

Chair  
Cabinet Legislation Committee

## **Health and Safety in Employment Amendment Bill: Approval for Introduction**

### **Proposal**

- 1 This paper proposes that the Health and Safety in Employment Amendment Bill (HSEA Bill) be introduced in early November 2001.

### **Policy**

#### ***Policy to be implemented in the Bill***

- 2 The HSEA Bill amends the Health and Safety in Employment Act 1992 (the principal Act), to form part of the Government's overall strategy for improving injury prevention in the workplace.
- 3 The HSEA Bill will provide for more comprehensive coverage of employees and workplaces; it will improve the ability of the Occupational Safety and Health Service (OSH) and others to enforce the principal Act; and it will ensure that employees have the opportunity for co-operative involvement in the management of health and safety in workplaces.
- 4 The changes that form the HSEA Bill were outlined in the Cabinet papers dated 17 July 2001.<sup>1</sup> These changes include:
  - workers, mobile workers, loaned workers, volunteers and those using work equipment provided by others
  - providing for duties on employers to ensure that employees have opportunities to be involved in the management of health and safety in workplaces
  - providing for duties on employers to ensure that employees have opportunities to be involved in the management of health and safety in workplaces
  - increasing fine levels
  - introducing Infringement Notices with financial penalties
  - removing the Crown's monopoly on prosecutions
  - clarifying that insurance policies which indemnify against fines imposed under the principal Act are unlawful
  - clarifying that fatigue and stress are covered by the principal Act
  - codifying the common law right to refuse dangerous work

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1 CAB Min (01) 23/13A-E, CAB Min (01) 23/13B, CAB Min (01) 23/13C; CAB Min (01) 23/13D; CAB Min (01) 23/13E and CAB Min (01) 29/6 refer.

### ***Aspects of the Bill which are likely to be contentious***

- 5 The increased level of fines proposed by the HSEA Bill may receive some comment. However, the current fines levels under the principal Act do not provide sufficient incentive for compliance with the principal Act. The proposed increases are also consistent with other legislation administered by OSH in the workplace. Ultimately, the higher fine levels would signal to employers and employees the importance that the Government places on health and safety in the workplace.
- 6 There has been comment from employer groups on the employee participation amendments. It is likely that this comment will resurface once Cabinet decisions are announced. The establishment of the test panel (see paragraphs 8 and 9 below), consisting of key representatives of industry sectors, employers, union groups will assist in the management of expectations through implementation.
- 7 Comments from the Treasury and the Ministry of Economic Development received on the employee participation proposals, were that they might impose significant compliance costs on employers.
- 8 To address the concerns raised during consultation relating to cost compliance for business, the Department of Labour, with advice from the Ministry of Economic Development, has established a compliance cost test panel. The test panel is comprised of representatives from all sectors of industry, leading business groups, union groups and small, medium and large business enterprises.
- 9 The test panel's focus will be the effect of all aspects of the HSEA Bill on stakeholders' interests, including ways in which compliance costs may be minimised. The test panel will also provide industry perspective and feedback on the policy and operational implementation of the HSEA Bill, prior to its introduction, throughout its passage and following its introduction.

### ***Why a Bill is needed***

- 10 The HSEA Bill forms part of the Government's overall strategy for improving workplace culture. This strategy includes the ongoing ACC reforms, the introduction of the Employment Relations Act 2000 and the amendments to the Health and Safety in Employment Act.
- 11 The changes contained in the HSEA Bill will ensure that a legislative framework applies to all New Zealand's workplaces that will enable employers, employees and Government to collaborate in improving workplace health and safety. They encourage a more inclusive approach to workplace health and safety management and strengthen the health dimension. Coverage of the principal Act is rationalised, particularly in the Transport sector. In a wider context, the changes will better align the Government's occupational health and safety strategy with employment relations' reforms and strengthen the incentives for best practice injury prevention and outcomes. To implement these changes effectively, amendment to the principal Act is required.

### ***Outstanding Policy Issues***

#### ***Employee participation funding mechanism***

- 12 To implement the employee participation amendments in the HSEA Bill, a funding mechanism will need to be established for the training of health and safety representatives. It is not envisaged that this mechanism will require any legislative change, only administrative arrangements.

13 Official will provide further advice will be provided to the Minister of Labour by the end of January 2002 on options for this funding mechanism.

#### *Protective Clothing and Equipment*

14 Section 10 (2)(b) of the principal Act provides that an employer must ensure that there is provided for, suitable clothing and equipment for employees to protect them from hazards that cannot be practicably eliminated. The section does not expressly provide for the original intent that an employer him or herself must provide such protective equipment or clothing. Legal texts interpret it as intended but it seems that some employers may transfer the burden directly onto employees.

15 For the purposes of legislative clarity therefore, a technical amendment is required to section 10 (2)(b). It is proposed that the section be amended to provide that an employer must provide protective equipment and clothing for the purposes of section 10 (2)(b).

#### **Compliance**

16 The HSEA Bill complies with the principles of the Treaty of Waitangi.

17 The Ministry of Justice has considered the HSEA Bill and considers that it achieves overall consistency with the **New Zealand Bill of Rights Act 1990**.

18 The HSEA Bill complies with the principles and guidelines set out in the **Privacy Act 1993**.

19 In respect of **international standards and obligations**, New Zealand has ratified the following ILO Conventions:

- Convention 10 Minimum Age (Agriculture) Convention, 1921
- Convention 32 Protection against Accidents (Dockers) Convention (Revised), 1932
- Convention 59 Minimum Age (Industry) Convention (Revised), 1937
- Convention 81 Labour Inspection Convention, 1947 (excluding part II )
- Convention 134 Prevention of Accidents (Seafarers) Convention, 1970
- Conventions 182 Worst Forms of Child Labour Convention, 1999

20 Each of these Conventions is implemented in part, by the principal Act. The provisions of the HSEA Bill would ensure that New Zealand continues to comply with its obligations under each of these Conventions.

21 ILO Occupational Safety and Health Convention 1981, No.155 has not been ratified by New Zealand. However, the HSEA Bill would promote compliance with this Convention, particularly in the amendments it contains relating to employee participation and right of employees to refuse to perform work likely to cause serious harm.

22 The HSEA Bill notes in its Purpose section, (clause 3) that the Bill “promote(s) compliance with International Labour Convention 155 concerning Occupational Safety and Health and the Working Environment.”

23 The coverage of air and maritime workers as proposed by the HSEA Bill may raise some issues with New Zealand’s international obligations in relation to air and maritime conventions.

24 In regard to coverage of maritime workers, the issues relate to New Zealanders who work on foreign owned ships. The Ministry of Transport, with assistance from the Crown Law Office, is already working on this and related issues at the request of the Ministry of Fisheries.

- 25 The Department of Labour is working with the Ministry of Transport as its work on these issues continues, to ensure that the coverage of maritime workers by the HSEA Bill is achieved in a manner that is in accordance with New Zealand's international maritime obligations.
- 26 The Ministry of Transport is also to provide further advice on compliance of the HSEA Bill with international air conventions.
- 27 If the work on the coverage of the air and maritime workers is completed in time for the select committee hearing process, the outcomes will be factored into the HSEA Bill at that time. If this work is not completed by that time, then compliance will be achieved via consequential amendments to the principal Act regarding aircrew and when maritime legislation is changed.
- 28 The HSEA Bill complies with the *LAC Guidelines: Guidelines on Process and Content of Legislation*, (2001 edition).

## **Consultation**

### ***Relevant government departments or other public bodies***

- 29 The following government departments and Crown agencies were consulted extensively during policy development: ACC, Department of the Prime Minister and Cabinet, Department for Courts, Ministry for the Environment, Ministries of Economic Development, Health, Justice, Transport, Agriculture and Forestry, Womens Affairs, the Treasury and Te Puni Kokiri.
- 30 The Ministry of Fisheries and the Ministry of Foreign Affairs and Trade were consulted specifically on policy formulation in relation to health and safety coverage in the maritime sector.

### ***Relevant private sector organisations and public consultation processes***

- 31 A formal public consultation process has been undertaken in relation to policy formulation. In December 2000, *the Discussion Paper on the Health and Safety in Employment Act Review* was published by the Minister of Labour. It was distributed to a significant number of stakeholders and was also made available to the public. Submissions on the Discussion Paper closed on 7 March 2001. Detailed analysis of the submissions received was published in May 2001. Submissions (177 in total) were received from sector and employer groups, employers, unions, union groups, government organisations, interest groups, health and safety professionals and others.
- 32 Further consultation on the HSEA Bill will be undertaken with business, industry and union groups throughout the passage of the HSEA Bill and its implementation. The test panel established to continue public consultation is discussed in paragraphs 8-9 above.

### ***Government caucus(es) and other parties represented in Parliament***

- 33 The Government caucuses and the Green Party have been briefed on policy formulation for the HSEA Bill.

## **Creating new agencies or amending law relating to existing agencies**

- 34 The HSEA Bill does not create any new agencies. The HSEA Bill will amend the law in relation to existing agencies.
- 35 Specifically, the HSEA Bill provides that the Prime Minister may designate, by notice in the Gazette, specified Crown agencies to administer the principal Act in relation to a particular industry, sector or type of work. The responsibility for administering the principal Act in a particular industry, sector or type of work, will rest with the Chief Executive of the designated agency, reporting to his/her Minister. It is intended that this mechanism will be used to continue to have the Maritime Safety Authority administer the principal Act in the maritime sector.

36 The primary responsibility for administering the principal Act will remain with the Secretary of Labour and the current enforcement agency (OSH). The Minister of Labour will be responsible for the Government's overall strategic direction in terms of occupational health and safety.

37 The HSEA Bill does not provide for any new allocation of decision-making powers between the executive, the courts and tribunals.

### **Associated regulations**

38 The following chart summarises the regulations that are required to bring the HSEA Bill into operation:

<b>Regulations</b>	<b>In force by:</b>	<b>Size of drafting task</b>
Courses of occupational health and safety training for health and safety representatives	02/09/2002	Minor
Form of Hazard Notice issued by trained health and safety representatives (prescribed matters)	02/09/2002	Minor
Form of Infringement Notice issued by Occupational Health and Safety Inspectors (prescribed matters)	02/09/2002	Minor
Notice to Secretary of interest in information (prescribed matters)	02/09/2002	Minor

### **Deemed regulations**

39 The HSEA Bill does not include any provision empowering the making of deemed regulations.

### **Definition of Minister/department**

40 The HSEA Bill continues the definitions of 'Minister' and 'Department' and 'Secretary' from the principal Act, but as stated in paragraphs 35-36 above, the roles of the Department and Secretary can be affected by Prime Ministerial designation.

### **Commencement Date**

41 The commencement date for the legislation is 2 September 2002.

42 Prior to the commencement date, a funding mechanism will need to be established to fund the training of health and safety representatives.

43 A comprehensive communication programme with employers regarding employee participation requirements will need to be undertaken as well as a broad publicity campaign to notify all stakeholders affected by the changes.

### **Parliamentary stages**

44 The HSEA Bill should be introduced into Parliament in early November 2001 and it should be passed by April 2002.

45 It is proposed that the HSEA Bill be referred to the Transport and Industrial Relations Select Committee.

## Recommendations

46 I recommend that the Committee:

- a) **note** that the Health and Safety in Employment Amendment Bill holds priority 3 on the legislation programme;
- b) **note** that the Health and Safety in Employment Amendment Bill will provide for more comprehensive coverage of employees and workplaces; it will improve the ability of the Occupational Safety and Health Service and others to enforce the principal Act, and it will ensure that employees have the opportunity for co-operative involvement in the management of health and safety in workplaces;
- c) **note** that the Health and Safety in Employment Amendment Bill will be referred to the government caucuses for approval before introduction;
- d) **approve** for introduction the Health and Safety in Employment Amendment Bill;
- e) **agree** that the Health and Safety in Employment Amendment Bill will be introduced in early November 2001
- f) **agree** that the Government propose that the Health and Safety in Employment Amendment Bill be:
  - (i) referred to the Transport and Industrial Relations Committee for consideration; and
  - (ii) in effect from 2 September 2002.

Hon. Margaret Wilson  
Minister of Labour