HEALTH AND SAFETY IN EMPLOYMENT AMENDMENT BILL

REPORT OF THE SOCIAL SERVICES COMMITTEE

COMMENTARY

Recommendation

The Social Services Committee has examined the Health and Safety in Employment Amendment Bill.

The committee was unable to recommend by majority that the bill proceed. In considering the clauses, we were unable to recommend that they stand part of the bill by majority, and as a result all the clauses and the Title were recommended to be struck out.

Conduct of the examination

The Health and Safety in Employment Amendment Bill was introduced on 16 July 1996 and referred to the Labour Committee after its second reading on 30 July 1996. The bill was carried over into the Forty-fifth Parliament and referred to the Social Services Committee. We were required to report to the House on this bill by 7 September 1997, but this was extended until 26 November 1997 to allow sufficient time for consultation among members about the proposed amendments. The closing date for submissions was 4 April 1997. We received and considered 24 submissions from organisations and other interested groups and individuals. Thirteen submissions were heard orally. Approximately four hours were spent on the hearing of evidence and consideration took approximately 10 hours.

Advice was received from the Occupational Safety and Health Service of the Department of Labour (OSH).

This commentary sets out the details of our consideration of the bill and the major issues we addressed. It reflects the views of the National and New Zealand First members of the committee. Three reports reflecting the views of the Labour, Alliance and Act members are included at the end of this commentary. National and New Zealand First members sought to amend the bill substantially, as discussed in this report and set out in Appendix 2, but we were unable to adopt these amendments by majority.

Price Code: J

Background

Prior to the enactment of the Health and Safety in Employment (HSE) Act 1992, employee and workplace safety was covered in a variety of different pieces of legislation. Key pieces of legislation also protected legitimate visitors or members of the public who happened to be on site or in the vicinity of various workplaces.

The HSE Act replaced the mix of industrial health and safety legislation with performance-based requirements covering all workplaces, including farms. In particular, section 16 imposes a duty on every " . . . owner, lessee, sublessee, occupier, or person in possession of a place of work (not being a home occupied by the person) . . . to take all practicable steps to ensure that people in the place of work, and people in the vicinity of the place of work, are not harmed by any hazard that is or arises in the place of work."

This raised for farmers and other landowners concerns about their liability for visitors, including recreational visitors such as hunters, trampers, and fishermen, under section 16 of the Act. OSH had prepared administrative guidelines which clarified that farmers would not be liable for non-work-related injuries to recreational users, but publication of these had not provided farmers with sufficient assurances.

In August 1995, Federated Farmers raised the issue in a submission to the former Labour Committee's *Inquiry into the Administration of Occupational Safety and Health Policy*. Later that year, farmers and recreational groups brought their concerns to the then Minister of Labour, Hon Doug Kidd. It was argued that uncertainty about liabilities was leading farmers and other landowners to refuse access to recreational users. A working group was set up at the request of the Minister, and comprised representatives of Federated Farmers, the New Zealand Sports Assembly, the New Zealand Fish and Game Council, the Adventure Tourism Council, and the Federated Mountain Clubs.

A range of options was canvassed, and the solution preferred by the working group was the subject of wide consultation. This proposed solution was that: "the HSE Act should be amended to ensure that landowners have no duties towards people using their land for non-work-related purposes." There was widespread support for the proposal but about 50 of the 200 respondents also sought continued liability of landowners for, for example, warning visitors of hazards.

The Labour Committee's report on the *Inquiry into the Administration of Occupational Safety and Health Policy*, which was presented to the House in August 1996, endorsed the proposal to address uncertainties over access to land for recreational purposes through amendment.

Purpose of the bill

The bill proposes to amend the Health and Safety in Employment Act 1992.

Clause 1 relates to the Short Title, and proposes that the bill should come into force on the day on which it receives the Royal assent.

Clause 2 of the bill amends section 16 of the principal Act, which imposes on every person who is—

(a) The owner, lessee, sublessee, occupier, or person in possession of a place of work (not being a home occupied by the person); or

(b) The owner, lessee, sublessee, or bailee of any plant in a place of work, (not being a home occupied by the person),—

the duty to take all practicable steps to ensure that other people in the place, and people in the vicinity of the place, are not harmed by hazards.

The amendment limits that duty so that, in the case of people in the place of work, that duty is owed only to people in that place who are there for some purpose connected with work activities of the person who owes the duty. Thus, under the proposed amendment, there is no longer any duty under section 16 to trespassers, recreational users, or people (like police officers, public service and local authority inspectors, and workers maintaining power or telephone lines) who may be doing work unconnected with work activities carried on in the place by the person who owes the duty.

This limitation has no effect on other duties imposed by the principal Act, such as the duties of employers to employees.

Clause 3 of the bill amends section 17 of the principal Act, which imposes on every self-employed person a duty to "take all practicable steps to ensure that no action or inaction of the self-employed person while at work harms the self-employed person or any other person". The amendment is to the same effect as that proposed to be made by clause 2, in that where a self-employed person is the owner, lessee, sublessee, occupier, or person in possession of a place, the duty is to be owed only to people in the place who are there for some purpose connected with work activities of the self-employed person.

Clause 4 proposes to amend section 20 of the principal Act to allow the development of codes of practice relating to the design and manufacture of plant, protective clothing, and protective equipment, or the manufacture of substances. At present, codes can relate only to work practices or arrangements.

Clause 5 proposes to make clear that the amendments effected by clauses 2 and 3 would not prevent prosecutions under statutes other than the principal Act.

Issues raised in submissions

Only three submissioners opposed the bill, while the remainder either supported the bill as introduced or supported the underlying intent of the bill but sought some amendment.

Support for amendments to sections 16 and 17 of the Act

The amendments attracted support from a range of recreational users, and farming and related groups, including the School Trustees Association and the National Council of Women. The reasons for support related to the need for certainty of the duties of landowners and for continued access of recreational users to open land.

Reduction in coverage of the Act

Five submissioners expressed concern that the amendments to sections 16 and 17 would result in the reduction or removal of protection for people in the vicinity of a workplace. Three submissioners opposed the amendment altogether, while others expressed concern about its extent and sought modifications to remedy particular defects. Concerns focused on the impact on members of the public generally, and on particular groups such as students or mobile workers. Mr Bob Moore, the Council of Trade Unions, GMV Associates and the Human Resources Section of Massey University were all concerned about a reduction in responsibility for public safety.

Safety of visiting workers

Concern about visiting workers was expressed by organisations whose employees are regularly required to work on other people's properties. As worded, the bill would make it difficult for these organisations to ensure the safety of their

employees. Trans Power supported the underlying intent of the bill, but argued that people in control of places of work should not be absolved of all responsibility for visiting workers. The Electricity Corporation of New Zealand (ECNZ) suggested that the problem for landowners is one of perception, and that it could be resolved administratively. Failing this, ECNZ proposed modification to the bill to provide protection for visiting workers.

Inconsistencies in the duties of employers and employees resulting from the amendment

The Employers Federation and Federated Farmers support the bill, insofar as it applies to "owners and occupiers" and self-employed people, and sought to have the same amendment applied to "employers" and "employees" (sections 15 and 19 respectively). These groups argued that, as the amendments stand, they would result in inconsistent sets of responsibilities under the Act. GMV Associates also argued that the inconsistencies in the duties of employers and employees need to be addressed.

The intention in amending sections 16 and 17 of the Act was to address the management of hazards, rather than the actions of employers and employees. We agree that the bill as introduced could be inconsistent in relation to responsibilities, and therefore we propose an amendment to the bill to remove the inconsistency.

Need for definition of a work-related activity

Four submissioners suggested that the introduction of the term "work activity" could be confusing, and sought a definition to ensure clarity. The Women's Division of Federated Farmers argued that such a definition is needed to clarify responsibilties in various circumstances, and GMV Associates also recommended a definition as a way of clarifying who is owed a duty.

Liability of self-employed people

GMV Associates suggested that clause 3 of the bill makes the position of self-employed people very uncertain, and recommended that consistent protections be applied to all self-employed persons.

Committee's consideration and recommended amendments

During our consideration of the bill, we canvassed a number of possible scenarios involving workplace responsibility. This resulted in a number of amendments being drafted for our consideration. We also looked at the concerns raised by submissioners and considered whether these should be addressed. The bill does not make specific reference to reducing the responsibilities of farmers towards recreational users, but this is the general perception of the intent of the bill and the majority of submissions focused on this area. The bill, in fact, covers all places of work. We understand that there may have been some more submissions if this had been more widely appreciated.

Although we considered the argument that the duties of landowners are made clear in the HSE Act, we are persuaded that there is enough confusion about these duties to signify that an amendment to the HSE Act is needed to clarify the perception of these duties. We canvassed the option of restricting coverage of the bill to "open land", but did not pursue this option due to the difficulties of defining "open land" and the Government's desire to protect the integrity of the HSE Act by not creating different classes of workplaces. However, in order to achieve this equality of workplaces, it has been necessary to reduce coverage for some visitors under section 16.

Appendix 1 of this commentary provides a variety of scenarios and the coverage that would be provided under the proposed amendments.

Public safety

We are concerned, as were a number of those who made submissions, that cover would be reduced for visitors to workplaces. The Minister of Labour signalled to us a need to address the issue of public safety in a wider context than the amendment bill. OSH is developing administrative processes for dealing with public safety issues on its boundaries, as outlined in recommendation 9 of the Government response to the Labour Committee's *Inquiry into the Administration of Occupational Safety and Health Policy*. These issues will be addressed in a report to the Minister of Labour on implementation of the select committee recommendations.

Proposed amendments to clauses 2 and 3

We recommend that no amendment be made to section 17 of the principal Act, and that clause 3 be struck out. This means that the obligation that every self-employed person has under section 17 of the principal Act, to take all practicable steps to ensure that no action or inaction of the self-employed person while at work harms the self-employed person or any other person, will not be affected by the passing of the bill.

We do, however, consider that section 16 of the principal Act should be amended. Clause 2 of the bill adds a new subsection (2) to that section. We recommend instead that section 16 be repealed, and a new section 16 substituted. The proposed new clause 2 provides accordingly.

Subsections (1) to (3) of the proposed new section 16 place obligations, not on the owner, lessee, sublessee, occupier, or person in possession of a place of work, but on every person who controls a place of work (other than a home occupied by the person).

The obligations imposed by proposed subsections (1) and (2) are more onerous than the obligations imposed by proposed subsection (3).

Proposed subsection (1) provides that a person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms—

(a) People in the vicinity of the place (including people in the vicinity of the place solely for the purpose of recreation or leisure):

(b) People who are lawfully at work in the place—

(i) As employees of the person; or

(ii) As contractors engaged by the person; or

(iii) As subcontractors to a contractor engaged by the person; or

(iv) As employees of a contractor or subcontractor to whom subparagraph (ii) or subparagraph (iii) applies.

Proposed subsection (2) imposes duties of the same standard. It provides that a person who controls such a place of work must take all practicable steps to ensure that no hazard that is or arises in the place of work harms people—

(a)Who are in the place with the express or implied consent of the person; and

(b) Who—

(i) Have paid the person (directly or indirectly) to be there or to undertake an activity there; or

(ii) Are there to undertake activities that include buying or inspecting goods from whose sale the person derives or would derive (directly or indirectly) any gain or reward.

Proposed subsection (3) imposes less onerous duties than those imposed by proposed subsections (1) and (2). Those less onerous duties are imposed only in certain cases and only in cases to which proposed subsections (1) and (2) do not apply. Those less onerous duties require that, in the circumstances set out in the section, warning must be given of certain significant hazards. Proposed subsection (3) provides that a person who—

(a) Controls a place of work (other than a home occupied by the person); and

(b) Knows of any significant hazard that—

(i) Is in, or is likely to arise in, the place of work; and

(ii) Arises from work that is being carried on, or has been carried on, for gain or reward in the place of work; and

(iii) Would not, in the ordinary course of events, be reasonably expected to be in, or to be likely to arise in, a place of work of that type; and

(c) Either—

(i) Expressly authorises any other person to be in the place of work; or

(ii) Has personally received oral advice that any other person will, under the authority of any enactment, be working in the place of work; and

(d) Is not obliged, in relation to that other person, to comply with subsection (1) or subsection (2),—

must take all practicable steps to warn that other person of the significant hazard.

Proposed subsection (4) provides that, except in the case of the practicable steps required by the section to be taken in relation to any person described in proposed subsection (2) or proposed subsection (3)(c)(i), section 16 does not impose on any person who controls a place of work any duty in respect of any person who is in the place of work solely for the purpose of recreation or leisure.

Proposed subsection (5) provides that where the person in charge of a place of work expressly authorises another person to be in that place, the warning required by subsection (3)(c)(i) to be given to the person so authorised—

(a) Must be given at the time at which that express authority is given; but

(b) If the express authority is given in respect of a group of persons, whether corporate or unincorporated, it is sufficient if the warning is given at that time to a representative or member of that group or body of persons.

Proposed subsection (6) provides that the oral advice required by proposed subsection (3)(c)(ii) (being oral advice that a person will, under the authority of an enactment, be working in the place of work) must be given by the person who will be working in the place of work or that person's employer.

Clause 4: Approved codes of practice

Section 20 of the Health and Safety in Employment Act 1992 provides for the Minister of Labour to approve codes of practice, setting out preferred work practices or arrangements. Clause 4 proposes to amend section 20 and allow such approved codes of practice, in addition, to deal with the design and manufacture of plant, protective clothing, and protective equipment, or the manufacture of substances.

The issue arose in the development of draft codes of practice dealing with the design and manufacture of boilers and pressure equipment.

Compliance with approved codes of practice is not mandatory. Such codes are intended to assist employers and others with duties under the HSE Act in fulfilling their duties to take "all practicable steps" to prevent harm. Compliance with an

approved code of practice would generally be accepted by a court as compliance with the Act. However, an employer or other person may still be able to comply with the Act by using some means other than that specified in an approved code of practice. The amendments are generally well-supported, and we recommend that they proceed, subject to one minor typographical amendment.

New clause 4A: Other offences

We recommend that a new clause 4A be included in the bill. The inclusion of this new clause is consequential on the amendments that we recommend be made to section 16 of the principal Act by clause 2. Under section 50(a) of the principal Act, the penalty for the offence of failing to comply with section 16 is a fine not exceeding $50,000 if the failure caused any person serious harm, or a fine not exceeding $25,000 in any other case.

We consider that an appropriate penalty for failing to give a warning under the proposed new subsection (3) of section 16 would be a fine not exceeding $10,000. The new clause 4A accordingly makes appropriate amendments to section 50 of the principal Act.

Clause 5: Saving

We recommend that clause 5 be struck out as unnecessary.

Conclusion

This bill was introduced as a result of lobbying by recreational groups which wanted to have continued access to farmland, and by farmers who wanted to have their responsibilties to these people defined and clarified. We believe the proposed amendments to the bill will go a long way towards addressing the interests of these groups. However, the bill covers all places of work, and therefore no one group will benefit, or be treated differently from other groups, as a result of the proposed changes. However, as mentioned earlier, in order to achieve this equality of workplaces, it is necessary to reduce coverage for some visitors under section 16.

Should the bill proceed with the proposed amendments, the broad principles of the HSE Act will be maintained. The responsibilities of farmers will have been clarified, and it is expected that there will be a more accurate perception of the scope and limits of the HSE Act.

OSH has advised us that it has prepared a communication strategy to support the amendment. It involves the provision of general public information and information to affected groups. Existing OSH publications explaining the application of the HSE Act will be updated, and new guidelines will be prepared for use by OSH staff as hand-out material. Advice on the practicable steps that people in charge of a place of work can take will be included in the hand-out.

We wish to be consulted during the development of this material so that we can make comment.

Labour minority view

1. The Labour Party supported the original intention of the amendment which was to make clear that farmers and other landowners did not have responsibility for people using open rural land for recreational and leisure purposes.
2. Unfortunately, the Government is seeking to report back amendments which depart from this original intent. The bill now amends the HSE Act by limiting the obligation of those in control of a workplace to those people who are in a

place of work in connection with the work activities of the person in control of the workplace.

3. Our concerns are as follows:

- The amendment now covers all workplaces rather than just open rural land.
- Responsibility for some classes of people who may have reason to be in a workplace has been removed from clause 16 of the Act and is reduced through the rest of the Act.
- Changes to the bill are very complex and will require significant interpretation. This is the reason for the unusual step of including drafting changes in the report to Parliament.
- It is doubtful that the bill will change the behaviour of those people who control open rural land or those who use the land.
- The select committee has not yet seen the communications strategy which will accompany changes to the Act. The success of any changes to the Act will rest on the effectiveness of the communications strategy.
- The public perception of the bill was that it dealt with open rural land. Given that the bill now explicitly deals with all workplaces further submissions need to allow for comment from people who may now have an interest.

4. It is worth noting that the report back of the bill is equivocal. It says the bill will "go a long way towards" addressing the interests of concerned groups. It notes that coverage is removed or reduced. It "expects" farmers will have their responsibilities clarified. It stresses the need for a communications strategy. This stance is hardly a sign of confidence on behalf of officials.

5. In conclusion, the amendments to the HSE Act have been before the select committee for many months. The apparent difficulties in drafting a satisfactory amendment have led to a very unsatisfactory outcome.

   Labour's view is that the bill should be withdrawn and the process of drafting legislation started again. If the bill is passed in its present form it will diminish coverage provided by current legislation, cause more confusion and not resolve the central issue of the recreational and leisure use of open rural land.

Alliance minority view

Throughout the consideration of this bill there has been an explicit acknowledgement by members of the committee and advisors to the committee that the bill is designed to address mis-perceptions of the Act, rather than actual deficiencies in it.

The bill arose from concern expressed by recreational users of rural land who had been barred from outlying areas as a result of a mis-perception held by landowners of those landowners' obligations under the Act.

That mis-perception relates to the interpretation of the term "practicable steps", and its application to hazards which may affect recreational users of outlying areas.

The committee had a choice.

Either it could clarify the existing law to give explicit direction to farmers as to what would amount to practicable steps in relation to such users. Alternatively, it could proceed with a wide-ranging amendment which substantially changes the liability of controllers of all workplaces toward those people who are not in the workplace for the commercial purposes of the workplace.

Regrettably, the committee elected to take the latter course, and has as a result substantially changed the effect of the Act on classes of people who may have

cause to be in any workplace. In some cases such people will warrant a warning from the controller of the workplace. In other cases there will be no duty at all on the occupier of the workplace to take any practicable steps to avoid harm to a person in the workplace.

This is a substantial change in the effect of the Act, and goes well beyond the original intentions of those seeking reform in relation to recreational users of outlying areas.

It means, for instance, that a construction area in a school playground would not need to be secured after hours to prevent harm to children using the playground. It has been acknowledged by the advisors that it may mean that children at school during school hours who have not paid for their education also have no duty owed to them, except for a duty to warn them orally of a hazard. Similarly, a hospital patient who is not paying for their treatment may well have no duty owed to them by the controller of the hospital, except a duty to warn them of significant hazards.

Further, the significant hazards requiring warning, as contained in clause 2(3)(b) are only those hazards which would be unusual in a workplace of the type involved.

Given that children, hospital patients, emergency workers or law enforcement officers and many other legitimate visitors to hazardous workplaces are unlikely to have sufficient knowledge to identify normal hazards themselves, this is a substantial undermining of existing duties.

The only justification given for applying the bill to all workplaces has been Government policy not to distinguish between different types of workplaces. This demonstrates a lack of understanding of the way the law already works.

Under the present law, the measure is "practicable steps". Practicable steps vary between workplaces. For instance, there may be no practicable steps a person in control of a workplace can take to protect a child accompanying a parent on a fishing trip from drowning if the weather turns bad. There may be simple steps that can be taken to protect a child from drowning in a water-filled foundation hole on a construction site in a school yard at the weekend. One death could not have been practicably prevented. The other could. The law presently acknowledges this difference. The change will mean that neither child is owed a duty to be protected from harm.

It is recommended that the bill be withdrawn and redrafted along the following guidelines:

1. The purpose of the new bill should be to codify the existing interpretation of the Act as it applies to recreational use of outlying areas.
2. The bill should not substantially alter any existing duties.

ACT minority view

The purpose of this amendment was to clarify the Government's intentions with regard to the responsibilities of recreational users of rural land and the owners of that land. Regrettably, this amendment further confuses the issue without remedying the perceived problem.

Until such time as the original Health and Safety in Employment Act is amended to reintroduce the concept of reasonableness as the test of culpability, difficulties of the nature that motivated this bill will continue. The test of "reasonableness" is widely known and accepted in judicial circles, and would remove the problems that rural landowners and recreational users face.

Practicability, by its usual dictionary meaning, means "that which can be done", and forces a "cost-benefit" decision that is totally unhelpful in determining whether a party has acted properly.

ACT recommends the Health and Safety in Employment Act be amended by removing the term "practicability" and replacing it with the term "reasonableness".

Appendix 1

Scenarios

The following scenarios relate how actual cases taken under section 16 of the Health and Safety in Employment Act would be taken under the proposed amendment. Please note that other sections of the Act or its regulations may also apply to these scenarios.

- Member of public entered construction site on weekend and was injured. Public access not prevented. No effective barriers on construction site.

  No longer covered—no permission to be there

- Daughter of shearing contractor suffered degloving of left arm on transmission machinery. Hazard was known and the farmer asked for the child to be removed from the shed.

  No longer covered—no permission to be there

- Blasting in a quarry. The explosions from the blasts resulted in rock scattering in the construction and adjacent areas, damaging other person's property.

  Covered—hazard to people in the vicinity

- Member of public was in a shop when a cardboard carton containing toys fell approximately 4–5 metres from shelving and struck her on the left side of her head.

  Covered—shopping

- Member of public suffered injuries when a scaffold plank fell from level 3 of a construction site.

  Covered—hazard to people in the vicinity

- Hotel patron fell over a balustrade approximately 3.15 metres below. Suffered severe head injuries and died in hospital the next day.

  Covered—injured person paid to be there

- Fatal accident to geriatric hospital paying resident, aged 93 years. Clamp in bus to secure wheel chair faulty. Fell backwards, broke neck. Works order issued by hospital listed clamp to be repaired. Job not done. Management allowed bus to be used.

  Covered—injured person paid to be there

Scenarios of who would be covered under the proposed amendment

Full duty

- A person contracted to do work for the person in control of that place of work.
- A jogger running along a track outside quarry boundary. Rocks from blasting hit jogger.
- Any person in a shop, whether or not they actually buy anything.
- People who pay the farmer to picnic on the property.
- A pony club which pays the property owner for permission to use a paddock for a gymkhana

- Tourists paying a company to visit a site of scenic interest on private land, where the landowner receives payment from the tour company.

A duty to warn of known, out of the ordinary, work related, significant hazards

- A parent supervising a child at a swimming pool (where the child, but not the parent, has paid).
- Tourists paying a company to visit a site of scenic interest on private land, where the landowner gives consent but receives no payment —tourists must be warned.
- A Trans Power worker gaining access under an enactment, and who has given oral notice —the worker must be warned.
- A person employed by the Department of Conservation to carry out an ecological survey on private land. The Department of Conservation has sought and received consent —the surveyor must be warned.
- A self-employed hunter, given permission to hunt on the property —hunter must be warned.
- A student, required by his or her course to get farm work experience, is working (unpaid) on the farm, with consent organised by the course supervisor —the student must be warned.
- School pupils on a farm visit, with permission given to the school —the party must be warned.
- A parent attending a school meeting, invited by the school —that parent must be warned.

Scenarios of who would not be covered under the proposed amendment

- A self-employed hunter who is trespassing.
- A Trans Power worker who has stopped work for the day but stays on the property to go hunting, without permission of the landowner.
- A Taskforce Green trainee who does something without permission (for example, going hunting after hours, or swimming in a creek).
- Children on a field trip organised by a museum club, collecting fossils without the knowledge of the landowner.
- A person visiting a hospital patient, unless express consent is given for the visit.
- Public visiting the botanical gardens provided by a council.

Appendix 2

HEALTH AND SAFETY IN EMPLOYMENT AMENDMENT BILL

Proposed Amendments

Clauses 2 and 3: To omit these clauses (which appear on pages 1 and 2), and substitute the following clause:

2. Duties of persons who control places of work—The principal Act is amended by repealing section 16, and substituting the following section:

"16. (1) A person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms—

"(a) People in the vicinity of the place (including people in the vicinity of the place solely for the purpose of recreation or leisure):

"(b) People who are lawfully at work in the place—

"(i) As employees of the person; or

"(ii) As contractors engaged by the person; or

"(iii) As subcontractors to a contractor engaged by the person; or

"(iv) As employees of a contractor or subcontractor to whom **subparagraph (ii) or subparagraph (iii)** applies.

"(2) A person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms people—

"(a) Who are in the place with the express or implied consent of the person; and

"(b) Who—

"(i) Have paid the person (directly or indirectly) to be there or to undertake an activity there; or

"(ii) Are there to undertake activities that include buying or inspecting goods from whose sale the person derives or would derive (directly or indirectly) any gain or reward.

"(3) A person who—

"(a) Controls a place of work (other than a home occupied by the person); and

"(b) Knows of any significant hazard that—

"(i) Is in, or is likely to arise in, the place of work; and

"(ii) Arises from work that is being carried on, or has been carried on, for gain or reward in the place of work; and

"(iii) Would not, in the ordinary course of events, be reasonably expected to be in, or to be likely to arise in, a place of work of that type; and

"(c) Either—

"(i) Expressly authorises any other person to be in the place of work; or

"(ii) Has personally received oral advice that any other person will, under the authority of any enactment, be working in the place of work; and

"(d) Is not obliged, in relation to that other person, to comply with **subsection (1) or subsection (2)**—

must take all practicable steps to warn that other person of the significant hazard.

"(4) Except in the case of the practicable steps required by this section to be taken in relation to any person described in **subsection (2) or subsection (3) (c) (i)**, this section does not impose on any person who controls a place of work any duty in respect of any person who is in the place of work solely for the purpose of recreation or leisure.

"(5) The warning required to be given to a person to whom **subsection (3) (c) (i)** applies—

"(a) Must be given to that person at the time at which the express authority to be in the place of work is given to that person; but

"(b) If the express authority is given in respect of a group of persons or a body of persons, whether corporate or unincorporate, it is sufficient if the warning is given at that time to a representative or member of that group or body of persons.

"(6) The oral advice required by **subsection (3) (c) (ii)** must be given by the person who will be working in the place of work or by that person's employer."

Clause 4: To omit from line 41 on page 2 the word "approved", and substitute the word "preferred".

Clause 4A: To insert, after *clause 4* (which appears on page 2), the following clause:

4A. Other offences—(1) Section 50 (a) of the principal Act is amended by inserting, after the expression "section 14", the words "or **section 16 (3)**".

(2) Section 50 of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) Every person who fails to comply with **section 16 (3)** commits an offence, and is liable on summary conviction to a fine not exceeding $10,000."

Clause 5: To omit this clause (which appears on page 3).

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act, — Text struck out unanimously

Struck Out (Majority)

Subject to this Act, — Text struck out by a majority

Hon Max Bradford

HEALTH AND SAFETY IN EMPLOYMENT AMENDMENT

ANALYSIS

A BILL INTITULED

Struck Out (Majority)

An Act to amend the Health and Safety in Employment Act 1992

BE IT ENACTED by the Parliament of New Zealand as follows:

Struck Out (Majority)

1. Short Title—This Act may be cited as the Health and Safety in Employment Amendment Act **1996**, and is part of the Health and Safety in Employment Act 1992* ("the principal Act").

*1992, No. 96
Amendment: 1993, No. 56

Struck Out (Unanimous)

2. Duties of persons with control of places of work—(1) Section 16 of the principal Act is amended by adding, as **subsection (2)**, the following subsection:

Struck Out (Unanimous)

"(2) Nothing in **subsection (1)** imposes on any person a duty to any other person who is in a place of work for a purpose not related to a work activity carried on in that place (regularly or from time to time) by or on behalf of the first-mentioned person."

(2) The said section 16 is amended by omitting the word "To", and substituting the words "(1) Subject to **subsection (2)**, to".

3. Duties of self-employed people—(1) Section 17 of the principal Act is amended by adding, as **subsection (2)**, the following subsection:

"(2) Nothing in **subsection (1)** imposes on any self-employed person a duty to take any steps to ensure that no action or inaction of the self-employed person while at work occurring in or in relation to a place of which the self-employed person is owner, lessee, sublessee, occupier, or person in possession, harms any other person who is in that place for a purpose not related to a work activity carried on in that place (regularly or from time to time) by the self-employed person."

(2) The said section 17 is amended by omitting the word "Every", and substituting the words "(1) Subject to **subsection (2)**, every".

Struck Out (Majority)

4. Codes of practice—(1) Section 20 (1) of the principal Act is amended by inserting, after paragraph (a), the following paragraphs:

"(aa) A statement of preferred aims, arrangements, practices, or principles (or any 2 or more of those matters) for the design of plant, protective clothing, or protective equipment, of any kind or description; or

"(ab) A statement of preferred arrangements, characteristics, components, configurations, elements, or states (or any 2 or more of those matters) for manufactured plant, manufactured protective clothing, or

Struck Out (Majority)

manufactured protective equipment, of any kind or description; or

"(ac) A statement of preferred characteristics for any manufactured or processed substance used or capable of being used—

"(i) In or in connection with any protective clothing or protective equipment; or

"(ii) Otherwise for or in connection with protecting people from hazards; or".

(2) The principal Act is amended—

(a) By omitting from the definition in section 2 (1) of the term "approved code of practice" the words "of preferred work practices or arrangements"; and

(b) By omitting from section 20 (2) the words "of approved work practices or arrangements", and substituting the words "under subsection (1)".

Struck Out (Unanimous)

5. Saving—Nothing in **section 16 (2) or section 17 (2)** of the principal Act is to be construed as absolving any person from criminal liability under an enactment other than the principal Act.

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