

Chair  
Cabinet Finance, Infrastructure and Environment Committee

## **Change to the Health and Safety in Employment Act: Coverage Issues**

### **Executive summary**

- 1 This paper seeks approval to address gaps in coverage of the Health and Safety in Employment Act 1992 (the HSE Act) through amendments to that Act.
- 2 This paper describes five coverage proposals.
- 3 The recommended amendments are for the HSE Act to:
  - cover aircrew;
  - cover persons who are working in a place of work who presently have no protection (section 16);
  - clearly include coverage of mobile workers;
  - cover railway workers in circumstances currently excluded;
  - mirror changes to the HSE Act in the Maritime Transport Act 1994 (MT Act) [subject to subsequent Cabinet decisions];
  - clarify that stress and fatigue are potential hazards that must be addressed in workplace health and safety management.
- 4 The public ‘Discussion Paper on the Review of the Health and Safety in Employment Act (1992)’ (the Discussion Paper) released in December 2000 considered these coverage proposals; submissions received are discussed in this paper.
- 5 The operating cost of implementing the aircrew amendment is \$0.174 million in 2001/02, \$0.275 million in 2002/03, and \$0.230 million in outyears, with a capital cost of \$0.028 million in 2002/03. The operating cost of implementing the rail amendment is \$0.174 million in 2001/02, \$0.275 million in 2002/03, and \$0.230 million in outyears, with a capital cost of \$0.028 million in 2002/03. The cost of implementing the proposal on stress and fatigue is \$0.023 million in 2001/02, \$0.153 million in 2002/03, \$0.143 million in outyears (operating), and \$0.028 million in 2002/03 (capital).

### **Background on occupational health and safety coverage**

- 6 The HSE Act was intended to provide for coverage for all work situations, excluding work with moving rail vehicles, aircrew and maritime workers.
- 7 Aircrew and rail workers are not adequately covered by their own specific safety legislation. Maritime workers have very similar legislative requirements to those provided in the HSE Act. The primary issue for maritime workers is whether inspection and enforcement is best done by the Department of Labour’s Occupational Safety and Health Service (OSH), or the Maritime Safety Authority.
- 8 As well as the intentionally excluded groups, there are some gaps in coverage for workers who were supposed to be covered under the HSE Act. These include:
  - ‘mobile’ workers; and

- some people working in places of work who are not contractually connected to the person in control of that place of work (section 16).
- 9 Highlighting the need to consider stress and fatigue in the HSE Act would help focus attention on those issues, and ensure that they are not ignored or considered unimportant when employers, employees or OSH apply the HSE Act. The essentials of the coverage of the HSE Act would not be altered by this change, rather, it is to ensure clarity and appropriate emphasis.
  - 10 Addressing the coverage issues achieves the original intent of comprehensive coverage in occupational health and safety legislation for all workers.<sup>1</sup>

## **The specific proposals for comprehensive cover**

### **Including aircrew under the HSE Act**

- 11 It is recommended that aircrew working on board aircraft be covered by the HSE Act. This would be achieved by removing the exemption for aircrew from section 2(3) of the HSE Act and therefore the HSE Act would apply to aircrew working on board aircraft operating domestically in New Zealand. A new section would specify that the HSE Act applies to aircrew covered by New Zealand employment relationships working outside New Zealand; but section 16 of the Act will not apply to aircraft.
- 12 Section 16 of the HSE Act should not apply to aircraft. The Civil Aviation (CA) Act 1990 covers the interface between aircraft (i.e. flight) safety and public safety, and therefore is the appropriate jurisdiction to continue this aspect of safety (section 16 provides for duties of “persons in control” of places of work).
- 13 The CA Act does not have occupational health and safety provisions. The Civil Aviation Authority (CAA) says that their expertise is in flight safety, not occupational health and safety, and that OSH should be responsible for this. The Department of Labour agrees with this.
- 14 A memorandum of understanding between OSH and CAA would be developed to ensure a smooth boundary transition for technical expertise. It would address issues such as aircraft modification and the role of OSH and CAA in different accident investigation situations.

### *Extra-territorial application of the HSE Act to international aircrew*

- 15 The proposal is that aircrew in New Zealand employment relationships working outside New Zealand would be covered by the HSE Act. Currently the HSE Act applies to offences committed in New Zealand (section 6, Crimes Act 1961). New Zealand only includes the territorial sea (the 12 nautical mile zone and airspace above it).
- 16 Some hazards are specific to long-haul international flights.<sup>2</sup> Therefore, the HSE Act presently may not require employers to manage those hazards.
- 17 Other legislation expressly states extra-territorial application, such as the CA Act 1990,<sup>3</sup> the Maritime Crimes Act 1999,<sup>4</sup> and the Accident Insurance Act 1998.<sup>5</sup>

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<sup>1</sup> This is consistent with the original conception of the Act formulated by the Advisory Council for Occupational Safety and Health (ACOSH), see: ‘A Public Discussion Paper – Occupational Safety and Health Reform’, June 1988, page 11, and consistent with the intention of the Government when the Act was introduced in 1992.

<sup>2</sup> For example: exposure to radiation, high frequency vibration, noise, circadian dysrhythmia (waking and sleeping outside usual body patterns).

<sup>3</sup> Section 4, ‘Application of Act’.

<sup>4</sup> Section 8, ‘Extra-territorial jurisdiction in respect of crimes relating to ships’.

### Summary of submissions – aircrew

- 18 Question 5: Should the HSE Act be amended to ensure coverage for all New Zealand aircrew, whether they are in local or international airspace? Of those who responded to the coverage of aircrew question (49 percent of submitters), there was strong support for occupational health and safety legislation to cover aircrew. A few submitters defended the status quo. Some submitters opposed the amendment because they believe the CAA should have occupational safety and health jurisdiction.

### Coverage for all workers in a place of work

- 19 Section 16 deals with the duties of a “person who controls” a place of work. This may be an employer, a principal (such as the lead contractor), a contractor, a sub-contractor, a self-employed person, or even the owner (eg a farmer) or lessee of the premises.
- 20 Until 1998, the duty of protection was owed under section 16 by the “person in control” towards any persons in the place of work or its vicinity, whether they were workers or recreational users or passers-by.
- 21 In 1998 an amendment to section 16 was made because of farmers and recreational users concern over the operation of section 16. The amendment resulted in:
- the duty being expressed to apply to certain listed people at work (linked to the person in control by a contractual hierarchy) in the place of work;
  - the duty remaining fully applicable to people in the vicinity (passers-by etc);
  - the duty applying to other people in the place of work who had express or implied consent to be there and who either pay to be there or who are there as shoppers;
  - a duty of warning being created for certain other persons about out-of-the-ordinary work-related hazards; and
  - non-paying recreational users of places of work not being owed any duty of protection.
- 22 The eventual content of the 1998 amendment was the result of a complex Select Committee and parliamentary process. The farming community in particular were satisfied that their concerns had been met. The Labour and Alliance representatives on the Select Committee remained convinced that the concerns were about perceptions rather than actual problems with the legislation. They suggested that at the most any legislative change should deal only with recreational users of rural land.
- 23 The unintended effect is that some people who were thought to be covered are not. Firstly, some people at work are not covered by any duty under section 16. Examples are where:
- contractors and employers ‘lend’ sub-contractors or employees to other contractors or employers;
  - equipment is hired for use in a place of work (There is no longer a duty owed for proper care or maintenance by the hirer under section 16).
- 24 The Wellington Coroner, Gary Evans, considered an example of the ‘loaned’ worker situation. He made a recommendation to me as Minister of Labour in April 2001 concerning a loaned employee who:
- “... died after falling from the roof of a building under demolition. .... No person was prosecuted by OSH or the Police (because of) the consequences of the 1998 section 16 amendment.”*

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<sup>5</sup> Section 41 Cover for personal injury suffered outside New Zealand (except mental injury caused by certain criminal acts)

The coroner recommended:

*“...that Section 16 of the Health and Safety in Employment Act be amended to ensure the duties of persons with control of places of work, to take all practicable steps to ensure that people in such places or in the vicinity thereof are not harmed by any existing or potential hazard, extend to all people in such places and in the vicinity thereof (saving people who are in such places or in the vicinity of such places solely for the purpose of recreation or leisure).”*

- 25 The second unintended gap created by the amendment is that some fee-paying recreational users may not be covered because of the particular wording of section 16. The duty only applies if the person has paid the fee, and may not cover fee-paying users where they pay it at the end of the activity.

### **Removing the unintended gaps created while retaining the benefits of the 1998 amendment**

- 26 The 1998 amendment to section 16 ended farmers’ concerns over liability for recreational users of their land. Federated Farmers recognise, however, that unintended gaps have appeared for workers who were originally covered by section 16. It is of concern to the farming sector that the benefits made by the 1998 amendment to section 16 are not lost in a new amendment to this section.

- 27 Two options for amendment are identified.

#### *Option 1 - Return to the original section 16 with exceptions*

- 28 This option would amend section 16 to return it to the original [HSE Act 1992] text, and include in that section an exclusion in respect of the non-fee paying "recreational user" who is on "rural land".

- 29 The Social Services Select Committee originally attempted to achieve this option during their deliberations on the amendment in 1997. Several possible exclusions were drafted at the time. The Select Committee’s approach was intended to deal with the perception of farmers and recreational groups while leaving intact all other aspects of the cover provided by section 16. It was not pursued eventually because it did not meet the then Minister of Labour's approval.

- 30 Using this approach limits the risks of excluding those originally covered by the HSE Act. The exclusion method is narrower and more targeted and therefore section 16 would again cover groups like:

- the ‘loaned’ worker in the place of work;
- volunteers in the place of work;
- trainees in the place of work; and
- public other than ‘recreational users’ in the place of work.

- 31 However, difficulties remain in the drafting of an acceptable definition for ‘recreational user’ and ‘rural land’. This option is unlikely to be acceptable to farmers and recreational groups because; its scope would include volunteers and workers who are in the workplace under the authority of statute (ie lineworkers), and, the perception of increased possibility of prosecution under the HSE Act. These groups have clearly stated in individual consultation and in written submissions that a return to the original section 16 text would cause uncertainty and the benefits of the 1998 amendment would be lost.

- 32 The Associate Minister of Labour, who was a member of the Select Committee that considered the 1998 amendment, favours this option.

*Option 2 - Amend the current section 16 to cover the unintended gaps*

- 33 This option would amend the current section 16 (amended in 1998), but only in the following respects:
- ensuring a duty of protection is owed by the person in control to workers doing paid work in the place of work for a person in control of a place of work or a person of a type described in section 16(1)(b). This is regardless of the worker’s relationship to the person in control, and the person they are doing the work for;
  - ensuring that providers of equipment are made accountable for hazardous equipment provided for work purposes; and
  - ensuring that the duty for fee-paying recreational users includes a duty where a fee is ‘payable’, not just ‘paid’.

In all other respects, section 16 would remain unchanged and would continue to have the limited application to recreational users in a place of work.

- 34 Under this option, two public safety aspects of the 1998 amendment that were and will remain potentially controversial are that:

- greater duties are owed to a recreational user in the vicinity of a workplace than to a non-fee paying user who crosses the threshold of that workplace; and
- volunteers doing work in what is otherwise a workplace have limited protections.

The proposed amendment focuses on occupational safety and does not change those distinctions.

*Summary of submissions*

Question	response rate	support	conditional support	Oppose	no clear opinion
2 Should section 16 be amended to ensure that the HSE Act covers the circumstances described above which have led to gaps in cover?	55%	69%	12%	5%	13%
3 Should any exemption from duties to recreational users only apply in the case of workplaces in rural areas?	46%	12%	7%	67%	13%

- 35 Amending section 16 of the HSE Act to clarify duties and remove gaps in coverage for workers is widely supported. Over half of the submitters did not support an exemption from duties for recreational users in rural workplace areas only. Many believed any exemption should continue to apply to all recreational users in all rural and urban workplaces.

- 36 The responses from the rural sector on this issue (8 submissions) were 8 percent of the total who commented on this question. Thirty-eight percent supported the 1998 amendment as a practical solution, and 25 percent commented that any amendment should be clear and concise with no uncertainty for people in control of the place of work.

**Place of work – coverage of mobile workers**

- 37 It is recommended that the HSE Act be amended so mobile workers are unequivocally protected under the HSE Act.
- 38 The proposal to amend the ‘place of work’ definition is intended to clarify the confusion surrounding what is a ‘place of work’. This confusion has arisen because of an interpretation in one District Court case. The case seems to exclude workers who are mobile in the course of their work (as distinct from travelling to and from work) from the protection of the HSE Act

when they are moving (the *Berryman* case). Judge Abbott said<sup>6</sup>, “... in my view the definition [of place of work in the HSE Act] is intended to connote a place where a person is working in more than a transitory sense.”

- 39 This interpretation is contrary to the original clearly stated policy intent of the HSE Act of comprehensive coverage of all work situations<sup>7</sup>. If a person is ‘at work’ they are in a ‘place of work’ wherever that may be at the time and they are entitled to the protection of the HSE Act. This was intended to include those people who are mobile when working. Mobile workers include groups such as couriers, a person pushing a wheelbarrow from one point of work to another, a conservation worker establishing a track in the back country, council gardeners, and postal delivery workers.
- 40 This clarification will ensure an employer of a mobile worker will owe the standard duty of ‘all practicable steps’ to identify and control hazards that the employer can reasonably guard against. Clearly an employer can only influence certain aspects of the mobile environment and that will be all that is required. For example some situations may only be addressed by training or provision of appropriate equipment.
- 41 If an HSE Amendment Act does not address this issue, the Courts and employers may regard it as an endorsement of the view of Judge Abbott. An amendment is therefore required to confirm coverage for all workers the HSE Act was originally intended to cover.

#### *Summary of submissions – coverage of mobile workers*

- 42 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 which is practical and reasonable to farmers? Of the submitters to the Discussion Paper 68 percent responded to this question, 78 percent supported the initiative and 15 percent were opposed.
- 43 The majority of submissions supported coverage for mobile workers. The most common concern was how this would apply in practical terms. Several employers commented that mobile workers in their workplace were treated as though they were covered despite the confusion around the definition of place of work.
- 44 The second question produced no clear response, though most who submitted on the question (30 percent of all submitters) did not think farmers should be treated differently.

#### **Coverage of rail workers**

- 45 It is recommended that rail workers be brought within the scope of the HSE Act. This would be done by repealing section 6H of the Transport Services Licensing Act 1989<sup>8</sup> (TSL Act) through a consequential amendment in the HSE Act Amendment Act.
- 46 Under section 6H, where a rail operator has complied with its approved safety system for a particular safety issue covered by that system, the rail operator is deemed to have complied with the HSE Act. If the rail operator has not complied with its own approved safety system, or the system is not relevant to the particular safety issue, then the HSE Act applies. OSH has

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<sup>6</sup> *Department of Labour v Berryman* [1996] DCR 121

<sup>7</sup> ACCOSH ‘A Public Discussion Paper – Occupational Safety and Health Reform’, June 1988, page 2 and the ‘Management of Health and Safety in Employment’ paper, commonly known as ‘The Ten Principles Paper’, Minister of Labour, August 1991.

<sup>8</sup> Section 6H says: “Relationship between this Act and Health and Safety in Employment Act 1992--

If a rail service operator or any other person complies with the provisions of this Act or of the operator's approved safety system then, in respect of the matters governed by those provisions, such compliance shall be deemed to be in compliance with the provisions of the Health and Safety in Employment Act 1992.”

successfully prosecuted Tranz Rail Limited on a number of occasions. In other cases<sup>9</sup>, however, OSH has not been able to take enforcement action because of the effect of section 6H.

- 47 The Tranz Rail Occupational Safety Inquiry<sup>10</sup> concluded that the HSE Act should apply without restriction to all rail employees and that section 6H of the TSL Act is unnecessary.
- 48 The Inquiry concluded that, under the current regime, OSH has several difficulties determining the scope of Tranz Rail's approved safety system, bringing prosecutions under the HSE Act, and enforcing an appropriate level of safety for rail workers.

#### *Summary of submissions – rail workers*

- 49 Question 4: Should an amendment be made to the Transport Services Licensing Act 1989 to ensure that the HSE Act applies to rail workers at all times? Of the submitters to the Discussion Paper, 52 percent responded to this question, 82 percent supported the initiative and no one opposed it. Many favoured 'coverage of all New Zealand workplaces and workers'.

#### **Coverage of maritime workers**

- 50 Maritime workers' occupational health and safety is currently covered by Part II of the MT Act administered by the Maritime Safety Authority. It mirrors Part II of the HSE Act except for sections 17 - 19, which are not directly applicable in the maritime context.
- 51 When Cabinet have indicated which amendments, if any, are to be made to the HSE Act, the Minister of Labour and the Minister of Transport will provide advice on how these changes might be most effectively applied to the maritime sector. The outcome would be that the occupational health and safety legislative framework that applies to maritime workers is consistent with the HSE Act.
- 52 Options would include either making consequential changes to the MT Act or increasing the coverage of the HSE Act to include the maritime sector.

#### *Discussion paper comments*

- 53 No specific question was asked on the coverage of maritime workers but a number of submissions commented on maritime employees and the need to clarify boundaries between the Maritime Safety Authority and OSH. Seventeen submissions believed that maritime workers should be covered by the HSE Act. A slightly lower level (11 submissions) supported retaining coverage for maritime workers in the MT Act.

#### **Stress and Fatigue**

- 54 It is recommended that a clear statement would be introduced into the HSE Act that stress and fatigue are potential hazards that must be addressed in workplace health and safety management. The Act presently covers all hazards and harm, including stress and fatigue, but explicitly stating it will increase awareness and certainty.

#### *Summary of submissions*

- 55 Question 14: Are additional measures needed to reduce occupational fatigue and stress in the workplace? . Of the submitters to the Discussion Paper 71 percent commented on stress and fatigue. 31 percent supported the development of a code of practice. 17 percent commented that

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<sup>9</sup> Two recent examples, are recent fatal accidents at Waipahi, Southland, and the Wellington rail yards where the OSH investigation concluded that Tranz Rail Limited had complied with its approved safety system, but that there were practicable steps which could have been taken to prevent those accidents.

<sup>10</sup> Ministerial Inquiry into Tranz Rail, Minister of Labour's website [www.executive.govt.nz/minister/wilson](http://www.executive.govt.nz/minister/wilson)

this a complex issue and there is a need for research and information provision. 10 percent commented on the current legal situation in particular noting recent court cases on the issues of stress and fatigue.

## Consultation

56 A list of those consulted in the development of this paper is included in the Regulatory Impact Statement.

## Financial implications

57 At a bilateral meeting on Monday 9 July 2001, the Acting Minister of Finance and I agreed, due to pressure on the 2001/02 contingency fund, that:

- the Health and Safety in Employment Amendment Act timeline will be delayed, with the Amendment Act being passed in April 2002, and coming into force in September 2002;
- any costs associated with the HSE Amendment Act that are incurred in the 2001/2002 financial year, will be funded from within the Vote Labour existing baseline through reprioritisation; and
- funding for costs associated with the implementation of the HSE Amendment Act will be considered as part of the 2002 Budget round.

58 The accompanying Overview paper outlines the effects of this approach, and describes the fixed costs for implementing any one of the proposed changes to the HSE Act.

59 The specific costs associated with the proposals in this paper initiative are:

- increased inspector numbers due to the coverage of new areas through the inclusion of aircrew, rail employees and mobile workers, and clarified public safety;
- initial and ongoing training for HSE Inspectors;
- purchase of technical expertise to provide advice on rail and air matters;
- a publicity campaign to notify all those affected by the changes; and
- operational policy development, codes of practice, and evaluation.

60 The following table summarises the estimated costs:

Coverage proposals	2001/02	2002/03	Outyears
	\$m	\$m	\$m
<b>Operating costs (GST incl)</b>			
Coverage of aircrew	0.174	0.275	0.230
Coverage of rail workers	0.174	0.275	0.230
Stress and fatigue	0.023	0.153	0.143
<b>Total</b>	<b>0.371</b>	<b>0.703</b>	<b>0.603</b>
<b>Outside the provisions (GST incl)</b>			
Coverage of aircrew	-	0.002	-
Coverage of rail workers	-	0.002	-
Stress and fatigue	-	0.002	-
<b>Total</b>	<b>-</b>	<b>0.006</b>	<b>-</b>
<b>Capital costs (GST n/a)</b>			
Coverage of aircrew	-	0.028	-

Coverage of rail workers	-	0.028	-
Stress and fatigue		0.028	
<b>Total</b>	-	<b>0.084</b>	-

## Human rights

61 The proposals are intended to comply with the Human Rights Act 1993.

## Legislative implications

62 The proposals regarding aircrew, section 16 and the 'place of work' definition would require an amendment to the HSE Act. The proposal regarding rail would require repeal of section 6H of the TSL Act through a consequential amendment in the HSE Amendment Bill. The maritime proposal may require consequential amendments to the MT Act or amendments to the HSE Act. The preferred option will be recommended in a future Cabinet paper. The proposal on stress and fatigue will require the HSE Act to be amended to include a clear statement that stress and fatigue are potential hazards that must be addressed in workplace health and safety management.

## Regulatory impact and compliance cost statement

63 A regulatory impact statement is attached to this paper.

## Publicity

64 The communications strategy is described in the accompanying overview paper.

## Recommendations

65 It is recommended that the Committee:

## Policy Content

### *Aircrew*

1. **agree** to amend section 2(3) of the HSE Act to remove reference to 'aircraft' so that the HSE Act applies to aircrew working on board aircraft domestically;
2. **agree** to amend the HSE Act to specify that the HSE Act applies to aircrew that are employees who are covered by New Zealand employment relationships but working outside New Zealand;
3. **agree** that section 16 of the Act will not apply to aircraft; because aircraft flight safety will remain the responsibility of the CAA.

### *Section 16*

#### *EITHER: Option 1*

4. **agree** to amend section 16 by returning to the original text of section 16 and include in that section an exclusion for the "recreational user" who is on "rural land";

#### *OR: Option 2*

5. **agree** to amend section 16 of the HSE Act to ensure a duty exists for a person in control of a place of work to workers doing paid work in the place of work for a person in control of a place of work or a person of a type described in section 16(1)(b) (regardless of the worker's relationship to the persons concerned);

6. **agree** that providers of equipment be made accountable for hazardous equipment provided for work purposes;
7. **agree** that the duty in respect of fee-paying recreational users includes a duty where a fee is 'payable', not just 'paid';

#### *Place of Work*

8. **agree** to amend section 2(1) of the HSE Act definition of 'place of work' to confirm that people who are mobile while at work are included in that definition;

#### *Rail*

9. **agree** that rail workers working with moving rail vehicles will be covered by the HSE Act, which would be achieved by repealing section 6H of Transport Services Licensing Act 1989 [the Tranz Rail Occupational Safety Inquiry recommendation];

#### *Maritime*

10. **note** that when Cabinet have indicated the amendments to the HSE Act they agree to, the Minister of Labour and the Minister of Transport will provide advice on how these changes might be most effectively applied to the maritime sector;
11. **agree** that the occupational health and safety legislative framework that applies to maritime workers is consistent with the HSE Act;

#### *Stress and fatigue*

12. **agree** that a clear statement be introduced into the Health and Safety in Employment Act 1992 that stress and fatigue are potential hazards that must be addressed in workplace health and safety management;

#### **Financial recommendations**

13. **note** that the estimated cost of the fixed costs if any change occurs for implementing any one of the proposed changes to the HSE Act are:

<b>Fixed costs if any change occurs</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>2004/05</b>	<b>Outyears</b>
	\$m	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.247	1.866	0.294	0.243	0.084
Outside the provisions	-	0.051	-	-	-
Capital costs (GST n/a)	-	0.562	-	-	-

14. **note** that the estimated cost of implementing the air, rail, and stress and fatigue proposals are as follows:

<b>Coverage proposals</b>	<b>2001/02</b>	<b>2002/03</b>	<b>Outyears</b>
	\$m	\$m	\$m
<b>Operating costs (GST incl)</b>			
Coverage of aircrew	0.174	0.275	0.230
Coverage of rail workers	0.174	0.275	0.230
Stress and fatigue	0.023	0.153	0.143
<b>Total</b>	<b>0.371</b>	<b>0.703</b>	<b>0.603</b>
<b>Outside the provisions (GST incl)</b>			
Coverage of aircrew	-	0.002	-
Coverage of rail workers	-	0.002	-
Stress and fatigue	-	0.002	-
<b>Total</b>	<b>-</b>	<b>0.006</b>	<b>-</b>

<b>Capital costs (GST n/a)</b>			
Coverage of aircrew	-	0.028	-
Coverage of rail workers	-	0.028	-
Stress and fatigue		0.028	
<b>Total</b>	-	<b>0.084</b>	-

15. **note** that any costs associated with the HSE Act amendments that are incurred in the 2001/02 financial year, will be funded within the Department of Labour baseline through absorption or reprioritisation;
16. **note** that this approach carries a number of risks and will therefore will be closely monitored by the Department of Labour, with progress reported to Ministers on a regular basis;
17. **note** that funding of the remainder of the HSE Act amendments costs will be considered as part of the 2002/03 Budget round;

**Drafting instructions**

18. **invite** the Minister of Labour to prepare drafting instructions for Parliamentary Counsel Office to amend the HSE Act as set out in recommendations 1 to 12, above.

Hon Margaret Wilson  
Minister of Labour

# Regulatory Impact and Compliance Cost Statement

## Statement of the public policy objective

- 1 The objective of the proposed amendments to the HSE Act and consequential amendments to the TSL Act and further advice on the MT Act is to:
  - provide cover for those workers who currently are not covered by the HSE Act;
  - provide consistency of cover for all workers in New Zealand; and
  - ensure cover for those originally intended to be covered by the HSE Act but are no longer covered or where confusion surrounding cover exists.

## Statement of the problem and the need for action

- 2 Currently there are employees and workers who are not covered by the HSE Act. This is contrary to the primary intention of comprehensive health and safety cover for all workers in New Zealand.<sup>11</sup> The overall effect of the proposed increase in coverage of the HSE Act is to ensure that *all* employees and those at work in New Zealand have the same level of legislative protection for health and safety while at work.

## Other options considered

### Aircrew:

- 3 Aircrew could be given occupational health and safety coverage under the CA Act. This option was not preferred because the expertise required to provide occupational health and safety would not sit well with the expertise required to provide for aircraft safety. To this end, OSH is the preferred administering agency and a memorandum of understanding would be renegotiated between agencies to ensure a smooth boundary transition for technical expertise.

### Section 16:

- 4 A range of legislative options was considered. The proposed options achieve the objective of coverage for workers in a place of work. Option 2 maintains the certainty for farmers and recreational users of rural land. Option 1 may create uncertainty for farmers and recreational users of rural land. Other options considered would create new legislative provisions, which may lead to uncertainty for persons in control of a place of work.

### Place of work:

- 5 The other option to amend the definition of 'place of work' is to remain the status quo. This leaves coverage of mobile workers uncertain until an appropriate case on the issue is decided. It may take some time for this issue to be resolved. Passage of other amendments to the Act when Parliament could be presumed to know about the case law could be argued to be an endorsement by Parliament of the case law.

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<sup>11</sup> Advisory Council for Occupational Safety and Health (ACOSH) 'A Public Discussion Paper – Occupational Safety and Health Reform', June 1988, and the 'Management of Health and Safety in Employment' paper, commonly known the 'Ten Principles Paper' Minister of Labour, August 1991.

**Rail:**

- 6 No other option would achieve the desired outcome of the same level of occupational health and safety cover for rail workers.

**Maritime:**

- 7 Options for ensuring consistent occupational health and safety cover for maritime workers include:
- making consequential changes to the MT Act; or
  - increasing the coverage of the HSE Act to include the maritime sector.

**Stress and fatigue**

- 8 This proposal was included because of support from submissions on the Discussion Paper.

**Statement of the benefits and costs of the recommended proposals**

- 9 The main implication for compliance cost to employers is reduced cost for employers (and others with duties under the Act) in the form of certainty of the requirement to comply with the HSE Act. Employers will know with greater certainty whether their employees are covered by the Act, whether this cover extends to other persons in their workplace, and what constitutes a 'place of work'. Therefore the cost of compliance would be reduced.
- 10 However, some additional compliance costs would exist for employers whose employees are not presently covered under the HSE Act or where confusion exists as to whether their employees are covered. The extent of these costs is not clear. They are not likely to be significant because of the safety systems already in operation given the current duties under the HSE Act to other employees of the employer and/or safety legislation that may apply through the safe operation of transport systems. Employers who have employees who are either not presently covered, or are thought not to be presently covered, the proposed amendments represent an 'extension' of the HSE Act. This would involve costs to the employer.
- 11 The operating cost of implementing the aircrew amendment is \$0.174 million in 2001/02, \$0.275 million in 2002/03, and \$0.230 million in outyears, with a capital cost of \$0.028 million in 2002/03. The operating cost of implementing the rail amendment is \$0.174 million in 2001/02, \$0.275 million in 2002/03, and \$0.230 million in outyears, with a capital cost of \$0.028 million in 2002/03. The cost of implementing the proposal on stress and fatigue is \$0.023 million in 2001/02, \$0.153 million in 2002/03, \$0.143 million in outyears (operating), and \$0.028 million in 2002/03 (capital).

**Business compliance cost statement**

- 12 The recommendations in this paper would impose compliance costs on the following groups of employers: employers whose employees are currently not covered by the HSE Act, and people who control a place of work who currently do not owe duties to some workers in that workplace.
- 13 The specific costs to employers for the coverage proposals are:

## **Aircrew**

- employers who currently have domestic and international aircrew of New Zealand owned or registered aircraft, and aircrew of foreign aircraft who provide a domestic service in New Zealand;

## **Section 16**

### *Option 1*

- persons who control a place of work would owe duties to all those in a place of work except for the "recreational user" who is on "rural land"; or

### *Option 2*

- persons who control a place of work would owe duties to workers doing paid work for a person in the place of work of a type described in s.16(1)(b) with the person, regardless of the worker's relationship to the persons concerned;

## **Place of work**

- employers who employ mobile workers;

## **Rail**

- employers who employ rail workers;

## **Maritime**

- These costs would not be clear until it is decided how to proceed.

## **Stress and fatigue**

- increased awareness of stress and fatigue and the possibility of enforcement action being taken under the HSE Act.

## **Consultation programme undertaken**

14 Those consulted in the development of this paper were:

- 177 submitters to the Discussion Paper, including key unions, employer organisations and employers; and
- ACC, Department of the Prime Minister and Cabinet, the Treasury, Ministry for Economic Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Agriculture and Forestry (Rural Affairs division), Ministry for the Environment, Department for Courts and Te Puni Kōkiri.

15 Ministry of Women's Affairs were given the opportunity to comment on this paper but declined.