

Legislation for Participation: an Overview of New Zealand's Health and Safety Representative Employee Participation System.

LEIGH-ANN HARRIS*

Abstract

New Zealand's Health and Safety in Employment Amendment Act, 2002 favours increasing worker participation in occupational health and safety (OHS) via a system of health and safety representatives. This amendment gives workers the right to 'have a say' in the running of their organisations, and has significant potential for improving the working environment and making working life more democratic. This paper chronicles the political conflict that hampered the union movement's attempts to enshrine representatives within New Zealand OHS law, outlines the current legal provisions for employee participation set out in the country's principal OHS statute and looks at how the legislation is supported via state patronage of training courses for representatives. Research into what is known about the implementation and operation of OHS employee participation systems in New Zealand is presented, with particular reference to the health and safety representative. A future research agenda is proposed.

Introduction

Employee participation is a cornerstone of systematic occupational health and safety management (OHSM), which has become the dominant legislative strategy for improving workplace health and safety across industrialised nations. Under OHSM, employers are responsible for OHS and have a general duty to implement processes for hazard management (Frick, Jensen, Quinlan and Wilthagen, 2000). Employee participation is seen as fundamental to this system because workers' practical knowledge of the production process can contribute to the effective management of hazards, and their cooperation is seen as vital for OHS improvements to be implemented successfully (Walters and Frick, 2000). Consequently, contemporary reform of OHS legislation, regulation and policy throughout many industrialised countries attempts to ensure employees' participate in OHSM (Bryce and Manga, 1985). Participative OHSM is not only embedded in international covenants, such as the European Union Framework Directive 83/391 and ILO Convention 155, but is also a requirement in the statutes of economies such as Canada, Australia and, more recently, New Zealand. Health and safety (HS) representatives, or workers mandated to represent workers' interests in relation to health and safety, are commonly endorsed as the primary model of participation (Walters, 2005).

International research, particularly from Britain, shows legal compulsion is critical in stimulating the establishment of representative structures for worker participation in OHS (Glendon and Booth, 1982; Leopold and Beaumont, 1982; Lewchuk, Robband Walters, 1996). Legislation provides guidance on the form and nature of participation and legitimises representatives' rights to resources, thus enabling participation (Walters, 2005). While New Zealand's principal OHS statute, the Health and Safety in Employment (HSE) Act 1992, requires employers to adopt an OHSM strategy (Frick and Wren, 2000), curiously, provisions for employee participation were originally negligible (Harcourt, 1996; Wren, 1997).

* Research Officer; Centre for Ergonomics, Occupational Safety and Health; School of Management; Massey University

A decade passed and the introduction of the HSE Amendment Act 2002 provided a supporting condition for employee participation in New Zealand workplaces. For the first time, workers had an enforceable right to participate in OHS beyond the traditional domain of collective bargaining, with the HS representative promoted as the primary mechanism for workers to channel their views. Harris (2004: 9) recognised the significance of this amendment as “break[ing] new ground for New Zealand”. In effect, the legislation heralded a new era for a country in which legally based employee participation schemes were eschewed (Harris, 2004), and representative worker participation was rare (Haynes, Boxall and Macky, 2005). Amendment of the HSE Act gave New Zealand workers similar rights to workers in other Western industrialised countries and improved conformance with ILO Convention 155 (New Zealand Government, 2008).

This paper describes the development and features of current New Zealand OHS legislation, with emphasis on the rights of HS representatives. I explain the genesis and progression of legislation for employee participation in OHS, which has tended to be framed to support the underpinning ideology of the prevailing employment relations legislation. It points to training as a necessary part of the infrastructure to ensure effective employee participation, and looks at what is known about the implementation and operation of the legislation within workplaces. Questions are raised as to how representatives are participating in workplace OHS, and how effective their activity is likely to be in terms of improving health and safety outcomes and extending employee ‘voice’ in managing New Zealand organisations.

Origins of New Zealand legislation for HS representatives

The possibility of a legal framework for HS representatives was mooted in the early 1980s when there was a surge of interest in OHS regulatory and administrative reform in New Zealand and abroad (for more on the reforms see Lamm, 1994; 2010; Wren, 1997; 2002). New Zealand’s trade unions instigated calls for reform following serious industrial accidents. Unions, with the Labour Party as their political ally, advocated legislative-based HS representatives and OHS committees as a means of empowering workers to protect their health and safety. Yet, employers’ representatives and the National Party wanted OHS reforms to empower employers to manage OHS and to limit workers’ rights to participate in order to minimise potential conflict and disruption (Wren, 1997). Employee participation, particularly legislative-based HS representatives, became a contentious political issue that dominated the reform process.

Conflict over legislated HS representatives and committees heightened when capital and labour were brought together at the Advisory Committee for Occupational Safety and Health (ACOSH). Established in 1985 as a tripartite platform, ACOSH had a broad agenda: OHS legislative and administrative reform (Wren, 1997). Yet, broader issues were marginalised as the proposed introduction of compulsory HS representatives and committees dominated the agenda for the first 18 months (Harcourt, 1996). According to Wren (1997), the reason for this dominance was that both employers and union representatives continually engaged in passionate debate without apparent compromise or resolution. Unions wanted representatives’ rights to be protected in law, but employers resisted the notion of legal compulsion, preferring arrangements to be voluntarily determined in the workplace subject to employer discretion (Wren, 2002). Indeed, employers opposed any legal reforms that would give workers greater influence in decisions about OHS and wider issues affecting their working lives, as demonstrated by their objections to statutory based industrial democracy schemes proposed by the Committee of Enquiry into Industrial Democracy in the late 80s (Harris, 2004).

To hasten OHS reform, the chair of ACOSH sought to appease employers’ and workers’ representatives by stipulating the introduction of a voluntary code of practice for HS representatives

and committees that would become mandatory if uptake was limited. The Department of Labour (DOL) (1987) issued the *Code of Practice for Health and Safety Representatives and Health and Safety Committees* to all factories employing more than 10 staff (Mullen, 1990). Employers had no influence on the code's content (Wren, 1997), which is perhaps the reason for the Employers Federation simultaneously releasing its own code that, apparently, attempted to minimise union influence within workplaces (Mullen, 1990).

Accounts suggest that neither code was willingly or widely adopted. For example, of the 427 factories that Moir (1989) surveyed, 51% reported making no changes in response to the codes, while Mullen's (1990) results revealed that only 30% of factories (n=385) were willing to voluntarily adopt the codes.

Union demands for compulsory representative employee participation appeared to be satisfied when significant reform was proposed via the Occupational Safety and Health (OSH) Bill 1990. The Labour Government's OSH Bill recommended an OHSM framework, including provisions for HS representatives and committees (Wren, 1997). When Wren interviewed a union official years later, the official declared: "The OSH Bill really was the union agenda, that was our Bill, that was what we wanted" (Wren, 1997: 116). However, any union celebrations were short-lived. The OSH Bill was withdrawn by the National Government after the party's victory at the 1990 General Election, which shifted the influence on legislative reform in favour of employer interests (Campbell, 1995; Wren, 1997). The new National Government handed employers the opportunity to progress OHS reform and redress what they perceived to be a power imbalance that immoderately favoured workers' interests.

In 1992, the National Government enacted major OHS legislative and administrative reform by passing the HSE Act. A policy of state paternalism whereby employers were told which hazards to manage and how, was abandoned in favour of a system that obliged employers to manage risks created in the course of business activity by implementing OHS management systems with guidance from prescriptive performance standards (Allen and Clarke, 2006; Gunningham and Johnstone, 2000; Wren, 1997). The HSE Act emphasised employers' responsibility for hazard management but conferred workers few rights to participate (Harcourt, 1996).

Employee participation, a fundamental cornerstone of OHSM, was a victim of this legislative reform and managerial prerogative was protected and promoted. Unlike the OSH Bill, the HSE Act contained no legal requirements for HS representatives or committees as these were perceived to be inconsistent with the neo-liberal philosophy that underpinned the concurrent changes to the employment relations regime (Lamm, 2010; Wren, 1997). Ratification of the Employment Contracts Act (ECA) 1991 ended nearly a century of centralised conciliation and voluntary arbitration in favour of a decentralised system that gave managers the right to determine terms and conditions of employment, including OHS (Jeffrey, 1995).

Alignment of the HSE Act with the ECA meant that provisions perceived to obfuscate managerial prerogative were omitted from the country's principal OHS statute (Anderson, 1991). Employers were obliged to give employees opportunities to assist with hazard management, but these provisions 'lacked teeth' and were unenforceable (Harcourt, 1996). Rights of workers to participate in OHS remained weak during the employers' ascendancy from 1991 to 1999.

Election of the fifth Labour Government in 1999 saw yet another shift in political influence and attempts to ameliorate employer dominance and restore a sense of balance to the employment relationship. Upon return of the Labour Party to Government, Minister of Labour, Margaret Wilson, proposed a package of employment relations reforms intended to improve workers' rights, including

emendations to the HSE Act (Lamm, 2010). OHS legislative reform was prompted by concerns about the efficacy of the HSE Act to protect workers given New Zealand's high rate of occupational illness, injury and fatality relative to other developed countries (Wilson, n.d.). Wilson and leadership of the New Zealand Council of Trade Unions (NZCTU) agreed that the poor OHS record was attributable to deficiencies in the HSE Act, particularly the omission of strong rights for employee participation (Harris, 2004).

In 2001, Margaret Wilson introduced the HSE Amendment Bill, which included provisions for elected HS representatives and OHS committees (Harris, 2004). She saw representative employee participation as an important mechanism for reducing the country's high level of occupational injury and fatality (Wilson, n.d.). She primarily based this assumption on findings from a British study by Reilly, Paci and Holl (1995), the reliability of which has since been seriously questioned (Nichols, Walters and Tasiran, 2004). The study's findings were used to justify that "legislated employee participation, in the form of health and safety representatives and committees, reduces the overall costs and incidence of injury by up to 50 percent" (Wilson, n.d.: 3).

Amendment of the HSE Act was also intended to facilitate the aims of the Labour Government's new piece of employment relations legislation, the Employment Relations Act (ERA) 2000 (Wilson, n.d.), which again reflected the Government's propensity to couch OHS legislation within the context of employment relations policy (Wren, 2002). The ERA's objective is: "to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship" (Wilson, 2004: 16). Wilson surmised that employee participation in OHS would support the ERA's objectives by increasing communication and cooperation between workers and employers (Lamm, 2010).

Faced with the renewed prospect of legislation for employee participation, employers' representatives opposed the HSE Amendment Bill. For instance, Business New Zealand (2002) questioned the need for the amendment, citing a downward trend in workplace accidents since the introduction of the HSE Act. Other accounts suggest that, paradoxically, the HSE Act failed to improve the country's OHS performance (Lamm, 2010). Minister Wilson sought to appease employers by reaffirming managerial prerogative and ensuring that the legislation could accommodate employee participation schemes already in operation (Harris, 2004). The HSE Amendment Bill was enacted as the HSE Amendment Act 2002, and contained statutory provisions for HS representatives for the first time in New Zealand's history.

Legislation for Participation: the HSE Amendment Act's Provisions for Employee Participation

Under the HSE Amendment Act, employers are responsible for workers' health and safety, but employee participation is fundamental to this process as it ensures all people with relevant knowledge can contribute to improving OHS (s.19A). To support this co-operation, the law created a general duty on employers to involve employees in OHS.

The HSE Amendment Act requires employers to "provide reasonable opportunities for ... employees to participate effectively in ongoing processes for improvement of health and safety" (s.19B[1]). These "processes" are referred to in sections 6-13 of the HSE Amendment Act (s.19B [2]) and give employees the right to:

- participate in the process of taking all practicable steps to ensure their working environment is safe and healthy (s.6);

- participate in identifying and assessing hazards, including recording and investigating accidents (s.7);
- participate in controlling significant hazards via elimination (s.8), isolation (s.9) or minimisation (s.10);
- results of workplace OHS monitoring (s.11);
- information about emergency procedures, hazards and controls (s.12); and
- training and supervision in the use of plant, objects, substances and equipment (s.13).

When determining how employees participate in these processes, employers must consider workplace contextual variables (s. 19[B]), such as the nature of hazards, whether employment is permanent or temporary, number(s) of worksite(s) and staff numbers. Employee count is an important variable because it determines whether an employee participation system is required.

One of the significant changes introduced by the HSE Amendment Act is the obligation on employers to negotiate with their employees and any relevant union(s) to determine an employee participation system (Hay, 2003). If a business employs fewer than 30 staff, a request by one employee or a union representative is sufficient to oblige that employer to develop a system. Businesses with more than 30 staff must have an employee participation system. Parties to the employment relationship have to co-operate in good faith to design, implement, maintain and review a system that allows employees to participate in OHS. The notion of good faith aligns the HSE Amendment Act with the ERA, and implies that this process is characterised by information sharing, cooperation and trust (Wilson, 2004).

Other than these requirements, the HSE Amendment gives workplaces freedom to determine the nature of their employee participation systems (s.19C). Parties can decide whether employees will participate in OHS directly with management or via representative channels, such as HS representatives, OHS committees or both. They also have scope to determine the roles and functions of these representative participatory mechanisms(DOL, 2002b). Schedule 1A of the HSE Amendment Act, or the 'default system', provides guidance on what *may* be included in an employee participation system. This system has to be implemented if parties cannot agree on how employees will participate (s.19D).

Central to the model of employee participation in the default system is the HS representative. The default system advocates democratic election of representatives, but an election is not required if there is only one nominee. If there are no nominees, the position should be considered vacant. The number of HS representatives at a workplace should be determined with reference to contextual variables, such as the type(s) of work performed and the way in which employees are grouped at worksite(s). A maximum of five HS representatives should participate in OHS committee meetings and must constitute at least half the committee's membership. Further, the default system specifies a range of possible HS representative functions. Taken verbatim from Schedule 1A (Part 2), representatives are:

- a) to foster positive health and safety management practices in the place of work:
- b) to identify and bring to the employer's attention hazards in the place of work and discuss with the employer ways that the hazards may be dealt with:
- c) to consult with inspectors on health and safety issues:
- d) to promote the interests of employees in a health and safety context generally and in particular those employees who have been harmed at

work, including in relation to arrangements for rehabilitation and return to work:

- e) to carry out any functions conferred on the representative by –
 - i. a system of employee participation; or
 - ii. the employer with the agreement of the representative or a union representing the representative, including any functions referred to in a code of practice.

However, the code of practice referred to in section e) ii does not exist, as consensus could not be reached regarding the content. In 2004, the Minister of Labour appointed a tripartite committee to develop a code (Wilson, 2005). According to one participant, members lost “goodwill” after a series of meetings and the committee dissolved in 2005 as parties struggled to agree on the content, suggesting lingering class conflict. Disagreement centred on whether HS representatives appointed by management were legitimate and when the default system should become mandatory (Bob White, Senior Policy Analyst, DOL, personal communication, 8 May 2009). While a code of practice never eventuated, the DOL produced guidelines to assist with the interpretation of the HSE Amendment Act (DOL, 2002a,b; 2003).

Under the HSE Amendment Act, HS representatives are also conferred special rights. Notably, they are entitled to:

- access information about OHS systems and issues (s.12 [2]);
- make recommendations about OHS matters to which the employer must implement or provide a written explanation as to why the proposal will not be adopted (s.19B [4]); and
- two days paid leave annually to attend approved HS representative training courses (s.19E), but this is subject to negotiation of the employee participation system.

Further, representatives have rights to advise workers to refuse to perform work that is likely to cause serious harm (s.28), and to issue their employer a hazard notice (s.46). The latter should describe a hazard and list possible solutions for its control. Notice should only be issued if the employer fails to address a hazard that the representative has previously raised in an attempt to facilitate a resolution. Recognising that employers might unfairly discriminate against those who exercise these rights, representatives have access to personal grievance proceedings if they perceive they have been disadvantaged because of their OHS activities (ERA s.104 and 107).

These statutory rights provide representatives with a degree of power but are not intended to be arbitrarily used. Rights related to the prevention of harm and hazard notices only extend to representatives that have attended approved training courses (s.46A). ‘Approved’ means that the course has been certified by the Minister of Labour and supports the aims of the HSE Amendment Act (s.19G). Thus, the HSE Amendment Act explicitly endorses the need for formal training opportunities for representatives if they are to utilise the avenues of influence available under law.

Provision and Funding of HS Representative Training

The NZCTU was the first organisation to develop a two-day training course for HS representatives, and to appeal to ACC to fund its delivery (Wilson, 2005). Commentators regarded this as a strategy to increase union membership (Harris, 2004), which may be why employers initially expressed a “considerable degree of scepticism” towards the initiative (Wilson, 2005). Possibly to convey political neutrality, ACC agreed to subsidise HS representative training courses delivered by both the NZCTU and EMA so that all representatives could attend for free or at minimal cost. This funding

has helped ensure that, of the 12 institutions approved to train HS representatives, the NZCTU and EMA are the country's largest providers of training for employee participation in OHS (Paul Fitzgerald, Employment Relations Education Authority, DOL, personal communication, 12 February 2010). Both organisations offer three two-day courses, the content of which is briefly outlined in Table 1. Theoretically, this training should increase representatives' capacity to participate in OHS management in the short-term, ultimately reducing accident and injury rates over the long-run (Johnson and Hickey, 2008).

Table 1. NZCTU and EMA HS representative training course content: stages 1-3

Stage	Content
One	Provides an overview of the HS representative role, OHS legislation and components of OHS management systems (Johnson and Hickey, 2008).
Two	Focuses on the accident investigation process (Johnson and Hickey, 2008).
Three	Teaches representatives how to measure OHS outcomes, 'sell' recommendations for OHS improvements and informs them about the return-to-work and rehabilitation processes (EMA, n.d.; NZCTU, 2007).

Government subsidy of HS representative training facilitates operation of the HSE Amendment Act by relieving employers of the financial costs associated with training representatives. Justification for this funding is embedded in the DOL's *Workplace Health and Safety Strategy to 2015*, which regards employee participation as a key injury prevention strategy (New Zealand Government, n.d.). Yet, despite the apparent centrality of employee participation to New Zealand's injury prevention efforts, economic downturn has seen a reduction in Government funding of HS representative training. Since 2009, ACC only subsidises courses run by NZCTU, EMA and Impac for representatives from high risk industry sectors, including metal manufacturing, agriculture, construction, forestry, meat processing, public health and road transportation (Paul Fitzgerald, Employment Relations Education Authority, DOL, personal communication, 3 December 2008). Transferring training costs to businesses in sectors beyond these industry classifications is likely to result in reduced attendance at courses (Lamm, 2010), thus potentially signalling the erosion of a mechanism shown to support New Zealand's representatives (Johnson and Hickey, 2008). However, the impact of this funding reduction is yet to be evaluated.

Evaluation of New Zealand's OHS Employee Participation Systems

In spite of the legal and state patronage of employee participation in OHS, surprisingly little is known about the implementation, operation or effectiveness of OHS employee participation systems within New Zealand's workplaces (Harris, 2010; Lamm, 2010). The subject has received scant academic attention but government agencies, under the fifth Labour-led Government, commissioned social marketing research agencies to conduct some evaluative research (Colmar Brunton, 2004; Johnson and Hickey, 2008).

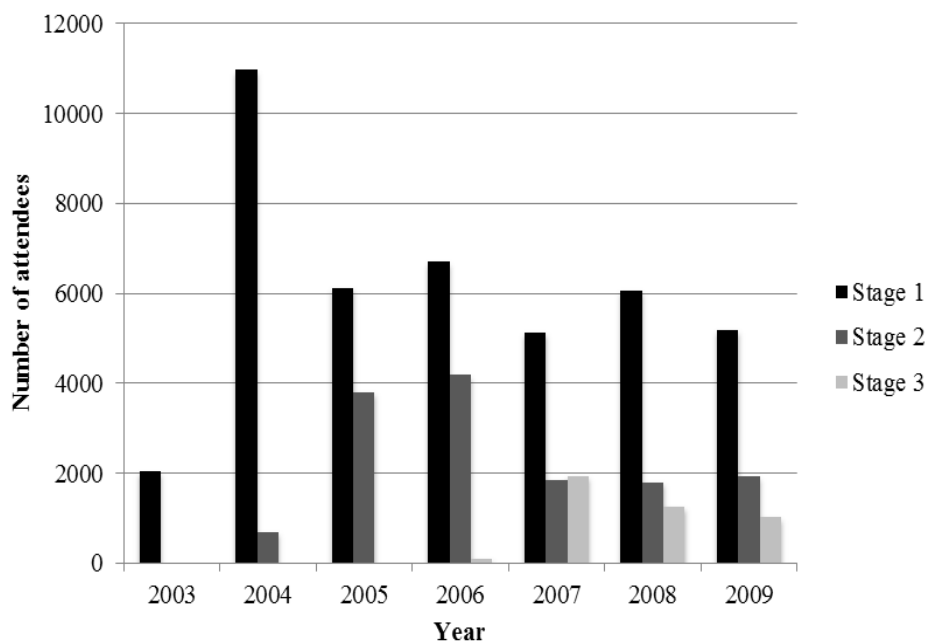
Quantitative evaluations of New Zealand's OHS employee participation systems

Soon after the HSE Amendment Act came into force, the DOL contracted Colmar Brunton (2004) to determine the Amendment's impact on the prevalence and nature of employee participation in OHS as well as employers' attitudes towards the matter. Of a national telephone survey of 600 employers, the majority (75%) reported that employees were able to participate in OHS, particularly via

meetings (business size indeterminate due to contradictory descriptions of participants). Employers were found to have surprisingly positive attitudes towards employee participation with three quarters agreeing that employee involvement in OHS was beneficial, the most popular reason being that it was “important to involve employees in health and safety matters”(Colmar Brunton: 10). It was argued that employers most favourable to participation were those with representative participatory structures established at their workplaces, but reporting inconsistencies make it impossible to ascertain prevalence. According to Colmar Brunton (2004, Table 6), 16% of employers confirmed that they had an OHS committee, 35% had HS representatives and 60% had neither. Yet, elsewhere in the report, Colmar Brunton (2004) reported that, more optimistically, 49% of the sample had a committee, 64% had HS representatives and only 27% had neither representative participatory structures. Disconcertingly, these discrepancies may influence Government policy and are being perpetuated. For instance, Harris (2004) used the figures in Table 6 of Colmar Brunton’s report to suggest that the prevalence of representative structures was low in New Zealand, claiming: “60% of all employers stated that they had neither a health and safety committee nor a health and safety representative!” (2004: 7). Additionally, it was impossible to ascertain from Colmar Brunton (2004) whether participatory mechanisms existed voluntarily prior to the HSE Amendment Act or came about in response to it.

Attendance figures at approved HS representative training courses suggest, however, that the HSE Amendment Act had a stimulatory effect on employee participation. Figure 1 shows that attendance figures for stage one peaked the year after the HSE Amendment Act came into force, and numbers have remained steady at between 5,000–6,000 participants. From 2003-2009, a cumulative total of 42,233 representatives attended stage one. Yet, only a minority of attendees appear to progress to the advanced stages, and training providers cite low attendance from construction, transport and on-hire sectors (Allen and Clarke, 2006).

Figure 1. Attendees at approved HS representative training courses (2003-2009)



Source: Paul Fitzgerald, Employment Relations Education Authority, DOL, personal communication, 12 February 2010

Attendance at training courses has been positively interpreted as an indication that the HS representative model has traction. In 2005, President of the NZCTU claimed New Zealand’s HS representative system had reached “critical mass” (Wilson, 2005), while the DOL (2007) inferred

that the volume of course participants suggested there was a “growing pool of skilled and experienced representatives...making a significant difference to New Zealand’s occupational health and safety performance” (p.19). It is unclear whether this statement is speculative or based on findings from in-house, unpublished research. I found evidence to support the DOL’s proposition via an ACC Civil Servant who provided access to Research New Zealand’s (Johnson and Hickey, 2008) unpublished evaluation of HS representative training courses. Notably, the combined evaluation of the NZCTU and EMA’s courses indicated that HS representatives are potentially improving the country’s OHS performance by contributing to OHSM. Of the 290 attendees interviewed by telephone, most (>80%) reported facilitating the identification of hazards and communicating OHS information to workers. HS representatives’ tendency to focus on operational rather than strategic OHS activities is a consistent theme internationally (Brun and Loiselle, 2002; Gaines and Biggins, 1992; Hillage, Kersley, Bates and Rick, 2000; Tragardh, 2008).

While Research New Zealand’s (Johnson and Hickey, 2008) study provides insight into how New Zealand HS representatives enact the role, it shares limitations common to questionnaire surveys. Notably, it fails to explain the nature and extent of representatives’ participation, particularly within the workplace, is restricted to the perspectives of individual representatives and does not develop qualitative insight into the experiences of HS representatives.

Qualitative evaluation of New Zealand’s OHS employee participation systems

A cross-perceptual study carried out by Harris (2010) serves to complement and enhance knowledge gained from quantitative studies. Harris’ two organisational case studies were large metal manufacturers committed to employee participation in OHS. The investigation focussed on the HS representative role as it had been interpreted and enacted in New Zealand workplaces within the bounds of the HSE Amendment Act. Data were collected via semi-structured interviews with eight HS representatives and a range of actors shown to influence the representative role, including line managers, workers, OHS managers, senior managers and a union representative. Thematic analysis of the interviews revealed that, whilst the HSE Amendment Act stimulated the establishment and formalisation of representative employee participation structures, Businesses A and B had diverse interpretations of the purpose of the HS representative, which seemed to influence role enactment.

Business A introduced HS representatives and an OHS committee to comply with the HSE Amendment Act and secure an ACC levy discount under the Workplace Safety Management Practices (WSMP) programme. Yet, in contravention of the legislation, and apparently without worker opposition or a union to represent worker interests, the OHS manager determined the HS representative role unilaterally and communicated her expectations ‘top down’ to representatives. The representatives’ purpose was to take responsibility for OHS management and to provide workers with an avenue of redress if their health and safety was jeopardised. Unsurprisingly, HS representatives had a ‘managerialist’ interpretation of their role and undertook compliance and monitoring functions. Two of the four representatives were typecast as ‘administrators’ because they sought to improve health and safety by administering their unit’s OHS management systems, and were vital in accrediting the systems to a basic, ‘primary’ standard under the WSMP programme. Business A’s other two representatives were typecast as ‘workshop inspectors’ because they primarily informed workers of their OHS obligations (e.g. to wear personal protective equipment) and monitored compliance. They were perceived to have improved workers’ attitudes towards OHS. In essence, Business A’s representatives acted akin to managers rather than workers’ representatives. Yet, co-workers perceived that their representatives represented their interests and provided a legitimate channel to articulate OHS concerns. Workers gave the impression that, through their representatives, they had a greater say in the running of their organisations, findings that may ameliorate concerns over the ‘representativeness’ of managerial defined HS representative systems (Wright and Spaven, 1999).

In contrast to the relative infancy of Business A's employee participation system, Business B institutionalised HS representatives in the 1970s under union auspices to service workers' interests. Still, the HSE Amendment Act prompted the formalisation and expansion of this system beyond the unionised workforce and an employee participation agreement, outlining the HS representative role, was negotiated between management and workers. Findings suggest that details of this agreement were generally not well communicated or known, leaving the role to be interpreted 'bottom up' by workers and managers. Within this context, representatives used their technical knowledge to participate in hazard management, which is perhaps akin to the form of participation that theorists and legislators envisaged as the appropriate type of engagement. Notably, two of the four representatives were typecast as 'problem solvers' because they focussed on seeking technical solutions to manage hazards and facilitated improvements to production from an OHS perspective. The other two representatives acted like 'craft experts' by asserting specialist craft-based expertise at OHS committee meetings to influence the development of standards and procedures for the management of specific hazards. Both of Business B's representative 'types' were perceived to give workers a legitimate channel to raise OHS concerns.

Harris (2010) also found that, commonly, representatives from both businesses seemed to foster the secondary aims of the HSE Amendment Act. All appeared to act in good faith to enhance the interests of management and workers, even though their approaches to the role varied, as demonstrated by the four identified role types.

HS representatives' role enactment appeared to be influenced by a range of factors. A particular influence was how the purpose of the HS representative was defined and communicated within the organisation, especially whose interests (management or workers) influenced role definition and how well expectations were communicated. Also pertinent was representatives' expert power based on their formal skills/qualifications, OHS knowledge, organisational knowledge and ability to form coalitions. Finally, role enactment appeared to be related to the representatives' job roles, which determined their access to resources and the types of activities in which it was acceptable for them to participate.

Harris's (2010) findings are, however, likely to reflect 'best practice' rather than the 'norm' based on the choice of research site and industry. For HS representatives to be better placed to improve OHS, there is a clear need for research into how the role is played out in workplaces throughout New Zealand.

Future Research Agenda

There remains considerable scope to broaden New Zealand's research agenda on employee participation in OHS. Firstly, it is important to ascertain the prevalence and nature of employee participation systems within New Zealand workplaces to determine where support should be directed to improve operation of the law. At present, basic facts such as the prevalence of HS representatives and OHS committees are unknown (Lamm, 2010). The nature of employee participation systems established within businesses is also unclear, particularly the extent to which the default system has been adopted and how representative systems function in combination with the direct participation systems that seem to be popular in New Zealand (Colmar Brunton, 2004).

Second, provisions for employee participation within the HSE Amendment Act should be evaluated against the purposes for which they were intended. Effort should, therefore, be directed to determining how employee participation in OHS affects rates of occupational injury. It should be noted that the relationship between representative employee participation and injury rates is difficult

to measure because of significant methodological limitations associated with complex cause-and-effect relations and variations in reporting standards (Shearn, 2005; Walters, 2005). Researchers, thus, recommend the use of mixed methodologies and triangulation to attain more reliable results (Bryce and Manga, 1985; Nichols, et al., 2004). Other means of measuring changes in OHS performance, such as assessing improvements to organisations' HS management operations, can also be useful proxy indicators of the effectiveness of representative participation (Walters, 2005).

Third, research is needed to determine how provisions for employee participation within the HSE Amendment Act affect employment relations and employee participation in New Zealand. Important questions pertain to the nature of representative participation: how 'representative' is it and to what extent are workers able to exercise 'voice' in the determination of employee participation systems, but also in operational and strategic decisions as individuals and as part of OHS committees?

Consideration of wider contextual circumstances is essential to enhance understanding of why the legislation fails and succeeds. Legal protections for HS representatives have remained intact under the fifth National Government, thereby allaying earlier fears that a change in Government might jeopardise their statutory rights (Harris, 2004). However, the HS representative system has faced challenges, particularly recognition that the prevailing economic downturn is likely to negatively impact on workers' ability to participate in OHS (Lamm, 2010; Wilson, 2005). International evidence suggests that employee participation schemes wane during recessions as managers tend to be receptive to the views of employees with skills and qualifications in demand on the labour market (Jensen, 1997; Walters and Frick, 2000). Additionally, managers are often more willing to share decision-making power with workers if they perceive them to have competent OHS knowledge, which is often enhanced by workers' attendance at HS representative training (Leopold and Beaumont, 1982). Yet, reduced Government funding of HS representative training courses potentially reduces workers' access to OHS knowledge and skills, particularly if they come from industry sectors that are not prioritised and funded by ACC. This raises questions about the status of, and support mechanisms for, employee participation in those industry sectors that are not considered 'high risk' by New Zealand's OHS administrative authorities.

In spite of potentially counterproductive economic conditions, other mechanisms could encourage employee participation. The Partnership Resource Centre and Workplace Productivity Group have helped to raise awareness of the link between employee participation and productivity (Lamm, 2010). Additionally, the ACC's WSMP programme offers financial incentives to businesses that demonstrate sound OHS management systems, including arrangements for employee participation (ACC, 2008). Harris (2010) found that the WSMP programme motivated a particular business to implement employee participation. However, further research could explore, more widely, the extent to which the WSMP programme promotes employee participation in OHS and influences the nature of that participation.

Conclusion

This overview of the development and features of current New Zealand OHS legislation highlights the significance of the HSE Amendment Act's provisions for employee participation in OHS. For the first time, workers were given a legitimate and enforceable right to participate in matters concerning their health and safety. HS representatives were introduced to help reduce the country's high level of occupational injury and illness, and to foster good employment relations. They form a significant part of New Zealand's injury prevention strategy and potentially give workers greater influence over the conditions under which they are employed to protect their health and safety.

The historical perspective adopted here suggests that legal support was necessary to establish employee participation in OHS within New Zealand. Employers, fearing that representatives would encroach on managerial prerogative, expressed significant political opposition to legislation for representatives. Evidence shows that there was limited uptake of the voluntary codes of practice for HS representatives and committees in the late 1980s, so legislation was necessary to stimulate institutionalisation of these representative participatory structures.

Since the passing of the HSE Amendment Act, attendance figures at HS representative training courses suggest this model of employee participation has been established in New Zealand workplaces. While training has shown to be beneficial, this critical support mechanism for representatives is in jeopardy following Government cuts to the funding of course attendees. The impact of funding changes as well as the HSE Amendment Act's provisions for employee participation in OHS, however, remains to be seen.

Revisiting the origins of the legislation and what is known about employee participation in OHS within New Zealand workplaces serves as a reminder of the potential contribution that representatives can make. If the full potential of the HSE Amendment Act to improve working lives is to be realised, research should be undertaken into the role of HS representatives and employee participation in OHS more generally. Moreover, research must link back to the spirit and intent of the legislation, which this paper goes some way to clarifying.

References

- ACC. (2008). *Measuring your Capabilities in Workplace Safety Management: ACC Workplace Safety Management Practices Audit Standards*. Retrieved from http://www.acc.co.nz/PRD_EXT_CSMP/groups/external_communications/documents/guide/wcm000512.pdf
- Allen and Clarke. (2006). *Occupational Health and Safety in New Zealand. Technical Report Prepared for the National Occupational Health and Safety Advisory Committee (NOHSAC Technical Report 7)*. Wellington: NOHSAC.
- Anderson, G. (1991), The Employment Contracts Act 1991: An Employers' Charter? *New Zealand Journal of Industrial Relations*. 16(2): 127-142.
- Brun, J-P. and Loiselle, C.D. (2002), The Roles, Functions and Activities of Safety Practitioners: The Current Situation in Quebec. *Safety Science*. 40: 519-536.
- Bryce, G.K. and Manga, P. (1985). The Effectiveness of Health and Safety Committees. *Relations Industrielles*. 40(2): 257-283.
- Business New Zealand. (2002). *Joint Responsibility Needed for Health and Safety*. Retrieved from <http://www.businessnz.org.nz/doc/415/Jointresponsibilityneededforhealthandsafety>
- Campbell, I. (1995). State Regulation of Occupational Health and Safety. In C. Slappendel (ed.) *Health and Safety in New Zealand Workplaces*. (pp. 81-116). Palmerston North, New Zealand: Dunmore Press.
- Colmar Brunton. (2004), *Health and Safety Employee Participation*. Retrieved from <http://www.osh.govt.nz/publications/research/employee-participation-report.pdf>

Department of Labour. (1987), *Code of Practice for Health and Safety Representatives and Health and Safety Committees*. Retrieved from <http://www.osh.dol.govt.nz/order/catalogue/archive/safetyrepscode.pdf>

Department of Labour. (2002a), *Fact Sheet: Employee Participation Systems*, Retrieved from <http://www.osh.govt.nz/order/catalogue/pdfs/employeeparticipationsystems.pdf>

Department of Labour. (2002b). *Fact Sheet: Health and Safety Representatives*. Retrieved from <http://www.osh.govt.nz/order/catalogue/pdfs/healthsafetyrepresentatives.pdf>

Department of Labour. (2003). *Involving Employees in Safety at Work: Developing an Approach that Suits your Workplace*. Retrieved from <http://www.osh.dol.govt.nz/order/catalogue/pdf/employee-involve.pdf>

Department of Labour. (2007), *Workplace Health and Safety Strategy for New Zealand to 2015: Snapshot of Progress 2006/07*. Retrieved from <http://www.dol.govt.nz/whss/snapshot06-07/WHSS-Strategy-snapshot06-07-monotone.pdf>

EMA. (n.d.), *Health and Safety Representative Training - Stage 3*. Retrieved from [http://www.ema.co.nz/Learning/Health And Safety Representative Training Stage3.html](http://www.ema.co.nz/Learning/Health%20And%20Safety%20Representative%20Training%20Stage3.html)

Frick, K., Jensen, P.L., Quinlan, M. and Wilthagen, T. (2000). Systematic Occupational Health and Safety Management – an Introduction to a New Strategy for Occupational Safety, Health and Well-Being. In K. Frick., P.L. Jensen., M. Quinlan and T. Wilthagen. (eds.). *Systematic Occupational Health and Safety Management: Perspectives on an International Development*. (pp.1-16). Oxford: Elsevier Science

Frick, K. and Wren, J. (2000). Reviewing Occupational Health and Safety – Multiple Roots, Diverse Perspectives and Ambiguous Outcomes. In K. Frick., P.L. Jensen., M. Quinlan and T. Wilthagen. (eds.). *Systematic Occupational Health and Safety Management: Perspectives on an International Development* (pp. 17-42). Oxford: Elsevier Science

Gaines, J. and Biggins, D. (1992). A Survey of Health and Safety Representatives in the Northern Territory. *Journal of Occupational Health and Safety, Australia and New Zealand*. 8(5): 421-428.

Glendon, I. and Booth, R.T. (1982). Worker Participation in Occupational Health and Safety in Britain. *International Labour Review*. 121(4):399-416

Gunningham, N. and Johnstone, R. (2000). The Legal Construction of OHS Management Systems. In K. Frick., P.L. Jensen., M. Quinlan and T. Wilthagen. (eds.). *Systematic Occupational Health and Safety Management: Perspectives on an International Development* (pp. 125-148). Oxford: Elsevier Science

Harcourt, M. (1996). Health and Safety Reform: A Review of Four Different Approaches. *Journal of Industrial Relations*. 38(3): 359-376.

Harris, L-A. (2010). *Health and Safety Representatives' Contributions to Occupational Health and Safety: Case Studies from New Zealand's Metal Manufacturing Sector: A Thesis Presented in Partial Fulfilment of a Master of Business Studies in Human Resource Management*. Palmerston North, New Zealand: Massey University.

- Harris, P. (2004). From Health and Safety to Employee Participation? The Impact of the New Zealand Health and Safety in Employment Amendment Act (2002). *International Employment Relations Review*. 10(1): 1-12.
- Hay, D.M. (2003). *Employee Participation: A Handbook for Health and Safety Representatives*. Palmerston North: Workplace Press
- Haynes, P., Boxall, P. and Macky, K. (2005). Non-Union Voice and the Effectiveness of Joint Consultation in New Zealand. *Economic and Industrial Democracy*. 26(2): 229-256.
- Hillage, J., Kersley, B., Bates, P. and Rick, J. (2000). *Workplace Consultation on Health and Safety (Contract Research Report 268/2000)*. Health and Safety Executive.
- Jeffrey, G. (1995). The Industrial Relations Context of Workplace Health and Safety. In C. Slappendel (ed.). *Health and Safety in New Zealand Workplaces* (pp. 157-180). Palmerston North: Dunmore Press.
- Jensen, P.L. (1997). Can Participatory Ergonomics Become 'The Way We Do Things in This Firm' – the Scandinavian Approach to Participatory Ergonomics. *Ergonomics*. 40(10): 1078-1087.
- Johnson, M. and Hickey, L. (2008). *Health and Safety Representative Training Evaluation (Research Report #3550)*. Wellington: Research New Zealand.
- Lamm, F. (1994). Australian and New Zealand Occupational Health and Safety: a Comparative Analysis. *Asia Pacific Journal of Human Resources*. 32(2): 57-77.
- Lamm, F. (2010). Participative and Productive Employment Relations: The Role of Health and Safety Committees and Worker Representation. In E. Rasmussen (ed.). *Employment Relationships: Workers, Unions and Employers in New Zealand* (pp. 168-184), Auckland: Auckland University Press.
- Leopold, J.W. and Beaumont, P.B. (1982). Joint Health and Safety Committees in the United Kingdom: Participation and Effectiveness – a Conflict? *Economic and Industrial Democracy*. 3: 263-284.
- Lewchuk, W., Robb, A.L., and Walters, V. (1996). The Effectiveness of Bill 70 and Joint Health and Safety Committees in Reducing Injuries in the Workplace: The Case of Ontario. *Canadian Public Policy*. 22(3): 225-243.
- Moir, R. (1989). Safety Reps Code Not Well Known. *Safeguard*, 2:20-21.
- Mullen, E.A. (1990). Voluntarism in Occupational Health and Safety: The New Zealand Response. *New Zealand Journal of Industrial Relations*. 15: 129-143.
- New Zealand Government. (n.d.), *Workplace Health and Safety Strategy: Strategy*. Retrieved from <http://www.dol.govt.nz/whss/>
- New Zealand Government. (2008). *Health and Safety In Employment Amendment Bill (No 2): Explanatory Note*. Retrieved from <http://www.brookers.co.nz/bills/current/b082411.pdf>

Nichols, T., Walters, D., and Tasiran, A.C. (2004). *The Relation Between Arrangements for Health and Safety and Injury Rates - The Evidence-Based Case Revisited (Working Paper Series Paper 48)*. Retrieved from <http://www.cardiff.ac.uk/socsi/resources/wrkpaper-48.pdf>

NZCTU. (2007). *Stage Three Health and Safety Rep Training: Course Outline*. Retrieved from <http://union.org.nz/sites/union.org.nz/files/Stage%20Three%20Course%20Outline.pdf>

Reilly, B., Paci, P. and Holl, P. (1995). Unions, Safety Committees and Workplace Injuries. *British Journal of Industrial Relations*. 33(2): 275-288.

Shearn, P. (2005). *Workforce Participation in the Management of Occupational Health and Safety*. Retrieved from http://www.hse.gov.uk/research/hsl_pdf/2005/hsl0509.pdf

Tragardh, B. (2008). The Role of Health and Safety Representatives in Sweden – the Implementation of the EEC Directive 89/391. *Studies of Organization and Society*. 1

Walters, D. (2005). *A Review of the Evidence of the Effectiveness of Representation and Consultation on Health and Safety at Work (Report for the Accident Compensation Corporation)*. Retrieved from <http://worksafereps.org.nz/davidwalters>

Walters, D. and Frick, K. (2000). Worker Participation and the Management of Occupational Health and Safety: Reinforcing or Conflicting Strategies? In K. Frick., P.L. Jensen., M. Quinlaw. and T. Wilthagen (eds.). *Systematic Occupational Health and Safety Management: Perspectives on an International Development* (pp. 43-66). Oxford: Elsevier Science.

Wilson, M. (n.d.). *Change to the Health and Safety in Employment Act: Employee Participation*. Retrieved from <http://www.osh.dol.govt.nz/publications/hseamend-cabinet/cabinet-participation010717.pdf>

Wilson, M. (2004), The Employment Relations Act: A Framework for a Fairer Way. In E. Rasmussen (ed.) *Employment Relationships: New Zealand's Employment Relations Act* (pp. 9-21). Auckland: Auckland University Press.

Wilson, R. (2005). *Worker Participation: A Key to Success*. Retrieved from <http://union.org.nz/policy/worker-participation-a-key-to-success>

Wren, J. (1997). *Understanding the Process of Change in Occupational Safety and Health Policy in Advanced Industrialised Democracies: An Examination of the International Literature, and the Experience of New Zealand Between 1981-1992: A Dissertation Presented in Partial Fulfilment of the Requirements for the Degree of Doctor of Philosophy*. Palmerston North, New Zealand: Massey University.

Wren, J. (2002). From the 'Balkanisation of Control' to Employer Management Systems: OHS Policy and Politics in New Zealand 1981-1992. In M. Lloyd (ed.). *Occupational Health and Safety in New Zealand: Contemporary Social Research*. (pp. 43-66). Palmerston North: Dunmore Press.

Wright, C. and Spaven, M. (1999). Who Represents Whom? The Consequences of the Exclusion of Unions from the Safety Representation System in the UK Offshore Oil and Gas Industry. *Employee Relations*. 21(1): 45-62.