

John Walley, NZMEA Chief Executive

Statutory Independence or Democratically Accountable

Up until now, most of the debate surrounding monetary policy has focused on ways inflation might be better managed and the need for different techniques, or further targets, to be added to the Reserve Bank's (RBNZ) responsibilities. This debate has tended to centre on the effect high interest rates have on exchange rates, and the returns to the tradeable sector.

The New Zealand Manufacturers and Exporters Association (NZMEA), for its part, has suggested variable savings rates instead of interest rates as an inflation control mechanism. Evidence over the last decade shows the money supply has increased faster than the economy has grown. This failure of monetary policy really does bring deeper questions to the table.

Are we well served by a RBNZ that is not subject to democratic influence and debate on what our policy settings should be? Was the fight against inflation won, or did low cost pressures just make it look that way?

Economic trends since 1989, when the Reserve Bank Act (RBA) was introduced, do not make pretty reading. Our trade balance has steadily decreased during this period while our terms of trade have actually been improving. Much of the responsibility for this disconnect must be placed on our approach to monetary policy.

Supporters of the RBA argue that these detrimental effects can be accepted because the rampant inflation of the 1970s and 80s has been constrained. To examine this argument it is worth noting the comparative inflation levels. New Zealand's inflation levels were unsustainably high in the 70s and 80s, but this was not unique. Worldwide inflation in that period was high driven by enormous cost pressures.

In the RBA era, New Zealand's inflation level has come down significantly but it has only been 0.1% lower on average than other IMF industrial countries; surely not enough to justify the obvious negative affects on our tradeable sector.

The cycles caused by high interest rates designed to curb domestic demand are only likely to get worse. Global capital flows are growing much faster than GDP, with cross-border lending more than tripling as a percentage of world GDP since 1994. Therefore there is more and more speculative foreign capital available to chase our inflated interest rates, putting increasing upward pressure on the dollar. The cycles are likely to get more extreme at both ends.

Recently the Reserve Bank has struggled to suppress demand through the Official Cash Rate (OCR). As the world faces price increases on oil, food and commodities in general, the demand side approach to inflation control must become much less effective. The only way forward is a focus on supply side productivity, and that will require a hard new look at the policy framework.

Who takes responsibility for bad outcomes? An independent central bank says we just fight inflation following the RBA and never mind the consequences. Elected politicians claim "there is no other way" – no one, it seems, is responsible. Meanwhile the report from the Finance and Expenditure Select Committee on monetary policy has disappeared without trace. So much for public accountability, transparency and the democratic process.

The economic situation is bad and likely to get worse in the medium term. The independence of the Reserve Bank should be at the centre of a policy debate on how to get out of this mess, and avoid going through the same cycle again. If the tradeable sector is to lead a recovery, the stability of exchange rates and interest rates without OCR surcharges must be on the agenda.

August 2008

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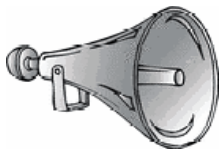
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*It is often said;
"nothing endures
but change"*

**Check out the NZMEA's
Agenda for Change**

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We Have Found the Wall - What Next?

The latest New Zealand Manufacturers and Exporters Association (NZMEA) Survey of Business Conditions completed during July 2008, shows total sales in June 2008 increased 3.79% (export sales increased by 39.6% with domestic sales decreasing 14.7%) on June 2007.

The NZMEA survey sample this month covered NZ \$566m in annualised sales, with an export content of 46%.

Net confidence dropped to -55, down from the -40 result reported last month.

The current performance index (a combination of profitability and cash flow) is at 93, down from the previous month's 100, the change index (capacity utilisation, staff levels, orders and inventories) went down to 99 from 100 last month, and the forecast index (investment, sales, profitability and staff) is at 98, down on the previous month's result of 101. Anything less than 100 indicates a contraction.

The reported constraints were: 9% capacity, 9% staff and markets 82%.

Staff numbers for June increased year on year by 1.05%.

"The numbers in the survey and the comments from manufacturers and exporters all reference a slow down or weakness in forward demand and current performance. Domestic demand has dropped away but has been propped up by higher export sales. Across the board rising costs are eating away at margins," says NZMEA Chief Executive John Walley.

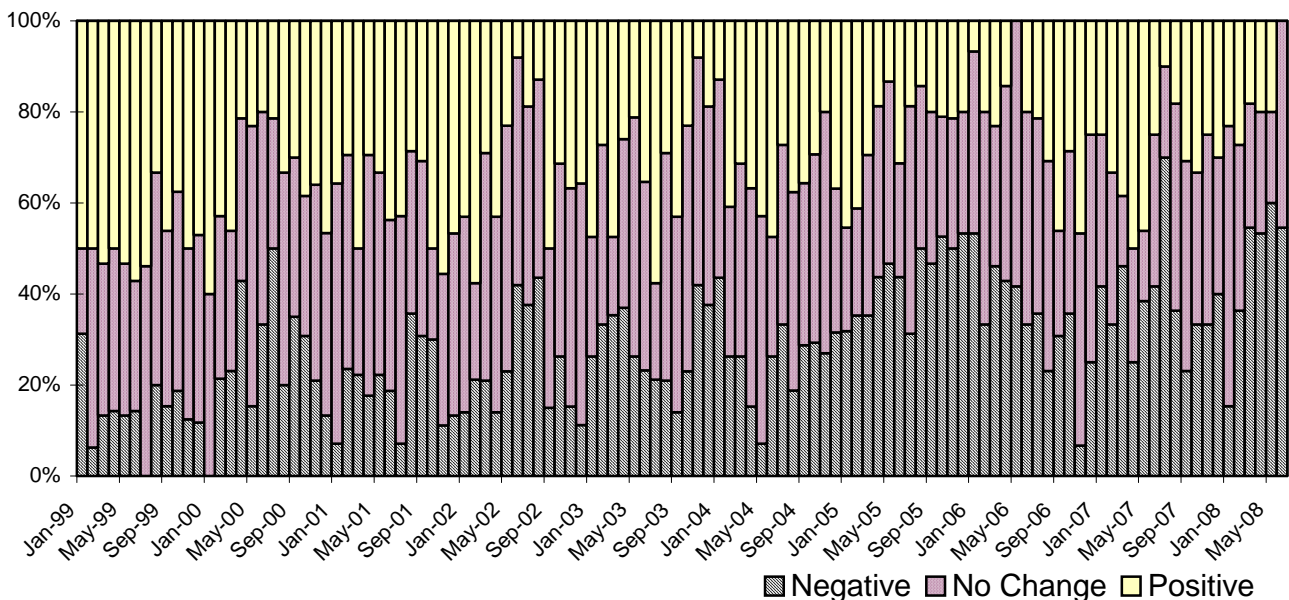
"The low returns, a lower backlog of forward orders, slow payment, and an all round nervousness about cash-flow have seen confidence drop further. For the first time in some years all three composite indicators are in contraction territory and future indications are all negative."

"The interest rate cut and the fall against the US dollar happened after we closed this survey. A more realistic exchange rate should herald some improvement in returns once any higher forward cover works through. Demand will be the constraint, as markets indicate a reducing tolerance to risk and consumers tighten their belts."

"In a world of cost driven inflation we need to shift our attention away from the interest rate, the "brakes" of the economy, and work out how to make the supply side, the "engine", more productive. Lifting activity and productivity in the real economy is the only way forward. Our policy framework needs to be aligned to the new world dynamics of fussy credit, slow demand and high commodity prices."

The New Zealand Manufacturers and Exporters Association survey gathers results from members around New Zealand. It provides a monthly snapshot of manufacturers and exporters' sales and sentiment.

Confidence



Do Employees of a Competitor Company Have Access Rights to Your Business as Union Representatives?

In a recent decision of the Full Bench of the Employment Court, the issue of whether employees of a competitor could gain access to a workplace pursuant to statutory powers governing such entry was considered. The Employment Relations Authority had earlier determined in the matter between McCain's Foods (NZ) Limited ('*McCain*') and the SFWU that employees of competitors could be union representatives entitled to entry. McCain challenged this by way of hearing de novo in the Employment Court.

The SFWU had members who performed similar functions in both McCain's and its competitor, Heinz Wattie's Limited's food processing plants near Hastings. Each plant has union members who are elected delegates. SFWU also has a full time organiser in the Hawkes Bay. Previously SFWU member organisers had been able to enter the McCain plant through 'union access' without difficulty, even when employed by Heinz Wattie's. McCain then took issue with this on the basis that commercially sensitive information was displayed on its cafeteria notice boards regarding the Hastings plant and a 'sister' Australian plant against whom the Hastings plant was measured. McCain did not want its competitors or employees of its competitors to see this information.

The Authority had held the statutory rights of entry conferred on unions by sections 20 and 21 of the ERA, did not expressly exclude employees of competitors. The SFWU was entitled to have its chosen or appointed representatives allowed access to the McCain plant (subject to any other statutory constraints) even if these representatives were employees of a competitor.

The full bench dismissed the challenge of McCain. In dismissing the challenge the Court commented that McCain had other options available to it to ensure SFWU member organisers employed by competitors did not have access to confidential information. Such options included obscuring the notice boards on which the confidential information was displayed in the cafeteria temporarily or holding the meeting outside of the cafeteria. The Court did not accept the argument advanced for McCain that because the member organisers were employed by Heinz Wattie's, they would feel compelled to act in the best interests of their employer and at the expense of McCain, particularly given the employees involved were not fiduciaries or managers but employed on a modest wage to perform manual work. Further, the statutory obligations of good faith meant that even if the member organisers could glean information about a competitor of their employer, it could not be disclosed to or accepted by their employer.

While Employers may find it concerning that the union access provisions can be relied upon for employees of competitors to access the workplace as a union representative, this decision indicates employers should be proactive in protecting any commercially sensitive information which may ordinarily be displayed in the workplace during any such access.

Employment Court Decision on Ratification Procedures

In the recent decision of *Waikato DHB & Ors v PSA*, the Employment Court have provided guidance on what must be done in order for terms of settlement to become a ratified collective agreement. In this case the PSA had presented for ratification terms of settlement relating to agreed wage increases. Additional terms were subsequently agreed and included in the collective agreement, however the employees had not voted on these additional matters and therefore they had not been ratified. Accordingly the Employment Court held that ratification of the collective agreement had not occurred. A distinction was drawn between ratifying the collective agreement itself under section 51 of the Employment Relations Act 2000 and the former requirement under the Employment Contracts Act 1991 to ratify the terms of settlement.

The four statutory requirements of a collective agreement are:

- that it is written;
- that the specific requirements under the employment Relations Act 2000 are met;
- that it is ratified; and
- that it is signed by both parties.

As the collective agreement itself had not been ratified it was deemed ineffective, rather than having been cancelled (which neither the Authority or the Court has the ability to do).

The facts in this decision were quite specific as the signed collective agreement contained terms which had not been voted on. However employers need to be aware that what needs to be ratified is the entire collective agreement rather than just a part of it. If an employer is preparing terms of settlement in conjunction with a union, then it would be appropriate to ensure that the document for ratification refers to "*the collective agreement, as modified by the following terms . . .*", or words of this nature which effectively present the entire collective agreement, including any agreed changes, for ratification.

This article was provided by McPhail Gibson & Zwart Ltd. If you require further information relating to this topic please contact the NZMEA at mea@mea.org.nz or phone 0800 353 2540.



In This Market Offense is Still the Best Defence

ANZ's senior economist Khoon Goh says a siege approach to market conditions is not the best way.

Hunkering down in response to the volatility in domestic and international markets, while an understandable reaction, is likely to lengthen and deepen the current economic downturn.

Worse, a survival strategy, rather than minimising risk, may overlook opportunities and leave a business poorly positioned to gain early benefits from the upswing that is sure to follow.

"We should be taking advantage of the current lull to really take a good look at the businesses and sectors we are in, and work out how we can strengthen our core competencies," says Khoon Goh, "There is tremendous potential for industry consolidation to occur, which will help bring about greater efficiencies and improve productivity.

Distance from markets, a commodity based economy and small size, once cited as reasons for New Zealand's economic underperformance, are now regarded as significant advantages.

Information technology has overcome the tyranny of distance while the economic centre of gravity is shifting closer to New Zealand, thanks to the growing importance of China and India. Small, nimble and green has become the new comparative advantage.

"We can focus on and service the high end of the market where people are actually willing to pay a high premium, and we have successful companies that have managed to carve out good niches for their products and are doing extremely well in the global market," Khoon Goh says.

Commodity prices are now on a structurally higher and rising trend, after being in decline for several decades. For New Zealand this is a once in a lifetime opportunity to benefit from being a high quality supplier to the world of protein in the form of dairy and red meat products. The intellectual property and technology associated with New Zealand's highly efficient agricultural sector could be transferred to further diversify the country's ability to supply customers.

The fact that we can be competitive, even though our products have to travel great distances, and the fact that some of our products command a premium in international markets such as the UK, just shows how attractive New Zealand products can be to the global market - and there remains tremendous untapped potential there.

"There's nothing to suggest that once we get through this bump in the road that the New Zealand economy will not enjoy another 10 years of strong growth as it did following the Asian crisis and drought-induced recession of 1998."

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NZMEA HR Advisory Services

Penny Shaw, Senior Consultant - Brannigans Human Capital: Penny has experience in the facilitation of a wide range of HR functions including employment relations, performance management, negotiating skills, recruitment and selection and human resource audits.

Sarah Bradshaw - McPhail Gibson & Zwart: Sarah is experienced in drafting employment agreements/contracts for service interpretation of all legislation relevant to employment issues, attendance at mediation, advocating in the Employment Relations Authority and the Employment Court and conducting of disciplinary meetings for employers.

Juanita Wilson - Next Step Solutions: Juanita offers a practical, common sense approach to HR challenges in the areas of manufacturing, retail, distribution, administration and professional environments, advice on HR, health and safety process and systems, recruitment and selection, skill assessments, performance review systems, training and development and change management.

For any human resource/employment questions please contact:

NZMEA HR Advisory Services on our website: www.mea.org.nz, or phone: 0800 353 2540, or email: meassist@mea.org.nz.

Travellers Friend

Jangan masuk! Keine ausgang. Выход. Farlightet! Vietato fumare, Wanawake, Мороженое, Hatari! Sortir.

If you saw any of these notices in an airport, at a railway station or on the street - what would it mean to you?

When we travel abroad we are exposed to many cultures, languages and practices which work fine for the locals but leave foreigners completely baffled. When Kiwis travel abroad they become foreigners and all the accepted standards and conventions of "home" become quite meaningless and often dangerous. When crossing a road in Europe, should one look right, then left, then right again, like we teach our kids? Only if you want to end up under a bus! Who has the right of way on a pedestrian crossing in Bangkok? What do you know about mopeds in Beijing? Why is that information useful? Is it good manners to offer to shake hands with your host's wife? How do you use chopsticks anyway? What about business gifts, bribes, tipping, favours, safety in foreign places, commercial morality, contracts, getting paid?

There are a good few things a traveller needs to know before embarking on a business trip to an unfamiliar place. Traps, pitfalls, dangers and sometimes delights.

Before you leave, do a little research into the places you will be visiting. Find a good reference book; Lonely Planet is helpful, but not really enough for a business traveller because it is aimed at the tourist.

You should take care to study as much information as you can find on the particular needs of a business traveller with reference to the places you intend to visit.

Subjects like basic local good manners in such situations as a first meeting, shared meals, meeting etiquette, self presentation, dress code and conventions. Then consider the way things work (or don't work) in the destination, planes, trains, taxis, currency, banks, money changing, hotels, hygiene, medical services, local laws and customs.

Some foreign places are so foreign they are almost alien, some look quite familiar then shock you with a sudden difference and some are just great fun – do you know which is which?

Never forget that commercial practices vary from place to place. What you are expected to pay for and what you need not pay for also varies, consider tipping for example, do you know when to tip, who to tip and how much?

Another thing that varies in some places is the concept of time and punctuality, words like "akan datang" (Malay), "bado kidogo" (Kiswahilli) and "mañana" (Spanish) take on whole new meaning when you are the one waiting.

On Thursday 14 August, the NZMEA will be offering a short and fairly light hearted forum in Christchurch entitled "Travellers Safety Net" to address a few of these issues. Come along and see if you really do want to make that trip after all.

This article was provided by The Test Agency. If you require further information relating to this topic please contact the NZMEA at mea@mea.org.nz or phone 03 353 2540.



US Visa Waiver Programme

Provided by United Travel on Victoria Square

On August 1st 2008, the American Department of Homeland Security will begin to accept voluntary ESTA (Electronic System for Travel Authorisation) applications.

ESTA is a new, fully automated electronic system for screening passengers before they begin travel to the United States under the Visa Waiver Program (VWP). The visa waiver program allows New Zealanders to enter the USA for holiday or business purposes for up to 90 days without a visa.

It is anticipated that ESTA will become mandatory for VWP travellers from January 12, 2009. International travellers seeking to travel to the United States without a visa, who are nationals of Visa Waiver Program (VWP) countries, should review this important information on traveller passport requirements under the Visa Waiver Program (VWP).

All VWP travellers, regardless of age or type of passport used, must present a machine-readable passport. In addition, depending on when VWP travellers' passports were issued, other passport requirements apply.

- Machine-readable passports issued or renewed/extended on or after 10/26/06 – requires an integrated chip with information from the data page (e-Passport).

- Machine-readable passports issued or renewed/extended between 10/26/05 and 10/25/06 – requires a digital photograph printed on the data page or integrated chip with information from the data page.
- Machine-readable passports issued or renewed/extended before 10/26/05 – no further requirements.

Temporary, emergency, official and diplomatic passports are exempted from biometric digital photo and chip requirements, but must be machine-readable.

If in doubt, it is recommended that travellers contact their local professional travel agent or the American Embassy in Wellington.

This article was provided by United Travel on Victoria Square. If you require further information relating to this topic please contact the NZMEA at mea@mea.org.nz or 03 353 2540.

We are all constantly made aware of the fact that a substantial part of running a manufacturing business, any business in reality, is the time required on minimising and coping with risks.

We have to cope with business risks on a day to day basis using strategies built into our regular routines - supply issues, currency fluctuations, difficulties of attracting staff with a 'lets do it' attitude, just to name a few.

However, some serious business risks have a habit of just sneaking up on us, without fair warning or precedent, and these can be the most disastrous of all. Major catastrophes such as a substantial fraud, fire, or serious accident to a staff member, can be very damaging to the future endeavours of the enterprise and indeed to the survival of the business itself.

Risk mitigation and traditional risk management actions are often concentrated around immediate risks, health and safety issues or providing adequate insurance cover. Whereas many companies now realise that the overview of this activity, and in the final analysis, the responsibility for ensuring the many other risks are evaluated is the responsibility of the Board of Directors. Their major task is to ensure the long term survival and growth of the enterprise as well as the realisation of the company's strategic vision.

Risk Mitigation

The fundamental mitigation strategy adopted by many business owners is to 'stick to their knitting'. In other words, to concentrate their business growth in activities they have good knowledge of, especially about what can go wrong.

Directors need to restrain the blind open enthusiasm frequently found when new opportunities are being presented by people outside the enterprise or by those within.

Directors often need to insist on detailed assessment of the potential for new risks in proposed new ventures or expansions, and may as a consequence, steer the direction for the business into more secure familiar areas where, for example, strong competitive advantages are held by the company. Protecting competitive advantages, which can be of greater value than any other aspect of the business, being the reason for its continued success, is also a common over-sight of the Board of Directors. Any threat or risk to them should be seen as a major threat and risk to the business's future.

A principle function of the Directors is to set Board level policies regarding the mitigation of major risks in detail, and of other risks in general terms. These policies set the boundaries for activities involved in high risk or potential risk such as exposure to takeovers, loss of major critical customers, or the arrival of a dominant new competitor.

Reviews of the CEO's performance in adherence to Board Risk Mitigation Policies are crucial to ensuring a business has effective risk mitigation and management right through all levels of the organisation.

Major Risks

Major risks for any enterprise often number a good handful and these can include:

- Loss of major contracts.
- Unexpected economic downturn.
- Loss of CEO or other key people.
- Major move in key foreign currency traded in.
- Loss of a major customer.
- Unexpected competitor action causing loss of major competitive advantage.
- Undesired major changes in government legislation adversely affecting company in a major way.

Inclusion in business plans of best and worst case scenarios can be a vital tool in forecasting the financial impact of major risks inherent in possible future events. Combined with strategic oversight by the Board, evaluating plans to manage or mitigate any major risks seen as possibly occurring in the planning period, can provide protection and potential solutions for a wide range of damaging events.

Risk mitigation is nowadays seen as a major function for any Board and it is essential for the Board to have senior management's total commitment to preparing for all identified risks in accordance with agreed priorities. As these can number thirty or so, this is obviously an ongoing task. For the future of your manufacturing business, it is worth evaluating your Board and management's effectiveness in risk mitigation and management at least annually. Don't you agree?

Eric Livingstone will be running a workshop in Christchurch on Tuesday 19 August titled: '**Your Board and Business Risks Workshop - Improving Risk Mitigation by Your Board**'. You can register on-line at www.mea.org.nz, or see the information flyer attached with this newsletter.

This article was provided by Livingstone Business Consultants Ltd. If you require further information relating to this topic please contact the NZMEA at mea@mea.org.nz or phone 03 353 2540.

Directors Personal Liability: When Things go From Bad to Worse

Before becoming a director of a company, a person should ask, can I be personally liable if something goes wrong?

Personal Liability of a Director

Where a person, while acting on behalf of a company, commits a civil wrong, the company will generally be liable for that wrong. However, there are circumstances, particularly when the company is on the brink of becoming insolvent, in which a third party will make a claim against the director. The liability of directors is unlimited and cannot be contracted out of.

Companies Act 1993

The introduction of the Companies Act 1993 clarified many issues surrounding directors liability:

- the standard of service, new duties and a higher standard of care is required;
- the ability of parties to enforce obligations against directors;
- the definition of director can include managers and employees;
- the liability of a director may arise from ordinary negligence;
- directors must meet the standard of a reasonable director; and
- the new procedural responsibilities of directors.

Failing to comply with these requirements may lead to a third party commencing proceedings and seeking damages for the alleged breach.

Fair Trading Act 1986

The Courts have held that there will be occasions where liability under the Fair Trading Act 1986 can be attached to a director. This involves treating the director as if they were “*in trade*”. Under the current law the critical question is whether the director was acting in a capacity distinct from his or her conduct on behalf of the company. For example, a director of a company may incur personal liability for his or her statements or conduct where he or she takes an active and independent part in negotiations relating to the company’s business.

Negligence – Misstatement

There has been a lot of debate in the law whether a director can be held personally liable for a misstatement. In *Trevor Ivory Ltd*, Mr Ivory was the major shareholder and managing director of Trevor Ivory Ltd. That company had been contracted to provide horticultural advice to the Andersons.

Mr Ivory, in performance of his company’s contract, gave certain advice to the Andersons. The advice was careless, and led to the Andersons suffering significant crop losses. The Andersons sued the company and Mr Ivory personally. The Court of Appeal held that Mr Ivory was not guilty on the basis that he had not assumed responsibility for the statements he made. As the law currently stands, for a director to be liable in this situation there must have been an assumption of responsibility such as to create a special relationship with the director.

How to Protect Yourself

If its constitution permits, a company can indemnify its directors to reimburse them for costs they incur in defending legal proceedings brought against them for activities carried out as a director. This can include criminal proceedings. The indemnity can only be given out if the director has won the case, has been acquitted or if the proceedings were discontinued.

Furthermore, a company can, if the constitution permits it, take out insurance for the benefit of a director covering civil liability for any acts carried out as a director and covering certain costs relating to defending or settling any claims.

It is important to note that indemnities or insurance policies must be disclosed in the company’s interests register and in the annual report to shareholders.

There are many ways in which a director can be held personally liable if something goes wrong within a company. However, the important thing is that directors know how to financially protect themselves.

This article was provided by Lane Neave. If you require further information relating to this topic please contact the NZMEA at mea@mea.org.nz or phone 0800 353 2540.

MEAssist

To network with other NZMEA Members or get assistance from our Associate Membership
 Contact: meassist@mea.org.nz or call 0800 353 2540

NZMEA's Associate Membership includes a wide range of specialists, consultants and service providers who can assist NZMEA Members with:

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| <ul style="list-style-type: none"> ➤ Strategic Business Development ➤ Business & Technology Planning ➤ Business Coaching ➤ Market Research & Marketing ➤ Export Marketing ➤ Advertising & Branding ➤ Communications & PR ➤ Import & Export ➤ Customs, Logistics & International Freight Forwarding Services, <u>plus 'less-than-container' services</u> ➤ Finance, FOREX & Banking ➤ Accounting, Payroll & Tax ➤ Investment Capital ➤ Insurance ➤ Debt Collection ➤ Business Sales & Valuation ➤ Research & Development Services ➤ Product & Prototype Development ➤ Intellectual Property & Patent Registration ➤ Total Product Design ➤ Engineering Analysis, CAD & FEA ➤ Project Management ➤ Operations Management ➤ Theory of Constraints ➤ Lean & Agile Manufacturing ➤ Kanban, Production Planning & Scheduling ➤ Condition Monitoring - Products & Services | <ul style="list-style-type: none"> ➤ ERP, MRP Solutions ➤ Supply Chain Management ➤ IT Systems – Design & Implementation ➤ Internet Telephony ➤ Website & Software Development ➤ Industrial Automation & Control ➤ Recruitment & Selection ➤ Human Resources Management ➤ Conflict Resolution & Mediation ➤ Employee & Immigrant Settlement Management ➤ Management, Leadership & Team Training ➤ Training Analysis ➤ Knowledge & Information Management ➤ Employment Law ➤ Change Management ➤ Temporary Staff ➤ Technical Publications ➤ Business Graphics & Printing ➤ Energy, Water & Waste Auditing ➤ QC & QS Management ➤ Health & Safety Systems & Training ➤ International Travel ➤ Fire Evacuation & Compliance ➤ Drug Testing ➤ Maintenance & Asset Management ➤ Factory & Plant Efficiency & Utilisation ➤ Strategic Pricing |
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NZMEA networks relationships and transactions between manufacturers FREE of charge.

Where the NZMEA stimulates a transaction with Associate Members a standard charge, or referral fee applies. This is invoiced to the Associate Member providing the service. These fees vary between Associates and reflect a wide variety of pricing models. The fee is constructed to be less than the usual marketing overhead recovery component of an Associate's pricing which enables a saving for Associates while using competitive market pricing which benefits all parties involved.



Workshops/Programmes/Special Interest Sessions

Events are open to all members of your staff and to members and non-members of the NZMEA. For more infor-

Date	Workshop	
Thursday 7 August	Christchurch	Engineers Industry Group Meeting - conference calling available
Tuesday 19 August	Christchurch	Your Board and Business Risks (Full day workshop)
Wednesday 20 August	Christchurch	Negotiation (Half day workshop)
Starting 21 August	Auckland	Stage 1 Health & Safety Representatives Training (Two full days) Dates are: 21 & 22 August
Tuesday 2 September	Ashburton	Training the Trainer (Full day workshop)
Starting 24 September	Christchurch	Certified in Production & Inventory Management (CPIM) Basics of Supply Chain Management (5 half days) Dates are: 24 September, 8, 22 October, 5, 19 November

The authentic voice for manufacturers and exporters