

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, 24 September 1992

HEALTH AND SAFETY IN EMPLOYMENT BILL

Proposed Amendments

Rt. Hon. HELEN CLARK, in Committee, to move the following amendments:

PART I

PRELIMINARY

Clause 2: To insert, after the definition of "accident", the following definition:

"Aircraft" means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against surface of the earth:

To omit from the definition of the term "all practicable steps" the word "reasonably", at line 14 on page 3; and

To omit from paragraph (e) of that definition the words "and cost".

To omit the definition of the term "crew" from lines 8 to 12 on page 4, and substitute the following definition:

"Crew", in relation to a ship, includes its pilot in command, captain or master, but does not include any person employed or engaged solely—

- (a) To maintain it while it is at sea; or
(b) To load it, unload it, or both:

To omit from the definition of the term "healthy", at line 34 of page 5, the word "unharmred", and substitute the words "a state of complete physical, mental and social well being".

To insert, after the definition of "improvement notice", the following definition:

"Internal flight" means a flight which is crewed by employees whose contracts of employment have been entered into in terms of New Zealand law—

- (a) Between any 2 or more places in New Zealand;
or

(b) That commences from any place in New Zealand and is intended to terminate at the same place:

To insert, before the definition of "machinery", the following definition:

"International flight" means a flight which is crewed by employees whose contracts of employment have been entered into in terms of New Zealand law—

(a) Beginning in New Zealand and ending outside New Zealand; or

(b) Beginning outside New Zealand and ending in New Zealand; or

(c) Beginning and ending outside New Zealand with an intermediate stop in New Zealand; or

(d) Beginning and ending in New Zealand with an intermediate stop outside of New Zealand:

To omit lines 33 to 36 from the definition of the term "place of work", and substitute the following words:

"Place of work" means a place (whether or not within or forming part of a building or structure), vehicle or aircraft on internal or international flights where or in which any person is to work, is working, for the time being works, or customarily works, for hire or reward; and,

To add to subclause (1), the following definition:

"Vehicle" includes passenger service vehicles, trains, tractors, trucks and all other mobile vehicles and machinery used in connection with work for gain, hire or reward:

To omit from subclause (3) the words "an aircraft or ship" in each place that they occur, and substitute the words "a ship".

Clause 5: To omit subclause (1) (lines 24 and 25 on page 10), and substitute the following subclause:

(1) This Act's principal object is to provide for the promotion of the health and safety of employees.

To add to subclause (2), after line 18 on page 11, the following paragraph:

(d) Promotes the protection of employees against hazards that may result in injury or harm to their health.

To add, after subclause (2), the following subclause:

(3) This Act has the following additional objects:

(a) To promote consultation and co-operation between employees and employers in relation to matters affecting the safety and health of employees:

(b) To promote the elimination at source, risks, to the health and safety of employees.

PART II

DUTIES RELATING TO SAFETY AND HEALTH IN EMPLOYMENT

Clause 6: To omit from line 23 on page 11 the words "to ensure the safety of employees", and substitute the words "to ensure the health and safety of employees".

To omit paragraph (a) (lines 26 and 27 on page 11), and substitute the following paragraph:

- (a) Provide and maintain for employees a safe and healthy working environment; and

To omit from paragraph (c) the words “that it is safe for the employee to use” (lines 32 and 33 on page 11), and substitute the words “so that it is safe and is not a hazard to the health of the employee”.

To add, after line 37 on page 11, the following paragraph:

- (e) Ensure that working arrangements do not reduce the employees’ ability to carry out the work safely and without risk to the health of employees, and other persons at work.

New clause 6A: To insert, after clause 6, the following new clause:

6A. Duties of employers, etc., in respect of arrangements, procedures, and systems—Every employer and other person with control over conditions in any workplace shall take all practicable steps to ensure that there are in place in respect of each workplace all arrangements, procedures, and systems,—

- (a) For protecting workers and the public from risk of injury or illness posed by anything in a workplace; and
 (b) For dealing with injury or illness, and risk of injury or illness, (of workers or the public); and
 (c) For—
 (i) Employing or engaging people who are; or
 (ii) Training workers to become,—
 suitably qualified to advise and help the employer or other person in respect of injury or illness, and risk of injury or illness, (of workers or the public); and
 (d) For providing emergency response, first aid, safety promotion, occupational health, and rehabilitation services,—

that are appropriate.

Clause 7: To omit from subclause (1) the words “Every employer shall ensure that there are in place effective methods for—” (lines 8 and 9 on page 12), and substitute the words “Every employer shall ensure within six months of this legislation being enacted that there are in place and shall take a record of effective methods for—”

Clause 8: To omit from line 25 on page 12 the word “take”, and substitute the words “undertake and record”.

Clause 9: To omit from line 35 on page 12 the word “take” , and substitute the words “undertake and record”.

Clause 10: To omit from subclause (2) (a) the words “take all practicable steps” (line 19 on page 13), and substitute the words “take and record all practicable steps undertaken”.

To omit from subclause (2) (b), the words “suitable clothing and equipment” (line 24 on page 13), and substitute the words “the clothing and equipment necessary”.

Clause 11: To omit paragraph (b) (ii) from subclause (1).
 To add to subclause (1) the following paragraph:

(c) Every worker shall have the ability to select their own medical examiner; and

(i) The results of such examination shall be confidential to the worker; and

(ii) Written consent must be given by the worker before the results are made available to the employer.

To add to subclause (2) the following paragraphs:

(c) Every employee shall be supplied with results in such a form and manner that the employee is reasonably likely to understand it; and

(d) Every employee shall be fully involved by the employer in decisions regarding the monitoring process.

To insert, after subclause (2), the following subclause:

(2A) Every employer who fails to fully involve employees under paragraph (d) of subsection (2) of this section commits an offence, and the provisions of **section 44** of this Act shall apply accordingly.

Clause 12: To omit from line 20 on page 15 the words "is reasonably likely to", and substitute the words "is able to".

To insert in line 25 of page 15, after the word "All", the words "potential and".

To insert in line 31 of page 15, after the word "All", the words "potential and".

To add the following new paragraphs:

(e) Reports on health and safety matters written by consultants engaged by the employer, and the reports of inspectors or other representatives of Government agencies; and

(f) Previous accidents at that worksite and any similar worksites engaged in the same activity; and

(g) The legislation, including codes of practice, guidelines and regulations relevant to the health and safety of employees.

Clause 13: To add the following subclauses:

(2) The training syllabus and testing procedures shall be made available to the employees and inspectors upon request.

(3) Every employee health and safety representative shall be allowed by the representative's employer leave of up to three days a year to attend courses of training in performing the functions and exercising the authority of the position, and shall be entitled to wages.

New clauses 13A to 13M: To insert the following new clauses:

13A. Industries required to develop health and safety syllabus—Every industry shall develop a health and safety syllabus through a tripartite process or industry training organisation (as defined in the Industry Training Act 1992).

13B. Employers may establish safety committees or arrange election of safety representatives—Any employer may, in accordance with regulations made under this Act,—

(a) Establish safety committees; or

(b) Arrange for the election of safety representatives,—
in respect of a workplace.

13c. Workers may approach employer to have safety committee established or safety representatives elected—

(1) Any worker or workers may ask their employer, in accordance with regulations made under this Act,—

- (a) To establish safety committees; or
- (b) To allow safety representatives to be elected.

(2) Where an employer fails or refuses to act within a reasonable time of being asked under subsection (2) of this section to do so, any worker or workers who asked may ask an Assessor to direct, in accordance with regulations made under this Act, that a safety committee should be established or that safety representatives should be elected.

13d. Establishment and election of safety committees and representatives—Safety committees may be established, and safety representatives may be elected, in respect of all or any of the following:

- (a) A workplace:
- (b) Part of a workplace:
- (c) All the workers in a workplace:
- (d) All the workers in part of a workplace:
- (e) All the workers of a specified class or description in a workplace or part of a workplace:
- (f) All workers employed by one employer:
- (g) All workers of a specified class or description employed by one employer:
- (h) All workers working on a project:
- (i) All workers of a specified class or description working on a project.

13e. Functions of safety committees—The functions of a safety committee are—

- (a) To investigate any thing in a workplace in respect of which the committee was established that the committee reasonably believes to affect or relate to safety or health; and
- (b) To make to the employer recommendations in respect of any such thing; and
- (c) Any other functions the employer and the committee agree.

13f. Functions of safety representatives—The functions of a safety representative are—

- (a) To investigate complaints about the safety or health of workers made by workers; and
- (b) To investigate cases of injury and illness of workers or former workers, and cases of injury of workers in the workplace; and
- (c) To advise workers on matters affecting their safety or health; and
- (d) To make representations to the employer on matters relating to the safety or health of workers and people in the workplace; and
- (e) Any other functions the employer and the representative agree.

13G. Powers of safety representatives—Subject to section 13H of this Act, the powers of a safety representative are the power—

- (a) After telling the employer or immediate supervisor that the representative intends to do so, to inspect all or any part of the workplace, or any plant in it—
 - (i) After an accident or dangerous incident; or
 - (ii) Without unduly disturbing workers or work, at any other time; and
- (b) To accompany any Assessor inspecting the workplace, or any plant in it; and
- (c) To examine and copy documents (in a form that does not identify, or disclose information about, any individual worker) given under section 13K (1) (b) of this Act; and
- (d) If the worker asks the representative to do so, to be present at any interview about safety or health, or about any accident or hazardous incident or situation, between a worker and—
 - (i) An Assessor; or
 - (ii) The employer or immediate supervisor (or a representative of the employer or immediate supervisor).

13H. Restriction on exercise of safety representative's powers—A safety representative shall not exercise any of the powers specified in section 13G of this Act except—

- (a) In respect of the workplace in respect of which the representative was elected; and
- (b) For the purposes of performing a function given by section 13F of this Act.

13I. Restriction on use of information obtained by safety representatives—Except for the purpose of performing functions conferred by this Act, a safety representative shall not make available to any person information obtained in the performance of any such functions that if made available—

- (a) Would disclose a trade secret; or
- (b) Would be likely to prejudice unreasonably the commercial position of the person who supplied or is the subject of the information.

13J. Worker members of safety committees to have functions and powers of safety representatives—Every member of a safety committee who is a worker (not being a person with managerial or supervisory functions) has all the duties, functions, and powers of a safety representative; and the term “safety representative” shall in this Act be read accordingly.

13K. Duties of employers in respect of safety committees and safety representatives—(1) Every employer shall—

- (a) Involve relevant safety committees and representatives in the planning of all relevant safety practices, procedures, and policies and all planning in relation to new plant or premises or modification to existing plant or premises; and

(b) Give relevant safety committees and representatives all information, help, and facilities they need to perform their functions and exercise their powers.

(2) The practices, procedures, and policies in whose planning safety committees and representatives must be involved include safety statements, new and altered methods, and procedures, and all other practices, procedures, and policies that may affect worker safety or health.

(3) No employer is required to give a safety committee or representative any information relevant to any legal proceedings that are contemplated, or have been commenced and not concluded or discontinued.

13L. Technical advisors—(1) Subject to subsection (2) of this section, a safety representative acting under this Act may be accompanied by a technical advisor certified in accordance with regulations made under this Act, unless the employer concerned thinks that the advisor is not certified; in which case the power may not be exercised unless—

(a) The advisor produces a certificate issued under those regulations; or

(b) An Assessor has considered the matter, and directed the employer that the advisor is certified.

(2) No employer is required to pay a technical advisor for, or pay any costs incurred by the advisor in or in relation to, accompanying a safety representative.

13M. No discrimination against workers—(1) No employer shall dismiss or suspend any worker, or take any action to the worker's disadvantage, by reason only of the fact that the worker is or was a safety representative, or in good faith—

(a) Was a party to any decision of a safety committee; or

(b) Took any action to any decision of a safety committee; or

(c) Agreed to be a worker's representative under this Act; or

(d) Took any action as a worker's representative under this Act; or

(e) Left any place, or refused under this Act—

(i) To enter or return to any place; or

(ii) To use, process, clean, or maintain, any plant, substance, clothing, or equipment; or

(f) Has given or agreed to give evidence in any proceedings or inquiry under this Act; or

(g) Has given to any person acting under this Act information about conditions of work, or the safety of health, of workers or former workers of the employer; or

(h) Has taken any action authorised by this Act; or

(i) Has sought, directly or indirectly, to have any provision of this Act enforced, or any mechanism provided for by or under this Act activated.

(2) No employer shall make any deduction from the wages or salary otherwise payable to any safety representative, in respect of any time spent in performing any functions as a safety representative.

Clause 19: To insert before the word “practicable”, the word “reasonably”.

New clauses 19A and 19B: To insert the following new clauses:

19A. Workers may leave, or refuse to enter, dangerous places—A worker who believes on reasonable grounds that there is a serious danger (being a danger that differs in kind from, or is greater than the dangers inherent in the work the worker is employed to do) in any workplace or other place where the worker's employer requires he or she to work, or go through in order to work, may—

- (a) Refuse to enter; or
- (b) Leave, and refuse to return to—
that place.

19B. Workers may refuse dangerous work—A worker who believes on reasonable grounds that there is a serious danger (being a danger that differs in kind from, or is greater than the dangers inherent in the work the worker is employed to do), to the worker or a serious danger to the public, if the worker uses, processes, cleans or maintains any paint, substance or equipment, may refuse to use, process, clean or maintain it.

PART III

STANDARDS

Clause 20: To omit this clause, and substitute the following clause:

20. Codes of practice—(1) The Secretary may from time to time issue recommendations relating to occupational safety or health practices; and may from time to time amend or revoke any such recommendation.

(2) No code of practice or amendment or revocation of a code of practice has effect until approved by the Minister by notice in the *Gazette*.

(3) The Minister shall not publish a notice under subsection (2) of this section unless—

- (a) The Secretary has published in the *Gazette* a notice (in the case of an amendment of a code of practice or a new code, giving a description of its general purport) of intention to apply for the Minister's approval; and
- (b) At least a month has passed since the publication; and
- (c) The Minister has consulted the Commission, and all persons affected, or reasonably likely to be affected by the code, amendment, or revocation concerned (or representatives of those persons), and given them a reasonable opportunity to comment; and
- (d) The Minister has considered all written comments (from any person) received within that time.

(4) A notice under subsection (2) of this section is conclusive evidence that subsection (3) of this section has been complied with in respect of the notice.

(5) After approving a code of practice or amendment of a code of practice, the Minister shall promulgate it in any manner the Minister thinks fit.

(6) A Court may, in determining whether or not a person charged with failing to comply with any provision of this Act or of any regulations made under it has complied with the provision, have regard to any code of practice that—

- (a) Was in force at the time of the alleged failure; and
- (b) In the form in which it was then in force, related to matters of a kind to which the provision relates.

(7) In the absence of proof to the contrary, a document purporting to be a code of practice, or an amendment of a code of practice, issued by the Secretary shall in any proceedings be deemed to be a code of practice or amendment of a code of practice.

(8) Nothing in subsection (7) of this section limits any method of proof of a code of practice or an amendment of a code of practice.

New Part IIIA: To insert, after Part III, the following new Part:

PART IIIA

OCCUPATIONAL SAFETY AND HEALTH COMMISSION

24AA. Establishment of Occupational Safety and Health Commission—There is hereby established the Occupational Safety and Health Commission.

24AB. Functions of Commission—The Commission's functions are—

- (a) To give the Minister advice on developing policies on occupational safety and health, including policies related to—
 - (i) Legislation and codes of practice; or
 - (ii) The administration of legislation; and
- (b) To give advice and information to, and get information from, persons concerned about occupational safety or health; and
- (c) To promote training and education in occupational safety and health; and
- (d) To approve courses of training and education in occupational safety and health; and
- (e) To give the Minister advice about commissioning research relevant to occupational safety and health; and
- (f) To recommend to the Minister the making of grants for the purposes of occupational safety and health; and
- (g) To recommend to the Minister inquiries into particular matters or occurrences related to occupational safety or health; and
- (h) To monitor the implementation of policies, and the delivery of occupational safety and health services; and
- (i) To encourage opportunities for providing the promotion of worker safety and health, and education and training related to worker safety and health; and
- (j) Any other functions conferred by this Act or any other enactment.

24AC. Membership—The Commission shall comprise—

- (a) Subject to section 24AF of this Act, the Minister; and
- (b) Three members appointed by the Minister on the recommendation of the central organisation of workers; and
- (c) Three members appointed by the Minister on the recommendation of the central organisation of employers.

24AD. Term of office—(1) Subject to section 24AE (3) of this Act, every member of the Commission shall be appointed for a term of 3 years, and may from time to time be reappointed.

(2) Notwithstanding subsection (1) of this section, but subject to section 24AE (2) of this Act, a member of the Commission shall continue in office until a successor is appointed.

24AE. Casual vacancies—(1) The Minister may dismiss any member of the Commission for incapacity, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) If a member of the Commission—

(a) Dies; or

(b) Resigns by written notice to the Minister; or

(c) Without first getting the Commission's permission is absent from 3 consecutive meetings of the Commission; or

(d) Is dismissed,—

the member's office then becomes vacant.

(3) Where the office of a member of the Commission becomes vacant, the Minister may appoint any person to be a member of the Commission for the unexpired part of the vacating member's term.

(4) The Commission's powers are not affected by any vacancy in its membership.

24AF. Minister to appoint alternate—(1) The Minister—

(a) Shall from time to time as the position becomes vacant, after consulting the 2 central organisations referred to in section 24AC of this Act, appoint a person to be the Minister's alternate on the Commission; and

(b) May at any time revoke the appointment of the current alternate.

(2) An alternate may resign by written notice to the Minister.

(3) At any meeting of the Commission where the Minister's alternate is present and the Minister is absent, the Minister's alternate shall be deemed to be a member of the Commission, and shall preside.

24AG. Annual report—(1) As soon as is practicable after the 30th day of June in each year, the Commission shall give the Minister a report on its operations for the year ending with that day.

(2) As soon as is practicable after receiving the report, the Minister shall lay a copy before the House of Representatives.

PART IV

GENERAL PROVISIONS

Clause 24A: To omit this clause, and substitute the following clauses:

24A. Notification of serious accidents—(1) Every employer and other person with control over conditions in a workplace shall give written notice of every accident causing death or serious injury that occurs in the workplace.

(2) The notice shall be given as soon as is possible, and in any event no more than 48 hours, after the accident occurs.

(3) The notice shall give—

(a) In respect of each person who was killed or seriously injured in the accident,—

(i) The person's name, place of residence, and age; and

- (ii) The place where the person was taken after the accident; and
- (b) Particulars of where and how the accident occurred; and
- (c) All other information necessary to enable the inspector to know exactly what occurred.

24B. Register of accidents—Every employer shall—

- (a) Keep a register of accidents in the prescribed form; and
- (b) Enter in or attach to the register the prescribed details relating to every accident of which the employer is aware occurring to any worker employed by the employer; and
- (c) Make the register available for inspection and copying.

Clause 30: To add to subclause (1) the following new paragraphs:

- (g) Notify the employee representative of their presence on site, and require to be accompanied and assisted by that representative in carrying out their functions.
- (h) Upon concluding an inspection an inspector all give to the employer and employee representative information with respect to the inspectors observations and any action the inspector proposes to take in relation to the workplace.

New clause 35A: To insert, after clause 35, the following new clause:

35A. Provisional improvement notices—(1) Where a health and safety representative is of the opinion that any person—

- (a) Is contravening any provision of this Act or the regulations; or
- (b) Has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,—

the health and safety representative may issue to the person a provisional improvement notice requiring the person to remedy the contravention or likely contravention or the matters and activities occasioning them.

(2) A provisional improvement notice shall:

- (a) State that the health and safety representative is of the opinion that the person—
 - (i) Is contravening a provision of this Act or the regulations; or
 - (ii) Has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) State the reasons for that opinion; and
- (c) Specify the provision in this act or the regulations in respect of which that opinion is held; and
- (d) Specify the day before which the person is required to remedy the contravention or the matters or activities occasioning the contravention or likely contravention.

(3) A person—

- (a) To whom a provisional improvement notice is issued which is deemed to be an improvement notice under section 35A of this Act; and
 - (b) Who does not comply with it,—
- commits an offence against this Act.

New clause 46A: To insert, after clause 46, the following clause:

46A. Proceedings for prosecution—

- (a) Employees or their representatives shall be entitled to bring proceedings for an offence against this Act, in respect of an injury to their person:
- (b) Inspectors shall be entitled to bring proceedings for an offence against this Act.

Amendment to Title: To omit all those words after the words "An Act", and substitute the words:

to promote and improve the standards for occupational safety and health of employees, and other people at work or affected by the work of other people