amongst employers and employees in the hotel industry?
- What are their perceptions and attitudes about the responsibilities of managing stress?
- What is the hotel industry's current approach to occupational stress?

Given the exploratory nature of the investigation a qualitative, comparative case study methodology was adopted. A triangulated approach was also used which involved the collection of data from multiple sources (Patton, 1987). The two large hotels were chosen to represent the different types of organisations within the hotel sector – one being part of an international chain while the other is a locally owned hotel (referred to as Hotel A and Hotel B respectively). Within the two case studies, 35 interviews using a semi-structured interview schedule were undertaken between August 2003 and February 2004. The duration of each of the interviews was approximately forty-five minutes. The interviewees represented all the departments and levels in the organisations. Hotel participants included the executive managers as well as departmental managers, supervisors and staff from the four departments - front desk, food and beverage, kitchen and housekeeping. Organisational documentation and archival records pertaining to stress policies and practices were also collected from the two hotel cases.

Furthermore, interviews were undertaken with key stakeholders from the Department of Labour's Occupational Safety and Health (OSH) Service, the Employers and Manufacturers Association (Northern), the Service and Food Workers Union, representatives from the Employees Assistance Programme as well as HR specialists. Interviews of the key stakeholders were used to support or challenge data collected from the case studies as a way of addressing the problem of intrinsic bias that comes from single observer research (Yin, 1994; Ghauri et al., 1995).

The macro/micro levels of analysis embedded in the study is compatible with the underlying broader employment relations perspective. In particular, the data was analysed by adopting Marshall and Rossman's (1989) analytical strategies. Firstly, the interview data was organised through coding and transcription and were structured in accordance to the research questions and the interview schedule. Secondly, categorisation processes were used to identify recurring regularities in the data and to evaluate the plausibility of those developing categories. In order to rule out alternative explanations of the data, pattern-matching technique (Yin, 1994) was applied by constantly comparing the

emerging categories against the collected data for credibility and centrality. Finally, the interview data and the organisational records were presented into tables and graphs and were discussed in a summarised and reflective format.

Findings

It was found that the two hotels differ in terms of their organisational profile, as summarized in Table 3. One on hand, Hotel A is part of an international chain and has been in operation since 2001. The hotel tends to attract younger employees as it offers more overseas transfer opportunities, than Hotel B. On the other hand, Hotel B is locally owned, has been in operation for over 26 years and has twice the number of staff as Hotel A. Hotel B has a higher proportion of female staff than Hotel A. It is also important to note that Hotel A has subcontracted its housekeeping services (28 staff).

Table 3: Characteristics of Case Studies

	Hotel A	Hotel B
Type of Business	International franchised	Locally owned
Age of Business	4 years	26 years
Number of Employees	Full-time Male 29 (37%) Female 24 (30%) Part-time Male 17 (22%) Female 9 (11%) Total 79*	Full-time Male 43 (28%) Female 69 (45%) Part-time Male 11 (7%) Female 32 (21%) Total 155
Age of Employees	79% under 30 years old	56% under 30 years old
Union Membership	None of the internal staff belong to a union**	65% (100 staff). Mainly in Rooms Division, Restaurant, Maintenance

* Excludes housekeeping contractors.

** The majority of the housekeeping contractors is union members.

The two hotels also vary in their employment relations arrangements as seen in Tables 3 and 4. In terms of *trade union membership*, Hotel B has 65% union members while none of Hotel A's employees belong to a union. However, the majority of Hotel A's subcontracted housekeepers are unionised. Averaged out across both sites, the low number of trade union members is consistent with national figures for the hospitality industry (Haynes, 2005). According to Haynes (2005), union membership in the large hotel industry in the Auckland region averaged 11.2% (range being 1% to 25%) in 2002-2003.

Table 4: Employment Conditions as of February 2003

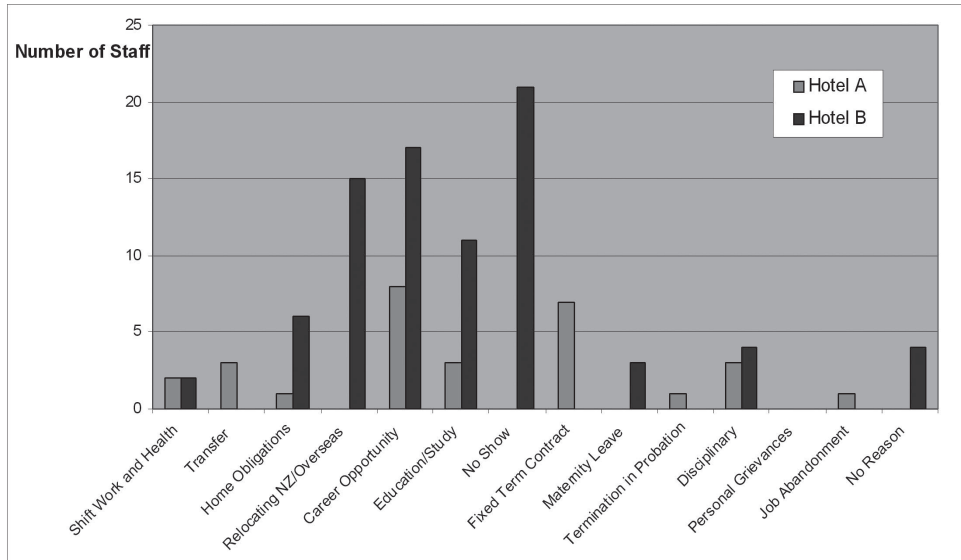
	Hotel A	Hotel B
Overtime*	<ul style="list-style-type: none"> • Payment: normal rate • Requires authorisation & <i>signed</i> mutual agreement • Requires 8 hrs break between shifts • No weekly limit on overtime 	<ul style="list-style-type: none"> • Payment: time and a quarter • Requires authorisation & mutual agreement for 4 consecutive shifts • Requires 12 hrs break between shifts • Limit on overtime: 10 hrs per week
Provisions	<ul style="list-style-type: none"> • Free meals (except housekeepers) • 1/2 hr unpaid meal break • 2 x 10min paid breaks 	<ul style="list-style-type: none"> • Free meals • 1/2 hr unpaid meal break • 2 x 10min paid breaks
Holidays/Leave Entitlements**	<ul style="list-style-type: none"> • Annual Leave: 3 weeks/yr; 4 weeks for senior positions • Statutory Holidays: 11 days/yr • Special Leave: 7 days/yr after 6 months' employment (<i>maximum accumulation of 20 days</i>) • Parental Leave: as per legislation 	<ul style="list-style-type: none"> • Annual Leave: 3 weeks/yr; 4 weeks after 7 yrs of employment • Statutory Holidays: 11 days/year • Special Leave: 5 days/yr after 6 months' employment (<i>no maximum accumulation</i>) • Parental Leave: as per legislation

* Ordinary Working Hours: 8-hour shift and 5 shifts per week

** Special Leave is now separate into Sick Leave and Bereavement Leave under the Holidays Act 2003.

Hotels A and B have different *overtime practices and policies*. In Hotel A, there is no limit on the amount of overtime workers can do and the breaks between shifts – 8 hours – are shorter than those in Hotel B. In spite of the unlimited overtime allowed, Hotel A's management has put in place a number of constraints on their full-time, non-managerial staff working extra hours. For example, employees must obtain written management authorisation prior to working overtime and there were no overtime penal rates or bonuses (day off in lieu) for working overtime. While the provision of breaks and access to free meals are generally the same across the two hotels, the housekeeping subcontractors in Hotel A are not provided with free meals.

Unlike Hotel A, there is a more flexible approach to working overtime in Hotel B in which mutual agreement between the employee and the supervisor is only required for working four consecutive 10-hour shifts. In Hotel B, employees must have a minimum of a 12-hour break in between shifts and can only work a maximum of 10 hours of overtime per week. Furthermore, although both hotels complied with the basic minimum standard of leave entitlements, Hotel B offered unlimited accumulation of special leave which was not provided under the previous Holidays Act 1981.

Figure 3: Reasons for Staff Turnover

Overall, the rate of *staff turnover* is considerably higher in Hotel B (56%) than in Hotel A (35%), as shown in Figure 3. However, the organisational records of exit interviews for Hotels A and B must be treated with caution for a number of reasons. First, the recorded staff categories used by Hotels A and B are dissimilar and crude. In Hotel A, the breakdown of categories is: management, supervisory and front line positions; while in Hotel B the breakdown of categories is: full-time and part-time positions. As a result of the simplistic method of categorising the data, there is no way to verify the anecdotal evidence of an even higher staff turnover in the food and beverage sections in both hotels, compared to the recorded highest rate of staff turnover in supervisory/front-line positions in Hotel A and in part-time positions in Hotel B. Second, both hotels use contract and temporary labour and therefore the true level of staff turnover is not reflected in the staff records and assertions can only be made based on the records of permanent staff. Third, the reasons for leaving given during exit interviews may not necessarily be accurate.

In spite of these drawbacks, the reasons for employees leaving *appear* to be fairly consistent and tended to be clustered around new employment opportunities, relocation, and education opportunities rather than associated with shift work and health concerns. Other less common reasons for staff turnover include family obligations, transfer, termination of contract and inappropriate behaviours at work. There were also a number of employees who left the job without giving any notice (or “no show”). It is impossible to give any accurate reason why these employees left, though they were predominately part-time and constituted one quarter of total staff turnover in Hotel B. Interestingly, Hotel B had significantly higher turnover in part-time staff (67%) than in full-time staff (33%), while Hotel A’s staff turnover was equally distributed across full-time and part-time staff.

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Other key differences between each of the hotels are highlighted in the performance indicators, such as the level of disciplinary actions, sick leave and workplace accidents. Each of the indicators has implications for stress in the respective workplaces.

Table 5: Organisational Performance Records

	Hotel A (year ended Oct2003)	Hotel B (year ended Feb2004)
Disciplinary Actions		
• Record of Discussion	4	4
• Verbal/Written Warnings	4	0
• Suspension/Dismissal	0	0
Sick Leaves	90 hours	3675 hours
Workplace Injury		
• Reported Accidents	3	4
• Hours on ACC	1128 hours	82 hours

As shown in Table 5, disciplinary procedures for both hotels were few and minor. There was no record of suspension/dismissal occurring and there appears to have been only a few discussions and warnings given for misdemeanours such as, falsifying timesheet/ wage records, intoxication, unauthorised possession of company property, etc.

Although Hotel B had a significantly higher record of sick leave – 3675 hours compared to Hotel A (which recorded 90 hours of sick leave), this figure was influenced by the ill-health suffered by one employee. However, Hotel B had a significantly lower number of recorded accidents in spite of the fact that it has almost double the number of staff compared to Hotel A. Although Hotel B's injury rate was lower than Hotel A's, at the time of the data collection, Hotel B was paying higher Accident Compensation Corporation premiums under the Workplace Safety Management Practices (WSMP) Programme compared to Hotel A (see below for more detailed discussion). However, Hotel B was a new entrant into the WSMP and, according to a management interviewee, the lower grade/higher premiums reflected this status.

While both hotels share core occupational health and safety (OHS) elements within their policies and practices, there some were notable differences. In particular, there were differences in their means of communicating OHS outcomes and concerns as well as having different Accident Compensation Corporation (ACC) ratings, as seen in Table 6. Both hotels are operating OHS committees comprising of employer and employee representatives from different departments. These committees comply with the most basic criteria outlined in the Health and Safety in Employment Act, 2003 and are consistent with other large hotels in Auckland (see Haynes & Fryer, 1999:106). While both hotels have arrangements to cover the duties of attending committee members, interviewees

stated that it was still difficult to attend the meetings as they neither had the time nor someone to relieve them from their duties. The OHS committee meetings in Hotel A are held more frequently than those in Hotel B (monthly compared to two-monthly). On the whole, the content of the OHS meetings was similar across the two hotels: they had similar agendas, including accidents reported and other health and safety issues. The minutes of the meetings in Hotel B are distributed to all departmental heads and are posted at the reception area. In addition, the OHS hazard identification forms in Hotel B are also posted on all departmental notice boards. In Hotel A, the minutes of the OHS committee meetings and other printed information, such as copies of the employment legislation and customer feedback forms, were filed at the staff canteen.

Table 6: OSH Practices and Policies

	Hotel A	Hotel B
OSH Committees	<ul style="list-style-type: none"> • Monthly meetings (1 hour) • Minutes, statues & customer feedback filed at staff canteen 	<ul style="list-style-type: none"> • Two-monthly meetings (1 hour) • Minutes distributed to departments and filed at reception
Communication Channels	<ul style="list-style-type: none"> • General Meetings (two-monthly) • Departmental Meetings (monthly) • Staff Notice Boards • Hotel Manager, HR Department, Line Managers 	<ul style="list-style-type: none"> • General Meetings (quarterly), Departmental Meetings (monthly) • Staff Notice Boards • General Manager, Executive Assistant Manager, Line Managers, Union Delegate
ACC Rating	<ul style="list-style-type: none"> • Tertiary Level (as at Feb 2004) 	<ul style="list-style-type: none"> • Secondary Level (as at Feb 2004)

Both hotels participate in the Accident Compensation Corporation's (ACC) Workplace Safety Management Practices (WSMP) Programme in which participating companies are allocated reductions on their workplace cover levies (see <http://www.acc.co.nz> for details). Based on an independent audit, ACC assesses and grades a company's injury and illness rates and their OSH systems and procedures. While participation in the programme is optional, it is recommended for organisations with 20 or more employees (also refer to Section 19 of the Health and Safety in Employment Amendment Act, 2002). The ACC reductions are divided into three levels: primary (10% discount), secondary (15% discount) and tertiary (20% discount). The two hotels have achieved different ratings for the WSMP Programme. At the time of the research, Hotel A had achieved a tertiary level rating while Hotel B had achieved a secondary level rating.

Table 7: Stress-related Practices and Resources

	Hotel A	Hotel B
Training	<ul style="list-style-type: none"> • Induction, customer service • Health & safety training 	<ul style="list-style-type: none"> • Induction, customer service • Health & safety training • External courses on building confidence & managing stress
Services	<ul style="list-style-type: none"> • Counselling & massage 	<ul style="list-style-type: none"> • Union delegates (on site)
Company Practice	<ul style="list-style-type: none"> • Employee opinion surveys • Annual performance reviews • Exit interviews 	<ul style="list-style-type: none"> • Annual performance appraisals • Exit interviews

Both hotel case studies have in place a variety of practices aimed at reducing the levels injury and illness and by proxy the management of workplace stress as outlined in Table 7, commencing with training. Both hotels undertake induction training that incorporates an overview of the organisation, customer service as well as key health and safety procedures such as hazard identification, *including stress-related hazards*. However, interestingly, the hotels' records showed that stress *had never been identified* as a hazard.

In particular, Hotel B provides an external training course focusing on building individual confidence and stress management for new recruits and this course is also offered to other staff every 2-3 years. According to the management of Hotel B, the course has an emphasis on stress within their occupations and is separated into two main parts: the first part focuses on team building, building individual confidence, and ways of servicing guests; and the second part looks at ways of handling stress and difficult clients. Hotel B also has two on-site union delegates who can assist in any employment matters, including stress related issues.

On the other hand, the management of Hotel A can refer stressed employees to a number of services, including a free on-site massage services and independent counselling, with the hotel management paying some of the costs. However, very few of the staff were aware of these services and to date, there had been only two referrals during its three years of operation.

The two hotels also had other ways to monitor the level of workplace stress through the use of employee surveys and performance reviews. For example, Hotel A conducts an online voluntary employee opinion survey that measures the respondents' level of satisfaction with the organisation and their level of awareness of health and safety

responsibilities. The survey is measured against the company's other hotels and each hotel must maintain a benchmark of 80% employee satisfaction. Other assessment tools include annual performance reviews and exit interviews to ascertain the reasons why people were leaving.

Although the managers in Hotel B had previously conducted employee opinion surveys, the practice had been discontinued. Instead, information on employee performance and satisfaction is gained from annual employee performance appraisals which are conducted by departmental heads. However, it is problematic relying solely on this evaluation system since a lack of anonymity may discourage comments on sensitive issues, such as staff dissatisfaction or a tense relationship with other staff. Also, as noted in previous studies, by focusing on the performance or non-performance of the individual, the wider organisational and employment issues that impact on the wellbeing of the employee are frequently overlooked.

While it was evident that working in the hotel industry has stressful elements, when participants were asked to rate their level of stress, *the ratings were medium to low*, as indicated in Table 8.

Table 8: 5-Point Rating Scale of Perceived Stress Levels

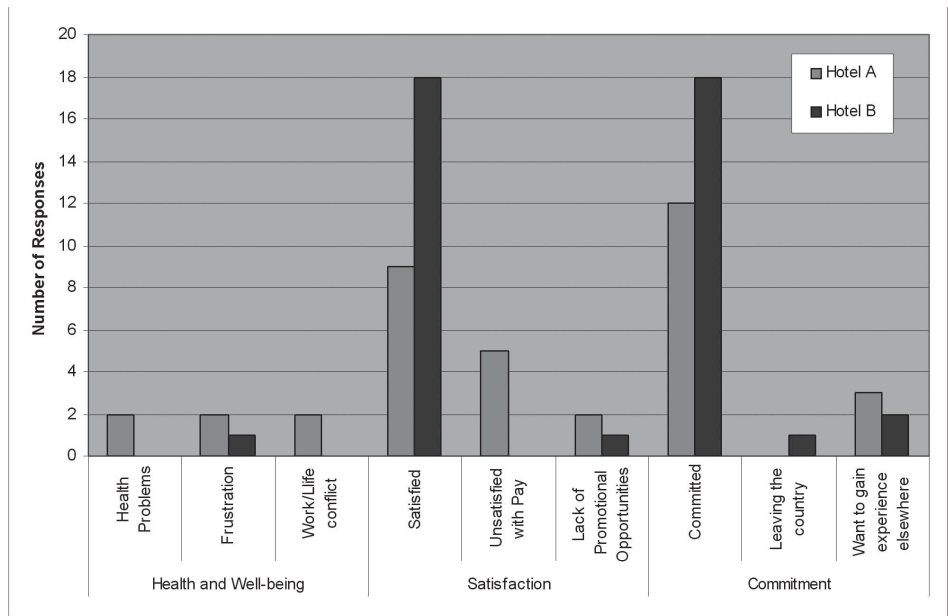
	Hotel A (mid Oct 2003)	Hotel B (average)*
Food & Beverage	3	2.56
Kitchen	2.75	2.58
Front Office	3	2.35
Housekeeping	2.88	2.58
AVERAGE	2.91	2.52

Note: Hotel A participants were interviewed during a typical season of the year (mid October 2003). However, Hotel B participants were interviewed during a quiet season (early Jan 2004), so they were asked to recall their stress levels during the peak season (i.e. before Christmas 2003) in order to derive an average rating that is comparable to Hotel A.

Staff interviewed were asked to rate the level of stress in their jobs on a 5-point scale, with 1 being the lowest and 5 being the highest. Overall, employees in both hotels reported a *moderately stressful rating* (2.91 and 2.52 respectively) with no major differences across occupations or status in the organisation. There was a general agreement amongst interviewees that although the employer's expectations are high, the working hours and workload are fair and acceptable and many hotel participants reported that they rarely had to work overtime. Interviewees also noted that the high levels of stress from customer interaction and the pressure of the job are not constant as some days are busier than others. A few interviewees (3 out of 35) stated that they enjoyed the flexible working hours as well as being kept reasonably busy. One of the most interesting finding was

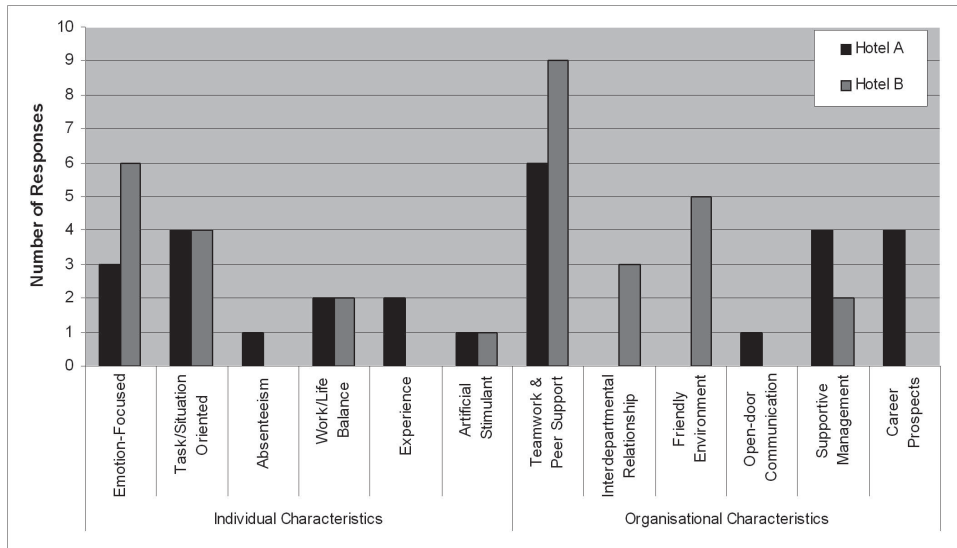
that, with the exception of one person, interviewees who did shift work stated that they had no major health problems and had little interference with their personal life – which is contrary to the findings in mainstream literature.

Figure 4: Employee Well-Being



Generally, the interviewed employees felt a sense of well-being. Job satisfaction and organisational commitment were high across both hotels. However, 3 out of 13 employees in Hotel A reported dissatisfaction with pay and lack of promotional opportunities, as shown in Figure 4. For example, one of the subcontracted housekeeping employees saw little advancement opportunities within the company. In another example, an employee from Hotel A complained of not being promoted and felt that their skills and experience were being undervalued by their superiors. However, some of the interviewees noted that one way to advance their careers in the industry was to gain experience in a range of jobs, including those that entailed shift work.

Finally, the primary mechanisms for coping with stress amongst the employees rested with the individual. The interviewed hotel managers argued that while they provided sufficient health and safety measures, coping with stressful situations was a personal matter. Therefore, as highlighted in Figure 5, it was not surprising that main responses to occupational stress was *individual adaptation* whereby employees tended to use personal coping strategies and social support more often than other types of strategies. The most common strategies were those that centred on controlling one's emotions (e.g. staying calm, taking deep breathes), task/situation oriented strategies (e.g. focusing on the problem, time management) and seeking out team and peer support.

Figure 5 Stress Management Strategies Used by Hotel Employees

Discussion

While the findings highlight a number of differences between Hotel A and Hotel B, such as staff configurations and the contents of organisational policies and practices, both hotels share similar core functional elements, such as OHS committees, and similar responses, particularly the perceived levels of stress. Certain themes related to the research questions have also emerged that require further exploration – namely:

- The perceived levels of stress
- Coping mechanisms based on the individual
- Sources of stress; and
- Compliance status quo.

One of the most puzzling aspects of this study was the respondents' low to moderate perceived levels of stress and very few acknowledged that they had stress-related health problems. This perception was also supported by key stakeholders. The OSH Service interviewees classified the hospitality industry as "a poorly organised job category" (Interview tape OSH1 17/09/2004) as it involves one-off stress factors (e.g. the risk of robbery) and fatigue (e.g. 7-day operation and shiftwork) in comparison to high-stressed jobs that are inherently stressful by their nature (e.g. air traffic, ambulance and policing).

The question is "*why*"? Could it be that hospitality workers are at risk of the "boiled frog" syndrome – that is, they are unaware of the impacts of an increasingly dynamic and stressful working environment on their health and well-being? There is evidence in both

this study and others that there is widespread acceptance by those in the industry that stress is an integral part of the job (e.g. shiftwork, long working hours and emotional demands) or as some of the interviewees stated: “it’s part of the package” and others described it as a “burn and churn” working environment (Interview tape HR1 06/11/2004). That is, hospitality workers are expected to *tolerate* occupational stress. As Sarabakhsh et al. (1989) have noted:

“... hospitality managers are aware that they will face irregular hours and demanding work when they enter the industry – individuals who can’t tolerate those conditions don’t choose careers in hospitality.” (p.76)

Another possible explanation for this general tolerance of stress is that in each of the case studies, management tended towards a unitarist approach in managing employment relations. Put simply, under a unitarist style of management, dissidence is not acceptable and disagreements are the result of management’s failure to communicate its goals effectively (Blyton & Turnbull, 1998). Employees are not expected to challenge managerial decisions or their employer’s right to manage; to do so would result in the disapproval by their managers, as noted by both the trade union organisers and cleaning staff in this study. Nonetheless, this and other studies (for example, Kahn, & Byosiére, 1992; Cartwright, et al, 1995; Houtman, et al 1998; Bohle, et al, 2004) indicate that even the most dedicated and compliant workers have limits and that they are prone to stress-related ill-health and social problems if they are exposed to prolonged stressful working conditions.

A *second theme* that emerged from the findings is that the *coping mechanisms* rest almost entirely on the individual and that this self-management approach was generally accepted by those working in the two hotels and most of the industry stakeholders. Rather than challenging management over the decisions concerning conditions of work (see Lukes, 1993), typically individual employees adapted to stressful situations by applying a number of personal strategies that ranged from physiological techniques (deep breathing, etc.) to social support mechanisms. Such strategies are concentrated at the individual level rather than the organisational or industry levels of analysis. This suggests an abrogation of the regulatory duty of care in which the responsibility for health matters rests no longer with the employer, but with the employee.

The prevalence of a close working relationship between employers and employees in the hotel cases suggests that *social support* may play a critical role in neutralising employees’ experience of occupational stress. Given the all consuming aspect of hospitality work in terms of long and unsocial hours, it is not unusual for work teams to provide a “second family” for many hospitality workers. This was particular so in Hotel B where a number of employees described their hotel as “very social”, “enjoyable and friendly”, “comfortable”, and “homely family environment”. In this sense, the camaraderie in the workplace provides an essential source of motivation, belongingness and support, especially for those who

are strong team players, which may in turn strengthen employees' commitment to their organisation in spite of unsatisfactory or stressful working conditions. According to Casey (1995; 2002), this "family culture" can be manipulative in nature in which employees are subconsciously drawn into the life of the organisation while subsuming their own personal lives and families. Furthermore, with unitarist style of management, there is a single source of authority (management) and each team or division was unified in a common purpose, namely the success of the team, and ultimately the organisation.

The findings also alluded to other possible coping mechanisms – namely *to vacate the job or to take annual holidays, sick leave or leave without pay* – once stress levels become intolerable. Most interviewees commented on the high absenteeism rate and the high staff turnover in the hospitality industry, where it is common for employees to leave their jobs without giving notice, particularly in Hotel B. However, as the industry has casualised most of its labour force and has a transient working population, it would be a misnomer to state that the high staff turnover was entirely the result of occupational stress. Nonetheless, one of the possible outcomes of an increase in the rate of stress-related illnesses could be growing number of absentees in the future (see Cooper and Cartwright, 1994). In addition, poor employment conditions associated with the industry have been identified by Hinkin and Tracey (2000) as the primary causes of employee turnover in the hospitality industry. Drawing on American and European longitudinal studies of voluntary employee turnover in the hospitality industry (see Wasmuth & Davis, 1983; Woods & Macaulay, 1991, 1998), Hinkin and Tracey (2000) concluded that dissatisfaction with an existing job (rather than attraction to other opportunities), poor quality of supervision and poor working conditions were more likely to be the main reasons for leaving rather than the low level of pay. Given this evidence, therefore, one has to question the validity of the exit interviews in both hotels, where the predominate reason given for leaving the job was better opportunities. Moreover, although employee turnover in both hotels (35% and 56% respectively) are relatively lower than the industry average in America (70%), Hinkin and Tracey's (2000) international study highlights the complexities of investigating occupational stress and the necessity to expand the purview of analysis.

A *third theme* was the *sources of stress*. Typically, employees and employers as well as stakeholders emphasised the *resource constraints*, such as work overload, time constraints, shortages of staffing and dealing with difficult customers, as influential factors in occupational stress. Staff shortages (either as a result of financial constraints or labour shortages) meant that sometimes workers, particularly the supervisors/junior managers, were required to *work longer hours*. This is supported by evidence found in the two case studies where 4 out of 6 (66.6%) supervisors and junior managers reported that they normally worked 40 hours plus overtime whereas 3 out of 13 (23%) entry level workers reported they only worked overtime occasionally. Furthermore, most executive and line managers (9 out of 13 interviewees) worked 50 hours or more per week. Comments about the general working conditions in New Zealand – that is, working longer and harder – were frequently mentioned by hospitality workers and the stakeholders. It is estimated

that almost 22% of New Zealand workers work more than 50 or more hours per week (Messenger, 2004; Statistics New Zealand, 2004c). By contrast, in most EU countries, the number of people working 50 hours or more per work remains well under 10 per cent, with figures ranging from 1.4 per cent in the Netherlands to 6.2 in Greece and Ireland (Messenger, 2004). Although the link between hours worked, ill health and injuries is still debatable, there is growing evidence that working beyond 48 hours a week doubles the risk of coronary heart disease (Wedderburn, 1996; Smith, 1993, 1999; Quinlan and Bohle, 2000; Messenger, 2004; Gold, 2005). Similarly, a New Zealand study by O'Driscoll revealed that as daily working hours are increased from eight to 12, there are detrimental effects on health and safety over time (cited Macfie, 1998). Other New Zealand studies on shift work show that people who cope better are those with well-established community and family support networks, maintained during periods outside work (Wilson, 1995; Rasmussen and Lamm, 2002).

Inter-personal relationships, particularly the tensions between *subcontractors* and non-subcontracted employees, were also identified as a source of stress by the employees and managers. The use of subcontractors is an extensive and increasing practice in the hospitality industry (although this common practice was not mentioned by the key stakeholders interviewed). There are a number of studies that shows subcontracted workers in general have higher rates of injury and illness, compared to non-subcontracted workers as they are often required to carry out the more hazardous duties that the host company does not wish to undertake (Quinlan, Mayhew & Ferris, 1997; Tucker, 2002). However, instead of commenting on stress felt by subcontracted workers, the hotel interviewees suggested that the general tense relationship between them and subcontractors was a source of stress. The views of the interviewees in both hotels reflected a "them and us" tension between subcontractors and the "hotel family". For instance, in Hotel A, one housekeeping subcontractor noted that it was difficult to approach the hotel division manager and that there had been angry exchanges between subcontractors and hotel members over minor deficiencies. Although the housekeeping subcontractors are predominantly under a collective employment agreement with the principal cleaning company, they are excluded from Hotel A's OHS training and committee meetings. Similarly, in Hotel B, a few hotel employees stated that there was a problem with temporary and subcontracting staff as they did not perform well under pressure. Thus, one could surmise that the lack of communication, support and worker participation experienced by the subcontractors could not only be stress inducing, but could also foster tension between the workers in the hotel industry.

A *fourth theme* was that there is a *compliance status quo* in which the management in both hotels made no special provision to incorporate work-related stress as a workplace hazard into their existing OHS policies and practices. According to the managers and the OHS Committee members in the case studies, stress constituted a minor share of the agenda in their meetings. They argued that major changes are unnecessary because they already have in place adequate health and safety systems and an 'open-door'

policy. However, employees interviewed reflected a somewhat contradictory perspective of the *application* of these systems and in particular, the “open lines of communication”. For instance, the majority of employees interviewed (with the exception of the divisional managers who directly report to top management) indicated that it would be very unlikely that they would approach management with a complaint about their stress levels. The general belief amongst employees was that while senior management were sympathetic towards their staff, they were not proactive in remedying the stressful situations. In addition, there is a high turnover of line managers, creating constant variations in capabilities and people skills (and differing levels of support) at the supervisory level. In short, the majority of employees did not consider their superiors suitable to alleviate the conditions causing stress. These sentiments, however, are juxtaposed with the comments made by 23 interviewees (out of 35) that there is intimate teamwork and interdepartmental relationship and that their working environment is very friendly. In addition, 7 interviewees (out of 35) noted that most senior and line managers are supportive and approachable and that management has an open door policy. Such comments could be described as attuned with the unitarist perspective, as discussed above. Such contradictory findings are supported in the literature where a number of studies show that there is a great deal of managerial rhetoric on reducing stress levels, but with little evidence of real commitment and that employers often underplay the stress suffered by employees (Houtman et al., 1998; Lamm, 2002).

The other area in which compliance status quo was exhibited was in the lack of awareness of the recent OHS reforms, including the addition of stress and fatigue. Despite the fact that both hotel case studies have well-informed OHS Committee meetings, the findings indicate that hospitality employees, in the main, are unaware of the legislative change and hence were unable to comment substantially about such changes. The possible reasons for this low level of awareness amongst the employees interviewed are: the general *lack of worker participation and collective bargaining arrangements* (in which most interviewees did not know what was meant by “collective agreement”) as well as a *weak trade union presence*. There is overwhelming evidence that worker participation, collectivism and a strong trade union presence greatly enhances both the level of awareness of OHS requirements and the health and safety of employees (Weil, 1991; Walters, 1997). However, given that both hotels display a unitarist approach to employment relations (that is, trade unions are viewed as an unnecessary intrusion) and the precarious and non-standard nature of employment in the industry, it is not surprising that these elements are largely absent.

Conclusion

This article has attempted to expand the level of analysis by incorporating employment relations features in its investigation of the complexities of occupational stress within the two hotel case studies. As a result of applying an employment relations perspective, a number of interesting aspects have emerged. First, the employees have low to moderate perceived levels of stress and yet there is no evidence that the stress levels are declining or that their conditions and pay rates are improving to any large extent. Also, the absenteeism and staff turnover rates are high and are increasing. In short, there is no conclusive answer as to why the interviewed employees perceive their stress levels to be low to moderate. It may be important that, under the unitarist frame of reference, management has a low tolerance to any dissent employees. Second, although there were some employer initiatives to reduce or manage workplace stress, coping with stress is still essentially the domain of the individual employee. However, this focus on the individual should not preclude a wider examination of workplace stress. That is, the employment factors, such as poor working conditions, the lack of resources, etc., which contribute to stress cannot be overlooked or diminished.

Third, the overall results from these two case studies were similar despite the difference in their hotel ownership and management. The interviewed hotel managers and employees held similar perceptions about occupational stress and the responsibility in managing stress. The case studies revealed that there was a passive, even neutral reaction by the hotel managers to the inclusion of occupational stress and fatigue in the Amendment to the Health and Safety Act, 1992. The employees' general lack of awareness of the changes to the health and safety legislation and their company's stress-related policies and deficient resources were not surprising given the low level of both worker participation and trade unionism. Instead, the goals of employers and employees were harmoniously aligned within a socially bonding work environment. Thus, the findings show that the hospitality industry is still entrenched in the unitarist approach to employment relations, in spite of the fact that the current legislation has pluralist intentions.

Finally, it is advocated that it is necessary to move the traditional research of occupational stress beyond the narrow confines of a mono-disciplinary approach with a single level of analysis to a multidisciplinary approach with multiple levels of analysis that underpins the employment relations perspective. By expanding the purview of the research on occupational stress in the hospitality industry, it will hopefully shed more light on the wider factors that contribute to occupational stress in this and other related industries.

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Turnover amongst Nurses in New Zealand's District Health Boards: A National Survey of Nursing Turnover and Turnover Costs

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Abstract

Turnover amongst nurses is a critical issue as nurse shortages throughout the Western world are putting a strain on health systems. New Zealand's nursing shortage is exacerbated by international recruitment efforts targeting New Zealand nurses. Our study of turnover and turnover costs is part of a wider international study, using an agreed study design and instruments, to determine the direct and indirect costs of nursing turnover. These costs also include the systemic costs, estimated by determining the impacts of turnover on patient and nurse outcomes.

The paper reports on two components of the study. First, a pilot study was conducted in six countries, including New Zealand, to identify availability of costs and suitability of the instrument. The pilot study found it difficult to establish the costs of turnover since information about many costs was not available. Second, as part of a national survey of nursing turnover and turnover costs, Directors of Nursing in the 21 District Health Boards (DHBs) throughout New Zealand were contacted to complete a survey on turnover and workplace practices; 20 participated. The survey did not establish how turnover rates were determined in the individual DHBs. Instead the study indicated the nursing turnover was a problem in 13 DHBs, with 5 DHBs reporting turnover rates over 20%. However, turnover did *not* appear to be an issue across the country as 5 DHBs reported low turnover in the 5-10% range. Notwithstanding the importance of attracting and retaining nurses, there were tight controls over recruitment of new staff in the majority

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This article is part of an international project to examine the cost of nurse turnover and the impact of turnover on patient safety and nurse health and safety outcomes. Co-principal investigators are Dr. Linda O'Brien-Pallas (University of Toronto, Canada) and Dr. Judith Shamian (Office of Nursing Policy, Health Canada). Team members represent five countries and include the following: Dr. James Buchan (Queen Margaret University College, Edinburgh, UK); Dr. Christine Duffield (University of Technology, Sydney, Australia); Ms. Frances Hughes (Ministry of Health, Wellington, New Zealand); Dr. Heather Laschinger (University of Western Ontario, London, Ontario, Canada); Dr. Patricia Stone (Columbia University, New York, NY, USA); and Dr. Pat Griffin (Health Canada, Ottawa, Canada).

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of DHBs, and several DHBs reported a freeze on recruiting Registered Nurses (except for 'specialist' nurse roles).

Introduction

Turnover amongst nurses is an issue of growing concern for health services and policy makers as many countries in the Western world are experiencing endemic shortages of nurses. The nursing profession is experiencing declining numbers of new nurses, an older average age of new graduates and high rates of younger nurses leaving the profession due to an unwillingness to accept the relatively poor pay, high stress, and limited opportunities for advancement. Contributing to nurse shortages, therefore, are an exodus of Registered Nurses (RN's) from the profession, a decline in the number of graduates entering the profession, and an ageing nursing workforce as the 'baby boomer' generation of nurses approaches its retirement (Cowin, 2002; Shader et. al., 2001; Stone et al., 2003). For example, the UK is now facing a situation where 1 in 5 nurses is aged 50 or older (Buchan, 1999). At the same time demand for a skilled, experienced nursing workforce is growing as skill shortages also affect other medical and health professions, and there is an increasing demand for health services with an aging population, complex morbidities and high expectations of excellent health care.

Like other Western countries, New Zealand is facing nurse shortages and an aging nursing workforce: 45% of active registered nurses were aged 45 and over in 2002 (NZHIS, 2002). The nursing shortage is exacerbated by international recruitment efforts targeting New Zealand nurses (including new graduates). Furthermore, New Zealand research into the career plans of nurses has consistently found that around 30-40% of all active RNs intend to leave their jobs in the next 12 months, and over 50% of New Zealand nurses cease active employment as a RN within eleven years of initial registration (Cobden-Grainge & Walker, 2002; Gower & Finlayson, 2002; Nursing Council of New Zealand, 2000; NZ Herald, 2002; and Quinnell, 2001). While the problem of nursing turnover is acknowledged (see Rasmussen et. al., 2005), the levels, costs and consequences both in economic and quality terms have not been empirically established in New Zealand, hampering policy and organisational efforts to address the issue.

This paper describes a national study on *nursing turnover and the cost of nursing turnover in New Zealand's public hospitals*. The study is part of an international collaborative study involving Canada, Australia, the United States, the United Kingdom, and Scotland, all of which participated in a pilot study to test the survey instrument. Other countries may join subsequently. To date, the study has been commenced in Canada and New Zealand only. In New Zealand, only the first stage, a national survey of Directors of Nursing to contextualise the study, has been completed so far. Some results of this survey are presented in this paper. However, the paper will first briefly review the literature on the cost of nursing turnover and then it will discuss the findings from the pilot study in New Zealand.

Determining the cost of nursing turnover: the literature

There is a considerable body of research on the *reasons* for turnover: the predominant reasons nurses resign from a job include issues related to salary, work schedules, job satisfaction, professional autonomy and job-related stress (Blegen, 1993; Cangelosi, Markham & Bounds, 1999; Cowin, 2002; Irvine & Evans, 1995; and Shader et. al., 2001). There are obviously strong 'push' factors which encourage nursing turnover, though 'pull' factors in form of private sector and overseas job opportunities have featured frequently in media reports (Rasmussen et. al., 2005). As such, nursing turnover fits the so-called 'push-pull model' (see Tava, 2005) where a combination of factors conspire to generate a high level of turnover.

There is also a small body of international and New Zealand literature on the *consequences* of nursing turnover: regular turnover of nursing staff has a negative impact on the care patients receive as health care teams become destabilised, staff morale declines, communication lines become disrupted and strain is placed on resources as temporary cover is arranged (Blegen, Goode & Reed, 1998; Buchan & Seccombe, 1991; Finlayson, 2002; Mueller & Price, 1989; O'Conner, 1996). In addition, efficiency is reduced and staff safety is compromised by staff shortages, increasing the likelihood of such incidents as needlestick injuries (Clarke, Rockett, Sloane & Aiken, 2002). However, turnover may also have positive impacts on employees and employers. Dalton and Todor (1979) assert that turnover can increase organisational effectiveness through enhanced innovation and mobility, and turnover is seen as an opportunity to replace dissatisfied workers who may have been unproductive for some time. In spite of these research findings, few policy and health service decision-makers have addressed the link between staff numbers, characteristics of work environment and the impact on patients, nurses and the hospital system as a whole. (O'Brien-Pallas, 2001).

Nursing turnover can have negative social impacts on an organisation, by disrupting cohesiveness, increasing internal mobility and often triggering additional turnover. In addition to impacting on the social dynamics of an organisation, turnover takes up a significant proportion of the healthcare dollar. Nursing turnover affects hospital efficiency through the costs of recruiting and orienting replacement nurses, the costs incurred in using temporary agency nurses to fill vacancies, reduced efficiency of team-based care on patient units, and the administrative costs of supervising new nurses (Alexander, Bloom & Nuchols, 1994). However, studies into the cost of nursing turnover are limited in number and are predominantly a decade out of date, therefore failing to reflect current nursing shortages (Johnston, 1991; Jones, 1990).

The identification of turnover costs per RN varies significantly due to both environmental factors and a lack of consistency between studies. Definitions of turnover, in particular, have been inconsistent amongst previous turnover research, and the costs included have varied, limiting comparability between studies. For example, American research has

estimated turnover to cost as little as US \$1,528, or in excess of US \$25,000 per nurse, largely due to indirect costs (Hoffman, 1985; Jones, 1990). Loveridge (1998) found turnover costs ranged from US \$2,000 to \$5,000 per RN, and Wise (1990) estimated turnover costs to be \$5,435 per experienced RN. Similarly, a British study within the National Health Service (NHS) found that nursing turnover cost between £1,250 and £7,760 per nurse (Buchan & Seccombe, 1991). Waldman, Kelly, Aora and Smith (2004) found that turnover of all health professionals, not only nurses, in a medical centre represented a minimum of over 5% of the total operating budget. Turnover of nurses was the greatest contributor to costs, through loss of productivity, followed by training costs, with costs related to hiring the smallest driver.

The inclusion of both direct and indirect costs is a primary cause for disparities in results amongst studies calculating turnover costs. Costs may also vary according to the level of experience and specialisation required for the position. Those on a higher wage may receive larger holiday leave payouts, and positions requiring a greater degree of specialisation may be more difficult to fill, causing longer periods of temporary cover. Due to the difficulty of accessing and measuring indirect costs many studies under-represent the cost of turnover by studying only the direct costs. The term 'turnover' can also be used differently; for example, it can be used narrowly regarding nurses leaving the organisation, or it can be used more broadly to include internal transfer. Whether nurses leave voluntarily or not may also vary among studies. Even the term 'nurse' can be defined differently, depending on qualifications and organisational levels of the nurses Covered.

The Pilot Study: testing cost measures

The methodological deficiencies and variation of costs of nursing turnover studies, and inconsistent use of cost measures combined with the lack of data, must be overcome if the true costs are to be determined. In 2002 a group of influential researchers and policy makers in nursing initiated an International Consortium with the aim of conducting international comparative studies using the same definitions and methodologies to establish the true cost of nursing turnover to inform and drive policy to address nursing shortages and turnover.

The aim of the international pilot study was to test an instrument developed to determine costs of turnover, not primarily to describe the costs themselves. The investigators were asked to document the availability of data, whether costs were accurate or estimated, how costs were calculated, and if possible wider systemic costs attributed to nursing turnover (including patient care errors and adverse nurse outcomes incurring costs). For the purposes of the pilot study, the term 'nurse' referred to registered nurses working as staff nurses only, excluding enrolled nurses, nurse specialists and nurses in management roles, such as charge nurses. 'Turnover' was defined as voluntarily leaving the primary place of employment, including both internal transfer and leaving the organisation; thus,

an agreed formula for determining turnover rates was used.

Costs were conceptualised as direct and indirect costs. Direct costs were those costs that were easily identified and were a direct result of recruitment, temporary replacement and leaving. In contrast, indirect costs were costs which were normally incurred as a result of the nurse leaving, but which primarily related to the time spent by other employees in administering the turnover process e.g. orienting and precepting, new hires and employment termination costs. The instrument employed in the pilot was based on Buchan and Seccombe's (1991) disaggregation of turnover costs into 40 items under the following headings:

- Separation: The costs associated with processing a nurse leaver's separation from the employment of the organisation.
- Temporary Replacement: The costs associated with the method, or methods, which the employing organisation adopts in the interim period until a permanent replacement is recruited.
- Recruitment and Selection: The costs incurred by the organisation in searching for, and appointing, an appropriate permanent replacement.
- Induction and Training: The costs associated with induction and training of the replacement nurse, and costs incurred during the time elapsed until the replacement is determined to be providing an equal contribution to that provided by the leaver.

A largely 'bottom up' approach was used, focussing on the hospital unit level. Analysis at the unit level avoids intra-organizational variation in turnover by work unit (Mueller & Price, 1989). The bottom up approach evaluates the costs and benefits of turnover through a checklist method which 'allows the development of a detailed picture of the costs of turnover within individual employing units and can assist operational management to identify major sources of costs, and potential cost saving policies.' (Buchan and Seccombe, 1992: 23). For the purposes of the pilot study, the units used in all the participating countries were general medical and general surgical units, thereby minimising variation across the pilot studies. General surgical units were those where 80% or more of the patients admitted were usually treated for surgical conditions by a general surgeon, while general medical units were those with 80% or more of the hospital inpatients admitted and treated for non-surgical conditions; specified specialties were excluded for each category, e.g. psychiatry from medical, paediatric from general surgical.

The cost of turnover was evaluated retrospectively within one medical and one surgical unit of one of New Zealand's major metropolitan hospitals over a six months period, from 1st July to 31st December 2001. The hospital involved in the study was known to have high rates of turnover, with figures released by the hospital's District Health Board (DHB) indicating a turnover rate of 18.2% for health professional staff in 2001. It must be noted that throughout this period the hospital made major reductions to its budget and

had carried out managerial restructuring in previous months. Faced with huge budget deficits, the DHB was undertaking restructuring in the hospital's nursing management, removing a layer of leadership, and freezing the employment of new staff.

The Results of the Pilot

The general surgical unit investigated was comprised of 27 beds, with an average occupancy rate of 92.16%, and the general medical unit was also comprised of 27 beds with an average occupancy rate of 93.8%. While actual turnover rates and related costs were calculated using the protocol and checklist developed for the pilot study, it must be emphasised that reporting these results is not the main purpose of this paper. Neither the turnover rates and costs reported reflected the hospital's reported turnover rates and, in the absence of data regarding costs, are almost certain to grossly under represent costs. Rather, this discussion focuses on the process of locating data, interpreting data and reflecting on both reliability of data and implications of data management.

Nursing turnover rates were based on the number of RN FTE (Registered Nurse Full Time Equivalents) terminations per fiscal year calculated as a percentage of the average annual budgeted RN FTEs. The first problem encountered concerned how to determine the budgeted RN FTEs. Curiously, three differing levels of budgeted FTE per fiscal year were provided by the hospital: the units' own reported figures, those of the Human Resource department, and the Payroll database. The FTE figures provided by the nurse managers were based on the actual number of persons working in the units, whereas budgeted FTEs, reported by the Human Resource department, were between 2-3 FTEs lower than those reported by the nurse managers. It was explained that the reasons for the discrepancies were due to the software system used by the payroll department, where annual leave and sick leave dollar amounts were deducted from the budgeted FTEs, and that Human Resources estimates reflected a forecasting based reporting system. For the purposes of the pilot, the FTE-based nursing turnover rates were extracted from actual FTEs who work in and are paid from the budget of the units analysed.

During the 6-month study period, there were 2 terminations and 2 RN FTEs were hired in the surgical unit. In the general medical unit, 1 termination occurred and 3.8 RN FTEs were hired. Annual turnover rates for Registered Nurse were 7.4% in the medical unit and 12.5% in the surgical unit. These numbers are lower than the DHB's total turnover rate for health professionals of 18.2% for 2001, and anecdotal evidence from nurse managers as well as low turnover rates (compared to the DHB's average annual turnover rate) indicate that the study took place during a period of low turnover. As the pilot study focussed on just one six-month period, it probably does not reflect true turnover levels due to the nature of taking a cross-section in time.

The second difficulty concerned the identification of costs related to nursing turnover. It clearly exacerbated problems that the pilot was a retrospective study. The main difficulties

related to loss of institutional memory due to turnover of clerical and senior nursing staff, the fact many human resource and payroll information were aggregated, and simply tracking down who exactly had the required information, and then these staff had to find time to identify the costs requested. Using the instrument provided, Figure 1 shows the costs that were determined, some of which were estimated costs and others documented costs. The figure also shows costs that the investigators were unable to determine.

Figure 1: Analysis of Data Availability and Total Turnover Costs for Surgical and Acute Units at a New Zealand Hospital

Direct Costs	<i>Recruitment</i>	Advertising costs	\$1,211.22
		Recruiters pay and costs	Unavailable ¹
	<i>Temporary Replacement</i>	Costs associated with temporary replacement mechanisms	\$25,200.00
		Costs of clerical and admin time arranging and paying temporary cover	Unavailable ²
		Time of experienced staff to provide on the job instruction to temp staff	Unavailable ²
	<i>Hiring</i>	Management time	Unavailable ¹
		Processing costs and supplies	\$550.70
		Pre-employment physical exam	\$1,809.90
		Applicants expenses	Not Applicable
Indirect Costs	<i>Termination/ Separation</i>	Holiday pay	Unavailable ¹
		Manager's time writing reference	\$318.00
		Clinical administrative time	\$25.00
		Exit interview time	Not Applicable
		Unused sick time	Not Applicable
		Leaving rituals	\$798.00
	<i>Orientation/ Training</i>	Formal off-job training	Unavailable ¹
		On-job training	\$10,583.00
		Salaries and benefits	Incorporated
		Training equipment	Not Applicable
		Reduced efficiency of preceptors	Unavailable ¹
	<i>Decreased Productivity of New Employee</i>	Number of hours orientation/induction to achieve 50% of full contribution of nurse	Unavailable ²
		Number of hours orientation/induction to achieve 100% contribution of nurse	Unavailable ²

¹ These figures were not collected by the hospital administration.

² These figures were not available as the numbers were too variable to calculate costs with accuracy, or the costs related to the units in the defined time period could not be disaggregated from general figures.

Figure 2 shows the distribution of costs. Between 65% and 75% of turnover costs were a result of temporary replacement costs: those costs incurred in covering for staff that had left, and the administrative aspects of arranging cover. The bulk of these costs were due to the higher wages associated with employing nurses from internal banks and external agencies, and the expense incurred in paying regular staff to work overtime to cover for the staff members who had left. The total costs for temporary replacement of unfilled positions came to \$8,400 per nurse. The clerical and administrative time utilised in arranging temporary coverage is also significant, with up to one hour spent by charge nurses ringing their own staff to cover vacancies; however, no data was available on these costs as the charge nurses were unable to retrospectively report how often this occurred. Following temporary replacement costs, the most significant cost to arise, as a proportion of total turnover costs, was in orientation and training of staff. Orientation and training costs varied from 13% of the surgical unit's total turnover costs to 22% of the medical unit's. At the time of the study, all staff employed by the DHB were supernumerary for the first two weeks of their employment, although in practice this was variable based on the nurses' level of experience. The cost of orientation/training was similar across the surgical and medical units varying from \$3,467.50 to \$3,648.00. This cost was estimated based on the median hourly staff nurse rate covering the hours in which they were in orientation and supernumerary in the unit. It does not include the fixed cost of delivering orientation programmes and job training. Data was not available on the reduced efficiency of the preceptor while training new employees.

Figure 2: Distribution of Measurable Turnover Costs for Surgical and Acute Units

	General Medical Unit		General Surgical Unit		Total	
	Cost (NZ\$)	%	Cost (NZ\$)	%	Cost (NZ\$)	%
Recruitment Costs	1923.47	6.21	1211.22	4.50	3134.70	5.41
Temporary Replacement Costs	20248.00	65.40	20426.00	75.84	40674.00	70.26
Hiring	1525.20	4.93	835.30	3.10	2360.50	4.08
Termination/Separation	327.50	1.06	813.50	3.02	1141.00	1.97
Orientation/Training	6935.00	22.40	3648.00	13.54	10583.00	18.28
Total	30959.17	100.00	26934.02	100.00	57893.20	100.00

In summary, total costs were very similar for the two units, the medical unit incurring \$30,959.17 over the six-month study period, and the surgical unit \$26,934.02 in turnover costs. However, it must be emphasised that these costs are likely to significantly under-represent actual costs due to costs for some variables, particularly productivity costs, (shown in other research as a significant contributor to turnover costs (Waldman et al, 2004)), not being available (shown in Fig. 1), and due to the process of desegregation from other costs incurred by a given service or department.

Despite significant gaps in the data collected, the cost of nursing turnover was nearly \$60,000 for just three RN terminations in the two hospital units; \$20,000 per nurse. Although this study under-represents actual turnover costs, the pilot reflects the significant impact which nursing turnover is having on healthcare budgets of New Zealand's health service organisations. The pilot study confirms that nursing turnover is consuming a large proportion of the health care dollar and this represents a net loss to direct patient care. These findings are consistent with previous research into the cost of turnover and, like previous studies, they are indicative of the *minimum* cost of turnover.

The outcome of the pilot is two-fold. First, in view of the indicative high real costs of nursing turnover, a decision was made to proceed with a national study. This decision was made both at the International Consortium level and locally. In New Zealand, funding has been secured and the full study is now underway. The study will control for differences in particular databases and administrative systems by taking a randomised sample of nursing units in New Zealand's public health service organisations. This will allow results to be generalised with confidence. Furthermore, seasonal variations in turnover will be countered by collecting data over a full calendar year. The results of a prospective, national study will provide hospital management with the evidence needed to support strategies to retain valued nursing workforces, thereby positively affecting patient outcomes.

Second, based on the experiences of the pilot study, the International Consortium made a number of changes to the survey instrument. The limitations to the application of the checklist were predominantly a result of the hospital's data collection procedures. The data required for the pilot entailed additional effort by human resource and nurse management staff because available data was collected and stored in a form for other purposes. As shown in Figure 1, most of the data could not be identified or it was impossible to disaggregate nursing data from other human resource data. Further, the retrospective nature of the pilot meant that some important data was lost to recall. Prompted by the pilot study, several changes were made to the research design: the study is prospective, it collects data not only on the direct and indirect costs of turnover but also includes the impact of turnover on patient and nurse outcomes; and it incorporates considerable fine-tuning of the methods used to calculate actual costs.

The New Zealand Cost of Nursing Turnover Study

Subsequent to the pilot study, the research team has already commenced on a longitudinal study of the direct and indirect costs of nursing turnover in New Zealand's public hospitals, including the impact of turnover on patient and nurse outcomes. Twenty-two general medical and surgical units in 11 District Health Boards have been randomly selected. As a first stage of the study, the Directors of Nursing in all twenty-one District Health Boards (DHBs) throughout New Zealand were contacted and invited to participate in a survey. Twenty DHBs and Directors of Nursing agreed to be involved and they either returned

completed questionnaires or participated in a telephone interview.

The aim of the survey of Directors of Nursing was to identify workplace practices affecting nursing turnover, in order to contextualise nursing turnover and its costs. The following data were requested: information related to nursing turnover currently collected; data, policy and initiatives on retention and recruitment; and relevant studies and reports conducted internally. Only results pertaining to turnover are reported here.

Reported turnover

The majority of Directors of Nursing (DONs) received regular reports from Human Resources or Payroll on resignations and new appointments, with fewer DHBs also producing reports on internal transfers, dismissals, leave of absence, parental leave and vacancies. These reports were received at weekly or monthly intervals. Three DHBs mentioned that a Balanced Scorecard reporting system – including turnover figures - was used. In other DHBs, turnover was specified in the Annual Report. In some DHBs, Nurses and Midwives are not separated from other staff so reliable turnover figures cannot be established for these DHBs. Only three DONs reported that analysis on nursing turnover data was carried out. On the other hand, *there were three DHBs that collected no data on nursing turnover*: in one of these DHBs, there appeared to be little turnover and in another DHB, the collection of turnover data had stopped because the responsible HR staff had left.

Thirteen DONs reported that nursing turnover was a problem, or that it was becoming an increasing priority. This referred to turnover that normally ranged between 12% and 25%. Five DHBs, primarily in the main cities of New Zealand, reported turnover rates that were at or over 20%. DHBs in regional areas were more likely to report that there was low turnover, or that they had not felt major turnover issues for some time. These DHBs reported turnover rates of 5% to 10%.

The survey did not establish how turnover rates were determined. When turnover data was not available, estimates were given instead or the numbers of nurses who had left (not turnover rates) were reported. Another approach is to report on unfilled vacancies (for example, one DHB reported 19.2 unfilled advertised vacancies). It proved extremely difficult to make comparisons, some DHBs routinely report turnover data on a monthly or quarterly basis, and turnover data can also be reported separately for wards and/or services. When turnover rates were available they were reported differently. The following illustrates the different reporting format based on information from 9 DHBs

- 5 regional DHBs reported rates at 12%, 12.9%, 15.84%, 16.38% and 16.9%.
- In contrast, 2 metropolitan DHBs reported annual turnover rates as 19.2% and 22-24%, and they also provided quarterly turnover data which ranged from

3.2%-37.5% per ward in one of those DHBs and 23.7-35.7% per service in the other.

- Another DHB reported monthly turnover rates per ward of between 1.47% and 7.49% and still claimed to have a problem with high turnover.
- Two DHBs gave a very detailed breakdown of turnover data which indicated the age and length of service distributions: unsurprisingly, the highest level of resignations occurs in the age ranges 22-39 and the lowest level of resignation in the 40-55 year range. One of these DHBs reported that 75% of resigning nurses have served less than 3 years.

Although turnover figures are detailed in a few DHBs, the variability in reported rates, where these are available, and the methods of reporting makes it difficult to compare turnover. Thus, it cannot be established exactly what the nursing turnover rate is in New Zealand.

Some DONs specified that turnover was an issue in certain areas only, for example in emergency or mental health services. Turnover is not evenly distributed: there is clearly a difference between DHBs in metropolitan and non-metropolitan areas, with limited turnover in areas with stable populations and offering attractive lifestyles. For example, a DON of a DHB in a large metropolitan centre commented on competition among multiple employers, DHBs as well as private hospitals and rest homes. In contrast, respondents from 'popular areas' described their DHBs as currently being privileged, with neither turnover nor recruitment problems. However, they added that turnover was likely to become a concern in the future as many in their nursing workforce approach retirement.

Two DONs gave additional statistical information on the nursing workforce that, although it can't be generalised, indicates some important characteristics of the hospital nursing workforce which impacts on turnover. A largely female workforce was described, with women constituting 91.3-94% of the workforce (though with more males in mental health services); this compares with 90% of the total DHB workforce who are female. The average age is about 43; 61% of nurses are over 40 years. The average tenure for nursing at one DHB was 6.94 years; at the other DHB 63% left between in the first 5 years of service. Of the total nursing workforce, one DHB reported a distribution of: 45% working part-time, 15% were casual and only 35% were full-time employees. Overall, nurses made up 39-40% of the total DHB workforces. Embedded in these figures is a picture of a female, mid-aged, short-tenured and less than full-time workforce, with the associated costs and risks.

There were reported several negative impacts due to nurse shortages. These included: bed closures, restricted elective surgery, reduced inpatient admission and ED service restrictions. The costs of underutilising expensive plant are high, but a dollar figure was not provided. In these situations of shortage, there is likely to be a trade-off in costs between protecting and supporting nursing staff stressed by endemic shortages (thereby

potentially reducing further turnover) and full utilisation of plant.

In spite of current or anticipated high nursing turnover and nursing vacancies, many DHBs exercised tight control over recruitment. Only five DHBs stated that there were no freezes, reviews, restructuring or rationalising taking place. In almost every other DHB, there are tight controls over recruitment of new staff. Vacancies were reported as going through a review process before nurses were recruited, due to financial constraints. Several DHBs had a freeze on recruiting RNs, except for 'specialist' nurse roles. Five out of the 20 DHBs reported that they were currently or soon would implement a review of Senior Nursing roles. One DHB had just gone through a full restructure. There were also reported instances of redeployment and freezes on salary reviews.

Conclusions

Nursing turnover is a growing problem shared by many Western countries, including New Zealand. Although there is a considerable body of overseas research on the reasons why nurses leave, there is scant research in New Zealand. Yet health workforce research is strongly endorsed by the Health Workforce Advisory Committee (2003). Furthermore, the costs of nursing turnover are poorly understood: there has been little research on costs, much of it is dated, and it is difficult to generalise research findings because of variations in operational definitions and in the way costs have been determined. This article has described a major new initiative into determining actual costs, in order to inform policy and practices relating to the nursing workforce. This initiative is currently underway, driven by an international consortium of researchers and policy-makers in nursing; New Zealand is a participating country and all the participating countries use a common research design.

A pilot study was undertaken to identify availability of costs and the suitability of the instrument. The pilot study highlighted methodological difficulties: some data were unavailable, there were problems of recall, figures and definitions varied (for example, for FTEs and turnover). As a result, the estimated costs grossly understate true costs. Nevertheless, indicative costs were sufficiently high to justify a national study on a much larger scale.

The first phase of the national study has shown that while nursing turnover is seen as a problem, it is not evenly distributed across public hospitals. DHBs in metropolitan areas, where there is high competition for nurses from private hospitals and non-hospital services, reported significantly higher turnover rates than non-metropolitan areas. Certain clinical areas also reported higher turnover than others (for example, in mental health and emergency services).

Despite concerns over turnover, there was little firm data provided, and the data was not

comparable across DHBs: estimates of turnover rates varied, and no information was collected on how rates were determined, making it difficult to state turnover rates with certainty or compare them across DHBs. Further, the majority of DHBs were undergoing tight controls on recruitment and a number of DHBs reported reviews of senior nursing positions and organisational restructuring. These are strategies that may add to nursing shortages and stress, possibly leading to a dependence on temporary cover and further increases in turnover (Lumley et al. 2004).

Finally, it is of some concern that this study is limited to medical and surgical units in publicly funded hospital services only; it is important that the study is extended to include other sectors: for example, aged care, community and primary care services, private hospitals and specialised nursing units such as intensive care, emergency and operating room services. Therefore, it is necessary to complement the current study on costs of nursing turnover with further New Zealand studies on nurses' reasons for leaving as well as on their reasons for staying. Determining the actual costs of nursing turnover and the reasons for turnover will provide DHBs with the information they need to make strategic decisions regarding their nursing workforce; these decisions are vital in improving retention and building a positive workplace and thereby providing better and more efficient health care.

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'Where's My Pay?': A Commentary on Wage Forfeiture Clauses for Insufficient Notice

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Abstract

Parliament's intent in relation to wages protection has been that workers should exercise control over and receive the full benefit of the expenditure of their wages. The development of forfeiture clauses for lack of notice, especially in relation to the modern employment environment of individual contracting, has undermined this principle. The clash between principle and practice needs government attention and some action.

Introduction

Employers frequently deduct money from the final pay of workers who give insufficient notice of leaving their employment.¹ Such deductions are made with the apparently specific written consent of the employee. This consent is usually included in their employment agreement, which appears to be lawful under section 5 of the *Wages Protection Act, 1983*. This is supported by a number of employment law cases (for example, *Portia Developments v Taylor*, *Labour Inspector (Horn) v Valiant Holdings*). While these cases suggest that the deductions may be lawful, there are a number of reasons for questioning the reasonableness of the practice. Principally, the practice does not appear to be consistent with Parliament's intentions. The deductions are not for the real value of goods or services supplied and workers do not exercise effective control over the deductions. The deductions applied as penalties also do not fit well with the provision in the *Wages Protection Act* that allows the withdrawal of consents to deduct wages, they may promote termination without any notice, and they are regressive in the sense that they recall the operation of the old law of master and servant.

The following commentary provides: very brief outlines of the principles of wages protection evident from parliamentary debates and the development of forfeiture clauses;

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¹ There appear to be no specific figures kept on the number of these cases. The Department of Labour's national call centre records, however, show that it received nearly 9,000 calls on the issue of deductions from wages from the beginning of October 2000 to the end of September 2004 and a further 1500 calls over the same period that indicated unlawful deductions from wages in general. From our observations and those of our colleagues, a significant proportion of wage deduction problems involve deductions on the basis of short notice.

a discussion of the mismatch between principle and practice; and a brief discussion of the other matters that also suggest that automatic forfeiture for not giving notice is inappropriate. For further information and references, a more detailed paper covering the same issues is also available on the website for *New Zealand Journal of Employment Relations* (see: www.nzjournal.org).

Background

Following on from British precedents, statutory wages protection has a long history in New Zealand commencing in 1891 with the enactment of the *Truck Act*. The current principal legislation, the *Wages Protection Act*, was enacted in 1983. For the immediate purposes of this article, the principles behind the legislation and the New Zealand Parliament's intentions on the matter are summarised briefly below.

The overriding principle throughout has been that workers have a right to the payment of their wages in full. In 1891, William Downie Stewart, a leading proponent of wages protection, stated during the debate on the Truck Bill that the right of 'the workman' was to 'be free and untrammelled as to how, when, and where he shall spend his money.' (NZPD, v.73: 228-229). In 1983, during the debate on the current *Wages Protection Act*, Jim Bolger noted that: 'Nothing is more fundamental than the right of an individual to spend his or her own pay' and that the object of wages protection legislation was to allow 'nobody but the worker himself to determine how his wages will be spent.' (NZPD: 2338-3229).

Alongside this principle, Parliament has debated and allowed various deductions from wages under certain circumstances. At first these were itemised in detail, covering items such as certain tools supplied by employers, food and drink, forms of personal insurance, and relief. Importantly, Parliament expressly prohibited deductions to cover employers' insurance costs and also expressly provided that deductions should relate to the 'real and true' value of goods supplied (Truck Act, s. 19). In 1964, the mechanism of listing items for which deductions could be made was replaced and the current provision whereby workers are generally able to provide written consent for deductions was introduced. The Minister of Labour at the time noted that the legislation was still intended 'to protect the wage worker against exploitation by his employer' but that he was prepared to abrogate this principle 'in some respects'. He was concerned in particular to ensure that workers did not obtain goods from their employers and then demand full payment of their wages. The Minister specifically cited the need to protect isolated farmers who supplied their workers with items such as clothing and tobacco and large retail stores that allowed their workers to purchase discounted goods on staff accounts. The legislation had to enable 'the value of those goods' to 'be deducted from the wages.' (NZPD, v. 340: 2588-2589, 3006-3008).

From 1939, Parliament also placed registered collective awards and agreements outside

the scope of the wages protection legislation. It did this on the basis that trade unions under the industrial conciliation and arbitration system were powerful enough to safely arrange and enforce their own qualifications to the general rule that wages be paid in full without risk to their members.

This last development had particular importance in allowing unions and employers to agree to forfeiture clauses for lack of notice. An early example of the clauses appears in the annual collection of industrial awards and agreements and orders of the Arbitration Court for 1940. The purpose of the clause was clearly stated to 'prevent workers leaving without giving notice'. The agreement, however, also recognised the need to take care with regard to the application of the clause and that the wages of a worker who left without notice for 'good cause' were not to be deducted for the lack of notice. In addition, any disagreements over the application of the provisions were to be referred to disputes committees comprising representatives of the worker's union and representatives of the employer (New Zealand Dairy-Factory Employees Award 1940: 11, 18, 23). From this rare provision in 1940, forfeiture clauses increased and were present in about 80% of awards and agreements by 1983. Typically, they required a week's notice or forfeiture of a week's wages.

The enactment of the *Employment Contracts Act* in 1991 affected the pattern of forfeiture clauses in two ways. Firstly, it produced some reduction in the coverage of the clauses through the development of greater individual employment contracting (including an increased reliance on verbal contracts) not directly derived from registered awards and agreements. The second important development, clearly evident from and associated with the above, is that where forfeiture clauses have been included in written agreements after 1991, this has been much more likely to be within the framework of an individual rather than a collective employment agreement.

With regard to the form of forfeiture clauses in current employment agreements, these are continuing to largely follow the traditional format, excepting that notice periods (with forfeiture of wages for the same period) are tending to be longer. Notice requirements in current employment agreements are often two weeks with some requiring four or more weeks' notice. In one extreme case the authors have seen, the agreement required notice of twelve months or forfeiture of the same in wages in lieu of notice. Not so extreme but still onerous was the provision considered by the Employment Court in *Portia Development v Taylor in 1997*. In this case, the intended arrangement was:

'Termination of employment requires (21) days written notice and further requires that you fully train your replacement unless otherwise agreed upon by both parties. In the event that proper notice to quit is not given by either party and in accordance with ... [the requirements outlined in the previous sentence], the defaulting party will be liable to forfeit (21) days wages.'

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A further example of a recent forfeiture clause is cited in *Labour Inspector v Valiant Holdings*. In this case, the employment agreement 'provided for two weeks' forfeiture of wages if no notice were given.'

Both *Portia Development v Taylor* and *Labour Inspector v Valiant Holdings* show that forfeiture provisions are being actively applied. The Valiant Holdings case also shows the need for concern over the current application of these provisions. The Employment Relations Authority found in this particular case that the employer had breached her agreement with the worker, causing the worker to leave without notice, and then deducted for lack of notice. The Authority held that the worker had been entitled to leave without notice and required the employer to pay the worker the wages she had deducted. The following four cases reported to the authors provide further examples of problems and common themes relating to the current application of forfeiture clauses. Because of privacy concerns, the details have been reduced to brief sketches.

Case 1

An office employee, temporarily working in New Zealand, described being penalised for inadvertently giving the incorrect notice. Her written employment agreement required a four week notice period of termination and forfeiture of four weeks' wages in the event that the four weeks' notice was not provided. Apparently unaware of the provision, the worker gave eleven days' notice of leaving and worked the eleven days. She was leaving to return home overseas earlier than she had anticipated. The employer did not pay the worker on termination. The worker, on asking for her missing pay, was shown the four week notice requirement in her agreement. The forfeited four weeks' wages exceeded the final pay and holiday pay she was expecting to be paid on termination. She left New Zealand without receiving any further payment.

Case 2

A worker in a motel reported that she had lost wages after verbally agreeing with her manager to leave her employment without notice. The manager subsequently denied the agreement and implemented the forfeiture clause in her written agreement. Because the change to the agreement had been made informally between the manager and the worker without witnesses, the worker believed she would be unable to show that her contractual obligation to provide notice had been waived. The employee later found that the employer had not found it necessary to re-fill her position.

Case 3

An employee in the fast food industry reported the application of a forfeiture clause after walking off the job because of what he regarded as abusive and culturally insensitive behaviour on the part of his manager. The worker found, on inquiring about the failure of

the employer to direct credit his outstanding wages after the termination, that the employer had deducted two weeks' wages for lack of notice. The two weeks' wages exceeded the sum due on termination, including his final holiday pay. The worker sought advice about his problem and was informed generally of his right to initiate action under personal grievance procedures in the event of unfair and unreasonable behaviour by his employer. The worker expressed concern over the possible legal costs of such action and that he might not be able to provide sufficiently clear evidence to establish his grievance.

Case 4

A worker in a retail outlet operating under a nation-wide franchise left without notice because of continuing delays in the payment of her due wages. Payment was due two days before Christmas. As payment was not made on the due date the worker complained. Wages had still not been paid by Boxing Day, so the employee abandoned her employment and returned to her home town. The employer refused to pay the wages or holiday pay due on the basis of the clause in her employment agreement that provided for forfeiture in the event that the required notice period was not worked out. The worker considered taking an action for breach of contract and a personal grievance against the employer but was also concerned at the possible cost of legal action and potential difficulties associated with travelling back to the town in which the outlet was located for hearings.

The facts of this last case are very similar to those of *Valiant Holdings* and highlight the difficulties of obtaining effective redress for the worker. The inspector's case against Valiant Holdings, however, also indicates that redress may take some time to achieve. The wages in dispute in *Valiant Holdings* were due in September 2002. The Employment Relations Authority made its determination almost two years later. This elapse of time is of course significant, the more so because any delay in receiving expected earnings can be especially hard for workers whose margins for living are small. In part the delay may be an indictment of available disputes resolution processes. It may also be that the black and white terms of the written provision encouraged the employer in her simple approach to the application of the clause and her determined refusal to subsequently budge from her position.

Generally, the authors have been acquainted with a considerable number of reports of deductions for lack of notice, particularly in relation to small businesses and businesses in the rural sector. In a significant proportion of these cases, inappropriate deductions are relatively easy to identify because of the lack of written employment agreements. As written agreements become more common, however, this will probably change. Deciding the accuracy of the application of such clauses may often only follow the more difficult determination of counter-claims of personal grievances and breaches of contracts, sometimes in the absence of willing witnesses. The need to prove a personal grievance or breach of contract to overturn the application of the forfeiture clause tends

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to put workers who genuinely have some 'good cause' for leaving at a disadvantage. They have to weigh their prospects of proof, particularly in circumstances where willing witnesses are not readily available, against the costs of time, emotional distress, and legal fees involved in the pursuit of personal grievances or breaches of contract.

In some ways, forfeiture clauses have changed little since they first appeared. They remain first and foremost penalty provisions seeking to deter workers from leaving work without giving required notice. There is no necessary connection between the real cost to the employer of the worker leaving prematurely and the penalty imposed, as illustrated by the motel case above (see Case 2). The wording of the clauses also tends to follow a very distinct and simple pattern. There is a difference, nonetheless, in that the notice periods associated with the forfeiture clauses are tending to be longer and thus more restrictive. The shift presents an interesting contrast to the general, modern push for employers and workers to adopt more flexible market-driven decision-making in their employment relations.

There has also been a significant change in the process of including and enforcing forfeiture clauses in employment agreements. Before 1991, the inclusion of these clauses was subject to union negotiation. Difficulties in relation to the application of the clauses were also invariably subject to union scrutiny, thus limiting the opportunity for employers to take matters into their own hands. For most workers, neither protections now apply. At best, workers on individual employment agreements generally have to negotiate for themselves the inclusion, exclusion, or modification, of the forfeiture clauses and either represent themselves or obtain costly legal advice in the event of a dispute over the application of the clauses. At worst, some workers are faced with 'take-it or leave it' agreements and have no real prospect of excluding forfeiture provisions from their contracts.

The cases above show some of the types of incidents that are arising in this industrial environment. Important themes in these cases include the lack of worker awareness of: how much notice was required under their employment agreements; the consent they had apparently provided within the body of their employment agreement for forfeiture in the event of insufficient notice; and their right to amend their consent to the forfeiture. The cases also indicate sharp practice and unlawful behaviour on the part of employers in applying provisions relating to forfeiture for lack of notice, and the sense among workers of a relative inability to challenge the employer's use of their, the worker's, 'consent'.

Practice versus Principles

The current practice of including and applying forfeiture clauses for insufficient notice in many individual employment agreements does not match Parliament's intentions in relation to wages protection. The clauses do not provide for the recovery of real costs; individual workers are not negotiating or acting from positions of industrial strength or in

a safe labour relations environment; and workers are not exercising decisive control over the application of the clauses.

Parliament has worked from a fundamental principle that workers must receive their entire wages when due, without being subject to the dictates of employers (who have the power when unrestricted to compromise the workers' ability to determine for themselves how to expend their wages). Over time, it has made specific exceptions to the general rule and allowed deductions for the recovery of the actual cost of things received, given certain circumstances. The types of payments contemplated have included payment for the tools to be owned by trades workers, actual premiums for insurance for accidents outside work, and the actual cost of discounted purchases on staff accounts. These examples are quite distinct from an exception to allow standard penalties against employees in circumstances where the cost (if any) to the employer is uncertain. The main purpose of the forfeiture clauses is punitive; the purpose of the exceptions relating to goods or services supplied is recovery of the fair value of the goods and services supplied. Parliament has never shown any intent in its debates on the enactment of wages protection legislation to include the deduction of penalties against workers as an exception to the general principle of wages payment in full.

Parliament excluded industrial awards and agreements from the protective scope of wages protection legislation on the basis of the ability of powerful unions to negotiate and uphold the equity of their agreements within the safety of the now defunct industrial conciliation and arbitration system. Neither the exclusion nor its grounds apply in relation to non-unionised workers in the post-1991 labour market. Today's reality for many unrepresented workers is that employers set the initial terms of their individual employment agreements. The terms in fact are often offered on a 'take-it or leave-it' basis. Often workers appear not to recognise the inclusion of forfeiture provisions for lack of notice in the agreements they are offered or the significance of the provisions. Even more often they are not aware of the optional nature of the provisions, that is that they do not need to consent. Of course, this option is largely illusory. To dispute the provision may lead to an employer not employing an applicant worker. This seems inevitable in the case of take-it or leave-it employment agreements. In either case, the agreements are generally completed under at least the suspicion of employer coercion. Similarly, workers are unlikely to be aware (until too late – that is after application of the clause on termination) that they can vary their consent at any time (as the *Wages Protection Act* permits). Even if they are aware, they may be restrained from effecting change for fear of poisoning their employment relationships.

According to Jim Bolger, in 1983 the *Wages Protection Act* was intended to allow 'nobody but the worker himself to determine how his wages will be spent.' As discussed above, this intent is not matched by the reality of the inclusion of forfeiture clauses in individual employment agreements. It is also not matched in terms of the practical application of the clauses. Forfeiture clauses are usually very simply framed. This simplicity, however,

is at odds with the often complex circumstances of termination. The worker is not necessarily in the wrong, for example, because he or she departs from their employment without proper notice. As indicated in early awards, such terminations may be for, or in part based on, a 'good cause' (for example in cases of constructive dismissals) and in such circumstances an employer may have no or very limited right to any damages under law in relation to the early departure of worker, and no or little prospect of a court upholding a decision to implement a penalty against the worker. As *Valiant Holdings* and various other cases set out above illustrate, employers step into the gap between the simply phrased forfeiture clause and the often more complicated circumstances of an employee's termination and determine for themselves whether or not the clause applies. To return to Bolger's statement that the worker must have the sole right to determine how his wages are spent and the reason for his statement, decisive control by a worker is exercised in the explicit consent of the worker to deduct a specific and fair sum for some thing received, as in the case of the worker's voluntary decision to pay union fees for union services. It is not decisive control by the worker where an employer effectively obtains the option to decide to deduct a standard penalty with or without regard to any complicating circumstance relating to the employee's termination, and subsequently acts on this option.

Parliament's stated intent is that workers' wages should be protected from the prospect of the interference and control of the employer. It is grounded in a fear that the employer may use his or her ability to control the worker's wage and thus deprive the worker of his earnings to the employer's own advantage. However, employers are determining the inclusion and application of forfeiture clauses in individual employment agreements. The penalties involve the deduction of monies from wages earned by the worker and the sum deducted goes to the employer. Such arbitrary penalties of fixed value applied by employers in often problematic circumstances with no clear regard to actual damages do not match Parliament's intentions. At best, Parliament has indicated that employers should be able to recover the fair value of goods and services they have provided to the worker, as equity would allow, on the informed written consent of the worker. Chilwell J noted in 1978 in the wages protection case, *McClenaghan v Bank of New Zealand*, that the employer should not be 'judge, jury and enforcement officer in his own cause'. In the case of forfeiture clauses, the employer is often the rule giver, judge, jury, and enforcer.

Additional Important Matters

To justify deductions for insufficient notice, employers make a number of arguments. The following briefly considers what appear to be the three most common justifications.

Employers argue that there should be symmetry in the treatment of employers and workers. In particular they note that they are required to give notice to workers (excepting in cases of summary dismissals associated with misconduct) and to provide payment in lieu of notice if proper notice is not provided. The provision of a standard notice period by

employers, or payment in lieu of the same standard notice is not only generally accepted as fair and reasonable practice in employment relations but it is also made an explicit term in many written employment agreements. Employers argue that if they have to meet these requirements then workers should be required to do the same or similar.

Symmetry and a general equality of treatment between employers and workers may be a virtue. This is not easily achieved, however, and certainly does not directly stem from simply placing similar penalty clauses against workers and employers alongside each other in employment agreements. Even the perfect and fair application of penalties in cases of 'bad' workers and employers is unlikely to produce any general equality of impact on workers and employers. The loss of two weeks' wages will likely hurt workers dependent on earned income more than it will hurt employers, who generally have greater financial resources. For a similar reason the loss of work will likely be more damaging to a worker than the loss of a worker to an employer. A general equality of penalty in such circumstances would seem to be unfair. The issue at the heart of wages protection is also important here. The fundamental concern underlying the development of wages protection legislation is a strongly perceived asymmetry in the power of workers and employers. As keepers of the purse, employers have more effective power over the implementation of notice provisions than workers (at least those who are not represented by powerful unions). In disputed cases about costs to either employer or employee on termination, the employer as the payer either of wages due or wages payable in lieu of notice, is always in a position to defeat a worker by withholding payment. The intent of wages protection legislation is to limit this power.

In reality, the argument for the fairness of the same notice and forfeiture clauses applying to employers and workers is crude and the clauses do not achieve a genuine equality of treatment for employers and workers. It is also worth emphasising that wages protection is not designed to stop employers from obtaining fair damages from workers. It should, however, prevent employers from using their possession of wages not paid to remedy damages which they decide are owed without submitting their claim to an objective authority, such as a court. Again, the intent of the legislation includes the stopping of the employer from being judge, jury, and enforcer in his or her own case.

A second argument advanced is that workers need to be subject to an automatic penalty because they may escape a lawsuit for damages by moving to an undisclosed address or by spending their wages before damages are awarded and can be enforced. To accept this, however, is to accept discrimination against workers as a special category of debtors. The possible movement and the inability to pay of any debtor at the time the debt is determined (which, as above, should not be by the employer on termination) are normal hazards of debt recovery. It is also not unknown for employers to not pay wages by reason of bankruptcy and their own change of address.

Third, employers argue that the absence of an automatic penalty means that they must

take the more time consuming and costly step of pursuing the matter to the courts, if they are to recover their due damages. This is, however, largely an argument for the convenience of employers over equity for, or the convenience of, workers. The interest of the employer is served by an automatic penalty but at the likely expense of the worker's right to pay only fair damages (if any). Further, the inconvenience of initiating court action falls on workers if they wish to pursue a change in the status quo following the imposition of automatic penalties.

The issue of forfeiture clauses also raises several other matters. These are: the incongruity of penalty clauses that may be arbitrarily rescinded (without detriment) by those who stand to be penalised; a public policy consideration with respect to the deductions of a standard penalty for varying insufficiencies of notice; a similarity between the objects of forfeiture clauses and nineteenth century master and servant law; and the advantage to the employer of a worker leaving without notice.

At least nominally, workers are able under the *Wages Protection Act* to freely give and withdraw written consent to any deductions they choose. This provides an understandable convenience for workers in organising the payment of fees and debts within the framework of their personal and family budgets. Such voluntarism, however, is less easy to comprehend with respect to forfeiture clauses that penalise workers for lack of notice. Workers appear to have little to gain by agreeing to the clauses which contain only risk to their wages. A forthright informed worker who initially agrees to a forfeiture clause is also able to easily neutralise the punitive effect of the clause by withdrawing consent. In other words, the worker seems to be in a position to allow the penalty clause to subsist merely as long as it poses no threat to him or her. In practice, forfeiture clauses only seem to work if workers are ignorant of their statutory right to agree to, not agree to, vary or withdraw consent to such deductions, or they are intimidated by their circumstances into not exercising the right.

A public policy consideration seems to exist in relation to the apparently common view that the forfeiture clauses provide for a standard deduction regardless of the degree of insufficiency of notice. To illustrate: in the case of the requirement to provide two weeks' notice or forfeit two weeks' wages, an employer will usually deduct two weeks' wages regardless of whether the worker provides one week's notice or gives no notice at all. The effect of this interpretation is to strongly encourage those who may want or need to give less than the required notice, and who have little holiday pay at stake, to give no notice at all. In such cases, the worker is unlikely to receive any final pay on termination regardless of how much notice is worked short of the required notice. It is possible that an employer may seek the balance of the forfeiture, if any remains after calculating the final pay, but this does not usually occur.

Forfeiture clauses also recall the rejected historical requirement of specific performance under master and servant law. The law was widely enacted and enforced against workers

throughout Britain and its colonies and former colonies through to the nineteenth century, but never enacted in New Zealand. Under the master and servant statutes, workers were required to work out full terms of their employment including often long periods of notice. Failure to serve out required terms of service was generally punishable by severe penalties including imprisonment. Proposals for a master and servant statute were considered by the New Zealand Parliament in 1864 and 1865 and rejected. Participating prominently in the debates in 1865, James Fitzgerald, the Minister of Native Affairs and one of the Parliament's leading opponents of the measure, stated that 'In the earlier times of history the idea of slavery had crept into all the relations of the servant with the master; but, as civilisation advanced, that idea of compulsory service had gradually been eliminated'. He further argued that 'any breach of agreement to labour should be dealt with as a civil action' (see Henning 2004: 36-50, 130, 222-223, 329-333).

Edward Gibbon Wakefield, the most prominent of the early promoters of the organised European colonisation of New Zealand and a strong promoter of 'free labour', also included a powerfully pertinent argument in *A Letter from Sydney* for not retaining unhappy workers any longer than need be. He argued that an employer who sought to make a reluctant worker remain as an employee ran serious risks in that the worker 'might contrive to do less than' the value of his wages, and worse - 'and this is no uncommon case - secretly do more than' the worth of his daily wages 'of injury per day to his master's property.' (see Lloyd Prichard 1969: 109). In such a case, far from damaging an employer, the employer could be rewarded by a worker's termination with insufficient notice.

Conclusions

There are a number of reasons to change current practice in relation to forfeiture clauses for insufficient notice. The practice is inconsistent with Parliament's stated intent. The clauses go beyond dealing with actual true debt and involve employer control over the expenditure of workers' wages to the detriment of the rights and interests of workers. Worker difficulties with forfeiture clauses are also exacerbated by the reduced level of unionisation in New Zealand which has deprived workers of strong and informed representation since 1991. Naturally, many individual workers have little expert knowledge of employment law (including the provisions of the *Wages Protection Act*), and are generally unable to match the industrial bargaining position of employers in relation to the establishment and enforcement of the terms of employment agreements. The clauses are also: functionally inconsistent with the terms of the *Wages Protection Act*; against public policy; and regressive.

The government in particular can play a significant role in securing change to this current practice. The Employment Court and the Employment Relations Authority have both indicated that forfeiture provisions in relation to the failure of workers to provide sufficient notice of termination are enforceable. If this is so, it seems necessarily equitable that both parties are fully informed of their rights and obligations in relation to the provisions.

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As a first step, this should involve ensuring parties are fully aware of the inclusion of forfeiture provisions in their written employment agreements. This may be achieved by ensuring such provisions are specifically acknowledged by workers by asking them to initial the appropriate section of their agreements. Alternatively and perhaps making the fact of consent more certain, written consent could be provided separately from the main employment agreement. Possible ambiguity in the meaning of 'forfeiture' should also be clearly rectified. Further, employees must be advised of their right to withdraw their consent to deductions under the *Wages Protection Act*. This might well be set out as a plainly worded note to a separate consent document. Given the hardship of losing immediately anticipated earnings, it is also important that workers understand and are given immediate and affordable access to disputes and personal grievance resolution services where there is any dispute over the fairness of the application of forfeiture provisions by the employer. Another matter that might be considered is an increase in the certainty of penalties for the misuse and misapplication of forfeiture provisions, thus an increased deterrence against such action. For government these issues may entail action to amend the requirements of the *Wages Protection Act*, changes to its institutional response to complaints of unfair deductions on termination, and would certainly entail greater effort in educating workers as to their rights under the Act and under employment law generally.

These suggestions of course deal with the amelioration of the provision and application of forfeiture clauses. The overall argument of this paper, however, is that forfeiture provisions in relation to insufficient notice are inappropriate and should not be lawful. This is not to deny that employers may suffer damages as a result of the action of employees ending their employment without sufficient notice. Nor does it deny employers' legal recourse to recover their damages. These will always be available to employers and workers for all types of debt and can be remedied through various disputes procedures and before various disputes tribunals, authorities, and courts. The issue is simply that neither penalties nor damages should be recovered through arbitrary self determination and self enforcement by employers. In the circumstances, the best change to current practice may be secured by an amendment to the *Wages Protection Act* that makes forfeiture clauses clearly unlawful.

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Downing Scalpels and Stethoscopes: The 2003 South Canterbury Senior Doctors' Strike and the Challenges facing their Union

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Abstract

South Canterbury senior doctors conducted unprecedented strike actions during 2003. The negotiations and strike actions provide important insights to the employment relations climate in the health sector and illustrate various union strategies to gain member and public support for the doctors' position. The strike actions were part of a decentralised, single employer collective bargaining pattern which localised employment conditions and collective action. This bargaining pattern has subsequently been abandoned for a national collective employment agreement.

Introduction

During February 2003, senior doctors, mainly specialists but also medical officers of special scale (MOSSs),¹ employed by the South Canterbury District Health Board (DHB) took four separate strikes over a four week period in response to an impasse over their collective agreement negotiations with the DHB. A fifth strike scheduled for the 7th of March was called off following a new proposal from the DHB that was sufficiently attractive to lead to a resumption of mediation and, subsequently, to a settlement. The strikes were all of six hours duration commencing at 9am each day and involved the withdrawal of labour for elective (non-emergency) services, largely operating lists and outpatient clinics; emergency and inpatient cover continued to be provided.

Although junior doctors (resident medical officers) had on a number of occasions previously taken strike action in New Zealand, this was unprecedented for senior doctors and posed strategic and tactical challenges for their union, the Association of Salaried Medical Specialists (ASMS), including the role of and relationship with the media, the reaction from the public, the effectiveness of the strikes, and potential political responses. Leading up to the commencement of the negotiations, 26 senior doctors out of an estimated potential of 29 were union members (the figures do not cover locums – temporary appointments).

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A fuller narrative account of this dispute was presented to the Australian Medical Association's Industrial Coordination Meeting and is available on www.nzjournal.org.

The Negotiations

Since 1993, the core terms and conditions of employment of senior doctors by DHBs and their predecessors had been determined by single employer collective bargaining (see Powell 1995). Although the union had succeeded in achieving discernible benefits for its members, inevitably senior doctors in some DHBs benefited less compared with those in other DHBs. This was the case in South Canterbury. On the 1st of July 2002, the South Canterbury specialist mean full-time equivalent (40-hour week only) base salary was the lowest out of the 21 DHBs, \$7,386 behind the highest and \$4,375 behind the national mean of \$125,289 (based on annual salary surveys conducted by ASMS which were based on data provided by DHBs and their predecessors – (see www.asms.org.nz). Further, by the expiry of the former collective agreement on the 30th of June 2002, the South Canterbury specialist salary scale was also well behind specialist scales in the other 20 DHBs. Its lowest step was 20th and its ultimate step was 21st. In addition, another seven DHBs also had at this time collective agreement negotiations underway, all of which were to be settled without recourse to industrial action.

A major issue of frustration facing South Canterbury senior doctors was the effect of having to work without registrars (doctors in usually five-year specialist training programmes following their first two years as house surgeons). South Canterbury lacked the critical volumes to ensure sufficient work to meet the training needs of locally based registrars compared with larger DHBs. Registrars make a critical difference in the workload and work pressures of senior doctors when on onerous and potentially risky rostered after-hours acute care duties, compounded by high frequency rosters (usually between 1:2 and 1:4).

Part of the remuneration for working these rosters was an availability allowance, usually calculated as a percentage of the base salary, as a retainer for being on rostered after-hours' call duties. These allowances varied considerably between DHBs, due to the great variability between rosters and, therefore, comparisons between them are difficult to make. The South Canterbury availability allowance had three main components - frequency of roster; response and attendance requirements; and 'no registrar cover'. The third component had a value of 1% which was to become a central issue in the direction and settlement of the dispute.

Negotiations commenced on the 24th of June 2002 and continued through until the 20th of March 2003. They included six days of mediation which commenced on the 14th of August in response to an impasse. The ASMS lodged an ambitious claim seeking several fiscal enhancements while the DHB had its own ambitious counter-claims which would have removed or eroded existing terms and conditions.

The impasse between the parties remained after the third day of mediation on the 27th

of November. But, by then, the issues of dispute had narrowed considerably. Two key union claims had largely been addressed—a \$3,000 salary increase to existing salary steps (the DHB's original position was \$1,000) and extending the virtual automatic annual salary step advancement to the top of both scales, consistent with most other DHBs. The DHB had also withdrawn all its claw-back claims.

By the time union members voted to proceed with strike action, the disputed issues were the strategically selected 'no registrar' component of the availability allowance (no employer offer), backdating of the \$3,000 salary increase, and the length of the term.² The union conducted a secret postal ballot of all its members, during the 2nd to the 19th of December, over its recommendation for the five six-hour strikes over elective services. The ballot result was clear but not overwhelming. With a response rate of 84%, 68% voted to support the strike proposal while 32% voted against it.

Challenges for the Union

The ASMS was conscious that undertaking strike action was unprecedented for senior doctors in New Zealand and raised serious challenges for it to overcome. Consequently, its focus shifted once it became evident strike action was likely. Based on the belief that public support and media empathy would be more achievable, the main emphasis was on after-hours emergency cover rosters. It also adopted a form of industrial action that was intended to cause inconvenience rather than harm to patients, affect the politically sensitive issue of elective volumes, and be more consistent with the ethical values of medical practitioners. Further, it continued to call upon the DHB to agree to independent arbitration as an alternative to the strikes.

Membership Support

Membership support and identification with the direction of the ASMS's strategy was critical. In fact, negotiations commenced with a high degree of membership ownership. The draft claim forwarded to union members did not seek any change to the availability allowance. However, the responses led to the finalised claim seeking to increase the 'no registrar cover' component from 1% to 6%. Then, in reaction to further membership feedback, the claim was again modified on the eve of negotiations to 15%.

Regular well-attended union meetings were features of the dispute, often scheduled in conjunction with negotiation rounds. These meetings made decisions over whether to accept or reject specific DHB proposals, invoke mediation, and hold stopwork meetings. Two well-attended two-hour stopwork meetings were held, during which all elective services were cancelled. The first, on the 11th of November, provided the union's negotiating team with the authority to develop a strike action strategy for consideration in a secret postal ballot. The second, on 11 March, determined the ASMS's approach after the cancellation of the fifth strike. Further, the decision to undertake strike action

was based on an affirmative secret postal ballot. Only four doctors did not participate in the strike 'more because they were philosophically opposed rather than against what the doctors stood for.' (Timaru Herald, 20 Feb. 2003).

The main sign of membership discord over the union's handling of the dispute came later in 2003 when, while being prepared to renew union membership, one member wrote to the union advising that a number of members 'feel we have been the victims of the agendas of others gathering power to themselves, with the senior medical staff in the final result being cast aside with little to show for all the anguish the recent events have caused, as the sideshow moves on.' (ASMS member, 16 Sept. 2003). Nevertheless, despite the criticism, union membership increased from 26 to 29 during the strikes.

Effectiveness of Strikes

In the context of raising the profile of the dispute and putting pressure on the DHB to improve its bargaining position, the form of the strike actions had a two-fold objective: to target the sensitive political issue of elective volumes and to confine the impact on patients to inconvenience only. The first strike, on the 3rd of February, proceeded without incident with all scheduled surgical lists and outpatient clinics cancelled. Nearly 70 hospital appointments were cancelled (Timaru Herald, 4 Feb 2003). The second strike led to the cancellation of all four scheduled surgical operating lists involving approximately 14 patients, two endoscopy sessions involving 10 patients, and outpatient clinics affecting another 66 patients. The DHB acknowledged that there had been no major problems but also that there were 'lost opportunities' of missed elective surgery (ibid, 12 Feb. 2003).

By the time of the third strike the DHB had, of necessity, adopted a modified approach to the cancellation of elective procedures. Only five patients had operations cancelled for the day with another nine out-patient consultations also cancelled. The cancellations were low because patients had deliberately not been booked for clinics and operating lists in advance (ibid, 20 Feb. 2003).

Media Strategy

In contrast with the DHB's reluctant and low key approach, the ASMS adopted a proactive strategy seeking to influence and shape the direction of media coverage, including formal statements and organised interviews. This contributed to and was helped by empathic newspaper headlines, particularly through the locally influential *Timaru Herald*. The first report was the ASMS's claim that South Canterbury senior doctors' conditions 'compare very unfavourably with the rest of the country....The sticking point was management's refusal to increase the allowance for being on-call to reflect the lack of registrar cover.' (Press, 30 Oct. 2002). In a reference to a four-day radiographers strike that had just commenced at the Auckland DHB, the Press had also speculated that South Canterbury

senior doctors were 'poised to join in a wave of industrial action hitting the health sector' (ibid, 29 Oct. 2002). The sympathetic media account immediately after the stopwork meeting resolutions focused on the pressure of the after-hours rosters, comparability of conditions with those in other DHBs, and recruitment and retention. Dr Matthew Hills, a geriatrician and member of the union's negotiating team, commented that he had come to Timaru five years ago for lifestyle choices but it was hard recruiting doctors for those reasons now because their conditions were falling behind (Timaru Herald, 12 Nov. 2002).

In addition to further coverage by the *Timaru Herald*, the ASMS's strike ballot result achieved national coverage when the union was interviewed on Radio New Zealand's Checkpoint programme on the 19th of November emphasising the after-hours rosters and recruitment difficulties. The ASMS's focus on after-hours rosters continued to be reported during December and January in both the local and national media leading up to the first strike on 3 February.

On the eve of the first strike, in an attempt to turn the media and the public against the senior doctors, the DHB made one of its few media statements arguing with much detail that its offer was generous. While this achieved prominent coverage, so did the ASMS's response which described it as inaccurate, and deliberately misleading (Timaru Herald, 1 and 5 Feb. 2003).

The absence of negative media coverage continued throughout the strikes. The ASMS's reiterated call for independent arbitration received national radio coverage (eg. Mid-Day Report, Radio NZ, 11 Feb. 2003). The Press gave extensive coverage following the third strike with a feature article titled 'Specialists face tough call'. Although the DHB's views were reported the tone of the article was sympathetic towards the senior doctors (Press, 20 Feb. 2003).

The ASMS's National President Dr Peter Roberts achieved national coverage when reporting 'strong national support' for the striking doctors and accusing management of being prepared to 'die in a ditch' over the dispute. He blamed the DHB's management style which had 'forced the doctors to act.' (8am News, Radio NZ, 22 Feb. 2003). Dr Roberts' visit to Timaru in support of his union members on the day of the fourth strike, the 27th of February, attracted further media interest.

Doctors Speaking Out and Resignations

In some instances, in recognition of the status of doctors within smaller cities, senior doctors participating in the ASMS's negotiating team spoke on behalf of the union. A related feature was doctors themselves speaking out. Between the first and second strikes, the *Timaru Herald* ran a sympathetic feature article based on an interview with orthopaedic surgeon John Rietveld, one of the DHB's most recently employed senior

doctors, who highlighted the pressures of the after-hours rosters on patient safety and family life, decried the lack of trust in management, noted the disparity in key employment conditions with other DHBs, and questioned why 'would anyone want to come here?' (Timaru Herald, 8 Feb 2003).

This was followed by a more significant collective action, an open letter, which achieved front page prominence in the *Timaru Herald*, from 25 senior doctors, including all the clinical directors and the minority opposed to strike action, calling for board members to become more involved in the dispute, and accusing management of misleading them and wrongly portraying the senior doctors' position. In reference to the 'unprecedented' strike action, they affirmed that:

Such actions are not taken lightly and when this action involves the most long-serving and dedicated senior medical staff at Timaru Hospital, all with a proven commitment to the South Canterbury dispute, it begs the question why? (ibid, 21 Feb. 2003).³

This was quickly followed by extensive publicity associated with another event, the sudden resignation from the DHB of Dr John Doran, a physician who had worked at Timaru Hospital for 31 years, believing that he could no longer safely work there. Under the banner heading 'Distressed' doctor quits' and a sub-heading 'I won't be the only one', Dr Doran reluctantly attacked the management style with the observation that 'I have never criticised Timaru Hospital or its managers before and it distresses me to do it now.' (ibid, 22 Feb. 2003).⁴

Then, after the ASMS's decision to cancel the fifth strike and return to mediation, an experienced general surgeon, Neil Harding-Roberts, announced his resignation leading Chief Executive Craig Climo to acknowledge that he 'was a very good surgeon and he [Climo] was sorry that he had decided to resign....negotiations were debilitating for all staff and was obviously affecting public confidence in the hospital....it is a timely reminder to both parties of the need to reach a speedy settlement.' (Timaru Herald, 20 March 2003).⁵

Public Response

More so than the senior doctors anticipated, there was already at the commencement of the strikes much public goodwill towards them. Immediately after the first strike the *Timaru Herald* called on the 4th of February 2003, under the heading 'Have a say', for its readers to ring a specified telephone number on how the strike affected them and what should happen next. The following day, the newspaper reported that 'South Canterbury people yesterday came out in support of the striking senior doctors' with all but one caller 'was right behind the doctors and encouraged them to stick to their guns.' Subsequently, the DHB's chief executive acknowledged that the senior doctors' after-hours on-call

roster was 'onerous' and did not 'begrudge the doctors one cent of the money they earn.' (Timaru Herald, 13 Feb. 2003).

Inevitably the pressure of public sympathy for the striking senior doctors was to take its toll on the DHB. Internal divisions emerged among the DHB's board members over whether they should also participate in the negotiations along with management representatives. The cumulative pressure of these developments led to signs of internal dissension on the board over the DHB's direction. Under a front page heading of 'Fears grow other doctors may resign', board member Terry Kennedy called for a special meeting reporting that he had been 'inundated with calls from the public' following Dr Doran's resignation.⁶ 'My phone started ringing at 8am on Saturday morning and did not stop until Sunday evening.' (Timaru Herald, 26 Feb. 2003). The callers were worried that more doctors might resign. Next, the Mayor of Timaru spoke out criticising the DHB's approach, in particular the refusal of the board to intervene in the dispute and the effect on community and hospital morale (ibid and Morning Report, Radio NZ, 27 Feb. 2003).

In addition to many letters supporting the senior doctors in the *Timaru Herald* and the criticism of the DHB by the Mayor, the most significant initiative was taken by Grey Power who convened a public meeting on the 5th of March which was attended by a reported 450 people. The strong sympathy of the meeting for the senior doctors was evident with several of them speaking, along with the DHB chair and deputy chairperson (Timaru Herald, 20 Dec. 2002).

Political Responses

Although it had a bias in favour of the DHB, the government did not publicly side with either party. Despite being approached following the ASMS's announcement of the outcome of its strike ballot, Minister of Health Annette King declined to comment.

Ironically, given their underlying negative attitude towards unions, while not endorsing the strikes, the opposition National and ACT parties expressed empathy towards the position of the senior doctors. National's health spokesperson Dr Lynda Scott commented that the planned strikes of senior doctors 'shows their absolute frustration' who were 'feeling the strain because of understaffing' (Timaru Herald, 24 Dec. 2002). Dr Scott linked this situation to under-funding and criticised the Health Minister for inaction.⁷ Both parties' health spokespeople also pointed the finger at the government following the first strike on the 3rd of February (ibid, 4 Feb. 2003).

On the day of the third strike, the Health Minister was drawn into the dispute with an oral parliamentary question from Dr Scott. The Minister declined to become involved. The tenor of her response, however, reflected a bias towards the DHB as she quoted uncritically its assertion of the fiscal benefits of its offer, despite the veracity being disputed by the ASMS. When invited to comment on the resignation of an experienced

general surgeon, she said that 'she was continuing to follow the issue with interest but was unable to intervene in an industrial dispute.' (Timaru Herald, 20 March 2003).

Nevertheless, the Minister was conscious of the level of public support for the senior doctors and sensitive to the need for a resolution. In late February, she sent her Principal Medical Adviser to Timaru for extensive discussions with senior doctors and management, although he was not involved in discussions over possible settlement proposals.

Lessons of the Dispute

Conclusions

It is possible to identify tangible benefits arising out of the decision to take strike action. Several issues in the negotiations had already been resolved before the ASMS gave its informal notice of the strikes on the 19th of December 2002. As a result of the strike actions the fiscal benefit to senior doctors was further enhanced in the following four areas:

1. The 'no registrar cover' component of the availability allowance increased from 1% to 3% effective on the 1st of October 2002 and then to 5% on the 1st of June 2003.
2. The term of the new collective agreement was reduced from 18 to 13 months after the expiry of the previous collective agreement.
3. The effective date of the \$3,000 salary increase for specialists became the 1st of July 2002 (expiry of the previous collective agreement) instead of the date of ratification. The practical effect of this change was to extend backdating by at least six months.
4. The \$3,000 salary increase for medical officers of special scale (MOSSs) was increased to \$4,000 with the backdating similarly increased by at least six months to the 1st of July 2002. Further, these salaries were further increased by another \$1,000 effective on 1 January 2003.

Despite being unprecedented, the South Canterbury strikes confirm that under certain circumstances a professional workforce can be prepared to undertake industrial action and can achieve tangible benefits as a result. The prerequisite was an already dissatisfied workforce frustrated by unfavourable employment terms relative to many of their counterparts in other DHBs, onerous working conditions (after-hours' rosters) and an unresponsive management.

A focused strategy to address the anticipated challenges was also required in order to neutralise possible negative political responses (and which achieved unusual opposition party empathy) and win public support. This strategy was based on a high level of membership involvement in union decision-making, adopting a form of strike action designed to maximise political sensitivity for the employer and government but reduced impact for the public (including advocating arbitration as an alternative), focusing

the dispute on the issue considered most likely to achieve public empathy while still being directly relevant to working conditions and remuneration, utilising sympathetic public predisposition towards the senior doctors, an active media strategy, and doctors individually and collectively being prepared to speak out.

The context of the strike – particularly the growing disparity in employment conditions across the health sector – and the strike itself illustrate how disruptive and personally difficult localised employment bargaining can be. The recent return to national collective bargaining has overcome some of these difficulties and it has also prompted an overhaul of employment conditions for senior doctors with a new national DHB collective agreement including some of the key issues originally sought in the early stages of the South Canterbury negotiation.⁸ The strike also indicates that some managers may have to take a hard look at their management styles and consider how they can best interact and communicate with staff in order to facilitate staff commitment and better quality health services.

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Powell, I. 1995. 'The Experience of Collective Bargaining for Salaried Senior Doctors under the Employment Contracts Act', *New Zealand Journal of Industrial Relations*. 20(2): 195-210.

Footnotes

- 1 In contrast to its similarly titled predecessor 1968 legislation, under the Medical Practitioners Act 1995 'specialist' is a term of convenience rather than a statutory term. There are two main forms of registration for medical practitioners: vocational which covers the secondary care specialties and general practice and general which requires some form of oversight and includes MOSSs.
- 2 The union wanted the salary increase backdated to the expiry of the previous collective agreement (1 July 2002) whereas the DHB wanted it to be effective from the date of settlement. The union was seeking a 12 month term from the expiry of the previous collective agreement whereas the DHB wanted it to be 12 months after the date of settlement (ie, at least 18 months).
- 3 The article also reported the Board's chairperson rejecting the call for its intervention and for arbitration while the chief executive also defended the DHB's position.
- 4 This front page article included a resolution of the ASMS National Executive in support of the striking senior doctors and was accompanied by a separate interview with Dr Doran and reply by the DHB (Timaru Herald, 22 Feb. 2003). Radio New Zealand also reported the resignation on the 22nd of February in its hourly new bulletins. Finally, Dr Doran's resignation led to several letters of support from the public.
- 5 The ASMS was also interviewed by Radio New Zealand over Harding-Roberts' resignation (Mid-day Report, 20 March 2003). As with John Doran's earlier resignation, this also led to letters of support from the public to the Timaru Herald (e.g., 22 March).
- 6 Board chair Joe Butterfield rejected Kennedy's call for a special meeting on the grounds that there were enough meetings scheduled anyway.
- 7 Dr Scott is a medical practitioner who had been employed by the Nelson Marlborough Hospital and Health Service (predecessor of the DHB) in geriatric care.
- 8 New Zealand District Health Boards Senior Medical and Dental Officers Collective Agreement (1 July 2003-30 June 2006). The national settlement included time-and-a-half for average hours worked on rostered after-hours call duties, six weeks annual leave, further enhanced salary scales (including widened margins between steps and extending the length of the scales), and enhanced employer subsidised superannuation.

Employee or Independent Contractor?

Comments on: Three Foot Six Limited v Bryson (CA 246/03, 12 November 2004)

PAM NUTTALL AND FELICITY REID*

Abstract

The recent Court of Appeal decision in *Three Foot Six Limited v Bryson* provides the first interpretation at appellate level of section 6 of the Employments Relations Act 2000. Although the majority judgment acknowledged that the definition of employee was different under the new legislation, it viewed this alteration as a “nudge” rather than a radical change in the law. The outcome of the case reflected this view. Industry practice and the intention of the parties carried significant weight in establishing that Mr Bryson was a contractor rather than an employee. While the Court endorsed the use of the “fundamental” test in determining the real nature of the employment relationship, it preferred a more “open-textured” enquiry to establish Mr Bryson’s employment status. This approach casts doubt on the relevance of the traditional “tests” in defining who is an “employee”.

Introduction

While the “Lord of the Rings” has been enjoying worldwide acclaim, the case of Mr Bryson, an on-set model technician, has been working its way through the Employment Institutions and Employment Courts. The issue in Mr Bryson’s case is whether he was an employee or an independent contractor. In November 2004, the Court of Appeal gave a judgment in which the majority held that Mr Bryson was an independent contractor (CA 246/03, 12 November 2004). The case is significant because it is the first time the Court of Appeal has considered the definition of section 6 of the Employment Relations Act. It is also significant because of the treatment by the Court of the traditional tests used to determine the status of a worker and because of the weight they gave to the role of industry practice.

The Employment Relations Act, section 6 stipulates:

“Meaning of employee

- (1) In this Act, unless the context otherwise requires, **employee**-
 - (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and

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- (b) includes –
 - (i) a homemaker; or
 - (ii) a person intending to work; but
- (c) excludes a volunteer who –
 - (i) does not expect to be rewarded for work to be performed as a volunteer; and
 - (ii) receives no reward for work performed as a volunteer.
- (2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the Court or the Authority (as the case may be) must determine the real nature of the relationship between them.
- (3) For the purposes of subsection (2), the Court or the Authority –
 - (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
 - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.”

Both dissenting and majority judgments in the Court of Appeal reviewed the policy intent behind section 6 and modifications to the wording of the section during the Select Committee process. The majority cited a submission by Department of Labour officials that the “policy intent by clause 6 is to stop some employers labelling individuals as ‘contractors’ so as to avoid the responsibilities that would arise if they were employees” (*Three Foot Six Limited v Bryson*, para 75). However, in his dissenting judgment McGrath J. suggested that the importance the majority placed on industry practice *could* amount to “a label argument” (ibid, para 33) and that “...there is a risk in applying such an argument that a whole industry will be treated as excluded from the provisions of the Act...” (ibid, para 33).

The predecessor to section 6 was section 2 of the Employment Contracts Act 1991 which was briefer and less specific. In the *Bryson* case, the Employment Court clearly viewed the new section as moving away from the previous emphasis on statements of parties’ intentions to a more objective analysis of the actual structure of the relationship. However, the majority of the Court of Appeal viewed the change in legislation as a “nudge” rather than a radical change in this area of law. In the end, the parties’ intention, in the light of particular industry practices (see de Bruin and Depuis 2004), carried the most weight. The majority specifically rejected (*Three Foot Six Limited v Bryson*, para 105) the appellant’s contention that section 6 of the Employment Relations Act did not change the law as stated in *TNT Worldwide Express (NZ) Ltd v Cunningham*. The judgment acknowledged that this interpretation was not “tenable in light of the policy underpinning s 6”(ibid). However, the outcome does appear to resemble a decision that could have been reached under the approach taken in *Cunningham*.

The Appeal Court case: background and key issues

Mr Bryson initially worked for Weta Workshop as an independent contractor. He was then seconded to Three Foot Six Limited for two weeks at the end of which he was invited to continue working. He accepted, although no formal contract was entered into for six months. The contract Mr Bryson eventually signed was called a 'crew deal memo' and was fairly standard in the film industry.

The crew deal memo referred to Mr Bryson as being a 'contractor' and specified that he was not an employee of the company. On the other hand, there were a number of features of the crew deal memo which were more consistent with an employment relationship. These features included sick leave at the discretion of the producer; payment for statutory holidays; the contractor had to work exclusively for *Three Foot Six Ltd* unless approval was given not to; hours of work were stipulated and overtime was paid if they were exceeded; and the company provided all tools except for a few basic tools. In addition, Mr Bryson was trained for six weeks by the company. He was allocated work each day and if he finished that work he would be allocated tasks elsewhere.

Shaw J. held in the Employment Court that Mr Bryson was an employee. This was based on the application of principles that had been developed in two earlier Employment Court decisions that considered section 6 of the Employment Relations Act 2000 (*Koia v Carlyon Holdings*, *Curlew v Harvey Norman Stores*). The principles were:

- The Court must determine the real nature of the relationship.
- The intention of the parties is still relevant but no longer decisive.
- Statements by the parties, including contractual statements, are not decisive of the nature of the relationship.
- The real nature of the relationship can be ascertained by analysing the tests that have been historically applied such as control, integration, and the 'fundamental' test.
- The fundamental test examines whether a person performing the services is doing so on their own account.
- Another matter which may assist in the determination of the issue is industry practice although this is far from determinative of the primary question.

Applying those principles, Shaw J. held that Mr Bryson was an employee, citing the lack of evidence that Mr Bryson was acting as a separate business; his lack of other employment; the requirement for six weeks training; and the content of the crew memo which although referring to independent contractors, read much like a contract *of* service (as opposed to a contract *for* services).

The majority of the Court of Appeal, William Young and O'Regan JJ., acknowledged that the way Mr Bryson's engagement worked out in practice "smacks very much of

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employment" (*Three Foot Six Limited v Bryson*, para 97), but concluded that he was an independent contractor. They held that the almost invariable practice in the film industry for workers to be engaged as independent contractors was a significant factor in them deciding that the "real nature of the relationship" was that of independent contractor.

In his dissenting judgment, McGrath J. cautioned against saying that all film workers are independent contractors because such an approach is a label argument. He viewed the legislation as requiring a determination of the real nature of the relationship on an individual basis and said that it is "not open...to the Court under the definition of "employee" in the 2000 Act to reach a decision that has general application to the film industry." (*ibid*, para 35). The conclusion reached by McGrath J. was that there were a number of features of the arrangement which "strongly suggest that the underlying nature of the parties' relationship is one of employment under a contract of service." (*ibid*, para 31). These features included the high degree of control; the level of integration into the business; the set hours and allocation of further work if he finished his tasks early; the inability to work elsewhere; the lack of ability to profit from the job; the provision of tools; the lack of personal investment and the inability to delegate (*ibid*, paras 28-31).

Comments

Industry Practice

The decision raises a number of issues. The first and most obvious is the role industry practice should play in determining whether a person is an employee. McGrath J. cautioned against 'labelling' all the workers in an industry, whereas the majority saw it as determinative. In the course of the judgment, the majority 'reconstructed' the parties' arguments in terms of whether "services of the sort which Mr Bryson provided (ie. as a member of a film crew)" are properly the subject of contracts of service or for services (*ibid*, para 80). This reconstruction moved the focus to the *type* of work performed in the industry as being determinative of the status of the worker rather than on the *structure* of the arrangements by which the work is carried out.

The majority recognised that in practice, Mr Bryson's engagement "smacks very much of employment" (*ibid*, para 97), and that although the significance of contractual terms has been downplayed, "standing alone" the contractual terms are not determinative (*ibid*, para 109). But then they held that a properly conducted "open textured inquiry" into the real nature of the relationship would consider the "external reality...most obviously relevant to the situation of the parties", that is, the fact that there are hundreds and perhaps thousands of people who work in the film industry in very much the same way as Mr Bryson did, and do so as contractors (*ibid*, para 111). And so they held that "[i]n the light of industry practice there is no basis for holding Mr Bryson's relationship with the appellant was other than what was provided for in the contract he signed." (*ibid*).

On this analysis, industry practice appears to trump all other 'relevant matters'.

Interpreting Section 6 in the Light of the TNT Decision

The leading decision under the previous Employment Contracts Act, *TNT Worldwide Express (NZ) Ltd v Cunningham*, was used by all Court members as the basis for measuring the changes that the new section 6 of the Employment Relations Act has brought to the meaning of 'employee'. Initially, in a decision in 2001, the Employment Court had viewed the TNT decision as meaning that the expressed contractual intentions of the parties prevailed over everything else (*Koia v Carlyon Holdings Ltd*). Subsequently, however, that was considered to be "too simplistic an analysis" and instead the TNT decision was held to require that all relevant factors evidencing the intention of the parties at the time the contract was entered into were to be considered (*Curlew v Harvey Norman Stores*).

Both the majority judgement and the dissenting judgement in *Bryson* considered the TNT decision as important in construing the wording of section 6 of the Employment Relations Act. McGrath, J. considered it significant because section 6 was directed as a "reforming measure" to the definition of "employee" under the previous legislation whose principles are stated in the TNT case.

William Young and O'Regan JJ. considered that "the [TNT] case does not stand for absolute deference to party autonomy" (ibid, para 70), but listed three important features of the case as respect for contractual form, acceptance of the choice made by the parties and rejection of a pro-employment bias (ibid, para 69).

They rejected the applicant's submission that section 6 "did not change the law as stated in TNT" and rejected the submission that section 6(3)(a) and (b) "merely reiterate the old rule that contractual labels are not determinative of status." (ibid, para 104). They accepted that section 6 "proceeds on the basis that 'the real nature of the relationship' is not controlled by contractual terms and this is so even in cases where the contractual form adopted by the parties cannot be stigmatised as a sham." (ibid, para 105).

But although "the approach dictated by s6 is plainly not the same as that taken ... in TNT", the majority still considered that "what was intended was more in the nature of a nudge rather than radical change in this area of law." (ibid, para 78).

The Traditional Tests and Intention

A final matter that the judgment leaves open is the role of the traditional "tests" often applied in these types of cases: the control test, the integration test and the fundamental test (see Deeks and Rasmussen 2002: 98-99). The majority considered that an analysis of the "real nature of the relationship" should not be restricted to those tests. They were concerned that an application of the traditional control, integration and fundamental

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tests alone to determine the real nature of the relationship could leave little scope for significant weight to be placed on contractual intention (ibid, para 103).

Rather they held that there should be more “open textured” inquiry (ibid, para 101). They considered the fundamental test, as applied in the leading case of *Market Investigations v Minister of Social Security* (see para 184-185), encapsulated the intention of Parliament but noted that the criteria set out there were not exhaustive and did not take into account a case where the overriding industry practice was for workers to be engaged as independent contractors. They held that Shaw J. had applied the fundamental test incorrectly by comparing Mr Bryson with a builder or plumber rather than with others in his industry.

In the end, it seems that it was the parties’ intention as expressed in the contractual terms, viewed in the light of current industry practice, that carried the day and this was seen as determining the real nature of the relationship.

So where does this leave the traditional tests as far as the new legislation is concerned? The control test and integration test receive little favour but possibly still have a life as part of the “open textured “ approach. The fundamental test has received qualified endorsement – it can assist in determining what the “real nature of the relationship is”. However, it seems it is not determinative if there is an overriding factor such as industry practice. What is left open is what the “open textured inquiry” should include where there is no overriding industry practice.

At the time of writing, an application has been filed to appeal this decision to the Supreme Court

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CHRONICLE

October 2004

The passage of the Employment Relations Law Reform Bill through Parliament continued to make the news during October. According to the Dominion Post, the National Party claimed that one of the key aspects of the Bill was compulsory unionism by stealth. The National Party's Industrial Relations spokesperson, Wayne Mapp, stressed that the bargaining fee arrangements meant workers had to opt out, rather than into unions and that the National Party would fight its introduction. He claimed that no one, apart from the unions, wanted the changes and that the feedback from a number of submissions to the Select Committee was that if 'it ain't broke, don't fix it'.

The business press also provided substantial coverage of the Bill. The Independent claimed that Labour Minister Paul Swain sneaked the bargaining fee measure into the Bill during the parliamentary recess, through a Supplementary Order Paper. The newspaper suggested that the proposed changes made it clear that employers could not object to the inclusion of a bargaining fee in collective employment agreements. The National Business Review viewed the late introduction of the bargaining fee as a major victory for unions at the expense of fairness and balance in employment law, especially at the expense of employees who choose not to belong to unions. An Employers and Manufacturers Association survey showed that 63% of employers thought that a collective would be bad for their business and 88% of employer respondents had a negative view of multi-employer collective agreements.

There were a number of crucial negotiations in the health sector. National multi-employer collective agreement talks for nurses continued (see September Chronicle). The Dominion Post reported that "significant progress" had been made after three days of negotiations between the Nurses Union and the 21 District Health Boards. It was also reported that senior doctors had voted overwhelmingly in favour of a national collective agreement giving them six weeks' leave a year and a base salary between \$111,000 and \$161,000. Both the NZ Herald and The Press alluded to contingency plans prepared by the Health Boards as they faced a 6-day national strike by 2000 junior doctors. The doctors claimed they were being worked off their feet and wanted reduced hours in place of a pay rise. The Health Boards responded by saying that 27% more junior doctors were on duty now than five years ago and working conditions were 'pretty favourable' compared with overseas.

The ongoing dispute at the Lyttleton Port Company (LPC) continued to receive media coverage (see September Chronicle). Following the recent Employment Relations Authority determination in its favour, the LPC was hoping that this would allow a swift and successful conclusion to negotiations. However, unions held a stopwork meeting to

update members on options which included appealing the ERA decision.

Bargaining at the Burnham Military Camp prompted a stand-off between members of two different unions. Around 60 civilian workers represented by the National Union of Public Employees (NUPE) went on strike for better pay but they felt that they were left “high and dry” by the Public Service Association (PSA) that had settled. The NUPE members wanted an 8% pay rise but the Public Service Association (PSA), which has about 800 members among the country’s 2,000 defence force civilian workers, had decided to accept an offer of a 2.5% pay rise.

Primary teachers and principals voted overwhelmingly to accept their new collective agreements, which would provide an 8.74% pay rise over three years. The agreements were estimated to be worth \$420 million and would cover around 25,000 primary, intermediate and area school teachers and principals.

Salary negotiations were also successful in another part of the education sector where early-childhood teachers won their battle for pay parity with primary and secondary teachers. The collective agreement would cover around 1,000 teachers and it included a four-step pay rise to lift the salary rates to the same level as primary, secondary and kindergarten teachers by July 2008. In that period, the salary of a teacher with eight years experience and a bachelor degree in early-childhood education would rise from \$37,000 to \$56,400.

The Transport and Industrial Relations Select Committee considered changes to the controversial Holidays Amendment Bill (see June Chronicle). Under proposals put before the Committee, it was advocated that employers would not have to pay sick leave if an employee failed to produce proof of illness or injury ‘without reasonable excuse’. However, it was also suggested that employers would have to pay an employee’s “reasonable expenses” when they sought a medical certificate.

The Council of Trade Unions (CTU) reportedly wanted the Labour Department to widen its investigation into the pay and conditions of foreign fishermen. Minister of Labour, Paul Swain, launched an investigation into the pay and conditions of foreign crews after allegations in Parliament that some employers were making significant deductions for food and accommodation, effectively paying foreigners less than the statutory minimum wage. The CTU claimed that this was problematic in the fishing industry because few commercial fishermen were part of collective employment agreements and many were paid on the basis of each voyage’s catch.

The Dominion Post reported that remuneration for top executives were rising at almost double the pace of that of the average worker. A Victoria University study showed that, on average, chief executives’ remuneration had increased by 7% a year since 1997, while the average wage for workers’ rose 3% over the last year. Thus, the average chief

executive's pay had leapt from \$249,000 in 1997 to \$355,000 in 2002, compared with the \$38,900 average pay for workers. CTU President, Ross Wilson, said the pay difference was hypocritical, as it was executives who had lobbied against moves to improve workers' conditions through the Employment Relations Act and the Holidays Act.

An Australian union stalwart Max Ogden claimed in a Dominion Post article that unions in New Zealand had a better chance of surviving than their seemingly brasher, tough-guy Australian counterparts. He stated that "Australian unions are not showing anything like the level of sophistication" found amongst New Zealand unions, who looked strategically at the bigger picture. Mr Ogden also claimed that Australian unions largely remained trapped in the narrowly focused "labourist" model as they chased higher pay without thinking where the money came from. Kiwi unions had shifted focus, he said, to a European-style social-democratic model with a commitment to helping businesses create wealth in a growing economy.

A personal grievance dispute between the NZ Police and former Superintendent Alec Waugh turned slightly bizarre when NZ Police contested a minor pay-out sought by Mr Waugh. According to the Dominion Post, NZ Police opposed granting the reinstated superintendent a 'bonus' for cleaning toilets on top of the \$1 million net compensation he won for his five years out of the police. Mr Waugh was seeking a rehearing on part of his successful compensation case. The sum included about \$14,000 Mr Waugh earned in a job cleaning toilets; this was used as an example of how badly Mr Waugh had fared after being forced from the police over since-quashed charges of expenses fraud.

A long-serving Mt Eden prison guard was awarded \$6,500 in a personal grievance case prompted by management searching his car for drugs. However, the Employment Relations Authority also found that he had not taken the necessary steps to familiarise himself with the department's new search policy for all staff, visitors and inmates. He was on holiday when the new requirements were e-mailed to staff, and he deleted the messages, unread, when he returned to work. The Authority accepted that the guard had suffered humiliation, loss of dignity and injury to his feelings, but dismissed further compensation claims.

The Dominion Post reported that four long-term employees at a Paraparaumu information technology company had been successful in their appeal against an Employment Relations Authority decision, preventing them getting paid as much as new recruits (see June 2004 Chronicle). The Unisys New Zealand help-desk analysts had challenged a company decision to leave them on existing annual pay of about \$32,000 when new operators, employed in 2003 to do the same job, started on \$37,000. Judge Shaw of the Employment Court ruled that Unisys should increase pay rates to within 10% of market rates and reimburse the difference between what the plaintiffs had been paid and the reassessed salary, backdated to April 2003.

November 2004

Business continued to attack changes to the holidays legislation (see October Chronicle). The Dominion Post reported that New Zealand's biggest meat company PPCS had been hit with a \$6.5 million hike in labour costs as a result of the changes to holidays legislation. Changes to how statutory holidays were applied had doubled the cost to the company to around \$5 million a year and sick pay changes would add \$4 million to a payroll of \$130 million, according to PPCS Chief Executive Officer Stewart Barnett. While the company thought that the timing of the changes was wrong, it also made the interesting observations that it had no issue with improving workers' conditions and that the changes were not extreme by international standards.

The country's 21 district health boards and its junior doctors reached an interim settlement, which still required ratification by doctors and individual health boards. This followed the threat by the doctors' union, the Resident Doctors Association, to hold a six-day strike at the end of October (see October 2004 Chronicle).

The Open Polytechnic faced possible strike action when negotiations stalled: the Open Polytechnic had offered a one-off cash payment equal to 2.5% of staff salaries but staff wanted their salaries to be increased by at least the same amount.

Strike action was adverted amongst workers in Taranaki's onshore oil exploration industry when they settled their bargaining over new employment terms and conditions. The dispute was settled when workers won a pay rise of 5% for 18 months, backdated to September 1, and a substantial allowance for working with new hazardous substances such as synthetic mud. Originally, the Engineers, Printers and Manufacturers Union demanded a 10% rise in pay rates while the employer had offered 3.5%.

The Marlborough Express reported that Marlborough rest homes were struggling to retain and recruit workers since their wages were below those paid to vineyard workers. A spokesman for the region's operators said a large number of people leaving rest home work were heading for the vineyards but, at current funding levels, rest home operators could not afford to pay more.

The Evening Standard reported on an impasse in collective agreement negotiations when workers at the McCain Foods plant in Feilding rejected concessions of any sort, including pay cuts. When negotiations started the company sought considerable pay adjustments since it maintained that the potato-processing plant was underperforming after three poor growing seasons, and, without pay cuts, the plant might have to close (reported in August 2004 Chronicle).

In a split decision, the Court of Appeal ruled that a model-maker from Lord of the Rings

film production was an independent contractor and not an employee. Two of the judges found that the agreement, signed by the model-maker, was in accordance with contractor status and that the usual industry practice was to employ people on contract. The judges also said: "Further, common sense suggests that any lessening in the competitive advantage of New Zealand's film industry will have the tendency to reduce the work which will be carried out in this country."

The managing director of an Auckland baby products company, who set up a rival business with his wife, was ordered to pay \$295,000 to his former employer. The managing director had set up the company after The Warehouse approached him, in his role as managing director, about importing cheaper products. Instead of passing the information on to his company, he used the opportunity to import the desired products through his own company.

The Employment Relations Authority found that a former Auckland-based Pitcairn Island commissioner was unjustifiably dismissed but his "serious misconduct" contributed to his sacking. The Authority ordered that the commissioner be paid \$16,000 in lost wages and compensation, which was 50% of what he would have received but for his misconduct. The sudden dismissal was found to be procedurally and substantively unjustified but evidence showed there had been a breakdown in the relationship with which made it impossible for him to continue his job.

A former Air New Zealand captain with assault and aviation convictions failed to get his job back pending a hearing of his claim that he was unfairly dismissed. In declining the application, the Employment Relations Authority said that safety was "a paramount consideration" to Air New Zealand and that five aviation convictions from his use of a flying boat without airworthiness documentation amounted to serious misconduct, which might warrant dismissal.

An unpopular meat inspector, fired for not doing his job properly, successfully challenged an Employment Relations Authority decision against him but his bad behaviour prevented him from getting his job back or any payout. In a written decision the Employment Court said that the meat inspector's summary dismissal was unjustified but as the case was "far from ordinary" his behaviour ruled out remedies. While management had made efforts to help improve his work, he continued to fail to meet standards and antagonised his workmates.

The Corrections Department was ordered to reinstate a Manawatu Prison manager who was dismissed after an inmate died in a jail cell. The Employment Relations Authority ruled that the dismissal was unjustified and the manager had met all specified requirements of an on-call manager. As well as reinstatement the Department was ordered to pay him \$15,000 compensation.

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Another Corrections Department employment dispute involving a former Napier probation officer who claimed that a judge had sexually assaulted her, reached a conclusion when she was ordered to pay \$3,560 costs for her failed personal grievance case. The woman had sought \$50,000 from the Corrections Department for alleged humiliation, loss of dignity and injury to feelings after she was medically retired from her job 18 months after the alleged assault.

The NZ Herald reported on the Employment Relations Authority endorsement of the sacking of a worker for serious misconduct. The worker refused to allow his fingerprints to be scanned for identification when clocking on and off, based on that this would violate his religious and ethical beliefs. Subsequently, the worker lodged a complaint with the Human Rights Commission alleging discrimination of his religious beliefs.

December 2004

In a major policy change, the National Party had decided to revise its opposition to the introduction of four weeks' statutory annual leave in 2007. The National Party had previously criticised changes to the Holidays Act as imposing an unacceptable cost on business and the economy. The change in stance was thought to be based on the unpopularity of repealing the increase in statutory annual leave as well as the realisation that by the time the party may come to power four weeks' annual leave would probably be entrenched in many employment agreements.

Both the Dominion Post and the Press reported that the CEO of Business New Zealand, Phil O'Reilly, had claimed that some businesses could lose money if they were open on public holidays because the Holidays Act could double pay rates for some workers (see also June Chronicle). He also added that the companies may not even be aware of the potential costs because the complexity of the new law made it hard to understand what employers were liable for over the Christmas and New Year period. The President of the Council of Trade Unions, Ross Wilson, dismissed the concerns as just "rhetoric" and that the extra rates were "not a huge cost item".

Despite the news of an increase in the statutory minimum wage to \$9.50 an hour, the Dominion Post reported that the Council of Trade Unions was disappointed. The CTU wanted the adult statutory minimum wage to be lifted to about \$11 an hour as it argued that this would restore the minimum wage to just over 50% of the average wage as it was in 1987.

A proposed law change that would guarantee the 4,000 disabled people working in sheltered workshops the minimum wage may have adverse effects: it could lead to the closure of sheltered workshops, according to the IHC Society. The government claimed that the current law (where some workers earn as little as \$5 per week) is outdated and that people with disabilities should have the same employment and minimum wage rights

as others employees.

There was widespread reporting on the long running negotiations (see February, April, May, July, September Chronicles) between the nurses' organization and their employers as the negotiations edged closer to a resolution, with an offer of a \$380 million national pay deal being unveiled. It was reported that the agreement, one of the biggest settlements in public sector history, was due to be ratified by Nurses and midwives in February 2005. The deal would bring pay rises of between 20% and 30% and an independent inquiry into staffing levels was also part of the agreement. However, the Dominion Post suggested that the agreement raised fears that private sector nurses would be left behind and that it would make it harder for the private sector to retain nursing staff.

Skill shortages continued to dominate media coverage with the NZ Herald reporting that Stagecoach was recruiting bus drivers from Samoa and was looking as far as India to fill staff shortages. The Corrections Department recruited 71 prison guards from Samoa to fill some of its current 300 vacancies.

The Westpac Bank claimed in the Dominion Post that skill shortages were one of the biggest factors holding businesses back with businesses being unable to expand to meet demand. A tourism and hospitality industry report revealed critical job shortages that could damage the sector as domestic and inbound travel expands. It was projected that 16,500 employees would be needed to fill new jobs created in the accommodation, food and beverage areas by 2010.

The Dominion Post reported on a scheme where fruit and vegetable growers co-operated with employment services in order to combat a severe labour shortage in the Kapiti Coast and Horowhenua area. The scheme involved creating a database of available workers and a list of farms and orchards that needed staff. Workers would be able to move from farm to farm for longer periods, depending on the demand.

The Press unveiled that 100 Air New Zealand employees were under investigation for breaches of internet policy breaches; this followed the sacking of 8 staff in late November. Unions labelled the move over-zealous and said that it was worrying other airline employees.

The Inland Revenue Department was accused of intimidating a staff member who wanted to testify before the Employment Relations Authority in support of two colleagues sacked from their Wellington service centre jobs in July 2003 (see April 2004 Chronicle). An employee, who was also an executive member of the in-house union, was told that he would have to obtain IRD permission before giving evidence on behalf of the two women. In its ruling, the Employment Court found that the women should be reinstated upholding an earlier Authority ruling. The judge agreed with the Authority finding that an unjustified dismissal had taken place because three other IRD employees who had committed similar breaches were given final warnings rather than being dismissed.

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The Court of Appeal, confirming an Employment Court ruling, dismissed an appeal by the NZ Herald over the issue whether union members could be encouraged to leave a collective agreement while it was in force. The case was sparked by the Auckland newspaper's decision to tell two senior journalists that they would have to leave the collective if they wanted a pay rise.

The NZ Herald and The Independent reported that the Workplace Productivity Challenge report suggested that the main ways workplace productivity could be increased were through investing in capital, achieving economies of scale, investing in innovation and technology and adopting better business practices. The Government had already set aside up to \$2.5 million a year to implement the group's recommendations.

A recent study on working time in households revealed that overall, there was an increase in the total average number of hours worked. The National Business Review published the study which found that there was a noticeable increase in the hours worked by older couples (those aged 50 and over) with well-qualified couples working longer hours than those with no formal qualifications. Couples with young children were also working longer hours, especially where both were well-educated. While some employees said they were working too hard and would prefer to have greater leisure time, many were happy to do the long working hours.

The NZ Herald reported that an Employers and Manufacturers Association survey showed significant pay rises for some workers, especially electricians who recorded average wage increases of 11.2%, lifting their average annual wage to \$48,694. The survey found that on average wages had increased by 3.5 per cent in the year to July, slightly less than the 3.8% increase of the previous year. The President of the EMA Northern, Alisdair Thompson, claimed that the successive pay rises showed that further law changes, which gave workers more bargaining muscle, were not needed.

The NZ Herald published a graduate survey that indicated future 'brain drain': around 31% of this year's surveyed graduates would immediately leave New Zealand in favour of employment in Europe, Britain, the United States, Asia or Australia. The survey also found that 67% of surveyed students planned to live and work in a different country by the time they were 30 years old. In light of current skill shortages, it was surprising that the lack of enthusiasm for employment in New Zealand was sparked by fears about employment prospects within New Zealand.

However, another survey concluded that most workers were confident that their jobs were secure. This survey found that only 13% of the 974 surveyed employees thought that there was an impending chance of unemployment; this compared with 41% 14 years ago. President of the Council of Trade Unions, Ross Wilson said he believed the change could be attributed to the more 'inclusive' workplace environment in New Zealand.

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In the Dominion Post, the National Party's Industrial Relations Spokesperson, Wayne Mapp, stated that a National government would review the Holidays Act (see December 2004 Chronicle). A key focus would be the provisions stipulating a time-and-a-half payment and day in lieu, with a view to scrapping them. Mr Mapp said that the National Party favoured giving workers a choice between the extra payment and the extra day off.

It was reported in both the Dominion Post and the Waikato Times that the business community was waiting for a court case to clarify when they had to tell employees they were selling the business. There was widespread concern amongst businesses about changes in the Employment Relations Amendment Act which required employers to tell staff about any plans to sell and to give staff an opportunity to comment before a decision is made.

The ongoing dispute between the Lyttelton Port Company (LPC) and the waterside unions continued with a three day meeting in a bid to resolve their protracted dispute (see May 2004 Chronicle). The Press reported that the talks had broken down and workers had given a month's notice of pending industrial action.

Maori Television Service (MTS) was cleared of discriminating against a former Pakeha employee who claimed she was forced to resign. The employee complained to the Employment Relations Authority that she resigned because she no longer felt able to perform her role; she was not allowed to travel to overseas film festivals with other station managers and MTS had failed to properly discipline an employee she was having difficulties with. The Authority found that the allegations, that MTS had discriminated against her on the grounds of ethical belief, colour and race, were "utterly without foundation".

The Employment Relations Authority ruled that a woman was unjustifiably dismissed and ordered the former owners of a Wellington Kebab shop to pay her nearly \$15,000 for lost wages and humiliation. It was alleged that the woman was sacked because she had refused to marry a friend of her boss.

The Independent reported that the Inland Revenue Department planned to appeal an Employment Court ruling requiring it to reinstate workers sacked for accessing family members' computer files (see December 2004 Chronicle).

The long-running saga at Radio New Zealand (see September 2004 Chronicle) took yet another turn when Radio New Zealand and its retired Chief Executive, Sharon Crosbie, were named in a defamation action filed by the former Head of News, Lynne Snowdon,

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who claimed damages of almost \$1.5 million. Ms Snowden had been on sick leave on full pay since the breakdown in her work relationship with Ms Crosbie in 2002.

In another joint effort to overcome shortages in the Horticulture Industry, the Southland Times reported on a joint initiative between Work and Income NZ, the Immigration Service, Inland Revenue and the Central Employment Trust in Central Otago. The scheme was designed to assist with the picking of an expected record 700 tonnes of export fruit. A free phone service for people wanting work had been getting an increasing number of inquiries.

The Dominion Post reported that illegal workers were still getting seasonal jobs in Hawke's Bay, with immigration officials catching 20 in the past two months. A spokeswoman from the Hawke's Bay Fruitgrowers Association said that the fact employers were taking on illegal workers each year did the industry no favours and these 'rogue' employers undercut honest employers and exploited illegal workers. While the problem was blamed on New Zealand's labour and skills shortage, a contractors' group aimed to raise the standards of seasonal worker employment with a new picknz website.

The death of well-known unionist Bill Andersen featured prominently in the media. Mr Anderson, who took part in the 1951 waterfront strike, was for many years President of the Auckland Trades Council and he was, at the time of his death, President of the National Distribution Union and leader of the Socialist Party of Aotearoa.

In his annual Orewa speech, the leader of National Party, Don Brash, said that under a National government unemployment benefits would only be paid if the recipient did community work or approved training. As part of a policy to encourage employers to employ people perceived to be risky, a National government would introduce a 90-day trial period so employment could be ended without penalty. Brash claimed that New Zealand's "deeply entrenched" welfare dependency had little to do with the availability of jobs and everything to do with systemic, structural problems in the welfare system.

The NZ Herald highlighted the difficulties of young refugees seeking permanent jobs with a focus on an Afghan refugee from the Tampa. It was reported that poor language skills and a lack of New Zealand work experience were big obstacles for young refugees seeking permanent jobs and discrimination also seemed rife.

The Government unveiled plans to increase childcare support, including care in the home, in an effort to encourage more women to join the workforce. The Government was looking at British moves to increase paid parental leave to one year and provide 'dawn to dusk' out of school care.

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