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Editorial

This issue shows the diverse range of employment relations issues in New Zealand.

We begin with Markey et al.'s paper which reports on research into employee participation and well-being in the New Zealand hospitality sector and then compares it to the famous 'Danish Model'. While Danish formal employee participation structures are clearly well embedded, this article shows that there is a more complex picture with several direct forms of participation available in New Zealand hospitality firms. However, the article also indicates that some of the direct forms of participation can be associated with negative well-being effects.

This issue also includes two articles on the employment relations policies of the political parties contesting the September general election. As the articles were finished before the last week of campaigning, we will soon know the election outcome and a great deal more about the new government's plans for employment relations. In spite of the fact that there are considerable differences between the parties regarding employment relations policies and several new policy proposals on offer, it is fair to say that this has been a rather unusual election campaign and little has been done to facilitate an in-depth debate of employment relations policy differences.

The next two articles were originally presented as part of a special symposium at the 2014 AIRAANZ (Association of Industrial Relations Academics in Australia and New Zealand) conference in Melbourne. Several more articles emerging from that symposium are expected to feature in New Zealand Journal of Employment Relations, 40(1). We would like to remind readers that the February 2015 AIRAANZ conference is in Auckland (see: <http://airaanz2015.org.nz>).

This issue ends on a sombre note. First, the Nilikant et al. article deals with organisational resilience in the aftermath of the Christchurch earthquakes. The devastating earthquakes have had dire consequences for many people and organisations but the article seeks to distil the important lessons learnt in terms of surviving and prosperous organisations.

Second, we pay tribute to Sir Owen Woodhouse, the architect of New Zealand's unique no-faults system of compensation for injury. Obituaries from Sir Geoffrey Palmer and Mr Ross Wilson have been re-printed with kind permission from the Safeguard Magazine.

Felicity Lamm, Erling Rasmussen & Rupert Tipples
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Exploring employee participation and work environment in hotels: Case studies from Denmark and New Zealand

RAYMOND MARKEY,^{*} CANDICE HARRIS,^{**} HERMAN KNUDSEN,^{***} JENS LIND^{****} and DAVID WILLIAMSON^{*****}

Abstract

We explore the relative impact of direct and representative forms of participation on quality of the work environment, based on multi-method case studies of two hotels each in New Zealand and Denmark. The degree of direct participation is higher at the New Zealand hotels, yet, workload and stress is higher than in the Danish ones. This confirms literature that questions whether participation is always beneficial to the work environment. On the other hand, representative forms of participation appear to offer greater opportunities for a better quality of work environment (QWE) since Danish employees in this study enjoy greater influence through collective bargaining and cooperation committees, and experience less workload stress than the New Zealanders.

Keywords

Quality of work environment, employee participation, HRM in hotels, direct participation, representative participation

Introduction

It is well described in the literature that employee participation is closely linked to the quality of work environment (QWE) or related concepts, such as employee well-being or job satisfaction. Whilst the brunt of research suggests that participation plays a positive role in the work environment, there are also findings that indicate a negative association. It was with this in mind that this comparative study of Danish and New Zealand workplaces in the hotel sector was undertaken as part of a wider project including workplaces from a range of sectors (Knudsen & Markey, 2014). Our aim was to investigate the nature of the relationship between employee participation and work environment quality through case studies in a number of workplaces. The study analysed both direct and representative forms of participation.

^{*} Prof Raymond Markey, Director of the Centre for Workforce Futures and Professor of Employment Relations – Department of Marketing and Management, Macquarie University, Sydney, Australia

^{**} Candice Harris, Associate Prof, Department of Human Resource Management and Employment Relations, Auckland University of Technology, New Zealand

^{***} Prof Herman Knudsen, Department of Development and Planning, Aalborg University, Denmark

^{****} Prof Jens Lind, Department of Sociology and Social Work, Aalborg University, Denmark

^{*****} David Williamson, Senior Lecturer, Department of Hospitality, Tourism and Events, Auckland University of Technology, New Zealand

The field of comparative employment relations is generally underdeveloped (Barry & Wilkinson, 2011). One of the most common approaches is through comparison of employment relations themes across different countries; some consider a number of themes (Bean, 1985; Eaton, 2000), but the “extent of comparison ... is patchy or underdeveloped” (Barry & Wilkinson, 2011: 3) and the themes broad and necessarily selective. Other comparisons focus on single issues, such as trade unions, but these are normally institutionally based (Fairbrother & Yates, 2003; Frege & Kelly, 2004; Verma & Kochan, 2004; Frege, 2007). Very few comparative studies focus on non-institutional themes at the organisational, rather than general level, through case studies that allow detailed analysis.

The rationale for these national case study comparisons was founded on important similarities, but contrasting systems of employee participation. New Zealand and Denmark are of similar size and industry structure. Some critical contributors to the work environment, notably work/life balance and occupational health and safety (OHS) problems, including stress, have recently been major policy concerns in both countries. However, the range and depth of representative employee participation is greater in Denmark than New Zealand, and a comparison allows consideration of the possible impact of this variable.

The article is structured as follows. First, it presents a review of the literature on employee participation, followed by a brief section on how participation interacts with work environment quality. The next section deals with main features of industrial relations in New Zealand and Denmark respectively, with a special view on the hotel sector. This is followed by a section on methodology, which also includes a brief description of the four case hotels. Subsequently, the findings of the study are presented; this includes data regarding participation and work environment, and then associations between the two datasets are explored. Finally, the conclusion highlights the main findings and discusses these against relevant parts of the literature. Our main focus is to establish whether various forms of participation impact positively or negatively on the quality of the work environment.

Employee participation

The concept ‘employee participation’ is a generic term covering a diversity of practices. These include suggestion schemes, team briefings, job autonomy, staff meetings, works councils, trade union representation, collective bargaining, and employee representation at board level. What binds them together are basically two shared characteristics:

- a) participation provides opportunities that enable employees to influence decision-making in organisations, and
- b) participation is played out in a decision-making context dominated by management prerogative (Knudsen, 1995; Wall & Lischeron, 1977).

As formulated by Pateman (1970: 68): “The whole point about industrial participation is that it involves a modification, to greater or lesser degree, of the orthodox authority structure, namely one where decision making is the ‘prerogative’ of management, in which workers play no part.”

Below this umbrella definition, a number of dimensions of participation and influence can be conceptualised. Blyton and Turnbull (2004: 255-56) define the *depth* of participation as a continuum

stretching from “no involvement” to “receiving information”, to “joint consultation” to “joint decision-making” to “employee control”. Employee control may be delegated by management, usually at task level, but it may also be control, exercised against the will of the employer in the way work is carried out or, more rarely, through radical collective action, such as picketing or occupation of the workplace.

Pateman (1970) distinguished between “pseudo”, “partial”, and “full” participation. Pseudo participation is linked with management techniques, which, even though involving consultation of employees, aims to persuade employees to accept decisions that, in reality, have *already* been made. Partial participation occurs in situations where employees are able to influence decisions, yet do not have the same power as management. Finally, full participation is defined by Pateman as a constellation where the parties involved have equal power. Therefore, to Pateman, participation in capitalist organisations is either pseudo or partial.

The notion of pseudo participation is similar to Heller’s (1998a: 149-50) identification of “inauthentic” and “manipulative” forms of participation that actually offer little real influence. However, it is extremely difficult to determine, in practice, whether specific forms of participation are pseudo or not. It is possible that management initiatives, labelled participation, are framed to make employees accept decisions that have already been made. Yet, they also may give knowledge resources that empower employees to influence future decisions; or the “pseudo” participation may result in ideas and decisions that were not originally part of management’s plans. It is certainly relevant to attempt to determine whether a given practice of participation is primarily an instrument for furthering employee influence or, first and foremost, a management instrument aimed at controlling the behaviour and performance of employees. Most forms of participation, however, include elements of both.

This discussion can be continued by drawing on the distinction between various types of participation offered by Hyman and Mason (1995), namely industrial democracy (ID), employee participation (EP), and employee involvement (EI). Leaving ID aside, as it is equivalent to Pateman’s “full” participation and has only been practised under exceptional circumstances in capitalist society, the central distinction is then between EP and EI. According to Hyman and Mason, EP is based on rights granted to workers by way of legislation or collective bargaining. Further, EP is essentially collective and indirect since it is played out through union representatives, health and safety representatives or other employee representatives. In contrast, EI is employer-driven and aimed at stimulating motivation and commitment among employees as a means to increasing organisational efficiency. Participation practised as EI is direct, exercised by the individual employee or the team. Returning to Pateman (1970), one may say that, whereas EP mainly corresponds to ‘partial participation’, many of the schemes seen within EI, for instance team briefings, quality circles and intensified communication processes, seem to qualify as ‘pseudo participation’. Thus, the forms of participation in the EI basket are of a character where employees are granted influence, not because it is considered a value in itself, but as a bi-product of efficiency considerations. A further distinction between EP and EI is that, while the former primarily deals with issues at a tactical or strategic level, the latter almost exclusively is confined to the operational or task level; the corresponding distinction made by Pateman (1970) is between “higher and lower level management decisions”. To conclude this discussion, EI and EP not only differ regarding *form*, the former practising direct participation, the latter indirect, but also regarding *scope*, “that is the range of decisions which employees or their representatives participate in” (Blyton & Turnbull, 2004: 257).

From the points made above, it follows that employee participation may be linked to fundamentally different driving forces and rationales. Knudsen (1995) lists three main rationales: industrial democracy, social integration and organisational efficiency. Industrial democracy is historically connected to the labour movement and socialist reformers, although full industrial democracy has never been fully achieved. An aim to democratise, or at least humanise, work has also been present in human relations and socio-technical traditions (Heller, 1998b), and in Scandinavian work development programmes since the 1960s (Hvid & Hasle, 2003).

Social integration is the rationale that has driven state interventions to introduce or extend participation through rights enshrined in law. With the aims of avoiding industrial unrest and open class warfare, and weakening radical currents in the labour movement, concessions were granted to workers and trade unions. It was demonstrated by Ramsay (1977) that participation has historically surged and waned in cycles as employers and governments took initiatives to pacify assertive labour movements when they were strengthened by economic conditions.

Organisational efficiency is the third rationale, already mentioned earlier. This rationale underlies the EI-type, employer-driven participation. As precisely formulated by Blyton and Turnbull (2004: 258) it aims at “increased worker commitment, higher job satisfaction and motivation, and reduced resistance to change”. However, in spite of the clear distinctions between the diverse rationales, specific forms of participation may well contain elements from all three of these. For instance, works councils or joint consultation committees may give employees a say (democratisation), be a forum for cooperation and conflict avoidance or resolution (social integration), as well as an instrument to raise commitment and reduce resistance to change (organisational efficiency).

It was the ambition of the study to identify and assess the forms, scope and depth (Blyton & Turnbull, 2004) of all employee participation taking place in the studied workplaces. For this purpose, employee participation is defined as all forms through which employees take part in decisions regarding their job and workplace. The degree or *strength* of participation is determined by its depth as well as its scope. As mentioned above, *depth* may range from shallow to deeper through the mere reception of information from management, to consultation and joint talks and negotiations, to self-determination at the deepest level. *Scope* stretches from operational matters (related to the job/task), to tactical matters (related to work organisation, technology and pay systems), to strategic issues (related to company goals, investment).

As to *forms* of participation, a key distinction was between direct, individual or team-based participation, and indirect, or representative, participation. Within the first form, the degree of job autonomy, or discretion granted to individual employees and/or teams of employees is a key ingredient. Other elements of this form of participation include informal interactions with management and arrangements, such as appraisal interviews, quality circles and suggestion schemes (Marchington, 2005). The second form is indirect participation through elected representatives, essentially participation of the EP-type.

Employee participation and work environment quality

The concept of work environment is broad, embracing both the physical, social and organisational surroundings of work. It has its origin in Scandinavia where, from the 1970s, this concept largely

replaced occupational health and safety (OHS), which was associated mainly with physical risks and hazards at work. In particular, the concept of psychosocial work environment, which denotes how job demands and social structures and interactions in the organisation influence the psychological well-being of employees, opens up for a broad understanding of how people are affected by their employment, whether positively or negatively (Hvid & Hasle, 2003). This broader concept of QWE has gained currency as the incidence and recognition of psychosocial workplace problems have increased, particularly stress-related disease (Busck, Knudsen & Lind, 2010).

Research into the significance of representative participation, where safety representatives, safety committees and other joint committees are studied, appears to find a clearly positive connection between participation and a good work environment (Walters & Frick, 2000; Walters & Nichols, 2007; Eaton & Nocerino, 2000; Nichols, Walters & Tasiran 2007). Walters and Frick's (2000) comprehensive international literature review concludes that participation resulting from the combined activity of these representatives and committees with unionised employees and union support leads to fewer injuries at work, and that the work environment is clearly better at workplaces with organised labour than without.

When it comes to direct participation's effects on the work environment, research results are more ambivalent. On the one hand, increased direct participation, in particular in the form of job autonomy, allows employees to exert more influence on their working situation, enabling action against physical and psychosocial threats in their work environment. The research of the 'Karasek school' demonstrates a positive correlation between influence in the form of job control and the psychosocial work environment as well as health (Karasek & Theorell, 1990; Eller, 2003). On the other hand, direct participation is often introduced on the basis of the efficiency rationale, with the aim of intensifying work and making it more productive. In recent years, it has typically been associated with IT-systems benchmarking and controlling the performance of the individual (Andersen, Bramming & Nielsen, 2008). In a Norwegian study, Kalleberg, Nesheim and Olsen (2009) found that employees who are organised in teams have higher stress levels than others, suggesting that positive effects of increased job autonomy usually associated with team-work may be counteracted by new pressures built into the organisation of work. North American studies of 'high performance' workplaces characterised by 'lean' or 'flexible' production and teamwork, at times, find a negative correlation between these elements of direct participation and work environment quality, for instance as measured by the number of accidents. Although increased direct participation may have some positive effects, the intensification of work may eventually compromise these effects (Harrison & Legendre, 2003; Askenazy, 2001; Foley & Polanyi, 2006).

Employee relations and employee participation in Denmark and New Zealand

Denmark and New Zealand are countries of similar population and economic structure, but they are characterised by significantly different employee relations systems, especially in relation to employee participation. Representative employee participation may occur through trade unions, workplace committees of various kinds, and employee representation on boards of companies (Markey, Gollan, Hodgkinson, Chouraqui & Veersma, 2001).

Comparing the basic structures of labour market regulation in Denmark and New Zealand, it is clear that the Danish system is based upon collective bargaining to a much higher degree than is the case in New Zealand. In Denmark, most workers are covered by a national collective agreement, which also grants

them the right to elect local union representatives (shop stewards) (Lind, 1995). Total coverage of collective bargaining in Denmark is 70-75 per cent of the workforce (LO, 2011; Visser, 2009), with national and workplace level agreements. In comparison, collective bargaining coverage is approximately 19 per cent in New Zealand where it is largely confined to the public sector (Blumenfeld, 2010). Danish union membership density is high, at about 70 per cent (Visser, 2009), compared with 20 per cent in New Zealand (Blumenfeld & Ryall, 2013).

Employment relations standards in the New Zealand system are based, to a greater extent, upon legislation, which during the past two decades has been directed towards securing the rights of the individual relating to minimum pay, leave and the like (Foster, Rasmussen & Coetzee, 2013; Geare, et al., 2014; Haworth, 2004). This leaves, at least in theory, a relatively stronger space for, and application of, HRM practices as the key mode of participation, i.e. a more individual and direct form of employee participation in New Zealand than in Denmark.

Other forms of representative participation, apart from trade unions, include joint consultation committees in New Zealand, and works councils or cooperation committees in Denmark. Danish legislation has also provided for employee representation on company boards since the early 1970s (Knudsen, 1995). Nevertheless, in both New Zealand and Denmark, the only form of legislatively mandated workplace employee representation occurs through OHS committees.

Whilst both Denmark and New Zealand have legislation for OHS delegates, in New Zealand, this is quite recent and wider participative practices are not as well developed by employer/union agreement as in Denmark with cooperation committees. Danish OHS representation was instigated by the *Work Environment Act 1975* (Knudsen, 1995). The threshold for establishment of Danish OHS committees is 35 employees, however, Danish enterprises with 10 or more employees must have employee work environment representatives. The Danish committees' jurisdiction includes the "planning and coordination of health and safety activities in the enterprise" which could include work processes, restructuring and technological change, although this only seems to occur in some enterprises.

The New Zealand *Health and Safety in Employment Amendment Act 2002* obliges employers to negotiate with their employees and any relevant union(s) to determine an employee participation system (Department of Labour, 2002; Hay, 2003). Businesses with more than 30 staff must have an employee participation system, and parties to the employment relationship must cooperate in good faith to design, implement, maintain and review a system that allows employees to participate in health and safety matters (Department of Labour, 2002; Harris, 2011). The participation system for businesses with over 30 staff is usually through representatives on OHS committees (Lamm, 2010; Ravenswood, Harris, Williamson & Markey, 2013). It should be noted that major reforms of New Zealand's OHS legislation, including worker representation and participation, are scheduled for 2015. In particular, the selection and duties of worker representatives, the level of worker participation and the function of OHS committees will be prescribed in a new set of regulations (Lamm, Rasmussen & Anderson, 2013a).

The fact that both the Danish and New Zealand OHS legislation require only medium-and-large-sized businesses to have formal worker representation and participation in place raises a number of issues regarding worker representation and participation within the small business sector. For example, the small business sectors in Denmark and New Zealand represent approximately 90 per cent of the business population and employs 60 per cent of the business population. This is a sizable proportion of employees with no legal entitlement to participatory mechanisms concerning their workplace health and safety

(Lamm, Frick, Jamieson, Martin & Donnell, 2013b). Moreover, the Danish and New Zealand small business sector have low trade union membership rates and low union density, and *ipso facto* trade union involvement in OHS worker representation and participation in this sector is minimal. There is evidence that workers in the small business sector are increasingly engaged in low paid, non-standard, insecure or precarious work. Added to this mix is the fact that small workplaces are becoming more culturally and ethnically diverse. Both of these features have the potential to create a working environment that discourages formal worker representation and participation (Lamm, et al., 2013b).

The jurisdiction of New Zealand OHS committees is more specifically limited to OHS and hazard prevention than in Denmark. However, a wide international literature argues that OSH committees of the New Zealand variety have the potential to address issues beyond a narrow focus on hazard identification and management (Bernard, 1995; Haynes, Boxall & Macky, 2005; Knudsen, 1995; Walters, Nichols, Connor, Tasiran & Cam, 2005). In practice, it is difficult to separate a narrow focus on traditional health and safety from work-life and other broad work environment issues, particularly involving the rising coincidence of employee stress and longer working hours (Lamm, 2010) or the introduction of new technology or organisational change (Heller, 1998a).

Based on national collective agreements since 1947, Danish cooperation committees exist in enterprises of 35 or more employees by agreement between the employer federation (DA) and the main union federation (LO). Cooperation committees are forums for consultation over working conditions, training, work organisation and especially technological and organisational change. Composed of equal numbers of employer and employee representatives, they cover a majority of private sector employees but may vary in effectiveness (Knudsen, 1995). These committees offer an example of the three rationales for participation – democratisation, social integration and efficiency – operating together. In a recent New Zealand survey, 40 per cent of employees reported coverage by similarly composed joint consultative committees (JCCs). Nevertheless, these are not subject to a general agreement, and hence, vary greatly in role and effectiveness, with employee representatives chosen by employers in over a quarter of instances (Boxall, Haynes & Macky, 2007). One might expect New Zealand JCCs, therefore, to be influenced to a lesser extent by the rationale of democratisation.

It is clear from this brief comparison of their respective employment relations systems that the range, depth and scope of representative employee participation are greater in Denmark than New Zealand. Comparison between the two countries enables testing of the impact of these differences on quality of the work environment.

The hotel sector

Hotels are a major component of the hospitality/tourism industry sector, which is a growing contributor to the economies of New Zealand and Denmark, with unique labour market conditions. In 2013, the New Zealand tourism industry directly accounted for 5.7 per cent of total national FTE employment, and generated 3.7 per cent of GDP (Statistics New Zealand, n.d). Hotels account for 9 per cent of the Danish labour force and 2.1 per cent of GDP (Ernst & Young, 2013).

In both countries, the hospitality workforce is characterised by its youth, feminisation, high proportion of immigrants, non-standard employment patterns, relatively low coverage of collective agreements and low pay. Almost 40 per cent of New Zealand hospitality employees are under 25 years (33 per cent of

hotel workers), and in Denmark over 50 per cent are under 35 years. Females account for 62 per cent of New Zealand hotel workers, and 54 per cent of Danish hospitality workers. Part-time workers make up over a third of the workforce in both countries. Higher than average proportions of foreign workers are also attracted to the industry in both countries, with this proportion growing from 25 to 35 per cent in New Zealand from 2001 to 2006 (Whiteford & Nolan, 2007; Klein Hesselink, 2004; Jørgensen, 2012).

In New Zealand, collective bargaining coverage is restricted to union members who comprise less than 10 per cent of the hospitality workforce (Boxall, Haynes & Macky, 2007: 155; Blumenfeld & Ryall, 2013). In Denmark, 70-80 per cent of hospitality workers are covered by collective agreements, more than union membership at about 40-50 per cent, since non-union members are included (CASA, 2002; Jørgensen, 2012). Danish workplaces covered by collective agreements typically have cooperation committees. JCCs typically are associated with larger, unionised organisations, which mostly precludes them from the smaller non-unionised organisations in the New Zealand hospitality industry. Nonetheless, hotels tend to be larger, unionised organisations, making them more likely than most hospitality organisations to have JCCs. Lo and Lamm (2005) also identified a high degree of unitarist management thinking in the New Zealand hotel industry.

The industry has also experienced high labour turnover historically – up to 60 per cent per annum in New Zealand – and high absenteeism – 4 per cent in Denmark. However, the recessionary environment since 2008 has lowered these rates somewhat, with the latest New Zealand figures putting the hospitality turnover figure at 32.7 per cent against an all industry average of 17.7 per cent (Human Resources Institute of New Zealand, 2012; Jørgensen, 2012). High labour turnover and absenteeism significantly affect business outcomes in the industry. Managers tend to attribute this to factors beyond their own control, largely the stereotypical characterisation of the industry as a temporary, part-time source of employment. However, Boxall, Macky and Rasmussen (2003) claim that voluntary labour turnover represents one end of a continuum, which extends to high retention at the other end. This continuum includes a sequence of withdrawal responses, including lateness and absenteeism, in response to unsatisfactory employment. Absenteeism includes work absence for injury or sickness, which may indicate an unsafe work environment. Work environment, including job security, job satisfaction, stress, pay satisfaction, and work/life balance, also critically affects labour exit decisions (Boxall et al., 2003; NZTRI, 2007). Work organisation can be sub-optimal for employee well-being. For example, shift work, which is common in the hotel industry, has been associated with stress (Wedderburn, 2006; Lo & Lamm, 2005). New payment systems for hotel work, for example, payment on the basis of the number of rooms cleaned (piece rates), relies on work-intensification, which leads to use of unsafe working methods, stress and injury (Oxenbridge & Moensted, 2011; Eriksson & Le, 2008).

Methodology

The data for this study derives from two coordinated research projects in Denmark and New Zealand, covering a number of sectors, and adopting a multi-method case study approach. The material presented here targeted two hotels in each country. Data were collected from:

- relevant documents;
- three to six interviews at each hotel, including HR and other middle managers, and employee representatives; and
- a questionnaire survey of 29 employees from the New Zealand hotels, and 46 from the Danish hotels.

The New Zealand employees surveyed represented 10 per cent (n. 9) and 6 per cent (n. 20) of all employees in Hotel NZX and NZY, respectively whereas the Danish employees surveyed represented 58 and 62 per cent (n. 23 each) respectively in hotels DX and DY. Most employees surveyed were in the kitchen/restaurant or reception/guest services areas. For the purpose of quantitative analysis from the employee survey, indexes of two key concepts, quality of work environment (QWE) and direct participation (DP) were developed to capture frequencies and distribution of responses across a series of survey questions. QWE was measured by an index for workload and stress based on six survey questions. A score out of 40 was measured for each workplace in each dimension; questions with a five-point response scale scored 40, 30, 20, 10, and 0 from the most to least positive response. This method follows the practice of the Danish National Research Institute for the Work Environment (Kristensen, Hannerz, Høgh & Borg, 2005) and is also inspired by the Likert scale. As higher scores in general indicate a more positive work environment, scoring for workload and stress questions was reversed since the most positive response was 'negative' (e.g. the most positive response to the question about feeling stressed was 'never/almost never').

Quality of the work environment was measured on the basis of six identical Danish/New Zealand questions with a 5-point scale and aggregated into an index for each workplace:

- Do you have more work than you can accomplish?
- Are you required to work overtime?
- How often have you felt worn out from work?
- Does your work put you in emotionally distressing situations?
- How often have you felt stressed?
- Do you think your work takes so much of your energy that it affects your private life?

Regarding participation, the degree of direct participation experienced by the hotel employees was measured by four questions which, taken together, tap central aspects of this type of participation:

- Do you have significant influence on how much work you do?
- Do you have significant influence on how your work is done?
- Do you get information on important decisions from management in due time?
- Do you have possibilities to learn new things in your job?

A score was measured for each hotel for each dimension, using the same method as for QWE, and a composite index for all direct participation was constructed.

As to representative participation, different environments in Denmark and New Zealand required different survey questions; for this reason, the separate results were interwoven with qualitative data to develop a characterisation of each workplace. On the basis of case studies across four different sectors in the broader study (not just hotels but also schools, food manufacturing, and hospitals/old age facilities, see Knudsen & Markey, 2014) three ideal types of participation, or participation *models*, were developed: the IR-model, the democratic model and the HRM-model. The models, which represent principally divergent configurations of participation at workplace level, will not be discussed in detail here. This is because all the four hotels in the study turned out to belong to the HRM-type, a configuration in which management – not unions and not employees – plays a central role in

determining how participation is structured and played out in practice. Representative participation plays a lesser role in the HRM model than in the IR-model or the democratic model.

The Danish hotels are part of major companies. Hotel DX is a rurally located four-star hotel, part of a Danish chain of 10 hotels. Hotel DY is a three-star hotel based in the city of Aalborg, part of a larger northern European chain of 150 hotels. Both Danish case studies represent positive and well-regulated workplaces in the middle to upper segment of the hospitality industry. Both companies are members of the employers' organisation, Horesta, which means that they are covered by a collective agreement and have cooperation committees, although not at the individual hotel, but for the entire group. Further, in accordance with Danish legislation, both hotels operate OHS committees. Compared with the conditions in the sector generally, both Danish hotels have a relatively stable employment structure with only a third of employees in both hotels employed for less than a year. Hotel DX has a somewhat more stable workforce, with 30 per cent of employees having been employed for over five years, compared with only 17 per cent for hotel DY. Sickness, absenteeism and labour turnover are also lower at hotel DX than hotel DY.

The two New Zealand hotels are parts of large international chains, with overseas owners in France and the US, regional offices in Australia, and hierarchical management structures. Hotel NX is based in the city of Auckland, and hotel NY in the capital, Wellington. Both hotels are in the upper end of the sector: Hotel NX is rated five-star, and NY is four-star. As with the Danish hotels, the New Zealand ones typified the general employment trends in the sector, but operated with somewhat more positive work environments than industry averages. NX had an annual labour turnover rate of 45 per cent, and NY of 50 per cent.

Findings

Representative participation

In all four hotels, representative employee participation can be described as embedded in a HRM approach, based on management initiative and relatively weak representative participation mainly confined to mandatory OHS structures. In this approach, previously outlined by Knudsen and Markey (2014), management is mainly interested in practices benefiting performance.

In terms of non-union forms of representative participation, both New Zealand hotels have reasonably effective OHS committees, but with narrow jurisdictions and some limitations to accountability and representativeness. Although numerically dominated by employees, the NX committee includes the Chief Engineer and HRM manager. The NX employee representatives are a mixture of volunteers and nominees, often "shoulder-tapped" for the role according to the HRM manager. The NY OHS committee seems more representative in that employee nominees are called for and elected by staff. Interviewees indicated that there was no issue with getting people to nominate, although the General Manager considered that some "shoulder-tapping" occurred. The NY committee is also chaired by the executive secretary to the General Manager. The jurisdiction of both committees is confined essentially to hazard identification and reduction, but both management and employee representatives considered them effective in this sphere. For both New Zealand hotels, OHS committee staff representatives are paid to attend meetings outside normal hours, and committee membership is viewed by employees as an opportunity for networking and access to management. NY has more extensive training opportunities,

during introduction to the committee, and an online training module for all staff. Both hotels also operate a range of other committees focused on quality improvement and social activities. These committees tend to be organised either around specific functions, such as sales or front line reception, or they are cross-functional, drawing managers and employees from throughout the hotel, for example, environmental committees and exchange committees.

Compared to Danish industrial relations more broadly, representative participation structures are relatively weak in the Danish hotels. The two case study hotels are members of the employers' organisation, and, hence, covered by a collective agreement. This is unusual in a sector, which by Danish standards has a low coverage of collective agreements. However, neither hotel's employees have elected union shop stewards; in the case of hotel DY, this is partly attributable to management pressure. Yet, this does not mean that management operates in a union free environment. To the extent that the national collective agreement stipulates supplementary local bargaining processes, management is obliged to negotiate with the union district organisation. The managers at both hotels recognise this obligation and claim they have good relations with the union at district level. Whilst each company has a cooperation committee, these do not operate at the level of the individual hotels. At hotel DX, the employees have an elected representative on the cooperation committee; at hotel DY, which is a relatively small hotel within a large group, the workers are not represented on the cooperation committee.

In the Danish hotels, the mandatory OHS committees (or work environment committees as they are called), therefore, are the only representative structures at workplace level. The OHS committees deal with both possible risks in the physical work environment and possible psychosocial problems such as stress. Whilst the OHS representative at both hotels feel that work environment standards are acceptable, they also complain that more expensive improvements sometimes have to wait because they need recognition at group level.

Unionisation for the New Zealand hotels is weak (Boxall et al., 2007). Hotel NX has less than one per cent of its membership unionised, and has no collective agreement. Hotel NY has about 10 per cent of its workforce unionised, equivalent to the sector average. Although hotel NY is not covered by a collective agreement, other New Zealand hotels in the group are, and have developed a partnership relationship with Unite Union. In HRM policy terms, partnership is expressed through encouragement of direct participation in problem solving, greater teamwork, a higher proportion of permanent employees, and payment of employees' union fees by management.

Exact figures for unionisation in the Danish hotels are not available. However, at both, there is a mixture of workers who are organised in 3F, the union that negotiates the collective agreement, workers who are in a 'yellow' union (i.e. a union that has no influence on the collective agreement), and workers who are not members of any union. Whilst the lack of a shop steward is a sign of weak unionisation, the fact that some of the employees are affiliated to the 3F means that the workforce, ultimately, can rely on support from the union in case the management fails to respect provisions in the collective agreement.

Direct participation

The majority of employees at all hotels have a relatively strong sense of direct influence on how their work is done, but less influence on how much work they do. For the Danish hotels, there is a clear difference between the two hotels concerning participation. The employees at hotel DX claim to have

much more influence than employees at hotel DY do on how much work they do and how the work is done. The possibilities to learn something new in the job are relatively better at the New Zealand hotels than the Danish. Regarding information, there is little difference between the two Danish hotels, both of which are rated significantly lower than the New Zealand hotels on receiving information in a timely manner.

Table 1. Direct Participation (DP) - scores on scale from 0-40

Workplace	Influence workload	Influence how work is done	Information from mgmt	Learning possibilities	DP index
Hotel DX	26.5	27.8	23.5	28.3	26.5
Hotel DY	17.4	23.5	24.3	25.2	22.6
Hotel NX	21.3	35.6	30.0	37.8	31.2
Hotel NY	24.5	30.0	27.0	30.5	28.0

It appears that the degree of direct participation is higher at the New Zealand hotels than at the Danish ones, with hotel DY particularly lagging behind. While their influence on workload is actually smaller than for Danish employees in hotel DX, the New Zealanders clearly experience more influence as to how work is carried out, just as they clearly consider that they receive more information from management and experience more learning in their jobs.

Work environment

Table 2 also displays a clear, largely contrasting, picture regarding work environment quality. On average, the conditions for Danish employees clearly appear to be better. Employees from both Danish hotels are less likely than their New Zealand counterparts to feel worn out from work, to experience frequent work-related stress, or to have their personal lives affected by loss of energy from work. One or another of the Danish hotels is also least likely to have employees who consider that they have more work than they can accomplish, or that they are placed in emotionally distressing situations in the workplace. Only with overtime requirements do employees at one New Zealand hotel respond the most positively (marginally), i.e. they are less likely consider they are regularly required to undertake it.

Looking at the hotels on a more individual basis, the survey results are generally more positive for one hotel in each country. In the Danish case, this observation applies across all components of the QWE index, except having more work than employees feel they can accomplish, which is the sole measure where Hotel DY outperforms Hotel DX. In New Zealand, Hotel NX performs more positively than Hotel DY across all measures of QWE except for overtime requirements, where Hotel NY ranked the most positively of all four hotels.

Table 2. Quality of work environment (QWE) - scores on scale from 0-40

Workplace	More work than can accomplish	Overtime required	Tired from work	Emotional distress	Stress often	Affect on personal life	QWE-index
Hotel DX	21.7	25.5	28.7	32.2	33.9	31.3	28.9
Hotel DY	26.1	17.4	27.8	29.6	29.6	27.8	26.4
Hotel NX	22.2	17.8	24.4	31.1	26.7	24.4	24.4
Hotel NY	19.0	26.0	13.0	22.0	17.0	22.0	19.8

Comparing participation data with QWE data

When DP and QWE are brought together, as is the case in Table 3, it appears that there is no positive association between direct participation and work environment quality. The first two cases, ranked for direct participation, hotels NX and NY are also ranked three and four, respectively for QWE, whereas the two lowest cases for direct participation, Hotels DX and DY, are ranked one and two, respectively for QWE. If anything, the figures point at a negative association between direct participation and QWE. However, it is noteworthy that for both direct participation and QWE, the Danish and New Zealand hotels rank as pairs at the top or bottom of the rankings. If we look within each national pairing, then the higher and lower rankings for direct participation and QWE do actually correspond with each other. This suggests a country effect from different institutional environments.

Regarding representative participation, it is not possible, as above, to compare one set of figures with another. However, it does seem likely that higher QWE levels experienced by Danish workers can at least partly be explained by the greater scope for representative participation in Denmark. Cooperation committees, a broader agenda for the OHS committees and a national collective agreement, which determines important parts of the effort-reward exchange, are all elements that can help shape a work environment that keeps psychosocial work environment problems at bay.

Table 3. Direct participation and work environment – scores and rank order of four hotels

Workplace	DP score	DP rank	QWE score	QWE rank
Hotel NX	31.2	1	24.4	3
Hotel NY	28.0	2	19.8	4
Hotel DX	26.5	3	28.9	1
Hotel DY	22.6	4	26.4	2

Conclusion

Obviously, the empirical material that this article is based upon is not sufficient to generalise. Material from two cases in each of the two countries cannot represent either the industry or the country. However, a few remarks on how the pattern of participation unfolds in these four cases in two countries are appropriate.

On average, we find work environment quality to be slightly better at the Danish hotels. Can this be explained by the fact that Danish hotel workers enjoy more direct participation at their workplaces than their New Zealand colleagues? The answer to this question is: No! Regarding direct participation, our data show that the New Zealand employees, with few exceptions, are equipped with a higher degree of influence, learning and information sharing than the Danes; however, they also experienced relatively high stress levels in this environment. The findings, thus, lend support to the participation literature that questions the notion of participation as always beneficial to the work environment and workers' well-being (Busck et al., 2010, Kalleberg et al., 2009).

The problem, as we see it, with the high level of participation granted to the New Zealand hotel workers is that it is all granted on the premises of management. The New Zealand employees receive information, they enjoy learning opportunities, and they get influence on their immediate work

environment, but they have no influence on any of the important framework conditions of work (cf. Hyman & Mason, 1995). In other words, the form of participation practised in the New Zealand hotels is what Pateman (1970) called “pseudo”, or what Hyman and Mason (1995) characterised as employee involvement, motivated by management desire for organisational efficiency through employee motivation. “Pseudo” participation or employee involvement, then, is not necessarily associated with better QWE.

Influence on the framework conditions of work is available to a considerable extent in the Danish hotels through the fact that workers there are covered by a national collective agreement, which contains a number of limitations to employers’ ability to freely exploit labour power. This may be characterised as Pateman’s “partial” participation, or what Hyman and Mason (1995) called employee participation. When Danish workers can be seen to score better on the questions related to workload and stress, this could very well be a reflection of the stronger forms of representative participation enjoyed by the Danish employees, notably because they are covered by a collective agreement, but also perhaps due to the dialogues occurring in the cooperation and OHS committees.

This brings us to an evaluation of the relative strength of participation in its different manifestations in the New Zealand and Danish hotels, using Blyton and Turnbull’s (2004) terms of depth and scope. The partial participation operating in the Danish hotels, through representative structures associated with the collective agreement and cooperation and OHS committees, provided greater depth of participation than in the New Zealand hotels with their relatively higher degree of direct, or “pseudo”, participation focused on task autonomy, information sharing and learning. We may also say, for the same reasons, that the scope of participation in the Danish hotels was greater than the New Zealand ones, since the latter cases confined participation to operational matters. In contrast, the Danish cases, to some extent, involved workers and their representatives in tactical matters related to work organisation and technology, if not more strategic issues. The Danish hotels, indeed, provided instances of very partial participation because the weak level of workplace representation meant that most consultation and negotiation occurred at a higher level in the organisation. Nevertheless, overall, these greater opportunities for participation contributed to a greater depth and scope and, therefore, strength of participation in the Danish hotels.

Two main conclusions may, therefore, be drawn from these case studies. First, by themselves, direct forms of participation that closely align with Pateman’s (1970) concept of “pseudo” participation do not necessarily lead to good QWE, and may even be associated with a poor QWE through work intensification. Secondly, representative forms of participation, even if partial, appear to offer greater opportunities for a better QWE. This distinction in terms of the impact on QWE warrants further exploration, through case studies and more general quantitative research, particularly in terms of the degree of impact from stronger and weaker structures of representative participation.

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The major parties: National's and Labour's employment relations policies

ERLING RASMUSSEN*, MICHAEL FLETCHER** and BRIAN HANNAM***

Abstract

The policies of the two major parties – the National Party and the Labour Party – are overviewed, based on our reading of recent policy implementation and election promises. The overview highlights two very different approaches to employment relations and its context. The National Party is continuing its piecemeal dismantling of collective bargaining and individual employment rights while the Labour Party seeks to enhance collective bargaining and unionism as well as individual employment rights. With its tax policies and more state intervention, the Labour Party is also projecting a different path to the elusive high skill, high wage knowledge economy. It appears that the 2014 general election provides the electorate with a clear choice when it comes to the employment relations policies of the two main parties.

Introduction

Most commentators have emphasised that this has been a rather unusual election campaign with the fall-out from the Nicky Hager book, *Dirty Politics*, and the resignation of Minister of Justice, Judith Collins, hogging the headlines. Also, the nature of MMP elections and coalition governments has meant that the policies of the two main parties have sometimes been overshadowed by the policies and behaviours of minor parties (see Molineaux & Skilling (2014) article in this issue). Still, there has been considerable focus on the major parties' policy positions and announcements, and they have shown plenty of policy differences both in the context of and in the specifics of employment relations. We will highlight some of these differences below.

This election has been influenced by that the economy and labour market has changed considerably since 2011. There has been the positive influence of the highest terms of trade in 40 years in 2013-2014, and the positive impact of high dairy prices and the resulting pay-outs to farmers have flown through to regional economies. Construction industry employment has increased significantly due to re-building work in Christchurch getting close to its peak, and by the ongoing repair to many 'leaky buildings'. This upswing in construction industry employment is expected to continue for the foreseeable future. Unemployment has declined over the past election period and it is now at a five-year low at 5.6 per cent. Reports of skills shortages and labour market bottlenecks have begun to appear in the media, and the insufficient attention to increasing labour market mobility measures and investing in vocational training and education during the past election period is becoming common knowledge (Collins, 2012; Doesburg, 2014; Porter, 2014).

* Professor of Work and Employment, Department of Management, Auckland University of Technology, Auckland (AUT),

** Senior Lecturer, Department of Social Sciences and Public Policy, Auckland University of Technology

*** Researcher, Auckland University of Technology

“‘This is the second year in a row that over half of employers in New Zealand are struggling to fill roles despite having an unemployment rate of 6 per cent,’ said Lincoln Crawley, ManPower-Group’s New Zealand and Australia managing direction” (Doesburg, 2014: 14).

There has also been more public emphasis on income inequality, ‘working poor’ and children in poor households, and both major parties have tried to emphasise their policies in those areas (see Table 3 below). What appears to have changed is the underlying understanding of mainstream economists and commentators: higher statutory minimum wages, social welfare interventions and better school-to-jobs connections are now being projected in a more positive economic light (for example, Editorial, 2014; O’Neill, 2014; MBIE, 2014). It is also illustrated by the media attention given to the so-called ‘living wage’ campaign (see New Zealand Journal of Employment Relations, 38(3)).

It is plainly crazy – at a time when company profits take up a record share of national incomes – that wages have to be constantly topped up by the state to give the low-paid an acceptable standard of living (Warner, 2014: B10).

This has also influenced another significant employment relations topic – the so-called productivity ‘conundrum’ – where the spotlight has moved from unions and constraints on work practices to insufficient R&D spending, managerial skills and skill shortages (see de Serres, Yashiro & Boulhol, 2014; Fallow, 2014; Oram, 2014 a, b). This is also where the vision of the two major parties has grown apart over recent times (as outlined below).

While we have drawn on the available information about the two parties’ policy positions, this has been influenced by recent media reports. This is also our description and evaluation of their policies and will involve some personal biases and speculations. This is particularly the case regarding the National Party’s position, which has been interestingly short of policy details about its future employment relations policies – as it was in the last election (Rasmussen, 2011) – though we have had the advantage of being able to draw on the last six years’ policy announcements and implementations. While neither party has focused strongly on employment relations, it has surfaced in debates of inequality, poverty, low and ‘living’ wages, skill shortages and economic growth.

In the next section, we overview the two parties’ recent public policy positions. With the National Party forming the government in the last two election periods, this provides a reasonably accurate picture of the main thrust of its employment relations policy platform even though it has not divulged much detail so far in the election campaign. It also aligns with the National Party’s aim to ‘run on its record’ and its claim of wanting to continue its current policies. However, there can always be changes as political alliances and debates unfold. With the Labour Party developing a number of new policy directions, it is more unclear how much its policy positions of the recent past will contribute, and instead the current election platform will probably provide a more precise picture of its policy approach in the coming election period.

Employment relations policies and positions 2008-2014

Since 2008 employment relations policies have been dominated by the changes made by the National-led governments (see Table 1). During the 2005-2008 period, the National Party moved from a repeal of the Employment Relation Act (ERA) to specific and limited changes. Its election platform had very few specifics about employment relations though it had a handful of targeted areas (Rasmussen & Walker, 2009: 166):

- “removing the union monopoly bargaining rights for collective agreements, to allow non-union workers to enter into agreements
- reviewing personal grievance procedures, which were seen as skewed in favour of the employee
- introducing an optional “probationary period”, where new employees would not have access to personal grievance provisions
- reducing compliance costs, particularly removing ACC’s monopoly over workplace injury insurance
- revisiting the Holidays Act”.

Likewise, the National Party did not produce a detailed policy document about employment relations in 2011, though it had just introduced the ER Amendment Act 2010 (see below) and a raft of other public policy changes (see Haworth, 2011), and it had foreshadowed further changes to employment rights and collective bargaining. While the ER Amendment Bill 2013 will probably be resurrected in some form if the National Party gain power, it is unclear whether there will be any further major changes. In particular, the policy wishes of employer associations have not been commented on by National Party politicians, including the suggestion of extending the 90-day trial period from Business NZ (2014: 3): “Small business would support the extension of this policy to 6 or 12 months, as in other countries.” There appears to be a pattern with the National Party downplaying its employment relations policy in the last three general elections and, thereby, avoiding a strongly ideological and political battleground.

Surprisingly, the Labour Party has yet to manage to position its employment relations policies as a central feature of the 2014 election campaign. For example, there has hardly been any debate about its proposed Commission of Inquiry into collective bargaining (see below). This is rather surprising since the Labour Party has a very detailed policy platform, it provides a clear distinction to the policy platform of the National Party, and it aligns well with its core union constituency and its possible future coalition partners the Greens and NZ First (see Molineaux & Skilling, 2014). Furthermore, many of the Labour Party’s core policies on poverty, skills shortages and fairness are compatible with its new direction in employment relations, including abolishing several of the changes implemented during the 2008-2014 National-led governments.

Table 1: Employment relations policy changes 2008-2014

Legislation	Legislative purpose and details
ER Amendment Act 2008	Introduce 90-day probation/trial period for small businesses (1-19 employees)
ER Amendment Act 2010	Extend 90-day trial period to all organisations, reduced union access rights, reinstatement is no longer primary remedy in dismissal cases, change dismissal test from what a reasonable employer 'would' instead of 'could' have done
Holidays Amendment Act 2010	Employers can require proof of sickness from the first day, allow employees to trade for cash their fourth week of annual leave
ER (Film Production Work) Amendment Act 2010	'Hobbit' legislation prescribes 'contracting' for film production workers
ER (Secret Ballots for Strikes) Amendment Act 2012	Before taking strike action, unions need to conduct secret ballots of members
ER Amendment Bill 2013 (not implemented)	Changes good faith duty to conclude collective bargaining, allow opting out of multi-employer agreement bargaining, meal and refreshment breaks can be removed, allow pay reduction for partial strikes, changes transfer regulation (Part 6A), strike notice requirements changed
Minimum Wage (Starting-out Wage) Amendment Act 2013	Reduce starting-out wages for 16-19 years employees to 80 per cent of adult statutory minimum wage (applies only to 18-19 years olds if they have been on benefit prior to starting job)
Health and Safety legislation	The Health and Safety Reform Bill in March 2014 extends the duty of care to all persons in control of a business or undertaking, worker participation is strengthened. New enforcement agency Worksafe NZ. The Accident Compensation Act underwent two amendments in 2008 and 2010. The amendments were primarily concerned with reducing the number of claims and associated costs. ¹

Source: Council of Trade Unions' website; EMA's (Employers & Manufacturers) website; New Zealand Journal of Employment Relations (various issues); Blumenfeld, Ryall & Keily, 2011-2014.

Table 1 sets out some of the major legislative changes though there have also been several private member bills (see Table in Molineaux & Skilling, 2014). As the ER Amendment Bill 2013 will probably set the future course of a National-led government post 2014, we are discussing below the details and the associated policy debate of that legislation. Overall, the 2008-2014 policy has undermined employee protection in several ways – be it in terms of statutory individual employee rights or in terms of unions' ability to conduct collective bargaining. The 'adjustments' to individual employee rights have been considerable. The so-called 90-day trial periods have become a standard feature in employment agreements for many new workers in key sectors, such as hospitality and retail, and recent figures indicate that employers are 'trying-before-buying' with many employees losing their jobs during the trial period (MBIE, 2012). The rather unusual 'Hobbit' intervention forced a change of

¹ The ACC changes included an introduction of experience rating and risk sharing for the Work and Motor Vehicle Accounts, setting a threshold for cover for hearing loss, and earnings-related compensation based on 52 weeks in a year.

employment status on film production workers and overruled traditional legal precedent (see a special issue of New Zealand Journal of Employment Relations, 36(3) on the 'Hobbit' interventions).

The ongoing changes to the legislative framework have clearly been controversial. The National-led government has argued that more flexibility for employers would be positive in terms of job creation and efficiency. With employers having more flexibility and less risk (in terms of personal grievances), this would reduce labour costs, transaction costs and increase predictability. Recent research has indicated that many employers concur with these arguments though it is debated to what degree this has increased employer willingness to employ and create extra jobs (see Business NZ, 2014; MBIE, 2012). Research has also highlighted that many employers are supportive of the legislative changes, even legislation they may not use in their own workplace (Foster, Rasmussen & Cotezee, 2013). In fact, some employers are interested in further changes to enhance their employment flexibility (Business NZ, 2014; Foster et al., 2013).

On the other hand, the Labour Party and its union allies have continuously argued against these changes, and portrayed them as undermining sustainable economic growth, increasing inequality and further embedding an underclass of 'working poor'. The ERA is seen as being undermined by a '1000 cuts' which constitute "some of the most radical changes in employment law in a generation" (Little, 2014). The Labour Party has continued its criticism of the 90-day trial periods, the inability to lift sufficiently statutory minimum wages and paid parental leave, and the attacks on union access and bargaining rights. As employment relations changes have gathered pace from 2010 onwards, the difference between the two parties' policy positions has increased and the Labour Party has promised to abolish most of the post-2008 changes.

Finally, it must be noted that the regulatory changes to health and safety does not appear to fit with the National-led governments' focus on creating more flexibility. The Pike River mining disaster and the inability to reduce fatalities and injuries have changed the political debate of health and safety since 2011. Following the Royal Commission of Inquiry into the Pike River Coal Mine explosions and the report issued by the Independent Taskforce on Workplace Health and Safety, the government implemented a stand-alone enforcement agency, Worksafe NZ, and introduced a new health and safety bill. This is a remarkable development since the National-led government's current OHS policy position contains a number of political U-turns on: employer responsibilities, employee participation, enforcement and penalties. According to the Minister's press release: "Specifically, the Health and Safety Reform Bill will:

Put more onus and legal requirements on managers and company directors to manage risks and keep their workers safe.

Require greater worker participation so workers are more involved in health and safety in their workplace.

Establish stronger penalties, enforcement tools, graduated offence categories and court powers (Press Release, Minister of Labour Simon Bridges, 10 March 2014).

The creation of a stand-alone enforcement agency also cuts across the previous creation of a super-ministry, the Ministry of Business, Innovation and Employment (see Lamm, Rasmussen & Anderson, 2013).

The ER Amendment Bill 2013 is of special interest as it can be seen as ‘unfinished business’ and, thereby, indicating the reform intentions of a future National-led government. It also highlights the narrow parliamentary foundation of the employment relations reforms in the last two periods. With John Banks’ absent vote, the government’s majority had evaporated as the Maori Party continued its traditional opposition to such reforms (see Molineaux & Skilling, 2014).

In general, the ER Amendment Bill 2013 continued the move of previous public policy changes towards more employer-determined flexibility and further constraining collective bargaining and union activity (Haworth, 2011), though probably with a stronger focus on collective bargaining and unionism. There are several changes to employment rights by removing automatic entitlement to meal and refreshment breaks, by removing transfer protections (as stipulated in Part 6A of the ERA), and by removing the 30-day rule for new employees which prescribes that new employees will be covered by an existing collective employment agreement², and employers are allowed to withhold information in dismissal cases. The Bill’s changes to collective bargaining are comprehensive: it abolishes the duty to conclude collective bargaining and allows opting out of multi-employer bargaining; union and employers will have same time period for initiating bargaining, a 60-day period after negotiation is deemed over where employers can offer individual employment agreements, it curtails strike action. The latter happens through two changes where more strict notice requirements will be required and where pay deductions for partial strikes are allowed. It is difficult to see how these changes align with the ERA’s objective of promoting collective bargaining.

Overview of current policies and election promises

While most of the policy differences in Table 2 are rather self-explanatory, there are at least three areas which appear less clear-cut and could facilitate considerable public policy change. First, the Commission Inquiry into wages and collective bargaining proposed by the Labour Party could have far-reaching implications. The Labour Party’s website indicates some of the scope by specifically mentioning redundancy, vulnerable workers and rights for dependent contractors, and it opens for considerable change to collective bargaining: “A Commission of Inquiry will be charged with investigating wage setting and other workplace practices and reporting on how to implement industry standard agreements, tailored as needed to meet New Zealand conditions.” The notion of fairness and anti-discrimination also features strongly and some move towards pay equity could also feature in the Commission of Inquiry.

Second, the Labour Party’s pledge to abolish the ‘Hobbit’ legislation brings into focus the issues surrounding independent contracting in New Zealand. This is an issue that the Labour Party has campaigned on for a while (see Fenton, 2011) and legislative intervention could be

² While it is unclear how much the 30-day rule has impacted on collective bargaining and conditions of new employees during 2000-2014, the Council of Trade Unions (2014: 3) is clearly worried about potential employer reactions: “This will also make it easier for employers to undermine the collective agreement and employ casuals on lower rates. The Cabinet Paper specifically mentioned that this will permit wages lower than the collective agreement.”

expected (as part of the Commission of Inquiry mentioned above). There are several types of problems associated with independent contracting. There are situations where ‘sham contracting’ occur (that is, when employees are being reclassified as contractors – see Rasmussen & Anderson, 2010). The lack of statutory minima coupled with dependency of contractors on a single ‘employer’ can often lead to inferior pay and working conditions (Fenton, 2011). This can be further aggravated when sub-contracting occurs. A fluctuating and sometimes unpredictable work flow can also have dire consequences for workers (Walker, 2011). Finally, contracting has received a lot of media and academic attention recently because of the OHS problems – fatalities and injuries – in industries with a high number of independent contractors (Lamm, Lamare & McDonnell, 2014).

Third, the positions around health and safety are also interesting. There is no doubt that the reactive approach to ‘policing’ workplace standards has been undermined by the Pike River disaster and continuous high levels of fatalities and injuries. This has prompted the Health and Safety Reform Bill 2014 and a stand-alone Worksafe NZ agency to implement and ‘police’ regulations. Still, the stand-alone status of Worksafe NZ, the new legislation’s punitive approach to senior management responsibilities and a stronger, more powerful inspectorate appear to sit uneasy with the general thrust of the National Party’s employment relations approach. This is clearly an area where there appears – at least at the surface – to be some commonality between the two parties, though the Labour Party clearly wants to go much further, especially in high-risk industries where the use of contractors is common.

Table 2: Employment relations policy positions, September 2014

Policies	National Party	Labour Party
90-day trial periods	No change	Abolish 90-day trial periods
Collective bargaining	Expected to follow position in ER Amendment Bill 2013	Will support collective bargaining, including MECAs or industry collective norms. Commission Inquiry into wages and collective bargaining
Union access and information	Expected to follow position in ER Amendment Bill 2013	Restore union access, better information about unions, protect against ‘undue influence’ and anti-union discrimination
Protection of new workers	Continue 90-day trial periods. ER Amendment Bill 2013 would repeal 30-day rule for new employees.	Abolish 90-day trial periods and starting-out wages, lift statutory minimum wage, protecting contractors
Statutory minimum wage	Continue ‘responsible’ rises in statutory minimum wage. Has target of a \$62,000 average wage by 2018	Lift to \$16.25 per hour by April 2015, abolish youth rates and starting-out wages, living wage for core civil servants
Health & safety	Implement Health and Safety Reform Bill with stand-alone Worksafe NZ agency	Review OHS legislation, implement all Pike River Royal Commission recommendations
Equity & discrimination	No change.	Abolish ‘Hobbit’ legislation to provide film production workers with employee option and collective bargaining rights

Source: websites of the National Party and Labour Party; media reports; press releases of party policy announcements.

While the devil is always in the detail and in the actual policy implementation, it is our distinct impression that the general policy gap between the two parties have increased significantly recently. The Labour Party will generally continue the main thrust of the ERA whose objectives explicitly support collective bargaining and unionism – collectivism is seen as ‘good’ for productive employment relationships. The National Party clearly has not the same position and while the ERA’s objectives have not been changed, they probably will be difficult to align with the party’s understanding of how to promote productive employment relationships. Importantly, the new policy positions of the Labour Party indicate that the limited positive impact of the ERA on collectivism prior to 2008 – especially the lack of multi-employer collective agreements and limited union density growth – has been taken on board. The current Labour Party platform has a much stronger support of collective bargaining and unionism and generally raises the prospect of a more interventionist government.

There are also more differences when the employment relations context is considered. As can be seen from Table 3, there are several areas where the two parties’ policy position is trying to both claim the policy centre ground and present a particular ideological position. This is, for example, the case with school education where both parties respond to concerns about education outcomes, but have different approaches to lift education quality. National’s focus is on initiatives targeting teacher quality; Labour’s is on reducing class sizes (Woulfe, 2014). The growing concerns about disengaged young people (so-called NEET – not in employment, education or training – persons, see Pacheco & Dye, 2013) and young people have been targeted by the parties’ policy positions. Again, there are similarities but also considerable differences in the proposed policy interventions. National’s primary focus has been on intensive case management support through its Youth Service programme aimed at getting disengaged young people back into education and training. Labour would keep a version of this programme but has a stronger emphasis of apprenticeships for youth and would also reinstate Training Incentive Allowance assistance for sole parent beneficiaries to undertake higher levels of tertiary education. The parties’ response to the prospect of growing skill shortages has been to increase funding for apprenticeships – National via a qualifications target for 25-34 year olds, Labour through identified additional funding places plus development of Employment and Skills and Careers Strategies.

Both parties have picked up on ‘middle New Zealand’ concerns for better support for parents with new-borns and young children, although Labour has gone rather further than National in its proposals. Labour would extend paid parental leave (PPL) to 26 weeks, introduce a new ‘Best Start’ payment for under-twos and extend free early childhood education (ECE) from 20 to 25 hours per week. National proposes a smaller four week extension to PPL, plus an increase in the Parental Tax Credit (available to non-beneficiaries who do not qualify for PPL) and an increase in ECE expenditure. Both parties propose free primary healthcare (GP consultations and prescriptions) for children under 13 years.

Table 3: Employment relations context: policy positions

Policies	National Party	Labour Party
Social welfare benefits, employment assistance and assistance for Youth (including Youth NEET – Not in Employment, Education and Training)	Continue ‘investment approach’ begun as part of welfare reforms. Re-write Social Security Act and embed investment approach into it Continue focus on at-risk youth/young parents. Extend income management to more young parents (and some others).	Raise abatement-free threshold to \$150pw to encourage part-time work. Youth employment package and young people pathways, subsidies for employers for new apprenticeships for 18-19 year old beneficiaries. Restore Training Incentive Allowance for Sole Parent Beneficiaries for Level 4 and above qualifications
Family assistance, child poverty	Extend Paid Parental Leave by four weeks to 16 weeks. Raise Parental Tax Credit. Extend free-GP visits to under-13 year olds. Increase ECE funding. Continue with phased in reduction in tax credit abatement threshold and increase in abatement rate.	Best Start package for pre-school-aged children. Extend Paid Parental Leave to 26 weeks. Increase free-ECE hours to 25 per week. Extend free-GP visits to under-13 year olds.
Vocational training	Continue recent support to apprentices and employers, with target of 60 per cent of 25-34 years old persons with trade qualifications.	Employment and Skills Strategy. Careers Strategy, with increased funds for vocational guidance. Lift apprenticeship funding, with payments to employers (12,000 over four years). Additional Maori & Pasifika Trades Training places.
Education & teachers	Reward the best teachers. Build nine new Auckland schools and 130 more classrooms. Four more partnership schools.	Employ more teachers and reduce class sizes, extra teachers for special needs and raise teachers entry standards, supply tablets to students
Immigration	Review Investor Plus scheme for wealthy immigrants Lift number of Pacific Islanders in Recognised Seasonal Employer scheme from 8,000 to 9,000 annually	Review Investor Plus scheme, change points systems to incentivise immigrants to settle in regions, implement ‘counter cyclical’ controls to smooth flow of migrants
Research & development (R&D)	Invest in ICT graduates, grow Callaghan Innovation grants, invest in Maori-led science and innovation	Invest in secondary teachers, re-instate post-doctoral fellowships, R&D tax credit (12.5 per cent), better career advice
Taxation	Possible income tax cuts in 2017 targeted at ‘low-to middle-income’ earners (approximately \$1 billion per year in total).	Introduce 15 per cent Capital Gains tax (excluding primary residence). New top income tax rate of 36 per cent on income over \$150,000 (and Trust tax rate of 36 per cent).

Source: media reports, press releases and the parties’ websites: <https://www.national.org.nz/policies> & http://campaign.labour.org.nz/all_our_announced_policies

What are the likely implications?

Well, that of course depends on who forms the next government. In case of a National-led government, the election campaign has promised ‘more of the same’. The blueprint will probably be the ER Amendment Bill 2013, which will continue the ‘adjustments’ to collective bargaining and unionism. However, it will not just be ‘more of the same’ as current economic activity could put more pressure on vocational training and the overall education system if skill shortages become more embedded. There have also been growing concerns about inequality and poverty which can no longer be placarded with references to the Great Financial Crisis. The election promises of tax cuts to lower and middle incomes indicate how the National Party will try to lift the ‘rewards of working’. It has also signalled a continuation of its efforts to move people from benefits to jobs by, for example, targeting the Jobseeker Support numbers and individualised job search support. On the other hand, it is unclear whether there will be much movement on statutory minima beyond the already announced increases to statutory minimum wages, and paid parental leave. Whether further employer demands for increased flexibility will be accommodated are also unclear.

A government led by the Labour Party will led to significant public policy changes based on their current platform. The issue is, though, that on the current poll results, such a government will probably need collaboration with both the Green Party and NZ First (and maybe also the Mana-Internet parties). There are some policy overlaps, as highlighted by Molineaux and Skilling (2014), but there are also some interesting differences. Additionally, there will be pressure from trade unions to ensure that a stronger backing of collective bargaining – including multi-employer collective bargaining – will occur. This, as well as the foreshadowed rolling back of reduction in individual employee rights, is bound to rise employer animosity, bringing back memories of 1999-2000 and 2003-4 where employer organisations attacked the announced public policy changes furiously.

While “it is difficult to predict, especially the future”, the 2014 election campaign has raised some thorny issues, such as productivity and economic growth, inequality and ‘working poor’, skills shortages, and health and safety improvements. These are difficult issues to grapple with but regardless of party political colours, the next government is likely to be judged on improvements in the outcomes associated with these fundamental employment relations issues.

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The Minor Parties: Policies, Priorities and Power

JULIENNE MOLINEAUX* and PETER SKILLING**

Abstract

Since New Zealand's first election under the mixed-member proportional electoral system, neither National nor Labour has been able to govern without the support of one or more minor parties. Predicting Employment Relations (ER) policy in New Zealand after the 2014 general election should thus take account of the positions of the minor parties. In this article, we survey the ER policies of the smaller parties that may gain parliamentary representation after this year's election. We consider the factors that will determine the likely influence (if any) that these parties might have on eventual policy development, including their bargaining power, their policy priorities, and any wildcard factors that might shape their ability to work with other parties.

Introduction: Minor Parties and Policy Change

In predicting how Employment Relations (hereafter ER) policy might develop after an election, it is tempting and natural to focus on the policy platforms of the major parties contesting that election (see Rasmussen, Fletcher & Hannam, 2014, in this issue). Minor parties – almost by definition – are assumed to carry less influence over the eventual shape of policy. Since 1996, however, when New Zealand adopted the proportional MMP voting system, neither National nor Labour has been able to govern without the support of one or more minor parties. While it certainly remains possible that National might be able to govern alone after this year's general election, we focus, in this article, on the policy positions of the minor parties contesting this year's general election. We explore each party's position on ER policy, the priority that they give to ER, and the amount of power they might wield in governing arrangements after the election.

The policy influence of a party is not reducible to its numerical representation in parliament. If a major party is reliant on a minor party in order to enact its policy programme, then that minor party may wield more influence than its vote share suggest. On the other hand, minor parties are sensitive to any public perception that they are the “tail wagging the dog” and have historically used their veto power very selectively, if at all. As we noted in 2011, minor parties', “values and ideologies are often in tension with pragmatic considerations of what they can and should demand of larger parties.” There is, therefore, “every possibility that a minor party will compromise in one policy area for the sake of influence in another” (Skilling & Molineaux, 2011: 10).

Entering into a governing arrangement with a larger party carries definite dangers for the long-term prospects of a small party. There are times where achieving political office and

* Julianne Molineaux, Lecturer, Faculty of Business and Law, Auckland University of Technology.

** Peter Skilling, Senior Lecturer, Faculty of Business and Law, Auckland University of Technology.

policy influence in the short-term comes at the cost of longer-term viability and popularity (Muller & Strom, 1999). The Māori Party, for example, is currently contemplating the double-edged sword of its participation in governing arrangements since 2008. While the Party defends its relationship with National as the best way to exercise influence and secure “gains for our people” (Pita Sharples, as cited in Trevett, 2009), it has come at a high price. Being formally aligned with a larger party includes undertaking to support that party on matters of supply and confidence, which involves voting for the major party’s budget. The budget process is intertwined with policy programmes, as these typically require money; thus the minor party may find itself tacitly supporting policies that it opposes (see Sharples, 2011). The Māori Party has faced criticism from those who see it as enabling, through their annual support for the government’s budget, a right-wing policy agenda that contradicts its stated commitment to greater equality (Godfery, 2010), even when the Māori Party votes against specific bills – as has been the case with most of National’s ER bills since 2008.

The influence of minor parties on policy-making, then, is neither straightforward nor easily predictable. We suggest that it is dependent on (at least) the following factors:

1. The *nature of the electoral system*: what avenues exist for minor parties to gain votes and achieve office (and thus at least *potential* influence)?
2. The *bargaining power* of minor parties: how reliant will the major party be on the minor party to advance its agenda? What other options are available to the respective parties?
3. The *policy priorities* of minor parties: how important is it to a given minor party to influence ER policy? How important is ER policy to the party’s voters and activists?
4. *Wildcard factors*, including the personal histories and relationships of key actors. Lingering distrust and animosity between party leaders may derail what appear to be sensible arrangements.

In this article, we begin by sketching the political context within which minor parties will contest this year’s election (the first factor listed above), before discussing, in turn, each of the minor parties contesting the election (in terms of factors two, three and four).

The Current Landscape for Minor Parties in New Zealand

The largest party after the 2011 election was National, with a party vote of 47.3 per cent (Electoral Commission, 2011). This translated into 59 seats in the 121-seat parliament. Sixty-one votes were required to pass legislation; National’s support deals with ACT (one MP), the Māori Party (three MPs); United Future (one MP) provided several possible combinations of votes to pass legislation. This was similar to its governing arrangements in the 2008-2011 period, but with fewer ACT MPs (five in 2008) and fewer Māori Party MPs (five in 2008) (Electoral Commission, 2008; 2011; Skilling & Molineaux, 2011).

The make-up of the next government is uncertain. While opinion polls show the National Party holding a commanding lead over its nearest rival, Labour, the centre-right bloc currently holds a much smaller lead over the centre-left bloc (Pundit, 2014). Further, there are uncertainties over which minor parties will end up represented in parliament: several minor parties, being below the five per cent threshold, will not enter parliament unless they win an electorate seat, and (in many cases) success in those crucial electorates may rely on more-or-less explicit accommodations with a larger party. Further, voting preferences can be volatile

with many voters making their decision close to Election Day (Vowles, 2003), and support for incumbent governments often decreases during the course of an election year (Levine & Roberts, 2003). National's vote of 47.3 per cent at the 2011 election, for example, came after it had polled above 50 per cent earlier in the year, and even during the campaign period (Pundit, 2014). Despite the current dominance of the National Party in the polls, history suggests that whichever party is in a position to form a government after the election will rely on one or more support parties if they are to pursue their policy agenda.

There are currently five minor parties in parliament that will be contesting the 2014 general election: the Green Party, the Mana Party (but see below), the Māori Party, the New Zealand First Party and the United Future Party. We survey each of these below, along with ACT New Zealand (which was represented in parliament by John Banks until he resigned in June 2014) and the Conservative Party. We allow for the fact that Mana has established a formal arrangement with the fledgling Internet Party (the Internet Mana Party) for the purposes of this election.

Our survey is primarily a descriptive piece. We set out the parties' positions on ER as objectively as possible, indicate the extent to which ER policy is likely to be a priority for each party, speculate as to how much influence each party may end up with, and identify any likely "wildcard" factors that might influence the decisions that each party is likely to make after the election. We present our discussion in alphabetical order to avoid the possibility of suggesting priority. It is based on a range of documentary data: publicly available statements taken from the parties' websites, public speeches made by members of the parties, and parliamentary records of debates of relevant issues. A set of questions was sent directly to the Conservative Party which – having not been in parliament – has little in the way of a voting record or an archive of public statements on ER policy. At the time of publication they have not responded.

To orient readers to the broad themes that we develop in more detail throughout this article, Table 1 summarises the position of the minor parties surveyed below, based on their voting record in parliament and – where possible – their public announcements and policy statements.

Table 1: Voting records on ER legislation, 2011-2014

	ER policy closest to which major party	Current number of MPs	ER (Secret Ballot for Strikes) Amendment Bill	Minimum Wage (Starting-out Wage) Amendment Bill	ER (Continuity of Labour) Amendment Bill - to select Cmte stage	ER Amendment Bill 2013	Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill 2013	Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill	Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill 2012
Type of Bill			Member's Bill: Tau Henare (National)	Govt. Bill	Member's Bill: Jamie-Lee Ross (National)	Govt. Bill	Member's Bill: David Clark (Labour)	Member's Bill: Sue Moroney (Labour)	Govt. Bill
ACT Party	National	0 (was 1)	Support	Support	Support	Support	Oppose	Oppose	Support
Conservatives		-						Support (support for gradual increase to 12 months)*	
Green Party	Labour	14	Oppose	Oppose	Oppose	Oppose	Support	Support (support for 13 months)	Support (with some amendments requested)
Independent (Brendan Horan, formerly NZ First)		1	-	Oppose	Oppose	Oppose	Support	Support	
Mana	Labour	1	Oppose	Oppose	Oppose	Oppose	Support	Support (support for gradual extension to 12 months)**	Support at first reading; doesn't go far enough.
Māori Party	Labour	3	Oppose	Oppose	Oppose	Oppose	Support	Support	Opposed as may harm iwi fishing companies; wants exemption for them.
NZ First	Labour	7 (was 8)	Oppose	Oppose	Oppose	Oppose	Support	Support	Support
United Party	National (mostly)	1	Support	Support	Oppose	Support	Support	Support (support for 13 months shared between parents)***	Support

Sources: New Zealand Parliamentary Debates, except:

*Bruce (2014).

**Mana Movement (2014).

***3 News (2014).

ACT New Zealand

Positioned to the right of National on the political spectrum, ACT New Zealand is a classical liberal party formed to promote smaller government and individual liberty (ACT New Zealand, n.d.a). Following the 2008 and 2011 elections, ACT entered into confidence and supply arrangements with National in exchange for some policy wins and a ministerial post outside of Cabinet (ACT New Zealand, 2011). ACT contested the 2011 election under the leadership of Don Brash but did not fare well; John Banks held the Epsom electorate for ACT with a reduced majority, and with a Party vote of only 1.07 per cent, no additional MPs joined Banks in parliament (Electoral Commission, 2011). In 2014, ACT elected Jamie Whyte as their new leader and selected David Seymour to run as candidate in the Epsom electorate, a seat ACT has held since the 2005 election. The change of leadership initially saw a small boost in the polls for ACT, but it has returned to sub one per cent ratings (Pundit, 2014). ACT's only chance of returning to parliament is Epsom voters supporting Seymour. Even if they do, it is unlikely on current ratings that Whyte will join Seymour in parliament.

Since 2011, ACT has been dogged by scandal; news media coverage of the Party has been dominated by ignominy and personnel changes instead of policy. Banks faced allegations he filed a false election return during his 2010 campaign to be Auckland Mayor. In May 2014, after more than two years of negative publicity on the matter, he was found guilty of electoral fraud, and having earlier resigned as ACT party leader, resigned from parliament; because of the proximity to the general election, a by-election has not been held, leaving the seat vacant. Banks' resignation reduced the government's majority by one vote; consequently National cannot pass legislation unless it has the support of the Māori Party. This reduced majority has seen the government shelve plans to pass the Employment Relations Amendment Bill (ERAB) 2013, which was supported by ACT but not the Māori Party.

ACT has announced education as its top policy priority in any coalition negotiations (Whyte, 2014a) This policy will extend the current partnership school programme to all schools; retaining state funding of schooling, but removing compulsory state control of schools. Funding will follow pupils in the form of a voucher and schools will compete for voluntary parental patronage (ACT New Zealand, n.d.b). Should this policy be enacted, it will likely have a significant impact on teachers' pay and conditions, and the future of collective employment agreements. While ACT negotiated a partnership school policy (charter schools) trial as part of its 2011 coalition agreement with National, convincing National to support a more radical redesign of schooling will depend on ACT's post-election bargaining power; such a policy may undermine National's flagship expert teachers and principals initiative (Investing in Educational Success).

ACT supported the ERAB 2013 and other National ER initiatives during the 2011-2014 term. If returned to parliament in September, ACT will support any ER legislation that moves in a more-market direction. ACT sees the employment relationship as a contract between equal parties and wishes to replace the current Employment Relations Act – which it describes as “a burden that stifles growth, productivity and wages” – with contract law and elements of common law (Whyte 2014b). “The goal is to reduce regulation, while at the same time protecting people from clearly abusive behaviour. Employment law must give freedom to employers and employees to come to arrangements that suit them both” (Whyte, *ibid*). Whyte has described the market as a “disciplining mechanism” that would ensure workplace safety if employers could be sued for negligence (Whyte 2014a).

Conservative Party

The Conservative Party was founded in 2011 by businessman Colin Craig, who continues to provide significant funding for the party (Vance, 2013; Electoral Commission, 2014). Craig's foray into politics was inspired by a change to the law around the physical discipline of children, colloquially known as the "anti-smacking law". 117 out of 122 MPs voted for the law change, despite vocal public opposition, which included a march organised by Craig, and a referendum in which 87 per cent of participants voted against the measure.

Convinced that politicians are not responsive to the public, the Conservative Party's policy priority – and bottom line for providing confidence and supply – is binding referenda (Davison, 2014a). Craig has clarified this demand to specify that any financial implications of a referenda must be part of the voting options (Television New Zealand, 2014a). As its name suggests, the Party stands for conservative moral values. Unsurprisingly, given its origins, newness, and size, the Party does not have a detailed set of economic policies and no specific ER policies. They have responded to survey questions indicating support for a gradual increase in paid parental leave to 12 months, and against the adoption of a "living wage" to replace the minimum wage (Bruce, 2014). Craig recognises that some families are struggling financially, and his Party's solution is a \$20,000 income tax-free threshold followed by a low flat tax, reasoning:

...we take this approach instead of a minimum wage increase [because] increasing the minimum wage will result in extra costs to business owners and therefore job losses. We do not support job losses. We are a party that wants everyone to be engaged in constructive work that is rewarding and can meet each family's needs" (Conservative Party, n.d.).

Craig has criticised Working for Families' perverse incentives (Campbell, 2013), and Craig, an employer of 25, says he supports paying people on their contribution rather than implementing pay equity (University of Otago, 2014a). Craig says that, while his party supports freedom of association and the role of unions, employment contracts are, "between an employer and an employee. While either or both may seek assistance, the primary parties need to have a good faith working arrangement between them" (Television New Zealand, 2014b).

In 2011 the newly-formed Conservative Party stood candidates in 52 electorates and compiled a party list of 30. The Party did not win any electorates but managed to garner 2.65 per cent of the party vote (Electoral Commission, 2011). They are polling between three and four per cent in the lead-up to the 2014 election (James, 2014) and are unlikely to win an electorate. Parties that do not meet either of the criteria for parliamentary representation (five per cent of the party vote or one electorate) have their votes reallocated proportionately to those parties that do win representation (Electoral Commission, 2013a). If the Conservatives fail to win an electorate and fail to make the five per cent party vote threshold, their party votes would be reallocated to all parties in parliament including those the Conservatives oppose, such as Mana and the Greens. In a tight election race, such a reallocation could be the difference between a National-led and a Labour-led government.

The Conservatives have said that if elected to parliament they will provide stability by supporting the highest polling party in confidence votes (Keall, 2014). This is likely to be National. Their insistence on binding referenda as a condition for a coalition agreement will complicate negotiations. Irrespective of the Party's bargaining power, this policy is considered extremely difficult to enact within the New Zealand constitutional framework (Geddis, 2014a). If not part of

a government, the Conservatives will vote for issues on a case by case basis; their support for individual National Party initiatives, including the ERAB are, at this stage, uncertain.

Green Party

Since its formation in 1990, the Green Party has always included a social justice element alongside its environmentalist agenda (Green Party, n.d. a). It understands society in general – and the world of work especially – as a realm of unequal power relations, and it has consistently sought to rectify these power inequalities through the regulation of employment relations.

The Green Party is currently represented in parliament by 14 MPs. As we noted three years ago, the Electoral Commission recognises the Party's unique place in New Zealand politics, with its voter support over an extended period of time distinguishing it from the other minor parties (Skilling & Molineaux, 2011). The Party's electoral success – relative to the other minor parties surveyed here – has allowed it to develop and promote its position on a wide range of policy fronts. The Party has also had a representative – currently Denise Roche – on the Transport and Industrial Relations Select Committee that considers proposed amendments to ER policy.

In parliament and in its other public statements, the Green Party has argued and voted against the National-led government's ER policy amendments. In their basic logic and structure, the arguments of the Green Party are not notably different from Labour's, revolving around the same key points: that the field of ER is inherently conflicted and unequal (and that National's proposed changes exacerbate this inequality); that the actual ER problem is low wages (rather than, as National would suggest, a lack of efficiency and productivity); that collective bargaining is the most important vehicle for improving wages, conditions, and health and safety outcomes; and that an approach to ER focussed on reducing costs and wages is not consistent with best management practice.

According to National (Mike Sabin as cited in House of Representatives, 2014a), its ERAB 2013 was premised on the "reciprocal relationship between the employer and the employee" and on the need for both parties to "work in a collaborative and respectful manner in a fashion that improves productivity" since – so National claimed – "when productivity is improved, everyone is actually a winner." The Green Party fundamentally rejects this vision of reciprocity and mutual benefit. Invoking the ERA's acknowledgment of "the inherent inequality of power in employment relationships", Denise Roche claimed (House of Representatives, 2013) that the Bill "tilts what was never a level playing field in the [ER] power relationship ... heavily into the employer's favour". Speaking on another occasion, Roche situated the Bill in the contemporary context of a tight labour market, noting that "there is little power and very little balance in the employment relationship" in a setting of high unemployment. Jan Logie (House of Representatives, 2014a) rejected Sabin's claim of the widely-shared benefits of productivity gains by noting that such gains in recent years "have been channelled into profits and chief executive officer pay packets rather than being shared with the whole team, who actually generated this increased productivity."

The Greens have articulated their stance on ER with a broader concern with inequality and the spectre of the 'working poor', or those subsisting on 'poverty wages.' Indeed, the Party insisted on the right of all workers to "a decent living wage to enable them to fully participate in our society" even before the concept of the living wage gained much prominence in New Zealand political discourse (Green Party, 2011: 2). They explicitly linked their opposition to the ERAB (2013) with

the Bill's likely effects on economic inequality, arguing that "this legislation cements inequality" and condemns "another generation of workers ... to low wages and poor conditions" (Roche as cited in House of Representatives, 2014a). Expanding on Andrew Little's (House of Representatives, 2013) claim that "if the average wage in this country had actually matched productivity improvements ... [it] would be between \$7 and \$8 a hour better than it is now", Denise Roche (House of Representatives, 2014a) argued that "the costs of ... low pay are externalised". Through spending on social problems, and through schemes like Working for Families, she stated "the taxpayer pays the social costs that come with poverty wages."

Consistent with its insistence on "workplace democracy and collective organisation" as a response to the "inherent potential for inequality of power" in employment relations (Green Party, 2011: 2), Green Party MPs have argued in parliament that collective bargaining is necessary to improve wages, to ensure safe and healthy workplaces, and to protect vulnerable workers. Roche sees the ERAB (2013) as a direct threat to collective organisation, arguing that "it is a blatant attempt to undermine unions and limit a worker's ability to collectively negotiate decent wages and conditions with their employer". The Bill, she continues, is "a return to the 1991 Employment Contracts Act" (Roche as cited in House of Representatives, 2013). Polling consistently over 10 per cent, the Greens will almost certainly return to parliament. Their ER policy has many points of convergence with Labour's, and so its hopes of seeing a move towards its preferred ER policies after the 2014 Election depend on the formation of a governing arrangement built around Labour, rather than National. While an alliance between the Green and Labour Parties makes sense in policy terms (and especially in ER policy terms), sensitivities exist around public perception, points of policy difference, and the relative electoral strengths of the two parties. Earlier this year, Labour rejected the Green's proposal for the two parties to "campaign together, ... brand themselves as a future Labour/Greens Government" and commit to a stipulated post-election division of cabinet positions (Television New Zealand, 2014c). While such an alliance would have formalised an obvious policy congruence, Labour were perhaps wary that it may have alienated some voters, and other prospective coalition partners (Campbell, 2014).

Internet-Mana

One of the more noteworthy developments on the minor party landscape in 2014 has been the formation of Internet-Mana, a strategic alliance between the Mana Party (see Skilling & Molineaux 2011) and the Internet Party.¹ The two constituent parties will continue to exist in their own right, and Internet-Mana will be "an umbrella organisation, registered as a party in its own right with the Electoral Commission" (Geddis, 2014b). This arrangement is designed to "take advantage of the electorate lifeboat rule in s.191(4)(b)(ii) of the Electoral Act" which states that the umbrella party "doesn't have to reach the 5% threshold to get party list seats", if one of the component parties manages to secure an electorate seat (ibid). In this case, if Mana MP Hone Harawira is successful in retaining his Te Tai Tokerau seat, then Internet-Mana will be entitled to MPs in proportion to its combined party vote. During August and September, Internet-Mana polling was consistently between two and three per cent (James, 2014). A vote of, say, 2.5 per cent on election night would see three MPs elected from the joint party list, which has Mana leader Harawira ranked first, Internet Party leader Laila Harré second, and Mana candidates Annette Sykes and John Minto third and fourth respectively (Geddis, 2014b).

¹ The Memorandum of Understanding between the two parties will be reviewed no later than five weeks after the general election (Internet Mana, 2014).

Political scientist Grant Duncan (2014) notes that this alliance runs the risk of tarnishing the brands of both parties, and of confusing “voters about what [each party] actually stand for politically.” Indeed, Internet-Mana has been accused of incoherence, with critics seeing little ideological congruence between the avowedly left-wing Mana Party and Kim Dotcom, the billionaire businessman founder of the Internet Party. As we noted in 2011, Mana is strongly committed to action that would strengthen worker rights. In setting out its ER policy priorities, Mana lists increasing the minimum wage, strengthening collective bargaining provisions (and, more generally, the power of workers and unions vis-a-vis employers), introducing industry pay scales, increasing worker protections and rights and, more generally, endorsing greater state involvement in creating meaningful and useful jobs (Mana Movement, 2014; Skilling & Molineaux, 2011). Hone Harawira, as Mana’s sole MP, has consistently voted against National’s ER legislation in parliament. The Internet Party, meanwhile, which was announced and launched in early 2014, does not even include ER among the six policy priorities (modern schools, environment, independence, privacy and internet freedom, cheaper universal internet, and copyright) listed on its website (Internet Party, 2014a).²

On the other hand, the selection in May of Laila Harré (a former unionist, Alliance MP, ILO representative in the South Pacific, and Green Party ‘Issues Director’) as the leader of the Internet Party weakens the charge of policy incoherence. Harré’s political life has been dedicated to left-wing causes, especially in the field of ER. It is difficult to imagine Harré voting with National (or against established Mana policy) on ER matters. There are further moments of policy alignment. Harawira has consistently spoken (and voted) against moves to increase the surveillance powers of the State and to restrict the internet freedoms of individuals (Mana Movement, 2013a, b). Further, both parties are motivated by a strong desire to see John Key and the National Party voted out of government. The purpose of the Internet-Mana alliance is to ensure that any ‘anti-government’ votes cast for either party are not wasted under the rules of the electoral system. To this end, the alliance allows the Internet Party to benefit from Mana’s expected electorate success in Te Tai Tokerau; and it allows Mana to benefit from the Internet Party’s (and Kim Dotcom’s) profile, online campaigning skills, and campaign finance. Kim Dotcom has donated more than \$3 million to the Internet Party’s campaign fund (Electoral Commission, 2014), a figure comparable to the amount spent in 2011 by the National Party (Walters & Watkins, 2014).

Based on stated policy and voting record (in the case of Mana) and potential MPs in parliament (Laila Harré, in the case of the Internet Party), both component parties of Internet-Mana are much more closely aligned with Labour than with National. Labour leader David Cunliffe initially indicated a willingness to speak with Internet-Mana after the election (New Zealand Herald, 2014), stating that “Labour would work with anyone who wanted to change the Government”, but later confirmed he would not include the Party in his governing arrangements (Radio New Zealand, 2014). His preferred partners in a potential coalition would be the Greens and New Zealand First (Trevett, 2014). This cautious level of openness is more, however, than that shown by then-leader Phil Goff towards Mana in 2011 (Skilling & Molineaux, 2011).

² The Internet Party’s Independence Policy does argue that New Zealand’s sovereign authority to determine its own laws (including labour laws) is eroded by international agreements such as the prospective TPPA (Internet Party, 2014b).

Māori Party

Formed in 2004 to oppose the Foreshore and Seabed Act (2004), and to promote Māori self-determination, the Māori Party are not easily placed on the left-right political spectrum. Despite many voters in the Māori electorates giving their party vote to Labour, the Party has been in a confidence and supply arrangement with the National-led government since 2008. Retiring leaders Tariana Turia and Pita Sharples, and new leader Te Ururoa Flavell, defend their alliance with National in terms of policy gains. They say the Māori Party was not formed to sit in opposition, but to progress a Māori worldview on policy decisions (Flavell, 2014a, b; Sharples, 2014). ‘Wins’ in the 2011-2014 period include a Māori economic development strategy, inclusion of Treaty of Waitangi clauses into legislation (such as the Public Finance (Mixed Ownership Model) Amendment Act 2012), substantial ongoing tobacco tax increases, and the Party’s flagship Whānau Ora policy (Māori Party, 2014).

Until the recent resignation of ACT MP John Banks from parliament, National has not required Māori Party support to pass legislation, operating a ‘surplus majority coalition’ (Boston, 2011). This arrangement – having confidence and supply agreements with more minor parties than necessary – has reduced the bargaining power of each minor party in governing arrangements.

As we previously noted (Skilling & Molineaux, 2011), while the Māori Party has not given policy priority to ER, it has nonetheless opposed National’s ER direction. The Party are campaigning on an increase in trades training and a minimum wage of \$18.80 per hour (Fox, 2013). Flavell (2013) says:

the Government should focus on reducing wage inequality by targeting high wages of excessively high income earners. ... The Maori Party sees the increase in income inequality over the last 25 years as a major threat to our economic well-being and social cohesion.

They have continued to vote against most of National’s ER legislation, which has often passed with United Future and ACT party support (See Table 1).

This parliamentary term saw the government respond to publicity about poor conditions and low pay for workers on foreign-owned and operated vessels fishing in New Zealand territorial waters. An inquiry led to legislation, the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill 2012. This Bill requires the boats to be re-flagged as New Zealand boats, so New Zealand law, including employment law, must be followed. The Māori Party, representing the views of an Iwi Leaders’ Group (Inns, 2014), lobbied for these provisions to be gradually phased in for iwi quota holders, saying the measures would “disproportionately affect iwi owners of settlement quota who lack the scale, capital and flexibility of other quota owners to make other arrangements for catching their annual catch entitlement” (Flavell as cited in House of Representatives, 2014b). The government declined an exemption for iwi quota holders, saying “the Crown’s right to develop policy in respond to contemporary issues” did not breach Treaty settlements or Maori fisheries claims (Goodhew as cited House of Representatives, 2014b). The legislation did not have its final reading before parliament rose for the 2014 general election; given support from both Labour and National, it is likely to resurface after the election.

Despite having a moderating effect on the National-led government, and some clear policy gains, the Māori Party battles a perception that they have sold out to National. During the 2014 election

campaign, Flavell has been at pains to distance the Māori Party from National (Flavell, 2014c). Electoral support for the Party is heavily concentrated among low-wage earners and beneficiaries, and former co-leader Pita Sharples has acknowledged that his party lost a number of arguments that were important to Māori. Crucially, in 2011 only 48 per cent of the Party's voters believed that Māori had benefitted from the Party's association with National (Miller & Curtin, 2011). While the retirement of founders and leaders Tariana Turia and Pita Sharples adds to uncertainty over the future of the Party in parliament, Turia's departure opens up the possibility of smoother relationships with her former party, Labour. New leader Te Ururoa Flavell has stressed the Māori Party is a potential coalition partner for both Labour and National. While the Māori Party is unlikely to prioritise ER policy in coalition negotiations, their voting record demonstrates a willingness to support a more left-wing policy agenda on the issue, irrespective of the government's stance.

New Zealand First

Formed in 1993, New Zealand First has proved to be the most enduring minor party under MMP. From a high-point of 17 MPs after the 1996 Election, New Zealand First's support declined to the point of disappearing from parliament in 2008. The party returned to parliament in 2011, securing 6.6 per cent of the overall vote, which translated to 8 MPs³ even though polling that year consistently placed them well below the five per cent threshold (Electoral Results, 2011; Skilling & Molineaux, 2011). Polling in the 2014 campaign mostly rates the Party's support above the five per cent threshold (Pundit, 2014). New Zealand First faces some electoral competition from the Conservative Party, who have policy overlap and are targeting a similar range of voters; New Zealand First leader Winston Peters went as far as accusing Colin Craig of plagiarising his policies (Davison, 2014b). If New Zealand First is returned to parliament in 2014, it has a very real chance of holding the balance of power, and many commentators are already addressing the vexed question of which bloc New Zealand First is more likely to align itself with (Watkins, 2014; National Business Review, 2013).

New Zealand First's founding principles include an appeal to economic nationalism (Miller, 2003), and its key policy priorities lie in the retention of state-owned assets in public control, restrictions on the foreign control of the local economy and property, and the protection of local industries and jobs (New Zealand First, 2014a). ER policy is not a top priority for New Zealand First: ER is not among the 20 policy areas listed on the 'Policies' section of the party's website (New Zealand First, 2014b). Still, its policies listed above – as well as its consistent support for increasing the minimum wage (Peters, 2013) – align New Zealand First more logically with Labour and the Green Party than with National and ACT. Indeed, since 2011, New Zealand First has voted against National's proposed ER amendments as well as strongly opposing its privatisation programme. The Party's spokesperson on industrial relations, Barbara Stewart, described the 2012 ERAB as “an affront to the rights of workers” that was part of a pattern of “the slow erosion of workers' rights as anti-worker legislation is pursued” (House of Representatives, 2013). Stewart, a non-voting member of the Transport and Industrial Relations Select Committee that considered the Bill, echoed the position of Labour and the Greens that the “employment relationship is not a level playing field” (Transport and Industrial Relations Select Committee,

³ This tally dropped to seven MPs after the expulsion of Brendan Horan in December 2012. Horan has remained in parliament as an independent MP (Small, Watkins & Vance, 2012).

2013: 19), and accused National, through the Bill of “pandering to its extreme-right minority at the expense of the more moderate majority” (House of Representatives, 2013).

New Zealand First emphasises the need for balance in ER. “There is a really fine balance”, Stewart argues, “between assuring and affirming the rights of workers, on one hand, and allowing enough worker flexibility so as not to hinder any business’s production or productivity.” The party consciously positions itself as centrist and pragmatic, rejecting what it sees as the ideological fixities of Labour, National and their allies. “Unlike other political parties”, Peters claims, “we see the government’s role as the impartial umpire or referee. Where the industrial relations goal posts are put in the right place and stay in the right place.” There is a plea here for a bipartisan consensus that would ensure stability and certainty to all parties. New Zealand First’s claims that National has “distorted” the ER system (Peters, 2013) and eroded workers’ rights (Stewart as cited in House of Representatives, 2013) sit within its broader emphasis on protecting “ordinary New Zealanders” from predatory elites. Its apparent convergence with a left bloc is not straightforward, however. As well as clear differences in other policy areas, there remains a degree of distrust and personal antipathy between Peters and the Green Party. At the same time, John Key – who ruled out working with New Zealand First in 2011, has refused thus far to do so in 2014 (Davison, 2014c). If New Zealand First reach the five per cent threshold this year, they may well hold the balance of power in governing arrangements. Their voting record on ER may not safely predict how they will deal with this situation, given that ER policy does not appear to be a high priority for the Party.

United Future

The United Future Party is represented in parliament by sole MP and leader, Peter Dunne. Dunne has held the Ōhāriu electorate since 1984, which he first won representing the Labour Party. United Future (formerly the United Party) was formed in 1995 to provide a centrist coalition option for Labour and National, acting as a check on extremism (Dunne, 2013a). With the exception of the 2002 election, United Future have performed poorly in the Party vote, but Dunne has consistently held his electorate seat, enabling a continuity in parliament and access to parliamentary resources. Dunne has been a Minister in both Labour-led and National-led governments (Skilling & Molineaux, 2011).

The 2011 general election saw Dunne return as Ōhāriu electorate MP; at just 0.6 per cent, the Party vote was too low for a second United Future MP. Once again, Dunne negotiated a supply and confidence agreement with National and became a Minister outside of Cabinet with the Revenue, Associate Health and Associate Conservation portfolios.

Employment relations are not a high priority policy area for United Future and it does not have detailed policy in the area (Skilling & Molineaux, 2011). Dunne’s policy priorities for 2014 include more flexible superannuation payments and retirement ages, and higher priority for recreational fishing bag limits (University of Otago, 2014b). Dunne has supported popular opposition legislation, such as the Mondayising of Waitangi Day and ANZAC day public holidays that fall on weekends, and the extension of paid parental leave to 26 weeks, calling it “a step in the right direction”. United Future’s paid parental leave policy fits within its broader emphasis on supporting families, viewing it as an investment that will provide long-term benefits for social development (3 News, 2012; 2014).

Dunne opposed Jamie-Lee Ross' private member's Bill, The Employment Relations (Continuity of Labour) Amendment Bill, commenting that he saw potential for its misuse:

I think that the right to strike, whether one agrees with strikes or not, is an important part of our industrial law framework and I think that what this bill potentially does is make it very easy for employers to ditch striking staff very quickly (Chapman, 2013).

On the whole, however, Dunne has been supportive of National's ER policies and direction, voting to support the Employment Relations (Secret Ballot for Strikes) Amendment Bill, the Minimum Wage (Starting-out Wage) Amendment Bill and the stalled ERAB Bill 2013.

Dunne has been open about favouring a National-led government after the 2014 election, over a Labour-led government (Dunne, 2014; Satherly, 2014). At the time of writing, no polls have been conducted in the Ōhāriu electorate. Dunne's likely success in his electorate is hard to predict due to boundary changes, the retirement of his main electoral competitor, former Labour MP, Charles Chauval (Raue, 2014), and uncertain reputational damage following a series of controversies that dogged Dunne and United Future in 2013. These include the brief de-registration of United Future for failing to maintain 500 members (Electoral Commission, 2013b), the resignation of Dunne as a Minister following unsubstantiated allegations that he leaked highly sensitive information to a journalist (Trevett, 2013), and Dunne's shepherding through parliament 'game-changing' legislation around the control of psychoactive substances (Dunne, 2013b). Dunne was reinstated as a Minister in early 2014 and his Psychoactive Substances Amendment Act was amended following a public outcry (Psychoactive Substances Amendment Bill).

If re-elected Dunne will not bring any other MPs into parliament for United Future; if the Party vote continues to track close to zero, his seat effectively becomes overhang. While his preference is to support a National-led government, it is not easy knowing how Dunne would react to a Labour-led government. Dunne's penchant for incremental policy gains and experience working with Labour may incline him to negotiate some key United Future policy wins with a Labour-led government, in return for confidence and supply, but – given his stated antipathy towards Labour's other potential coalition partners of the Greens, Mana, and New Zealand First (see for example, Dunne, 2013a) on NZ First, and Fox, 2013 on the Greens) – it is possible he may stay out of governing arrangements altogether and vote for legislation on a case by case basis.

Conclusion

The make-up of the government that is formed after this year's general election will almost certainly be important for ER policies and laws: this is one policy area where the major parties markedly differ. Since 1996, minor parties in New Zealand have exercised a degree of influence over how ER policy has developed. The stalling of the ERAB (2013) this term once John Banks resigned from parliament illustrates the potential importance of minor parties to the policy process. In this article, we have argued that the exact degree of influence enjoyed by a given minor party is a function of its bargaining *power* (determined by the minor party's number of votes, the other options available to it, and – crucially – the options open to the major party) and by the extent to which the minor party sees ER – as a policy *priority*.

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Are vulnerable workers really protected in New Zealand?

DANAË ANDERSON* and RUPERT TIPPLES**

Abstract

Increasing migration to New Zealand is indicative of globalisation's influence on working arrangements and employment conditions. Although the "compression of time and space" (Harvey, 2000: 16) has opened borders and increased opportunity for many, it has also exacerbated worker vulnerability for a sizeable proportion of workers. One subset of such workers are migrants. Migrant workers often obtain precarious work through community connections or labour contractors; some have language difficulties; and a significant proportion of these migrants work in sectors with relatively high accident rates. It may be assumed, therefore, that they are likely to be more vulnerable to work accidents and injuries (Benach, Muntaner, Delclos, Menéndez & Ronquillo, 2011). Initially, we explore who are categorised as vulnerable workers using Sargeant and Tucker's 2009 framework; concluding that, for many, protection is largely rhetoric not reality. Then we ask three questions: What are the existing protections for New Zealand's vulnerable workers? Secondly, why are these mechanisms ineffective? Finally, what can be done to improve the protection of such vulnerable workers?

All New Zealand workers are protected by the state through public policy, monitoring, and enforcement with varying efficacy. While recent legislative amendments acknowledge some new features of vulnerability, on their own, they are recognised as insufficient to ensure compliance from employers and employees. As a result of public sector restructuring and budgetary constraints, there is also a lack of enforcement mechanisms to iterate legislative oversight. Moreover, many insecure and precarious workers will not advance entitlement claims due to employment dependency.

Most additional protections are likely, in the short-term, to come from collective worker initiatives and, to a more limited extent, by unions' collective labour actions. These are illustrated through case studies of new radical trade unions such as *Unite* and *First's Union Network of Migrants*, with a focus on membership ethnicity and new organisational devices, such as social media, communication campaigns and leadership development. Such features are contrasted with a non-union but demonstratively successful collective, the Filipino Dairy Workers in New Zealand (Inc.) of Ashburton in dairy farming, and of the role of the Canterbury Indonesian Society (Inc.) in the 'rescue' and repatriation of the Indonesian crew of the *Oyang 75*. Finally, discussion of the Recognised Seasonal Employers (RSE) Scheme is presented to query whether this model is a successful response to migrant exploitation and could offer an appropriate foundation for other primary industries.

Introduction

Changing employment conditions in New Zealand have resulted in certain groups of workers collecting at the periphery of the labour market. This work is typically located in tedious or hazardous positions with little regulation, supervision, and poor remuneration (Anderson, Lamare, &

* Researcher at Work Research Institute, Auckland University of Technology, New Zealand

** Associate Prof in Employment Relations, Faculty of Commerce, Lincoln University, Christchurch, New Zealand

Hannif, 2011; Bauder, 2006; Jayaweera & Anderson, 2009). However, while these jobs are often relatively hidden, they are nonetheless vital to some of New Zealand's major export sectors. For a country which depends on its export industries for economic survival, to rely on such groups of marginalised, vulnerable, and often migrant workers is placing those industries at risk. Therefore, addressing the causes and remedies for vulnerable employment is a matter of considerable domestic importance.

Sargeant and Tucker (2009) group three risk factors contributing to migrant worker vulnerability:

- migration factors
- characteristics related to migrants and their country of origin
- receiving country conditions.

We define vulnerable workers following Ori and Sargeant (2013: xii) as

[...] someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse.

Standing's denizen (resident alien) category from 'The Precariat' (2010) also describes this group well: individuals who have a right to be in New Zealand, but who are expected to comply with specific visa requirements which may increase their vulnerability. These groups may be exposed to exploitation because they need work to generate income, but also to repay debt (often incurred to 'middlemen' or migration/education agents), and for remittances to family, friends and community: often the reason they migrated. Many migrant workers have visa validity conditional on employment, placing increased (and some would say unbalanced) power in the hands of their employers with the potential for exploitation and abuse.

What are the sectors where vulnerable work is found?

The makeup of the New Zealand economy is dominated by primary sector production where exports have reached record levels of \$37.7 billion in 2014 – about \$11.3 billion more than previously forecast (Rae, 2014). With annual exports in excess of NZ \$13.7 billion, the dairy industry is New Zealand's biggest export earner, accounting for more than 29 per cent by value of the country's merchandise exports (Dairy Companies Association of New Zealand, 2014, National Business Review, 2014). Horticultural products now account for eight per cent of New Zealand's total merchandise exports, and in the year to 30 June 2013, the horticulture industry generated more than \$3.6 billion in export revenue, with the major products being wine (\$1.2 billion) and kiwifruit (\$934 million) (Plant and Food Research, 2014). If fishing (\$1.3 billion) is added, these industries are responsible for \$18.6 billion in exports or about a third of total merchandise exports (New Zealand Trade and Enterprise, 2014). Such significant economic impact is matched by influence on employment conditions in the primary sector.

Extant literature shows that the employment of migrant labour in the primary sector is increasingly widespread where non-standard, precarious employment and the use of unregulated, contingent labour is the norm (see McLaren, Firkin, Spoonley, Dupuis, de Bruin & Inkson, 2004; OCED, 2009). The greatest proportionate growth in migrant labour worldwide has been among low-skill, low-wage workers in sectors, such as caregiving, agriculture, hospitality, and food services, expanding in response to employer demand, but with little public debate (Faraday, 2012). With the primary production sector forming a significant part of the New Zealand economy and external trade, the sector's employment practices are paramount for continued increases in productivity as well as maintenance of external trading reputation (Tipples & Whatman, 2009).

Export conditions are the main influence on sectorial employment trends where employment numbers fluctuate according to seasonal, economic, and climatic conditions. As horticulture and agriculture are seasonal in nature and largely unskilled, the difficulties of recruitment and retention domestically are pertinent. Staffing uncertainties continue to be a major concern to growers (Tipples & Whatman, 2010, Horticulture NZ & New Zealand Institute of Plant and Food Research, 2010) and dairy farmers (Tipples, Hill, Wilson & Greenhalgh, 2013), so potential employers often choose labour contractors and migrant workers who complete the work when needed. Labour contractors are usually employed by the owner/operator to complete a job and recruit and employ their own staff: migrant workers who may be illegal workers. As the contractor bears responsibility for employment, the farmers hiring them can 'step away' from the accountability of direct employment and its inherent legal obligations. Indeed, a typical defence of poor labour practices is that the owner was unaware (Stone, 2014; Clark, 2011).

As a primary industry, horticulture has been an avenue for migrant employment for some time (see Rogaly, 2008, Garson, 1999; Horticulture Week, 2008; Kandel, 2008; Shelley, 2007). Horticulture also remains a significant casual employer and of the 40,000 seasonal jobs, 30,000 are located in the forestry and horticulture sectors (Lamm et al., 2011). However, as in many developed countries, farm work is no longer regarded as a respectable or sufficiently attractive or available occupation to the local population. Further, many potential workers are domiciled far from the major regions of production, and transferring for short work periods is unattractive and institutionally difficult as various rural areas in New Zealand have restricted welfare payments to discourage residence (Coppel, Dumont, & Visco, 2001; Guthman, 2004; Horticulture Week, 2008). Therefore, in many cases, the workers available can be assumed to be contingent migrant workers. While they may not choose to work in such industries or conditions, they may be limited by work experience, English language competency, and a lack of other job opportunities (Mackenzie & Forde, 2009; McKay, Craw, & Chopra, 2006; Pollert & Charwood, 2009).

In spite of worker vulnerability leading to access and information-gathering difficulties, Anderson, Jamieson and Naidu (2012) gathered evidence showing migrant workers experienced exploitative and illegal working conditions. A significant proportion of those surveyed worked above the legal hours stipulated in sectors with relatively high accident rates. Average hours worked per week were 29 hours (above the legal limit of 20), and a spread of hours between 16 and 55. Many obtained work from ethnic community connections or labour contractors, and all 93 respondents were paid below the minimum wage. Furthermore, just under half of these workers had any formal written contract. This research presents evidence of industry reliance on migrants working outside their visa conditions as well as the lack of monitoring or enforcement of employment minima by the relevant regulatory agencies. In an export-dependent economy like New Zealand, this can have far reaching implications.

The Recognised Seasonal Employers (RSE) scheme has attempted to address and mitigate some of the above problems as well as ameliorating worker shortages (Cameron, 2011), but secondary (illegal) labour market employment practices continue and undermine the primary sector as a whole. Moreover, the inability of vulnerable workers to enforce their contract or statutory rights creates a situation of commodification of workers, as well as creating workers for positions no domestic workers are prepared to accept. Guthman (2004) premises that this vulnerability is used to ensure compliance in the labour force; these are core jobs on which the primary industry is reliant, but for peripheral wages (Anderson & Naidu, 2009; Walsh & Deery, 1997). This peripheral work creates a workforce without comprehensive rights even though the jobs are economically essential.

The Foreign Charter Vessel (FCV) fishing sector has also seen human rights abuses occurring within New Zealand's exclusive economic zone (EEZ). Deregulation and a drive to increase profit margins from large fishing corporates (including major iwi enterprises) have encouraged the use of foreign vessels and foreign crews in the New Zealand fishing industry (Stringer, Simmons, & Coulston, 2011). Exploitation and cruelties were elucidated in two South Korean flagged boats within a short time period: *Oyang 70* with six deaths in 2010, and desertion by Indonesian crew of the *Oyang 75* in Lyttelton in 2011. "Crew members on the *Oyang 75* reported officers beating them for working too slowly, and making crew members remain standing in a fixed position for hours as punishment for perceived slights to officers" (Stringer et al., 2011: 8).

So we ask: what are the existing protections for New Zealand's vulnerable workers? Secondly, why are these protections ineffective? Finally, what can be done to improve the protection of vulnerable workers in primary industry?

What are the existing protections for New Zealand's vulnerable workers?

The response to the first question reviews current legislation and its implementation. While the state regulates labour supply through its migration policy (Rogaly, 2008) as well as a protective dimension to regulation, varied viewpoints remain on its effectiveness protecting migrant workers (Anderson & Naidu, 2009; Bocock et al., 2010). Firstly, at the point of entry for new migrants, government regulation should ensure benefits for a variety of stakeholders and to avoid abuse of individuals as well as ensure social cohesion (ICFTU, 2005). In New Zealand immigration and employment law:

1. Onus is on the employer to act lawfully
2. An under-resourced inspectorate limits enforcement capability
3. There is inconsistent coverage of protective legislation among workers (for example, Accident Compensation).

Essentially, major statutory protections are under the Employment Relations Act 2000, the Health and Safety in Employment Act 1992, The Holidays Act 2003, the Minimum Wages Act 1983 (all as amended). To these must be added the ILO Covenants relating to migrant workers and the Code of Practice for Foreign Chartered Vessels (FCVs), approved by the Department of Labour (DoL) in 2004, and related international conventions covering migrant seafarers and fishermen. There is an obvious need for strengthening migration governance, as currently linking visa entitlement to a position with limited transfer ability appears to undermine worker protection. New Zealand also still maintains reservations on two of the eight core ILO Conventions¹. Although legislative deficits relating to domestic labour markets exist, questions must also be asked about the global mechanisms encouraging worker vulnerability and how to reduce the 'attraction' of relocation for work.

Why are these protections ineffective?

International labour migration has been described as "a new geography of centrality and marginality" (Sassen, 1998: xxv), reflecting widening gaps not only in terms of structures and dynamics of economic activities across the world, but also in terms of employment equity issues faced by migrants relative to the native population in host economies. While some interest in this area has been indicated by economic and policy research, the lack of access to or visibility of migrant workers

¹ C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 C138 - Minimum Age Convention, 1973 (No. 138)

creates problems for both government agents and researchers alike. Improving labour legislation is the responsibility of domestic governments but the available national data does not consistently or accurately reflect what is occurring in New Zealand's labour market; so changes are often initiated in a reactive 'ad hoc' fashion, or as a response to negative publicity (Faraday, 2012; Woodhouse, 2013; Logie, 2014).

Further, the recent disestablishment of the Department of Labour (DoL) and merger of its functions into the mega-agency Ministry of Business, Innovation and Employment (MBIE), compromising of 14 agencies has meant there is no longer a single agency focused on labour issues (Lamm, Rasmussen & Anderson, 2013). Combined with a lack of policy coherence, geographic spread, business numbers and deficiency of information-sharing between the ministries responsible for migration and labour, weaknesses are apparent within domestic legislative frameworks, refuting the assumption that "laws are self-enforcing and have full compliance" (Fenn & Veljanovski, 1988: 1055). While enforcement law mechanisms in New Zealand are proclaimed to be "considered generally robust" (Williams, 2009: 17), the precarious nature of the migrant labour market generates anxieties about the monitoring and enforcement weaknesses of government agencies (see Anderson & Naidu, 2010; ILO, 2002, 1991; McLaren et al., 2004).

Domestic monitoring and enforcement capabilities are constrained by funding², whereby the power of current regulation and the limited monitoring capacity of the INZ and DoL inspectorates (numbering approximately 35 compliance officers and less than 100 health and safety inspectors, respectively, as of August 2013) is limited. Thirty-five labour inspectors have responsibility for ensuring compliance in New Zealand (and fisheries within our exclusive economic zone). According to the latest Household Labour Force Survey (March 2014), 2,318 million people are employed in New Zealand. The ILO sets the desired number of labour inspectors as one per 10,000 workers in developed countries (CTU, 2014). This equates to one labour inspector per every 66,228 people, well below recommended levels (ILO, 2006). There is also criticism that:

The labour inspectorate's focus on high risk areas leaves them with little resource to deal with day to day breaches of the minimum employment rights (particularly in un-unionised industries such as hospitality) and many workers experience major delays or denials of effective enforcement of their rights (CTU, 2014),

and "in Auckland inspectors spend 54 per cent of their work time investigating abuse cases, while across New Zealand that work takes up 33 per cent of their time" (Fenton, 2013).³

Nevertheless, there is "tacit tolerance" of the presence of migrant workers by governments during economic booms while, officially, governments aim to be seen as "combating" or "fighting" irregular migration (Wickramasekara, 2008 as cited in Williams, 2009: 18; Ministry of Justice, 2009; DoL, 2006). Further, the level of employer compliance reflects the tensions between needs of 'flexible' labour market and desire to closely monitor/control migrants for immigration control purposes (Bernstein, Lippel, Tucker & Vosko, 2006). Employee wages are typically the only variable that can be manipulated by employers, with costs such as power and water a fixed expense.

² However, approximately NZ\$7 million has been allocated over the next four years to fund the addition of six new labour inspectors and seven Immigration New Zealand (INZ) staff with a mandate to investigate and "stamp out" migrant exploitation and unlawful practices. This funding is for the Canterbury area only (Williams, 2014).

³ The establishment of WorkSafe NZ will increase total health and safety inspectorate resourcing by more than 65 per cent. This will include increasing the number of core inspectors from 115 to 200, and the number of high hazards and major facilities inspectors from six to 29. However, this does not include labour inspectors.

This makes regulation of often invisible, unmeasured workers extremely difficult, given the financial incentives for non-compliance with minimum wage regulations. Its prevalence and causes are varied, with theories suggesting that compliance depends largely on the likelihood of detection, as well as the certainty and severity of sanctions imposed for infringements (Ruhs & Anderson, 2006; Kirchler, 1999; Fenn & Veljanovski, 1988). Given the low penalties and number of successful prosecutions, businesses could confidently feel that the opportunity versus risk is firmly weighted in their favour.

Nonetheless, the inability of vulnerable migrant workers to enforce their contractual or statutory rights creates a situation of worker commodification. When large migrant populations work in precarious conditions, governance is difficult; regulating the problem of unfair competition is challenging, and advantages go to enterprises using workers of irregular status at cheap wages. The irony of this bifurcated labour market is that unemployed and foreign workers exist side by side, potentially leading to conflict between local communities and migrant workers. Accusations often repeated in the media about ‘migrants taking jobs’ fail to recognise that these jobs are never designated nor intended for local workers as they fail to fall within the standard labour market and its legal obligations. Whole industries seemingly reliant on an underclass of workers make a mockery of rising wages and legislative protection.

Anderson et al.’s (2012) study of the working lives of student migrant workers in New Zealand horticulture, and Stringer et al.’s (2011) study of labour and human rights abuses aboard foreign fishing vessels illustrate how employers and contractors can extort more work from the employees for less pay because the vulnerable workers cannot afford to abandon their employment. The ability to access or protect those engaged in precarious work is further limited by low union membership, especially amongst private sector rural workers. Tension also remains as union preference and protection are for documented and subscribed members, while migrants rarely engage with established institutions or organisations that could represent their interests.

What can be done to improve the protection of vulnerable workers?⁴

Recognising the limitations of regulation, monitoring, and enforcement, the third question is answered by looking at the development of new union features, especially geared to the increasing number of migrants in the workforce, and by considering other collective actions by migrants outside the trade union movement. These actions are contrasted with the operation of the RSE scheme for New Zealand horticulture and viticulture. From these examples, positive policy suggestions are made as to how a similar scheme might be of benefit to New Zealand dairy farming (Tipples et al., 2013).

New Unions and Alternative Forms of Organising

At an international level, ASEAN trade unions meeting in Hanoi with ILO involvement have recently united to protect migrant workers who are vulnerable to abuse, exploitation and unfair treatment. Bilateral actions between unions in sending and receiving countries to formulate mutual protocols were discussed (Vietnam News, 2013). Acknowledged is that unions must find ways of representing non-traditional workers, where “Dependent and independent contractors, agency

⁴ Council of Trade Unions (2013) *Under Pressure: A Detailed Report into Insecure Work in New Zealand* outlines 20 fields in which positive actions can be taken to reduce the incidence of ‘insecure work’.

workers, temporary workers, farm workers and small farmers are categories of workers which would benefit from collective representation” (Ritchie, 2013). With some notable exceptions (e.g. Unite), current union structures are unable to represent such workers because they are structured to represent and protect the interests of workers in traditional employment with full time work and transparent contracted conditions. In the non-documented, particularly rural sector where work is often in a sub-contracting relationship, it is difficult, indeed unrealistic, to expect effective union reach.

However, two unions have been showing active interest in vulnerable migrant workers in New Zealand. First, Unite (formed in 2005) which has been prominent in campaigns against fast food giant McDonald’s for its discriminatory and anti-union employment policies (Unite Union, 2013), and against another fast food giant Burger King (Kumar, 2013). By targeting traditionally non-unionised workplaces in the service sector such as hotels, restaurants, casinos, cinemas, call centres, security, malls and language schools as well as instituting a lower fee structure, they have reversed an overall trend of declining union membership. With political engagement high on their agenda, they vocally criticise government policy settings for worker protection and offer an alternative form of organising.

Second is First Union’s Union Network of Migrants (UNEMIG), launched in August 2012 in Auckland. Aiming to protect the rights and welfare of migrant workers, they also provide information resources and media campaigns, UNIMEG represents and bargains across many service sectors in retail, transport and logistics, finance, wood, and textile/clothing/baking (First Union, 2014). UNIMEG have said migrant worker issues had stayed under the radar because many foreign workers were employed in small businesses working for other immigrants, where it was easy for employers to take advantage of their workers (in Glass, 2013). Vocal in their criticism of migrant workers’ exploitation by workplaces on which they are reliant for work visas, First Union spokesperson, Robert Reid, states “These migrants, when they come to New Zealand, in their passport – their visa – they can only stay here as long as they are working for the person who is nominated on their visa.” Reid also acknowledges: “Migrant workers are frequently victims of under legal minimum wage pay, abuse, discrimination, bullying, and harassment in the workplace” (as cited in Kumar, 2012).

New Zealand dairy migrants

In addition to developments in trade unions as collective representatives of migrant workers, other non-union collectives have taken a growing role in the relatively unorganised migrant worker space. In dairy farming, propelled by the recent world commodity boom, rapid expansion has been constrained by problems with the recruitment and retention of labour. From 2006, these problems have been addressed by the employment of short-term (three to five years) migrants on work visas, nearly half of whom originate from the Philippines. The inflow of these ‘skilled’ migrants was explored using Sargeant and Tucker’s framework to document the working, health and safety experiences of Filipino dairy workers in mid-Canterbury, in New Zealand’s South Island (Tipples, Rawlinson, & Greenhalgh, 2012).

The Filipino Dairy Workers in New Zealand Inc. was set up in Ashburton in 2006 as an association to promote much needed social contact, and then advocacy for the many members experiencing employment or immigration difficulties. The overall objective of the group is to prevent exploitation of members by recruitment agencies and dairy farm employers (Tipples et al., 2012). They educate members about their rights in New Zealand employment law and the requirements placed on dairy

farm employers for their employees.

However, concerns continue to abound about farm working conditions. CTU President, Helen Kelly, has documented long hours and limited days off, making the salary of many farm workers below the minimum wage. These are not undocumented jobs in the secondary labour market, but are advertised positions. Callister and Tipples (2010: 12) note about wage levels that

When the long hours worked by dairy workers are taken into consideration, they are very low at an average level ... [O]nly 39.4 per cent of farmers record staff hours, leaving considerable scope for paying an hourly rate of pay below the minimum hourly rate of pay set for a normal 40 hour week⁵ (Minimum Wages Act 1983).

This comes on the back of nearly three out of four dairy farmers having been caught breaking basic employment laws in a government crackdown in December 2013. Labour inspectors with the MBIE started visiting farms to check on compliance with minimum employment rights. Results of the initial visits revealed that employers on 31 out of 44 farms were breaking the law, a result the Ministry called “disappointing”. Many breaches involved time recording, where employer and staff had to sign timesheets confirming hours worked. In eight instances, workers had been employed without proper contracts. No prosecutions had been laid, a ministry spokeswoman acknowledged, but inspectors would follow up enforcement notices to check whether breaches had been rectified. If employers failed to comply, orders could be sought from the Employment Relations Authority (Stone, 2014).

New Zealand fishing migrants

New Zealand public policy supports the use of FCVs to complement the local fishing fleet, provided that “...FCVs do not provide a competitive advantage due to lower labour costs and foreign crew receive protection from exploitation” (Stringer et al., 2011: 2). Stringer et al., (2011: 5) examined which institutions were responsible for the working conditions of foreign fishing crew and found that there was “...an institutional void pertaining to labour standards on board FCVs”, and distressing levels of “...inhumane conditions and practices...” which had become institutionalised. Labour and other abuses were exposed in FCVs after the sinking of the South Korean *Oyang 70* with loss of life in 2010. Further, 32 Indonesian crew left the *Oyang 75* in Lyttelton in 2011 claiming “...physical, mental and psychological abuse as well as the non-payment of wages” (Stringer et al., 2011: 10). This was not the first time such allegations had been made but limits of territory and inspectorate capacity have restricted offshore monitoring.

Oyang 75 crew members immediately became illegal immigrants because their visas were as Korean crew. They had no means of support and were to be forcibly repatriated by INZ without any resolution of their pay dispute, let alone their other issues. The Canterbury Indonesian Society became involved to help with translation as some members came from the island of Ambon, where most of the crew had been recruited. Because of the human rights abuses, local churches and the local mosque also became gave support. These bodies organised a collection to help pay for the crew’s accommodation and support while their case was contested. The Society was able to act as an intermediary and collection agent as a formally registered charity. It also acted as a formal link with

⁵ Recent law changes have moved to fortnightly averaging to allow an employer to offset payment payable to a worker for work in one week against payments due to the worker in the following week towards the minimum wage rate. (MBIE, 2014). This change will affect many of the lowest paid workers in the country, and several industries with long hours such as dairying this are likely to become the norm (CTU, 2014).

INZ and sought, successfully, to get the crew repatriated, without the usual penalties from the agents who had recruited the crew (Kartikasari, 2013, personal communication). They were able to do this through establishing links with the Indonesian organisation responsible for foreign workers, ATKI-INDONESIA⁶.

Problems with FCVs are not restricted to vessels owned by the Oyang Corporation. The “cockroach infested and leaky” Shin Ji, chartered by Tu’ere Fishing Ltd 9, had no bed linen, no hot water and the life rafts were inaccessible due to mis-stowed fishing gear. Fishermen working aboard the vessel went on strike for non-payment of wages dating back two years – the wages only amounting to \$260 NZD a month (Harré, 2013: 2). The deaths, injuries, violence, abuse, stand over tactics, theft of wages, and shocking conditions on these vessels over many years have all been documented – and are now exposed on the international stage.

Following the conclusion of an official domestic inquiry into the industry in March 2012, the report made 15 recommendations for the government to consider (Ministry for Primary Industries, 2012). In a surprising development in response to mounting pressure, the New Zealand Government (2012) announced in May that a ban on foreign flagged fishing vessels in New Zealand waters would be phased in “to address labour, safety and fisheries practice concerns”. Foreign charter vessels would be required to comply fully with New Zealand laws and regulations. The government offered a four year transition period to soften the blow to the joint venture operators, who comprise 12 out of 27 of the fishing industry companies. The *Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill* was the final piece of legislation passed on the last sitting day of the House of Representatives prior to Parliament being dissolved for the election in July 2014 (House of Representatives, 2014).

The ‘success’ of RSE – How far can it go?

Given the examples of migrant exploitation documented thus far in primary industry employment, is the RSE scheme a model that could be extended to other industries? The RSE policy was developed to meet a crisis in the pip fruit industry when growers were failing to meet quality deadlines because of a lack of picking staff and inability to export their fruit in required condition. A continued dearth of ‘suitable workers’ (Franks, 2009) and the national workforce perceiving “low skill jobs as undesirable” (Williams, 2009: 4) has minimised criticism that this work could be filled by locals (Cameron, 2011).

The RSE scheme has run since 2007, aiming to create a sustainable seasonal supply of experienced labour for the horticulture and viticulture sectors (DoL, 2010). Bilateral facilitative arrangements were negotiated between the DoL and the governments of five Pacific ‘kick-start countries’ (i.e. those countries initially participating in the scheme) of Kiribati, Samoa, Tonga, Tuvalu and Vanuatu (Luthria, 2008; DoL, 2010). The scheme has continued to help with many of horticulture and viticulture’s seasonal labour problems and provide ‘wins’ for governments (New Zealand and islands – labour supplied, exports facilitated, remittances received), growers (vines pruned, fruit harvested on time etc.) and for migrants who have earned far more than in the islands (sufficient to live, pay for remittances to invest in education/houses and small businesses) (Immigration NZ, 2012-2013).

⁶ **The Association of Indonesian Migrant Workers in Indonesia (ATKI-Indonesia)** is a self-organisation of Indonesian migrant workers, and advocates migrant workers policies and regulations in destination countries and Indonesia. ATKI also provides direct assistance, counselling, legal aid referral services for migrant abuse and trafficking cases. Atki.indonesia@gmail.com

An evaluation was conducted on the first two seasons (1 April 2007-31 March 2008, and 1 April 2008-31 March 2009) of the RSE, identifying worker support and dispute resolution as key issues requiring attention. In addition, there was criticism by some employers and unions of the 'facilitative' approach of the relevant regulator – the DoL (DoL, 2010). It was also found, in the evaluation, that protection processes were not easily accessible by workers (DoL, 2010). In addition, some Pacific Islander workers did not understand their contracts; exploitative working conditions were also indicated, where workers recruited under the RSE scheme were regarded as highly productive, partly because they were willing to work “in very hot, cold or windy conditions...long hours, weekends and night shifts” (DoL, 2010: 56). Presently, as an established guest worker programme “the Scheme still has eight inspectors who are spending up to 70 per cent of their time... investigating possible breaches of minimum wage and other employment laws” (Fenton, 2013).

Could such a model be developed for other export sectors? The same research team who underpinned the RSE scheme have been helping dairy farming stakeholders with problems of fatigue and stress, induced partly by the staffing concerns that have led to the use of migrants (Tipples et al., 2013). As a targeted scheme for staffing shortages that mitigates the problem of illegal workers, it has some merit. However, temporary migration should not be permitted to “facilitate, institutionalize and normalize a second-tier, low-wage/low-rights “guest worker” program” (Faraday, 2012: 3). Further, the preference of migrant employment fails to address rural unemployment levels, nor does it seek to improve the generally poor working conditions found within primary industry employment. It can, therefore, be considered an imperfect response at best, and one that favours the primary sector over other sectors also facing worker shortages.

Conclusion

Mitigating factors within the New Zealand employment environment have favoured migrant workers in primary sector employment. Nonetheless, with increasing numbers of these workers filling positions once considered 'New Zealand' jobs, it is timely to consider some concerns. What are the existing protections for New Zealand's vulnerable workers? Secondly, why are these mechanisms ineffective? Finally, what can be done to improve the protection of vulnerable workers?

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Commentary

The New Zealand Public Sector: Moving Beyond New Public Management?

NIGEL HAWORTH* and BRENDA PILOTT**

Introduction

New Zealand has, since the 1980s, been recognised internationally for its experimentation in what is now widely known as “New Public Management” (NPM) (Boston, Martin, Pallot & Walsh, 1996; Pollitt & Bouckaert, 2004). NPM seeks to bring market disciplines and, hence, greater levels of accountability and efficiency into public sector activities. In this, it is consistent with the general international trend in government economic thinking from the 1970s, sometimes described as Neo-liberalism. NPM is, at once, a descriptive label, an ideology and a set of tools and practices at the disposal of governments.

Our purpose here is not to discuss NPM theoretically. We wish, instead, to recognise its importance in New Zealand government thinking about the public sector in two periods: 1984-1999, and again after 2008 (periods which encompass the reforming Labour governments of 1984-1990, the similarly reforming conservative governments between 1990 and 1999, and the post 2008 conservative governments). In the following discussion, we lay out briefly the rise and nature of NPM in New Zealand, indicating some of the more recent debates about its nature and extent. In particular, we emphasise the extent to which market (private sector) disciplines brought into the public service have affected the employment relations (ER) and human resource management (HRM) practices in the sector. We contrast this with comprehensive counter proposals developed over this period by the Public Service Association (PSA), the primary public sector trade union, in response to the impact of NPM in general, and specifically to its ER and HRM impacts.

Background

In 1984, a newly-elected Labour government, assailed by international financial pressures, surprisingly, adopted a strongly neo-liberal policy orientation. A progressive deregulation of much of the economy followed, with the exception of the employment relations system, which was somewhat amended, but not subjected, at that stage, to rigorous neo-liberal reform. A series of measures were introduced in the public sector, designed to implement NPM. These included the State-Owned Enterprises Act (1986), the 1988 State Sector Act and the 1989 Public Finance Act. The first imported private sector structures and disciplines into government-owned commercial activities; the second brought private sector structures and expectations into the core public sector; the third imposed private sector financial disciplines on the core public sector, in the process introducing a model whereby government “purchased outputs” from ministries and departments.

* Prof. Nigel Haworth, Head of Department, Management and International Business. University of Auckland, New Zealand

** Brenda Pilott, Former National Secretary, PSA.

After re-election in 1987, and as a result of growing political discontent within the Labour tradition, the Labour government showed less interest in the reform process generally, and in the reform of the public sector. Nevertheless, there was no attempt to reverse the changes that had been introduced. Rather, the reform process was put on hold.

In 1990, a National government came to power and restarted the reform process with great vigour. New reform had two key dimensions. The first was a programme of cuts and reconfiguration in welfare provision. The second was employment relations reform. The latter was embodied in the Employment Contracts Act (ECA) 1991, as applicable to the public sector as it was to the private. The purpose of the ECA was to raise the individual employment relationship above collective relationships and, consequently, undermine collective bargaining and trade union voice in workplaces. In the public sector, the ECA was to combine with other state sector reform measures in order to mimic the power relations, behaviours and outcomes observed in the private sector.

A Labour-led government returned to power in 1999-2008, but under new constitutional arrangements as a result on the introduction of a proportional representation system at national level. On the one hand, post 1999 Labour-led governments funded better the core public service and, as we shall see, were committed to a partnership model with the PSA. On the other, their commitment to NPM remains the subject of debate (see below).

Labour-led governments gave way to National-led governments in 2008, whereupon NPM gained new life as government focused on reducing the size of the public sector. A policy of “doing more for less”, implemented through upwards of 500 reviews since 2008, has seen employment levels in the sector reduced, and a sustained anti-public service rhetoric used by ministers.

Three Moments in the NPM Debate in New Zealand

The nature and extent of the adoption of NPM in New Zealand is well captured in the comparison of three commentaries. First, we have the view of a departmental CEO, actively engaged in the implementation of NPM (Walker, 1996). This interpretation adopts the standard rationale for the reform process. Hence, argues the piece, the reforms were needed because of long-term inefficiencies in the economy as a whole, and in the public sector in particular, and short-term, because of the economic crisis facing the incoming government in 1984.

For Walker, the reforms were a success, in terms of setting in train a model of continuous improvement in which there is no final, known goal. Success is understood in terms of three qualities: the political will to drive the change process; the “broad community acceptance that change was necessary” (Walker, 1996: 356); the reforms were driven by principles, thus, giving them both an analytical grounding and a defence against attacks from the status ex ante. For now, we can accept that there was political will (though it waxed and waned, particularly in the centre-left). The assertion that the wider community supported the reforms is contentious (though, for example, some sectors of the business community clearly favoured a smaller public sector). The third argument about principles is reducible to the ideological domination in the period of core tenets of the Washington Consensus and its neo-liberal form.

Walker’s overall assessment is “overwhelmingly positive”. Things went particularly well in the core public service, in which departmental autonomy has “liberated” managers from central controls, promoted innovative management, improved resource utilisation, sustained “good practice” in HRM, and promoted “an entirely healthy focus on the quality and content of what departments produce rather than on expenditure per se” (Walker, 1996: 363). Of course, there are rough edges, such as the

loss of “horizontal interaction or cooperation” across departments, or the uneven responses of ministers to the new arrangements. However, the balance of judgement emphasises the positive.

A decade on, the impact of NPM was subject to re-appraisal. Chapman and Duncan (2007) suggest a rebalancing of perspectives on NPM in New Zealand, in which the overwhelmingly positive view taken by Walker and others is qualified by the suggestion of growing “misgivings” about its impact (see also, for example, Gregory, 2003; Whitcombe, 2008). To quote Chapman and Duncan (2007: 3-4)

None the less, substantial misgivings about the New Zealand model have since emerged, for example concerns about... poor integration and strategic co-ordination of services ... rigid performance measurement systems that imposed forms of centralized (and often disempowering) control ... a lack of commitment to long-term social outcomes as opposed to short-term business goals... a concern that the purchasing-of-outputs model had over-emphasized efficiency at the expense of ‘long term maintenance of capacity’ in public organizations ... and a lack of managerial discipline among Crown entities.

They go on to note public dissatisfaction, particularly with the public health reforms of the 1990s, and with accountabilities exposed in incidents such as the Cave Creek disaster.

Public dissatisfaction with NPM, argue Chapman and Duncan, grew in a broader context undergoing change for four reasons – the introduction of proportional representation (a mixed member system – MMP), changes in the role of the State Services Commission (SSC), the impact of the 1996 Schick report, and the coming-to-power of a Labour-led government in 1999. In relation to the change in electoral system, the suggestion is that policy reform became slower because of the need to sustain coalitions in power, in turn making it less easy to promote NPM. Given events after 2008 and the election in that year of a National-led coalition, this argument, insofar as it suggests a permanent limitation of NPM, is difficult to support. The second shift – in which the SSC, initially charged under the 1998 State Sector Act with a fairly narrow role in terms of performance reviews, senior appointments and personnel issues, gained a wider (in the sense of issues and organisational scope) and more strategic role – gave, argue Chapman and Duncan, more status to the SSC. This, in turn, reduced relatively the status of Treasury (Ministry of Finance) and its generally effusive support for NPM.

This shift should be understood in the context of the Schick Report. As Chapman and Duncan rightly argue, Schick was expected by many to find little fault with the public sector reforms undertaken in New Zealand. Surprisingly, he was critical of the reforms, pointing to *inter alia* the exaggeration of the application of agency theory and the provider-purchaser split (leading to weaknesses in the ability of departments to service government), the need for an improved whole-of-government perspective, the need for a Senior Executive Service as a pool for senior talent, and less focus on narrow “market-driven” criteria for output purchasing. Again, this commentary did not fundamentally weaken NPM practice in New Zealand, but did play a role in a rebalancing of power between Treasury and the SSC and in the manner by which non-financial measurements of departmental performance gained higher status.

The incoming Labour-led government took up the Schick report and, as Chapman and Duncan suggest, distilled its approach into three priorities for change (a better-integrated, people-focused delivery; less fragmented and better aligned delivery; greater emphasis on people and culture in the sector) and two avenues for change (legislative changes and a focus on improved sectoral capability). The impact of this approach was, in Chapman and Duncan’s view, to modify or reverse the NPM approach adopted in the 1990s on a gradual, pragmatic, piecemeal basis. The “New Zealand model” of the 1980s and 1990s was no longer in place.

By 2011, and three years into a new National-led government, Lodge and Gill (2011) take firm issue with the idea of a shift away from NPM. They offer a technical assessment of the public sector's administrative doctrines, public service bargains (PSB – the conduct of relationships between the public servants and the wider political system) and change in doctrines, as determined by the 2004 Crown Entities Act. They conclude that New Zealand offers little support for a “mega trend” from NPM to a post-NPM environment. Moreover, changes in public sector management in New Zealand in the early 2000s were less of a shift away and more of a construction upon the existing NPM framework. Instead, they point to diversity in the implementation of NPM, a trend that has grown in the 2000s. Their suggestion is that NPM was never a homogenous phenomenon, and that lack of homogeneity has been exacerbated, but still within the broad rubric of NPM.

This, then, is the background against which we must view current PSA proposals for change in the public sector. New Zealand grasped firmly the NPM message in the 1980s, and, notwithstanding, the views of Chapman and Duncan might reasonably be understood in the terms suggested by Lodge and Gill. Certainly, the post-2008 government's focus on cost-cutting and restructuring in the public sector carries many of the hallmarks of NPM.

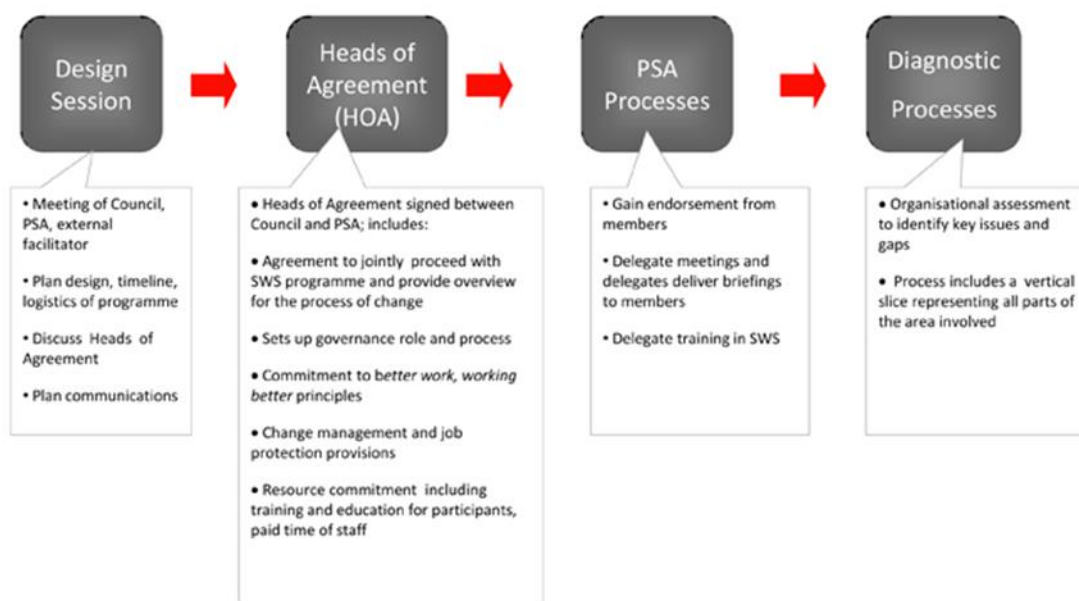
The PSA – an agenda for change

Despite the sustained assault on the public service since the 1980s, the PSA has, when circumstances allow, sought to respond on two fronts – one defensive, in an attempt to protect members and conditions in government departments and beyond; the other positive, in a sustained commitment to improved public service based on decent work and good employment practices. The PSA's Partnership for Quality (PFQ) model was originally developed as an approach to National-led governments in the 1990s. During the period of Labour-led governments in the 1999-2008 period, PSA strategy in the core government sector focused on a “Partnership for Equality” approach, which, through three iterations, came to include government, the PSA and the SSC around the following key elements:

- Enhanced conditions negotiated for PSA members in recognition of their contribution through the partnership approach
- The public service employer-subsidised retirement savings scheme and its extension across the state sector
- Funding increases to improve staff capacity and capability
- Regular meetings between the PSA, government and public service chief executives to discuss key strategic issues in the public service
- Information and consultation on new initiatives and policies

Simultaneously, the PSA undertook development work on improved workplace arrangements, under the rubric of a Sustainable Work System (SWS) model. SWS was a comprehensive organisational change management / transformation agenda, which incorporated a number of key elements: Lean, partnership, staff involvement and effective engagement, including in change management processes. The ‘best practice’ approach was also a major aspect of the PSA SWS model. Note that Lean alone, or Lean Lite, the “watered down”, partial version of Lean, were not accepted by the PSA as a sufficient condition for the creation of high-performing workplaces. Interventions had to be strongly associated with a comprehensive SWS approach. More recently, the PSA has consolidated its thinking around workplace change in Transforming the Workplace, to which we return below.

The PSA SWS model is captured in the following diagram:



As might be expected, the PSA generally anticipate that a centre-left government will be more attuned to partnership-style engagement with SWS and similar initiatives. However, it is also able to see some possibility of progress under centre-right governments, as in the case of the 2011 Better Public Services Report. Hence, whilst its contemporary thinking is orientated in part to the prospect of a change of government in the 2014 general election, it has also seen positive elements in reports produced by the current centre-right government (such as the 2011 Better Public Services report see below).

The PSA has recently developed a comprehensive framework for change in the core public sector (whilst recognising similar needs in, for example, health, local government and community services). The twin key themes of the “agenda for change” are, first, state sector reform on a first principles basis, and, second, the establishment of the state sector as “an exemplar of good employment and employment relations practices”. The agenda marks the PSA as, in contemporary parlance, a “modern” union, that is, to use classical employment relations terms, a union prepared to adopt an integrative (or positive sum) bargaining approach rather than a traditional distributional approach. That said, it is also the case that the PSA understands the importance of, and is committed to, independent worker voice in the creation and management of constructive and mutually respectful working relationships¹. The PSA has arrived at its strategic vision for the state sector as a result of robust internal debate, in which the principles of engagement are subject to regular appraisal and contestation. It is fair to describe the contemporary PSA view as mature, an effect of over 15 years of development.

The current context, especially since the 2008 election, has added urgency to the PSA’s strategic positioning. The incoming government adopted a “more for less” approach to the public sector, arguing that the sector is inefficient, over-staffed and not focused sufficiently on delivery. The intention or claim has been to maintain service provision whilst improving efficiency. The PSA has identified over 500 discrete restructuring “events” since 2008, involving at least 5000 job losses. “Creeping” restructuring has been accompanied by a rhetoric of criticism of public sector

¹ At the time of writing (mid-2014), the prospect of major strike activity in the health sector, led by the PSA, indicates the willingness of the PSA to act firmly as a trade union, representing members’ legitimate demands, when the need arises.

performance, perhaps most starkly seen in the fraught attempts to restructure the Ministry of Foreign Affairs and Trade (MFAT) from 2012. This wave of restructuring takes place against the longer term shifts in circumstances in the public sector in which, for example, the impact of MMP has been to change public servant behaviour. Palmer (2013) describes the erosion of the “free and frank advice” practices of a previous age, and their replacement by “far too much second guessing by public servants of the political incentives on Ministers – and too much pulling of punches in the provision of advice” (ibid: 45). He also notes pointedly, first, the rise to the top of ministries of the managerially-capable rather than the policy-savvy and, second, the threat of politicisation of the public service.

Also, there are the current policy settings for the public service – captured in the government’s Better Public Services strategy – which include emphasis on results rather than outputs, cross-departmental cooperation, improved efficiency and capability, better advice and analysis, improved departmental leadership and a new Performance Improvement Framework. Such expectations may not sit easily in an environment marked by instability and criticism.

In sum, the public service in New Zealand faces short term restructuring and job loss in a longer term environment of change and uncertainty. It is in this challenging context in which the PSA seeks to promote its agenda for change.

Initiative One: State Sector Reform

The PSA argues that there is a need for a “first principles” restructuring of state sector management. This is needed for both practical and philosophical reasons. Practically, the PSA, in line with other contemporary reports on state sector performance, observes a state sector which is fragmented, unable to solve intractable problems, slow to innovate, and performing poorly in terms of leadership and response to change. In philosophical terms, the rationale for the 1980s reforms – neo-liberalism – is outmoded and out of step with the challenges facing the contemporary public sector.

There is evidence to support the practical concerns. The 2001 Review of the Centre and the 2011 Better Public Services make similar points. The PSA has argued that such failings are an effect of the framework imposed in the 1980s, a framework that is unable to provide adequate and effective responses. The PSA notes calls that have been made (especially by Sir Geoffrey Palmer) for a Royal Commission to investigate the challenges facing the state sector². The implication to be drawn here is that there is a groundswell of concern that state sector performance cannot improve under the existing framework. Moreover, it is not a question of returning to some pre-existent model of state sector arrangements but, instead, there is a need for an open-minded consideration of new structural and legislative arrangements which, in turn, will deliver a state services system that is adaptable and responsive. The PSA emphasises the need for new state sector legislation particularly if there is to be improved cross-agency collaboration, improved leadership and, also improved accountabilities.

The proposed re-think of the framework under which the state sector operates includes a number of related considerations. Improved accountabilities for chief executives and the state sector in relation to the Treaty of Waitangi are needed. Staffing caps should be discontinued, and improved investment in the public service is needed (to avoid problems such as, for example, those seen in Education

² The Labour party has included a proposal for a Royal Commission on the public sector in its 2014 election manifesto.

around Novopay, or those which have emerged in the Conservation Estate)³. The current government's heralded but markedly underperforming privatisation campaign should be halted, as should the untested and ideologically-driven experiments with public-private partnerships. The ethos of public service should return to a focus on delivery to the public, and not on a politicised delivery to ministers. The PSA offers a possible but-still-to-be fully-scoped way forward to support a renewed ethos of public service in the guise of Charter of State Servants' Rights⁴ (a specific antidote to managerialist codes of conduct introduced by the SSC). The purpose of the charter would be to uphold the provision of free and frank advice, to establish the right of public servants to respect and dignity in work, and to recognise public servants' rights to be active citizens in a democracy (within the constraints imposed by a professional need to maintain political neutrality). A recent much-criticised report on leaks from MFAT adds a particular piquancy to this last purpose⁵.

In sum, the PSA is recommending a significant re-casting of both the framework and expectations that govern public servants' activities and the organisations in which they work.

Initiative Two: The State as Exemplar Employer

If the PSA desires a comprehensive reform of the framework under which the state sector operates, its expectations on the human capability and organisational performance fronts are no less demanding. It proposes a range of revised or new measures to allow the largest employer in New Zealand to lead by example in the creation of a high-performance culture.

In law, state sector employers are required to be "good employers" and, broadly, this is the case. More can be done on this front, argues the PSA, particularly in terms of accountabilities for, and monitoring and reporting of, good employer and good faith behaviours.

Good employer behaviour is, suggests the PSA, compromised by a pervasive managerialism throughout the public service. "Command and control" management styles, a "right to manage" mentality, and a cult of (senior) leadership are rife across the sector. Lost in this package are the positive workplace arrangements that promote improved organisational performance and productivity, better workplace cultures, and high-trust relationships. The HRM approach adopted is too often an apeing of the corporate sector, unsuited to the requirements and expectations of the public service. Good employer behaviours in the state sector demand improved and changed leadership performance and also a commitment to high-trust practices, supported by appropriate training and development provision. In related recommendations, the PSA is promoting change management practices in the public sector, which reduce or remove the contemporary focus on redundancy and job loss, and replaces it with a focus on employment security, tied to retention and/or redeployment of skills, and improved career structures. In turn, this leads to a desire to see greater emphasis on proactive workplace learning in order to address concerns such as skill

³ Novopay is a controversial salary payment system for teachers in the public system. It has failed consistently and its improvement has required major unanticipated expenditure, and the handing-over of the system from the private sector to public sector management. In the case of the Conservation Estate, underfunding and poor management have been blamed for a decline in conservation performance.

⁴ A title still in development.

⁵ The report relates to an investigation of leaks from MFAT in relation to its restructuring, and led to naming of senior officials in a manner widely regarded as both improper and inaccurate.

shortages, improved career development, adequate capabilities and competencies, and organisational resilience in HR.

High-trust arrangements require high-trust, productive and innovative workplaces. As noted above, the PSA has been at the forefront of the high-performance debate in New Zealand for two decades, and seeks to take this approach further in the state sector. However, they notably couch their approach to workplace reform in terms of a recognition that people want more value to be achieved from constrained public spending. Hence, high performing workplaces provide two related sets of advantages – far better environments in which to work for public servants, and important opportunities to promote productivity and innovation in a constrained financial environment. For members, high-performing workplaces will offer substantive employee engagement and voice, higher levels of autonomy, improved staff retention and employment security and, overall, improved workplace cultures. The PSA is firm that the union – autonomous, organised, progressive – is critical to high performance success in the sector, and that many managers, currently not on board with this idea, will have to understand this to be the case. The PSA also sees greater opportunity to bring government and the PSA together to investigate innovation in the public sector.

The PSA also identifies a pressing need for a new bargaining framework in the state sector. A particular target in the PSA's sights is the fragmentation of bargaining and outcomes across government agencies, and the effect of the enterprise bargaining model. The PSA recognises that the Partnerships for Quality agreements set in place between 1999 and 2008 failed to address this challenge and now argues for the creation of MECAs (multi-employer collective agreements) as the way to achieve common terms and conditions. An added impact of cross-departmental outcomes would be efficiencies gained in bargaining (for example, in relation to salary survey data). Finally, the PSA recognises that the Council of Trade Unions (CTU) and the Labour Party are considering major changes in the ER legislation, which, if implemented following a change in government, would make industry-wide arrangements far easier to achieve.

One effect of new bargaining arrangements might be a mechanism to address increasingly disadvantageous pay outcomes (relative to the private sector) and the difficulties associated with problematic performance-based pay systems. Another pressing issue for the PSA is pay equity. Noting that the public service gender pay gap is 14.2 per cent, and that some departments encompass gaps of up to 40 per cent, the union argues for comprehensive measures in legislation to address these discrepancies.

Finally, the PSA is keen to see effective tripartite arrangements set in place to address health and safety (H&S) issues in the sector, not only in terms of new national H&S arrangements, but also to respond to particular issues that arise in the sector, such as stress deriving from restructuring, casualisation and uncertainty, the risk of violence from clients, and bullying.

Discussion

The PSA is clear that its agenda for change is unlikely to be achieved under centre-right governments. Although not affiliated with any party or tradition, it is anticipated that a centre-left government would be more likely to respond favourably to the agenda. In other words, the politicisation of public sector policy remains deeply embedded in New Zealand as an effect of NPM and its local history.

However, the “branding” of the agenda is important. The PSA has moved away from a simple demand for better resources and more funding. It has, in many ways, turned that traditional argument

on its head, downplaying considerably (but not totally) any expectation of increased funding. Rather, it has driven the agenda from the perspective of improved services and efficiency, arguing that its prescriptions will not only drive improved performance but also create better working conditions for members. This is a mature (and radical) argument for engagement and high performance, in which the PSA, whilst protecting autonomy and voice, also claims (partial) ownership of the sector and its workplaces, with all such ownership's accountabilities and responsibilities. The traditional union call – “it is the manager's job to manage” – has been replaced by a call for joint regulation considerably beyond narrowly-defined wages and conditions.

The maturity of this argument reflects the long experience and discussion in the PSA around high-performance and the impacts of NPM. It also reflects a confidence in the union, based in part on that experience, in part on size and growth, in part on membership mobilisation, and in part on its leadership. Few unions in New Zealand could or would make the analytical leap from traditional “distributional arrangements” to such a mature “integrative” model.

The leap is not without questioning. The PSA has a strong, active membership, which subjects union strategy to careful scrutiny. The “engagement” model must sustain membership support to prosper. At the strategic level, the PSA leadership has consistently maintained the view that only a strong, independent worker voice can become legitimately engaged in joint regulation, establishing a clear bottom line for union involvement in reform of the sector. There is no sense in which the PSA is a supplicant in the debates around public sector reform, and there remains a willingness to couple engagement with traditional union action where and when needed.

The short-term future for the PSA's strategic approach depends on election results in 2014. A left-leaning government will provide a fertile environment for change. A victory for the existing government promises further restructuring in the “more for less” guise. However, the PSA is unlikely to resile from its strategic approach in the near future, not only because of its commitment to reform, but also because of its recognition that reform is in the interests of members and nation.

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Research Note: Conceptualising Adaptive Resilience using Grounded Theory

VENKATARAMAN NILAKANT,^{*} BERNARD WALKER,^{**} KATE VAN HEUGTEN,^{***} ROSEMARY BAIRD^{****} and HERB DE VRIES^{*****}

Abstract

We present the initial findings from a study of adaptive resilience of lifelines organisations providing essential infrastructure services, in Christchurch, New Zealand following the earthquakes of 2010-2011. Qualitative empirical data was collected from 200 individuals in 11 organisations. Analysis using a grounded theory method identified four major factors that aid organisational response, recovery and renewal following major disruptive events. Our data suggest that quality of top and middle-level leadership, quality of external linkages, level of internal collaboration, ability to learn from experience, and staff well-being and engagement influence adaptive resilience. Our data also suggest that adaptive resilience is a process or capacity, not an outcome and that it is contextual. Post-disaster capacity/resources and post-disaster environment influence the nature of adaptive resilience.

Introduction

This research note offers an overview of a significant New Zealand research project exploring organisational resilience in the aftermath of the Canterbury earthquakes. The project commenced in 2012 and finishes towards the end of 2015. As the project passes its midway point, we briefly share and reflect upon some of the initial findings. Other, more detailed articles will subsequently provide a more comprehensive account of the project's activities and the specific outcomes.

Background

Most organisations are likely to encounter crises that have the potential to impair or even end their functioning. The crises can include local incidents, or broader dynamics such as globalisation, discontinuous shifts in technology or the increasing occurrence of natural and man-made disasters (Norris, Stevens, Pfefferbaum, Wyche, & Pfefferbaum, 2008). The concept of resilience offers an explanation for the differing outcomes that result from these experiences, with some organisations successfully addressing those crises and adapting to new situations, while others may falter or fail. The growing interest in resilience and the need to identify ways to boost organisational resilience reflects the frequency of organisational crises, with organisations increasingly forced to rapidly adapt to changing, and often unpredictable situations.

^{*} Associate Prof., College of Business and Law, University of Canterbury, New Zealand

^{**} Senior Lecturer, College of Business and Law, University of Canterbury, New Zealand

^{***} Associate Prof., College of Arts, University of Canterbury, New Zealand

^{****} Research Associate, College of Business and Law, University of Canterbury, New Zealand

^{*****} Senior Lecturer, College of Business and Law, University of Canterbury, New Zealand

Resilience has been defined in a variety of ways (Norris et al., 2008; Zhou, Wang, Wan, & Jia, 2010). In the positive organisational scholarship literature, Vogus and Sutcliffe (2007) define resilience “as the maintenance of positive adjustment under challenging conditions such that the organization emerges from those conditions strengthened and more resourceful” (p. 3418). In their definition, resilience not only helps the organisation to cope but it makes it better. In a similar vein, Norris et al (2008: 130) define resilience as “a process linking a set of adaptive capacities to a positive trajectory of functioning and adaptation after a disturbance.” While the notion of individual resilience has gained prominence in addressing the coping capacities of individual persons, the emerging concept of organisational resilience represents a distinct, although related, construct which has the potential to integrate research from a variety of organisational perspectives that have focused on organisational crises, adaptation, learning and employee well-being and engagement in dynamic and volatile environments.

Resilience can be viewed as consisting of two dimensions. Planned resilience or first-order capacity involves the use of existing, predetermined planning and capabilities, as exemplified in business continuity and risk management which are predominantly pre-disaster activities. In contrast, adaptive or second-order resilience emerges during the post-disaster stages as organisations develop new capabilities through dynamically responding to emergent situations that are outside of their plans (Lee, Vargo, & Seville, 2013).

In this note, we present the initial findings from a study of organisational resilience, specifically adaptive resilience, of lifelines organisations in Christchurch, New Zealand. The city was hit by a series of devastating earthquakes from September, 2010. The February 2011 event was the most devastating, causing 185 deaths and widespread infrastructure and property damage. By December 2012, more than 12,000 aftershocks were recorded. During this period following the disaster, organisations in the city had to effectively respond to the disaster, recover from its consequences and manage renewal in the altered post-disaster context. In this study, we have defined organisational resilience as the capacity or ability to respond effectively, recover quickly and achieve positive renewal in the new environment. The research was guided by the two broad questions: (a) How did the organisations in our study respond to the crises? How did they recover? How did they positively adapt to the new environment? (b) What helped them in effective response, recovery and renewal?

Research Design and Methodology

There are relatively few studies that have examined how organisations perform in an actual disaster. The phenomenon that we were dealing with was relatively unique and dynamic, with an extended period of ongoing, significant seismic events. Therefore, we opted for an inductive qualitative study using grounded theory procedures for data collection and analysis (Charmaz, 1990; Corbin & Strauss, 2008; Yin, 1984).

We drew on a pilot study of four large organisations in Christchurch impacted by the earthquakes, conducted between October and December 2011. The four were a mix of commercial and non-commercial organisations (such as a public hospital). The pilot study provided a glimpse of some of the categories that we wanted to explore in detail in a larger study.

Between October 2012 and May 2014, we collected data from 10 “lifeline” organisations, that is, organisations that provide essential infrastructure services to the community, such as water, wastewater, transport, energy and telecommunications (Lifeline Utilities, 2014; New Zealand Treasury, 2014). We also studied one further organisation that included a collective or alliance of

other organisations. Since that organisation was of a different type from the others, we will not discuss this here; it will be the subject of separate articles.

In each of the 10 organisations, we collected data from individual interviews with senior managers who were involved in the response, recovery and renewal. In two organisations, data was also collected through focus group discussions. Across the 11 organisations, a total of 159 individuals were interviewed and 41 individuals participated in the focus groups.

Findings

We categorised the phases of the disaster aftermath as immediate response, recovery and long-term renewal. While each organisation faced its own separate challenges, certain issues were common across the 10 organisations. The dominant themes throughout the phases of the disaster included; (a) employee needs, well-being and engagement; (b) collaboration; (c) leadership; and (d) organisational learning.

Our data suggest, firstly, that understanding the trajectory of employee needs in the aftermath of a disaster is critical to effective response and recovery. During the response and recovery stages, primary tangible needs were easy to identify and address, however, other employee needs were unarticulated and only emerged later (Nilakant, Walker, Rochford, & van Heugten, 2013). The more resilient organisations were sensitive to the full, evolving range of employee needs. Middle managers played a key role in identifying and responding to employee needs. When those managers lacked empathy and emotional intelligence, however, this adversely affected staff perceptions of the organisation, and engagement declined.

Communication was a critical part of this process of relating with employees. Ongoing communication, including active listening in order to monitor changing needs, boosted organisational resilience. The need to manage employee workload and foster employee well-being was similarly evident. The organisations studied were infrastructure and lifelines organisations, where people worked long hours and risked fatigue to assist their community. Organisations learned to provide flexibility to assist staff in dealing with personal issues, and often developed more comprehensive personal well-being programmes. Customised human resource practices were more effective than a one-size-fits-all approach.

Collaboration proved to be a second vital element of resilience. In a post-disaster situation, an organisation is forced to respond to a new context, often with only limited experience and resources. Resilience was boosted when organisations were able to make internal changes, such as breaking down organisational silos in order to draw upon the combined resources and synergies of different sections. Similarly, when organisations were able to use their established networks to link and collaborate with others, this expanded their resources, their ability to learn, and their capacity to respond to the situation.

The role of the local leadership was a third crucial feature of resilience. The local leaders who achieved a strong sense of engagement and respect among their staff were characterised by features such as being empathetic, self-aware as well as valuing people and prioritising them over profits. Staff responded positively to leaders who were visible, honest, caring, and authentic in their communication. These leaders expressed genuine appreciation of staff efforts, and prioritised both their own well-being and that of their staff. Effective local leaders also empowered staff at lower levels, and were sensitive to the evolving context.

Several of these more effective leaders mentioned their own growth and learning from the disaster-related experiences, describing, for example, how they became less judgemental and more understanding. Related to this, the leaders did not get caught in the immediate crises but thought about long term issues early on, and tended to consciously balance risk with opportunity. Overall, they possessed what we termed “situational awareness”; this included clarity of direction and goals, active networking, sharing and collaboration, readiness to try new approaches, awareness of staff well-being, and appropriate communication.

Learning emerged as a fourth essential feature. We observed that organisations generally responded very well to the immediate crisis. In the initial response phase, they moved out from their standard routines and mind-sets to focus directly on the pressing, and very evident issues associated with the disaster. Typically, they learned how to respond to a disaster, they exhibited greater-than-ordinary collaboration, and they paid attention to staff well-being. For some organisations, their post-disaster learning did “spill over” to create new, enhanced ways of functioning that persisted long-term, and this learning also spread to other parts of the organisation. Those organisations developed processes and procedures to systematically learn from their experiences. However, in other areas, the initial adaptation and altered approaches did not endure. While the earthquakes resulted in huge opportunities for some organisations, they did not always become better at reflecting, learning and adapting long-term.

Discussion

For this study, we operationalised adaptive resilience as the ability to respond effectively, recover quickly, and successfully renew in the face of adverse events.

Crises such as major disasters alter an organisation’s landscape. Our research has identified four categories that seem central to effective response, recovery and renewal. These are staff well-being and engagement, collaboration, leadership, and learning.

Staff engagement was a major driver for adaptive resilience. While the disaster could provoke an initial short period of heroism and heightened engagement, this could erode quickly unless leaders put specific initiatives in place to sustain well-being and engagement. Staff well-being and engagement, while conceptually distinct, are practically related as part of a broader phenomenon that involves well-being as an antecedent to engagement (Macy & Schneider, 2008). In organisations, where staff felt cared for, empowered, and valued, staff engagement tended to be high. Work-life balance and the acknowledgement of family ties tended to enhance a sense of well-being. The emotional literacy of middle management played a key role in sustaining engagement.

Leadership emerged as a central feature, with empathetic leadership particularly vital in the response and recovery phases. The leaders who fostered resilience exhibited a range of features that differentiated them from less effective leaders. They could articulate values and behaviours that were corroborated by other organisational members as central elements of resilience, such as open and frequent communication with staff; placing a high value on staff (and family) well-being; empowering their staff. These leaders were open to learning and mindful of the future and, most importantly, they created a caring culture, a learning culture and a collaborative culture – aspects that promoted better response, faster recovery and positive renewal.

While leadership and staff engagement played a primary role in adaptive resilience, collaboration and learning were catalysts that promoted that ongoing resilience, particularly in the recovery and renewal stages. Organisations that were externally well-networked could draw upon resources and support in the response, recovery and renewal stages. Rapid adaptation in a dynamic environment requires quick decision making and flexibility in operations. Internally, organisations that had built up entrenched, separated silos found it harder to respond quickly. Teamwork inside the organisation also promoted adaptive resilience by ensuring quicker decision making and faster responses.

In a dynamic environment, organisational adaptation is contingent on continuous learning. Organisations need to establish a culture of openness, teamwork and shared vision to promote learning (Sinkula, 1994; Sinkula, Baker, & Noordewier, 1997). This aspect has tended to receive less attention in most organisations. Organisations typically lacked a systematic approach to organisational learning and there was little dissemination of new insights.

Relating this set of factors to the overall concept of organisational resilience shows the factors function in differing ways. Leadership and staff engagement can be viewed as *creating* adaptive resilience whereas collaboration and learning are needed to *sustain* it. Figure 1 below shows the framework for adaptive resilience that emerged from this study.

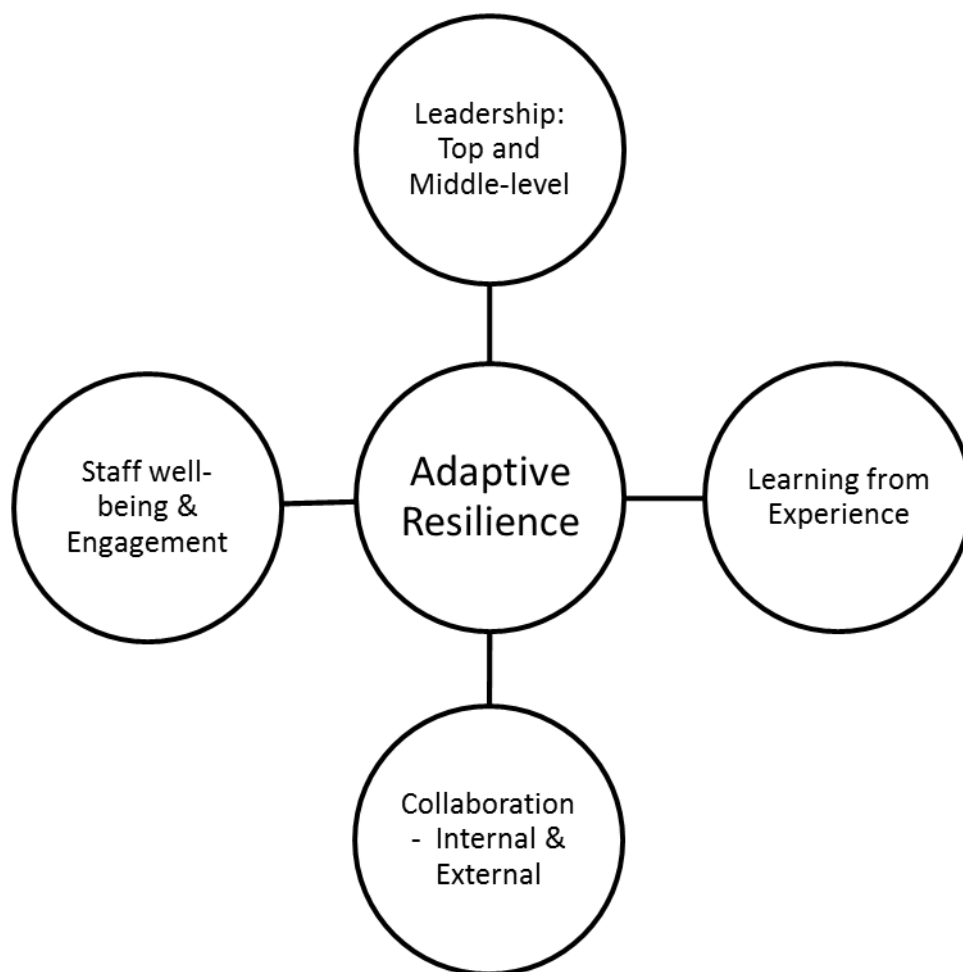


Figure 1: Framework for Adaptive Resilience

Our findings suggest that adaptive resilience is also influenced by the context. In a large scale crisis such as a disaster, some organisations may be impacted severely while others experience little damage. If we conceptualise an organisation's landscape as its markets or resource streams, the organisational landscapes can vary significantly in a disaster. Two aspects of an organisation's landscape significantly influence its adaptation: (a) the availability of resources, and (b) the dynamism of its environment (markets/suppliers/resource streams). An organisation's resources, both tangible and intangible, may remain intact after a disaster or these may be significantly eroded. Similarly, the post-disaster environment may be similar to the pre-disaster environment or it may be significantly different. A different environment may be what we term "positive" or "negative". A positive environment will offer opportunities for growth in terms of an expanded market or demand, whereas a negative environment will be more challenging with a decline in demand. These two dimensions, resource availability and environmental dynamism can be combined to produce four different scenarios, as shown in Figure 2 below.

		Post-disturbance Market/Environment	
		Similar	Different
Post-disturbance Organisational Resources	Adequate	Resilience is about sustaining performance	Resilience is about leveraging strengths
	Inadequate	Resilience is about acquiring resources	Resilience is about exploring new opportunities

Figure 2: Contextualising Adaptive Resilience

The four scenarios require an emphasis on differing factors. If an organisation's post-disaster environment is similar to its pre-disaster environment, and its resources, both tangible and intangible, are largely intact (top left quadrant), then adaptive resilience is centred on dealing with the disruption and sustaining performance. In this situation, the two factors of leadership and staff engagement will be central to quick recovery.

If an organisation's post-disaster environment is similar to its pre-disaster environment, but resources are significantly eroded (lower left), then adaptive resilience focuses on rapidly mobilising resources. Collaboration becomes a central element, along with leadership and staff engagement.

If an organisation's post-disaster environment is different from its pre-disaster environment, and its resources, both tangible and intangible, are largely intact (top right), then adaptive resilience is all about leveraging its existing strengths in the new environment. In this situation it is learning, along

with leadership, and staff engagement that are likely to be the key to effective recovery. This is, of course, contingent on the post-disaster environment having enough resource to support the recovery.

If an organisation's post-disaster environment is different from its pre-disaster environment, and its resources, both tangible and intangible, are eroded (lower right), then adaptive resilience primarily involves mobilising resources and exploring new opportunities. Here, the four factors – leadership, staff engagement, collaboration and learning – are all central to recovery and renewal.

Conclusion

Recovery and renewal require both tangible resources, such as physical assets and money, along with intangible assets like human capital, knowledge and leadership. The most significant contribution of our study is to conceptualise adaptive resilience as a complex dynamic that is constituted by a constellation of tangible and intangible resources, and then identify its core components using a grounded theory method. The quality of top and middle-level leadership, together with the level of staff engagement, determine an organisation's adaptive resilience. However, if its constituent resources are neglected and eroded rather than fostered and sustained, adaptive resilience will tend to diminish over a period of time. To counter this, the quality of an organisation's internal and external collaboration, together with a learning orientation, can promote and sustain its adaptive resilience.

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Eulogy for Rt Hon Sir Owen Woodhouse

SIR GEOFFREY PALMER^{*}

Capturing the essence of Owen Woodhouse makes demands. He was a complex, multi-faceted human being, blessed both with penetrating insight and human empathy. His compassion for people was perhaps his most salient characteristic. The number and range of his friends and acquaintances both in New Zealand and overseas was astonishing.

Owen had the gift of friendship. He inspired enormous loyalty and affection among those with whom he interacted and worked. He laboured in some tough situations. He was a leader. He had the capacity to weld a disparate group into a team and produce high quality outcomes. Everyone wanted to help him. He also knew how to run a social occasion and was a great host, if a trifle heavy handed with the whisky.

Owen had a warm-hearted social vision. He was a visionary with judgment and wisdom. He believed those in distress should be helped and the well-being of each one should be of concern to all. He looked into the future and tried to see how it would be. These qualities were reflected not only in his court judgments but also in the reports he wrote both in New Zealand and Australia.

In all of this, he carried his message through a unique prose style. Always spare, his prose had a limpid and crystalline quality to it. It was the result of painstaking drafting and redrafting. The Woodhouse Report in Australia went through nine drafts. He wrote these reports himself. They were powerful, clear, elegant and persuasive. From Owen I learned it was fine to start a sentence with “and.” He was always critical of lawyers with a turgid style.

Owen Woodhouse was devoted to his family. He and Peggy were such a great team and they nurtured a family of six wonderful people – Roger who predeceased Owen but not Peggy, then Susan, Peter, John, Tim and Margaret. Those five are all here today with their families. When Peg died in 2000 Owen was sad beyond consolation.

They married in Napier in 1940, seven years after Owen had set his cap at Margaret Thorp, when he was not yet 17 years of age, a law clerk in Napier earning ten shillings a week, having left school early during the depression. She invited him to tennis at her home and that was, as they say, the ball game. In his privately circulated “A Personal Affair” he says “And at an early age I had my eye on the girl next door. Our marriage has been my life.” Notice that sentence begins with “and.” He spent the years from 1935 until 1939 as a full time but underpaid law clerk in Auckland for several law firms studying part time for a law degree at the University of Auckland, from which he graduated in 1940. He was for a period law clerk to Alfred North. He also found the time to edit the University newspaper “Craccum.”

^{*} Rt Hon Sir Geoffrey Palmer QC. Harbour Chambers, Wellington.

Apart from his family, four primary forces shaped Owen Woodhouse's beliefs and values – Napier, the 1931 earthquake there, the great depression and Second World War.

- Napier, where he was born in 1916, was a tolerant and happy community. There he was brought up, there all the Woodhouse children were born, there he practised law

The Earthquake of 1931 that thrust the land mass up by nine feet visited terrible suffering upon Napier, with 256 deaths and many injuries. Owen was then at Napier Boys' High School and was outside when the earthquake struck since it was the beginning of cadet week. He saw directly the physical ruin and human desolation that event caused in the town.

- The depression that he lived through and from which he directly suffered made its impact on his outlook – the retrenchment, the unemployment, the poverty, the hunger, the soup kitchens and the dislocation of people's lives.

The ranks of the Second World War veterans like Owen, who left such a heavy imprint upon New Zealand life, are thinning now. Their values, their courage and their sacrifice were real.

Owen joined the territorial artillery and was called up in 1940. He decided it was better to join the Navy and be trained in England. At the end of 1941, he was accepted and left New Zealand for England on the "Dominion Monarch" in January 1942. He did not tell the authorities he suffered from asthma and was embarrassed when he had an attack in England. He was lucky not to be sent home. The poet Denis Glover was one of his naval friends of whom Owen wrote he had "Music in his soul." Tough naval training all over the United Kingdom followed where he enjoyed fascinating experiences, and met many people. He passed the tests to become an officer. He cabled Peg back in New Zealand "With delicate grace have donned gold lace, No arrogant louse, your loving Woodhouse."

He always had the purpose of serving in motor torpedo boats and he resolutely secured his wish. The MTBs (motor torpedo boats) of the Coastal Forces were intended for offensive operations by night. They were of plywood construction, 70 feet long, powered enormous marine engines. From April 1943, Owen took part in many patrols from various bases in the Mediterranean, the Aegean and the Adriatic. In the nature of this type of warfare, the engagements were close requiring much courage and skill. He saw a lot of action. After Sicily fell his flotilla went up the coast of Italy, a country that he came to know well and love

In November 1943, Owen was appointed the Coastal Forces Liaison Officer to work ashore with Tito's partisans at their headquarters on the island of Hvar. This was a position of unusual responsibility and danger involving sensitive intelligence issues, strategy, negotiations and lengthy reports. He was active along the Dalmatian coast. He was obliged to attend many meetings all over the theatre of war. He thrived as an Intelligence Officer being blessed with both tact and insight.

In August 1944, Owen was given command of MTB 85. His boat broke down in an operation

resulting in considerable danger but he was given a new one, MTB410. It was in this vessel in the closing stages of the war in April 1945 that he won the Distinguished Service Cross for an operation in the Gulf of Venice in which the flotilla sank five ships out of eight. His MTB sank two of them and his boat came under heavy fire for 12 minutes. Owen was responsible for the sinking of enemy shipping and loss of life. He did his duty with professional detachment. He told me, however, the last time I saw him in February of this year how he was having dreams about the fate of the German sailors who had perished as a result of his activities and what terrible toll it must have taken on their families. That compassion was typical of him.

When the war in Europe concluded, Owen came under heavy pressure to accept an appointment as assistant to the naval attaché in the newly opened British Embassy in Belgrade, where he remained six months. He was promoted to Lieutenant Commander. In the war, he progressed through the ranks of bombardier, seaman, able seaman, sub-lieutenant, lieutenant and finally Lieutenant Commander, a testament to the quality of the man.

The intensity and breadth of his war experiences taught Owen Woodhouse a great deal. It taught him how to operate and what an operator he was. He had a tremendous sense of strategy and was a master of clever tactics. Furthermore, he was remorselessly determined and could not easily be convinced to change his stance. Behind his humane purposes and positive outlook, there was real grit and steel. These qualities were forged in the war.

Back in Napier New Zealand, aged 29, he resumed his legal career and was quickly appearing in major cases. In 1953, he was appointed Crown Prosecutor.

At the early age of 44, he was appointed a Supreme Court judge, now the High Court, in 1961. He served as a judge until 1986 becoming a judge of the Court of Appeal in 1973 and became the President of that Court in 1981. As a lawyer and as a judge, he was of the highest quality. The depth of his life experiences was reflected in the insights contained in his judgments. He was something of a lateral thinker and not afraid to strike out in new directions. For him, the law was not an end in itself. The pursuit of certainty was not always the pursuit of justice. He thought the law had to move on. That was part of the judicial function.

Owen was appointed counsel assisting a Commission of Inquiry into fluoridation of the public water supply that reported in 1957. The work required the sifting and evaluation of complex scientific information. He wrote the entire report and it brought him to the attention of politicians and administrators in Wellington.

In 1967, he was asked to chair the Royal Commission into Personal Injury in New Zealand. He wrote every word of that report too. Appointed in September 1966, the report was complete by December 1967. It precipitated a legal revolution and made Owen Woodhouse a figure of international significance. I met him first when I was a student at the University of Chicago Law School and he visited with the Royal Commission. I drove him back to the Drake Hotel along Lakeshore Drive from the South side in an uninsured beat up 1955 Chevrolet.

His report swept away the common law action for damages and provided in substitution

earnings related compensation for all, 24 hours of the day. There was no place for the old jury trials, nor the common law itself. Workers compensation was abolished. It was all to be done with no further money than the old compulsory insurances provided. The report caused a deal of fluttering in the legal and political dovecotes. It needed to be studied, a White Paper was to be written; I was its main author, selected and insinuated into the system by Owen Woodhouse.

After delays, hesitations and changes, the scheme was enacted but not as it had been recommended. ACC in New Zealand would have worked better if his report had been followed in every respect. The experience with the scheme has not matched the vision of the original blueprint. New Zealand never received what was envisaged by Owen: a “unified and comprehensive scheme of accident prevention, rehabilitation and compensation.” Owen was publicly critical of unwise later decisions that befell the scheme

One person who noticed the Woodhouse Report in New Zealand was Gough Whitlam then Leader of the Opposition in Australia. He visited Owen in Auckland to talk about it. A lawyer himself, Whitlam was attracted to the reform. When he became Prime Minister of Australia in 1972, one of the first things he did was to ask the New Zealand government to lend Owen to head up an Australian inquiry. The government agreed, a step that did much for trans-Tasman relations. Owen rang me when I was teaching at the University of Virginia and said “Palmer, you have to come to Australia” and I became Principal Assistant to the Committee of Inquiry. It never occurred to me to refuse.

The landscape in Australia was very different from New Zealand and the way of the reformer much harder. We had a tough time, but it was the most exciting adventure I ever had. Here is Owen’s crisp summary of the fundamental principle in the Australian report:

“There is the initial principle of community responsibility. For three main reasons the community must accept the obligations that are clearly owed to every person who has been struck down by sickness or by injury. First there are the civilised reasons of humanity. Next, there are the economic reasons of self-interest. If the well-being of the workforce is neglected, the economy soon will suffer and society itself thus has much to lose. Finally, there is the plain fact that rights universally enjoyed must be accompanied by obligations universally accepted. The scheme proposed is a national scheme. It involves national responsibility. It must be organised as a responsibility of the State.”

Sadly, when the Bill was in the Senate, Sir John Kerr, who, when he was Chief Justice of New South Wales, had made submission to the inquiry favouring the end of the common law remedy, dismissed Whitlam from office. The scheme perished with him. Owen led the Australian inquiry with determination and vigour. One example will suffice – the inquiry was within the jurisdiction of the Attorney-General, Lionel Murphy. He was not enamoured of the Woodhouse ideas. He clamped a restriction on the inquiry that no movements interstate were to be undertaken without his express approval. Owen spent his own money and flew to Canberra to see the Prime Minister. By nightfall, the inquiry was no longer within Senator Murphy’s power.

The third Woodhouse Report came after Owen was appointed President of the Law Commission in 1986. The new Commission was asked to review the Accident Compensation Act 1982 and one of its recommendations was that sickness should be covered by the scheme as soon as possible. I took up that opportunity. We tried to get a combined scheme together after I became Prime Minister and a Bill was introduced in 1990. The time will come for that coverage.

Owen did much work on the Law Commission Act 1985, while it was being designed and he became Commission's first President at the age of 71. He suggested that each Law Commission Report should be accompanied by a draft Bill and that be given an automatic first reading by law. I could not get it through Cabinet but it should be done. Owen set up the Law Commission when the statute was passed and kept a strong and imaginative arm on the tiller navigating the directions it took. Ken Keith, who is here today, was his Deputy President. The Commission under Owen's leadership made many useful contributions to law reform in New Zealand – the structure of the courts, wholesale reform of company law, accident compensation, a Personal Property Securities Act, a new Act on the interpretation of statutes, work on the statute of limitations and a valuable report on Imperial Statutes in force in New Zealand. A start was also made on the massive evidence project. During this period, he was also a member of the international arbitral tribunal in Greenpeace's claim against France over the Rainbow Warrior bombing.

Mention should be made of Owen's constitutional views. His judgment as President of the Court of Appeal in striking down a set of regulations in 1982 was bold. His 1979 JC Beaglehole Memorial lecture called for a halt to expanding executive power, likening the situation in New Zealand to that enjoyed by the Stuart Kings. He called for a written Constitution supported by a Bill of Rights. We are still waiting for the real thing.

Owen Woodhouse rendered the State much distinguished service. We shall not see his like again. But his legacy will live long in the life of New Zealand and the culture of its law. He was a wonderful mentor to many.

We celebrate today what was not merely a good life, it was a great one.

30 April 2014.

Sir Owen Woodhouse

ROSS WILSON*

The great liberal jurist and reformer, Sir Owen Woodhouse, died in Auckland on the 15th April at the age of 97. I last visited Sir Owen late last year not long after he had fallen and broken his femur. He recounted how the ambulance attendant, concerned to ensure he was aware of assistance available, had asked him if he “knew about ACC”? With his usual quick humour Sir Owen responded “I invented it”. The attendant took some convincing but, after a quick social history lesson, left with Sir Owen’s autograph. This anecdote is a reminder that many New Zealanders are not aware of his role in the radical reform which resulted in the establishment of our accident compensation scheme, and which we now take for granted as a key public institution.

Sir Owen chaired the Royal Commission of Inquiry for Personal Injury in New Zealand from 1966 to 1967 which, in what became known as the Woodhouse Report, recommended the abolition of the right to sue in the courts and the establishment of a national no fault compensation scheme. This was a radical move, described by the *American Journal of Comparative Law* as “an unparalleled event in our cultural history, the first casualty among the core legal institutions of the civilised world”. The surrender of the right to sue, in exchange for entitlements under ACC, has been described as a “social contract”. Sir Owen’s view was that the common law negligence action was a form of lottery and that a national no-fault scheme would enable seriously injured people, without proof of fault against some other person, to be provided with compensation approaching common law damages. Neither major political party has ever challenged the validity of the Woodhouse founding principles of Community Responsibility, Comprehensive Entitlement, Complete Rehabilitation, Real Compensation and Administrative Efficiency.

The foresight of Sir Owen and his fellow commissioners is also reflected in other lesser known recommendations in their report which included making the wearing of seat belts compulsory and requiring farm tractors to be fitted with safety frames. More broadly, they rejected experience rating of employer levies (on the basis that there was no international evidence that they had any significant positive effect on safety) in favour of the Swedish approach of active co-operation between management and workers, and between business and unions. This approach has been adopted in law since 2003 with ACC funding of workplace Health and Safety Representatives, and is now being strengthened in the Health and Safety Reform Bill following the strong endorsement of tripartism and worker participation in workplace health and safety by the Independent Task Force which arose out of the Pike River Disaster.

It was disappointing that the 40th anniversary of ACCs inception passed on the 1st April 2014 without any official acknowledgement of its founder. Working as a lawyer representing injured workers under the old system, I am very conscious of the huge benefit which ACC

* Ross Wilson is a former lawyer and President of the Council of Trade Unions. He was Deputy Chairman of ACC 1986-1991 and Chairman 2007-2009. He is currently the Deputy Chairman of Worksafe New Zealand.

has provided to the millions of New Zealanders who have suffered accidental injury in the 40 years since the scheme came into effect, and I am sure that gratitude would be shared by other New Zealanders.

Sir Owen was always adamant that injured workers, and the nation would have been better served had his recommendations been implemented in full. I was surprised in 1980, the morning after I had been reported in the Wellington "Evening Post" bemoaning the inadequacy of ACC lump sum compensation for seriously disabled railway workers I represented, to receive a call from the Court of Appeal. It was Justice Woodhouse with a gentle rebuke for supporting lump sum compensation and providing my first lesson on the benefits for workers of delivering compensation for non-economic losses through a weekly pension assessed on loss of earning capacity. He remained willing, throughout his life, to join conferences and meetings on ACC issues and always captivated the audience with his eloquence, charm and humour.

ACC has not yet quite achieved the potential which Sir Owen envisaged, but it has survived a political era when "community responsibility" seemed like a vanishing value. It remains admired around the world as the ideal which many other countries aspired to, but which vested political interests denied them. Many may not know that, at the request of the Whitlam Government, Sir Owen developed a similar scheme for Australia which would have been implemented had it not been for the dismissal of that government in the constitutional crisis of 1975.

Sir Owen's view of accidents as complex events may have been hard to grasp 45 years ago but is certainly more readily understood today in a world where there is daily debate about the disabling effects of poor work organisation, and the health effects of toxic exposures, both in the workplace and the general environment. His recommendation was that the highest priority be given to the promotion of safety. He returned to this theme as President of the Law Commission in its 1988 report which, most notably, promoted a comprehensive disability scheme for the victims of disabling disease as well as accidents.

Sir Owen was a liberal judge with a strong social conscience who was influenced by his personal experience of major events of his era, such as the Napier Earthquake, the Great Depression and the Second World War. He served in the Royal Navy and was awarded a Distinguished Service Cross for naval operations. He was a progressive and compassionate judge and, as the Law Society has noted in its tribute, was the most liberal judge of the Court of Appeal to ever become its President.

The influence of his beloved wife, Peggy, was frequently mentioned with gratitude. They met when he was 16, and Sir Owen noted in his memoir that "Our marriage has been my life". It was wonderful to see his large extended family at All Saints Cathedral on the 30th April sharing their recollections, and celebrating the life of their remarkable father, grandfather and great-grandfather, a truly great New Zealander.