行政院及所屬各機關出國報告

(出國類別:其他-出席雙邊會議)

赴紐西蘭出席

臺紐經濟合作協定 (ANZTEC) 勞工專章

第2次資深官員會議

服務機關: 勞動部

勞動部職業安全衛生署

職稱姓名:副司長 陳毓雯

副署長 陳秋蓉

派赴地區:紐西蘭威靈頓

開會期間:104年12月17日至104年12月18日

報告日期:105年3月

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摘要

依據「台紐經濟合作協定(ANZTEC)勞工專章第 1 次資深官員會議」 之結論,賡續協調聯繫職業安全衛生與勞資關係等事務,以及促進我國與 紐西蘭雙邊勞工事務合作關係,於 104 年 12 月 17 日至同月 18 日於紐西蘭 威靈頓召開會議,由本部勞動關係司副司長陳毓雯及職業安全衛生署副署 長陳秋蓉共同出席,與紐方共同研討勞工事務合作議題,以增進雙邊勞務 關係,同時拓展我國外交關係。

會議期間除與 Ministry of Business, Innovation and Employment Building (紐西蘭商業創新與就業部) Michael Hobby, Principal Advisor International Strategy 等人,針對臺紐經濟合作協定 (ANZTEC) 勞工專章第 1 次資深官員會議後,紐西蘭商業創新與就業部之改變,紐西蘭立法政策環境及臺灣勞動關係之現況等,進行業務交換經驗外,亦針對職業安全衛生制度概要、勞動檢查員訓練、暴露評估 3 個主題,我方為化學品管理制度、暴露評估與分級管理進行討論。另拜訪 NZ Council of Trade Unions與 Richard Wagstaff, President 討論紐西蘭之工會組織,介紹我國之工會現況,拜會 Business New Zealand,與 Paul MacKay - Manager 討論我國與紐西蘭之勞雇關係與政策,又拜會 Wellington Mediation Office,與 David Hurley 先生對於勞資爭議之調解方案,進行意見交換,對於台紐經濟合作協定 (ANZTEC) 確有重大助益。

壹、目的

本部前於 103 年 11 月 19 日至 20 日舉辦「台紐經濟合作協定 (ANZTEC) 勞工專章第 1 次資深官員會議」時,總結討論研議未來合作重點包括 (一) 職業安全衛生:台紐兩國均正推動職業安全衛生新制度及經歷組織改造,建議可針對制度法規等進行資訊交換,對雙方均有興趣之主題可探究共同研究可行性,並將職業安全衛生合作列為下次台紐經濟合作協定 (ANZTEC) 勞工專章資深官員會議之議題。(二) 勞資關係:我國與美國間已簽署「勞資爭議調解與替代性解決方案合作計畫協定」,推動勞資關係集體協商及爭議調處人才之培訓計畫,紐方回應專家邀訪也是良好合作之作法。(三) 舉辦「台紐經濟合作協定 (ANZTEC) 勞工專章第 2 次資深官員會議」,預定 104 年在紐西蘭舉行。據上,為賡續協調聯繫職業安全衛生與勞資關係等事務,以及促進我國與紐西蘭雙邊勞工事務合作關係,於 104 年 12 月 17 日至同月 18 日於紐西蘭威靈頓召開會議,由本部勞動關係司副司長陳毓雯及職業安全衛生署副署長陳秋蓉共同出席,與紐方共同研討勞工事務合作議題,以增進雙邊關係,同時拓展我國外交關係。

貳、臺紐雙方出席名單

紐方代表:



Michael Hobby

Michael Hobby

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Gordon MacDonald

Gordon MacDonald is Chief Executive of WorkSafe New Zealand. Until recently, he was Acting Deputy Chief Executive of the UK's Health and Safety Executive (HSE), where he had a 35-year career. He joined the HSE in 1978 as an inspector and during his career worked in all of HSE's operational and policy areas. These included: policy work developing major hazards legislation; strategic and research functions in the nuclear industry; managing regional teams of inspectors; and leading HSE's Hazardous Industries Division regulating the offshore oil industry and the onshore chemicals and petrochemicals industries.



George Mason

George Mason is General Manager, Labour Inspectorate, MBIE. George practiced law inside Government for 20 years including litigating employment standards and immigration cases for the former Department of Labour. From 2010-12 he was the Chief Legal Adviser then became General Manager of the Labour Inspectorate when MBIE was established in 2012. He is responsible for the enforcement of employment standards (except health and safety), covering 150,000 workplaces and 2.2m employees.



Richard Wagstaff

Richard Wagstaff was elected President of the NZCTU in October 2015. He was previously Vice President and one of two national secretaries of the NZ Public Service Association. He began his union career in 1988 as a researcher then organiser in Auckland. In 1997 he was appointed operations manager, and became national secretary in 2000, serving until his recent election to the NZCTU.



Paul MacKay

Paul MacKay is Manager, Employment Relations at Business New Zealand. He has worked in employment relations in the private and public sectors throughout his career including a range of roles in the State Services Commission, the energy sector, change management at Ernst & Young and as General Manager Employment Relations at Carter Holt Harvey.



Caroline Holden

Caroline Holden is Programme Director

Resolution Services for the Market Services Group of MBIE.



David Hurley

David Hurley LLM is an employment mediator for MBIE. He has been full time in dispute resolution since 1991 formerly as a Member of the Employment Tribunal (mediations and adjudications) but has been focused on mediations since 2000. Whilst mainly involved in employment matters he has also mediated family and commercial cases and for the Waitangi Tribunal. He has contributed articles and papers to LEADRNZ, AMINZ and NZ Law Society conferences and periodicals. He has been a Vice-President of the NZ Law Society and

has chaired a number of charitable organisations. He was awarded Employment mediator of the year for 2015 by the NZ Law Society.



Kris Casey is Manager, Learning and Development for WorkSafe New Zealand.

Kris Casey



Philippa Gibson

Philippa Gibson is Principal Specialist, Occupational Health with WorkSafe NZ. She specialises in occupational health and occupational hygiene. She is also a Health and Safety Inspector and Hazardous Substances Enforcement Officer. In her role she provides technical support for WorkSafe, inspectors and members of the public or industry. She is a certified occupational hygienist with both the American Board of Industrial Hygiene (CIH) and the Australian Institute of Occupational Hygienists (COH), a committee member of the New Zealand Occupational Hygiene Society, and a board member of the International Occupational Hygiene Association.

臺方代表:

序號	姓名	服務單位	職稱
1	陳毓雯 Yu-Wen Chen	勞動部	勞動關係司 副司長 Deputy Director General, Department of Employment Relations
2	陳秋蓉 Chiou-Jong Chen	勞動部 職業安全衛生署	副署長 Deputy Director General, Occupational Safety and Health Administration

多、出國行程

	THURSDAY 17 DEC MBIE G.16
8.30-9.00	Welcomes/Introductions
9.00-9.30	Presentation: MBIE Organisational changes since first SLOM • Michael Hobby, Principal Advisor International Strategy
9.30-	Presentations/Discussion - Employment Relations
11.00	• NZ Legislative and Policy Environment - Michael Hobby, Principal Advisor International Strategy
	• Current Employment Relations in Taiwan - Ms. Yu-Wen Chen,
	Deputy Director, Employment Relations, Ministry of Labor
11.00	New Zealand's Workplace Health and Safety system -
	 Gordon MacDonald, Chief Executive, WorkSafe New Zealand
12pm	Lunch (on site)/free time
1.00-1.50	Presentation: New Zealand's system of Labour Inspection and
	Enforcement
(travel	 George Mason, General Manager, Labour Inspectorate
time)	
2.00-2.50	Visit to NZ Council of Trade Unions
	Meeting with Richard Wagstaff, President
	Level 5, Education House, 178 Willis Street Wellington
3.00	Visit to Business New Zealand
3.00	Meeting with Paul MacKay -Manager, Employment Relations
	Policy
	Level 6, Lumley House, 3-11 Hunter Street, Wellington 6011
4.00	Return to MBIE Offices and Wrap-up of day/Adjournment
5.00	Free time
6.00-8.00	Hosted Dinner - Juniper Restaurant
	Johnston Street near intersection with Featherston Street, Wellington
	(Delegates will be met at Restaurant)
	FRIDAY 18 DEC

	MBIE G.05
9.00-9.50	
Presentatio	n/Discussions
	oute Resolution Framework and System
• Carolin	e Holden – Programme Director, Resolution Services
• Dispute	Resolution in Taiwan - Ms. Yu-Wen Chen, Deputy Director,
Empl	oyment Relations, Ministry of Labor
Visit to Wel	lington Mediation Office
Tour of med	liation rooms and discussion with David Hurley, Employment
Mediator	
Wellington M	ediation Offices, 205 Victoria Street Wellington
10.00-10.45	Visit to Wellington Mediation Office
	Tour of mediation rooms and discussion with David Hurley,
(travel	Employment Mediator
time)	Wellington Mediation Offices, 205 Victoria Street Wellington
11	Health and Safety Training
	Kris Casey, Learning & Development Manager
	WorkSafe New Zealand
12pm	Lunch (on site)/free time
1.00	Presentations/Discussion - Occupational Exposure
	• Ms Philippa Gibson, Principal Specialist Occupational health,
	WorkSafe New Zealand
	• Ms Chiou-Jong CHEN, Deputy Director General, Occupational
	Safety and Health Administration
2.00	General discussion/next steps/wrap-up
3.00	Conclusion/farewells
	Free time

Meeting Venue

The main venue for the meeting is the **Ministry of Business, Innovation and Employment Building, 15 Stout Street Wellington**. You will be met at the ground floor reception before being escorted to Meeting room G.16 (Thursday 17 Dec) and G.05 (Friday 18 Dec). Lunch and refreshments will be provided on-site. Transport will be provided to off-site meetings.





肆、會議情形

第一場

- 一、 **會議日期**: 104 年 12 月 17 日上午 9 時至 11 時
- 二、會議地點: Ministry of Business, Innovation and Employment Building, 15 Stout Street Wellington. (紐西蘭商業創新與就業部)
- 三、 會議主持人: Michael Hobby, Principal Advisor International Strategy

四、討論議題:

- (一) MBIE Organisational changes since first SLOM (臺紐經濟合作協定 (ANZTEC) 勞工專章第 1 次資深官員會議後,紐西蘭商業創新與就業部之改變)
- (二) NZ Legislative and Policy Environment (紐西蘭立法政策環境)
- (三) Current Employment Relations in Taiwan (臺灣勞動關係之現況 簡介)

五、討論摘要

- (一) 紐西蘭勞動關係之現況
 - 1、2015年9月的就業人數下降(下降0.4%),較上一季少11,000人。在2015年6月失業率上升到6.0%,高於5.9%。在9月,經濟增長勞動力最高的是20-29歲的人,有35,900多人。這個增長主要來自增加就業人數(28,300人),失業(7,600人)。
 - 2、紐西蘭勞動關係建立技能和安全的工作場所之七個關鍵領域
 - (1) 強化高等教育
 - (2) 使就業市場更積極
 - (3) 吸引技術移民與投資
 - (4) 提升青年人之成就感
 - (5) 提供職業培訓之技能
 - (6) 職場安全

- (7) 促使人們投入就業市場
- 3、紐西蘭勞動關係架構
 - (1)單一的立法架構:紐西蘭法律對所有員工無論是兼職、全職、公共 部門或其他類型的工人沒有區別提供相同的一 般保護。
 - (2)核心的立法:制定具體保護勞工最低權利的實施,以促進靈活性和 生產效率的目的。
- 4、紐西蘭勞動關係主要特徵
 - (1) 誠信
 - (2) 工會權利和代表性
 - (3)集體協商:結社自由、只有工會和雇主可以討價還價的集體協議、 集體談判之誠信義務、集體談判的內容、集體可覆蓋 多個雇主、地位平等的個人談判
 - (4) 個人申訴權利
 - (5) 就業問題解決機制
- (二)臺灣勞動關係之現況
 - 自主性勞動關係之現況,包括推動工會組織發展、強化勞資協商建立夥伴關係以及健全勞資爭議處理制度和尊嚴勞動。
 - 2、在推動工會組織發展方面,重點在於開放工會組織類型(教師得組工會)、建立工會財務處理之內部治理機制、法規鬆綁(工會得自主決定內部運作)和明定不當勞動行為態樣。至104年5月中旬,共有235件申請案:103件作成裁決決定,65件和解成立,53件申請人撤回。
 - 3、在強化勞資協商建立夥伴關係方面,對於他方合理適當協商方案, 拒絕或未提出對應方案之無正當理由不得拒絕協商機制。以及需傾 聽對方要求或主張要實質討論努力達成合議可能,不得佯裝或拖延 談判之誠實信用協商機制。
 - 4、健全勞資爭議處理制度:增設獨任調解人制度、擴大仲裁處理範圍、 降低罷工程序限制、增訂訴訟費用及擔保金之暫減免、明定設立勞 工權益基金及建立不當勞動行為裁決機制。
 - 5、尊嚴勞動:創造優良勞動關係環境和建立自主勞動關係。

第二場

- 一**、會議日期:**104年12月17日上午11時至12時
- 二、會議地點: Ministry of Business, Innovation and Employment Building, 15 Stout Street Wellington. (紐西蘭商業創新與就業部)
- 三、會議主持人: Gordon MacDonald, Chief Executive, WorkSafe New Zealand
- 四、討論議題:New Zealand's Workplace Health and Safety system

五、討論摘要

紐西蘭職業安全衛生管理系統

- 1、政府部門與民間法人機構共同推動。
- 2、政府部門由 MBIE (紐西蘭商業創新與就業部)轄下之勞工、科學 與企業事業群負責推動,主要業務為:
- (1)法規制定。
- (2)與紐西蘭工作安全協會(WorkSafe NZ)共同發展安全衛生推廣策略。
- (3)監督紐西蘭工作安全協會(WorkSafe NZ)。
- (4)維護及監督政府職業安全衛生管理體系。
- 3、民間法人機構由紐西蘭工作安全協會(WorkSafe NZ)負責推動,主要業務為:
 - (1)主導及執行職業安全衛生管理體系。
 - (2)提供法規制定、相關指引及政策施行之技術支援。
 - (3)提供 MBIE 職業安全衛生諮詢及回饋建議。
 - (4)與 MBIE 合作,共同參與職業安全衛生政策之擬訂。

第三場

- 一**、會議日期:**104年12月17日下午1時至1時50分
- 二、會議地點: Ministry of Business, Innovation and Employment
 Building, 15 Stout Street Wellington. (紐西蘭商業
 創新與就業部)
- 三、會議主持人: George Mason, General Manager, Labour Inspectorate
- 四、討論議題: New Zealand's system of Labour Inspection and Enforcement

五、討論摘要

紐西蘭勞動檢查制度

- 1、前身為勞動部工業局。
- 2、現在隸屬 MBIE (紐西蘭商業創新與就業部)法務司之市場服務部門。
- 3、有 12 分駐所,50 個檢查員,600 個稽核員,每年大概發出 400 個行 政處分(enforcement action)。
- 4、10年期勞動檢查策略:
 - (1)檢查與合作之左右2手策略。
 - (2)2013年:資料收集、教育、申訴導向之調查。
 - (3)2013-2016 年:資料收集、教育、由申訴導向轉型至任務導向之調查(加強與各公協會之合作)
 - (4)2016-2022 年:任務導向之調查,符合性活動、稽核管理制度,認 證制度。

第四場

- 一、**會議日期:**104年12月18日上午9時至9時50分
- 二、會議地點: Ministry of Business, Innovation and Employment
 Building, 15 Stout Street Wellington. (紐西蘭商業
 創新與就業部)
- 三、會議主持人: Caroline Holden Programme Director, Resolution Services

四、討論議題:

- (-) The NZ Dispute Resolution Framework and System
- (=) Dispute Resolution in Taiwan

五、討論摘要

- (一)紐西蘭勞資爭議之現況
 - 1、工會:截至 2015 年 1 月,紐西蘭共有 137 個登記的工會。共有工會會員為 359,782 人。其中 49 個工會有不到 100 個成員,而 10 個最大的工會具有 283,900 成員總數。
 - 2、罷工和停工:為了追求集體談判或健康和安全方面的保護,得為合法 之罷工和停工,有關集體談判是採無記名投票,要求書 面通知。
 - 3、個人申訴權利:適用於所有勞工,並提供保護,防止無理行動或解僱, 其範圍包括就業歧視,對於新員工的特別規定(試用期),給予獲得勞動爭議解決機制。
 - 4、爭議解決:僱傭關係的問題並不僅僅侷限於員工與雇主像無理解僱或 拖欠工資的問題。他們還可以涉及到雇主可與員工如未能 滿足的就業協議條款的問題。如果勞動關係出現問題時, 留下的問題雙方應努力解決誠信問題。明智的做法是:(1)

清楚的事實(2)雙方的溝通(3)及時處理問題,但有足夠的時間雙方尋求建議和思考的問題(4)確保每個人都遵循了員工的就業協議規定的程序進行問題解決。

(二)臺灣勞資爭議之現況

- 1、台灣自 1987 年解除戒嚴令之後,經過 20 餘年的社會變遷,在政治上已經成為民主化國家,然而集體勞動三法之主要內容均完成於上個世紀三〇年代,與現今台灣集體勞資關係之實際狀態相去甚遠,因之,團體協約法率先完成修法(2008 年),而勞資爭議處理法(2009 年)、工會法(2010 年) 相繼完成修法,終於在 2011 年 5 月 1 日同步施行新集體勞動三法。新勞資爭議處理法中最受矚目的就是參考美國及日本的制度,建立不當勞動行為之救濟制度,當勞工或工會受到雇主不當勞動行為侵害時,可以尋求快速、專業之救濟。關於不當勞動行為之規定,主要散見於工會法第 35 條、團體協約法第 6條以及勞資爭議處理法第 4 章第 39 條至第 52 條。另外,根據勞資爭議處理法第 43 條第 3 項之授權,頒布不當勞動行為裁決辦法,規範裁決委員會之組成、資格條件、遴聘方式及相關處理程序等。而為了規範裁決委員會之編組、分案、初步審查程序、調查程序、詢問程序等事項,另頒布不當勞動行為裁決委員會分案及審理要點(2011 年 4 月 29 日頒布)。
- 2、不當勞動行為之類型(1)不利益待遇(2)黃犬契約(3)支配介入(4)協商義務及誠實協商義務,針對私權爭議,裁決委員會所作成之裁決,具有與民事確定判決相同之效力;但對於非私權爭議所作成之裁決決定,則具有行政處分之性質,裁決得命當事人為一定之行為或不行為。
- 3、裁決委員會之組織:為辦理裁決事件,應組成不當勞動行為裁決委員會。裁決委員會置裁決委員7人至15人,由中央主管機關遴聘熟悉勞工法令、勞資關係事務之專業人士任之,任期2年,並由委員互推1人為主任裁決委員。」(勞資爭議處理法第43條),由此觀之,裁決委員會僅設置於中央主管機關,換言之,所有不當勞動行為事件之救濟均委由單一之裁決委員會受理。主任裁決委員得以裁決委員1人至3人編成審查小組,共同辦理裁決案件之初步審查

及調查程序。各審查小組置組長1人。審查小組組長負責協調該組組員及所承辦案件之相關事項。

4、救濟命令內容之分析

通觀裁決委員會所作救濟命令大致可歸納為三類:(1)撤銷雇主 所為不利益待遇,並另為適當處分(2)命為一定行為或不行為(例 如:命代扣工會會費、命將裁決決定書張貼於事業單位內之公佈 欄、命刊登道歉啟事、命不得對申請人召開會員大會及工會活動有 不當影響),並將已為一定行為之事證陳報主管機關(勞動部)(3) 命自收到裁決決定書後,不得有不當影響、妨礙或限制工會活動之 行為。而當事人不服此等救濟命令時,得向行政法院起訴。

第五場

- 一**、會議日期:**104年12月18日上午11時至11時50分
- 二、會議地點: Ministry of Business, Innovation and Employment
 Building, 15 Stout Street Wellington. (紐西蘭商業
 創新與就業部)
- 三、會議主持人: Kris Casey, Learning & Development Manager
- 四、討論議題: Health and Safety Training WorkSafe New Zealand

五、討論摘要

檢查員教育訓練規劃

- 1、共分三階訓練課程
 - (1)第一階-新進檢查員訓練(6-12個月內完成55天之訓練):法規、公文寫作、事故調查、檢查基礎、行政處分基本原則、職業衛生、機械安全、職業安全衛生管理系統。
 - (2)第二階-進階檢查員訓練(12個月內完成32天之訓練):法規進階、 法規實務、檢查會談技巧、調查技巧、特定產業(農、林、建築、 製造、職業衛生)職業安全衛生訓練。
 - *諮詢檢查員(Response Inspectors)
 - *調查檢查員(Investigations Inspectors)
 - *評估檢查員(Assessment Inspectors)
 - (3)第三階-講座級檢查員訓練(6-12個月內完成2天之教練課程及檢查專業課程):進階風險評估講習、進階檢查實務、進階特定產業職業安全衛生訓練。

第六場

一、**會議日期:**104年12月18日下午1時至2時

二、會議地點: Ministry of Business, Innovation and Employment

Building, 15 Stout Street Wellington. (紐西蘭商業

創新與就業部)

三、會議主持人: KMs Philippa Gibson

四、討論議題:Occupational Exposure

五、討論摘要

- (一)紐西蘭職業暴露評估與管理
 - 1、紐西蘭工作安全協會(WorkSafe NZ)技術支援小組。
 - (1)小組成員:2位認證職業衛生師(兼具檢查員身分),1位具有辦理職業暴露評估工作經驗職員。
 - (2)主要提供工作場所、事業單位及檢查員辦理職業暴露評估之技術諮詢。
 - (3)可委請專家學者進行暴露評估,主要作為:
 - *預防或收集資料目的
 - *委外進行專家證人意見
 - *請外界提供採樣儀器及實驗室資源
 - 2、法規規定:
 - (1)目前法規規定:工作場所暴露危害管理,確認暴露濃度低於標準值。
 - (2)新法法規規定(2016年4月): 勞工作業環境監測,<u>確保</u>暴露濃度低於標準值。
 - (3)檢查員:不需進行暴露評估,主要原因是:
 - *檢查員未具足夠專業
 - *檢查員訓練非紐西蘭工作安全協會(WorkSafe NZ)權責
 - *暴露評估之實施是企業之責任。
 - *檢查員可要求企業提供暴露評估書面紀錄,無需親自實施。

- 3、暴露評估法規架構:
 - (1)符合性暴露評估:
 - *暴露評估頻率沒有規定,原則在製程改變後或適當時間間隔應實施 暴露評估。
 - *暴露評估之化學物沒有規定。
 - *低於容許暴露標準:持續控制。(控制頻率沒有規定)
 - *高於容許暴露標準:監督及管理。(沒有再評估之規定)
 - (2)容許暴露標準
 - *OEL 在紐西蘭稱為 WES,包含部份之 BEIs(生物暴露指標)
 - *目前版本為2013版,2015版草稿已完成。
 - *595 種物質,688 個暴露標準值,21 個 BEIs。
 - *80%為 8-hr TWA
 - *WES 的訂立是依據 SCOEL(Scientific Committee on Occupational Exposure Limits)之方法
 - (3)暴露評估方法
 - * Workplace Exposure Standards and Biological Exposure Indices(紐西蘭工作安全協會公布之指引)
 - *含暴露評估、採樣策略、變異、採樣結果統計分析
 - *指引內有(但未強制規定):採樣數目、符合標準(<0EL)及評估標準(95%ile<0.50EL或GM<0.10EL,每2年)
 - *2016年將公布新指引,亦將公布礦業暴露評估指引
- (4)Control Banding
 - *推廣中小企業使用之工具。
 - *當初採用時有做過評估,紐西蘭未採用國際公認之 Stoffenmanager 而採用 COSHH Essntial 主要是紐西蘭企業以 SMEs 為主,認為 COSHH Essntial 較方便。
- (二)我國職業暴露評估與管理

A.危害性化學品評估及分級管理技術指引

- 一、本指引用詞,定義如下:
 - (一)相似暴露族群:指工作型態、危害種類、暴露時間及濃度大致相同, 具有類似暴露狀況之一群勞工。

- (二)分級管理:指依危害性化學品之健康危害特性及暴露,就評估結果 評定其風險等級,並採取對應之控制或管理措施。
- 二、雇主使勞工製造、處置、使用符合國家標準 CNS 15030 化學品分類, 具有健康危害之化學品,應依所定之流程與基本原則,運用具有健康 危害之化學品分級管理工具,評估其危害及暴露程度,劃分風險等級, 並採取對應之分級管理措施。
- 三、雇主使勞工製造、處置、使用定有容許暴露標準之化學品,而事業 單位規模符合規定者,應依所定之流程,實施作業場所暴露評估,並 依評估結果分級,採取控制及管理措施。
- 四、前點暴露評估方式,建議採用下列之一種或多種方法辦理:
 - (一) 作業環境採樣分析。
 - (二) 直讀式儀器監測。
 - (三) 定量暴露推估模式。
 - (四) 其他有效推估作業場所勞工暴露濃度之方法。

作業環境採樣分析之實施方法,建議參考中央主管機關公告之作 業環境監測指引、採樣分析建議方法及其他具相等效力之方法;採用 直讀式儀器進行監測時,應考慮能有效排除干擾因子;選用定量推估 模式,得參考本指引所列舉之各種推估模式,或其他具有同等科學基 礎之推估模式,應用時應瞭解各模式之適用情形及使用限制。

- 五、依前點實施危害性化學品暴露評估結果,應藉由統計分析,對照其 容許暴露標準進行作業場所暴露評估結果分級。
- 六、同一作業場所使用二種以上具有健康危害之化學品或混合物,雇主應針對個別化學品,分別辦理健康危害風險評估及分級,並以最高風險等級,作為後續管理規劃的依據。
- 七、雇主應依分級結果,採取防範或控制之程序或方案,並依下列順序 採行預防及控制措施,完成後評估其結果並記錄:
 - (一) 消除危害。
 - (二) 經由工程控制或管理制度從源頭控制危害。
 - (三) 設計安全之作業程序,將危害影響減至最低。
 - (四) 當上述方法無法有效控制時,應提供適當且充分之個人防護具,

並採取措施確保防護具之有效性。

- 八、雇主應訂定相關實施計畫,據以執行本指引之評估方法及分級管理措施,產生之文件及紀錄,應維持一套系統予以管制,並依規定期限保存。雇主應建立定期稽核與管理審查之頻率、作法及程序,以確認評估與分級管理實施計畫之執行成效。
- 九、雇主應建立適當之程序,以處理稽核與管理審查所提出分級與管理措施之改善建議。

B 化學品的安全衛生管理

近數十年來國際相關組織開始制訂發展與化學品安全相關之計畫與公約,1971年經濟合作發展組織(OECD)環境委員會成立化學品小組,1976年聯合國環境規劃署(UNEP)成立了國際潛在有毒化學品登記處(IRPTC),蒐集及管理有毒化學品對人類及環境影響數據及各國法規訊息。1980年由 UNEP、世界衛生組織(WHO)及國際勞工組織(ILO)聯合成立了國際化學品安全規劃小組(IPCS),透過 IPCS 活動為各國化學品安全推動提供了科學與法規之參考。

2006 年 140 多個國家共同簽署推動「國際化學品管理杜拜宣言」(Dubai Declaration)中,支持聯合國「國際化學品管理策略方針」(Strategic Approach to International Chemical Management, SAICM),已成為 2020 目標年前國際化學品安全管理推動的主要工作架構,主要涵蓋化學物質的進出口、交通運輸、製造生產、操作使用、廢棄、農藥、公共危險品管理、緊急應變等化學物質生命週期之相關事項。其中階段性的工作目標包含 GHS 制度推廣、職場化學品安全資訊與知識的普及、化學品清單建置、風險評估與管理(包含簡易快速方法)等。

台灣近代之職業安全衛生相關管理制度始於 1992 年行政院勞委會 (於 2014 年改制成為勞動部) 於勞工安全衛生法開始引進危害通識、物質安全資料表 (MSDS)、標示的概念。2006 年時台灣開始推動實施聯合國 GHS 制度,同時也促使各個部會開始導入 GHS 制度。修訂版的職業安全衛生法納入既有化學物質清單、新化學物質登記、評估及分級管理、安全資料表與標示、優先管理化學品報請備查、管制性化學品許

可等措施。這些廠場化學品管理新措施與 ILO 公約調和一致,並以達到 SAICM 2020 共識為目標。

2013年的職業安全衛生法修正版本主要新增了第 10 條到第 14 條, 內容如下:

- 第十條 製造者、輸入者、供應者應提供與 GHS 調和的 SDS 與標示,以利 危害通識。
- 第十一條 雇主應利用化學品的健康危害、散布狀況、使用量等,評估化 學品之風險並採取分級管理措施。
- 第十二條 雇主應確保勞工於作業場所中暴露到化學品皆符合容許濃度標準之要求。
- 第十三條 製造、輸入者應於製造、輸入新化學物質前進行登記。
- 第十四條 經指定之優先管理化學品與管制性化學品應分別依法完成報請 備查與運作許可。

另外考量職業暴露風險,新修法條也訂定特定具有生殖、突變危害 的化學品於製程安全評估以及母性保護之相關規範。

至於職安法化學品管理推展期程,危害通識制度於 2008 年起,分三階段公布三批次的優先適用物質,並於 2016 年全面適用。職安法亦主導了 2009 到 2015 年之間的既有化學物質提報,以建置台灣既有化學物質清單,目前清單中包含約十萬筆的化學物質。2015 年亦為新化學物質登記、優先管理化學品報請備查、以及管制性化學品許可制度的實施元年。

由於國際間發展推廣化學品分級管理(Chemical Control Banding, CCB)已有多年,參考國際間作法,於 2012 年度參採結合職業安全衛生系統的 PDCA 精神建議導入落實 CCB,規定雇主應利用化學品的健康危害、散布狀況、使用量等,評估化學品之風險等級,並採取分級管理措施。勞動部並建立 CCB 查核表單,提供廠商在執行 CCB以及在廠場中針對 CCB 執行結果暴露控制部分的完整性確認與紀錄,逐項比對 CCB 執行流程的步驟是否完成並符合要求,以利達到 CCB 落實以及風險管理之目的。目前有超過 37,000 筆次的化學品使用 CCB 方法來評估風險減量與控制措施。

為協助廠商適法與降低衝擊,勞動部提供許多不同支援工具予廠商,包括 CCB 網站、資訊工具、轉盤文宣及三摺頁文宣等,並辦理多場次教育訓練宣導活動,以促進法規推廣。

考量我國中小企業眾多,為降低廠商因應法規之衝擊及提升政府導入新制之成效,研提分階段推動優先管理化學品報請備查之規劃與建議,以期降低衝擊並提升執行績效。規劃未來優先管理化學品分階段實施期程,將參採我國 GHS 執行現況與化學品之危害性,目前經公告之優先管理化學品包括隨辦法上路的 13 項化學品,以及於 2015 年 11 月公告之 503 種化學品。

國際勞工組織(ILO)對於如石綿、苯等致癌性之特殊危害化學品,已規定各國應定期檢討禁用或在符合規範下許可使用。職安法第14條明訂,凡證實為職業致癌物、具有特殊健康危害、健康嚴重風險或立即危害之化學品,且經中央主管機關指定為管制性化學品者,製造者、輸入者或供應者不得從事製造、輸入、供應或供工作者處置、使用等行為,但經許可者,不在此限。目前公告之管制性化學品有18種,皆為台灣特定化學物質之甲類與乙類物質,後續將依照化學品暴露風險評估結果,持續公告管制性化學品。

伍、参訪紀要

第一場

一、**會議日期:**104年12月17日下午2時至2時50分

二、會議地點: NZ Council of Trade Unions

Level 5, Education House, 178 Willis Street Wellington

三、會議主持人:

Richard Wagstaff, President

四、會議紀要:

(一) 兩國工會現況介紹

臺方:我國工會現況係建立在所謂的勞動三權。這三種權利分別是:團結權、協商權與爭議權。團結權指的就是團結組織工會的權利,協商權則是指擁有透過工會與雇主進行協商談判的權利,爭議權則指的是勞工在與雇主協商或有爭議時,有權利採取罷工、怠工等爭議行為。一般而言,這三種權利最基本的是團結權,沒有工會,就很難與雇主進行集體談判和集體罷工。我國的工會組織狀況,首先先對目前的工會類型做分類,依照 2010 年新修定的工會法規定,工會可以分成企業工會、產業工會與職業工會。簡單說,企業工會指的是以一個事業單位或廠區下的工人所組織的工會,產業工會範圍較廣,可由相關產業內不同企業的勞工一起組織的工會,產業工會範圍較廣,可由相關產業內不同企業的勞工一起組織。職業工會則是指由同一技能的勞工一起組織的工會。截至 2015 年6 月底止,總計工會數為 5324,其中職業工會數為 4025,產業工會有 149,企業工會數為 902,加入工會人數為 3310189 人。

紐方: NZ Council of Trade Unions 共有超過 35 萬的紐西蘭工會成員,分屬於 40 個附屬工會。目標致力於薪酬和就業平等行動,促進婦女和年輕的工人及其工會的積極參與。工會運動的目的是提高勞動人民和他們的家庭的生活。NZ Council of Trade Unions 作用是通過積極的宣傳活動方案,促進工會化和集體主義。存在是為了團結民主工會,讓他們進行協商,並與對方攜手合作,創造共同利益,並幫助實現商定的目標,並根據民主多數人的決定,代表工薪階層,承認某些基本權利的工會,包括就業權、社會保障、社會公正、人權和平等機會、組織成立和加入

工會的權利、有權與用人單位進行集體談判、罷工權,並堅持民主的原則,包括改變政府的民主手段,保障和平和人類自由的事業、反對和打擊任何形式的極權主義和侵略,承諾聲援和支持被壓迫人民。

(二)討論情形

主要討論重點在瞭解紐西蘭工會對於保護勞工權益之相關作法,具體內容略以:

- 1、勞工有選擇是否加入工會,或者離開工會的權利。
- 2、雇主不能影響員工決定加入工會,也不能威脅或為難選擇加入工會。
- 3、雇主不得因為工會成員而歧視,同樣的工會成員不能恐嚇非會員。
- 4、工會代表可代表有關其成員包括各成員的集體就業權益的任何事情進行 談判集體協議。工會也可以代表個人就業問題,由個別會員授權工會進 行談判。

(三)建議:

籌組工會乃為國際潮流所趨,必要時應可提供相關協助,並注意切勿 干預或阻擾勞工籌組工會,甚至資方可以釋出誠意採取主動協助、輔導 的立場,期待在籌備階段就建立良好互動關係,厚植日後溝通平台。在 籌備階段建立溝通模式,藉此溝通會議奠定友好互信基礎。勞工加入工 會是其權利,應由勞工自行考量與取捨,資方不需表示支持或排斥。當 勞工籌組工會時,資方得善用其所知悉之法令規範,給予適當方式之提 醒,應該注意籌組之程序原則,如發起人數、章程、會議召開、會費收 取、及工會幹部選舉等事務。我國工會法修法方向,建議應以較為急迫 性及必要性為優先順序,例如基層工會之理事長任期是否修正為連選得 連任,並不限連選次數(工會法第28條)。入會費及經常會費最低規範 (工會法第28條)。區域性工會聯合組織籌組是否應有門檻之規範(工 會法第8條)。基層工會理事名額是否要調高(工會法第17條)。工會理 事、監事之改選,是否於當屆理事、監事任期屆滿前進行改選(工會法 施行細則第 16 條)。企業工會組織類型中「廠場企業工會」存廢(工會 法第6條第1項第1款)。工會理事長任期是否應統一範定為4年(工會 法 20 條)。企業工會之會員或會員代表擔任工會聯合組織之理事、監事 時,是否應增列會務假之請領(工會法第36條)。如工會不於工會章程 中明定出會機制,有關工會會員申請退會應如何處理。是否刪除勞工 30 人以上籌組工會之門檻。企業(工作場域)內之派遣人員或外包人員是否可由該企業工會決定是否招收其為會員等。

第二場

一、**會議日期:**104年12月17日下午3時至4時

二、會議地點: Business New Zealand

Level 6, Lumley House, 3-11 Hunter Street, Wellington 6011

三、會議主持人:

Paul MacKay - Manager, Employment Relations Policy

四、會議紀要:

(一) 兩國勞雇關係現況介紹

臺方:勞動基準法定義勞動契約為「約定勞雇關係」之契約,至於所謂勞雇關係究為何指,一般而論,勞雇關係應為一方提供勞務而他方給付報酬之關係,勞動契約者必須符合「從屬關係」、「提供職業上之勞務」、「給付報酬」等三要件,而勞資爭議的因素的確很多,不論是從經濟層面、政治層面、法治層面乃至社會心理層面,但是隨著社會與經濟環境之變遷,勞工之勞動意識與企業僱用型態之轉變,定期契約工勞動、部分工時勞動、派遣勞動、電傳勞動、母子公司間勞動力之流動等非典型勞動契約關係,亦逐漸成形並被廣泛運用在台灣的企業界,由於社會趨向多元化發展,女性勞動力與高齡勞動力投入就業市場之比例逐年增加,一般青壯年勞動力也有不必然受僱於固定雇主朝九晚五職業生涯之情形,此種現象皆係導致勞務型態複雜化。另一方面,企業除了必須不斷因應國際乃至國內經濟情勢的變化,加上所有行業納入勞動基準法適用後,企業主也必須增加負擔同法所規定之雇主責任,在這些因素考量下,台灣的勞雇關係正面臨著重大變革。

紐方: Business New Zealand 之目的在協助企業和促進數以千計的紐西蘭企業的聲音,通過新思維,生產力和創新積極的變化,利用 Business New Zealand 獨特的優勢在於有能力,與政府官員,社會團體,國會議員和部長們在日常的基礎上,確保商業利益在整個決策過程中得以被重視,因為當紐西蘭企業業務進展順利,它會影響紐西蘭的經濟,紐西蘭的環境,紐西蘭人的工作,紐西蘭人的社區,紐西蘭人的家庭和紐西蘭人的未來的福祉。Business New Zealand 工作內容包括 2015 年健康工作場所之調查、紐西蘭經濟帶主要經濟指標預測在未來三年季度的情勢,以

及在 2010 年和 2011 年後,婦女事務部進行了研究,以找出為什麼女性參與勞動力的影響,該研究形成了婦女部和地方培訓機構和用人單位在夥伴關係,增加行業的婦女人數的目標的基礎,這項工作已導致更多的婦女培訓坎特伯雷的行業和更多的婦女在工地打工,以更好地利用婦女勞動力在行業的經驗。

(二)討論情形

主要討論重點在瞭解紐西蘭雇主在簽訂勞動契約之情形,具體內容略以:

- 1、如果雇主集體協議,所僱用的人是工會會員,那麼對新員工必須提供在 集體協議的條件。如果他們選擇加入工會,雇主應依據集體協議之情形 辨理,如果他們選擇不加入,雇主可以通過談判與他們一個新的個體就 業協議。
- 2、如果工作場所沒有集體協議,那麼新員工將由個人與雇主進行就業協議。
- 3、如果雇主可能想聘請某人的時間(如半年)一固定時間,或直到某個事件發生(例如,直到某個項目結束)或直到工作完成(例如,直到果實採摘),則需要知道一個固定期限的協議額外的規則。
- 4、新員工必須有參加或不參加工會的權利。雇主不要試圖去影響他們的選 擇。
- 5、如果想改變員工的僱傭協議,例如,他們的工作時間,雇主需要讓你的 員工同意這樣做。

(三)建議:

為了因應市場環境變遷以及科技發展,企業普及使用的策略即為「勞動彈性化」,其使得企業有更多人力資源運用的空間。隨著全球化經濟快速的移轉及跨國企業人才移動變化下,我國勞資關係產生了重大之變革。而勞動契約為勞資雙方緊密聯繫之途徑。故勞動契約是規範勞資雙方權利義務之依據,也是以勞動契約訂定成立勞雇關係。然而勞動契約法於民國 25 年制訂公布迄今尚未施行,目前現行有效之勞動契約法律規範僅有民法之「僱傭」及勞動基準法第 2 章「勞動契約」專章規定。然而因民法有關「僱傭」之內容,對於勞僱關係中之從屬性及保護勞工之特殊性均未考量,致使勞工往往為能尋求一份工作並在資訊不對稱之下,任由資方輕易掌控主導,而造成勞方之權益受損,故為能保障勞工及因應

全球化經濟下勞動契約之多樣性,我國勞動契約法制化已是不容忽略之重要議題了。

第三場

一**、會議日期:**104年12月18日上午10時至10時45分

二、會議地點: Wellington Mediation Office

205 Victoria Street Wellington

三、會議主持人:

David Hurley, Employment Mediator

四、會議紀要:

(一) 兩國調解業務現況介紹

臺方: 勞資爭議處理法於 2011 年 5 月 1 日施行後,權利事項勞資爭議得 透過調解程序處理,亦得經合意交付仲裁,期迅速解決爭端。依 本部勞動統計資料顯示,近年來我國勞工行政機關受理之勞資爭 議案高達 99%以上之案件為權利事項之爭議,該等案件經本法所定 調解程序解決者約佔60%,據本部勞動統計資料,近年勞資爭議案 件平均約有2萬2千餘件,經地方政府主管機關或勞資關係民間 團體調解成立而解決者約 55%~60%, 其他約 40%之調解不成立案 件,後續仍需循合意仲裁或司法途徑尋求救濟。查經仲裁程序處 理勞資爭議之案件數,自100年5月1日至104年底僅45件(100 年1件;101年3件;102年7件;103年20件;104年14件)。 另查司法院統計資料,近3年經司法訴訟之勞資爭議案件約為 2,500 多件,其比例占整體勞資爭議案件數約 10%,換言之,其餘 約30%之勞資爭議案件計約6,000件,經調解不成立後,既未循仲 裁程序尋求救濟,亦未循司法途徑提起訴訟。以訴訟外解決紛爭 機制之處理結果來看,在調解程序之處理天數約 20~49 天,成功 率約 55%~60%, 其成效顯著, 可迅速有效處理全國一半以上之勞資 爭議案件。

紐方:在紐西蘭調解之主要功能在獲取解決問題的信息、確定需要處理的問題的技能,以及觸發雙方認識到問題的存在,作用在於幫助人們找到解決自己問題的最佳途徑,鼓勵各方找出真正的問題,幫助雙方解釋這些問題給對方,確定雙方之間的協議要點幫助人們找到一種方法,與人一起尋找答案,體現誠信和常識;與各方

共同努力,尋求一項決議,幫助雙方繼續前進,故調解可以在調 解會議提出建議,作出決定(根據當事人的要求),記錄定居點, 以及信息提供給工會,社區團體和顧問,為雇主組織或就業的法 律研討會。因為調解每個個案具有不同的格式和動態。它會涉及 到一系列的活動,包括電子郵件和電話通信,會議和工作場所的 討論。調解提供了一個保密的過程,其中可以討論的問題,問題 的澄清,並作出結論。雇主和僱員只要在法律範圍內都同意這滿 足其利益的事項,在任何時候,當事人可以約定要求調解訂立有 關此事的建議。如果建議被拒絕(這必須以書面形式約定的時間 內完成)調解可以繼續。如果達成協議的調解將記錄所有各方簽 署的決定。如復職的員工,支付結算或正式道歉,對發生在調解 達成的任何協議記錄。一旦簽署,協議變為完全並最終解決,不 能由任何一方重新打開。一個解決辦法應體現對當事人爭議事件 的影響,不一定會涉及金錢。各方無法達成一致。如果它看起來 像更多信息或協助可能導致和解,調解員可以安排休庭。如果協 議沒有可能,調解停止,各方管理其尚存的分歧,或尋求與就業 關係委員會或就業法庭的問題。這些機構可以直接與當事人再次 嘗試調解,如果他們相信這應該有可能達成協議。

(二)討論重點

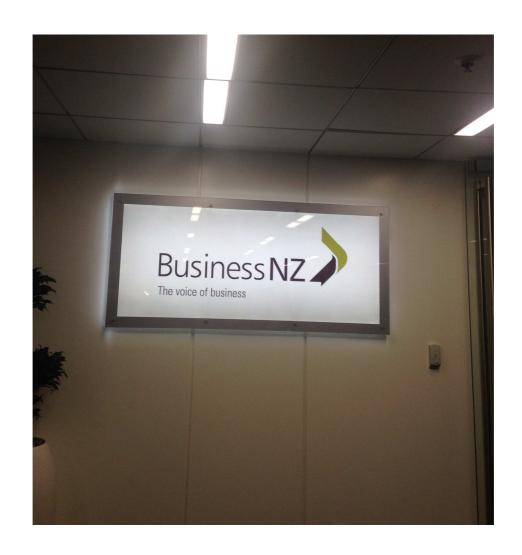
 在有關調解案件之態樣方面,我國主要爭議類型,包括契約、 工資、給付資遺費及職業災害補償為大宗,而紐西蘭之調解業務,則更著重於職場性別平等。因女性工作生涯的較少規劃或 中斷是造成勞動市場性別差別待遇的一個重要原因。由於育 嬰、托兒、及托老的成本過高,而且缺乏足夠的和完善的設施, 女性常常就得負起這些責任,使得小孩、病人或是老人可以受 到專業、完善的照顧,也避免女性因為必須承擔這些工作而被 剝奪個人發展的機會。兩性工作平等之落實,有賴於勞資雙 應相互合作,建立一個兩性平等的工作環境。除了保障男性的 參與權利之外,也能真正讓女性工作者受益,創造出「勞資雙 贏、兩性雙贏」的合理制度。讓所有的參與者共享企業的發展 成果,創造和諧並永續經營的企業與社會,更進一步以此為基 礎,朝向一個兩性平等的目標邁進。為了解決女性受雇者的特殊困境和制度上的偏差,我國通常有設計一些措施或立法,用以促進兩性職務的平等。我國的憲法中列有對婦女參政保障的名額也算是其中的一種。

2、在調解人的年齡層方面,紐方表示該國調解人之年齡層相較於 我國較為年輕,依據我國勞資爭議調解辦法規定,調解人應具 備下列資格之一:一、執行律師業務,並於最近三年內曾辦理 勞資爭議案件者。二、曾任或現任教育部認可之大專校院講師 以上,並教授勞資關係或法律相關課程三年以上,且有實務經 驗者。三、曾任各級勞工行政主管機關,處理勞資爭議或擔任 法制工作具三年以上經驗者。四、具備第四條第一款資格,並 依第十四條規定取得中央主管機關核發之勞資爭議調解人認 證證書,故在調解人的年齡層方面,我國調解人之年齡層較高。



典 Michael Hobby

Gordon MacDonald 令影[鍵入文件的引文或重點的摘要。您可以將文字方塊放在文件中的任何位置。使用[文字方塊工具]索引標籤以變更重要引述文字方塊的格式。



全訪 Business NZ[鍵入文件的引文或 重點的摘要。您可以將文字方塊放在文 件中的任何位置。使用 [文字方塊工 具] 索引標籤以變更重要引述文字方 塊的格式。]



與 Michael Hobby、代表處秘書合影 Gordon MacDonald 鍵入文件的引文 或重點的摘要。您可以將文字方塊放在 文件中的任何位置。使用 [文字方塊工 具] 索引標籤以變更重要引述文字方 塊的格式。]

陸、結論

台灣與紐西蘭都於近幾年完成組織再造,勞工事務與經濟發展、人力資源、教育等息息相關,紐西蘭的部會整合與溝通協調合作值得我們參考借鏡。

- 1、根據台紐經濟合作協定(ANZTEC)勞工專章第1次資深官員會議結論,第2次資深官員會議已於本次舉行,至於第3次資深官員會議輪由我國於105年主辦,應與紐方窗口密切保持聯繫,即早訂出彼此關切議題,必要時可以針對特定有興趣議題,另外規劃辦理更深入的研討會、論壇、訓練等。
- 2、在勞資關係方面:為配合我國刻正推動自主性勞動關係,強化勞資合作之夥伴關係,實應積極掌握國際間勞資爭議處理機制之脈動趨勢,如能針對工會監督、集體協商或勞資爭議處理等議題,透過台紐雙邊勞工事務之合作關係,共同研議,提點勞資爭議等全球化等前瞻的趨勢,追求勞工權益之公平對待與自我實現,從大構面的工會與勞資爭議等問題找出「雙贏」的法則,建立完整的政策擬定思維。
- 3、 職業安全衛生方面,此次簡報內容紐方針對職業安全衛生制度概要、勞動檢查員訓練、暴露評估3個主題,我方為化學品管理制度、暴露評估與分級管理。透過雙方詳細介紹說明,加上充分的討論與回應,對台紐雙方目前執行現況均能掌握。未來因應我國職業安全衛生法的全面推動,除了國際脈動的趨勢外,更多職業安全衛生相關議題仍可以藉由已展開的台紐雙邊勞工事務合作關係,積極共同研討,互相吸取推動經驗,創造勞工更舒適的安全衛生工作環境,確保勞工身心健康。
- 4、 此次赴紐西蘭參加台紐經濟合作協定(ANZTEC)勞工專章第 2次資深官員會議,於12月15日23時由台北出發,12月 20日凌晨4時30分返國,其中開會2天,去程又發生雪梨 機場暴風雨無法下降,飛機轉往布里斯本機上停留5小時後 在飛返雪梨之嚴重延誤事件。導致最後轉機至紐西蘭威靈頓 時行李未到,延至隔天傍晚行李送到時又發生行李嚴重破損

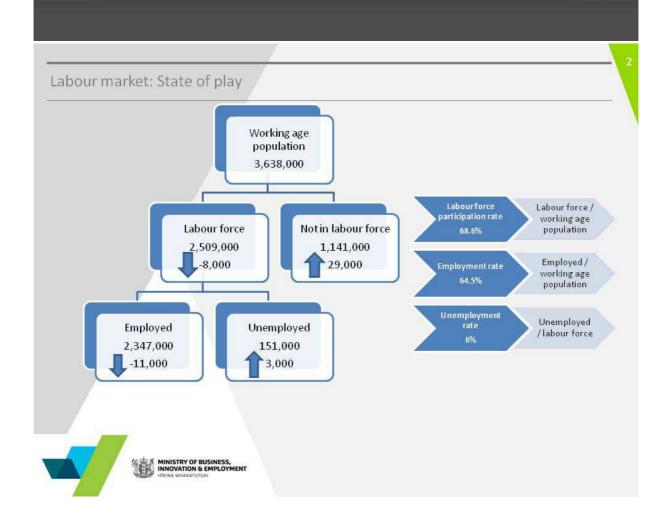
現象,謝謝駐紐西蘭台北經濟文化辦事處安排接送機,陪同參加會議,協助處理行李延誤及破損事宜。由於本次行程過於緊湊,加上已近年底聖誕節前夕,紐方政府官員處於長假前忙碌時刻,無法藉此次參訪有更充裕時間與機會與紐方官員多溝通研討,建議下一次的會議除了儘早規劃外,能讓與會者有更多天參與,且儘可能避開年底的忙碌時段。

附件 會議簡報資料



NEW ZEALAND'S EMPLOYMENT RELATIONS FRAMEWORK

Michael Hobby, Principal Advisor, International Strategy



Building skilled and safe workplaces in seven key areas...

Attracting Skilled Migrants and Investors Strengthening Tertiary Education

> Moving People off Benefits and into Work

Making the Job Market More Responsive



Achievement of

Young People

Employment Relations Framework

- Single, unitary legislative framework applies to all types of employee
- Core legislation, supplemented by specific laws on minimum entitlements
- Objective of promoting flexibility and productivity based on 'bottom line' statutory minimum employment standards



Legislative Elements

Core legislation

- Employment Relations Act 2000
- · Health and Safety in Employment Act 1992
- · Health and Safety at Work Act 2015

Minimum Standards

- Holidays Act 2003
- Minimum Wage Act 1983
- Equal Pay Act 1972
- Wages Protection Act 1983
- Parental Leave and Employment Protection Act 1987



Employment Relations Act

Key Features

- · Good Faith
- · Union rights and representation
- Collective bargaining
- · Fair individual bargaining
- · Personal Grievance Rights
- Employment problem resolution mechanisms





Collective bargaining

- Freedom of association
- Only unions and employers can bargain for a collective agreement
- · Collective bargaining subject to good faith obligations
- Content of collectives subject to negotiation
- Collectives may cover more than one employer



Individual bargaining

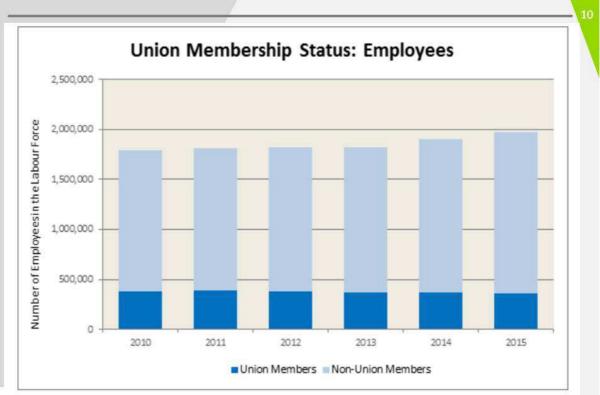
- All employees must have written employment agreements
- Terms and conditions of individual employment agreements are subject to negotiation but:
 - · minimum content requirements apply; and
 - may not be contrary to law or to statutory minimum conditions



Unions and Bargaining

- 137 unions approx. 360,000 members
- 18.3% of employees
- Concentration in large, multi enterprise/industry unions
- Most bargaining conducted at the individual level collective agreements cover approx. 22% labour force
- Majority of collectives are single employer, remainder multi-employer (mostly in public sector)







Strikes and Lockouts

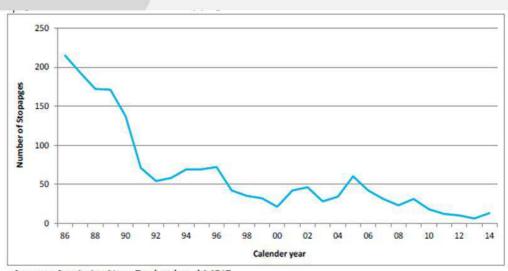
- Lawful and protected if in pursuit of collective bargaining or health and safety matters
- Subject to secret ballots where collective bargaining concerned
- · Written notice required
- Restrictions on use of replacement labour by employers
- Special notice requirements for strikes or lockouts in essential services and provision for access to mediation





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Work Stoppages



Source: Statistics New Zealand and MBIE





Work Stoppages (cont.)

Calendar Year	Number of stoppages	Number of employees involved	Person-days of work lost	Estimated loss in wages and salaries \$(million)
2005	60	17,752	30,028	4.8
2006	42	10,079	27,983	5.2
2007	31	4,090	11,439	1.9
2008	23	С	С	С
2009	31	8,951	14,088	2.4
2010	18	С	С	С
2011	12	2,098	4,850	1.0
2012	10	5,179	78,589	13.6
2013	6	270	483	0.12
2014	13	1,564	1448	0.3



Personal Grievance Rights

- Apply to all employees
- Give protection against unjustifiable actions or dismissals
- Also cover employment discrimination
- Give access to specialist employment dispute resolution mechanisms
- Special provisions for new hires (trial periods)



Dispute Resolution

Variety of methods:

- · Self help website and guidance material
- Contact centre
- Mediation
- Enforcement Labour Inspectorate
- Employment Relations Authority
- Employment Court Appeals to Court of Appeal, Supreme Court



Labour market issues / challenges

Changing nature of the labour market / future of work

- · Increasing diversity of working arrangements
 - · Zero hour contracts
 - Higher proportion of individual agreements
 - · Part-time
 - Casual
- Migrant exploitation
- Avoidance of minimum employment standards
- · Changing demographics higher number of migrants entering workforce

Workplace health and safety reform









Employment Standards



What is the issue

- Evidence on an unacceptably high level of non-compliance with New Zealand's employment standards
- MBIE's labour inspectorate investigating a growing number of serious breaches involving migrants and other vulnerable groups and systemic breaches
- Migrant exploitation can involve significant underpayment of minimum entitlements, and is particularly an issue in Auckland and the Canterbury rebuild
- · Zero hour contracts no guaranteed minimum hours

What was a second second

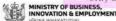
Non-compliance with employments standards has wide ranging effects, on individuals, businesses and New Zealand's economy:

- · Anti-competitive behaviour
- Harm to New Zealand's international reputation as a place to do business, or to work
- · Poor outcomes from employment
- · Low productivity workplaces
- Poor employment relationships
- · Promotes precarious employment

And also parental leave The current settings of the parental leave scheme mean it is not working as effectively as it could. For example:

- accessing paid leave requires being in continuous employment with the same employer for at least six months
- only biological and formal adoptive parents are eligible





Proposed amendments

The principal object of the Employment Standards Legislation Bill is to **promote fairer and more productive workplaces** through a number of changes to the employment relations – employment standards (**ERES**) system. Specifically, the Bill:

Strengthens enforcement of employment standards strengthens enforcement of employment standards in particular through providing for a more comprehensive sanctions regime, better enabling inspectors to identify and investigate breaches and increasing the accountability of third parties involved in breaches

addresses 'zero hours' contracts and other unfair practices in employment relationships (such as unreasonable wage deductions) that undermine the mutuality of obligations in the employment relationship

Modernises Parental Leave modernises the parental leave scheme by broadening eligibility to better reflect current work and family arrangements, and providing more flexibility





Questions? For more information:

http://www.legislation.govt.nz/

http://www.mbie.govt.nz/

http://www.employment.govt.nz/er/

http://www.immigration.govt.nz/

http://www.business.govt.nz/worksafe



Assessing and Managing Occupational Exposure

Philippa Gibson стн сон Principal Specialist Occupational Health

New Zealand Government



Todays talk

- 1. Our team
- 2. Legislation
- 3. OELs
- 4. Guidance material
- 5. Sampling and analysis in NZ
- 6. Control
- 7. Occupational hygiene in NZ

WORKSAFE
NEW ZEALAND | TOWNSON

Technical Programmes and Support Team of Worksafe NZ

- 1+1? certified hygienist
- Are also inspectors
- · 1 other with occupational exposure experience
- provide technical advice on exposure assessment and control for Worksafe, inspectors and public

Philippa Gibson

With Worksafe since 2006, prior was an occupational hygiene consultant since 1995

WORKSAFE NEW ZEALAND I RATURADARA

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Occupational Exposure – legislation

Current legislation

- Duty to manage hazards Requirement to monitor the employees
 exposure to the hazard, and monitor health in relation to the hazard (Health and Safety In Employment Act, 1992)
- Ensure no person exposed to a concentration exceeding an OEL (Hazardous Substances and New Organism's Regulations, 2001)

New legislation (April 4th 2016)

- Health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness (HSW Act, 2015)
- To be confirmed but may be No person at the workplace is exposed to a concentration that exceeds the OEL (General Risk and Workplace Management Regulations 2016)



Occupational Exposure – legislation

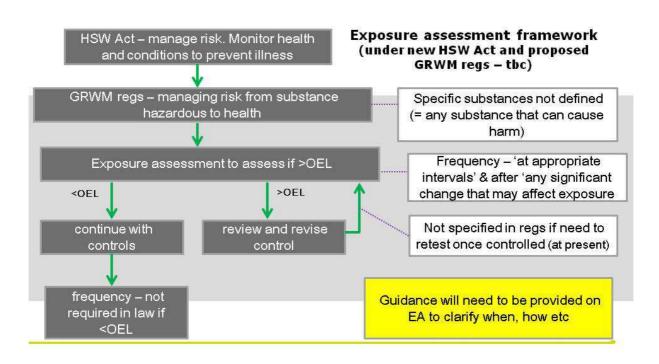
Health and safety inspectors - do not do exposure assessment

- Not competent
- · We don't train hygienists at WSNZ
- · Not our duty to do so
- · May require employer to do exposure assessment via a written notice

Technical specialist - may do EA

- For a prosecution or to gather evidence (rare)
- · We may outsource expert witness
- WSNZ does not have a wide range of monitoring equipment, no labs





Occupational Exposure - OELs

New Zealand OELs are called 'WES'
Also contain some BEIs
Current version 2013, draft 2015
version completed

Workplace Exposure
Standards and Biological
Exposure Indices

DECEMBER 2015 STREDMON

Occupational Exposure - OELs

- · 688 WES values for 595 substances
- · 80% are 8 hour TWAs
- 21 BEIs
- Most WES and the BEIs are based on ACGIH TLVs from 2002
- Since 2002 six substances have been reviewed: soft wood dust, formaldehyde, benzene, methyl bromide, diesel particulate matter (in progress), crystalline quartz (in progress)

Workplace Exposure Standards and Biological Exposure Indices

DECEMBER 2015 and purpos



Occupational Exposure - OEL review

Review process in part defined by HSNO legislation:

Before setting exposure limits under this section, the Authority* must—

- (a) consider the best international practices and standards for the safe management of the substance; and
- (b) be satisfied that, against other specified exposure limits that apply to the substance, -
 - (i) the proposed exposure limit is more effective in terms of its effect on the management, use, and risks of the substance; or
 - (ii) the proposed exposure limit is more cost-effective in terms of its effect on the management, use, and risks of the substance; or
 - (iii) the proposed exposure limit is more likely to achieve its purpose; and
- (c) do everything reasonably practicable on its part to advise all people who in its opinion may be affected by the proposed exposure limit; and give those people a reasonable opportunity to make submissions and comments to the Authority on the proposed exposure limit; and (e) consider all submissions and comments received.

* the Authority is not Worksafe - it is the Environmental Protection Authority



OEL review

The actual WES value follows SCOEL methodology:

- · For health based OELs
- As per general S3.2 General procedure for setting OELs

Worksafe NZ

- outsource the tox and current OELs review and recommend an OEL value (TERA)
- · consults with stakeholders on the proposed level
- considers the submissions and determines a new WES
- · Publish WES may have a lead in period



Methodology for the Derivation of Occupational Exposure Limits

Scientific Committee on Occupational Exposure Limits (SCOEL)

Key Documentation (version 7

Exposure assessment - Guidance

WES book

- Assessing exposure
- Sampling strategy
- · Variation in exposure
- · Statistical analysis of sampling results
- · What is compliance with WES

Workplace Exposure Standards and Biological Exposure Indices

DECEMBER 2015 and po



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Exposure assessment - Guidance

Worksafe doesn't specify:

- number of samples, or statistics to apply etc but provides examples e.g. British and Netherlands Occupational Hygiene Societies, AIHA, NIOSH Occupational exposure sampling strategy manual, UK Health and Safety Executive HSG173 (2006)
- What 'compliance' with an OEL is though that guidance will come next year
- Frequency of assessment e.g. if 95%ile <0.5 OEL, then every two years; or is GM <0.1 OEL then every two years

Workplace Exposure Standards and Biological Exposure Indices

DECEMBER 2015 anaporo



Exposure assessment - Guidance

Mining guidance – to be published Feb 2016?

 In underground mines – must have a plan for monitoring – Guidance on assessing exposure; sampling strategy; variation in exposure; statistical analysis of sampling results; what is compliance with WES

2016 - new guidance

- on what WES values are enforceable (some may be, some may be guidance)
- How will quantitative control banding fit*
- ? Competence of people doing exposure assessment requirement under regs (tbc) that
 EA carried out by a competent person who has sufficient knowledge, skills, and experience in the
 appropriate techniques and procedures, including the interpretation of results

* exposure monitoring— (a) means the measurement and evaluation of exposure



Exposure assessment - Sampling methodology

Worksafe NZ doesn't specify methodology

- except for inhalable dust and respirable dust (Australian Standards AS 3640: 2009 and AS 2985: 2009)
- Its up to the consultant to decide on appropriate method competence important
- Consultants use NIOSH/OSHA methods (some HSE)

Tubes and filters

- Common ones easily available in NZ, sometimes have to wait for correct tube to be sent from USA/Europe
- Direct reading instruments and noise meters Ready supply and calibration in NZ



Exposure assessment - Analysis

- · Common types available in New Zealand accredited labs
- Not uncommon to send samples to Australia
- · Sometimes send samples to USA
- · Stability in transit and Customs can be an issue



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Control banding

COSHH Essentials

- · WSNZ weblink to the E-tool
- Adjustments made on our website for differences in classification e.g. numbers not always on NZ SDS
- WSNZ will be doing promotion on using the tool to SMEs, industry, inspectors

WSNZ trialled *Stoffenmanager* against COSHH Essentials and decided to promote COSHH Essentials (though *Stoffemanager* & other tools (qual/quant) would be considered acceptable in principals for risk management)



Noise

Regulation 11 of current law requires noise to be assessed AS/NZS 1269:2005. Specifies:

- Type of meter
- How to determine Laeq8hr
- Competency

New noise regulation (2017?)



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Management of occupational exposure

Hierarchy

 written into new law - eliminate; substitution; isolation; engineering controls; admin controls; PPE

Reasonable practicability

 what is reasonably practicable to be done taking into account: likelihood, degree of harm; methods to control and their availability; (finally) the cost of control and whether cost is grossly disproportionate to risk



Management of occupational exposure

Limited experienced consultants in NZ in

- · ventilation engineering
- · acoustic engineering



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Occupational hygiene in New Zealand

- Around 30 practicing hygienists
- New Zealand Occupational Hygiene Society
- NZOHS part of IOHA and ANOH
- No NZ certification system
- 7 certified hygienist in NZ certified under AIOH, ABIH, BOHS
- Professional development challenging mostly go to AIOH conference
- Some organisations teaching some international occupational hygiene module courses (OHTA)



Thank you

Any questions?





The Ministry of Business, Innovation & Employment





14 Ministers

144 number of Acts and other pieces of legislation that MBIE is responsible for

3500 MBIE people Around 474 offshore and 3026 with New Zealand



Organisational Structure

The Market Services group works with businesses, employees and consumers to help them operate successfully in the market place.

The Corporate, Governance and Information Group supports the Ministry's leadership team to set and guide strategic direction and governance. It is also responsible for communications and marketing, legal advice and crown entity monitoring.

The Finance and Performance Group manages MBIE's financial resources to maximise efficiency and provide a greater impact.

The Office of the Chief Executive acts as a strategic advisor to our Chief Executive and leaders on government priorities. It also includes the Canterbury Recovery Programme and Māori economic development teams

The Building, Resources and Markets Group ensures infrastructure and resources (including the built environment) are managed efficiently as part of a productive, internationally competitive business environment. The group also ensures the effective stewardship and management of Crown-owned resources.

The Labour, Science and Enterprise Group advises on sector, regional and business development policy and programmes, tourism and major events. LSE also advises on a wide range of labour, international and immigration policy. It works alongside Crown entities such as Tourism NZ, NZ Trade and Enterprise, Callaghan Innovation, WorkSafe New Zealand and Crown Research institutes.

The Immigration New Zealand Group is responsible for delivering immigration services and for bringing the best people to New Zealand to enhance our social and economic outcomes



MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT HÉRINA WHAKATUTUR

MBIE'S Objectives

MBIE's purpose

MBIE's purpose is to grow New Zealand for all, as reflected in the MBIE triangle:

INCREASE REAL HOUSEHOLD INCOME 40% BY 2025

From a median household income of around \$1300 to \$1800 a week

OBJECTIVES

MORE COMPETITIVE BUSINESSES

productivity growth Increase exports/GDP ratio to 40%

JOB **AFFORDABLE** OPPORTUNITIES HOUSING FOR ALL

Lower ratio of housing costs to income

Focus areas

- MBIE's five outcomes correspond to five of the narrative's key focus areas:
 - Dynamic business environment
 - Skilled people and innovative firms
 - The built environment
 - The natural environment
 - Sectors, regions and people
- While not an MBIE outcome, MBIE is also interested in greater levels of international connections

MBIE OUTCOMES

Unemployment

under 4%



More supportive and dynamic business environment



innovative firms well-functioning



Greater value sustainably derived from the natural







MBIE'S Priorities

Support key Government Priorities (BGA)

- building a more productive and competitive economy
- rebuilding Christchurch
- delivering better public services
- managing the government's finances responsibly.

Labour Market and Skills – ensuring the systems deliver good outcomes for New Zealand businesses and workers

MBIE's key focus is:

- Improving the operations of the employment relations and standards systems to address issues such as non-compliance with employment standards and zero-hour contracts
- Implementation of the health and safety reforms has the potential to lead to a stepchange in the way New Zealand firms view and proactively manage health and safety in the workplace.







- Employment Relations
- Health & Safety
- Employment Standards

Dispute

- Information
- Mediation
- Employment Relations Authority
- Employment Court *

Enforcement

Labour Inspection





MBIE and WorkSafe NZ: Dual Roles

MBIE will:

Lead development of legislation and regulation

Partner with WorkSafe NZ in design of any health and safety strategy

Monitor WorkSafe NZ

Maintain central Government overview of health and safety system

WorkSafe NZ will:

Lead operation and implementation of system

Provide technical input into design of legislation and regulation, and provide supporting guidance / Approved Codes of Practice

Provide feedback to MBIE on workability of regulatory regime

Partner with MBIE on design of any health and safety strategy







Ensuring Minimum Employment Standards - Labour Inspectorate Approach

"Making smart decisions and taking deliberate concerted action to relentlessly weed out unfair and anti-competitive employment practices."



NZ Work Context

- 150,000 businesses employers, 2 million workers
- 6,000 new business employers annually and 4,000 out of business
- Circa 180,000 migrant workers at peak (temporary workers, working holidays, students)
- 60,000 school leavers
- 300,000 workers at or around minimum wage
- Long period of declining union coverage particularly in private sector





- · Growth in flexible/informal employment arrangements
- Increasing migrant workers, increasing migrant employers
- Divergence of outcome for skilled vs un/semi-skilled
- Poor (latent?) public appreciation of employment standards
- Weak supply chain labour models which lack assurance
- Variable business quality (business models and management)

NZ Employment Standards Context



- Legislated minimum standards fairly comprehensive with complex elements
- Legislated institutions (Labour Inspectorate, Mediation Services, Employment Relations Authority, Employment Court)
- · Civil orientation weak accountability mechanisms
- Relationship vs regulatory approach (intermingling)
- Complaints based reactive/responsive vs proactive/intel led
- Regulatory capability challenge
- Regulatory/agency challenge and opportunity
- Systems challenge

Labour Inspectorate

A BUREAU OF INDUSTRY.
THE MINISTRYS NEW DEPARTURE.
INTERVIEW WITH THE PREMIER.
MR. BALLANCE EXPLAINS HE
PROPOSALS.

[OT THEREPARE—OVE CORRESPONDET.]

(ST TRINGRAPH.—OWN CORRESPONDENT.
WELLINGTON, Saturday,
I WAITED on the Premier this afternoon

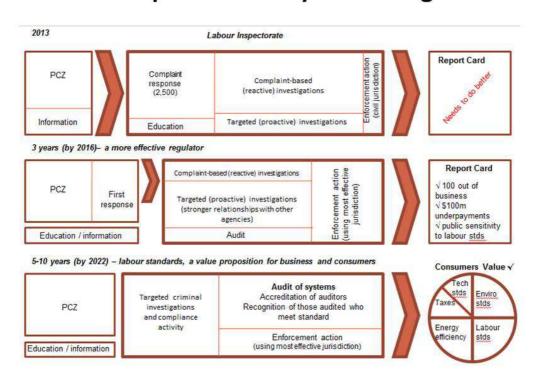






- Genesis in the Bureau of Industry (forerunner to the former Department of Labour) in 1891
- Located in Market Services with MBIE's 'family of regulators'
- 12 locations
- 50 Labour Inspectors
- 6 desk based compliance staff members
- 23 additional staff (support, managers, national office)
- 3 dedicated intel officers
- 600 audits, 600-800 investigations per year
- Currently 400 enforcement actions per year approx (notices and proceedings)

Labour Inspectorate 10 year Strategic Path



Labour Inspectorate as Regulator

- LI regulatory task to align legislated behaviours with workplace behaviours leveraging beliefs already held
- 'Fairness' a core belief and a defining aspect of NZ psyche (everyone deserves a 'fair go')
- Fair competition between business
- Fair workplaces, and ultimately productive workplaces, start with getting the basics right









- Inspectorate as 'regulator' not employment consultant - enforcement outcomes for standards rather than problem resolution outcomes for relationships
- Labour Inspectorate as the 'enterprise gardener' – take out the weeds and prune to promote desirable growth.

Our strategic approach – refining the regulatory 'craft'

The left hand creates demand...

- Programme of audits in each sector – based on intelligence
- Investigations
- Enforcement action taken
- Media coverage of enforcement activity
- = Evidence the problems
- = Hold to account

...while the right hand influences and persuades

- Engage with industry leaders to encourage their leadership in employment standards compliance
- Explain value proposition of employment standards
- Encourage development of industry-led assurance models
- · Strong information and education element
- Co-production with other regulators and industry groups
 - = Co-production
 - = Systems solutions
 - = Capability building

Priority sectors and regions for the left and right hands:

- Dairy, Horticulture and Viticulture, Hospitality and Retail, Construction, Fishing, Payroll
- · Migrant workers and youth
- · Canterbury and South Auckland

Recent High Profile Cases

- Rum City retail liquor outlet Auckland Central
- Masala Chain of Indian Restaurants in Auckland
- Preet Chain of convenience and liquor stores Canterbury
- KiwiRail Short term Chinese workers removing asbestos
- Tech 5 Labour on-hire enterprise Canterbury
- · Indonesian fishing crews
- Worker deductions for petrol station drive offs
- Dairy sector audits nationally
- Kiwifruit sector audits Bay of Plenty
- Construction sector audits Canterbury





Where To...

- New legislation (additional powers, accountabilities and offences – including infringement offences)
- New integrated CRM and Intel System
- Lifting and formal recognition of regulator capability
- Focus on system responses (e.g. migration, payroll, assurance, brand, track and trace



