



THE NEWSLETTER
OF THE NZ
FEDERATION OF
MOTORING CLUBS

WHEEL TORQUE

ISSUE 21 | JULY-AUGUST 2015

Safety Reform Bill revisions a relief for voluntary groups

Last minute revisions to provisions in the Health and Safety Reform Bill have relieved the vast majority of clubs and voluntary associations from compliance with the more onerous responsibilities imposed by the original draft legislation.

In response to concerns raised by the FOMC, many member clubs and a range of other concerned voluntary organisations, the Government is adding a new section to the clauses which defined “volunteers” as “workers” and made them subject to the requirements of our health and safety laws.

The new subclause differentiates “volunteer workers” from “casual volunteers” who will be now excluded from the category of “worker” when they are undertaking specified voluntary activities:

- *participating in fund-raising activities.*
- *assisting an educational institute, sports club, or recreation club with sports or recreation.*
- *assisting with activities for an educational institute outside its premises.*
- *caring for another person in the volunteer’s home.*

Although casual volunteers and volunteers participating in the above activities will no longer be “volunteer workers” under the revised bill, their health and safety will still be covered by a PCBU’s duty to look out for the welfare of other people affected by the conduct of its business or undertaking.

In his statement announcing the Transport and Industrial Relations Select Committee’s recommended revisions to the Health and Safety Reform Bill, Workplace Relations and Safety Minister Michael Woodhouse said coverage of volunteers will now

remain the same as the provisions under the current law, ensuring volunteering is unaffected.

“It’s important to strike the right balance between safe workplaces for workers and unnecessary red tape and I’m confident we have landed in the right space,” he said.

“I want to thank the Transport and Industrial Relations Select Committee for their hard work. They have done a great job and the Bill is in good shape.”

Under the latest revisions, incorporated societies and voluntary associations with no employees will remain exempt from the requirements of the Act, but those clubs which do employ one or more workers will be required to meet the obligations imposed on PCBUs or “Person Conducting a Business or Undertaking” to ensure the health and safety of their workers and others, “so far as is reasonably practicable”.

To determine whether their organisation is a PCBU, clubs and associations will have to consider

whether those individuals performing tasks or “work” on behalf of the club are “casual volunteers” or “volunteer workers”.

Volunteer workers are people who regularly work for a PCBU with its knowledge and consent on an on-going basis and are integral to the PCBU’s operations. This distinction is based on the existing Health and Safety in Employment Act 1992.

[cont’d on page 2](#)



PCBUs will owe a duty to ensure, so far as is reasonably practicable, the health and safety of volunteer workers as if they were any other worker. This ensures that these volunteers are afforded the protection of having the appropriate training, instruction or supervision requirements to undertake their work safely – just like any other worker.

Casual volunteers who do not fall under the definition of a “volunteer worker” will still be covered by the PCBU’s duty to other persons affected by the work of the business or undertaking.

For those clubs who do employ staff or undertake semi-commercial activities which will bring them within the criteria to qualify as PCBUs there are other revisions in the Bill which have reduced the work and costs involved in complying with its requirements. There have also been positive changes to who will and will not be held liable when health and safety breaches occur.



FOMC PRESIDENT WELCOMES CHANGES TO REFORM BILL

For the many clubs fearful of the impact the Health and Safety Reform Bill would have on their activities, the recommended changes are a great result though we still need a bit more clarity on the two new definitions of a “volunteer” and just how and when people will be classified as “workers” subject to the Act.

While the Government is proposing that we revert to the original or current law, clubs will still have to be careful as there will be circumstances where they could be subject to prosecution if accidents occur and people are injured.

Apart from voluntary associations the other big winners are farmers and those who live on or visit farms. For the vintage machinery clubs and off roaders like the Military Vehicle club, this will be a huge outcome and will allow access to farmland for recreational activities to continue without compromising the landowners.

The FOMC will continue to monitor and scrutinise the provisions of the Bill until the final form of the new law and associated regulations are determined. It is our intention to assist clubs to reach clarity about what their individual responsibilities will be under the new legislation and provide templates for meeting their obligations at the lowest possible cost.

Malcolm Lumsden
FOMC President

CLUBS ADVISED TO REDUCE SAFETY RISKS

For clubs concerned about the possible impact on their activities of the proposed health and safety law reforms proceeding through Parliament, the reassuring message to the FOMC annual conference in May from the President of the Australian Historic Motoring Federation, Christine Stevens was that most clubs can and will survive the new regime. And many may even benefit from becoming more aware of potential safety hazards and taking a methodical approach to reducing risks.

While the introduction of more stringent safety regulations in Australia resulted in a few clubs effectively closing down, the historic motoring federation brought other small clubs together into a new structure so they could jointly afford the costs of adequate insurance coverage and meeting their new responsibilities to mitigate risks.

Regardless of the requirements of the new legislation, Christine argued that all responsible clubs should be doing as much as they can to minimise the possibility of events they organise leading to injuries to their own members or the public.

As well as encouraging all their member clubs to take out appropriate insurance to cover the financial consequences of a possible prosecution, the Australian federation has produced a set of risk assessment checklist templates which can be applied to a wide range of motoring type events. In fact Christine said public liability insurance will become essential for all clubs that employ any person to undertake a task.

Just exactly when a club or “voluntary association” will become an “employer” and therefore classified as a PCBU (person conducting a business undertaking) and subject to the requirements of the revised Health and Safety Act



Christine Stevens of the Australian Historic Motoring Federation

is not yet clearly understood and will depend on how the new legislation directly impacts on individual clubs.

However Christine said in Australia if a club paid its secretary an “honorarium” then it became a PCBU, but if it just “refunded genuine expenses”

then it remained a “voluntary association”. Once the reform bill has become law in New Zealand all clubs will have to give careful consideration to how individual members are reimbursed for the time and expenses they incur.

But Christine advised that all clubs should undertake risk mitigation to ensure their operating environment is as safe as it can be, and to identify and record potential negative occurrences and any actions taken to minimise them.

“You should identify the essential objectives of the club or event,” she said “Identify, define and record any risks. Implement early management action and remain aware of current levels of risk. Risk reduction requires strategies to prevent, mitigate or transfer the risk.”

She provided examples of comprehensive and detailed Activity Checklists developed by her federation and now being widely used by clubs in Australia. And she recommended that no matter what is required by the new legislation, NZ clubs should give positive consideration to adopting a similar approach to reducing accident risks.

The other guest speaker at the AGM was WorkSafe New Zealand's Chief Inspector Assessments Northern John Howard. Because the proposals affecting volunteer organisations in the reform bill had attracted so much feedback and comment, he said the still ongoing Select Committee process was likely to result in further changes to the draft proposals so his presentation may no longer be relevant.

However, while he canned his prepared presentation John Howard assured the meeting that the primary purpose of the reform bill was to provide the workers employed by clubs and voluntary associations with the same protections afforded to other paid employees. He said the vast majority of clubs with no paid employees would not be affected by the legislation but any impositions on the others would not be as onerous as many people feared.



John Howard from WorkSafe speaking to delegates at the AGM

Howard said WorkSafe would not be requiring clubs to prepare detailed written safety plans for every event. But if an accident occurred which required a WorkSafe investigation, inspectors would be looking for clear indications that the club or event organisers had given some thought to potential hazards and taken positive action to reduce the risks such as erecting safety fences or signposting dangerous areas or equipment.

CHANGES TO FOMC EXECUTIVE

With the retirement of vice president Fred Fellows, the long serving representative of the Motor Caravan Association on the FOMC executive, newer member Harry Duynhoven has taken up the role.

Treasurer Paul Billings also sought to retire after many years of service to the FOMC, but as no replacement was available he has agreed to carry on for another year.

As a result of the postal vote for the committee positions, all of the current members were re-elected and they are joined by new nominee Peter Boys, who is secretary of the Hamilton Vintage and Classic Car Club and an Automobile Association district councillor.

Because his knowledge and wise judgement have proved so useful over the years Fred Fellows has been persuaded to continue his association with the executive as a technical advisor. Secretary of the Franklin Vintage Machinery Club and president of the NZ Ploughing Association, Ian Robb has also been invited to become a technical advisor.

PRESIDENT'S REPORT TO THE 20TH AGM

Twenty years on and the issues the federation was formed to confront seem to become more complicated and challenging each year.



30/40 year rule

Last year we made submissions to the Minister requesting a change to the 40 year rule for vintage vehicles to meet the internationally recognised standard of over 30 years. The Minister declined our request. But we did revisit the issue with regard to the ACC component of registration fees because owners of vehicles between 30 and 40 year old will be penalised as their vehicles do not meet the latest higher safety standards. Complicating our situation was that if we were to be successful, then the ACC component of registrations may increase for all over 30 year old vehicles including the over 40 vintage vehicles which now enjoy a concession.

In rejecting our approach the Minister used information provided to him that 30-40 year old vehicles still do considerable annual mileages. This does not fit with evidence we have and we need to decide if and how we contest this. Pending substantial reductions in the ACC component of rego fees has also tended to make the situation more palatable.

SIV permits

There seems to be an equity issue with Special Interest Vehicles permits. One has to ask why the limit has been set so low and is it compatible with the wishes of the motoring public. Given that there is no increased safety risk, we believe increasing the quota to clear the backlog would meet the motoring public's wishes. An investigation into a change of policy is, in my opinion, justified.

Fuel safety

In New Zealand we do now have an agreed 90 day fuel supplies requirement but I am advised that this may not have been implemented yet. It was previously 60 days but our obligation under the International Energy Agency rules is now 90 days. The Government is raising the fuel tax by a fraction of a cent to cover this. But the reserves are not held in NZ as it appears to be cheaper to rent space in other countries. Fuel supplies available in rural areas have become less and are dependent on just-in-time deliveries. There is a higher cost for fuel supplies in rural areas because of lower volume sales. This causes me to be concerned that if JIT deliveries are interrupted by adverse events then a problem suddenly exists. I remain sceptical that in the event of an international crisis or major event, our supplies overseas will still remain available. I flag the issue as we cannot have this debate post an event. However any change to the current practice may come at a cost in the tank. What price are we prepared to pay for fuel security and availability?

cont'd on page 4

Response to the Health and Safety Bill

When the new bill was introduced in 2014 and submissions were called for by May of that year, we were given assurances that this would not impact upon voluntary associations and the many volunteers who give of their time for the public good. Since then with the introduction of the proposed legislation, we have become unconvinced that this was the intent of the Bill and all advice received reconfirmed our fears. It was therefore decided to initiate a club activity to have individual clubs express their concerns to their Members of Parliament. The outcome of this, supported by other volunteer organisations, was to have the return of the legislation to Parliament [April] delayed and the select committee reconvene at the end of May 2015 to review these concerns. The implementation of this legislation is now to be later in the year. To assist clubs understand the proposed legislation, which we were advised was based on the Australian model, we invited our Australian guest to address us on how things went in Australia post the introduction of the reforms there. I very much appreciate her willingness to get on a plane and give of her time to assist us. As well, we sought to have the Minister attend our AGM but he declined and so we invited a speaker from WorkSafe. We will continue to provide our member clubs with advice on how to adapt to what changes are passed by Parliament.

Vehicle compliance

This continues to cause issues for members when they encounter vehicle inspectors who appear to have little knowledge of the VIRM. I ask member Clubs to continue to keep us informed of any difficulties arising in this area.

Succession

I thank all those who allowed their nominations to come forward for our committee. I have agreed to do a further year but this will be my last with an agreement that we have a candidate who is prepared to move up at that point in time.

The organisation has been well served by your dedicated committee members, and especially our long serving Treasurer Paul Billing and his wife Noeline, and our ever efficient Secretary Roy Hughes. Roy and I enjoy a very workable relationship and we seem to touch base on a weekly basis. I can say from a President's viewpoint that is a very valued and supportive relationship which has served this Club very well.

In terms of finances, we have operated in a very frugal manner with the accounts not reflecting the true cost as some prefer not to seek reimbursement for all their expenses. I guess that is fine but we need to be aware of this. Our Treasurer Paul and wife Noeline have been stalwarts of this organisation. Paul sought to retire but has agreed to stay for another year. I sincerely thank you both on behalf of the Club for the ongoing loyalty and support you have provided the FOMC. Also special thanks to Norm Pointon who played a key role in the founding of the FOMC and has served on the executive for 15 of the past 20 years. Finally always take seriously that young person who shows interest and asks about your vehicle. Remember one day, if his interest is cultivated, he may own it.

Malcolm Lumsden
FOMC President

NEWS FROM AROUND THE WORLD

Exemptions from vehicle checks for 30 year plus cars

Under a new European Union Directive vehicles older than 30 years will be exempt from the British and European equivalents of New Zealand's Warrant of Fitness test.

In Great Britain all vehicles manufactured before 1960 are already exempt from regular road-worthiness testing. The new rules allow member states of the EU to exempt vehicles from testing if they are at least 30 years old and no substantial changes have been made to them since manufacture.

The new Directive allows member states to permit exemptions from periodic testing for "vehicles of historic interest". Such vehicles are defined as those which:

- *are no longer in production.*
- *were manufactured or registered for the first time at least 30 years ago.*
- *are historically preserved and maintained in their original state and have not undergone substantial changes in the technical characteristics of their main components.*



In 2012 all vehicles manufactured before 1960 were exempted from the MoT test by the British Government, following a public consultation which found high levels of support for the proposal. Vehicles licensed before 1960 make up about 0.6% of the total number of licensed vehicles in Britain, but are involved in just 0.03% of road accidents. Initial MoT test failure rates for these vehicles in 2009 was less than 10%, whilst the initial MoT test failure rate for vehicles manufactured after 1960 was over 30%.

The EU Directive has been prompted by concerns that vehicle testing for modern cars is becoming increasingly automated, more computerised and less decided by simple human judgement. Many older cars were never built to pass the newer tests, even when they are still in perfect mechanical condition, and some can even be damaged if subjected to checking by the latest testing equipment.

