



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Department of Labour on the Discussion Paper :
Review of the Health and Safety in Employment Act (1992)**

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organization representing 43 nationally organised societies. It has 34 branches spread throughout the country to which women from some 150 societies are affiliated.

For over a century NCWNZ has initiated and actively supported endeavours to improve working conditions for all people, especially for women at work. The council made submissions to the Labour Select Committee considering the original Bill in 1992 and to the Inquiry into the Administration of the Occupational Safety and Health Policy in 1995.

In our submission on the Health and Safety in Employment Bill we called for an effective occupational health and safety structure, a national database to help identify problem areas and personnel trained to address the problems that were identified. We emphasised the need for a cooperative approach between employers and employees and the need for a balance between central regulation and individual employer responsibility.

Almost a decade later we believe that the Health and Safety in Employment Act 1999 has been effective in raising awareness of health and safety issues but there is still much to be done to encourage compliance with its provisions through greater use of education information and support services and through greater requirement on employers to comply with the Act. NCWNZ appreciates this opportunity to comment on the issues covered in this Discussion Paper. Our Employment Standing committee has consulted widely on these topics.

We commend the clarity of the layout of the document and the grouping of the proposals under three headings. The background information and the summary of the Health and Safety in Employment Act 1999 provides a good basis for comment on the specific questions.

Background

The information and data certainly reinforce the belief of NCWNZ that there is still much to be done in changing the culture of work places and attitudes to health and safety. We note that health and safety issues are part of an overall strategy to improve the work place environment and sit alongside the Employment Relations Act with its emphasis on good faith and the changes to ACC and ACC's partnership programme.

Question 1

Do you think that the HSE Act should be clarified to make it clear that it covers mobile workers?

If so how should the law be implemented in a way that is practical and reasonable to farmers?





NCWNZ believes that the Act should be so clarified. It is apparent that the original intention of the Act has been reinterpreted. We agree that there needs to be consistency with ACC coverage that includes mobile workers.

Members of our Standing Committee ask why such change would not be reasonable for farmers.

Question 2

Should Section 16 be amended to ensure that the HSE Act covers the circumstances described above which have led to gaps in cover?

NCWNZ agrees that Section 16 should be so amended. Protection must be provided for workers in all work situations. It is a nonsense that there should be a difference of cover between those persons who are inside places of work and those who are in the vicinity of their place of work.

Workers who are employed to come into a home for child care or cleaning duties are not covered by the legislation unless they are employed by a third party contractor. This is presently a gap in coverage and should be rectified

We absolutely concur that the duty of care be the same in all situations.

Question 3

Should any exemption from duties to recreational users only apply in the case of work places in rural areas?

NCWNZ considers that there could well be other recreational situations where exemptions may be appropriate eg. marine areas, mussel farms and divers' work places.

We are unclear if the legislation provides an exemption from duties towards a person who is unauthorised to be in a work place eg. building sites.

Question 4

Should an amendment be made to the Transport Licensing Act 1989 to ensure that the HSE Act applies to rail workers at all times?

NCWNZ agrees that such amendment should be made to the Transport Services Licensing Act 1989 if it does not lessen the standards now required for rail workers. All workers should have the same protection with no lesser standard of safety because a person is in a certain occupation. For these reasons we would expect maritime workers to be covered also.

Question 5

Should the HSE Act be amended to ensure coverage for all New Zealand aircrew whether they are in local or international airspace?

It is of concern that there is no New Zealand legislation that covers the health and safety of aircrew while on board an aircraft. NCWNZ considers that those workers should be given coverage under the HSE Act whether in New Zealand or international airspace. We note the reference to other legislation that presently contains the kind of statement that would cover international aircrew while working outside New Zealand. It is our view that it is preferable for requirements for health and



safety to be clearly defined in the HSE Act for all workers rather than dotted through various pieces of legislation.

Development of a culture of safety and health in the work place

In the submission NCWNZ made to the Inquiry into the administration of Occupational Safety and Health policy in 1995 it was suggested that cooperation, support and encouragement should be the main consideration in enlisting employer support for improved occupational safety and health and that, "the role of the Occupational Safety and Health service must be to do everything possible to inform and assist compliance".

There is evidence that issues of occupational health and safety are now being regarded seriously by industries and employers in New Zealand. However the background information provided in the present discussion paper shows that although New Zealand accident and illness rates have been declining in line with international trends, we continue to have higher fatality rates than Australia and USA. We note that there are certain industries where we compare poorly with Australia.

We would agree that while the Act is basically sound more must be done to attain the best possible environment for promoting healthy and safe work practices. Greater emphasis on the role of employees in this task is considered timely.

Question 6

Should the HSE Act provide for the election of Health and Safety Representatives in those work places where employees want a representative?

As stated in the introduction to this submission NCWNZ emphasises the need for a cooperative approach between employers and employees and the need for a balance between contract regulations and individual employer responsibilities.

NCWNZ Employment Standing committee when considering the question was agreed on the desirability of work places electing a Health and Safety representative but was divided as to whether this should be a prescriptive requirement.

Question 7

Should a trained Health and Safety Representative be able to issue Provisional Improvement Notices?

Question 8

Should a trained Health and Safety Representative be able to issue Provisional Prohibition Notices?

Question 9

What arrangements should be made for training Health and Safety Representatives?

These proposals could be viewed as a change to the concept of partnership and mutual support that NCWNZ wished to be the basis for the legislation. However on balance NCWNZ supports a trained Health and Safety Representative being able to issue Provisional Improvement Notices (PIN) and Provisional Prohibition Notices (PPN). This would give the trained Health and Safety representatives status and credibility in their role. In the "good faith" environment of the



Employment Relations Act it is in the interests of employees and employers to ensure the provisions are not abused.

It is absolutely crucial that the Health and Safety Representative should receive quality training. There must be clear guidelines on the use of PINs and PPNs. Two members stated that this training should be government funded and provided.

We do not have knowledge of the working of such notices in Australia but understand that this is the basis for the model suggested here so we presume that the model is working well.

Effective Enforcement

In the submission NCWNZ made on the Inquiry into the Administration of Occupational Safety and Health Policy in 1995 it was stated that "the role of the Occupational Safety and Health Service must be to do everything possible to inform and assist compliance." We continue to hold this view but we agree with the present discussion paper that the level of avoidable accidents strongly suggests an unacceptably high level of non-compliance with the Act. Accordingly we concur that there is a need for measures to address this by increasing the likelihood of prosecution for failure to comply. The horrifying figures on page 17 showing how unlikely it is that OSH staff can cope with non compliant employers strongly suggest that the service is under staffed. This must be remedied. Sufficient well trained inspectors need to be available to undertake the work of visiting sites, issuing prohibition and improvement notices and following through with prosecution as well as the vitally important role of educating and informing employers and employees. This matter does not seem to be addressed in the document.

Question 10

Do you think that the infringement offences would be an effective way to encourage employers and employees to change their behaviour towards common health and safety problems?

NCWNZ considers that infringement offences be an option for HSE inspectors to use in cases of minor offences. The Australian experience shows infringement fees to be effective in encouraging non-compliant employees to address health and safety matters and we believe this would be so in New Zealand also.

We agree with the need for training of HSE inspectors and clear guidelines for implementation and education programmes prior to introduction of the system.

Question 11

Are the suggested increases in the level of fines appropriate?

NCWNZ supports the proposed increase in fines.

Current penalties under the HSE Act seem ludicrously small in today's terms particularly when compared with the other New Zealand legislation listed in the document. The proposed fines we consider to be at the lower end of what is reasonable.

We note the suggestion that raising fines will encourage people to take out insurance policies. We do not consider this a reason not to increase fines. The detrimental publicity arising from a



successful prosecution should impact on the organization and highlight the seriousness of the failure to comply.

Question 12

Should the HSE Act be aligned with contemporary legislation and allow anyone to initiate prosecution?

It seems reasonable that OSH's monopoly on prosecutions be removed and for the HSE Act to be in line with the Biosecurity Act 1993, the Building Act 1991, The Hazardous Substances Act and New Organisms Act 1996 and the Resource Management Act 1991.

NCWNZ accepts that employers' concerns that prosecution could be used as an industrial tool if OSH's monopoly were removed are not unfounded. The public perception of greater ease of industrial unrest with ERA changes means the industrial scene in New Zealand is already sensitive and potentially volatile. There is a need to have compliance with the HSE Act while allowing business to be viable and profitable.

Question 13

Should the current six month limitation period start from when it has been discovered that harm has occurred and allow for an application to be made to the Court for an extension of time to take a prosecution?

NCWNZ agrees that six months from the discovery of harm is a fair time to make a decision to prosecute. We concur that there needs to be provision for application to be made to the Court for an extension of time to take a prosecution in cases where this is necessary.

Question 14

Are additional measures needed to reduce occupational fatigue and stress in the work place?

NCWNZ stated in the 1995 submission to the Inquiry into the Administration of Occupational Safety and Health (OSH) Policy, " NCWNZ believes that the focus to date has been largely on safety issues as they relate to the reduction of deaths and injuries. We suggest that health issues and the prevention of illness arising from the work environment requires more attention. Cases in point are Occupational Overuse Syndrome resulting from intensification of work which is a significant problem for office workers and overexposure to chemicals for cleaning staff. Greater emphasise on measures to combat the effects of such hazards would lead to a significant reduction of incidents and costs."

This statement is still relevant today with even longer working hours becoming the norm. Issues of stress and their relationship to health and well being are beginning to be debated seriously.

While we accept the links between fatigue and accident rates we suggest that little is known about excessive working hours with their consequent stress and how this affects health, efficiency, alcohol/drug consumption and family life. Research needs to be done in this area.

In our Employment Standing Committee members have experience of excessive work demands on themselves or their families in a variety of occupational areas eg. health, education, cleaning, IT/information services, advertising.



Additional measures are most definitely needed. The proposed code would at least be a start.

One of our members queried whether those matters would not be more correctly addressed in the ERA.

Conclusion

Any proposals which promote more effective partnership and encourage employees and employers to take a pro-active role in adopting work place management safety practices seems the best way to go.

NCWNZ is pleased to comment on this very sensible Discussion Paper.

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National President

Marian Redwood
Convener, Employment Standing Committee