

Article 22 of the Constitution of the ILO

First Report made by the Government of New Zealand
on the

OCCUPATIONAL SAFETY AND HEALTH CONVENTION, 1981 (No. 155)

I. *Please give a list of the main legislative enactments and regulations, policy statements and other official documents which apply the provisions of the Convention. Where this has not been already done please forward copies of the texts in question to the International Labour Office with this report.*

Please indicate whether these laws, regulations, statements or documents have been adopted or modified to permit, or as a result of, ratification of the Convention.

The Health and Safety in Employment Act 1992 ("the HSE Act"), plus regulations made under the HSE Act, are the principal pieces of legislation covering occupational health and safety in New Zealand. Other legislation that is relevant to health and safety in New Zealand is:

- Hazardous Substances and New Organisms Act 1996 ("the HSNO Act")
- Injury Prevention, Rehabilitation, and Compensation Act 2001 ("the IPRC Act")
- Employment Relations Act 2000 ("the ERA")

Copies of the legislation referred to in this report are available at www.legislation.govt.nz.

II. *Please indicate in detail the provisions of the above-mentioned laws, regulations, statements or documents which give effect to each of the following Articles of the Convention and any other measures under which they are applied. In addition, please provide any information specifically requested below under individual articles. If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has had this effect. Please also specify what steps have been taken to implement the Provisions of this Convention requiring action by the competent authority or authorities.*

If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations has requested additional information or has made an observation on the measures adopted apply the Convention, please support the information asked for or indicate the action taken by your Government to settle the points in question.

Introduction

The HSE Act came into force on 1 April 1993 and was substantially amended during 2002. These amendments came into force on 5 May 2003. The HSE Act requires a general

standard of care that addresses workplace diversity. The HSE Act has the following core elements, these are:

- The scope and applicability of the HSE Act to a place of work. It covers people in a place of work and in its vicinity; responsibilities are allocated to those with control of hazards in workplaces to take 'all practicable steps' to ensure the safety of people in the workplace.
- "All practicable steps". This means that people with duties under the HSE Act are required to take all steps that are practicable to take in the circumstances to ensure that others are not harmed, bearing in mind the benefits (reducing risk) and cost.
- The HSE Act requires the systematic identification and elimination, isolation or minimisation of significant hazards in the workplace in that order of priority.
- Requiring employers to provide reasonable opportunities for employee participation and development of employee participation systems.
- Enforcement by HSE inspectors. This is generally by warning and notices requiring improvements, prohibiting work, applying infringement fees and ultimately through criminal prosecution.

The HSE Act is designed to be consistent with the objectives of the Injury Prevention, Rehabilitation and Compensation Act, the Hazardous Substances and New Organisms Act 1996, the Employment Relations Act 2000, and the removal of the Crown's immunity to prosecution proposed in the Crown Organisations (Criminal Liability) Act, 2002.

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all branches of economic activity.

2. A Member ratifying this Convention may, after consultation at the earliest possible stage with the representative organisations of employers and workers concerned, exclude from its application, in part or in whole, particular branches of economic activity, such as maritime shipping or fishing, in respect of which special problems of a substantial nature arise.

3. Each Member which ratifies this Convention shall list, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation, any branches which may have been excluded in pursuance of paragraph 2 of this Article, giving the reasons for such exclusion and describing the measures taken to give adequate protection to workers in excluded branches, and shall indicate in subsequent reports any progress towards wider application.

Please indicate the provisions which ensure that the measures of protection required under the Convention apply to all branches of economic activity.

The principal piece of legislation in this regard is the HSE Act. The HSE Act deals with all health and safety issues in all workplaces and during all work activity. The HSE Act is drafted to ensure that it imposes duties on a wide range of working relationships. The key concept in

understanding how various economic activities are covered is the definition of a “place of work”. A place of work is defined very broadly under the HSE Act. A place of work is any place where any person is to work, is working for the time being, or customarily works for gain or reward. This definition allows for the coverage of mobile workers and workplaces such as a ship or an aircraft. The HSE Act sets duties on different parties in places of work including employers, employees, persons in a control of a place of work, those engaged in a contract for service, the self-employed and principals.

There are limitations to the extent of coverage. These are the New Zealand Defence Force, and private homes. The New Zealand Defence Forces are excluded from the HSE Act’s provisions relating to accident investigation provisions and inspection of high security defence areas. Occupiers of a home do not have duties to people who perform residential work.

Article 2

1. This Convention applies to all workers in the branches of economic activity covered.

2. A Member ratifying this Convention may, after consultation at the earliest possible stage with the representative organisations of employers and workers concerned, exclude from its application, in part or in whole, limited categories of workers in respect of which there are particular difficulties.

3. Each Member which ratifies this Convention shall list, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation, any limited categories of workers which may have been excluded in pursuance of paragraph 2 of this Article, giving the reasons for such exclusion, and shall indicate in subsequent reports any progress towards wider application.

Please specify to which categories of workers the provisions giving effect to the Convention apply.

The provisions of the legislation apply to all categories of workers. Under the HSE Act an employee is someone who is employed to do any work (other than domestic work) for hire or reward under a contract of service and, in relation to any employer, means an employee of the employer. There are further specific provisions in relation to those gaining work experiences and on-the-job training in the workplace under section 3 of the Act. Those engaging in on-the-job training or who are participating in a job experience programme are covered by the HSE Act excepting the provisions relating to employee participation, part 2A of the HSE Act. Those who are receiving training or on work experience are treated as employees, while those who have agreed to provide the experience or training are to be treated as employers. Persons engaged by a home owner to undertake work are not considered to be an employee of the home owner for the purposes of this Act.

Article 3

For the purpose of this Convention—

*(a) the term **branches of economic activity** covers all branches in which workers are employed, including the public service;*

*(b) the term **workers** covers all employed persons, including public employees;*

(c) the term **workplace** covers all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer;

(d) the term **regulations** covers all provisions given force of law by the competent authority or authorities;

(e) the term **health**, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work.

PART II. PRINCIPLES OF NATIONAL POLICY

Article 4

1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

Please indicate the measures taken to formulate, implement and periodically review the national policy provided for in this article.

The wider New Zealand legislative framework represents a coherent national policy on occupational health and safety. The key pieces of legislation in this regard are the following:

- The Health and Safety in Employment Act 1992 and associated regulations
- The Employment Relations Act 2000
- The Hazardous Substances and New Organisms Act 1996
- Injury Prevention, Rehabilitation, and Compensation Act 2001.

A full discussion of the individual pieces of legislation, their purpose and function, can be found in Article 8 of this report.

Formulation of the national policy occurs during legislative change. This is when either new legislation is being considered or existing legislation is being amended. Public input is called for by submission on legislation being considered by parliament. A select committee of the New Zealand parliament then considers these submissions. Select committees comprise members of parliament from all political parties. The submissions are in a written form and submitters can request to be heard by a select committee.

Policy change primarily occurs through government sponsored review. In 1988 an Advisory Council on Occupational Safety and Health was formed by the Government to develop a framework for workplace safety and health. Some of the resulting recommendations contributed to the formation of the HSE Act in 1992. The HSE Act was reviewed again in 1996 by a select committee of the New Zealand Parliament, and in 2002 legislative change led to amendments being made to the HSE Act.

New Zealand Injury Prevention Strategy

The New Zealand Injury Prevention Strategy ("NZIPS")¹ was launched in 2003. It establishes a framework for the injury prevention activities of government agencies, non-governmental organisations, communities and individuals.

The NZIPS is based on a vision for a safe and injury-free New Zealand. To attain this vision two goals are identified. These goals aim to achieve a safety culture in New Zealand and create safe environments. To achieve these goals ten objectives and associated actions to be undertaken were set. Objective nine is to develop and implement national injury prevention strategies for priority areas. Of the six priority areas identified one was workplace injury (including disease).

To address this priority area a Workplace Health and Safety Strategy for New Zealand ("WHSS") was set up. Both NZIPS and the WHSS are part of New Zealand's framework for preventing injury and occupational disease and promoting improvement in health and safety in New Zealand workplaces. The broad aims are:

- serve to inspire a sector around a common vision
- provide a strategic direction for the sector
- create an improved infrastructure to support health and safety in workplaces
- put issues in perspective and give a sense of priority
- identify gaps and areas where gains can be made.

Please describe the manner in which the most representative organisations of employers and workers were consulted.

Social partners (the most representative organisations of employers and workers) are consulted during the formation of government policy and during the development and implementation of legislation. Both employer and union groups have the option to submit to parliamentary select committees and they often take the opportunity to do so.

Article 5

The policy referred to in Article 4 of this Convention shall take account of the following main spheres of action in so far as they affect occupational safety and health and the working environment:

(a) design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents, work processes);

(b) relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of the workers;

¹ The strategy can be viewed on the internet at www.nzips.govt.nz

(c) training, including necessary further training, qualifications and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health;

(d) communication and co-operation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level;

(e) the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.

Please indicate the extent to which the policy to which reference is made in Article 4 of the Convention covers the main spheres of action enumerated in this article.

In relation to the material elements of the workplace there are duties under the HSE Act, and the HSNO Act. Employers have a general duty to take all practicable steps to ensure the safety of their workers and workplace. This involves providing and maintaining a safe working environment, ensuring that the plant is safe for employees, and ensuring that while at work employees are not at risk from work processes. The HSE Act further allows for a system of regulations and codes that cover best practice in specific situations. Regulations are made under section 21 of the HSE Act. They are made to control particular hazards, by industry, or with application to a range of hazards across all industries. Examples of regulations made in this area have included asbestos, mining, pressure equipment, cranes and passenger rope-ways. Approved codes of practice ("ACOP") are statements of preferred work practices or arrangements. Current ACOPs cover such matters as the design and manufacture of plant, protective clothing and equipment.

Under the HSNO Act new organisms or hazardous substances must be approved before use in New Zealand. This includes materials and substances that are used in the New Zealand workplace. New substances have to be approved for use by a statutory body, the Environmental Risk Management Authority ("ERMA"). If a hazardous substance or new organism is approved for use then controls are set for their application which all users must comply with. Enforcement of the Hazardous Substances provisions of the HSNO Act in the workplace is performed by the HSE inspectorate.

(5b) In general the creation of a safe and healthy workplace is a basic part of the employer and employee relationship. Two pieces of legislation support this relationship. The Employment Relations Act (ERA) promotes good faith relationships amongst employees, unions, and employers. The HSE Act promotes strong relationships and co-operation in the workplace on occupational health and safety issues. Under the HSE Act employers have duties to employees and others in the workplace in regard to general safety. Specifically there are duties in relation to plant, hazard management, training and supervision. These are set out under sections 18, 7-10, 13. The duties in relation to hazard management in particular involve eliminating, minimising or isolating potential hazards in that order of priority. This can involve hazards in the areas of work organisation and process that impact on the capacity of workers. Issues of work time and organisation may also be employment relations issues. As such they will be covered by the ERA and will be a matter for good faith bargaining between the employer, employees, and any union representing employees.

(5c) Under the HSE Act the employer must take all practicable steps to ensure that employees either have the requisite skills and knowledge to safely undertake their work or

are supervised by someone who has appropriate skills and knowledge in that use or experience in work, plant or particular substances.² In practice this means providing training where necessary in health and safety. Further, where health and safety representatives are part of an agreed employee participation system there is provision for them to undertake health and safety training to assist them in performing their role effectively.

The training and qualification of the inspectorate is set through legislation and regulation via the HSE Act. Members of the inspectorate are required to possess either the required levels of health and safety knowledge from experience, or have passed prescribed examinations. Inspectors are recruited for their specialist qualifications and experience.

National qualifications in occupational safety and health are available at all levels. The national qualifications framework is administered by the New Zealand Qualifications Authority ("NZQA"). The NZQA's role is the provision and quality assessment of qualifications in New Zealand. This includes qualifications that deal with occupational health and safety. The New Zealand Industry Training Organisation is recognised by NZQA as the national standard setting body for occupational safety and health qualifications at all levels of learning, from entry level into work through to university level qualifications. More detail is provided under Article 14.

(5d) One of the objects of the HSE Act is to recognise that successful management of health and safety issues is best achieved through co-operation in the workplace and through the input of those doing the work. This involves communication and co-operation between employer, employee and their representative in the workplace. To aid in this communication the HSE Act formalises a system of employee participation. This is to allow the input of all parties into health and safety processes. Employers, employees, and any unions representing them are required to co-operate in good faith and develop, agree, implement and maintain an employee participation system. Such a system can include any matter the parties agree on. The HSE Act gives some examples of matters that can be included in an employee participation system. Default provisions apply should the parties not agree on an employee participation system. The HSE Act requires employers and employees to act in good faith when dealing with one another.

(5e) Workers and their representatives, as long as they fulfil their duties under the HSE Act, are protected from disciplinary action. This means an employee taking all practicable steps to ensure their safety at work, and that through no action or inaction cause harm to others will not be in breach of their duties. Workers have further specific rights that protect them under the HSE Act and the ERA. Under the HSE Act section 28(a) workers have a right to refuse dangerous work (see article 6 for a fuller description of this right).

The ERA provides workers with rights in employment relations, which apply to occupational safety and health. There is provision for the right to strike by employees if there is a reasonable belief that it is justified on the grounds of health or safety.³ Workers have general recourse to mediation services in respect of employment relations problems which include health and safety issues.

² Health and Safety in Employment Act 1992 s13 & s13b

³ Employment Relations Act s84

Article 6

The formulation of the policy referred to in Article 4 of this Convention shall indicate the respective functions and responsibilities in respect of occupational safety and health and the working environment of public authorities, employers, workers and others, taking account both of the complementary character of such responsibilities and of national conditions and practice.

Please indicate the provisions which specify the respective functions and responsibilities in respect of occupational safety and health and the working environment of:

- **public authorities**
- **employers**
- **workers**
- **any other interested parties.**

The functions and responsibilities where applicable of public authorities, employers, workers and others are set out under legislation. In relation to the HSE Act the relevant parties are employees, employers and the Government. The Government's role in enforcement and provision of information is described in the HSE Act. The Department of Labour ("the Department") is charged with administering the HSE Act. This is primarily achieved through the establishment and maintenance of an inspectorate.⁴ The Government also sets standards and regulations for particular workplace situations that require specific measures.⁵ Primary responsibility for health and safety within the workplace rests with the employer. The employer has duties in relation to the identification and management of hazards, information, and training and supervision. Employees in turn have to ensure their own safety while at work. Employees, their representatives, and employers have a responsibility to co-operate in good faith to establish and maintain employee participation systems.

Article 7

The situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals, either over-all or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results.

Please indicate what arrangements have been made for the reviews provided for in this article, specifying the intervals at which they take place.

Consultation with representative organisations of employers and employees in the development of a national policy occurs at both formal and informal levels. During legislative change and the formulation of regulations, consultation occurs with the social partners. This is done by direct consultation by Ministers and the Department with the social partners and by calling for submissions on legislative bills and presentations before a select committee of members of parliament.

⁴ Health and Safety in Employment Act 1992 ss29-38

⁵ Health and Safety in Employment Act 1992 ss20-24

At a more particular level the Department, industry groups, and employee groups examine problems particular to an industry sector proactively where possible or as they arise. This can involve specific initiatives to improve an industry's health and safety. The Department engages in programmes of inspection and education. Other government agencies such as the Accident Compensation Corporation (ACC) cooperate in this.

There is also provision for ministerial inquiries into problems with workplace safety and health.

Article 8

Each Member shall, by laws or regulations or any other method consistent with national conditions and practice and in consultation with the representative organisations of employers and workers concerned, take such steps as may be necessary to give effect to Article 4 of this Convention.

Please indicate what laws or regulations have been adopted to give effect to the policy called for by the Convention.

As mentioned in the discussion of Article 4, the body of New Zealand legislation constitutes a national policy on occupational safety and health. Explanations of the relevant pieces of legislation follow below.

Health and Safety in Employment Act 1992

Introduction

The HSE Act was enacted in 1992 and came into force on 1 April 1993. The HSE Act sets out to prevent harm to employees and others at work. The policy approach is a principles and performance-based approach to health and safety. It replaced earlier industry specific legislation. This was seen as more appropriate as to accommodate rapid changes in technology and as the types of work and workplaces became more diverse and complex.

The Object of the HSE Act

The object of the HSE Act is to promote the prevention of harm to all persons at work and other persons in, or in the vicinity of, a place of work by:

- promoting excellence in health and safety management, in particular through promoting the systematic management of health and safety; and
- defining hazards and harm in a comprehensive way so that all hazards and harm are covered, including harm caused by work-related stress and hazardous behaviour caused by certain temporary conditions; and
- imposing various duties on persons who are responsible for work and those who do the work; and
- setting requirements that:
 - relate to taking all practicable steps to ensure health and safety; and
 - are flexible to cover different circumstances; and

- recognising that volunteers doing work activities for other persons should have their health and safety protected; and
- recognising that successful management of health and safety issues is best achieved through good faith co-operation in the place of work and, in particular, through the input of the persons doing the work; and
- providing a range of enforcement methods, include various notices and prosecution so as to enable an appropriate response to a failure to comply with the HSE Act depending on its nature and gravity; and prohibiting persons from being indemnified or from indemnifying others against the cost of fines and infringement fees for failing to comply with the HSE Act.

The HSE Act itself sets out duties. These are supplemented by regulations, approved codes of practice, and guidelines.

Coverage

Coverage is broad and the HSE Act imposes duties on a wide range of working relationships in all places of work. There are duties on employers, people who control workplaces, the self-employed, principals to contracts, and employees.

The Place of Work

A place of work is defined broadly and means a place (which may be a part of a building, structure or vehicle) where any person is to work, is working for the time being or customarily works for gain or reward.

In relation to an employee, it includes a place, or part of a place under the control of the employer, where an employee:

- comes or may come to eat, rest or get first-aid or pay;
- comes or may come as part of their duties, to report in or out, get instructions, or deliver foods or vehicles; or
- may or must pass through to reach a place of work.

All Practicable Steps

“All practicable steps” is a phrase on which many of the duties in the HSE Act are based upon. It sets a standard that must be met by employees, employers, self-employed, people in control of workplaces, and principals.

All these people are required to take steps that are reasonably practicable. A step is practicable if it is possible or capable of being done. Whether a step is reasonable considers:

- the nature and severity of any injury or harm that may occur
- the degree of risk or probability of injury or harm occurring
- how much is known about the hazard and the ways of eliminating, isolating or minimising the hazard

- the availability and cost of safeguards.

The degree of risk and severity of potential injury must be balanced against the cost and feasibility of the safeguard. The cost of providing safeguards has to be measured against the consequences of failing to do so. It is not simply a measure of whether the person can afford to provide the necessary safeguards. Where there is a risk of serious, or frequent injury or harm, a greater cost in the provision of safeguards may be reasonable.

Any judgement of whether a safeguard was "reasonably practicable" is to be made taking common practice and knowledge throughout the industry into account.

The courts have referred to the current, "up-to-date" body of knowledge that is available to people. Failure to be familiar with this knowledge, or to follow it, is failing to take all practicable steps.

The concept of "reasonableness" is based on the legal principle of the "hypothetical reasonable person" and the way that he or she might behave in a particular situation. It is based on the values of society of the day and, in the end, will involve a value judgement.

The overall test is what would a reasonable and prudent person do in all the circumstances. There are no fixed guidelines. The question of what is reasonably practicable is always a matter of fact and degree in each situation.

All practicable steps apply to those matters that are known or it is reasonable to expect the duty holder to have known about.

Standards

The HSE Act sets out broad duties, which are supplemented by regulations, approved codes of practice and guidelines.

Regulations

Regulations made under the HSE Act describe particular requirements which apply to specific work situations. Like the HSE Act, regulations are enforceable and breaches may result in infringement fees or prosecutions and fines. For example, regulations have been made on such matters as asbestos, facilities required for the safety and health of employees, and certificates of competence for some kinds of work.

Approved codes of practice

Approved codes of practice ("ACOP") are guidelines which have been approved by the Minister of Labour under s20 of the HSE Act. They are statements of preferred work practice. ACOPs are the result of consultation between the Department and affected industry members. The requirements of an ACOP are not enforceable or mandatory but their observance is accepted as evidence of good practice by HSE inspectors and the Court. Examples of ACOPs that have been approved under the HSE Act are ACOPs relating to isocyanates, workplace noise, and forest operations.

Guidelines

Guidelines are developed by, or in conjunction with the Department. They may not have undergone a formal approval process. But, nevertheless, they are an important source of guidance for employers and others on how to comply with the HSE Act.

Employers' Duties

The main responsibility under the HSE Act is placed on the employer. The employer has a general duty to take all practicable steps to provide a healthy and safe workplace.

Employers have a duty to follow a process of identification, elimination and isolation of significant workplace hazards. If a hazard can be neither eliminated or isolated then the effects of the hazard must be minimised in that order of priority.

The HSE Act requires that the employer informs employees of a range of information on the hazards they may encounter or create in their work. It also requires that any information on the results of workplace health and safety monitoring be made available.

Employers have duties of supervision and training. They must ensure employees are either sufficiently experienced or supervised by an experienced person to perform their work safely. Employers must further ensure that employees are adequately trained.

Employees' Duties

Employees have duties to take all practicable steps to ensure their own safety at work and to ensure that their action or inaction does not cause harm to any other person.

Employee Participation

The HSE Act places a duty on employers to ensure that employees have reasonable opportunities to participate effectively in ongoing processes for the improvement of safety and health in the employees' workplace. All parties (employees, employers and any unions representing employees) must co-operate in good faith to develop, agree and maintain a system that sets out the ways in which the employee participation system will operate. If there is a failure to develop a system then a default mechanism applies (this is set out in the HSE Act) which requires the election of employee health and safety representatives.

Hazardous Substances and New Organisms Act

The HSNO Act manages potential risks that hazardous substances and new organisms may pose to the health and safety of people, communities and the environment in New Zealand. It pulls together the management of new organisms and hazardous substances into one comprehensive Act. In general, a hazardous substance includes any substance that can damage the environment or harm human health and safety. A new organism refers to any organism not legally present in the country before 29 July 1998.

Anyone wishing to introduce a hazardous substance or new organism (not already legally present in New Zealand) must apply to ERMA for approval to do so. If introduction is approved, the Authority will set national controls on the organism or substance to manage environmental risks and effects. The public are able to have input into decision-making

processes on approvals for hazardous substances and new organisms. All users of hazardous substances need to comply with the controls that are set throughout the substance's life cycle.

The Department enforces hazardous substances provisions of the HSNO Act in workplaces.

The Accident Compensation System

The Accident Compensation scheme provides accident insurance cover for all New Zealand citizens, residents, and temporary visitors. The scheme is based on a twenty-four hour no-fault principle. The scheme is managed by the Accident Compensation Corporation ("ACC"). The ACC is a Crown entity and is involved in injury prevention, collecting premiums, determining entitlement, buying services and advising the Government. The scheme is funded partly through levies and partly through appropriation. In terms of legislation, the scheme is governed by the IPRC Act. The scheme is delivered by the ACC and administered by the Department.

In regard to the health and safety legislative framework, the ACC plays an important role. As mentioned below (refer to interagency co-operation, paragraph 60) the ACC engages in injury prevention activities in the workplace and assists the Department in targeting key nonperformers. The ACC co-ordinates the provision of rehabilitative services. This also covers those harmed in the workplace. The ACC also provides incentives to companies and businesses that perform well in workplace health and safety. This involves reductions in the levies paid by businesses for enacting good safety management practices and partnership programmes with well-performing companies.

The ERA

The Employment Relations Act (ERA) is the legislation governing workplace relations in New Zealand. The ERA's key concept is the duty to act in good faith. This means that employers, employees, and unions must deal honestly and with transparency with each other. The ERA thus provides a framework for employees to organise and engage in good faith bargaining for collective agreements. It also provides specific rights in regard to health and safety. This includes being able to strike on the grounds of health and safety if necessary.

More generally, the HSE Act and the ERA are aligned. The HSE Act reflects and builds on the ERA's good faith requirements. The HSE Act allows for employee participation between the employer, employees, and any union representing employees based on good faith principles.

Interagency Co-operation

The Department and ACC co-operate in the maintenance and development of the health and safety framework in New Zealand. The two organisations integrate their systems and activities at a number of levels. Examples of such measures have included working with high-risk industries such as boat building, forestry and agriculture. The two organisations have engaged in targeting strategies with "poor-performing" employers to ensure greater legislative compliance in health and safety. Together they have also developed and implemented best practice products for employers, such as the code of practice on the use of all terrain vehicles (ATVs). The two organisations have developed a joint staff-training programme and a range of shared tools from information to financial incentives, which ensure consistency of delivery.

Please indicate the manner in which the representative organisations of employers and workers concerned were consulted.

Please see Article 4 for a discussion on how consultation with social partners occurs.

If this policy is being implemented by means other than laws or regulations, please indicate the method followed.

Article 9

1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.

2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.

Please supply information on the organisation and functioning of the inspection services responsible for the enforcement of laws and regulations concerning occupational safety and health and their working environment. Please indicate what penalties are applicable in the event of contravention.

1. The Inspectorate

The inspectorate is the primary means to ensure compliance with the occupational health and safety law in the New Zealand workplace. The relevant legislation is the HSE Act, the HSNO Act, and any pertinent regulations. In relation to international law New Zealand has previously ratified the Labour Inspection Convention, 1947 (No. 81).

The empowerment functions and the powers of entry of the inspectorate under the HSE Act are set out under sections 29-33. Inspectors' functions are to provide information and education to improve safety in the workplace, to ascertain whether the HSE Act is being complied with, and to take all reasonable steps to ensure that the HSE Act is complied with. Appointment to the inspectorate is based on appropriate health and safety qualifications and/or industry experience. Inspectors may also have experience and specialist knowledge of a particular industry. Currently, this includes high-risk industries such as forestry, construction and mining. There are other workplace health and safety professionals who have been recruited as accident prevention consultants, occupational health nurses and departmental medical practitioners. They provide specialist services in relation to their subject area. HSE inspectors are empowered to enter workplaces, use powers of investigation and inspection (sections 31(1)), and they have powers to take samples. Those with duties under the HSE Act are obliged to assist and not obstruct inspectors.

The inspectorate is further obliged to ensure that the provisions in relation to hazardous substances and new organisms of the HSNO Act are complied with in workplaces. The Department co-operates in enforcing the HSNO Act with other agencies where there is either a lack of knowledge of particular situations or there are overlapping responsibilities. The Department performs similar enforcement activities in relation to the HSNO Act as it does with the HSE Act. This includes compliance checks, providing education and advice on the HSNO Act, and prosecuting offenders under the HSNO and HSE Acts.

The inspectorate conducts activities at the branch, regional, and national levels as well. The Department organises inspection, information, and other programmes to meet specific local, regional or industry requirements. These activities may be to meet a need in a particular high-risk area, activity, or a particular hazard.

Nationally the inspectorate engages in the formulation of programmes and strategies for health and safety. These are done in consultation with employee, employer, and industry groups plus other relevant government agencies. There is a focus on particular high-risk industries, specific types of hazard, or particular types of employment relationship. All this contributes to the national inspectorate functions.

2. Penalties for violation of the law and regulations

The HSE Act, as mentioned, prescribes duties for employers, employees and others. Failure to observe a duty may lead to either the issuing of an infringement notice ("IN") or prosecution. These provisions set out a range of offences and penalties for breaches of the HSE Act. There are three main categories of offence depending on the seriousness of the breach and the offender's culpability.⁶

The IN is issued for an infringement offence, which can be a failure to comply with any of the provisions of the HSE Act.⁷ The IN allows for a more graduated response to less serious breaches of the HSE Act where a prosecution is not warranted.

The first category of offences under section 49 refers to offences where it can be proven that there was knowledge of the potential for serious harm by the offender. This is where a person takes an action, or fails to take action, knowing that it is reasonably likely to cause someone serious harm. These involve the highest culpability and as such have the highest fines and potential for imprisonment. Someone who has committed an offence is liable, if convicted under section 49, to imprisonment for up to 2 years, a fine of up to \$500,000 or both.

The second category of offences are "other offences" under section 50 of the HSE Act. The Crown only has to prove that the breach of a duty has occurred and that the person charged caused it by their action or inaction. Every person who commits an offence under section 50 is liable, on conviction to a fine of up to \$250,000. There is an exception to this fine level that applies to a set of circumstances where a person controlling a place of work failed to warn a workplace visitor of a significant hazard. In this case, they are liable on conviction for a fine of \$10,000.

Article 10

Measures shall be taken to provide guidance to employers and workers so as to help them to comply with legal obligations.

Please indicate what measures have been taken to give effect to this provision.

One of the main functions of the inspector under section 30 of the HSE Act is to provide information and education to employers, employees and other persons to improve health

⁶ S49 and s50 of the HSE Act

⁷ Health and Safety in Employment Act 1992 s50(1)

and safety of people at work. This is done at both an individual and national level. Individual inspectors engage in proactive education work with employees and employers. At a regional and national level the inspectorate as a whole takes part in education programmes and workshops on health and safety in the workplace. In the year to June 2008, of workplaces that completed the health and safety compliance or enforcement actions required of them, 92 per cent did so in a six-month period – well above the target of 75 per cent. The Health and Safety inspectorate delivered 4,700 forums and information visits and over 5,000 workplace assessments related to the HSE Act or HSNO.⁸

The Department co-operates with other injury prevention agencies on injury prevention and education strategies. The Department works with ACC in high-risk industries such as boat-building, forestry and agriculture. A range of tools, including information is used to target employers and employees in these industries. Dedicated websites⁹ provide information to employees, employers, and others with duties. The Department also provides a free telephone call centre which people can call to discuss any matter relating to workplace health and safety.

Article 11

To give effect to the policy referred to in Article 4 of this Convention, the competent authority or authorities shall ensure that the following functions are progressively carried out:

(a) the determination, where the nature and degree of hazards so require, of conditions governing the design, construction and layout of undertakings, the commencement of their operations, major alterations affecting them and changes in their purposes, the safety of technical equipment used at work, as well as the application of procedures defined by the competent authorities;

(b) the determination of work processes and of substances and agents the exposure to which is to be prohibited, limited or made subject to authorisation or control by the competent authority or authorities; health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration;

(c) the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases;

(d) the holding of inquiries, where cases of occupational accidents, occupational diseases or any other injuries to health which arise in the course of or in connection with work appear to reflect situations which are serious;

(e) the publication, annually, of information on measures taken in pursuance of the policy referred to in Article 4 of this Convention and on occupational accidents, occupational diseases and other injuries to health which arise in the course of or in connection with work;

(f) the introduction or extension of systems, taking into account national conditions and possibilities, to examine chemical, physical and biological agents in respect of the risk to the health of workers.

⁸ Department of Labour Annual Report 2007-08

⁹ www.dol.govt.nz and www.workinfo.govt.nz

Please indicate the extent to which the competent authority or authorities ensure that the functions enumerated in this Article are carried out.

(11a) The inspectorate enforces the HSE Act's duties and the associated regulations setting out duties regarding the design, construction and layout of businesses and plant/machinery.

(11b) The introduction of the HSNO Act in 1996 changed the way hazardous substances and organisms were controlled. If someone wishes to import, develop, or manufacture a new hazardous substance then they must gain approval from ERMA. The approval process includes the establishment of a set of controls for the hazardous substance. All users of a hazardous substance are required to comply with the controls set by ERMA on each hazardous substance they use. Further, specific regulations can be made under the HSNO Act to deal with specific substances and agents. Similarly, under the HSE Act regulations can also be made, such as in regard to asbestos.¹⁰ The asbestos regulations set out matters in relation to the handling, storage, disposal, and duties of all parties in the control of asbestos in the workplace.

(11c) The HSE Act sets out a procedure for the notification of occupational disease and injury.¹¹ Where a serious harm illness or injury occurs the employer, principal or self-employed person is required to notify the Department as soon as reasonably possible. Details of notification include such matters as what has occurred, to whom it has occurred, and where it happened. If necessary the Department then takes an action on notification. (See 11d for further details).

Statistics on occupational injury and illness have historically been available from individual injury prevention agencies. The Department holds data on serious harm injuries, on fatalities in the workplace, and prosecutions (which section of the HSE Act has been breached). The Department also maintains the Notifiable Occupational Disease System database ("NODS"). This is a voluntary notification system and contains information on the incidence of occupational disease in New Zealand. Similarly, ACC produces annual statistics from its injury claims database on injury and illness. These statistics include specific information on illness and injury in the workplace.

A review of New Zealand's injury data in 2000-01 led to the establishment of the Injury Information Manager ("IIM"). This position is held by Statistics New Zealand ("SNZ"), the national statistics agency. The IIM is responsible for integrating injury data from other agencies and producing data sets. The aim of this is to produce meaningful injury information, make data sets available for research and statistical purposes, and produce integrated data sets. In 2008, the Official Injury Statistics Programme was reviewed. It was recommended that the IIM should lead work to address two issues: to improve awareness and availability of the current official injury statistics information, and to improve the integration of data and scope the development of an official injury rate.

(11d) Inquiries into occupational illness and injury occur when the Department is advised of a general complaint of unsafe work; an accident, incident or other occurrence of serious harm. An inspector within the local branch office decides to what depth to investigate the case to determine if there has been a breach of the HSE Act. Further, in suspected or

¹⁰ HSE Asbestos Regulations 1998

¹¹ Health and Safety in Employment Act 1992 s(25)

confirmed cases of occupational illness or disease a Departmental Medical Practitioner (DMP) or occupational health nurse may investigate.

There is a further provision for the Minister responsible for the HSE Act to direct that an inquiry be held before a district court judge into any accident or occurrence of serious harm that happens in a workplace. This is a matter of ministerial discretion and would be based on the public interest. A judge appointed to lead such an enquiry has the powers of a commission of inquiry.¹² This means being able to appoint expert assistance and hold hearings. An inquiry report is provided to the Minister responsible for the HSE Act.

(11e) Information on the actions taken in regard to workplace safety and health can be found through the reports of government agencies. This includes the Department and ACC. The Department's Statement of Intent sets out the work programme for the year and what actions are to be taken. Complementing this is the Department of Labour's Annual Report. The report gives details on the progress made on the goals set out in the Statement of Intent. Similarly the ACC annual report gives details of actions taken on injury prevention in the workplace.

(11f) ERMA as empowered under the HSNO Act imposes national controls on hazardous substances and new organisms. These controls cover chemical, physical, and biological agents. Applicants for and users of hazardous substances and new organisms apply to ERMA for their use. After input from the public ERMA makes a decision. If hazardous substances or new organisms are approved then controls are set for their use.

Article 12

Measures shall be taken, in accordance with national law and practice, with a view to ensuring that those who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use--

(a) satisfy themselves that, so far as is reasonably practicable, the machinery, equipment or substance does not entail dangers for the safety and health of those using it correctly;

(b) make available information concerning the correct installation and use of machinery and equipment and the correct use of substances, and information on hazards of machinery and equipment and dangerous properties of chemical substances and physical and biological agents or products, as well as instructions on how hazards are to be avoided;

(c) undertake studies and research or otherwise keep abreast of the scientific and technical knowledge necessary to comply with subparagraphs (a) and (b) of this Article.

Please indicate what measures have been taken to give effect to this article.

(12a) In relation to plant machinery and equipment, there are duties under the HSE Act to ensure there are no health and safety dangers. Employers are required to ensure that plant used by employees in a workplace is designed, made, set-up and maintained to be safe. There are also regulations setting out requirements for designers, manufacturers, and suppliers of plant to workplace. They require that employers be given the information to fulfil this duty. Additional steps maybe required to ensure the safe use of the plant.

¹² Commissions of Inquiry Act 1908

Approved codes of practice may apply. There are also duties placed on persons selling or supplying plant for use in the workplace (s18(A)).

(12b) The Department by itself, and on occasion with the co-operation of interested group undertakes to provide specific information on best practice in the areas stated by the Article. It also makes available relevant information from overseas sources. This includes use of machinery, hazard management, and safe use of chemical, biological or physical agents. Information takes the form of approved codes of practice, safety guidelines and other forms of best practice documentation. There are also duties under the HSE Act's regulations which require the provision of information on such matters.¹³

(12c) The Department of Labour undertakes research on the matters discussed in the article and is required to provide policy research and advice to the New Zealand Government on issues of occupational safety and health. The Department in partnership with ACC and with the Health Research Council ("HRC") manages a joint research portfolio which provides money towards occupational health and safety research. The HRC is responsible for purchasing and co-ordinating health research in New Zealand. The Department of Labour also keeps abreast with international developments in this field.

Article 13

A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.

Please indicate the legislative or other provisions whereby the protection provided for in this Article is assured.

Under section 28(A) of the HSE Act employees may refuse to perform work that they believe is likely to cause them serious harm. The employee must, as soon as is possible, inform their employer of their refusal to work. The employee is required to discuss the problem with their employer in an attempt to resolve it. The employee may continue to refuse to carry out that work if, after discussing the matter with their employer, the problem is still not resolved and the employee believes on reasonable grounds that the work is likely to cause them serious harm. Reasonable grounds exist if, for instance, a health and safety representative believes that the work an employee is required to do is likely to cause them serious harm and advises them accordingly.

Some employees will perform work, which, by its nature, carries a high degree of risk and consequently the potential for serious harm, for example the Police or Fire Service. In such a situation employees may only refuse that work if the understood risk of serious harm has materially increased in a given situation. That is to say that the risk of harm has become significantly more likely.

If an employee refuses work because it is likely to cause serious harm, they must perform any alternative duties that their employer reasonably requests. This is as long as these duties are within the scope of their employment contract.

¹³ An example is s66 of the HSE Regulations 1995

It should be noted that in general in a situation involving the “right to refuse” the employer, the employee, and the health and safety representative must deal with each other in good faith. Further questions about whether the applications of the right to refuse apply to a specific situation may be an employment relationship problem and a matter for the Employment Relations Act.

Article 14

Measures shall be taken with a view to promoting in a manner appropriate to national conditions and practice, the inclusion of questions of occupational safety and health and the working environment at all levels of education and training, including higher technical, medical and professional education, in a manner meeting the training needs of all workers.

Please indicate what measures have been taken to give effect to this Article.

These measures can be found through an examination of the National Qualifications framework in regard to health and safety. The New Zealand National Qualifications Framework (NQF) is designed to provide:

- nationally recognised, consistent standards and qualifications
- recognition and credit for all learning of knowledge and skills.

Framework qualifications are quality assured and nationally recognised. Administered by the New Zealand Qualifications Authority (“the NZQA”), the Framework is a way of structuring national qualifications.

The Framework is a three-pronged quality system:

- national standards are registered
- these are used by accredited organisations
- a moderation system ensures national consistency.

National Certificates and Diplomas: There are more than 18,000 registered unit standards and 800 National Certificates and National Diplomas covering almost every area of work and learning.

National standards: Each standard registered on the Framework describes what a learner needs to know or what they must be able to achieve. Unit standards are developed by experts in their fields.

Because the standards are nationally agreed, learners' achievements can be recognised in a number of contexts. Their knowledge and skills will be transferable between qualifications and providers. All organisations accredited to assess against standards recognise Framework credits awarded by others.

Standard setters: The Framework is built on a process of consensus. Standards are drafted by expert groups (engineers for engineering standards, geographers for geography standards and so on). The draft standards are then circulated to stakeholders for comment and contribution. Once standards are agreed to and registered, they are subject to review by

stakeholders and experts on a regular basis. This allows for standards to be refined and updated over time.

Industry Training Organisations (ITOs) develop standards and national qualifications for specific industries and professions - they are responsible for about half the standards on the Framework. The New Zealand Industry Training Organisation is recognised by the NZQA as the standard setter for occupational safety and health.

The NZQA's Framework Registration team quality assures unit standards, National Certificates and National Diplomas that have been developed by ITOs and other standard setting bodies.

The Framework has eight levels of progression. Levels 1-3 are of approximately the same standard as senior secondary education and basic trades training. Levels 4-6 approximate to advanced trades, technical and business qualifications. Levels 7 and 8 equate with advanced qualifications of graduate and postgraduate standard.

Framework qualifications consist of:

- National Certificates - at all levels but normally found at levels 1-4
- National Diplomas - at levels 5 and upwards.

Fields: The Framework consists of 17 subject fields one of which covers Health. The Health field in turn comprises 8 Sub-fields, one of which is Occupational Safety and Health. Within the Occupational Safety and Health sub-fields are four Domains against which unit standards are registered. The Domains cover:

- occupational health and safety practice
- occupational health nursing
- occupational hygiene
- workplace health and safety management.

Article 15

1. With a view to ensuring the coherence of the policy referred to in Article 4 of this Convention and of measures for its application, each Member shall, after consultation at the earliest possible stage with the most representative organisations of employers and workers, and with other bodies as appropriate, make arrangements appropriate to national conditions and practice to ensure the necessary co-ordination between various authorities and bodies called upon to give effect to Parts II and III of this Convention.

2. Whenever circumstances so require and national conditions and practice permit, these arrangements shall include the establishment of a central body.

P1 – Please indicate what arrangements have been made to ensure the necessary coordination between the various authorities and bodies responsible for giving effect to the Convention at the national level.

P2 – Please indicate whether a central co-ordinating body has been established.

(15 P1) The NZIPS provides a co-ordinated approach and a framework for injury prevention across the New Zealand government sector. Stakeholders such as regional, local, non-government organisations, businesses and community groups in the wider community are involved as well. Specific government agencies lead strategies on national injury prevention priorities and associated action plans. One of those strategies is the Workplace Health and Safety Strategy (WHSS). The Department leads this strategy. Further discussion on the NZIPS, and the WHSS can be found under article 4 on p5.

A central co-ordinating body – the Workplace Health and Safety Council (the Council), was established by Cabinet in 2006. The Council is based on a tripartite partnership agreement with Business New Zealand and the New Zealand Council of Trade Unions, and Government, represented by Ministers of Labour and ACC. The purpose of the Council is to build consensus and provide advice to the Ministers on workplace health and safety matters. This includes advice on:

- ways to progress the Strategy
- the medium to long-term implementation opportunities and challenges for the Strategy across agency or sector boundaries
- the different support requirements and interests within and across stakeholder representatives with regard to the Strategy
- the workplace health and safety matters of national or international significance.

The Council normally meets up to four times a year and is supported by a secretariat based at the Department of Labour, with involvement from other departments as appropriate.

Member numbers provide a balanced representation of employer and employee interests. The ex officio appointments are:

- the Ministers responsible for workplace health and safety
- the President of the New Zealand Council of Trade Unions
- the Chief Executive of Business New Zealand.

Two representatives of employees are appointed by the Minister of Labour following nomination by the President of the New Zealand Council of Trade Unions and a further two representatives of business are appointed by the Minister of Labour following nomination by the Chief Executive of Business New Zealand. With the exception of ex-officio members, members are appointed for terms of up to 3 years.

PART IV ACTION AT THE LEVEL OF THE UNDERTAKING

Article 16

1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

2. *Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.*

3. *Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.*

Please indicate the legislative or other provisions whereby employers are required to take the action called for in this Article.

Employers have a general duty under section 6 of the HSE Act to take all practicable steps to ensure the safety of employees while they at work. This general duty is expanded on by a number of specific duties. In particular, employers have a duty to ensure that work plant machinery used by employees in the workplace is safely designed, made, set-up and maintained.¹⁴ There is a further duty for employers to ensure a safe working environment for employees. This covers matters such as work processes.

In terms of chemical, physical, and biological substances or agents in the workplace, employers are required to ensure that employees are not exposed to hazards in or around their place of work. This is an extensive duty and requires that work systems consider the "arrangement, disposal, manipulation, organisation, processing, storage, transport, working use of things".¹⁵ Users of hazardous substances or new organisms under the HSNO Act are obliged to comply with any controls that are set on them.

(16/3) As part of their duties under section 10(2)(b) of the HSE Act employers have a duty to provide, make accessible and ensure the use of protective clothing and equipment to prevent any harm that may arise out of a hazard.¹⁶

Article 17

Whenever two or more undertakings engage in activities simultaneously at one workplace, they shall collaborate in applying the requirements of this Convention.

Please indicate the legislative or other provisions whereby undertakings in the circumstances specified in this Article are required to collaborate in applying the requirements of the Convention

Being a performance-based piece of legislation, the HSE Act addresses coordination and collaboration on health and safety in workplaces with two or more undertakings through a combination of duties on various parties¹⁷, as well as the express requirement for employers to take "all practicable steps" to ensure the safety of employees at work.

In relation to section 18 of the HSE Act, a principal is someone who engages any other person (other than an employee, to do any work for gain or reward). This does not include a

¹⁴ Health and Safety in Employment Act 1992 s6(c)

¹⁵ Health and Safety in Employment Act 1992 s6(c)

¹⁶ Health and Safety in Employment Act 1992 s10(2)(b)

¹⁷ The duties of the person in control of a place of work (s16) and the duties in relation to the principal-contractor relationship (s18).

householder who contracts someone to do work on or in their own home. Therefore, any person who contracts someone to do a job will have duties under the HSE Act. A principal must take all practicable steps to ensure that subcontractors, contractors, and the employees of a subcontractor or contractor are not harmed while performing any work they are engaged to do. The principal's duty is limited to matters which they can reasonably be expected to control.

A contractor to a principal in a workplace in turn has a general duty to take all practicable steps to prevent harm to their employees. Under the HSE Act a contractor is defined as a person engaged by any other person (otherwise than as an employee) to do any work for gain or reward. The term gain or reward can mean payment in kind or an exchange of services as well as money. The contract does not have to be in writing. The contractor has duties as they may be one or more of the following: a self employed person, an employer (if they employ others), and a principal (if they engage subcontractors to work for them).

To codify the HSE Act's requirement for collaboration in multi-employer workplaces, Cabinet agreed (POL Min (08) 9/7) to amend the HSE Act by adding a new duty in Part 2 of the Act. Part 2 contains the core of the HSE Act's duties for employers and others to manage health and safety in the workplace. The amendment would create a specific duty to collaborate where business undertakings share a workplace at the same time. This amendment will strengthen the HSE Act's requirements for collaboration in multi-employer workplaces by:

- reinforcing the need for employers and others to meet their existing duties
- framing the duty in a way that is logically consistent with the Act as a whole, and
- being flexible and non-prescriptive for the range of situations in which the duty will apply.

The Amendment Bill is currently on the Parliamentary Order Paper to be progressed during 2009.

Article 18

Employers shall be required to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.

Please indicate the legislative or other provisions whereby employers are required to take the action called for in this article.

Employers have a general duty to take all practicable steps to ensure the safety of employees while at work. In regard to providing health and safety facilities, employers have a specific duty under section 6(b) of the HSE Act to provide and maintain facilities at work for employees for their safety and health.¹⁸This may include measures such as first-aid facilities, emergency equipment, and other facilities for the safety and health of employees. Employers also have a duty under section 6(e) to develop procedures for dealing with emergencies that may arise while employees are at work.

¹⁸ Health and Safety in Employment Act 1992 s6(b)

Article 19

There shall be arrangements at the level of the undertaking under which--

(a) workers, in the course of performing their work, co-operate in the fulfilment by their employer of the obligations placed upon him;

(b) representatives of workers in the undertaking co-operate with the employer in the field of occupational safety and health;

(c) representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure occupational safety and health and may consult their representative organisations about such information provided they do not disclose commercial secrets;

(d) workers and their representatives in the undertaking are given appropriate training in occupational safety and health;

(e) workers or their representatives and, as the case may be, their representative organisations in an undertaking, in accordance with national law and practice, are enabled to enquire into, and are consulted by the employer on, all aspects of occupational safety and health associated

with their work; for this purpose technical advisers may, by mutual agreement, be brought in from outside the undertaking;

(f) a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.

Please indicate the legislative and/or practical measures taken to give effect to the various sub-paragraphs of this Article.

(19a) Employees under the HSE Act are obliged to contribute to a safe and healthy workplace. The employee under section 19 has a duty to take all practicable steps to ensure their own safety while at work.¹⁹ These steps include wearing protective clothing and the use of protective equipment provided by the employer. Employees also have a duty to ensure that their action or inaction at work does not cause harm to others.

(19b) Workers' representatives parties as part of an employee participation system are expected to: "co-operate in good faith to seek to develop, agree, implement, and maintain a system that sets out the ways in which the employer must seek to comply with s(19)(1)". This involves being provided with reasonable opportunities to participate in ongoing process for the improvement of occupational safety and health.

(19c) The employer under section 12 of the HSE Act is obliged to ensure that employees in general, and health and safety representatives in particular, are provided with ready access to information. This information must be in a form and manner that they are reasonably likely to understand.²⁰ More specifically the information on health and safety systems and

¹⁹ Health and Safety in Employment Act 1992 s19

²⁰ Health and Safety in Employment Act 1992 s12

issues in the workplace must enable health and safety representatives to perform their duties effectively.²¹Types of information that are provided are the location of safety equipment, emergency procedures, potential hazards that employees may be exposed to, hazards that the employee may create while at work, and how to ensure hazards do not become a threat to others.

(19d) There are duties under the HSE Act for the employer to provide training to employees and health and safety representatives. The HSE Act requires that employers take all practicable steps to ensure that every employee is adequately trained in the safe use of all plant, objects, substance and personal protective equipment that they may be required to use or handle.²²Such training covers issues of occupational safety and health in the workplace. Under employee participation provisions health and safety representatives are entitled to 2 days paid leave each year to attend health and safety training. ²³This training must be approved by the Minister.

(19e) Under the HSE Act there is a general duty for employers to involve employees in health and safety matters. This involves providing reasonable opportunities to participate effectively in ongoing processes for improvement of health and safety in the workplace. This enables workers or their representatives as part of an employee participation system to enquire into aspects of safety and health. This may entail, by mutual agreement of the parties involved, the use of external technical advisers from outside the business.

(19f) There is both an individual right to refuse dangerous work and a collective right to strike. Under the HSE Act employees may refuse to perform work if they believe that is likely to cause serious harm.²⁴They may continue to refuse to do the work if: they attempt to resolve the matter with the employer as soon as possible after first refusing, or the matter is not resolved and they believe on reasonable grounds that it is likely to cause serious harm. There is a further collective right under the ERA. Employees may under section 84 of this Act participate in a strike if they believe it is justified on the grounds of safety or health.

Article 20

Co-operation between management and workers and/or their representatives within the undertaking shall be an essential element of organisational and other measures taken in pursuance of Articles 16 to 19 of this Convention.

Please indicate what arrangements have been made to ensure co-operation between management and workers and/or their representatives within the undertaking.

The HSE Act encourages co-operation between the employer and employee based on good faith principles. As part of this there are provisions mandating employee participation. The purpose of the employee participation provisions is twofold. Firstly, it is to ensure that all people with the required knowledge and expertise in a workplace can be involved with making their workplace healthy and safe. Secondly, it aims to make sure that an employer

²¹ Health and Safety in Employment Act 1992 s12(2)

²² Health and Safety in Employment Act 1992 s13

²³ Health and Safety in Employment Act 1992 s19(e)

²⁴ A definition of Serious harm can be found in the first schedule of the Health and Safety in Employment Act 1992

when making decisions on his or her workplace has information from employees who face health and safety issues.

In the HSE Act there is a general duty under section 19(b) for employers to involve employees in health and safety matters.²⁵ This means allowing reasonable opportunities for employees to participate effectively in ongoing processes for the improvement of health and safety. Reasonable opportunities encompass what is reasonable in the circumstances. This is having regard to such matters as the number of employees, the number of places of work, health and safety issues, the nature of work and the nature of employment arrangements.

As part of these opportunities for participation employers, employees, and unions representing any of the workers are obliged to co-operate in good faith to seek to develop an employee participation system. An employee participation system can include any matters that employers, employees and any union representing them, agree on. The HSE Act sets out matters that can be considered in an employee participation system. The matters suggested include the election of health and safety representatives, whether health and safety representatives are independent or part of a committee, and the development of processes for ongoing co-operation between the employer and employees. Should there be a failure to agree on an employee participation system the HSE Act under section 19(d) sets out default provisions.

Article 21

Occupational safety and health measures shall not involve any expenditure for the workers.

Please indicate the legislative or other provisions whereby effect is given to this Article.

Under the HSE Act employers as part of their duties in hazard management under section 10(2)(b) have a duty to provide protective clothing and equipment. They are required to take all practical steps "to provide, make accessible to, and ensure the use of by the employees of suitable clothing and equipment to protect them from any harm that may be caused by or may arise out of the hazard".²⁶ This means that personal protective clothing and equipment must be provided by employers. An employee may, if they genuinely and voluntarily choose, provide their own protective clothing. The employer must be satisfied that any such protective clothing is suitable for the work situation. Any employee who has volunteered to provide their own protective clothing may, having given reasonable notice, require their employer to provide protective clothing.

²⁵ Health and Safety in Employment Act 1992 19A

²⁶ Health and Safety in Employment Act 1992 s10(2)(B)

Glossary of Terms

ATV: All Terrain Vehicle
ACC: Accident Compensation Corporation
ACOP: Approved Code of Practice
DMP: Departmental Medical Practitioner
ERA: Employment Relations Act 2000
ERMA: Environmental Risk Management Authority
HSNO: Hazardous Substances and New Organisms Act 1996
HRC: Health Research Council
IAP: Implementation Advisory Panel
IIM: Injury Information Manager
IN: Infringement Notice
IPRC: Injury Prevention, Rehabilitation, and Compensation Act 2001
ITO: Industry Training Organisation
NODS: Notifiable Occupational Disease
NZIPS: New Zealand Injury Prevention Strategy
NZQA: New Zealand Qualifications Authority
SNZ: Statistics New Zealand
WHSC: Workplace Health and Safety Council
WHSS: The Workplace Health and Safety Strategy