

Rail and Maritime Transport Union

**Submission on the Health and
Safety in Employment Bill**

**To the Transport and Industrial
Relations Select Committee**

28 February 2002

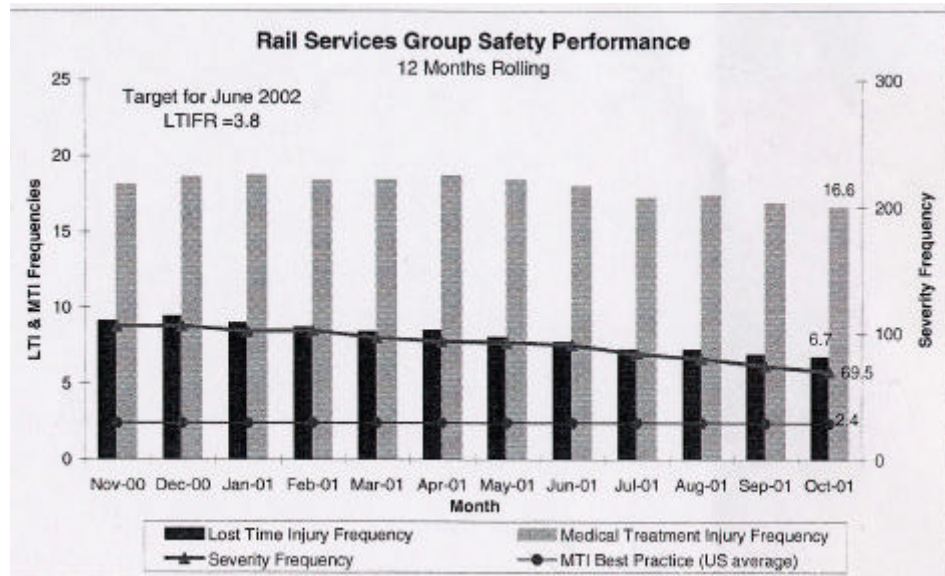
Introduction

The Rail Maritime and Transport Union (RMTU) has 4000 members who work in rail, the ports sector and in land transport. The occupations covered by the RMTU include: administrative, customer services, call centre staff, machine operators, trades groups, cleaners, construction staff, in addition to industry specific occupational groups such as shunters, straddle crane drivers, cargo handlers, track workers, traction workers, mechanical and electrical staff, signals workers, locomotive engineers, remote control operators and train control.

The RMTU is a proactive union in health and safety. It encourages worker involvement in health and safety committees, employee assistance, and injury management. Our members have considerable exposure to risk as workers in the transport sector: in rail, there is a high lost-time injury rate by international standards; the incidence of worker fatalities has been high; and a number of workers have suffered serious injuries.

The RMTU is delighted that all rail workers will now enjoy the benefits of coverage under the HSE Act. The RMTU believes the inclusion of rail under the coverage of the HSE Act is even more important now that rail services and functions are being contracted out (out-sourced) to other operators. Infrastructure and motive power (i.e. service and construction of locomotives) are due to be out-sourced on 23 March 2002; Trans Scenic and Auckland Metro are in the process of being outsourced.

Tranz Rail now bench marks its rail services group safety performance against a US average. We replicate a chart developed for the Health and Safety Executive showing the safety performance of the rail services group. As this chart shows the NZ performance is slowly trending downwards, but NZ's performance still falls well behind comparable US safety standards.



Inclusion of rail workers

The inclusion of rail workers is enabled by the repeal of section 6H of the Transport Services Licensing Act, which is included as a consequential amendment to the HSE Act.

As stated, the RMTU welcomes the inclusion of rail workers under the coverage of the HSE Act. The HSE Act is made more comprehensive in its coverage of NZ workers. The inclusion of rail workers under the HSE Act is another step in the process of lifting the standard of health and safety amongst rail workers.

This Government accepted that the abysmal safety record within rail could not continue. It convened a Ministerial Inquiry into Tranz Rail's occupational safety and health. It reported to the Minister in August 2000. This amendment to the HSE Act is a direct result of this Government's acceptance of the recommendations from the Ministerial Inquiry.

The Ministerial Inquiry has resulted in a fundamental change in health and safety within Tranz Rail: there is now a commitment by management and union to work together on health and safety. Some of the practical changes that have resulted are:

- The establishment of democratically elected site based health and safety action teams
- The establishment of occupational councils to proactively look at ways to improve health and safety. These councils are a mixture of union and management representatives
- One of the occupational council's is a shunters council. One of its achievements is worth noting in this submission. After doing a detailed analysis and risk assessment of varying shunting practices, the council agreed that certain riding positions would be prohibited. The shunters council toured NZ, entered into dialogue with shunters, and explained the reason for the changes. The fact of union involvement meant there was ownership of the changes.
- The establishment of a joint senior management / union Health and Safety Executive. This body meets for half a day once a month to consider incidents, safety statistics, to look at escalated issues, to look at ways of encouraging all staff to operate safety. This means both parties are singing the same song, and we are able to put in place a drive for safety throughout all levels and business units within the organisation.
- Tranz Rail has committed the organisations with whom it contracts or to whom it is out-sourcing services, to their input and participation in the Health and Safety Executive.
- A funded position based within the union to actively solicit employee involvement in health and safety
- Subsequent to the Inquiry and one of the Inquiries recommendations, Tranz Rail has taken steps to make practical amends with the families of those killed at work since Tranz Rail took over New Zealand Rail.

- A reduction in the lost time injury rate (per 200,000 working hours) from before the Inquiry of 11 to 5.6 presently.

All of these changes are compatible with the proposed changes in the Bill.

In summary, the recommendations of the Ministerial Inquiry and the proposals contained in the HSE Bill, have as a principle objective the need to involve employees and their union in health and safety.

Administrative matters arising from rail coverage

OSH will need to build up internal expertise in rail and in multi operator environments/ multi licensed environments. The new operating scenarios, where the responsibility is a complex mix between those who own the rail, maintain rail, and operate on rail including outside contractors will create new challenges for OSH and LTSA.

We would expect as an administrative flow on from this amendment, that the existing memorandums of understanding between OSH, LTSA and Tranz Rail would be extended to include the RMTU and other rail operators. We would also hope that OSH would convene a working party with the RMTU and other rail operators to facilitate the transition of responsibilities from the LTSA to OSH as it relates to rail workers.

The RMTU calls on Government to adequately resource OSH so that it can fully implement the proposals. The extended jurisdiction will require additional resourcing.

Overview of submission

This submission will comment on the proposed changes where they have particular relevance to the RMTU. For ease of understanding we have grouped proposed amendments on similar matters together, (e.g. clauses relating to employee participation).

The RMTU supports the direction of the Bill, and supports the CTU submission and its proposed amendments. In particular the RMTU is delighted to see:

- The inclusion of rail workers

- The role of health and safety representatives strengthened
- The introduction of hazard notices
- Increased levels of fines

The proposed amendments to the Bill are listed at the end of this submission.

Part 1 Preliminary Provisions

Clause 2 Interpretation

Inclusion of volunteers

The RMTU welcomes the inclusion of volunteers under the coverage of the Act. Although there may be opposition to their coverage, there is no justification for a lower standard for volunteers. Health and safety needs to be incorporated into all aspects of our lives. The RMTU notes that not all volunteers will be covered by the Act – i.e. those volunteers whose organisations who do not have employees, and/or where the work does not provide gain for the employer.

Many of the voluntary Railway Societies have a mixture of employees and volunteers. The RMTU does not support a double standard of safety: one for employees and one for volunteers, especially where there is gain or reward out of their efforts.

Place of work

The RMTU welcomes the expanded definition of place of work to include persons who are using a vehicle in the course of their work.

The first reason the RMTU believes this amendment is important is that currently fatalities and other injuries that occur on the road that are work related are not included in OSH statistics. Rather they are called motor vehicle injuries, thereby giving an underestimate of the number of the work related deaths and injuries that occur in New Zealand. A true picture of the number of work related deaths and injuries are needed in order to determine occupational injury prevention strategies and to ensure adequate funding for such strategies. In a recent Safeguard article

'Wheels of Fire' (attached to this submission), ACC acknowledges that injuries from work related driving are likely to constitute around 25% of all motor vehicle claims, and that "premiums paid by private motorists are subsidizing employers".

The second reason that the RMTU welcomes the extension of the definition is because it draws to the attention of and emphasizes the need for employers to provide hazard management of vehicles used in the course of employment and for the proactive management of driving hazards including fatigue.

A significant group of Tranz Rail employees travel on the roads in the course of their work: e.g. where there is a signal fault staff would travel to it frequently by a mixture of road and rail to fix it; also locomotive engineers frequently travel back to their home base in a rental car.

The RMTU welcomes the proposed administrative arrangement that will be facilitated by clause 28B Enforcement by other Agencies, whereby OSH and the NZ Police can agree that the NZ Police will be the agency who will administer the HSE Act in relation to vehicles.

Stress and fatigue

The RMTU welcomes the specific mention of stress and fatigue in the definitions of harm and hazard.

Fatigue

RMTU members in Ports and rail operate 24-hour services. Fatigue is a major side effect of shift work. Tranz Rail and the RMTU are involved in a number of initiatives to control the amount of over time worked, and to increase awareness of fatigue. Phillippa Gandar, an expert on shift patterns and fatigue, has done considerable work with locomotive engineers, to educate both management and locomotive engineers about the hazards of fatigue.

In the last year the Health and Safety Executive has increasingly monitored the hours staff work, from the perspective that fatigue is a hazard and therefore has to be controlled. This has not been without its problems both in terms of rostering and in

dealing with unforeseen emergency maintenance and in dealing with the attitudes of some staff who feel they are entitled to work as many hours as they wish. During this time there has been a noted drop in excessive hours being worked.

Tranz Rail assists some workers to deal with problems associated with sleep apnoea, because of the obvious hazard created by workers having a condition that means they unknowingly fall asleep.

Stress

The RMTU welcomes the inclusion of stress in the definition of harm. Stress can be a source of impairment in the workplace. People who are stressed can be a hazard to themselves and others. By its positive inclusion, employers will be encouraged to consider putting in place programmes such as EAP, work flow monitoring to avoid placing excessive and stressful demands on workers.

The RMTU has sadly had to confront the suicides of its members who have witnessed or who have unavoidably killed people in the course of their work as locomotive engineers. Such tragedies have major repercussions on the individuals involved and their families. In Tranz Rail there is now compulsory counseling following critical incidents. All sites where a fatality occurs have Te Pure (cleansing) carried out by local Kaumatua in order to cleanse the site and acknowledge the grief and stress such events cause.

In the past there was little acknowledgment of the impact of the stress of such events. The RMTU along with CTU and EPMU have been commemorating the deaths of workers on International Worker's Memorial Day on April 1st. This acknowledgement is significant in the lives of the families and work mates after a fatality.

International research has shown that those with the least power and control in the workplace suffer from the highest stress levels. A recent Safeguard article said that between 1991 and 1996 trades workers committed suicide at an adjusted rate of 27 per 100,000, above the national average of 18 per 100,000. The rate for agricultural and fishing workers was 23 per 100,000.

Workplace stress is an issue that can be addressed as a health and safety issue. Proactive wellness programmes and employee assistance programmes have many positive spin offs.

Good faith

The RMTU welcomes the inclusion of “good faith” into the Act. The RMTU knows that good faith is fundamental to best practice in OSH. Trust is required between employers and workers. Participation in health and safety can be sabotaged if employers do no more than pay lip service to worker involvement. Workers need time to perform the functions of a health and safety representative, to have access to a phone, to be able to obtain relevant codes of practice and to move around the site to talk to their fellow workers.

Part 2 Amendments to Principal Act

Clause 10(2)(b)

The RMTU welcomes the clarification that employers must provide and pay for protective clothing. The RMTU has members who work for a contractor who were not provided with safety boots when they were required. It took the intervention of the RMTU and a letter from the Hon Margaret Wilson to sort the problem out. (This letter is included as an attachment.)

As more work is contracted out and with the increasing use of casual workers this provision is important for worker’s protection.

Clauses relating to Employee Participation

Clause 12(2) - information

The RMTU welcomes the addition of Clause 12 (2) reinforcing the obligations on employers to ensure that health and safety representatives have sufficient information about systems and issues in order to perform their jobs effectively. We are mindful that some employers in particular, small employers, will find this provision difficult to attend to. Therefore as an adjunct, it urges Government to consider providing additional resources to OSH and to the CTU, to enable it to develop clear

and accessible resources in English, Pacific Island and Asian languages for employers and health and safety representatives.

The RMTU believes that in addition to resources about obligations and compliance, resources should be developed that encourages people to participate in health and safety. There are positive benefits that flow from having good health and safety systems.

Monitoring

Clause 12(2) also has relevance to obtaining the results of monitoring in such a way that the representative is able to perform his/her functions effectively.

The RMTU has had the experience of the results of monitoring being provided to health and safety representatives. These results can be very scientific and unreadable to the average person. Not only should the results be provided, they must be provided in the way that they can be used by a worker representative who may not have a degree in statistics and biochemistry. This amendment will encourage employers to provide information in such a way that it can be used.

This clause has implications for employers around training. In order for health and safety representatives to be able to perform their functions effectively, training will be required in hazard management and monitoring.

Part 11 Employee Participation

“ Employee participation”

The RMTU's experience is that the only way to sustain good health and safety is by active employee participation. Prior to the Ministerial Inquiry, Tranz Rail had a system of health and safety committees, which met an audit requirement but did not meet the needs of our members and did not succeed in getting good health and safety outcomes.

The RMTU's experience is corroborated by international research. Published research entitled *“Unions, Safety Committees and Workplace injuries”* in the British Journal of Industrial Relations, June 1995, Barry Reilly, Paci and Holl found that

when the performance of health and safety committees are compared, those committees which have union elected representatives perform better than those where management alone determines the health and safety arrangements. They found that in those workplaces with union employee representatives there were on average 5.7 fewer injuries per 1000 employees compared with establishments where management deals with health and safety matters without any form of worker consultation.

The RMTU welcomes the Clause 19A –K amendments with the proposed further amendments by the CTU.

Clause 19A(1) – opportunity to participate

The RMTU welcomes the wording of clause 19A(1) stating employers must give reasonable opportunities for employees to participate effectively in the ongoing management and improvement of H&S in the workplace. These words are particularly relevant to shift workers who have difficulty getting to meetings.

The RMTU welcomes the amendment in clause 19A (3) which proposes an approved code of practice. The RMTU submits the ACOSH code is a good starting point. The Select Committee is referred to the CTU submission for background to the ACOSH Code of Practice.

Clause 19F elections

Although the position of H & S rep is not always a hotly contested position, it is important that it is underpinned by a democratic process, and one of accountability back to those who have elected that person. Too often employer appointed H&S reps are seen as police men for the employer rather than actively promoting those H&S safety issues that concern the workers.

Clause 18A Supply of plant

The RMTU welcomes the addition of s 18A. The RMTU supports the CTU amendment to this clause.

Clause 28 A Right to refuse

The RMTU shares the NZ CTU's concerns about the wording of clause 28A whereby employees may refuse to perform work likely to cause serious harm. The RMTU is concerned that this amendment actually reduces the right to refuse, in particular when the employee is faced with hazards that occur in the normal course of work. In rail and ports, there are many examples of hazards that our members face in the normal course of their work.

The RMTU has concerns about the interface of the proposed Clause 28 with Section 19 of the HSE Act. Section 19 places a duty on employees to take all practical steps to ensure their own safety whilst at work. An offence can flow out of a breach of this duty. However, clause 28A(3) circumscribes the common law duty and statutory duty under S 19. An electrician, for example, would not be able to refuse to enliven a line whilst he remains on a ladder on a pole under Clause 28A(3), because this practice is permitted by the rulebook governing electrical safety. Yet this practice is inherently unsafe and has resulted in death and injury to workers. The fact that some employers interpret "all clear" to mean "come down from the pole", is not a protection for a workers whose employer thinks "all clear" means remain on the ladder beneath the lines that are being enlivened. Clause 28A(3) would have the effect of prohibiting a worker from carrying out his /her own obligations to ensure his/her safety under S 19. The RMTU is concerned about the possibility of ambiguity being caused by the mixed signals given by clauses 28A (3) and (5).

The proposed clause 28A imports a reduced standard for employees in terms of their own hazard management.

The RMTU supports the NZCTU proposed amendment to this clause, in particular their option 2.

The Role of OSH

Funding

Currently, 5 cents in every \$100 of employer (and self employed) pay roll is levied for the purpose of the administration of the HSE Act. Over recent years, all of the HSE levy funding has not reached OSH. The figures obtained from the Department of

Labour (attached) show that over the last five years \$10,972,000 has been put back into the consolidated fund. This is money that could have been used by OSH. The money foregone is a lost opportunity. NZ has an appalling workplace safety record. It is the view of the RMTU that the failure of OSH to visit sites because of their paucity of resources (noted elsewhere in this submission) and the failure to adequately police the Act is relevant to our safety record.

The RMTU firmly believes that OSH is inadequately funded to fulfill its functions. The HSE levy was reduced in 1999 from 6 cents to 5 cents. Currently OSH has 185 inspectors in the field. There is an argument that this is insufficient to provide an adequate policing presence.

OSH considers that there are between 400 and 600 work related deaths a year. OSH, the RMTU is told, investigate about 50 of these deaths. Even if a number fall outside their jurisdiction (e.g. they are vehicle related, maritime or air accidents) there must be a considerable number that OSH does not investigate. The RMTU believes that occupational disease related deaths are under investigated and acknowledged.

The December 2000 Discussion paper on the review of the HSE Act produced by the Office of the Minister of Labour said at page 17:

“ Currently employers who fail to comply with the HSE Act do not face any direct financial penalty unless it is a fine imposed following a successful prosecution. Prosecution however is a severe means of ensuring compliance and is expensive for both parties, both in staff time and legal costs. At the current level of OSH staffing and activities, a non compliant workplace has on average:

- *1 in 8 possibility of a visit by an HSE inspector during the year*
- *1 in 25 possibility of receiving an improvement notice*
- *1 in 333 possibility of receiving a prohibition notice*
- *1 in 1,000 possibility of being prosecuted”*

Information provided by OSH relating to fatal accident investigations by OSH show a low level of enforcement action is being taken.

These figures indicate that compliance with statutory duties is largely voluntary. The RMTU submits that voluntary compliance is a tool that will work with some employers, but many will respond to a more vigorous enforcement approach by OSH. The RMTU believes that these statistics show that OSH is under funded to do the job of enforcing compliance on the unwilling employer (and employee) and needs to focus on getting out into the workplace to perform inspections and enforce the Act.

Worksafe fund

Although, this part of the submission is beyond the scope of the Bill, the RMTU is using this opportunity to provide information to the Select Committee considering the Bill. OSH has disbanded the Worksafe fund whereby groups could apply for funding from OSH to undertake a specific project, matching the Worksafe funds with their own contribution. This is regretted by the RMTU as the fund enabled unions and other groups to apply for funding for projects, which are relevant to health and safety. It was a modest fund, but allowed groups to work together on issues of common interest. An evaluation of the outcomes of the grants has been undertaken, and it showed there is merit in continuing with a Worksafe fund.

Occupational disease – asbestos related disease

The RMTU has been concerned that OSH has not been proactive in relation to the management of the Asbestos Register and Asbestos Disease Register. Many of our members have been exposed to asbestos and OSH has taken no steps to follow them up: to find out whether they are alive or dead, or whether they are receiving any assistance from ACC. Not only is the process of dying painful, the Government has taken no active steps to help them and their families. The RMTU submits that there is a responsibility on Government to take active steps to assist those who have been suffering work related disease. OSH has been given the function of the administering the Disease Registers, but it has discharged its responsibility in a desultory manner.

Powers of entry and inspection

Proposed amendment to S31(6)

S 31(6) of the Act states no person should be required to give an answer that will incriminate that person. The Act should be amended to ensure that a person should be advised of their rights. This is in accordance with the Bill of Rights and the usual measures taken by police prior to taking a statement.

Clause 54A(2) Laying an information

OSH's role in ensuring compliance with HSE Act general obligations and if necessary prosecuting is one of the few checks on errant employers.

Research undertaken by Hazel Armstrong during a Stout Fellowship at Victoria University, has shown that OSH has a high threshold before it takes a prosecution. The research showed that of the 42 fatalities at work in 1996

- 5 prosecutions were undertaken by OSH
- 1 police prosecution resulted.

There were 17 fatality investigations where not enough information was available to decide whether or not an information could be laid. Reading the Inspector's reports, one conclusion that could be reached was that this was a direct result of poor investigation techniques by the OSH officials.

This research showed there was a consistent pattern of few prosecutions

Financial Year	1992/93 (from 1 April 1993)	1993/94	1994/95	1995/96	1996/97	1997/98 (to 1 March 1998)	Totals
No of Fatal Accidents	11	39	47	53	41	43	234
Resulting in a Prosecution	2	6	16	12	7	5 (provisional)	48
Percentage	18%	15%	34%	23%	17%	11% (provisional)	20.5%

There is a low prosecution rate for accidents that result in fatalities, but given that 90% of prosecutions have been undertaken only after a serious injury accident has occurred, the rate of prosecutions following non serious injuries is even lower.

This research confirmed the findings of the Bell Gully Buddle Weir research commissioned by the RMTU to review OSH files of four railway accidents (including 2 fatalities), which concluded that there was ample evidence of breaches of the HSE Act but no action was taken by OSH to prosecute.

For all these reasons, the RMTU supports the rights of persons other than OSH to lay an information in respect to offences under the Act. This brings the HSE legislation into line with other legislation such as the Crimes Act, HASNO and RMA where a person can lay an information.

The RMTU has observed the despair and anger of many families of members who were killed at work, unable to understand why OSH has not prosecuted and left feeling that no-one is accountable for the death of their loved one.

Clause 54A must not to be used as a means for OSH to resile from its prime function of ensuring compliance with the Act under S 30 (b).

OSH should prosecute more in order to give employers and others with duties under the Act a real apprehension that failure to adhere to the provisions of the Act is likely to result in enforcement action. Without such deterrence, no adequate sanctions exist to deter an employer from using the less regulated environment to fail to put in place adequate interventions to protect their employees from harm.

In Australia the injury rates in rail are considerably lower than in NZ, and it is clear this is in part due to rigorous enforcement and higher fines. In Victoria there has not been a worker fatality in rail for 10 years.

The way OSH exercises its discretion to prosecute is not open to judicial review. The only matter that can be judicially reviewed is whether or not the discretion has been exercised at all, not the actual exercise of its discretion.

Clause 54(2)

Clause 54 (2) states that OSH does not have to give reasons why it is choosing to prosecute or not to prosecute. Under the HSE Bill other parties have the option to lay an information, and the RMTU hopes that an outcome of this amendment is that OSH will be more robust in the exercise of its discretion. At present no obligation exists at all to give reasons for the failure to prosecute and in fact they do not even have to advise whether the matter has been considered for enforcement action.

Proposed amendment to Clause 54(2)

OSH should be required to give reasons for its decision not to prosecute. This would assist families and others to make their decision whether or not to lay an information.

It is the RMTU's understanding that OSH is considering doing this as an internal policy. The RMTU submits that this should be a requirement under the Act so reasons are transparent. The RMTU hopes that if OSH is compelled to give reasons as to why they have decided not to prosecute, then it will have the flow on effect of ensuring OSH's investigations of accidents will be more robust.

Clause 54C Extension of time

This amendment highlights that OSH will have to be very thorough in its investigations. OSH will be the agency that families or other interested parties such as the RMTU will have to rely on for the immediate evidence such as photographs of the scene, notes from the initial investigation.

COMPLIANCE CLAUSES

Clause 46A Hazard Notices

The RMTU strongly supports this proposed clause, as it will force errant employers to deal with hazards that are brought to their attention. It is in every employer's interest to encourage employees to bring to their attention hazards that exist in the workplace. Robust health and safety depends not just on process and procedures, but active employee participation. Employees are the ones most likely to become aware of hazards in the workplace, and frequently have good solutions to deal with hazards.

It is a poor employer that will ever get a hazard noticed issued, as the proposed clause forces employees to discuss with employers the hazard before any hazard notice can be issued. Furthermore Clause 46A demands good faith which will remove the fears of some employers that hazard notices will be used without good faith – for example to pursue an industrial issue.

It is hoped that this clause will spur employers to take their responsibilities seriously. In 1995 OSH did a “Stocktake” to indicate the take up of workplace health and safety behaviours and systems. The results are appalling.

	Managers	Supervisors	Employees	Farmers
Have a hazard list	45%	45%	32%	9%
Do not have one	55%	55%	68%	91%
Total	100%	100%	100%	100%

Under S19 of the HSE Act, employees have an obligation to work safely. If employers refuse to provide a safe workplace by controlling hazards that are brought to their attention, then employees need the means to require the employer to take action to ensure their own and their workmates safety.

Clause 56 Infringement Offences

The RMTU supports the NZCTU submission on infringements notices.

S 56 I Insurance against fines unlawful and of no effect

The best way to insure against fines is by ensuring good health and safety on the job. This means ensuring there are good processes in place, adequate training and employee participation. It is well established amongst people involved in accident prevention that it is vastly cheaper in every sense to ensure a safe and healthy workplace than it is to pay for the cost of injuries. Fines are only one potential cost of what the real cost is to a company that has an accident.

As the Law Commission has advised it is against public policy and therefore unlawful for persons to insure against criminal liability.

Serious harm

The RMTU supports the NZCTU submissions on “serious harm”.

Occupational Safety and Health Commission

The RMTU supports the NZCTU proposal for an occupational safety and health commission. One of its proposed functions of the commission is to provide an overview of what regulations are needed. The RMTU notes that NZ is under regulated compared with the US, UK, and Australia. Regulations are needed where the risks are high, and the knowledge of those risks is well known. Confined space work is a classic example. At present representations about the need for regulations whether it is from the Coroner or from unions largely go unheeded. OSH still seems to be in the grip of a philosophy of opposition to regulations. A commission would provide the Minister with advice from those who actually work with the hazards on a day-to-day basis.

Summary of Proposed amendments

Clause 8 Information to employees generally

Proposed amendment

S12 (2)

Insert “readily available” between “have” and “sufficient” in the proposed new s 12(2)

Additional proposed amendments to s 12 of the Act:

S12 (b)

Amend existing section 12(b) so that employees are given information about “all identified hazards to which the employee is or may be exposed to in the course of their work in that place, and the steps...”.

Amend existing section 12 (d) so that employees are given information about where all necessary safety clothing, devices, equipment and materials are kept , and add the words “and how to use them safely and effectively to prevent harm”.

Clause 11 - Part 2A “Employees Participation”

Proposed amendment

S19B(1)(b):

After s 19B (1)(b) insert the phrase “to avoid doubt, this section also applies where an employee, or a union makes a request to redevelop an existing system”

Proposed amendment:

S 19B (3) (b) to read:

“electing employee members of a health and safety committee established to represent the interests of employees and to support the ongoing management and improvement of health and safety in the place of work”.

A similar amendment is required to clause 19(D)2

Proposed amendment:

S 19 F (2)

The words “... at the employers expense and give any employees or unions representing them the opportunity to be involved in developing the process and scrutinising the results” should be added to s 19 F (2).

Proposed amendment

S 19H

Two further functions should be included in the proposed section 19 H

- “to investigate and report on accidents, incidents and complaints”
- “to obtain technical advice on health and safety matters in the place of work”

S19I

Proposed amendment:

Add the words “... and given sufficient time and resources to perform their role effectively” to clause 19I.

New s 19J

“every health and safety representative shall have the opportunity to undertake training in order to meet the competency as determined pursuant to s.46A (1)(c)

The CTU proposes that the OSH Commission permit an additional 2 day leave entitlement on an industry basis. This concept is supported by the RMTU.

s 19K

The RMTU respectfully submits that approval of courses of training in occupational safety and health is an issue which is best dealt with by the Minister as part of the Occupational Health and Safety Commission.

Proposed amendments:

For the reason stated above the RMTU supports the CTU proposal that Clause 19K be deleted and that approval of courses of training be undertaken by the Commission pursuant to the powers under the proposed Clause 20A.

Proposed new section 20A

S 20A Occupational Safety & Health Commission

As set out in the NZCTU submission.

Proposed amendment:

S28A

In the clause 28A (1) & (2) replace the words “likely to” with “may” and in the title of 28A with “which may”

Proposed amendments:

Clause 28 A (3) is removed.

Or - a new Clause 28A (3) is inserted which reads “Without limiting s28A(1) or subsection 2, reasonable grounds exist for the purposes of subsection 1 if the health and safety representative has issued a Hazard Notice in regard of that hazard, and the employer has not taken all practicable steps to control that significant hazard.”

Proposed amendment to S31(6)

S31(b)

S 31(6) of the Act states no person should be required to give an answer that will incriminate that person. The Act should be amended to ensure that a person should be advised of this provision. This is in accordance with the Bill of Rights and the usual measures taken by police prior to taking a statement.

Add, “and all persons who are being so interviewed shall be advised of their rights under examination or inquiry.”

Proposed amendments:

S54 new subsection

A new clause is inserted between 54 (2) and 54 (3) which sets out that “where an interested person requests it, the Secretary shall provide full information on the case and the decision not to prosecute within 1 month”

Clause 54 C (3) is altered to provide for the one month period to begin only after the full information is provided.

Proposed amendments to First Schedule

First Schedule – serious harm

- that clause 1 be amended by inclusion of the additional words “illness or debilitation caused by severe exhaustion or severe stress”.
- that clause 6 be deleted and replaced with “any harm that requires surgical or specialist treatment or admission to a hospital”.
- a new clause 7: “exhaustion and physical and psychological illness caused by stress requiring more than five days off work on the advice of a medical practitioner”.