

1 March 2002

The Clerk of the Committee
Transport & Industrial Relations Select Committee
Parliament Buildings
WELLINGTON

**SUBMISSION
ON THE HEALTH & SAFETY IN EMPLOYMENT
AMENDMENT BILL 2001**

I enclose a submission on the Health and Safety in Employment Amendment Bill 2001.

The Association wishes to support this submission by appearing before the Select Committee.

Could you contact Christine Molineux, telephone (04) 473-4769, to make the appropriate arrangements for that. We will advise you of the persons who will be appearing as soon as we have been advised of the date and time of our meeting with the Committee.

Rob McLagan
Chief Executive
NZ Forest Owners' Assn

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INTRODUCTION

1. The New Zealand Forest Owners' Association is a voluntary organisation representing the interests of commercial plantation forest growers. The Association has 215 members whose forest holdings represent something of the order of 85% of New Zealand's commercial forest estate. The members include all of the major forest corporates, the majority of medium-sized forest companies, many forest syndicates and a number of smaller forest owners and farm-foresters.

GENERAL COMMENTS

2. The Association and the Council support the need to provide a safe working environment and to ensure continuous improvement in safety performance. Indeed, this has been an emphasis of both the Association and the Council over recent years and members of both organisations have made significant efforts in this regard.
3. These efforts have been directed at ensuring a broad commitment to safety through comprehensive management systems and the establishment of a safety culture. The success of such an approach depends on the involvement of all in the workplace.

4. The focus in the amending bill seems to be on employers only when, in our view, it should be inculcating a philosophy of safety in everyone involved in the workplace.
5. In our view increased regulation and bureaucracy will not assist the development of a safety culture which is all-inclusive, but instead runs the risk of a return to the days when safety was the responsibility of designated people only. This was an ineffectual approach.

COMMENTS ON AMENDMENTS

DEFINITION OF HARM AND HAZARD

6. We recognise the importance of protecting employees from exposure to excessive workloads and to stress. However, this is a very difficult problem to define and to manage, especially in a workplace, e.g. a forest, which is not physically constrained, e.g. within a building.
7. The difficulty is in determining whether stress or fatigue are work-related or might be a carryover from non-work activities into the working situation. There are so many environmental and social factors that contribute to stress and fatigue that the workplace should not be seen as the only potential cause. There appears to be an excessive obligation placed on the employer without the concomitant recognition of the duty of the individual to be in a fit state for work.
8. We submit that the current definition of harm and hazard should be retained.

DEFINITION OF PLACE OF WORK INCLUDING PERSONS WHO ARE MOBILE

9. The forest industry includes a large number of employees and contractors who travel considerable distances to work. In many cases there are transport arrangements provided by the employer to achieve this.
10. There is uncertainty as to whether persons travelling to and from work in a company owned or provided vehicle are covered by this legislation. In our view, it is inappropriate to have employers put in the position of having to control their employees' movements travelling to and from work. Similarly, it must be made clear that employers have no more responsibility for hazards on the road than any other members of the travelling public.
11. We submit that the legislation must make it clear that persons travelling to and from work in company owned or provided vehicles are not covered by the legislation. The definition in the Injury Prevention Rehabilitation and Compensation Act 2001 would be appropriate.

VOLUNTEERS

12. The inclusion of a volunteer who is in a place of work for the purposes of training or gaining work experience is a concern. Undoubtedly employers must have a duty of care to everyone who is in the workplace but to deem volunteers to be employees for the purposes of the Act is to go too far. It will act as a disincentive to the provision of work experience for students from secondary or tertiary education.
13. We submit that the definition of volunteers should not include persons in a place of work for the purposes of training or gaining work experience.

DEVELOPMENT OF EMPLOYEE PARTICIPATION SYSTEM

14. Our members have supported the need for employee participation in safety matters. Indeed, as already indicated, this has been a major thrust in recent times. Many employers in the industry have developed employee participation systems for their workplaces which have been most effective.

This effectiveness has been due largely to being flexible in terms of team composition.

15. In contrast, the Bill sets out very prescriptive requirements for employee participation.
16. Prescription of the type contemplated imposes compliance burdens on employers, especially in respect of the cost and formalities involved. The current emphasis is that each person must take responsibility for the safety of his or her work environment and moving the focus back to representative groups or individuals is a backward step.
17. In addition, the intrusion of a third party, viz. the Union, introduces new dynamics which may be in conflict with the interaction of the health and safety emphasis of employer and employee working together. Health and safety action teams typically include a range of people committed to safety and included because of their ability and enthusiasm. Predetermined ratios of representatives remove the flexibility available to such groups and will therefore reduce the effectiveness of them.
18. Open communications and a flexible approach are much more preferable to the prescriptive outline in the amendment bill.
19. We submit that employee participation, and the safety process, should allow a more flexible approach than that proposed in Section 19. Deletion of the new section and reversion to the “all practicable steps” approach would achieve this.

HAZARD NOTICES

20. It is noted that the employer holds the ultimate responsibility for health and safety issues in the workplace on a basis of strict liability. However, the bill provides that health and safety representatives have a specific ability to consult with OSH inspectors and not necessarily with the employer present.

They may issue hazard notices that must be complied with. This is seen as an area of inevitable conflict and confusion.

21. Our members are concerned that health and safety issues can be used as industrial bargaining points or can precipitate an adversarial approach to the very health and safety issues which shared commitment and responsibility can best deal with. The issue of hazard notices can be open to abuse.
22. We submit that the issuing of hazard notices by representatives should be deleted.