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Health and Safety Regulatory Reform in Australia: Challenges and Issues for Smaller Ethnic Firms

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Abstract

In recent times significant change has occurred to the Australian health and safety regulatory context. In this paper we consider the potential response of smaller firms in general, and ethnic owned and/or operated smaller firms in particular. We draw on literature examining smaller firms' responses to regulation and apply this to what little we know about smaller ethnic firms in Australia in the context of the regulatory change. We highlight the challenges to owner managers and what could be done to engage and support smaller ethnic firms to realise the opportunities resulting from this regulatory change.

Keywords
Australia, health and safety regulation, ethnic smaller firms.

Introduction

Smaller firms make important contributions to servicing and producing Australia's economic growth, wealth, employment and innovation. Of the 2.05 million economically active firms, 40% have employees but of these very few employ significant amounts of people (just 1% of firms employ more than 200 people) (ABS 2010). Our interest is in smaller firms that employ up to 100 people and specifically those owned and operated by members of Australia's many ethnic communities.

A firm that is connected to an ethnic group, functions in a way that is open mainly to the members of that ethnic group and draws on resources (such as customers, suppliers, labour and finance) from within that ethnic group, is usually taken to refer to as an ethnic firm (Jones & Ram 2008). The development of ethnic firms is underpinned by migration. Indeed, early theories of ethnic entrepreneurship focussed on migrants' labour market disadvantages as the key push factor for self-employment and business development (Volery 2007). Yet Australia's long history of migration means this 'traditional' view of an ethnic firm may be misleading, particularly when an open business migration channel exists and business migrants are encouraged to settle in Australia. Indeed some old and successful immigrant businesses such as Myers (Australia's largest department store chain) or the Grollo and Doric Groups (Melbourne and Perth based large construction and development groups) do not fit the 'traditional' ethnic firm stereotype.

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Australia's history of migration has led to a diverse population with 27% of the population (some 6 million people) born outside Australia (ABS 2011). This diversity is reflected in smaller firm ownership where 29% of those who own and operate smaller firms were born overseas (ABS 2008). With this diversity many ethnic firms will not fit the stereotype of a firm that operates where there are low barriers to entry or in areas with a concentration of members of the same specific ethnic group. However many will and we see this for example in the ethnic food sector and in ethnic enclaves such as the Chinatowns that exist in major Australian cities. Some ethnic firms serve their co-ethnic community while others use their ethnic authenticity to serve to the wider market be it in serving ethnic food or arranging travel to their home country for example. Clearly there is a presence of first and multi-generational ethnic families and communities in Australia, but we know surprisingly little of the extent, nature and operations of smaller ethnic firms in the business community.

The purpose of this paper is to assess what is known about smaller firms and particularly smaller ethnic firms in terms of their response to the changing health and safety regulatory context. The reform agenda sees the Council of Australian Governments overseeing a process of harmonising state and federal laws to reduce complexity for business (http://www.coagreformcouncil.gov.au/). The reforms to health and safety also reflect Australia's aspiration to be a world leader in health and safety practice through changed workplace practices (ILO 2005). As such the Australian Work Health and Safety Strategy (AWHSS) 2012-2022 sets a target of reducing work-related injuries by 30% and fatalities by 20% over its ten year period (Safe Work Australia 2011). The AWHSS sits alongside the harmonisation of all state based health and safety legislation. The aim has been for all State governments to enact legislation that mirrors the national Work, Health and Safety Act 2011 (WHS Act) and for this to have been completed by 1 January 2012 (Safe Work Australia 2010). So far all jurisdictions except Victoria (which has chosen to retain its legislation) and Western Australia (which has agreed to enact a version of the WHS Act in 2014) have complied (Tooma 2012), although with some variations.

Smaller firms must respond to this regulatory change but it is unclear whether and how this will occur. Smaller firms are vulnerable in the face of regulatory change due to their adaptive capacity and lack of resources, expertise and managerial knowledge (Baldock et al 2006; González et al 2010). We would argue that smaller ethnic firms would be even more vulnerable because of their unequal access to valuable forms of human, social and financial capital (Kloosterman & Rath, 2001). We pursue this argument after outlining the key elements of the health and safety regulatory change. We then move to what research has said about smaller firms, particularly smaller ethnic ones and regulatory change. In the final section we examine research on smaller firm owner-managers' attitudes to regulation in order to make recommendations for ways in which they can be engaged and supported in this changing regulatory context. We argue that stereotypical views of smaller ethnic firms may be unhelpful and that further research is needed to understand the impact of regulatory change on these firms.

Health and Safety Regulatory Change

The purpose of regulation is to enhance and maintain an efficient market economy, while, at the same time, providing safeguards for workers, consumers, firms and the environment (BRTF 2005). However, popularly, any discussion of regulatory effects on smaller firms cites it as being a burden and negatively affecting firm performance. Linked to this is the

stereotype of smaller firm owner-managers as overt individualists who avoid regulation and/or shirk their regulatory responsibilities (see for example Hasle et al 2012).

That said, much regulation does not have smaller firms as its focus and thus smaller firms are disproportionately affected by regulatory regimes and in some circumstances they bear regulatory costs which are at least 35% higher than larger firms (Chittenden et al 2002). Regulatory costs can be incurred from complying with policy or through the administration of the policy (Storey & Greene 2010). In the UK the cost of regulation over the period from 1998-2008 was estimated to be £77 billion (British Chambers of Commerce 2009). When the focus is specifically on smaller firms and WHS, it has been calculated in the UK that WHS regulations compliance costs are seven times higher for the smallest firms compared to the largest ones (£111.59 per employee compared to £15.99) (Lancaster et al 2003). However, to date research has not been conducted in Australia to determine the costs to smaller firms in relation to responding to the changes in WHS regulation.

The cost burden of regulation contributes to concerns that business regulation simply creates 'red tape' that deters individuals from engaging in business. Indeed, the COAG reforms are all about "cutting red tape to make it easier to do business" (Senator Nick Sherry quoted Crowe in the *Australian Financial Review*, 11 Feb 2011). The harmonisation of health and safety legislation seeks to develop a level playing field for all employers and workers and thus improve health and safety outcomes at work. But by January 2013 Victoria and Western Australia were still resisting harmonisation and although the other states and territories had introduced new legislation they had done so with some variation to suit jurisdictional requirements. The Acts are supplemented by national Regulations and Codes of Practice, and are managed and enforced by state-based agencies while being overseen by the federal agency (Safe Work Australia 2010).

Harmonisation reduces difficulties of firms operating in multiple jurisdictions but the impact of the harmonisation will be felt differently across jurisdictions. This was behind the Victorian Government's resistance. Using a report prepared by PriceWaterhouseCoopers (2012) the then Premier argued that the reforms were regressive and would compromise productivity in the State. Moreover the costs were too prohibitive, especially for smaller firms (Baillieu & Rich-Phillips 2012), which was consistent with Access Economics' (2011) predictions that the changes required to be undertaken by smaller firms would not be offset by reduced complexity.

There are specific elements of the WHS Act that pose challenges for smaller firms in terms of their capacity to respond given their resource poverty and other vulnerabilities that impact on smaller firm owner-managers' choices about workplace actions; for example, the due diligence clause in the WHS Act places personal liability on company directors for workplace health and safety. Company directors, or those persons conducting a business or undertaking, are deemed personally liable for breaches and the associated fines have been increased to $3M with up to five year jail terms (Safe Work Australia 2010). This is new in some jurisdictions and concern has been expressed about how smaller firms will manage in the event of being found guilty of a breach and subsequently fined (Baillieu & Rich-Phillips 2012).

These due diligence provisions also have considerable documentation requirements and this is problematic for smaller firms (see Eakin et al 2010). The due diligence clause is underpinned by the 'duty of care' concept which requires employees to be consulted. This means employers are required to consult and communicate with employees about a range of health and safety issues including about the nature of risks and hazards in the nature of present in current their operations; allocation of resources, and processes to ensure a safe system of work; disseminate knowledge of WHS matters; implement practices that facilitate a timely response to incidents and implement a processes that enables full legal compliance (Safe Work Australia 2010).

While improved health and safety performance is the ultimate goal of the health and safety regulatory reforms, it is unclear whether this will be achieved in smaller firms generally and smaller ethnic firms specifically. What little we know about the effect on, and response by, smaller ethnic firms to regulatory change of this type we turn to in the next section.

Smaller Firms, Regulation and Health and Safety

Smaller firms' responses to regulation go beyond simple cost-benefit calculations and depend on a complex interaction of cultural, contextual and economic factors in concert with owner-managers' responses as well those of employees and other stakeholders (Barrett & Mayson 2008; Mayson & Barrett 2006; Wilkinson 1999). Recent studies have taken into account the complex economic and social structural location of smaller firms as well as their owner-managers' understandings of, and motives for, action in response to regulation and its effect on firm performance (see Anyadike-Danes et al 2008; Kitching 2006; Vickers et al 2005). This would also be the case in terms of smaller ethnic firms where the diversity between and within ethnic groups, and within and between home and adopted home country contexts (be they social, cultural, political, economic, regulatory, educational etc), plays an important role in understanding their behaviour and functioning (Baldock et al 2006).

We can see this in a UK study where the impact of health and safety regulations on ethnic minority businesses (EMBs) was examined (Baldock et al 2006). While the study found no significant differences between EMBs and white owned businesses in making compliance related health and safety improvements, it did show that variations existed between different ethnic groupings in the sample. For example, employment size and sectoral context differentiated EMBs' compliance responses to health and safety improvement measures where factors such as type of industry, pressure by customers and trade associations may increase awareness of regulation and hence compliance (Baldock et al 2006). Lee's (2008), study of small Korean dry cleaning firms in the USA, found that regulatory compliance (or non-compliance) was constructed by the owner-managers through a "web of regulatory politics" (p. 138) embedded in the firms' environment. Gunningham (1999) has noted that the risk of penalties for non-compliance is a key driver in managerial action regarding safety regulation. Inspection regimes, the accessibility and relevance of information about health and safety requirements, publicity of penalised for non-compliance, the availability of training are all factors that will affect how smaller firms respond. Indeed whether the smaller firm is part of a supply chain or subcontracts to a larger firm also will pay a role as the WHSS requires larger firms and state regulators to work together to support smaller firms in their supply chains to become compliant.

That said, we do know that smaller firms are structurally vulnerable when facing regulatory compliance. Resource poverty gives rise to "structures of vulnerability" (Nichols 1997: 161) and this can mean relevant infrastructure is less likely to exist in smaller firms. Compliance demands could be felt more keenly in smaller ethnic firms because they may be less aware of legislative requirements and less able to comprehend the requirements of legislation due to language difficulties and their location in informal areas of the economy (Baldock et al 2006). Indeed we need to take note of Azmat and colleagues (Azmat 2010; Azmat & Zutshi 2012a; 2012b; Azmat & Coghill 2005) studies of immigrant entrepreneurs in Australia and their perception of corporate social responsibility (CSR). These studies shows that home country contextual factors, such as culture, institutional environment and socio-economic development, play a role in how immigrants interpret host country regulations and these are likely to affect understanding of and compliance with regulation. Further, Azmat and Coghill (2005) suggest that if the immigrant entrepreneur's home country lacked robust regulatory frameworks, had a culture of poor enforcement and insufficient processes to safeguard organisational practice and where corruption thrived, then the immigrant entrepreneur may face difficulty in responding to their host country's regulation.

In terms of health and safety, it is understood that poor performance is more likely to be "related more to the inadequate management of risk than to the absolute seriousness of the hazards faced" (Baldock et al 2006: 829). In smaller firms there is more likely to be a lack of awareness of what constitutes a risk rather than an absence of risk (González et al 2010). Even if there is an awareness of risks, then the documentation of risks can be problematic (Eakin et al 2010), especially in smaller firms whose management systems generally lack formality, and as Barrett and Mayson (2008; Mayson & Barrett 2006) have established, this is particularly so in regard to managing the employment relationship. Indeed the European Survey of Enterprises on New and Emerging Risk which was a study of 28,649 managers and 7,226 health and safety representatives in 31 European countries, found that rather than risks being absent in those firms without a documented policy, management system or action plan, it was more likely there was a lack of awareness of risks (González et al 2010).

A smaller firm owner-manager's awareness or perception of risk underpins whether actions are taken to mitigate risk, and in the case of health and safety, this is whether they implement health and safety management processes and practices. Eakin (1992) found in her analysis of interviews with 53 small business owners, that risks were 'normalised' because WHS was not understood as "a bureaucratic function of management but as a personal moral enterprise in which the owner did not have legitimate authority" (Eakin 1992: 689). Holmes and Gifford (1997) made similar findings in their analysis of narratives of health and safety from employers and employees in the Victorian painting industry, while MacEachen et al (2010) explain this in terms of the informal workplace social relations that limit employer and employee perceptions of risk in smaller firms.

Cross national and cross cultural differences have also been found in relation to the perception of risk (see for example Renn & Rohrmann 2000; Rohrmann & Chen 1999). For example a study of risk perceptions of employees in a Greek and an English bakery found those in the UK bakery were better aware of risk definition (Alexopoulos et al 2009). While education and training played a role in the recognition of risks the results did suggest that there were cross national differences in attitudes related to managing WHS.

Arguably, whether it is a result of a lack of risk awareness, lack of documentation of risks or a perception that risks do not need 'managing', there is likely to be some (negative) impact on the health and safety performance in smaller firms. This could be further compounded by smaller firms being less likely to be inspected by regulatory agents than larger firms and less likely to employ WHS practitioners (Pilkington et al 2002; Walters 2001). Furthermore there is less likelihood that relevant infrastructure such as employee training and union organisation will exist in smaller firms, despite these elements being critical to the representative participation that underpins improved health and safety management practices (Frick & Walters 1998; Quinlan & Johnson 2009).

Care must be taken not to tar all smaller firms with the same brush. Rigby and Lawlor (2001) pointed to the nature of employer-employee relationship in smaller firms and owner-manager's own health and safety values as critically influencing the management of health and safety in the Spanish smaller firms. Mayhew's (1997) study of Australian smaller firms, found that core business and economic pressures were the dominant factors affecting health and safety compliance. Similarly Walters and Lamm (2003) argue that the smaller employers' training and experience will impact on whether or not they are likely to be compliant with health and safety regulations.

Taking a similar line of reasoning and looking at responses to regulation more widely, Anyadike-Danes et al (2008: iii) concluded that, "knowledge of regulation, coupled with internal capacity to respond positively can and does enable business owners to adapt business practices and products to overcome some of the constraining influences of regulation". More than half their sample of 1205 smaller firms accommodated regulations while "sizeable minorities" (p. ii) reported beneficial impacts. Mutually interlocking relationships between regulation and performance were explored further by Kitching (2006). He focused on 'regulatory tendencies', to show that smaller firm owner-managers' agency connects regulation to firm performance. Regulation may constrain smaller firms activity through compliance, but could also enable and motivate other activity by making certain actions possible or by encouraging certain activity in others.

In terms of understanding the regulatory context, Safe Work Australia has considerable resources available online for employers and employees. Fact sheets address matters in different industries and for different types of work and workers. The National Safe Work Australia Week is held annually while the annual Safe Work Australia Awards acknowledge excellence in work health and safety at an organisation and individual level on a national stage. State based health and safety agencies also run training as well as provide information and resources in an array of languages. So too do a host of private companies and consultants. However there are issues around getting information to smaller firm owner-managers. Research shows that the 'what's in it for me' needs to be emphasised if smaller firm owner managers are to engage with externally sponsored business support initiatives (Billington, Neeson & Barrett 2009). Their preference is for learning opportunities that enable value to be drawn from interactions and communications with others and these require a good relationship with the training provider (Devins et al 2005; Billington et al 2009).

In terms of smaller ethnic firms and their potential responses to the health and safety regulatory reform, there is much we can speculate and very little that is known. Research tells us that members of ethnic communities are now as equally likely to be pulled into realising an opportunity through self-employment and business development as be pushed by necessity (see Volery 2007). Differences will emerge between the ways businesses are run depending

on whether the owner manager is a first or later generation migrant. Indeed this is what is suggested by the mixed embeddedness approach (Kloosterman 2010; Kloosterman & Rath 2001; Kloosterman et al 1999; Ram et al 2008; Vershinina et al 2011). Mixed embeddedness places ethnic entrepreneurship within the wider social, political and economic institutional frameworks and opportunity structures of the entrepreneur's adopted homeland. It seeks to transcend the push-pull dichotomy by highlighting ethnic entrepreneurs' embeddedness in co-ethnic social networks, and the interpretation of these in the context of being embedded in wider sectoral, spatial and regulatory environments. While, mixed embeddedness has been applied in the context of new im/migrant entrepreneurship, it has also been applied to explaining entrepreneurship in older ethnic communities (Vershinina et al 2011). This is possible as the opportunity structure is the realization of opportunities available at any point in time in an economy and these are determined by socio-political institutional factors but also depend on the (personal and group) resources available to individuals at the time of start-up.

Understanding how smaller ethnic firms will respond to the regulatory change is not straightforward and therefore we turn to the Vickers et al (2005) typology of small firm responses to regulation which we think can be deployed as a guiding framework that moves us beyond stereotyping smaller ethnic firms.

Attitudes to, and Responses of Smaller Firms to Regulation

Vickers et al's (2005) typology of owner-manager attitudes and responses towards regulation developed from their study of 1087 UK small firms provides a useful framework for analysis of responses to WHS regulation. 'Avoiders/Outsiders' are likely to be non-compliant and keep a low profile so as not to attract attention. This is where, stereotypically, we would expect to locate a proportion of smaller ethnic firms. As Gunningham and Kagan (2005) note, the risk of enforcement is a key driver in managerial action towards health and safety compliance, and if risk is perceived to be low, then avoidance might result. Those with little to fear from losing business as a result of regulatory intervention or unconcerned about adverse publicity if they are in breach (Baldock et al 2006; Wright 1998) are likely to be Avoiders/Outsiders. Smaller ethnic firms that sit at the margins of the formal economy or are well-embedded in their co-ethnic community may be difficult to locate in order to enforce compliance. Moreover language difficulties and the reliance on informal information and advice structures (Baldock et al 2006) may also complicate matters here and unwittingly make smaller ethnic firms more likely to be avoiders and/or outsiders.

'Reactors' are either 'minimalists' or 'positive responders' and they comply because of the demands placed on them by their customers, supply chains or through public procurement processes (Fairman & Yapp 2005; Wright 1998). 'Minimalists' view regulations as an unnecessary burden, are suspicious of external agencies and employ 'short cuts' and/or dishonest measures. Their behaviour may be encouraged by being difficult for regulatory agents to reach and they are therefore less likely to be influenced by traditional regulation methods (Baldock et al 2006; Walters 2001). For instance, Bahn (2008) found minimalism to occur around health and safety issues in her study of the WA construction industry at times of high production. Minimalism might also result when there is difficulty in interpreting the legislative requirements, as in Fairman and Yapp's (2005) study of UK hairdressers.

'Positive Responders' use external agencies, such as customers and inspectors to ensure they are compliant with regulations, and are tolerant of regulatory intervention as long as it is accompanied by clear guidelines (Baldock et al 2006). In Baldock et al's (2006) study of 180 small firms of which 143 were ethnic owned, they found Bangladeshi-owned catering firms were more compliant than Chinese and Turkish owned firms because they were located in the formalised hospitality sector and not only had pressure from customers applied on them but they were more likely to be inspected. Similarly, Charles et al (2007) argue that in the Australian construction industry, that unless pressure brought to bear on smaller firms by larger project management ones that deal with high profile clients, then there is little likelihood voluntary codes of practice for WHS will be adopted. However, positive responders may be thwarted by the multiple agencies that operate in the WHS space, which Rigby and Lawlor (2001) found confused owner-managers who were unsure of their differences and what they were required to do in order to comply. For smaller ethnic firms in Australia understanding the array of information emanating from agencies dealing with WHS and the lack of easily accessible information in languages other than English could present problems. Moreover Lord Young's (2010) review of the UK's 1974 Health and Safety at Work etc Act showed firms appeared to be positive responders but that was because they operated in "a climate of fear" (p.11), leading them to over-comply and incur excessive and unwarranted costs.

The final type, 'Proactive Learners', have a sound awareness of regulation which is supported by workplace policy and practice. Anyadike-Danes et al (2008) found complementary policy measures have the potential to enhance business performance in response to regulation and so it could be expected that within this category of smaller firms there is some positive impact of regulation on performance.

Discussion and Conclusion

The health and safety regulatory change in Australia, most notable in the harmonisation of state based health and safety legislation, aims to create a level playing field for business by reducing complexity. Together with the new AWHSS, Australia aims to ensure working lives are healthy, safe and productive (Safe Work Australia 2011). Moreover, in recognition of the importance of smaller firms, the AWHSS states: 'It is important that national strategic activities support improvement in the capability of small business to successfully manage health and safety risks' (Safe Work Australia 2011: 3). However the smaller firm sector is large and diverse and nearly one third of all Australian firms are owned and operated by individuals born outside Australia. Many more again will be owned and operated by second and older generation members of Australia's many old and new ethnic communities.

However when the literatures on smaller firms, smaller ethnic firms and health and safety are brought together, we can see there are questions about how smaller firms generally and smaller ethnic firms specifically might adapt to the regulatory change. Importantly, while we understand certain factors shape attitudes to health and safety risk, more generally we have scant knowledge about Australian smaller firms' responses to regulation and even less knowledge about smaller ethnic firms. For this latter group, responses to health and safety regulation must be understood using a framework that accounts for their heterogeneity created by their embeddedness in co-ethnic social networks, and the interpretation of these in the context of being embedded in wider sectoral, spatial and regulatory environments social and economic contexts.

If we use the Vickers et al (2005) typology, the temptation is to take a stereotypical view of smaller ethnic firms and predict that they are likely to fall into the 'Avoiders/Outsiders' type in their response to regulatory reform. This may be the case for newer migrants in business who may have limited resources at their disposal and could suffer from difficulties communicating with regulators or understanding their responsibilities through a lack of English language skills. However for those who entered Australia on a business migrant visa, the possibility of a penalty and the potential for that to affect their visa conditions, could mean these ethnic entrepreneurs are more likely to be positive responders or proactive learners.

So to say that many smaller ethnic firms are vulnerable in the face of regulatory change is, we think, too simplistic given the diversity within Australia's ethnically owned and operated smaller firm community. We have demonstrated this using the Vickers et al's (2005) analytical framework in the context of the mixed embeddedness approach to explaining ethnic firms. Mixed embeddedness seeks to transcend the push-pull dichotomy by highlighting ethnic business owner's embeddedness in co-ethnic social networks, and the interpretation of these in the context of being embedded in wider sectoral, spatial and regulatory environments (Ram et al 2008). These interpretations will differ with the passing of time (Vershinina et al 2001) and therefore it is also necessary to consider the historical context of ethnic business development within the Australian economy if we are to understand the ways smaller ethnic firms will respond.

As we can see there is a challenge in coming to an understanding of smaller ethnic firms' responses to regulatory change and determining the ways to support them so that good health and safety outcomes can be facilitated. Others are watching Australia's progress with these health and safety reforms too (Templer 2012). As such, we have presented a rich research agenda for the future. Research that is specific to ethnic smaller firms and their understanding and support needs in terms of regulatory change and compliance is needed, and not simply in Australia.

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Vulnerability in New Zealand dairy farming: the case of Filipino migrants

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Abstract

In New Zealand, the dairy industry contributes significantly to the economy. It is responsible for 26 per cent of total merchandise exports. Propelled by the recent world commodity boom, the dairy industry has expanded rapidly, but that expansion has been constrained by problems with recruitment and retention of labour. From 2006 these problems have been overcome by the employment of short term migrants, nearly half of whom originate from the Philippines. This paper explores the inflow of these migrants using Sargeant and Tucker's (2009) framework to document the working, health and safety experiences of Filipino dairy workers in Mid Canterbury, located in the South Island of New Zealand. It explores how they came together and established an association to promote much needed social contact and then advocacy for the many members experiencing employment or immigration difficulties.

Keywords:
advocacy group, dairy farming, employment, Filipino migrants, New Zealand.

Introduction

At the end of 2010, the dairy industry accounted for 2.8 per cent of New Zealand's Gross Domestic Product (GDP), over a third of the GDP share of the whole primary sector (dairy and meat farming, processing, horticulture, fishing, forestry and mining) and provided 26 per cent of New Zealand's total goods exports (Schilling, et al 2010). Although the average size of a New Zealand farm is only 536 acres (215 hectares) and most are classified as a small business, substantial growth of this sector has provided an increasing number of employment opportunities, and generated wealth that has rippled throughout New Zealand.

New Zealand's agricultural sector (including dairy) however, has one of the highest rates of work-related injury and illness, accounting for the largest amount of workers' compensation claims for the 2010 year, despite representing only 7 per cent of New Zealand's labour force (Statistics New Zealand, 2011). Furthermore, there is a

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disproportionate number of people in agriculture and dairying, working long hours (defined as 50 + hours per week). Eleven per cent of all those identified in the 2006 Census worked long hours, but that equated to only 5.6 per cent of total workers (Fursman, 2008). New Zealand dairy farm workers expect to work more than the standard 40 hour working week[5]. Eighty eight per cent of dairy farm workers surveyed by Searle (2002) expected to work more than 50 hours per week and during the spring over half of respondents expected to work more than 60 hours per week. The working day on a dairy farm is long and time between rostered time off is lengthy. Ninety per cent of all dairy workers surveyed were working for at least seven consecutive days and 75 per cent worked more than ten consecutive days before having time off (Tipples & Greenhalgh, 2011).

The New Zealand dairy industry now faces a severe labour shortage, driven by the expansion of the dairy industry, an aging workforce and prevalence of long working hours and hazardous working conditions. Despite high national levels of youth unemployment (13.4 per cent) and general unemployment (7.3 per cent) for the September 2012 quarter (Statistics New Zealand, 2012), dairy farmers cannot find an adequate supply of suitably skilled farm workers to meet the current and projected labour needs. Federated Farmers and recruitment agencies estimate there is a shortage of at least 2,000 skilled dairy workers. With the dairy industry growing fast, labour shortages are likely to compound, particularly in the South Island where expansion is concentrated (Tipples, et al, 2010). This has resulted in an exponential growth in employing migrant labour to offset the labour shortage.

While migrants working as dairy workers come from a wide range of countries, there has been a notable increase in the number of temporary work visas issued to Filipino workers. Kelly describes the Filipino migratory phenomenon:

> "By the late 1980s, for many countries around the world, the Philippines had become a major supplier of subordinate working-class labour…expatriate Filipinos have come to occupy the least secure, least remunerative and least desirable places in the global labour market."
> (Kelly, 2010: 159)

Table 1 illustrates the significant influx of Filipino dairy workers since 2003/04. In the 2008/09 dairy season, 898 temporary work visas were approved for Filipinos, of which 831 were issued to men (Callister & Tipples R, 2010). There is a stark contrast with other streams of Filipino migration to New Zealand, for example nurses and caregivers, who are overwhelmingly dominated by females working in urban locations compared to dairy men in rural ones (Baskar, et al, 2009). Currently the Philippines labour force is described by Castles (2000: 5): as a "…labour exporter par excellence…with nearly one-tenth of its people overseas (also see Castles & Millar, 2003). The Philippines has a population of 98 million and of this population in 2010 there were 4.42 million permanent Filipino migrants, 4.32 million temporary migrants and 704,000 irregular migrants, living in 217 different countries (Ministry of Foreign Affairs and Trade, 2011).

Table 1: Number of Filipinos granted temporary work permits for dairy farming 2003 to 2011

Season/Years	Number	% of all permits granted for dairy farming
2003/04	16	3
2004/05	40	6
2005/06	74	12
2006/07	278	32
2007/08	806	46
2008/09	898	46
2009/10	861	48
2010/11	866	51

Source: Rawlinson, Tipples, Greenhalgh, Trafford (2012)

If one considers New Zealand and the Philippines to be unequally situated in the global economic order, New Zealand benefits from the use of labour from the Philippines to renew its workforce and sustain its international dairy competitiveness. As part of that process the Philippines bears the cost of social reproduction and export of labour in return for remittance income, while New Zealand continues to get its cows milked and dairy products exported (Tipples & Trafford, 2011). The Philippines actively markets its people as "…a flexible, hard working, malleable workforce for the global economy and fosters a training infrastructure to create such workers", (Kelly, 2010: 173). Philippines' public policy to encourage and control emigration for national benefit might be perceived as part of a national 'sustainable livelihoods strategy', using remittances from its human capability exports to sustain the Philippines' economy, communities and families (Chambers & Conway, 1992).

In this paper, the following definition of a migrant worker is adopted (Sargeant & Tucker, 2009: 52):

> …workers who have migrated to another country to take up work but who currently do not have a permanent status in the receiving country…The migrant category… includes both workers who have obtained a legal right to enter and work, as well as those who have entered and are working without legal authorisation. It also includes temporary foreign workers (TFWS) whose right to work is time-limited from the outset, as well as foreign workers who have a more open-ended right to remain but have not yet obtained permanent status

Migrant labour is commonly found in industries with non-standard practices, such as irregular working hours and at-will or casual employment. Much of it is precarious, unregulated, contingent employment (Boocock, et al., 2011). Finding out the degree of work-related injury and illness amongst migrant workers has not been part of the current discourse and little research has been completed. The research that has occurred has been concentrated on textiles/clothing, manufacturing, retail and call centres, all of which have a

reputation for exploitation and vulnerable workers. Limited statistical databases of accidents/injuries, occupational disease, and workers' compensation make such research even more difficult. Research is also needed to establish causality and study migrants' wellbeing (Boocock, et al., 2011).

This paper explores the inflow of migrants into New Zealand dairy farming since 2006, with the focus on Filipino dairy workers located in the Mid-Canterbury town of Ashburton, using Sargeant and Tuckers (2009) framework in order to document the working and OSH experience of Filipino workers. Finally, the paper examines the way in which these workers reacted to their less than satisfactory working conditions and reports on the creation of a Filipino Dairy Workers' Association in response to the exploitative practices of some New Zealand employers.

Research Method

In 2010-11, Tipples and Greenhalgh (2011) carried out a study for DairyNZ exploring a baseline for measuring employees' experiences of people management practices in New Zealand dairy farming. The study was based on a representative sample of AgITO trainees taking dairy courses in early 2011, as there is no sampling frame for dairy farm workers. AgITO is one of New Zealand's largest agricultural training organisations. A total of 483 dairy workers completed the AgITO survey (Tipples & Greenhalgh, 2011). Data were extracted from that to give a comparison of New Zealand (n=326) and Filipino workers (n=34), which was then compared with a visiting group of Irish dairy farm students (n=24) (Greenhalgh, 2011). Table 2 provides an analysis of differing characteristics between New Zealand, Filipino and Irish dairy workers in New Zealand. As a total population, 38 per cent had rosters of 11 days on, 3 days off; 26.5 per cent had 6 to 8 days on and 2 or 3 off (Greenhalgh, 2011).

Table 2: Comparison of age, herd size and daily working hours between New Zealand, Filipino and Irish dairy employees

Characteristics of the Dairy Industry			
	Filipino	New Zealand	Irish
Average age	36	27	21
Average herd size	862	874	927
Working daily hours	11.2	10.5	10.2

Source: Tipples and Greenhalgh (2011); Greenhalgh, (2011).

This exploratory study is based on informal participant observation by the second author of Filipino activities and working alongside them in the dairy shed. A total of 20 qualitative interviews were conducted with both a New Zealand born dairy farmer (n=1) and the leader of FDWNZ and 15 Filipinos dairy workers (n=16), community based workers (n=2) and a dairy recruitment specialist (n=1). This particular piece of research was commissioned by

the first author as a resource for a major research project on fatigue and work-related stress, which is part of the DairyNZ Farmer Wellness and Wellbeing programme (2010-2017). In this paper, participants are referred to in text using generic titles such as a 'Farm Manager' or a 'Community Advocate'. This has been done to protect the anonymity of participants in the study.

Recruiting migrant dairy workers for New Zealand

Driven by the prosperity of the global commodity boom, an increasing number of New Zealand farmers have converted their properties to dairy farming (Rawlinson, 2011). Sourcing labour for these new conversions is an issue for dairy farmers, who have found New Zealand born workers lacking the skills, experience and capabilities they required for positions advertised (Cropp, 2010; Rawlinson, et al. 2012a). As a result, dairy farmers have turned to migrant workers to meet the labour demands in the dairy industry. A significant proportion of these migrant workers are recruited from the Philippines, a nation famed for its policies surrounding external migration of its people (Alayon, 2009).

With 10 per cent of its population working outside the Philippines, the Philippines government has two government departments established to facilitate and regulate Overseas Filipino Workers (OFWs) and promote job opportunities overseas (Alvin, 2003). These OFWs are then encouraged to send their income back to the Philippines to support their families and to improve living conditions, household incomes and provide family members with a better education (Alvin, 2003; Rawlinson & Tipples, 2012; Rawlinson, et al., 2012b).

For New Zealand dairy farmers, the most common way of getting a migrant worker was through a recruitment agency (Rawlinson, et al., 2012b; Rawlinson & Tipples, 2012). These recruitment agencies can be based in New Zealand or the Philippines. New Zealand based recruitment agencies are now highly regulated, but this may not be the case in the Philippines (Rawlinson & Tipples, 2012). For example, participants in the study of paid recruitment companies $NZ1,000 for migrant employees (Rawlinson and Tipples, 2012). However, the ease of employing a migrant worker is then dictated by the rules and policies of Immigration New Zealand (INZ) and these are subject to constant change.

When their study was conducted, Rawlinson and Tipples (2012) found there were different ways a migrant could be employed in the New Zealand dairy industry. If migrants come to New Zealand to fill a vacancy on the Immediate Skilled Shortage List (ISSL) there is no onus on an employer to prove there are no other New Zealanders to fill the position. The Assistant Farm Manager position was on the ISSL and to qualify for the position, migrants had to have two years working experience in dairying and an equivalent qualification to the National Certificate of Agriculture (Level 3 on the New Zealand Qualifications Framework (Immigration New Zealand, 2011a). Migrant workers who come to New Zealand to fill a vacancy on the ISSL are in New Zealand on a temporary basis, as one 'Dairy Recruitment Specialist' explained: "we need you now. Tomorrow we might not need you [and] you can go home".

Alternatively, if a dairy farmer wishes to hire a migrant worker for a position that is not on the ISSL, they have to prove there are no other New Zealanders available to work in the position required (Rawlinson & Tipples, 2012). Immigration New Zealand and Work and Income New Zealand (WINZ) must be satisfied that genuine attempts to find New Zealanders to fill the position have been made. They take into consideration the advertising undertaken, the location of the job and the labour market in the area (Immigration New Zealand 2011b). WINZ have had New Zealanders who they felt were suitable for the position. However, 'Farm Manager' after interviewing two found they were less than desirable and neither was employed. This provided 'Farm Manager' with the impression that WINZ was interested in pushing up the numbers in employment rather than presenting suitable candidates for each vacancy.

Once a dairy farmer has selected a migrant worker and the temporary work visa application is submitted and approved, they can commence working in New Zealand. Temporary work visa lengths vary from one year to three years. Those migrants who wish to remain in New Zealand after their temporary work visas expire must initiate the process of renewal 90 days prior to expiry. Employers decide if they wish to re-employ the migrant and if they do, must re-advertise the migrant's position (to make sure no New Zealanders can fill the position). With 60 days remaining, INZ is informed that there are no suitable New Zealanders and that the dairy farmer wants to re-hire the migrant. INZ will then make a decision to renew or decline the temporary work visa (Immigration New Zealand, 2011c).

The murky underworld of migrant dairy worker recruitment

The process for recruiting and employing a migrant worker (outlined above) appears to be transparent. However, during fieldwork it was apparent that the recruitment of migrant workers was anything but transparent (Rawlinson & Tipples, 2012). Recruitment agencies and dairy farm employers have been responsible for exploiting the naivety and vulnerability of migrant workers. Filipino dairy workers initially encountered problems when they first applied for employment at recruitment agencies in their country of origin, where fees were charged for such things as: applying for a position advertised, having a phone interview and for documents freely available on INZ's website. Before arriving in New Zealand, a migrant dairy worker might have spent US$10,000. Fees continue once they arrive in New Zealand. Participants reported paying fees to New Zealand recruitment agencies for finding the employment and processing work visas. Some recruitment agencies forced migrants (sometimes straight off the plane) to sign documents authorising the deduction of a percentage of the workers' salaries:

> Some of them are still in the airport [and] they have to sign some documents ... they are so tired and they have been travelling that long and all they want to do is sleep. They will just sign on the dotted line and some of them won't even read what is really written there. That such and such per cent of my income comes to me every week. (Filipino worker, December 2011).

Participants also cited examples of second contracts, between a migrant and recruitment agency, providing them with the impression that they are bound to the recruitment agency:

> It's like you are a slave of [recruitment agency] you don't have any rights to go to other [employers] you are buying people (Filipino Worker, December 2011).

On top of this, recruitment agencies also withheld important documents belonging to migrants, including passports and qualifications. Migrants have found it difficult to get these documents returned:

> The guy that had his passport withheld and they had been trying to get it. Immigration came down here, the compliance officer knew, I don't want to say if it was or wasn't, we just talked about the company. She rung the number and asked for the guy by his name, none of us mentioned the name, she just knew. She was talking to him, you will courier the passport down. It was down at 9.30 am (Community Advocate, February 2012).

In addition to these examples of second contracts and withholding important documents, Cropp (2010:14) cited examples of pay disparities between workers completing the same job:

> New Ashburton migrants told of employment contracts that included a clause expressly forbidding workers from discussing their employment conditions with other staff, and once Bruzo's group started comparing pay rates they discovered members earning up to $5,000 less than others doing the same job.

In an attempt to counter some of these issues, INZ has developed an information sheet for migrant dairy workers, detailing salaries and job descriptions of each position in the dairy industry. The figures in Table 3 are based on an annual Federated Farmers survey of dairy farm employers and their rates of pay that dairy farmers have to pay their migrant workers (Federated Farmers of New Zealand, 2012).

Table 3: Salary level by position in the New Zealand dairy industry

Position	Hourly Rate	Salary
Dairy farm worker	$15.78	$36,000-$43,000
Assistant herd manager	$16.70	$38,000-$45,000
Dairy herd manager	$19.01	$48,000

Source: Immigration New Zealand 2011b.

Participants in this study were happy to discuss the (seemingly) endless examples of exploitation and poor employment practices carried out by recruitment agencies and dairy farm employers, but gaining physical evidence of these allegations is difficult. This finding is not limited to this study (Rawlinson & Tipples, 2012). Community agencies have attempted to encourage migrants to come forward in Canterbury with evidence to help prosecute the recruitment agencies. So far, migrant workers have been unwilling to produce

the evidence, for fear their work visa will be cancelled or future work opportunities in New Zealand will be jeopardised:

> There was a lot of recruiting agencies that were withholding passports, withholding qualifications ... we have had some Fraud squad [members] come down from Auckland [and] they needed hard evidence to back it up and make a charge in court. The migrant workers and I don't blame them they are scared if they come forward they feel like they are going to lose their jobs. So it's a catch-22 ... we were wanting to see contracts that they had signed in their home countries and then see what they had signed here, but quite often they would give in and the contracts would be given with vital details missing [or] blacked out (Community Advocate, February 2012).

There have been some successful prosecutions against recruitment agencies in the dairy industry. Two South Canterbury companies were recruiting Filipinos into New Zealand en-masse and frustrated with the delays in processing temporary work visas, the company directors decided to forge the signatures of prospective employers in order to speed up the process (Clarkson, 2010). Some migrant dairy workers then found they were employed on a different farm to where they thought they were to be working (Cropp, 2010). The company directors were convicted of representative forgery and fined $650 and $2,500 (Clarkson , 2010).

Incidence of accidents and deaths among dairy workers

There is no data available on specific injuries or illness experienced by Filipino workers (Tipples & Greenhalgh, 2010). Over the period from 2007 to 2010 accident claims for dairy farming to New Zealand's Accident Compensation Corporation (ACC) increased as the dairy industry expanded. ACC data indicated that 44 per cent of migrant worker fatalities were as a result of a vehicle accident, compared to 54 per cent for New Zealanders. However, 33 per cent of migrant workers killed were involved in farm vehicle accidents, double the percentage of New Zealanders. The figures are too small to test for significance, but there is the possibility that migrant workers' lack of experience with New Zealand farm vehicles means they are more prone to serious accidents with them (Tipples & Greenhalgh, 2011).

The reasons for the increase in claims as the dairy industry has grown cannot be determined from the data. Possible explanations include the growth of larger farms. Higher staffing levels show a correlation with a higher number of fatalities, an increase in the migrant workforce and a change in the availability of health and safety training (Tipples & Greenhalgh, 2011). The rising number of migrant workers in the dairy industry could also be a contributing factor (Tipples, 2011). Most new migrants do not have previous experience with the type of dairying system in New Zealand, such as working with large numbers of cows, riding all terrain vehicles (ATVs) or quad bikes, working with farm machinery, for example, large tractors and chainsaws, or moving irrigation systems. Appropriate training may not be able to be accessed in a suitable timeframe or may not be

offered to these workers. ACC does not have reliable data on the country of origin of claimants. However, fieldwork in April 2012 suggested that farmers were very wary of allowing migrants to drive expensive farm machinery because of the expense of even trivial accidents. Consequently they do not get experience with such equipment, which perpetuates the problem (Rawlinson, et al., 2012a). Employer motivations seemed to be more financially driven than by health and safety factors. Moreover, migrant dairy workers may be unaccustomed to the requirement to work long hours. In addition, some migrant dairy workers struggle with communication and understanding New Zealand English. These factors contribute to both fatigue and stress, which can affect judgement and lead to accidents.

The Filipino Dairy Migrant Experience

Sargeant and Tucker (2009)[1] have constructed their model to include micro, macro and meso-level factors, which bring together the political, economic and institutional influences on the OSH risks faced by migrant workers. What makes the model useful is that it provides a comparative framework in order to better understand the salience of risk and compare the situation of at-risk workers. Using the model to compare migrant labour in Canada and the United Kingdom, Sargeant and Tucker (2009) made multi-level comparisons between different groups of migrants in the same country, thus allowing a more detailed account of OSH vulnerabilities of the different groups. Other work on OHS of migrant workers located in small businesses provides a further layer namely *Layer 4: Migrant OHS factors,* which is added to Sargeant and Tucker's (2009)[1] model. Gravel et al (2009) preliminary findings indicate migrant workers face a number of barriers in terms of raising health and safety issues and accessing workers' compensation, including a fear of reprisal (dismissal or loss of income); communication problems (translation and comprehension of OHS instructions and measures); and difficulty adapting to management structures (such as OHS joint committees), as outlined in the Table below (Gravel et al., 2009; Sargeant and Tucker, 2009). More importantly their work highlights the fact that "… the processes for improving and developing culturally appropriate health and safety activities seem to miss the essence of preventive health and safety work: joint action and mutual, democratic commitment by employers and employees" (Gravel et al., 2009).

Table 4: Levels of Vulnerability

	Layer 1 – Features of the receiving county
a	Socio-economic conditions: World trading conditions for dairy products have been extremely good since about 2005, with a dip in the markets in 2007/8 and 2011/2012. Rabobank is predicting a significant shortage of milk in the medium term in the Chinese market and continued very positive trading conditions for NZ farmers (Rae, 2012). Continued expansion of the dairy industry is consequently likely. In the absence of any radical change in farming systems there will continue to be a need for migrant workers to help milk the cows (Tipples & Trafford, 2011).
b	*Sectors of employment*: Dairy farming is only one sector of Filipino migrant employment in New Zealand. Another prominent one is the 'eldercare' industry (Baskar, Callister Didham, 2009).

c	*Access to/strength of collective representation*: At present there are no registered trade unions operating in agriculture in any significant capacity. Dairy farming has been vehemently opposed to any form of unionism, or union preference in deducting membership fees from workers' pay, for a hundred years (Angove, 1994; Tipples, 1987). Growing Filipino communities have begun to form their own 'societies' to promote community interests (such as FDWNZ Inc.), which have involved supporting mistreated and disadvantaged migrant dairy workers.
d	*Access to/strength of regulatory protections*: Regulatory protection of worker conditions in New Zealand is quite good by international standards, but probably not as good as in Australia or parts of Western Europe. The weaknesses arise in the enforcement of regulatory conditions. There are only about 150 Department of Labour Inspectors for 500,000 businesses, who are concentrated in urban centres where most employees are to be found. Government cost cutting makes it unlikely that more will be appointed. The inadequacy of the inspectorate has been highlighted in 2010/2011 by the Pike River Mine disaster (Lamm, 2012; Lloyd, 2012)
e	Social exclusion/inclusion: Filipino migrants suffer from exclusion as a result of the dairy lifestyle and working patterns, with very long and non-standard working hours which are not conducive to easy social intercourse. Limited skills in English, particularly among migrants' wives and living in small, rural and predominately European communities also accentuate the feeling of exclusion. Moreover, limited access to public and private transport compounds the feeling of isolation.
f	*Living in the employer's workplace*: This requirement of employing farmers exaggerates social exclusion by removing Filipino families from the urban community lifestyle in which they have been used to living.
g	*Urban/rural location*: The distance of many farms from the nearest township has also been a problem for access to shops, schools, and community services.
h	*Role of collective/civil society supportive groups*: Settlement assistance is being provided to support such workers and their families, but distance and the 'emptiness' of the countryside are hard to overcome. Language and other forms of assistance are provided, but not always in the most useful form for migrants. FDWNZ Inc. is a good example of a self-help organization.
	Layer 2 – Migration features
a	*Migration security (legal status, visa status) & whether tied to employment*: Given that New Zealand is an isolated, island nation, it has been easier to prevent access to illegal migrants compared to land-locked nations. Historically the major problem has been migrants overstaying their visas. So far this does not seem to have been an issue in dairy farming. A migrant worker on a temporary work visa has a specified position and employer/location of employment, and they have to work within those conditions. However, if they want a change of employer a new visa application must be made before moving job. No one is allowed to threaten a migrant in such a case, or to hold their passport or personal documents. In practice changing jobs does not seem to be particularly difficult. Cases where unacceptable bad language by the employer has led to a move and where family connections have been the key driver have been reported (Christie, 2012).
b	*Duration*: Temporary work visas are available in the first instance for up to three years but can be renewed to five.
c	*Conditions of right to remain*: A permanent resident permit can be obtained but only 30-40 permits have been granted per annum since 2007/8. Under the permanent resident permit, a Level 4 or equivalent agricultural qualification is required and the applicant must have a

	minimum of three years relevant experience. Field work during 2012 suggests that many Filipinos do want to stay in New Zealand and want to make a long-term career in the dairy industry (Rawlinson, et al, 2012a)
d	*Role of migration agents/employers in process of migration.* In recent case studies by Christie (2012), the findings show that Filipino migrants tended to use migration agents to assist their coming to New Zealand even when those services had been extortionately expensive. Some employer groups have been working closely with Immigration New Zealand to make it easier and less expensive for migrants to find dairy work in New Zealand. New Zealand based agents guaranteed a job and often helped the migrant get to it. If there were problems they facilitated changing jobs.
e	*Treatment of migrants*: Is highly variable from those who make a special effort to house and integrate their staff to those who apparently could not care and want to use the cheapest way to get their farm work done. There is still room for considerable improvement in practice.
	Level 3 – Migrant features
a	*Reasons for migrating – push/pull factors*: Filipinos experience both push and pull factors as potential migrants. The push comes from an oversupplied labour market in the Philippines and the desire to earn overseas foreign exchange. Filipino workers can earn in one hour in the NZ dairy industry what they could earn in one day in the Philippines. Such migrants achieve national hero status. From the NZ end, the primary pull factors have been the rapid expansion of dairy farming over the last ten years and the reluctance of younger New Zealanders to take up dairy farm work. Filipino dairy workers have largely filled that gap.
b	*Need to provide remittances*: Most migrants interviewed paid remittances to family and community as stated. Remittances are a substantial portion of the Philippines' economy and account for nearly ten percent of Gross Domestic Product.
c	*Level of education/language*: Many Filipino dairy workers are graduates in agriculturally related subjects, such as animal or veterinary science, so they are bright and relatively well educated. In terms of language they may have learnt American English but lack New Zealand idioms and farming vernacular. With a reasonable technical context these problems can be overcome. Their children also not only learn English at school but quickly pick up the local vernacular. The wives, however, have more difficulty in communicating in English given that they often have limited social contact outside the family.
d	*Skill level*: In order to obtain a temporary work visa on the Immediate Skill Shortage List as an Assistant Herd Manager and bypass the more rigorous Labour Market Check, many Filipino dairy workers work at least two years for Almarai, the Saudi Arabian dairy giant, prior to coming to NZ. Many of the interviewees noted that dairy work in New Zealand was far better compared to working in Saudi Arabia.
e	Availability and access of/to decent work: For migrant Filipino workers one of the main reasons for working in New Zealand is availability and access of/to decent work for fair wages. However, it is clear from the interview and observational data that access to decent work was not always the case in New Zealand.
	Layer 4 – Migrant OHS factors
a	*Hazard Identification and Control*: For many of the Filipino dairy workers identifying hazards is problematic given that they may have little or no knowledge of the hazards in their new working environment. The recruitment of workers from non-English speaking backgrounds also raises important issues about the adequacy of pre-departure OHS information for migrant workers, welfare services and capacities in the workplace (e.g. the ability of workers to understand information or instructions on OHS.
b	*Exposure to hazards*: Chemical exposure, machinery and manual and repetitive work are just some of the many hazards. New Zealand's primary sector also has the dubious

	reputation of being the highest user per capita of dioxins in the world, ranging from phenoxy herbicide 2,4,5-T to pentachlorophenol (PCP) timber treatments, all of which have been linked to numerous diseases (Purnell, et al. 2005).
c	*Stress and Fatigue*: Under the Health and Safety in Employment Amendment Act, 2002, stress and fatigue are now recognised hazards and as such must be identified and controlled. However, working excessive, non-standard hours over a long period of time is normal practice within the dairy industry and as such it is difficult to eliminate both stress and fatigue altogether. The Filipino dairy workers interviewed stated that they worked on average over 11 hours per day during the summer period. However, introducing measures such as milking once a day instead of twice a day and employing extra staff can help to reduce the long hours worked, but probably at the expense of reduced migrant earnings and thus income to repatriate as remittances.
d	*Workers' Compensation:* One of the issues facing many migrant workers including Filipino dairy workers is access to fair workers' compensation if injured at work. Once migrant workers leave New Zealand Accident Compensation payments cease and any new claims for injuries sustained in New Zealand are not accepted if the injured worker is domiciled in another country.

Formation of Filipino Dairy Workers in New Zealand

For migrant workers, their working and OHS experiences outlined above are often overwhelming. It has been difficult for the newly arrived Filipino dairy workers to receive any government help or support. There have been substantial budgetary cuts to the New Zealand public sector, including the enforcement and advisory functions of the Department of Labour and the health and safety representative training sponsored by ACC. In light of these difficulties, Filipinos in the Ashburton area mobilised to form their own advocacy association in response to these issues. The following section will outline the formation of Filipino Dairy Workers in New Zealand (FDWNZ) Inc.

Filipino Sam Bruzo arrived in New Zealand to work in the dairy industry in 2006 and the cold weather, work-related hazards, monotony of dairy farm work and the social isolation almost consumed him (Rawlinson & Tipples, 2012). Bruzo felt lonely away from his friends, family and support networks. The consuming nature of calving meant Bruzo had no time to generate friendships with colleagues or local New Zealanders or Filipinos (Rawlinson & Tipples, 2012). Feeling socially isolated, Bruzo collected the phone numbers of Filipinos he met in Ashburton and invited them to his birthday party thus unintentionally laying the foundation for the development of FDWNZ:

> [I thought] we cannot survive in this kind of environment. We need to have social interaction otherwise we will go crazy ... so I started calling the [Filipino] people every time I met people in Ashburton [and] get their contact number and I ask them to gather at my house ... we started with only ten people ... The next people having a birthday and they call us and circulate, and every time they meet people and every time we have gathering we contact each other, it spread like fire [and] we become 50 people (Rawlinson & Tipples, 2012).

Initially the purpose of these regular gatherings was to socialise with other Filipinos, but Bruzo heard complaints from other Filipinos in relation to working conditions and mistreatment of Filipino workers by employers and recruitment agencies. There was one case in particular where migrant workers were told they needed their recruitment agencies permission to bring their children to New Zealand that sparked Bruzo's activism for Filipinos in Ashburton:

> They said I have problems with [recruitment agency and] I have problems with this one. I don't use agency to come here, so I don't understand that. So I ask them well what is your problem? Oh [recruitment agency] charged me this one [fee] at that time if you want to get your family you have to ask a letter from [recruitment agency and] get approval from them. I asked well why do you need to get a letter from them? Well they are the one who bring me here and then how much they charge? They charged $380! I don't know if it was legal or illegal. I said it's very costly and then one time I went to Immigration in Christchurch and I asked is this okay [you know] if we will bring our family is there any charges from like this? They said you don't need a letter from your agency, just a support letter from your employer and your contracts and something like that (Sam Bruzo, January 2012).

This finding changed the purpose of FDWNZ, from a socialisation group to an advocacy group. To legitimise the position of FDWNZ in New Zealand the group became an incorporated society in 2007 (Filipino Dairy Workers New Zealand Inc., 2007). By becoming an incorporated society, New Zealanders were shown that the large and regular Filipino gatherings were not part of any terrorist organisation or terror plot (Rawlinson & Tipples, 2012). FDWNZ became the first successful collective farm worker group since the Farm Workers Association, which operated from 1974 until it was dissolved in 1987 (Tipples, 2011).

FDWNZ's application to incorporate as a society outlines a number of formal purposes of the group, related to the problems first faced by members (Filipino Dairy Workers New Zealand Inc., 2007). The overall objective of the group is to prevent exploitation of members by recruitment agencies and dairy farm employers (Rawlinson & Tipples, 2012). They aimed to achieve this by educating members about their rights in New Zealand employment law and the requirements placed on dairy farm employers for their employees (for example, having to provide a contract, formal resignation procedures, supplying gumboots and wet weather gear).

FDWNZ also wished to educate members on New Zealand agriculture and encouraged members to attend AgITO classes. When Bruzo first arrived few Filipinos attended AgITO classes as they were unable to understand what was being taught, so Bruzo taught everything he learned in class to interested FDWNZ members on a Saturday morning. Other purposes of FDWNZ include:

- To improve English proficiency of members, spouses and children
- To improve the skills of spouses or partners

- To provide legal assistance
- To connect with other Filipinos in New Zealand
- To fundraise for the betterment of FDWNZ
- To purchase communal equipment (Filipino Dairy Workers New Zealand Inc., 2007).

Official membership of FDWNZ has increased from the 15 founding members in 2007 to over 400 in 2012 (this does not include spouses or children). FDWNZ has embraced Facebook, communicating important news, events or other items of interest on the group's page. FDWNZ raised a pool of money, toys and other equipment for Filipinos affected by natural disasters such as the floods in December 2011.

The value of having a formal Filipino network in Mid-Canterbury is best evidenced by the following situation:

> Sam was getting groceries by the post office and he walked past and saw someone sitting 'ah this must be the new Filipino'. He went over and introduced himself and surely he was, he had been here for a week. He was placed on a farm and the day before he was told to leave and go home.

> He couldn't understand why? ... He can't go home because he had no money, he took a loan to come here as well. What had happened is, that there was to be a buddy system for him on the farm and that person happened to be on holiday at that time. What had happened was the recruitment agency had rung him and said he had to go home. Didn't say why or anything like that ... his employer was really nice and said he could stay. It just needed someone else to act as an interpreter basically.

> We actually rung Immigration and they had received a letter from the recruitment agency saying this person had walked off the farm! Luckily he had met up with Sam and a few other people who were able to say that did not happen. It so happened that his boss could see that he wasn't going to be totally suitable for where he was, but gave him a place where he could, he acted as reference. The recruiting agency had told Immigration that he had walked off the property, which was false (Community Advocate, February 2012).

This perceived power exhibited by dairy farm employers and recruitment agencies has been reduced through the formation of FDWNZ. Filipino employees now know of their rights in relation to employment law and Immigration New Zealand now has strict rules in place in relation to wages and qualifications required of migrant workers. However, recruitment agencies are still threatened by the continued existence of FDWNZ and one has made a number of personal threats to Sam Bruzo:

> I receive threats from these people when I started fighting with them. They told me they are going to deport me, because I ask all the questions, I do these things against them. They tell me 'you are not going to stay long in NZ' I will do something to send you home. I said, if I will be sent home because I am fighting

for these people, let it be. This is what I am. I cannot just stay in the crowd and see that there is problem. I am an activist (Sam Bruzo, January 2012).

Is FDWNZ a union?

In spite of the obvious benefits of FDWNZ, some people in the wider community suggested FDWNZ is a union rather than an advocacy group. Indeed, some Ashburton business leaders have been particularly vocal regarding their impression of FDWNZ, where the 'Community Advocate' was told by a business leader:

> Oh I've heard these rumours that FDWNZ is a militant group and farmers won't employ them, we have to put a stop to this (Community Advocate, February 2012).

Leaders in the wider dairy industry also share similar perceptions to the business leader the 'Community Advocate' talked of:

> What I am getting from the industry is negative, very negative ... I think it is a good support network for them, for each other. But the way in which they operate sometimes is not good ... they are viewed by many employers as a union and they are using strength in numbers, bully is not the right word, but using strength in numbers to achieve their objectives (Dairy Recruitment Agent, January 2012)

When Sam Bruzo was asked if he thought FDWNZ was a union, he denied the claims made by 'Dairy Recruitment Specialist' and the business leader. Instead he reiterated that FDWNZ is a very strong advocacy group that aims to improve the circumstances and conditions of members:

> They feel it is a union because we are strong and we are fighting them as a whole ... we are just an advocacy group. We are fighting for our rights and we don't want these people to exploit us, that is the only thing we want to do. We are not against the good employer, we are only against those people who are taking advantage of the weaknesses of our members (Sam Bruzo, January 2012).

In light of the two arguments, we should consider the various definitions of the terms advocacy group and union and Table 4 outlines the different definitions of each term. The two terms advocacy group and union are very similar and equally descriptive of FDWNZ. The original purpose of FDWNZ was to stimulate Filipino social contacts and then as they started to express discontent over pay and other methods of exploitation, some union tendencies in FDWNZ began to emerge. Although registered under the Incorporated Societies Act 1908 FDWNZ has not become registered as a trade union under the Employment Relations Act 2000, as it was legally entitled to do, if it wished to bargain collectively on behalf of its members (Rudman, 2010). Clearly it has no desire to do so. If recruitment agencies and dairy farm employers had not been guilty of exploitation, then there would have been no need for the development of union tendencies in the group.

Table 4 Definitions of Union and Advocacy Group

Union
A continuous association of wage earners for the purposes of maintaining or improving conditions of their working lives. Webb (1920), (cited in Harbridge & Wilkinson, 2001).
[An] institution through which workers may express discontent over pay and working conditions Freeman (1976), (cited in Harbridge & Wilkinson, 2001).
An association of individuals or groups for a common purpose" (Collins Dictionary)
Advocacy Group
A group of people who work to support an issue and defend a group of people (MacMillan, 2013)
Advocacy means to speak up, to plead the case of another, or to fight for a cause (Johnson, 2012)

FDWNZ with some success against recruitment agencies and dairy farm employers may now revert to its origin, as a group providing social support for Filipino dairy workers in New Zealand. Filipinos have an active voice in Mid Canterbury, other migrant groups do not, and problems may occur or continue for these other migrant groups.

Future Challenges

Going forward, the major challenge for FDWNZ will be to replace Sam Bruzo as chairperson. Since Bruzo and his family obtained residence and moved to Christchurch there is a noticeable gap in the Filipino community. There was no succession plan for replacing Bruzo and those suggested as replacements have lacked the passion and drive Bruzo had for his people and the group. This type of situation is not limited to FDWNZ. Since former leader David Jones vacated the Amuri Dairy Farm Employers Group, the group has struggled to maintain traction. As of November 2012, the 'Community Advocates' position has been discontinued. A person who provided an important voice for migrants in Mid-Canterbury:

> Our son is a farm consultant and he was reading an article in the paper and he said 'Mum, be careful, there's going to be a contract out on you if you keep saying this stuff'. I am extremely passionate about [migrant labour] (Community Advocate, February 2012).

There are also a number of challenges for the dairy industry going forward. The major challenge is 'Where will the future dairy workers come from?' Continued dairy growth appears likely in the medium term, but who will milk the cows (Tipples & Trafford, 2011)?

Conclusion

The aims of this article were to explore the inflow of Filipino migrants into New Zealand dairy farming and review their employment, working and OHS experiences. How they responded to difficulties in these areas, and the unaccustomed isolation of rural New Zealand, through the formation of Filipino Dairy Workers in New Zealand (Inc.) completes this account of the development of a new group of temporary migrants moving into Mid-Canterbury. Sargeant and Tucker's 2009 model of layers of vulnerability in OHS for migrant workers was used to facilitate this exploration and helped to identify key issues.

The first conclusion from using Sargeant and Tucker's model in terms of the receiving country was that expansion of the Canterbury dairy industry and associated job opportunities for new migrant workers was likely to continue. Collective representation of such migrants is ethnically based with FDWNZ (Inc.), which is an advocacy organization not a registered trade union. OHS regulation and practice was found to have weaknesses in rural areas resulting from isolation, prevalence of SMEs and constrained government spending on the inspectorate. However, social exclusion is not intentional but largely the result of the dairy lifestyle and also from remoteness from town.

In terms of the features of migration, visas, typically lasting from three to five years, are linked to specific jobs, but can be changed. Permanent residence is only a limited possibility. Migration agents are used extensively, although often very expensive, particularly because at the New Zealand end of the migration process they offer direct access to the specific jobs needed for visa applications.

Features of those migrating included a good basic education, with many animal science and veterinary graduates educated in American English. But they found farming idiom and vernacular difficult to grasp. Wives often had worse problems from isolation and lack of social intercourse. Previous dairy experience had often been obtained by a spell in Saudi Arabia. Better 'decent work' was a reason for taking dairy work in New Zealand, although unfortunately not always the reality. Such migrants experienced both push and pull factors as possible migrants, with much better pay in New Zealand giving a good chance to remit funds to family and community. They could thus confirm their acquired status as 'national heroes' of the Philippines.

In terms of Migrant OHS factors hazard identification and control was problematic with limited equivalent experience and language issues. Exposure to dangerous agricultural chemicals was very possible, especially with casual attitudes in rural areas to their storage and use. Stress and fatigue were also significant issues, recognised by our own DairyNZ funded fatigue research. A striking paradox became apparent – Filipinos want to maximise their earnings for remittances, while less hours or stress might be a lot safer for them. Serious accidents could remove their earning potential totally, with no accident compensation being payable if they were repatriated to the Philippines. Taken together migration to New Zealand for dairy farm work has a lot of attractive features, but still

retains some really negative possibilities. Ideally governments, industry and migrants should be working towards maximising the wins for all parties.

The Filipino dairy workers of Mid-Canterbury have sort to make the best of their circumstances through FDWNZ (Inc.). It's effective use of social media and planned recreational activities have contributed to making dairy work more acceptable, without the need to become strident trade unionists. Thus Filipinos are contributing to their new communities in many ways and yet they continue to be linked to the motherland.

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Succession Planning in the Third Sector in New Zealand

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Abstract

Succession planning is a significant problem for third sector organisations (TSOs), that is, organisations that are neither wholly public nor private sector organisations. While there is some academic research published in the wider area of succession planning, little has been published on succession planning in TSOs. What is known is that TSOs are often built by and around a founder who at some stage will need to be replaced. Drawing on both the succession planning literature and the literature on TSOs, we propose initial ideas to form a framework in which to examine the views concerning succession planning of people who are involved in the governance and management of a typical TSO in New Zealand. Interviews were used to confirm the ideas proposed in the literature and from there we have begun to develop a set of recommendations on succession planning for TSO practitioners.

Key Words: succession planning; third sector organisations, aging population, transfer of knowledge

Introduction

TSOs are by virtue neither wholly private nor public sector but instead are typically voluntary organisations and community organisations. We use the term TSOs to mean a range of not-for-profit enterprises and social enterprises. Much of the social enterprise literature is concerned with defining what constitutes a social enterprise. Dacin, Dacin and Matear (2010) identify 37 definitions as a way of providing a comprehensive understanding of social enterprises and social entrepreneurs. Their review of the literature covers the characteristics of individual social entrepreneurs, the place or space they operate in, the processes and resources they use, and the outcomes that are associated

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with the social entrepreneur. Comini, Fisher, and Paulo, (2009) also note that social entrepreneurs start TSOs as:

> *"an expression of the love of people through efforts to meet the needs and wants of individuals and groups devoid of economic advantage; social entrepreneurship exhorts society to overcome inequality by treating all citizens equally, which is a novel form of socio-cultural emancipation"* (Comini, Fisher, & Paulo, 2009: 4).

The founder or founders of a TSO make a contribution to society by creating something new and beneficial for their communities (Teegarden, 2004; Tierney, 2006; Greatbanks et al., 2010). TSOs typically meet a range of needs, such as education, health care, social welfare, environmental causes, and sustainable development (Comini et al., 2009). These organisations may provide services in areas that the commercial and state sectors will not or cannot provide, (Comini et al., 2009). TSOs generally have social agenda rather than commercial or 'for profit' ones, and if TSOs make a profit it is done to raise funds for their activities.

Greatbanks, Elkin and Manville (2010) reported that the TSO sector was well established in New Zealand, with a rich heritage, and made a significant contribution to the New Zealand economy. They cited Sanders, O'Brien, Tennant, Sokolowski, and Salamon (2008) who record the Aotearoa/New Zealand voluntary sector TSOs contributed a net added value of some NZ$7 billion, or nearly 5 percent, of GDP (2004 data). TSOs employ about 200,000 full-time equivalent paid staff and volunteers, representing nearly 10 percent of the economically active population (EAP) of New Zealand. As a proportion of the EAP, New Zealand has the seventh largest non-profit workforce in the world (Sanders et al., 2008).

New Zealand's third sector also has a long history of support from social and philanthropic orientated funding bodies, many of which have been organised into regional community trusts or are registered charities. There are other funders who are private and independent through a family foundation legal structure (Crampton, Woodward, & Dowell, 2001). TSOs, however, are often poorly funded. Many TSOs have no financial reserves because New Zealand's third sector receives rather less government, health, and education support than it might be expected, as, unlike many other countries, these sectors are funded primarily through public mechanisms and institutions (Sanders et al., 2008). Many TSOs rely on donations and fundraising for part or all of their income yet funds are often difficult to attract and can be short term in nature. This is particularly true in economically hard times. Furthermore, most TSOs rely on goodwill and volunteers to carry out their activities. As generally small organisations, they are burdened with compliance activities, forward planning, and separating governance from management. Our paper is concerned with smaller TSOs rather than the few that, because of their scale, do not have the same level of difficulties.

The ANZ Privately-Owned Business Barometer (2009) suggested that 55 percent of all New Zealand organisations have an issue with succession planning. The literature has identified some differences between the way a TSO and for-profit organisation deals with

succession planning (Comini et al., 2009; Price, 2006). Furthermore, it is likely that under-resourced TSOs will find this a potentially more intractable problem.

Given the size of this sector and its contribution to society, it is surprising how little is known about New Zealand TSOs, their governance, management, and, more specifically, their succession planning. This paper attempts to address a lack of research by examining the particular difficulties TSOs face in ensuring survival through the succession planning for Chief Executive-type roles.

Issues Surrounding the Succession Process

The literature identifies a number of issues surrounding succession planning, including a leadership deficit, ensuring continuity of the organisation and planning, and documenting the tacit knowledge, some of which are briefly outlined below.

A leadership deficit in succession planning

In common with the majority of the Western world, the population of New Zealand is aging. This aging population suggests that a rising number of small organisations must be faced with replacing founders in the near future. Baby boomers (born between the year periods of 1945-1964) are near the retirement stage of their life cycle (Wong, Gardiner, Lang, & Coulon, 2008). Bell, Moyers, & Wolfred (2006) suggested many founders were already planning to leave within five years but had neither consulted their board nor started planning for their succession. As a result the issue may be more severe than has been reported. The post-baby boom generation is less numerous than previous generations, so there may be insufficient replacement leaders, signalling a potential leadership deficit (Teegarden, 2004; Tierney, 2006; Santora, Caro, & Sarros, 2007; the ANZ Privately-Owned Business Barometer, 2009).

Founders may leave for many reasons other than age and retirement, for example, health issues, a desire for new challenges, career or a change from routine, personal reasons and some who are forced to leave the organisation by governing boards (Bell et al., 2006; Comini et al., 2009; Santora et al., 2007). Succession planning is clearly an important issue for an organisation when endeavouring to replace founders of organisations and ensuring continuity of leadership in a time of a reducing competent labour pool (Bell et al., 2006; Comini et al., 2009; Price, 2006; Santora et al., 2007; Tierney, 2006).

Action before the founder leaves

Behn, Riley and Yang (2005) found it is prudent for a successor to be in place before the founder leaves. This presents a difficulty to the small TSO with insufficient funds to hire an additional person. Price (2006) suggested an organisation should start succession planning as soon as it is established as an organisation. As part of this endeavour, the

founder's past, present, and future role in the TSO needs to be established. The founder's tacit knowledge will be very important for any new successor and needs to be made explicit. The board of directors needs to develop the successor's job description outlining all the roles within the founder's job role (Price, 2006; Wolfred, Allison, & Masaoka, 1999).

As the prospect of the founder leaving becomes clearer, it is important that some of the daily duties and roles of the founder are delegated to the board of directors and managers. Delegating some of the founder's duties can provide a safeguard against a founder's sudden exit. Discussion among these parties needs to identify who wants more responsibility, and who will share knowledge with the founder and be able to pass it on and work alongside the new successor when required (Laff, 2008; Price, 2006). Such practices will begin to fill a potential void if the founder leaves. They are also good managerial practice.

Planning and documenting the tacit knowledge

Planning for the change process may also reduce the stress and conflict surrounding the succession. Research shows that the transition is made easier if the founder's knowledge is documented and efforts are made to transfer it to the successor (Wolfred et al., 1999; Weisman & Goldbaum, 2004). Wolfred et al. (1999) also state that TSOs should have an emergency succession plan, which is "a document that names candidates who can replace the current executive director on either an interim or permanent basis and sustain an organisation though a transition crisis" (cited in Adams, 2006: 5). Succession plans need to be documented and updated regularly although in practice this does not always happen (Adams, 2005, 2006; Hodgetts, Kuratko, Burlingame, & Gulbrandsen, 2007).

Emotional issues

The process of succession can be an emotional time for all parties involved. Founders may have trouble letting go of their organisation and the process may be acrimonious (Adams, 2005; Comini et al., 2009). Bell's et al. (2006) US study revealed that an estimated 34 percent of all non-profit TSOs surveyed found that the transition was emotional and that members of TSOs showed signs of major loss for their founder ((also see (Adams, 2006). Moreover, not all the individuals within an organisation will be happy with an outsider taking over the TSO, which has the potential for problems and/or conflict to arise (Bell et al., 2006; Comini et al., 2009; Santora et al., 2007). It is important that employees understand why someone has been selected and that they and the board of governors support the new TSO chief executive (Comini et al., 2009; Price, 2006; Santora et al., 2007).

Successors are hard to recruit for TSOs

It appears that it is harder to recruit leaders for TSOs than for 'for-profit' organisations because it often difficult to find a successor with the same unique qualities as the founder (Tierney, 2006). Moreover, compared to the private or public sector organisations, TSOs tend to have a smaller talent pool from which to recruit potential successors, have fewer resources to apply to the recruitment process, and often cannot match the remuneration and conditions offered by private or public sector organisations (Bell et al., 2006; Comini et al., 2009; Price, 2006; Santora et al., 2007; Teegarden, 2004). TSOs, therefore, are often looking for an intrinsically motivated successor to follow an inspirational founder, which in turn may narrow the potential pool even further.

One strategy is to choose a successor who is already in the organisation as they will tend to be familiar with the operational processes and culture of the organisation (Comini et al., 2009). However, research shows that while for-profit organisations tend to recruit 60-65 percent of their senior appointments from inside their organisation, internal senior appointments in TSOs are only 30-40 percent (Tierney, 2006). The literature suggests that choosing an internal successor may have a number of limitations, and an external candidate may be a better choice for TSOs (Bell et al., 2006; Bowen, 1994; Greene, 1989; Price, 2006; Santora, Clemens, & Sarros, 1997; Santora et al., 2007; Tierney, 2006). For example, the internal TSO candidate may not always be suitable as they may not have the necessary skills required and/or may have a narrow vision for the organisation (Bell et al., 2006; Comini et al., 2009).

Transitional mentoring

Mentoring is "…the process where a more experienced person guides and supports the work, progress and professional relationships, of a new or less experienced individual" (Longenecker et al., 2008: 159). The founder needs to mentor the successor during the transition as this will ensure the process will be relatively smooth as well as highlighting how the successor is performing (The ANZ Privately-Owned Business Barometer, 2009). Mentoring the successor can also help the founder deal with relinquishing their position and ease their emotional attachment to the organisation (Comini et al., 2009; Walseth, 2009; Wolverton, Wolverton, & Gmelch, 1999).

Preserving the networks

Networks created by the founders are vital for the success of the TSOs as these networks represent intellectual capital and connections. A founder of a TSO may have many personal contacts developed over years. However, the transfer of these contacts to the new successor can be a difficult and lengthy process particularly if the contacts have a strong personal relationship with the founder. The founder, therefore, must ensure that their network of contacts understand in advance the changes taking place in the TSO

(Adams, 2006). How the network is introduced to the new successor will often determine the status of future relationships (Santora et al., 2007). Arranging meetings and informal discussions can help stimulate, inspire, and encourage these relationships to grow stronger (Comini et al., 2009). Adams found that "…should the executive leave without adequate attention to transferring those relationships, the organisation's very survival may be in jeopardy" (2006: 12).

Planning models

The use of an intentional process or model can help structure the whole transitional route and can also ensure that the new successor becomes part of the organisation as the founder gradually relinquishes their position (Hodgetts et a1., 2007). One such model is illustrated in Figure 1, which shows a mutual role adjustment process between the predecessor and the successor (Handler, 1990).

Figure 1: The succession process: Mutual role adjustment between predecessor and successor
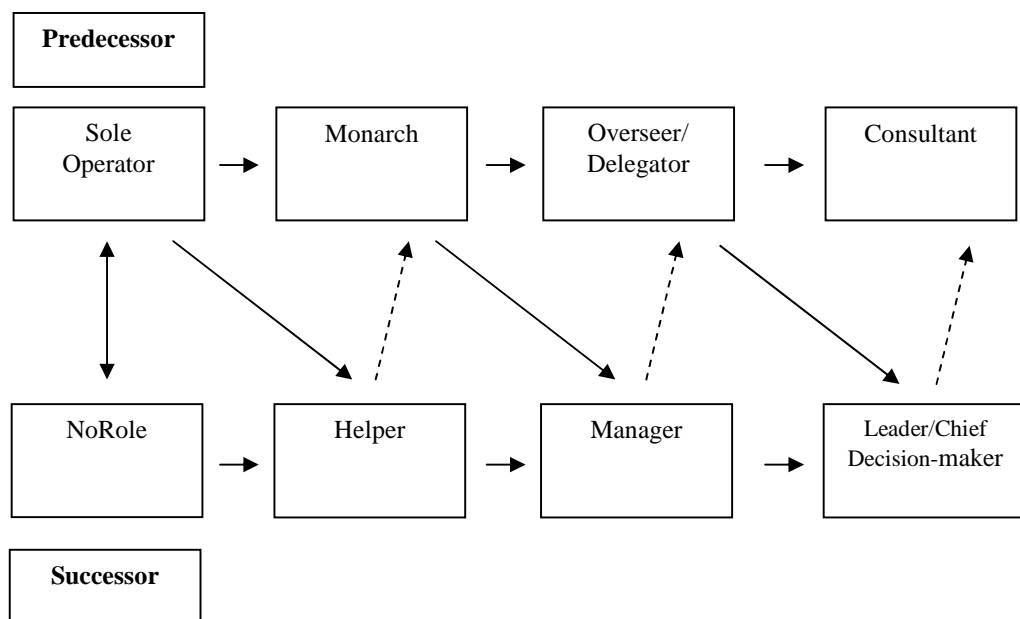
Source adapted from: (Handler, 1990: 43)

While the founder is still in control or partially in control of the organisation, the new successor initially may have no role to play. The move towards the manager's role occurs slowly as the successor gains more expertise in the organisation and the founder's role is diminished (Lambrecht, 2005; Longenecker, Moore, Petty, & Palich, 2008). Comini's et al. (2009) study revealed that one to three years is the time required to train and inculcate

a potential successor into a TSO, a time scale that is difficult to achieve for underfunded TSOs. Therefore, the use of planning models may provide guidance through the succession process, even if they are only partially applied.

Our review of the literature points to the importance of a potential leadership deficit, the need for early action before the founder leaves, as well as the need for delegation, documentation, and making explicit much of the implicit information in the TSO. The review also highlighted emotional issues, the difficulty of sourcing successors, the use of planning models, and the crucial impact of the leaver in the process

The Malcam Charitable Trust

The purpose of this research project was to test out the views from the literature in practice and to explore the succession planning of the Malcam Charitable Trust (MCT). Following the literature review summarised above, a qualitative study was undertaken of key stakeholders who had a role in the appointment of and working relationship with the new CEO. The aim of the study was to apply the insights gleamed from the interviews and the literature to the succession process of the MCT.

The MCT is a typical TSO; that is, a registered charity that is neither public nor private sector. The MCT was set up in 1985 by Malcolm Cameron whose empathy with young people had shown itself over many years of involvement with disadvantaged young people. Established to assist local young people in Otago, the Trust gained an initial contract for three government youth development programmes. Until mid 2010 Malcolm Cameron remained the CEO. The MCT's mission is:

> *"To provide young people with positive learning and developmental experiences, encourage young people to become self supporting members of their communities, and to maintain a supportive structure that resources people with the enthusiasm and skills to live effectively within the community."* (MCT, 2010)

Typically, young people are referred to the Trust by schools, the Ministry of Social Development, the police, and the courts. Some young people are also sent by parents while others hear about the Trust by word of mouth or through friends. The young people involved in the Trust come from every sector of society and most have been disadvantaged in one way or another.

The Trust values:

> "*Contribution to the communities in the Otago region; responsive services and responsible development; partnership, team work and achievement; respect for all people as individuals; fun, creativity and learning and ethical practice*". *(MCT, 2010)*

By 2009 the MCT had grown into a TSO with 13 full-time staff and more than 20 volunteers working on a number of projects. .In 2008 the Trust had a budget of over $512,000 in which it received over $350,000. of government funding for local youth development, youth employment, and women returning to work (MCT, 2008). The remainder of the funding is generated from local fundraising, sponsorship, philanthropy, and making a margin on projects. Since its inception the Trust has worked with 2000 young people and by 2010 had contact with 340 young people in one way or another: some completing 12 week programmes, other completing modules of training, and some involved through Green Jobs and other short term initiatives. In general the MCT claims an 80 percent success rate by which it means completing the programmes and entering employment or further education and training.

The MCT also works to provide community/social projects that are not funded through government. The MCT ran a programme (4 Trades) providing employment for over 80 apprentices placed with tradespeople to develop and provide skills useful to the local community. Recently the 4 Trades programme has been established as a separate independent trust with a turnover of over NZ$2m. Other projects are Restore, which is a joint venture second-hand store with Habitat for Humanity, a technology drop-in centre, and a hanging baskets scheme for the city council for the public areas of Dunedin. Another project is the "Green Jobs" scheme whereby young people are employed and work with a supervisor cutting grass and doing horticultural work in the Dunedin Botanical Gardens with the intention of developing work skills sufficient to enter an apprenticeship or permanent work.

The Trust has a number of other initiatives, for examples, in 2008, the Trust funded a group of young people to travel to Nepal to work on a hospice. Also from 2008 to 2010 the trust operated "Launchpad" – a venture to assist young people into permanent employment through developing relationships with local employers and Otago Polytechnic. Another proposed initiative provides improvements to home insulation and heating for low-income families. This initiative has been expanded to include a potential plant to manufacture household insulation materials from recycled materials and teams to install the insulation materials

The MCT has an all-volunteer board that exercises governance responsibilities. The board members are all middle-aged and successful business people, often with experience of managing businesses. They are all involved in other third sector organisations as well.

The Research

Our study included interviews with the founder, the chair, five members of the board, and all three managers. In addition, one employee of the Trust was also interviewed to get an employee perspective on succession planning in the Trust. Given the small number of people associated with the TSO, a qualitative approach was taken and only one interviewer used. The interviews were semi-structured with questions chosen as the "themes and questions were known in advance but the questions and their orders vary

depending on the flow of the interview" (Anderson, 2009: 187). This method also allowed for the use of 'open-questioning techniques'. The questions themselves were derived from the literature review. Semi-structured interviews also allowed new issues to be explored that had not been initially planned and for some other themes to emerge.

The questions were piloted with the chairman of the board and the founder before the interviewing was undertaken. The questions set out to cover:

- how the founder should be replaced.
- what characteristics were required for the successor.
- whether a replacement should be from inside or outside of the organisation.
- the time and nature of the planning needed.
- how the successor should be introduced into the organisation.
- what role the founder would have once a successor is established.
- how the founder's contacts should be transferred to the new successor.

At the end of each interview, participants were able to add any additional information. All the interviews took place in a quiet setting, often in the participant's office, where the researcher and participant were not disturbed. Each interview was reviewed immediately by the researcher after they were finished to ensure accuracy. Once all the interviews were completed, the responses were collated and summarised. From here, key themes were derived. Supporting quotes to provide rich data show the viewpoints more clearly.

Results

The founder's reasons for planning for his succession were related to age, family, sickness, and exhaustion, which are typical reasons for succession planning (Bell et al., 2006; Santora et al., 2007; Comini et al., 2009). The summarised results outlined below also highlight the key aspects of the succession process.

Before the founder leaves: a change of structure and delegation of corporate knowledge

It became clear that once the founder of the Trust resigned, the organisation would need to function quite differently. The majority of participants (10/11) felt that a successor was required to replace the founder but that he was irreplaceable. However, it became clear that seven out of the eleven participants also believed that a structural change was required to coincide with the replacement of the founder.

> *Structural change is required as the trust is expanding for future initiatives"* (Participant 2*); "Help to plan for the future therefore need a different structure"* (Participant 11); *"All knowledge is in founder's head and needs to be extracted for the new successor to understand the ethos"* (Participant 9).

The future role of the board was also questioned:

> *"All board of directors need to approve all documents"* (Participant 2);
> *"Divisions need to take on more responsibility"* (Participant 7); *"Board to play a bigger part during planning founder's succession"* (Participant 2).

The desired characteristics for the successor

Table 1 clearly shows the different characteristics, skills, knowledge, and attitudes the participants believed were needed for a future successor.

Table 1: Successor characteristics

Characteristics	Participant	Ranked Popularity of Response
Understanding Community/Youth needs and earn respect	1 2 5 6 8 9 10 11	1
People skills	2 3 4 5 6 8 9	2
Networking skills/Strong relationships	1 2 5 6 7 8 9	2
Problem solver/Practical	1 5 6 11	4
Good communication skills/Verbally expressive	4 5 6 7	4
Management and planning skills	7 8 9 10	4
Open	4 7	7
Driving force	5 7	7
Proven success	8 11	7
Ability to source income for funding projects	1 10	7
Similar to founders	1 7	7
Entrepreneurial	1 3	7
Risk Taker	1 2	7
Young	2	14
Worldly wise	3	14
High IQ	11	14

Three first-order characteristics stood out: full understanding of the community and youth (8 out of 11), people skills, and networking skills and strong relationships (7 out of 11). A lesser second-order set of characteristics was evident. They were problem solving and practical skills, good communication skills and verbal expressiveness, and management and planning skills.

Finding a successor

Where to find a successor was an area of disagreement among the participants (6/11) suggesting the successor should be sourced from inside the Trust and (5/11) opting for replacement from outside the Trust. The rationale for a successor from within the trust was:

> *"Insiders have had many years of experience and have complete understanding of the organisation"* (Participant 1); *"An insider is unique to the organisation with an outsider not really having that much knowledge"* (Participant 4); *"Insider with the knowledge of ethos"* (Participant 5); *"History with the trust with huge visions, outsider hard to understand this"* (Participant 8).

The reasons for wanting an outsider for a potential successor were:

> *"No insider has the right characteristics"* (Participant 9); *"Need someone so when founder is gone; the trust is still strong and going to strive with growth in the future"* (Participant 10); *"Outsider is good as they can bring in new fresh ideas so long as they follow the vision"* (Participant 6); *"Benefit community by bringing in new fresh ideas and change if done well"* (Participant 2); *"Finding new innovative ways to do activities/processes more efficiently"* (Participant 2); *"Attracting more diversity into the trust is good"* (Participant 6, 10); *"Coordinating managers and the over arching vision"* (Participant 10).

Transitional mentoring and the role of the founder

Most participants (9/11) thought that succession planning should start immediately or was already under way. All the participants believed that the founder's role should be that of a mentor or advisor and they should provide guidance to the successor.

> *"To help with the restructuring process as he has most expertise in how the trust operates"*, *"As an advisory role by having an influence on the final decisions to be made"* (Participant 4); *"Offer advice on what to do"* (Participant 6); *"Active part of the trust by being a strategic visionary"* (Participant 9); *"Attend board meetings"* (Participant 10); *"Founder should introduce successor to his contacts to start and maintain a relationship as they are likely to keep supporting the trust as they have done so in the past"* (Participant 5).

Cautionary advice was given:

> *"Successor not to be smothered by founder, they need to do their own projects to develop a new potential opportunity for the trust"* (Participant 6); *"Founder not to tell what successor should do but rather guide them by having a mentoring role"* (Participant 3); *"Successor not to ask founder how to do everything"* (Participant 5).

This is reinforced by the emotional aspect of the entire situation (Adams, 2005; Comini et al., 2009). When passing on knowledge to the successor, the founder must understand why this is important to ensure continuity of the organisation (Hodgetts et al., 2007; Longenecker et al., 2008).

Introduction to the trust and orientation

It is important that the founder be placed in new role by the successor and board of directors and that founder's new position be accepted by both themselves and others in the company as a way of acknowledging the founder's 'legacy'. It is also important for the founder to explain the successor's attributes they bring to the job. A founder's good relationship with the successor can ensure knowledge is transferred and make the successor understand the importance of continuing the vision.

Possible orientation methods mentioned were:

> *"Shadow successor and by doing so fully understanding each and every part of the trust"* (Participant 4); *"Successor to learn all departments to have a thorough understanding"* (Participant 7); *"Successor to learn different division, a month in each"* (Participant 10); *"Work experience in each department especially in Youth Development and Social Enterprise with access to managers and be part of the decision-making process"* (Participant 5).

All the participants interviewed believed that an interim director was unnecessary in the case of the MCT: *"Doesn't fit with this type of organisation" "Cost of doing so is not viable"*.

Transfer of founder's contacts

Six out of eleven participants believed that the founder's contacts could easily be transferred. The remaining 5 out of the 11 participants believed that this transfer would be difficult. Out of all the participants, 7 participants believed that the new successor would already come with their own personal contacts:

> *"Passed on due to the nature of the organisation"* (Participant 1); *"Founders to be tapped into because he has always been part of the trust"* (Participant 10); *"Founder to remain part of trust to help out with transfer of contacts and keeping those networks alive"* (Participant 10).

Summary of Results

Key Stakeholders

The results show that as it was difficult to replace the founder, most participants would have liked a new structured organisation. The key characteristics necessary for a successful succession process are people and networking skills as well as understanding the community and youth needs. The findings indicate that a potential successor should come from the MCT as Trust staff understand the ethos and have had experience in the Trust. However, none of the Trust participants felt they could fill this position themselves. Therefore, the succession process should be extended allowing the successor to shadow the founder as well as being given the opportunity to work and experience every part of the Trust. The founder should have a role as a mentor/advisor in which he can provide guidance during this process without having too much input.

The respondents' viewpoints generally aligned with the literature on succession planning in TSOs. However, the leadership deficit identified in the literature was not an issue that surfaced during the interviews. The founder of the Trust and the chair of the board had identified the need to begin planning for his succession, which led to the study, considered to be an important first step (Bisbee & Miller, 2007; Comini et al., 2009; Walseth, 2009).

The Succession - Events

When it became clear that the founder needed to slow down and move away from the day-to-day responsibilities, the board moved to assign some his responsibilities to other members of the board and employees of the Malcam Charitable Trust. Together these people would have enough knowledge to cope in the short term if a need arose. The literature supports the delegation of duties to relieve pressure off the founder by transferring their knowledge to other Trust members (Laff, 2008; Price, 2006). This was a protective move and a version of an emergency succession plan. The founder began to work only four days each week. Managers gained more responsibility by preparing budgets in their own divisions. This also developed and strengthened the relationships between particular trustees and managers as they worked together and supported one another (Weisman & Goldbaum, 2004).

All parties were told about the planned changes and planning for succession, reducing uncertainty and surprise. Applications for the new CEO role were welcomed from anyone in the Trust as well as outsiders. The search for a replacement began including writing a job description and a personal specification of the characteristics required. Advertising and networking led to 28 applications. No internal candidates applied. All applicants except one were known to board members. Five candidates were interviewed by the whole board and the founder. One applicant was clearly suitable and she was hired. The founder was very enthusiastic about the choice and some of the characteristics she had in

common with him. The Trust was fortunate in finding someone for whom maximising income was not a priority.

During the first few weeks of the new CEO placement, difficult adjustments were made. Two managers resigned because some projects ran out of government funding at this time. Senior staff showed classic signs of dislocation and grief. The Chair and founder both became involved briefly in day to day matters. The founder and Chair acted as mentors for the new CEO as she learnt the network and interpersonal connections. The new CEO was well established after six months but estimated it would take six months more to come up to speed. At that stage new ventures will be considered. It will have taken 15 months to plan and complete the succession process. The founder continues to be involved at a strategic level and as a mentor.

The Trust has no documented succession plan in which the literature states is necessary for a smooth change process (Hodgetts et al., 2007; Price, 2006). All the participants interviewed disagreed with not having a plan. Furthermore, the Trust did not hire an interim executive director help facilitate the succession process as it could not afford to do so even though the literature suggests that this could aid the succession (Wolfred, 2005). Notwithstanding, having a founder committed to the transition helped greatly and could be seen as an equivalent measure.

Concluding Discussion

In general, the MCT participants agreed with much of the literature. However, like other organisations, TSOs are vulnerable to a sudden loss of CEO; a situation made worse if there is no succession plan and emergency succession plan. An organisation, unable to afford an interim director, is likely to flounder. We recommend the use of a succession planning process model. Other documents, such as a charter and a strategic plan, also need to be kept up to date.

Moreover, a systematic processes of regularly updating and making explicit the implicit knowledge the founder needs to be in place so that in the case of a sudden loss of a founder (or for that matter a CEO), the organisation can carry on. Networks and relationships need to be shared well in advance of any resignation of the founder. The transition from one transformational and characteristic leader to another one or a different style of leader is not without risk. This transition is difficult and time consuming. The transition is best done over several years while the founder is present. Such a change in the founder's role needs to be carefully managed to minimise the sense of loss, abandonment, and grief. A new leader needs to be counselled, helped, and supported in the difficult early times. The founder has a vital role in the transition and mentoring the successor.

Finally, it is interesting to note that the theme of a potential leadership deficit, while prominent in the literature, was not mentioned by the participants in our study even though one of the 28 applicants was suitable for appointment. Moreover, the

recommendation in the literature of appointing an interim director was considered impractical because of the founder's presence during the process and the cost. Therefore, further research is needed to develop low-cost ways of handling the succession planning and alerting boards of TSOs to take the issue seriously.

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Ideology versus reality: New Zealand employer attitudes to legislative change of employment relations

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Abstract

There has been a shift to individualised and workplace-based employment relations in New Zealand. Researchers have canvassed many explanatory factors behind this shift but this paper focuses on the role played by employers. It draws on several surveys of employer attitudes and behaviours. These surveys have shown that the majority of employers have negative attitudes towards collective bargaining and they seek more employer determined flexibility. Employers are very supportive of post 2008 reductions in employment rights. Interestingly, many employers have yet to apply these legislative changes in their own workplace and it is unclear what future impact the legislative changes will have on the development of 'positive employment relationships'.

Introduction

In line with many other OECD countries, there has been a fundamental shift away from collective bargaining and industry arrangements to individualised and workplace based employment relations in New Zealand in the last two decades (Blumenfeld, 2010). While researchers have pointed to many explanatory factors 'driving' this shift away from collectivism, this paper will focus on the role played by employers and their associations. This is partly because the role of employers has been under-researched in New Zealand employment relations and partly because it allows us to draw on several recent research projects and their empirical research findings (Rasmussen, Foster & Murrie, 2012).

The paper's discussion of collectivism and the role of employers draws on three research projects, *with a focus on findings from the last project*. First, legislative changes and three recent, high-profile collective bargaining disputes have highlighted the wider implications of employer pressure for change to legal precedent and employment relations legislation. While employers' success in seeking more labour market flexibility, decentralised and individualised bargaining has fluctuated in the last two to three decades, there is now a situation in many private sector workplaces where employer determined flexibility prevails. This has created a segmented labour market with many low paid workers. Of particular concern is recent dilution of legislative protection of individual employees as well as a tendency towards labelling workers as contractors – regardless of the "true nature of their employment situation" (Nuttall, 2011).

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Second, individual employers' strategies, attitudes and behaviours have been surveyed through a national survey of private sector firms employing 10 or more staff (Foster, Rasmussen, Murrie & Laird, 2011). Overall, the survey found that employers have little interest in collective bargaining and they didn't think that their employees had an interest either. These findings are supported by recent research of trends in HRM practices and the public policy positions taken by various employer organisations (Bryson & Ryan, 2012; EMA, 2013).

Third, survey findings from a recent survey of employers are presented. In light of considerable amendments to the current legislative framework (Employment Relations Act 2000) in recent years, the survey focuses on employer attitudes to employment legislative changes since the National-led government was elected in October 2008. The survey focused on whether employers were supportive of the government's reduction of employees' employment rights in its quest for more labour market flexibility and whether public policy changes have had an impact on workplace employment relations.

Overall, our findings indicate a considerable attitudinal shift in favour of a stronger employer prerogative, less legislative support of employee rights and an emphasis on direct employment relationships at workplace level. Paradoxically, many employers have not implemented the possible changes to terms and conditions in their own workplace and some employers still think that the legislative framework is either well balanced (in terms of employer and employee power) or favours employees. The research illustrates a major ideological transformation of New Zealand employment relations towards individualised, workplace-based employment arrangements. It is expected that this transformation will have significant direct impact on employment relationships, employee protection and employment outcomes and processes.

How Did New Zealand End Up With Its Current Employment Relations System?

Current New Zealand employment relations are in a state of flux and the lack of a fundamental consensus over key public policy positions is well-established (Wilson, 2010). This is particularly the case when it comes to changes to employment legislation, as will be discussed below. Concerns have been raised over a variety of issues and trends: disappointing productivity levels, substantial income differences, prevalence of low paid and low skill work, 'brain-drain' (mainly to Australia), regulatory failures in health and safety (especially the Pike River mining disaster), as well as the labour market implications of the Christchurch earthquakes.

Three recent high-profile collective bargaining disputes - known as the Hobbit/Actors Equity, Ports of Auckland/Stevedores, and Talley AFFCO/Meat workers - put the notion of contractors versus employees at the centre of public debates. These disputes are indicative of weak labour markets where employers seek further control, flexibility and cost advantages through employers strategies of either labelling their employees as 'casuals' or changing the employment status of their workers to being 'contractors'.[†] It has been questioned whether

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[†] While the aims of control, flexibility and cost-savings are similar, they are different strategies with different implications. The discussion of casual versus permanent employees has featured in Rasmussen and Anderson

the classifications are correct, with terms such as 'permanent casuals' and 'sham contracting' being used. In particular, the internationally renowned 'Hobbit' change involves the legislative overturn of recent legal precedent which classified the so-called contractor as an employee (Nuttall, 2011).

Overall, the on-going lack of a broadly-based consensus over employment relations as well as a range of concerns over outcomes lead to the following pertinent questions: how did New Zealand end up in such a situation and how can it generate positive and productive employment relationships (the explicit objective of the ERA)? As the recent history of New Zealand employment relations changes is well-established territory, we will only provide a brief overview of the most important changes and issues (for a detailed overview, see Rasmussen 2009).

Since the early 1980s, the traditional approach to employment regulation had been under scrutiny and pressures intensified as major economic, social and public sector reforms/deregulation were implemented in the 1980s – the so-called 'New Zealand experiment' (Kelsey, 1997). Instead of opting for on-going, piecemeal employment relations reforms, the Employment Contracts Act 1991 (ECA) was a radical departure from a nearly 100-year old regulatory approach.

> "The traditional conciliation and arbitration system was abandoned, the award system abolished, union promotion exchanged with non-prescriptive 'bargaining agent' status and individual bargaining was elevated in status. The ECA constituted probably the most radical public policy shift found amongst OECD countries with a non-prescriptive approach to bargaining and union activity. The limited regulation of bargaining facilitated a sharp shift from industry and occupational based bargaining to workplace and individualised bargaining, a steep decline in union density and new forms of employee representation. Within 5 years, union density was halved to around 20% and collective bargaining became 'ghettoised' to a few traditional sectors large workplaces tended to be prevalent." (Foster *et al*., 2011).

In the 2000s, a Labour-led government tried to shift the balance of bargaining and employment rights through the Employment Relations Act 2000 (ERA) and a raft of supporting legislation. The ERA sought explicitly to bolster collective bargaining and more 'productive employment relationships'. There were several measures to bolster unions: better workplace access, exclusive bargaining rights for registered unions, 'good faith' bargaining obligations, and abolishing strike restrictions on multi-employer bargaining (Rasmussen, 2004). There were also significant changes to the health and safety regulations which included the statutory prescription of health and safety committees in medium-sized and larger firms (Lamm, 2010).

The ERA did, however, continue the protection of individual employment rights and these became very important as new or enhanced individual employment rights were introduced by the Labour-led government. This included the introduction of paid parental leave and a fourth week of annual leave, a strong rise of the statutory minimum wage by nearly 70% during

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(2010) while the discussion of contractors and employees have been raised in many recent articles. In particular, the 'Hobbit' change to public policy has been widely debated since it shifted dramatically the formal employment status on an industry-wide basis, following pressure from well-known film production firms (see *New Zealand Journal of Employment Relations*, 36(3)).

1999-2008, flexible working hours could be requested and the compulsory retirement age was abolished. Beyond doubt, many improvements to low paid workers were driven by legislative enhancements of statutory minima during 2000-2008 though the economic upswing and a tight labour market had beneficial effects across the labour market.

Importantly, the explicit support of collective bargaining generally worked well in the public sector while bargaining density in the private sector continued to decline and is now around 9%. Since 2008, a National-led government has introduced piecemeal changes to the ERA and these changes and their impact on bargaining and employment rights have been the focus of our series of surveys and interviews of employers (as discussed below). Since political power changed to a National-led government in 2008, public policy and legislative changes have focused on ways to dilute the ERA's support of collective bargaining though the main thrust has been a reduction in employee rights. In particular, the personal grievance right of new employees is now up for negotiation (the so-called '90 days rule') and employees can sell their fourth annual leave week for cash. As mentioned above, employment status has also been contested with some employers favouring contractors over employees and contracting has been implemented industry-wide in the film industry through a controversial government intervention.

Reflecting on the progression of employment legislation, the ERA appears to have shifted permanently towards a new way of thinking about bargaining, employer and employee rights, employment status (employee or contractor?) and traditional working arrangements. Collective bargaining has languished and employee rights are under pressure. The New Zealand labour market has become fragmented with large incomes differences, diverse employment protection, and individualised and workplace based bargaining. Precarious, low paid work has become a public concern, as has the regulation of health and safety hazards (Lamm, 2010). Overall, it appears that employers have managed to embed a flexible, decentralised employment relations approach though – as our surveys show - this is not quite the way that some employers see it.

Employer Attitudes to Collective Bargaining

The sparse available research on employer roles, attitudes and behaviours indicates there has been an attitudinal shift in favour of individualism and unitarist employer opinions in the last couple of decades. On that background, researchers from Massey University and Auckland University of Technology decided to survey employer attitudes to collective bargaining. Three surveys were carried out providing a national coverage of private sector organisations which employed ten or more staff.[‡] These were undertaken using a cross-sectional survey design where the surveys matched the sample demographics used by previous New Zealand studies (see McAndrew, 1989; Foster *et al*., 2011). The three surveys involved a self-administered questionnaire in two regions (the lower half of the North Island and the South Island) and an on-line survey was used in the third region (the upper half of the North Island). The response rates ranged from a disappointing 8% for the online survey to 19% and 21% respectively for the two postal surveys. The survey information was also supported by in-depth interviews with 30 employers.

[‡] A more detailed description of the applied methodology can be found in Cawte, 2007; Foster *et al*., 2011.

As discussed in other articles (Foster *et al*., 2009; 2011), there were many different opinions amongst employers but we also ascertained there were two distinct groups of employers. The attitudes of employers *who <u>were</u> engaged* in collective bargaining differed systematically from the attitudes of those employers *who were <u>not</u> engaged* in collective bargaining. The surveys asked employers about a number of key variables that are of significance to employers' attitudes toward the process of collective bargaining (such as: the interest of employees in the process, its relevance to the business, and whether collective bargaining had been considered at all). Taken as a whole, the responses to those variables showed marked differences between the two groups of employers. Of those engaged in collective bargaining, only 21% believed their employees lacked interest in the process. Of those *not* engaged, the proportion is reversed with 70.1% arguing that their employees lacked any form of interest in collective bargaining. While those *not* engaged in collective bargaining would also regard individual bargaining to offer greater benefit (73.8%) this was not so prevalent amongst employers engaged in collective bargaining where less than half saw individual bargaining as offering greater benefit.

The differences in employer opinions were confirmed by the interviews where a strong individual approach clearly prevailed, with many employers being quite clear that their staff had a preference for direct discussions and absolutely no interest in collective bargaining (Foster *et al*., 2011). Furthermore, while the negative attitudes to collective bargaining appeared rather firm amongst employers who were not engaged with collective bargaining, it appeared that the positive attitude amongst employers who were engaged with collective bargaining was tinged with some reservations. In the interviews, some employers involved in collective bargaining found that it was not relevant because of the quality of the relationship with the union or because the workplace had no major problems (according to the interviewed manager). Some employers, who were engaged in collective bargaining, found either the bargaining costs too high or didn't think that it added much to the business. We found that this would depend on the ongoing relationship with the union but it was also associated with transaction costs: could a comprehensive 'package' covering many employees be obtained without a lengthy and costly negotiation process?

It is important to note that the employers who are engaged in collective bargaining constitute a clear minority and even amongst these employers there is criticism of bargaining processes and associated outcomes. Generally, employers have a negative attitude towards collective bargaining and unionism and they would prefer to conduct their employment relations affairs in direct discussion with individual employees. As fewer and fewer employers become engaged in collective bargaining, it is likely that employer resistance or indifference to collective bargaining and arrangements will grow.

Survey of Employers' Attitudes to Post 2008 Legislative Changes

Since 2008, there has been considerable political controversy over introduced and proposed legislative changes. The National-led government has continued its piecemeal changes to the ERA starting in 2008 with the introduction of a trial in period of 90 days for new employees in enterprises with less than 20 employees. In 2010, there were further changes introduced such as the trial period now covered enterprises irrespective of size, restricted entry of union officials onto premises, changes to the law on dismissals. There were also changes to the Holidays Act including an employee's ability to buy back the fourth weeks of annual leave,

changes to working on a public holiday and justification of sick leave. In April 2013, the National government proposed a raft of further changes to the ERA such as: employers would be able to walk-away from collective bargaining if there is no sign of a settlement, repealing the 30 day rule for new employees who are not union members, firms with less than 20 employees will be exempt from the restructuring provisions of the ERA, changes to good faith in regards to the release of confidential information, and changes to meal breaks. The Minister of Labour and employer organisations have all said these changes will improve an enterprises ability to recruit more staff by making the enterprise more flexible and through increased productivity.

The leading employer organisation - Business New Zealand - has clearly voiced their opposition to many of the employment relations changes under the previous Labour-led government. This has been supported by other employer organisations and 'think tanks', including the high-powered Business Roundtable. For example, in response to New Zealand's lowest growth in productivity in 31 years, Business New Zealand argued in a press release that New Zealand should implement a Productivity Commission (as in Australia)[§] and needed "things like more flexible employment law, lower taxes and a smaller compliance burden…" (Business NZ, 2010). These arguments are in line with Business New Zealand's briefing to incoming government in 2008 where it advocated more flexibility and freedom in the workplace

The Department of Labour[**] in 2010 carried out research on employer's experiences to the changes to the personal grievance process (commonly known as the 90 day trail period) under the ERA in 2009 and found they were generally happy with process. A majority of employers used the trial period to check on suitability before commitment to hire. They also found that employers thought it easier to dismiss and to avoid incurring costs if their organisations faced an unstable future. Perceptions of unfairness towards employees do not seem to be borne out in the research (Department of Labour, 2010). Employers in the Hawkes Bay and Poverty Bay area were worried about the cost of dismissal settlements and therefore supported the 2009 and 2010 legislative changes. However, the reality of this happening to them was fairly remote based on the number of personal grievance cases that were heard by the Mediation Service and the Employment Relations Authority compared to the number of enterprises that employ staff (Elstone, 2011).

Methodology

In order to investigate employers' attitudes to employment legislative changes in 2008 and 2010 under a National led government, a survey carry out by Massey University and Auckland University of Technology used a representative sample of organisations employing more than 10 staff member focused on employer opinions. This was done by using a cross sectional survey design involving a self-administered postal questionnaire in two regions (in the Lower Half of the North Island and the South Island). This survey sought information on employers' attitudes to a range of issues including, whether employers support these changes: what effect, if any have these changes had on running their business and their relationship with employees; what are employers' views on employment legislation in New Zealand; are

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[§] The New Zealand Productivity Commission was established in 2011

[**] In July 2012, the Department of Labour merged into a new ministry, the Ministry of Business, Innovation and Employment

there differences of opinion on employment legislation related to employer characteristics (for example, between SMEs and larger organizations and the various industry categories)? Besides these issues, the survey targeted reactions to the two main pieces of legislation the ERA and the Holidays Act. Respondents were also given a chance to comment on why they gave the answer to a particular question.

As with our earlier employer surveys, the survey matched the sample demographics used by previous NZ studies and allowed the entire population of employers (2500 individual firms) to be surveyed. Employers within all 17 standard industry classifications used by previous researchers were included (Blackwood, Feinberg-Danelli, Lafferty, O'Neil, Bryson & Kiely, 2007). Participants were also asked if they wanted to partake in semi-structured interviews so as to extract any underlying issues that could not be gleaned from a questionnaire. We received 80 acceptances and a selected portion will be used to ensure that the participants will cover the various regions in the survey. The interviews have yet to be done, but it is anticipated that these will be completed in the second half of 2013. The interviews will be conducted by telephone and taped.

Results

The response rate from the cross-sectional survey was 15.1%. This rate for a self-administered postal questionnaire is accepted by comparative studies. However, this is a relatively low figure and the results must, therefore, be interpreted with caution. These results are purely descriptive and we hope to investigate the underlying reasons for the responses through our in-depth interviews of employers. While there are differences across the various questions and employer groups, it is important to stress *the overall message of the survey*: employers showed a clear preference for the implemented legislative changes. However, when asked what impact these changes have had on their businesses and employment relationships, a vast majority of employers responded that there had be no or minimal impact.

Industry Classification of Firms by Size

Table 1 provides a detailed representation of the distribution of the sample across standard industry classification by size. Table 1 shows that 44% of respondents were in 10-19 employees category, 46.5% in the 20 to 99 employees category and 9% in organisations with more than 100 employees. Please note that the industry classification of 'Others' is approximately 18.6% of the total.

Employers in favour or opposed to employment legislative changes

Table 2 shows that a large proportion of respondents were in favour of the amendments to the legislation, particularly in relation to evidence of sick leave provisions, the 90 day provisions and that the substance of the case must be considered by the Authority rather than minor process defects. Respondents were mainly opposed to the amendments that related to reinstatement if practicable and reasonable as a remedy for PG's. There was also some opposition to union consent to entering the workplace. There was also a differentiation between the sizes of the organizations

Table 1

Industry Classification of Firms by Size

Industry Classification of Firms	10 to 19	20 to 99	100+	Total
Accommodation and food Services	16 (4.3)%	8 (2.1%)	0	24 (6.4%)
Administration and Support Services	2 (0.5%)	0	1 (0.3%)	3 (0.8%)
Agriculture, Forestry and Fishing	10 (2.7%)	6 (1.6%)	1 (0.3%)	17 (4.5%)
Arts and Recreation Services	0	2 (0.6%)	0	2 (0.5%)
Construction	22 (5.9%)	20 (5.3%)	1 (0.3%)	43 (11.4%)
Electricity, Gas, Water and Waste Services	5 (1.4%)	4 (1%)	3 (0.8%)	12 (3.2%)
Financial and Insurance Services	5 (1.3%)	1 (0.3%)	0	6 (1.6%)
Health Services and Social Assistance	8 (2.2%)	6 (1.6%)	4 (1.1%)	18 (4.8%)
Information, Media and Telecommunication	4 (1%)	4 (1.15)	3 (0.8%)	11 (2.9%)
Manufacturing	34 (9%)	37 (9.8%)	7 (1.9%)	78 (20.7%)
Mining	1 (0.3%)	0	0	1 (0.3%)
Professional, Scientific and Technical Services	14 (3.7%)	16 (4.3%)	2 (0.5%)	32 (8.5%)
Rental, Hiring and Real Estates Services	3 (0.8%)	1 (0.3%)	0	4 (1.1%)
Retail Trade	7 (1.8%)	17 (4.5%)	3 (0.8%)	27 (7.2%)
Transport, Postal and Warehousing	3 (0.8%)	9 (2.4%)	2 (0.5%)	14 (3.7%)
Wholesale Trade	4 (1.1%)	10 (2.7%)	1 (0.3%)	15(4%)
Other services	30 (8%)	34 (9.1%)	6 (1.6%)	70 (18.6%)
Total	**168 (44%)**	**175 (46.5%)**	**34 (9%)**	**377**

Table 2

Employers in favour or opposed to employment legislative changes

Legislative changes	% Responses				
	VMF	SWF	N	SWO	VMO
Trial period <20	61	20	15	1	2
Consent to enter workplace	55	22	17	4	4
Penalties re- enter workplace	34	31	30	3	3
Employers copy of EA	63	27	9	0.07	1
Trial period for any new employee	66	19	10	0.03	1
Test of justification fair and reasonable	28	45	18	7	2
Must consider substance of case	66	25	7	0.07	2
Reinstatement one of remedies	4	18	26	31	22
Cashing of one weeks annual leave	48	28	13	30.7	4
Transfer of public holiday	42	24	19	6	8
Proof of sick leave after one day	75	18	6	0.07	1

Note: The abbreviations used to describe the employer's attitudes to legislative changes are: Very much in favour (VMF), Somewhat in favour (SWF), Neutral (N), Somewhat opposed (SWO), Very much opposed (VMO), and Don't know (DK).

Impact of legislative changes to employers' business

In Table 3 about a third of the respondents indicated that the amendments to the legislation had some impact on their enterprise, whilst over two thirds of respondents indicated that the changes had minimal or no impact on their business. Amendments that were perceived to have a positive impact included the provision for *cashing up one week's leave* and *transfer of holiday pay*. The remaining amendments were perceived to have no or minimal impact on the business. In the select committee hearings on these amendments, there was an overwhelming support for these changes from business organisations and various large and small companies. This support was underpinned by the belief it would lead to more productive relationships. If you compare this table with the previous it would appear that the rhetoric does correspond with the reality.

Table 3						
Impact of legislative changes to employers' business.						
Changes to legislation	**% Responses**					
	PI	**CEL**	**NC**	**MI**	**NI**	**IC**
Trial period <20	16	20	28	34	1	1
Consent to enter work place	9	11	37	38	4	1
Penalties re-enter work place	7	11	38	40	3	1
Employers copy of EA	12	18	36	31	1	2
Trial period for any new employee	18	20	29	31	1	1
Test of justification fair and reasonable	8	22	27	35	4	4
Must consider substance of case	13	23	27	31	3	3
Reinstatement one of remedies	2	6	29	35	24	4
Cashing of one weeks annual leave	35	12	19	24	3	7
Transfer of public holiday	26	15	25	28	4	2
Proof of sick leave after one day	18	22	25	28	5	2

Note: The abbreviations used to describe the legislative impact on changes to employers business are: Positively improved the employment relationship (PI); Clarified the employment legislation, simplifying processes and reducing costs (CEL); No cost in implementing the new changes (NC); Minimal impact on the business and relationships with employees (MI); Had a negative impact on the employment relationship with employees (NI) increased costs in implementing the new changes.

Which amendment had the most impact?

Employers were asked what legislative change had the largest impact on their business. Table 4 shows that trial periods and the cashing up of the annual leave had the most impact. The two types of adjustments to employee rights have been considered amongst the most significant changes implemented during the post 2008 period. It was clear from responses to the survey's open-ended questions that employers were very positive about these changes and also indicated that 'cashing up' could create a win-win situation.
Typical responses for the trial periods were:

> *"New employees can be terminated more easily within the first 90 days".*

> *"Puts employer in a position of strength at the start of the relationship".*

Typical responses for cashing up the forth weeks annual were:

"Staff are happy to be paid 3 weeks holiday as this is enough for most people".

"Employees are strapped for cash and would rather work and earn extra cash to get by than take time off on paid holiday".

Table 4				
Which amendment had the most impact by size?				
Changes to Legislation	**10 to 19**	**20 to 99**	**100+**	**Total Responses**
Trial period <20	64	20	2	86
Union consent to enter workplace	1	5	0	6
Penalties re- enter workplace	0	0	0	0
Employers to retain copy of EA	5	7	3	15
Trial period any new employee	19	53	8	80
Test of justification fair and reasonable	3	2	2	7
Must consider substance of case	4	1	1	6
Reinstatement one of remedies	1	3	1	5
Cashing of one weeks annual leave	34	42	10	86
Transfer of public holiday	5	23	2	30
Proof of sick leave after one day	5	14	1	20
				341

Table 5				
Which amendment had the least impact by size?				
Changes to Legislation	**10 to 19**	**20 to 99**	**100+**	**Total Responses**
Trial period <20	8	13	6	27
Union consent to enter workplace	45	44	4	93
Penalties re-enter workplace	7	7	3	17
Employers copy of EA	24	23	6	55
Trial period any new employee	6	4	1	11
Test of justification fair and reasonable	3	4	0	7
Must consider substance of case	5	2	0	7
Reinstatement one of remedies	15	14	4	33
Cashing of one weeks annual leave	1	5	2	6
Transfer of public holiday	8	11	3	22
Proof of sick leave after one day	7	6	0	13
				291

Which amendment had the least impact?

In Table 5, the provisions of union officials allowed entry on to the premises had the least impact (across all workplace sizes). This may be because of the low union presence. Finer legal points – often associated with personal grievances – had little impact, as had employers retaining a copy of the employment agreement.

If changes were implemented what were impacts on employment relationships?

In Table 6, the results showed that 24% of respondents thought that the changes had had a positive effect on their business and their employment relationships, 3% said there was a negative effect and an overwhelming 74% said there had been no impact. Across the three categories of sizes of organisations – small, medium sized and large - the distribution of responses was fairly uniform. This is a rather interesting response pattern as one would have expected that the legislative changes, which have been rather controversial but also strongly supported by employers (as can be seen from Table 2 above), would have had considerable actual impact on employment practices.

Table 6				
If a business had implemented changes what impact was there on the employment relationship				
	10 to 19	**20 to 99**	**100+**	**Total**
Positive	29	37	8	74
Negative	5	2	1	8
None	101	107	20	228

Level of employment legislation

In Table 7 the majority of all employers, 67.3%, believed that there was enough employment legislation; whereas, 29.6% believed there was too much employment legislation.

Table 7				
Level of employment legislation				
	1 to 19	**20 to 99**	**100+**	**Total**
Too little	5 (1.3)	7 (1.8)	0	12 (3.1%)
Enough	114 (29.4%)	126 (32.5%)	21 (5.4%)	261(67.3%)
Too much	56 (14.4%)	45 (11.6%)	14 (3.6%)	115 (29.6%)

Industry classification and focus of employment legislation

In Table 8, a majority of employers, 59%, across all industry classifications believed that employment legislation in New Zealand is employee focused. However, in Professional Scientific and Technical Services there is an approximate split between employee focused and balanced legislation. In the Health, Wholesale Trade and Agriculture there is a belief that the balance is about right. Again, these are interesting findings which are rather paradoxical. The findings do not align well with the standard comparative understanding of a high level of employer determined flexibility in New Zealand workplaces.

Table 8

Industry classification and focus of employment legislation

Industry Classification of Firms	Employee focused	Balanced focused	Employer focused	Total
Accommodation and food Services	15 (3.9%)	9 (2.3%)	2 (0.5%)	26 (6.8%)
Administration and Support Services	2 (0.5%)	1 (0.3%)	0	3 (0.8%)
Agriculture, Forestry and Fishing	8 (2.1%)	9 (2.3%)	0	17 (4.4%)
Arts and Recreation Services	1 (0.3%)	1 (0.3%)	0	2 (0.5%)
Construction	31 (8.1%)	14 (3.6%)	0	45 (11.7%)
Electricity, Gas, Water and Waste Services	7 (1.8%)	4 (1%)	1 (3%)	12 (3.1%)
Financial and Insurance Services	3 (0.8%)	2 (0.5%)	0	5 (1.3%)
Health Services and Social Assistance	7 (1.8%)	12 (3.1%)	0	19 (4.9%)
Information, Media and Telecommunication	6 (1.6%)	5 (1.3%)	0	11 (2.9%)
Manufacturing	49 (12.7%)	28 (7.3%)	1 (0.3%)	78 (20.3%)
Mining	0	1 (0.3%)	0	1 (0.3%)
Professional, Scientific and Technical Services	15 (3.9%)	15 (3.9%)	2 (0.5%)	32 (8.3%)
Rental, Hiring and Real Estates Services	2 (0.5%)	2 (0.5%)	0	4 (1%)
Retail Trade	23(6%)	6 (1.6%)	0	29 (7.5%)
Transport, Postal and Warehousing	6 (1.6%)	8 (2.1%)	0	14 (3.6%)
Wholesale Trade	8 (2.1%)	7 (1.8%)	0	15 (3.9%)
Other services	44 (11.4%)	28 (7.3%)	0	72 (18.7%)
Total	**227 (59%)**	**152 (39.5%)**	**6 (1.6%)**	**5 (100%)**

Impact of other legislation

In Table 9 the legislation that had the most impact on the businesses surveyed were the Health and Safety in Employment Act 1992, the KiwiSaver Act 2006 and the Parental Leave Act 1987. The legislation that had no or least impact on the businesses included the Wages Protection Act 1983, Minimum Wage Act 1983 and the Human Rights and Privacy Acts. It is interesting to note that on 1 May 2013 the Minimum Wage Act was amended and a form of youth rate was introduced for employees between 16-17 years of age who would receive 80% of the adult rate. The present Minister of Labour Simon Bridges said 'this would now allow employers to take on younger workers'.

Table 9

Impact of other legislation

	No impact	Least impact	Some impact	Very much impact	Most impact	Not sure
Minimum Wage Act	175	38	98	34	27	7
Wages Protection Act	177	64	62	11	4	50
Parental Leave Etc Act	112	67	140	40	10	8
Health & Safety in Employment Act	53	39	127	77	71	11
Human Rights Act	164	94	66	14	4	34
Privacy Act	113	87	127	21	12	15
Kiwi Saver Act	31	25	173	92	58	5

Conclusion

New Zealand employment relations has been through a turbulent period and there are no signs that a more stable period will occur. The lack of consensus surrounding public policy debates and a range of concerning employment outcomes mean that employment relations will continue to feature highly on the agenda of political parties, employers, unions and the general public.

New Zealand employers have pursued a consistent campaign which has highlighted the managerial prerogative, increased employer determined flexibility and cost containment. Within this consistent message, there have been diverse employer opinions. As our survey evidence underlines, employers have a growing resistance towards participating in collective bargaining (as it becomes a rare occurrence in the private sector). They are also very supportive of the National-led government's recent legislative changes. This is probably not surprising since the changes have been demanded by employer associations and they put the employer in a stronger position as indicated by some of the above mentioned comments from surveyed employers.

Surprisingly, many employers are still of the opinion that the legislation is fairly evenly balanced or may even be in favour of employees. While rather puzzling in light of low union density and a weak labour market, these findings may indicate that employers will press for further reductions in employee rights, including changes to employment status. The findings also align with the constant employer criticism of too much legislation, transactions costs and unsuitable use of personal grievance rights. They also indicate that unions and centre-left political parties will be faced with considerable opposition if they want to move employment relations closer to the original intentions of the ERA. These opinions will be further investigated during our in-depth interviews of employers.

However, our survey results also raise two types of questions – what will be the immediate employment relations impacts and what will be the long-term, wider economic and social impacts? As indicated by our survey, it is not all employers who has used the new legislative options and for many employers the changes have had limited or no impact. As stressed, the distribution of responses was fairly uniform across the three categories of sizes of

organisations (small, medium sized and large). This is an interesting finding as it was expected by most employment relations commentators that these changes will have a disproportional effect amongst smaller firms, on the lower end of the labour market and in retail, hospitality and tourism industries. Again, this is a response pattern which we will explore further into during our in-depth interviews of employers.

Finally, we have argued in previous papers that the long-term, wider economic and social impact could be rather negative (e.g. Foster *et al.*, 2011). There are already considerable concerns about low wage, low skill work and how this drives 'brain drain', career constraints, social problems and exclusion. It is also difficult to see how these changes can be part of overcoming New Zealand's long-running disappointing productivity record. These long-term, wider economic and social impacts will be – with the verdict of the electorate - the key influences on the on-going re-evaluation of recent changes to New Zealand employment relations.

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Commentary: Reflections on High Performance, Partnership and the HR Function in New Zealand

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Introduction

This is a personal reflection on more than two decades of involvement in the policy development and implementation side of government measures to promote improved productivity and modernised workplace organization in New Zealand. It began as a member of the Auckland Business Development Board throughout the 1990s, when ISO accreditation was king, and high performance, beyond some exceptional examples, was a topic of cult discussions. That involvement continued in the 1999-2008 governments' productivity agenda. It continues today in the current government's High Performance Work Initiative, and a range of related activities. Over that period, I have also taught regularly on the University of Auckland's HR Diploma course, and have spent a lot of time drumming the high performance message into undergraduates and graduates alike.

There are other roots to this reflection. One is the context in which I arrived in New Zealand in 1988. The "Nissan Way" was the controversial employment relations topic of the day (as I recollect, even more so than, for example, the 1987 employment relations legislation). Unions were split, inter and intra, about the engagement practices embodied in the car assembly industry in New Zealand. There was an understandable concern about a productivity message, which challenged traditional thinking in unions, and which traditionally was associated in unions with greater work intensity and rewards that did not reflect that intensity. One feature of that debate which struck me as an incomer was its "freshness", as if the debate had not been running for years before. Such freshness was also observable in, for example, the activities of Workplace New Zealand. I return to this point later.

Another "root" is personal. I arrived in New Zealand belonging to an intellectual tradition that was cynical about the wave of enrichments and engagements and quality circles that had marked management's 1960s-onwards move from a traditional personnel function to what we now call HRM. I had taught both (my first lecture as a tenured academic was in 1978, on a course entitled "Personnel Management") and despaired of the magic bullet, top-down managerialism that imbued these various waves of PM and HRM strategy. The question of "voice" was already crucial in mine, and others, thinking. If unions and workforces were to be fully engaged in such workplace processes, how would they come to own the process, such that discretionary effort and creativity would be released in return for fair wages and conditions. Much academic debate at the time had rejected that positive–sum model, a critical tradition still alive and well, and the tenor of the debate in New Zealand around the Nissan Way did little to dispel such concerns.

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Yet another is a consideration of the history of employment relations in New Zealand, and its implications for the HR function, As I suggest below, it is arguable that the particular impact of the arbitration model on workplace organisation and employment relations, and on the conjunctural emergence of the modern HR function, carries with it important implication of the development of high performance in New Zealand. Moreover, the substance and timing of employment relations reform is also a factor to be added into the mix. Again, I explain this in more detail below.

Finally, I am going to assert here that building of the high performance paradigm in New Zealand is a difficult and often unrewarding task. My reasons for this assertion are discussed in detail below, but years of engagement on the issue – with union and employer organisations, with layers of middle-level HR managers in training, as chair of the Partnership Resource Centre (PRC) and High Performance Work Initiative (HPWI) advisory boards, and in policy-related research – support this assertion. For reasons that we need to understand better, and despite obvious examples of successful high performance innovation, high performance is difficult to "sell". It breaks no confidence when I say that leaders of New Zealand's main business sector organisations have told me simultaneously how much importance they and their organisations place in high performance, and how difficult it is to obtain membership buy-in in a sustained fashion.

A Hypothesis

I will, first, present a simple hypothesis; second, I will develop it in some detail, before, third, suggesting how it might resonate in the contemporary high performance debate.
The hypothesis is this:

A) a major effect of the arbitration system was the underdevelopment of workplace organization and employment relations, and a particular underdevelopment of the PM/HR function;

B) the decline and fall of the arbitration system, and its replacement by the ECA model substantially marked the experience and thinking of the HR profession as it came of age in the 1990s

C) that "coming of age" took place crucially in a long period of economic downturn, involving a pervasive cost-savings approach in management

D) the ideological context in the 1990s and beyond was, as a result of this conjuncture, primarily unitarist and anti-union

E) that conjuncture – unitarism, a predominant cost-saving, short-term view of business decision-making, and the dominant experience of the HR profession – militates against the take-up of sustainable high performance models (where sustainability is governed by the degree of ownership by the workforce of the performance model).

Getting to the Hypothesis

Arriving in 1988, one of the first tasks in which I was involved into the 1990s was teaching the Graduate Diploma in HR, then a new programme at the University of Auckland. It was taught in the now much reconfigured School for the Blind in Parnell, and was marked by standing room only. There was a time when we were cramming well over thirty students into a room designed for a comfortable 25. An interesting characteristic of the students was their

breadth of background – from relatively recent graduates with an interest in a career in HR, to some very experienced, seasoned, and occasionally jaundiced practitioners.

The main drivers of this demand were, I think, two. The first was a secular movement towards professionalization in the HR world. There was a changing of the guard in the HR world from the motley origins of the personnel function in New Zealand organisations to a new professional tradition. This echoed similar changes that had taken place in, for example, the UK in the 1970s and 1980s.

Second, after 1990, there was the impact of the ECA. The importance of that measure for New Zealand employment relations and its impact on an emerging professional HR function demands some discussion. We were, rather suddenly, moved from the remains of the arbitration system, which still maintained an award structure, to company level-bargaining, often without union representation on the ground. Companies had to create promptly collective employment contracts (CECs) and individual employment contracts (IECs) to replace pre-existing arrangements. Employers' organisations were swamped with members asking for advice about how to make these changes. Personnel practices at the level of the company were required to become more sophisticated and responsible. Technical personnel skills previous underdeveloped at company level became vital. This was major flux, engendered by legislative change, and providing a further opportunity for the professionalisation of the HR function.

Let me turn to the hypothesis in a little detail. The first element is the legacy of the arbitration system. Here, the key issue is the centralization of bargaining imposed by the post-1894 model. Awards were usually determined far from the company and workplace, by representatives also distant from their constituents' particular interests. Whilst matters settled in awards were restricted, they were vital. "Industrial matters" covered the core issues of wages and conditions. Secondary bargaining provided some flexibility in outcomes.

One consequence of this system was a conditioning of the personnel function, in which key technical processes were excised from the personnel manager's repertoire. The personnel function was, in this sense, incomplete. Moreover, specific personnel roles were limited to larger enterprises, further reducing the professional's presence in New Zealand.

A second consequence was a barrier to the development of more sophisticated workplace organization traditions. A lack of "reach" in the personnel function, coupled with the excision of some key personnel tasks from the personnel professional's repertoire, combined with a relatively unsophisticated industrial structure to capon the workplace reorganisation debate. Scale may be a factor here, and it is instructive to see companies where sophisticated HR practices emerged were few and far between, and, where they did emerge, it was an effect of external forces (e.g. Nissan) or of particular leaderships (e.g. Fisher and Paykel). Limited take-up of new workplace organisation techniques was not just a problem in management development. Unions were backward in this area, too. Islands of innovation existed in, for example, the EPMU, but, even there, the battle for a modern approach to workplace reform was tough. Unions, on the whole, paralleled management. If management, on the whole, failed to develop a modern HR function, unions failed to develop the workplace representation and skills needed to match technological, work organisation and management developments.

In sum, the 1894-1990 arbitration model was a curate's egg. For all its advantages, it may also have substantially obstructed the professionalization of the personnel function, the creation of modern union organization at company level, and the generalization of modern work organization practices.

The ECA replaced the remnants of arbitration with company-level arrangements predicated on individual employment contracts. The intention of the legislation was, in the view of the government, to improve economic performance by matching employment relations outcomes to company needs. It is a moot point whether this outcome was achieved. What is clear is that the ECA halved union membership, particularly reducing union density in the private sector, and significantly shifting the balance of power. Unions have still to recover from this blow to their presence in bargaining. True, in the public sector, union presence held up, as was the case in many of the largest private sector companies, but across the SME and micro-companies, union presence was fundamentally weakened.

Moreover, in the post 1984 period, and in the ideology surrounding the ECA, dominant themes – individualism and unitarism in particular – were a powerful presence. Neo-liberal ideology exalts the individual over the collective, regarding collective action as a threat to individual choice and action. This was seen in the sustained argument that an individual employer and an individual employee met on equal terms – as two equally-powerful individuals seeking to make a deal, from which both could choose to retreat. In such arrangements, the role of the union was not simply unnecessary; it was dangerous, for it allowed the intervention of collective pressure that "distorted" the equal engagement of individuals. In this sense, the ECA might be understood as explicitly anti-union.

There was a further consequence of neo-liberal thinking for employment relations. It combined the "equal engagement" argument with the rights of owners and managers. A theme in the anti-unionism of the ECA was the illegitimate questioning in collective bargaining of the right of owners (or their proxies) to manage what was private property – the business operation. Thus, the equal engagement was between individuals, one of whom possessed the right to manage, the other enjoying the right to be managed. The idea of joint regulation – of industrial democracy – present in collective bargaining was replaced by a unitarist approach in which the employment contract embodied the right to manage on whatever terms were deemed appropriate. Those terms might involve consultation or other forms of engagement, but their initiation was to be determined by managerial power, not by negotiation.

This was the context in which HRM blossomed in New Zealand, driven by the sudden replacement of arbitration by company-level, primarily unitarist responses, under the auspices of a deeply-ideological legislative framework, against which collective bargaining made heavy weather. But that context was compounded by another factor – New Zealand's industrial structure and economic performance from the 1970s.

From the 1960s, the need to diversify the New Zealand economy away from a dependency on trade in commodities had been recognized. Indeed, one could argue that the tradition of import-substitution since the 1930s derived from that need. Post 1984, the model adopted to promote that diversification was a classical "shock" treatment, whereby protections were removed, market forces were unfettered, regulations reduced or abolished, and New Zealand was opened up to global competition. Many manufacturing sectors were adversely affected. Plants closed, jobs were lost. Then, in 1987 and throughout much of the 1990s, the New

Zealand economy faced severe disruption, to return to a growth path only in the 2000s. During the crucial period in which the HR profession came of age in New Zealand, a cost-saving, low-road approach dominated most company strategies and, arguably, continues to this day. High performance models were not the employment relations or work organisation strategies of choice.

The 1990s: a fraught conjuncture

Here, I want to speculate on a particular conjuncture of factors that applied in the 1990s as they might apply to the high performance approach. The conjuncture involved:

- little long-term interest in the high performance approach,
- a strong legislative shift in ER to a neo-liberal approach,
- an extended period of economic downturn after 1987,
- companies facing severe cost pressures,
- an emerging layer of HRM professionals operating in a new company-based ER framework.

This conjuncture offered a particularly infertile environment for high performance initiatives. It was not that the ideas were entirely missing. Some companies experimented with high performance, some in a sustained and successful manner. But, arguably, such companies were few and far between. Moreover, the "Workplace New Zealand" movement, which held two conferences in the late 1980s and early 1990s, worked hard to promote high performance initiatives, but reported at the time that the conditions for success were absent. Also, anecdotal evidence from trainee HR managers at the time reported cost concerns and control, short planning horizons and an essential conservatism in the choice of work organisation strategies.

The impact of the ECA on the union movement should also be considered again at this point. Some of the most sophisticated thinking about high performance in New Zealand in the 1990s lay in the union movement. Three unions in particular – the EPMU, especially in Fisher and Paykel, the Dairy workers in Fonterra, and the PSA in the public sector – adopted high performance approaches and were keen to promote them with "their" employers. However, managerial attitudes towards high performance and unions made approaches difficult to sustain. Reduced power meant that committed unions were less able to drive a high performance approach by means of bargaining.

The 2000s

The Labour-led governments between 1999 and 2008 placed great emphasis on improved economic performance (economic transformation), improved productivity and high performance systems. For example, the purpose of the ERA was to drive improved economic performance on the basis of integrative bargaining. A Workplace Productivity Agenda was developed, focusing on information dissemination around productivity and high performance. New Zealand Trade and Enterprise (NZTE) engaged in some high performance promotion. The Partnership Resource Centre was funded to promote union-company high performance

initiatives. Some regional development agencies (RDAs) also took up elements of high performance, including Lean.

There was in this period much activity, many meetings and seminars, but relatively little shift in management attitudes to high performance models. During the benign economic conditions up to 2007, employment levels grew rapidly, but productivity performance remained relatively poor, suggesting that little was being done to improve the sophistication of production systems. The fear grew in this period that the impact of the 1990s had been to entrench many New Zealand employers in a low-road, labour intensive, low cost model. Again, anecdotal information from HR managers, from senior representatives of business organisations, and from Department of Labour case-studies suggested that the high performance message was understood by many, yet, for a variety of reasons, was seen as difficult, if not impossible, to take up in New Zealand.

I spent much of this period working with the Workplace Productivity Agenda in a number of capacities, and was the chair of the Partnership Resource Centre. In these roles, I spent a lot of time talking with senior managers and boards about the high performance message. There was a consistency in the messages that I was given in these discussions:

- most agree with high performance as an abstract idea; some think it nonsense;
- it is often not understood, or is misunderstood;
- it is complex, expensive, difficult to implement and uncertain of outcome;
- it frequently appears to offer no real advantage over the current model of work organisation
- power sharing is a challenging concept
- it is a good idea for the future, sometime.

Subsequent review of the Partnership Resource Centre initiative puts flesh on these bones. Analysis of PRC interventions suggested that following positive gains from union-based high performance approaches:

- Improved employee relations
- A more positive and satisfying workplace culture
- Greater job satisfaction and more opportunities for personal and career development
- Motivated staff who are able to participate in the decisions that affect them
- Reduced workplace conflict and tension
- Increased confidence, trust and openness in people
- The ability to constructively work through change and conflict
- Greater job security and the potential for wages to rise with productivity
- Easier staff recruitment and increased staff retention rates
- Shared ownership of business outcomes and results
- Increased profits, productivity, innovation and efficiency
- Improvements in work processes and service delivery
- Better business performance and long-term viability.
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Equally, hurdles stood in the way of high performance initiatives. The key hurdles included:

- Establishing the validity of high performance approaches in the company
- Convincing the CEO/board of the concept's viability

- Sustaining the approach through changes of leadership
- HR managers committed, but other management functions not so
- Convincing middle managers of the approach's advantages (where senior managers were committed)
- Costs
- Appropriate scheme design and implementation
- Gaining and sustaining employee buy-in (where the buy-in was based on legitimate, autonomous representation)
- Measurement (and sharing) of success
- Timing

The Partnership Resource Centre was disestablished in 2011 by the post-2008 government, but a High Performance Work Initiative (HPWI) emerged from the ashes, with a different focus and delivery method. The new focus was the promotion of Lean, across all types of workplace (not just unionized locations), and on a "bottom up" basis, that is, scheme "partners" in the regions bid for support to deliver Lean development to a group of companies. The first 18 months of operation of the HPWI have delivered promising results.

Yet, to see the delivery of Lean as a breakthrough in New Zealand in 2012 is telling, for Lean as a concept has been around for over two decades, and the systems upon which it is based for longer still.

Explaining this profile

Most of us involved in the high performance movement ponder regularly on its rate of uptake in NZ. Bias is admitted, yet it is also clear that other observers, from Prime Ministers to the OECD, lament the productivity performance of the New Zealand economy over the last generation or more, and seek ways to reverse it. My experience suggests that we can order the challenges associated with the take-up of high performance as follows:

Management Understanding and Commitment
Contemporary senior managers in their 40s and 50s were in their formative 20s when the ECA was introduced. They have also been employed in a period marked by two downturns, interspersed by one growth phase. Their initial experience was in an economy in which many sectors were restructured by the post-1984 reforms. Cost control and short-term horizons have often been constants in their decision-making. High-road, high investment, high productivity strategies, where appropriate, have not always been possible, or, sometimes, considered. Demonstrations effects of high performance have been muted. They have, on the whole, limited experience of unions and collective bargaining and, with the exception of state sector organisations and some of the larger private sector companies, adopted unitarist ER approaches. Some have upgraded their management qualifications; many have not. Is it unreasonable, given this thumbnail profile, to suggest that there may exist a disjuncture between the high performance paradigm and its requirements and the capabilities and orientation of senior managers in New Zealand? My own experience, and that of other initiatives in the area, suggests that this may be the case.

Employee understanding and commitment

Employees in the private sector are likely to be working in a non-union environment, often in a small workforce. There is some evidence that they are reasonably content in their circumstances, but comparative data suggest that they are often relatively low paid, work longer hours than are worked in other OECD economies, often with relatively low capital investment. They may have experienced changed circumstances in the 1990s or after 2007. Unemployment or casualization may be an imminent concern. They may enjoy training and up-skilling opportunities; many do not. In larger firms, they will be subject to a formal HR regime; in many, the HR function is rudimentary. Some will have been the object of top-down engagement or productivity initiatives, sometimes on multiple occasions. "Voice", such as it is, will be configured by a top-down initiative, or by informal interaction in a small workforce. For the majority of employees, high performance is a closed book, and one which is owned by the employer

Technical capacity in design, support and implementation

The apparatus of high performance is weak in New Zealand. Trend setters with networked power (such as Toyota in Japan) do not exist. Companies with high performance aspirations rarely network assiduously with suppliers and customers. Skilled resources to train managers in high performance methods are few, and of mixed calibre. Some of the offerings on the market – for example, the Lean Lite models – are poor quality. The temptation to buy a system "off the shelf" remains high. Networks of specialists and companies providing mutual support for high performance are rare (the HPWI is an exception to this, as is the NZTE work). Production-based training (in universities and elsewhere), where it promotes improved performance, often eschews the "human" side of performance, preferring instead to focus on "technical" design issues. There is little of an underlying culture of high performance.

Contextual drivers

Above all, the New Zealand economy continues to perform poorly and is looking at perhaps another 5-7 years of adjustment to the effects of the 2008 GFC. Longer term vision will be blunted, costs concerns will remain high, capital investment will be carefully scrutinized (especially with abundant supplies of cheap labour), productivity improvements will be modest, if observable at all. For many companies, not all, the medium term is challenging. Generalised shifts of thinking, radical breaks with management's past performance, are unlikely. Rather, companies operating in niched, competitive markets will be more likely to grasp the nettle of high performance on an individual basis.

What does this mean for HR managers?

I have already used a "coming of age" metaphor to describe the emergence of the HR function in New Zealand in the 1990s. It is an important starting point in thinking about the HR function and high performance. That coming of age took place against a background of:

- At best, patchy economic performance,
- A dominant business model based on cost control and short-term horizons;
- Major restructuring as an effect of structural adjustment measures,
- significant decline in some key sectors of the pre-1984 economy,
- a dramatic shift to company-level ER,
- major de-unionisation in the private sector,
- powerful neo-liberal policies and ideological settings, especially in the ECA.

I have suggested that this context did little to promote successfully high performance models. It follows that the HR professional, even if attuned to the high performance message, would find it difficult to "sell" that message at company level. Moreover, I suggest that in New Zealand managerial practice in general, the role and status of the HR function remains underdeveloped. Hence, the ability to promote high performance is further diminished.

And, in my experience, the HR professional is, today, attuned to the message. Year in, year out, I have asked my post-experience HR class about their response to high performance and their ability to introduce or support it in their companies. There is a general positive response to the message of high performance, usually coupled with issues about its implementation is particular sectors and circumstances. The minority will then report that they are experimenting with, or are committed, to high performance. Often, the minority comes from the "usual suspects" list of high performance innovators. The majority will suggest that, for a variety of reasons, it won't work in their companies. The explanations vary – cost, senior management objections, failed previous experiments, size of operation, the belief that it may work in manufacturing but not in other sectors, and so on.

So let me conclude with a challenge. Alan Bollard, when Governor of the Reserve Bank, argued that New Zealand's route out of the crisis post-2008 was through trade and productivity. In other words, we had to produce better, high-quality, high-priced goods and services that the world wanted. His was a call for the high road, including a shift to a high performance model, where possible and appropriate. In the intervening four years, we have seen little to give us confidence that his message has been wholeheartedly adopted. Perhaps there is a mission for the HR profession and HRINZ in taking Dr Bollard's message and giving it teeth.