

Chair  
Cabinet Finance, Infrastructure and Environment Committee

## Change to the Health and Safety in Employment Act: Employee Participation

### Executive summary

- 1 This paper proposes amendments to the Health and Safety in Employment Act 1992 (the HSE Act) to introduce a flexible, integrated system of employee participation in workplace health and safety. This system will be made up of the following elements:
- a duty on employers to ensure that there are real opportunities for employees to participate effectively in the ongoing management and improvement of health and safety in the workplace, to assist the employer to comply with sections 7 to 13 of the HSE Act, including in particular:
    - a duty on employers, where one or more employees requests involvement, **or** who employ 30 or more employees, to decide jointly with employees how to develop and implement a formal and cooperative system for ongoing employee participation. (This system may include health and safety representatives, a health and safety committee or other system as agreed.) Where no agreement can be reached, employers of less than 30 employees would be required to arrange for the election of at least one health and safety representative, and employers of 30 or more employees would be required to either:
      - option (a)** arrange for the election of at least one health and safety representative; or
      - option (b)** arrange for the establishment of a joint health and safety committee with elected health and safety representatives on that committee.
  - a provision for trained health and safety representatives to issue hazard notices formally identifying hazards, where a health or safety matter has not been resolved after the representative and the employer have discussed the matter; and
  - a confirmation of the individual common law right to refuse or stop work if the individual reasonably believes that the work is likely to cause them serious harm.
- 2 The cost of implementing these amendments is:

Employee participation	2001/02	2002/03	2003/04	Outyears
	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.068	0.798	2.195	2.187
Outside the provisions (GST incl)	-	0.011	-	-
Capital costs (GST n/a)	-	0.123	-	-

### Background on election policies and public consultation

- 3 Prior to the last election, the Labour Party policy stated that a Labour Government would amend the current legislation to provide for the election of health and safety representatives, or committees, in workplaces. A trained health and safety representative would be able to place a provisional improvement notice on a machine or a process that is considered unsafe.<sup>1</sup>

<sup>1</sup> Labour on Occupational Safety and Health, October 1999, <http://www.labour.org.nz/InfoCentre1/Policies/OSH.doc>

- 4 Prior to the last election, the Alliance Party policy stated that ‘health and safety legislation will require the establishment of workplace health and safety committees, initially in establishments of over 30 employees with worker representation.... For smaller workplaces there will be requirements for worker representation regarding health and safety issues.’<sup>2</sup>
- 5 In December 2000, a public consultation document (‘the Discussion Paper’) described possible legislative amendments to the HSE Act and the regulation of stress and working time.<sup>3</sup> These amendments to the HSE Act have been subject to wide public consultation.

## **Comment on the proposed amendments**

### **Background on the existing opportunity for employee participation in the HSE Act**

- 6 The current HSE Act has no enforceable obligation on employers to involve employees in workplace health and safety. Section 14 of the HSE Act requires employers to ensure that all employees have the opportunity to be fully involved in the development of hazard management procedures and in dealing with or reacting to emergencies or imminent dangers. However, failure to comply with section 14 is not an offence under the HSE Act.<sup>4</sup>
- 7 Section 52 provides that the Court may take a breach of section 14 into account when determining penalties for a breach of section 7, 8, 9 or 10.<sup>5</sup> In practice, however, a separate investigation is required to establish a breach of section 14 and the potential minimal impact on penalty does not justify the resource required.

### **Employment relations: employee participation and the Employment Relations Act 2000**

- 8 The Employment Relations Act 2000 (the ERA) provided a new framework for entering into and maintaining employment relationships. The ERA’s primary objective is to build productive employment relationships, based on good faith. The ERA recognises an inherent inequality in bargaining power, and promotes collective bargaining, but this is not recognised in the HSE Act. The HSE Act assumes that employers have primary responsibility for health and safety, and does not give any authority to employees to participate in health and safety management.
- 9 The good faith concept can be reflected in workplace health and safety. Employee participation initiatives promote ongoing open communication between employers and employees (and unions), and joint ownership of health and safety issues. The good faith duty is on both employees and employers. The employee participation initiatives encourage dialogue as the first step to resolving health and safety matters. They also encourage employers and employees to seek outside help about health and safety matters from, for example, OSH or the Mediation Service.
- 10 It is not clear at this time what effect the good faith framework of the ERA has had on the willingness of employees to be more open in raising safety concerns with their employers, or in refusing dangerous work (the ERA includes a collective right to strike on the grounds of health or safety). This framework is intended to facilitate communication between employers and employees. Over time, it should increase the likelihood that health and safety matters are resolved in an agreed manner.

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<sup>2</sup> Modernising New Zealand's workplaces, undated, <http://www.alliance.org.nz/fpbrief.html>

<sup>3</sup> Office of the Minister of Labour, *Discussion paper on the review of the Health and Safety in Employment Act 1992*, December 2000

<sup>4</sup> Section 50(1)(a)

<sup>5</sup> These sections deal with hazard identification, isolation, minimisation, elimination, and dealing with emergencies.

## ACC incentives to involve employees

- Existing incentives to involve employees includes two programmes under the ACC scheme: the Accredited Employer and Workplace Safety Management Practices programmes. Both of these programmes require evidence of employee participation in workplace health and safety as part of the assessment criteria.

## Research findings and overseas experience

- Research in New Zealand and overseas shows that employee involvement in health and safety is associated with best practice in health and safety management. It generally improves accident, illness and injury rates in the workplace and therefore reduces economic costs and negative social consequences.
- Evidence from New Zealand and Australian research shows that employee participation is associated with good health and safety practice and compliance with the workplace safety laws. Its absence is associated with poor practice and non-compliance.<sup>6</sup> One study of employee participation in the United Kingdom shows that legislated employee participation, in the form of health and safety representatives and committees, reduces the overall costs and incidence of injury by up to 50 percent.<sup>7</sup>

## Problem definition

- Despite the research findings, a large number of employers do not involve employees in workplace health and safety management. The present legislative requirements do not provide sufficient incentives for employers to involve employees. One major reason for this may be because the costs of accidents are not borne fully by employers and employees. This means that market mechanisms alone are unlikely to direct employers towards best practice of employee involvement.
- The HSE Act requires a systematic and dynamic approach to health and safety management. This is the fundamental requirement for employers to enable best practice. Employee participation in the development, implementation, and management of health and safety systems is best practice but is not required by the Act; this weakens the HSE Act framework.

## Results from discussion paper

- The Discussion Paper generated a significant response to the questions about the employee participation proposals. A summary of findings from the Discussion Paper is shown in the table below. A more detailed discussion of findings is in Appendix A.

	Response rate % (number)	Support %	Conditional support %	Oppose %	No clear opinion %
Question 6: Should the HSE Act provide for the election of health and safety representatives in those workplaces where employees want a representative?	80 (142)	37	17	38	7
Question 7: Should a trained health and safety representative be able to issue provisional improvement notices?	78 (138)	25	9	60	6

<sup>6</sup> Occupational Safety and Health Service of the Department of Labour, Ministry of Economic Development, *The Costs and Benefits of Complying with the Health and Safety in Employment Act 1992*, Department of Labour occasional paper series, 2001/4; Labour Market Policy Group, Web Research, *Research into health, safety and rehabilitation: report of phase two*, Draft, December 2000; The Productivity Commission of Australia, *Health and Safety at Work*, 1995, [www.pc.gov.au/inquiry/47workhe/index.html](http://www.pc.gov.au/inquiry/47workhe/index.html).

<sup>7</sup> B. Reilly, P. Paci and P. Holl, 'Unions, safety committees and workplace injuries', in *British Journal of Industrial Relations*, June 1995, pages 275 – 288.

Question 8: Should a trained health and safety representative be able to issue provisional prohibition notices?	77 (137)	17	9	68	7
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### **Recommended options: a flexible and integrated system of employee participation**

17 The proposed amendments aim to introduce a flexible and integrated system of employee participation. The individual mechanisms would not be as effective in isolation. For example, health and safety representatives may be very effective in some workplaces, but not in others. Similarly, the individual right to refuse or stop work if the individual reasonably believes that the work is likely to cause them serious harm is an important reactive mechanism, but on its own does not achieve any meaningful participation. It is proposed that the following elements form an integrated system of employee participation under the HSE Act.

#### *Employers to ensure employees participate in health and safety management*

18 It is recommended that a duty be placed on employers to ensure that real opportunities exist for employees to participate effectively in the ongoing management and improvement of health and safety in the workplace in order to assist the employer with:

- hazard identification, isolation, minimisation and elimination;
- dealing with emergencies;
- information for employees; and
- training and supervision.<sup>8</sup>

19 To meet this obligation, the employer shall take into account the contents of any code of practice on employee participation. This amendment will create a duty on all employers to involve employees in health and safety, but will not be prescriptive about how to fulfil the duty. It is intended that a code of practice will help by identifying ways of achieving effective employee participation. This duty:

- is consistent with the current performance-based HSE Act;
- aligns with the employee involvement requirements in the ACC Accredited Employer and the Workplace Safety Management Practices programmes; and
- aligns with the good faith responsibility on employers and employees in the ERA.

20 In identifying the duty described above, a number of factors were considered, in particular, how to encourage effective employee participation without detracting from employers' responsibilities under the HSE Act, and how strong the requirement on the employer should be.

21 It is proposed that the duty on employers be enforceable. This requirement will enable OSH (and others if the monopoly on prosecutions is removed) to use enforcement mechanisms when employers do not meet this obligation.

#### *Employers to decide jointly with employees on a system of ongoing employee participation*

22 It is recommended that the HSE Act be amended to place an additional duty on employers, where one or more employees requests involvement, **or** who employ 30 or more employees, to decide jointly with employees how to develop and implement a formal and cooperative system for the ongoing employee participation required under paragraph 18 above. This system may include health and safety representatives<sup>9</sup>, a health and safety committee or other system as agreed. The employer and employees must work in good faith together to meet this obligation.

<sup>8</sup> sections 7 to 13 of the HSE Act.

<sup>9</sup> The functions of health and safety representatives will be set out in the HSE Act and Regulations. They will primarily be to assist the employer with: hazard identification, isolation, minimisation and elimination; dealing with emergencies; information for employees; and training and supervision (sections 7 to 13 of the HSE Act).

The parties shall take into account the contents of any relevant code of practice when dealing with these issues.

- 23 This duty will help employers determine with their employees the most suitable mechanism for their workforce. For example, an employer with a single worksite may have a different arrangement to that of an employer with multiple worksites.
- 24 Where no agreement can be reached, employers of less than 30 employees would be required to arrange for the election of at least one health and safety representative.
- 25 Where employers have 30 or more employees and no agreement can be reached two default options are offered for consideration below.

*Option 1: arrange for the election of at least one health and safety representative*

- 26 Employers would be required to arrange for the election of at least one health and safety representative. This option would have low compliance costs, but would provide for one representative to be able to take advantage of training and be able to issue hazard notices [see para 28 below]. This option may however provide a disincentive for employers to reach agreement with their employees. Also, it may not provide sufficient representation for large workforces.

*Option 2: arrange a joint health and safety committee with elected health and safety representatives on that committee*

- 27 Employers would be required to arrange for the establishment of a joint health and safety committee with elected health and safety representatives on that committee. This option provides for more than one representative to be able to take advantage of training and be able to issue hazard notices. This option has a higher compliance cost than option 1 above. It may also provide a disincentive for employees to reach agreement with their employer on alternative arrangements.

*Health and safety representatives able to issue hazard notices*

- 28 It is recommended that the HSE Act is amended so trained health and safety representatives can issue hazard notices identifying a hazard when a health or safety matter has not been resolved after discussions between the representative and the employer. Hazard notices are recommended instead of allowing health and safety representatives to issue Provisional Improvement Notices (PINs) as proposed in the Discussion Paper. The Discussion Paper analysis found significant opposition to the PIN proposal. Concerns included the potential abuse of the mechanism, and the incompatibility with the good faith environment. A hazard notice will have the effect of increasing communication between employers and employees, while presenting less risk of costly confrontation than PINs would have.
- 29 Hazard notices are not coercive, but informative. They present a formal means of recording employees' concerns. Before issuing a hazard notice, the health and safety representative will try to resolve the issue with the employer or supervisor. A hazard notice is not enforceable, but documents a health and safety concern.
- 30 If the person to whom the hazard notice is issued does not deal with the hazard, it could impact on any resulting penalty applied for that hazard by the Courts, or result in an infringement offence notice penalty.

*Training of health and safety representatives*

- 31 Health and safety representatives will need a good understanding of the HSE Act and relevant Regulations so they can work effectively and apply hazard notices correctly. The representatives will also need a good understanding of their good faith obligations under the

ERA. It is recommended that the HSE Act be amended to require training for health and safety representatives before they can issue hazard notices. The representative will have to achieve and maintain a prescribed level of competency, including a suitable level of knowledge around the provisions of the HSE and associated employee/employer responsibilities, and the process for and consequences of issuing hazard notices.

- 32 Submitters to the Discussion Paper were divided on whether employers or the government should pay for training. It is proposed that employers and the government share the cost of training. Employers will provide health and safety representatives with paid leave, and the government will pay for the training programmes. Training courses for health and safety representatives will either be funded through an expansion of the Employment Relations Education Fund to incorporate the requirements for health and safety representatives' training, or a separate fund. The operational implications of these options are being worked through, and recommendations on the form and operation of the funding will be made at a later date. Provision for the cost of training, however, should be made. The following table summarises the cost of funding courses for training 3000 representatives per annum:

<i>Vote Labour</i>	2001/02	2002/03	2003/04	2004/05	Outyears	GST
	\$m	\$m	\$m	\$m	\$m	
Health and Safety Representative Training Fund	-	-	1.688	1.688	1.688	n/a

- 33 The impact of representatives will be greatest in medium and large enterprises; many smaller enterprises may not adopt representatives. There will be compliance costs for enterprises where employees request representatives but they will benefit through reduced injury and illness rates.<sup>10</sup> It should also be noted that many larger employers already have good employee participation systems. For this group there will be no or little additional cost. The overall impact of this proposal is therefore likely to be positive and significant, but with some costs, and specific to medium and large enterprises.
- 34 It is recommended the HSE Act be amended to require employers to release health and safety representatives on paid leave for training for two days per year. This leave should be in addition to the employee's existing leave entitlements. It will also be separate from the existing Employment Relations Education Leave (EREL) provision in the ERA, which provides unions with a collective entitlement to leave that the union allocates to eligible employees (union members). To be effective, all representatives will need to have access to training, whether or not they are union members.

*An individual right to refuse dangerous work*

- 35 Legislative confirmation of the existing common law right to refuse dangerous work is recommended as an alternative to allowing health and safety representatives to issue provisional prohibition notices. There was significant opposition to the proposal for Provisional Prohibition Notices (PPNs) in Discussion Paper. One quarter of respondents commented that PPNs duplicated the existing right to strike in the ERA<sup>11</sup> or the common law right to refuse dangerous work.
- 36 It is recommended that the HSE Act be amended to confirm (but not change) and make transparent individuals' right to refuse or stop work if they reasonably believe that the work is likely to cause them serious harm. This will complement the collective right to strike on the grounds of safety and health in the ERA.

<sup>10</sup> UK evaluation of representatives is that they lead to a significant reduction in illness and injury rates.

<sup>11</sup> Section 84, Employment Relations Act 2000

- 37 The right to refuse dangerous work only allows the individual to refuse the specific work they believe is likely to cause them serious harm. In most situations, the individual could do other work that they are required to perform under their employment agreement. If an individual did exercise the right to refuse dangerous work, and their employer disputed their refusal, existing employment relations resolution mechanisms can be applied.
- 38 As part of evaluating the outcomes of the legislative changes, the Department of Labour will evaluate the impact of the right to refuse dangerous work to ensure that, in practice, it is an effective mechanism for protecting the health and safety of employees.

## **Consultation**

- 39 A list of those consulted is contained in the Regulatory Impact Statement.

### *Ministry of Economic Development comment*

- 40 “The Ministry of Economic Development considers that, because of their significant effect on business, the recommendations for change to employee participation be considered by a test panel comprised of business representatives, including SME representatives, prior to implementation of any aspect of it.
- 41 The Ministry has particular concerns with respect to the cost effectiveness of the hazard notice proposal. If it was implemented it would:
- Require significant financial resource to train workplace health and safety representatives and to otherwise implement the proposal;
  - Coverage is specifically targeted at relatively large workplaces of over 30 employees (5% of all firms) yet many of these firms already have a sound interaction with their employees on health & safety issues;
  - It would provide yet another compliance cost for medium to large businesses; and
  - In our opinion it would likely have limited impact at workplaces unless an OSH inspector was involved to deal with the issue.
- 42 The proposal may in some cases improve communication on health & safety issues between staff and firms but this benefit is not expected to be significant in comparison to the significant initial and ongoing costs of the proposal.”

### *The Treasury comment*

- 43 “This proposal has the potential to impose significant compliance costs on employers, particularly if employee representatives misuse the powers granted by the proposal. The suggested proposals to increase fines and remove OSH’s monopoly on prosecution considered elsewhere in the review will strengthen employers’ incentives to comply. We recommend that Ministers implement these changes and assess their impact on safety outcomes before considering additional regulatory changes. This would avoid the compliance costs we feel this proposal may create.”

## **Financial implications**

- 44 At a bilateral meeting on Monday 9 July 2001, the Acting Minister of Finance and I agreed, due to pressure on the 2001/02 contingency fund, that:
- the Health and Safety in Employment Amendment Act timeline will be delayed, with the Amendment Act being passed in April 2002, and coming into force in September 2002;

- any costs associated with the HSE Amendment Act that are incurred in the 2001/2002 financial year, will be funded from within the Vote Labour existing baseline through reprioritisation; and
- funding for costs associated with the implementation of the HSE Amendment Act will be considered as part of the 2002 Budget round.

45 The accompanying Overview paper outlines the effects of this approach, and describes the fixed costs for implementing any one of the proposed changes to the Health and Safety in Employment Act. The specific costs associated with the proposals in this paper are:

- operational policy development, code of practice, and evaluation;
- a publicity campaign to notify all those affected by the changes;
- training for health and safety representatives;
- initial and ongoing training for HSE Inspectors; and
- five additional HSE inspectors due to interaction with health and safety representatives.

46 The following table summarises the estimated cost of the proposals to improve employee participation in workplace health and safety:

<b>Employee participation</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Outyears</b>
	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.068	0.798	2.195	2.187
Outside the provisions (GST incl)	-	0.011	-	-
Capital costs (GST n/a)	-	0.123	-	-

### **Human rights**

47 The proposals are intended to comply with the Human Rights Act 1993.

### **Legislative implications**

48 The proposals in this paper will require amendments to the HSE Act:

### **Regulatory impact statement**

49 A regulatory impact statement is attached to this paper.

### **Publicity**

50 The communications strategy is described in the accompanying overview paper.

### **Recommendations**

51 It is recommended that the Committee:

### **Policy content**

*EITHER (Treasury preferred option)*

1. **agree** that the status quo be maintained and the Occupational Safety and Health Service of the Department of Labour report back on the impacts other suggested proposals have in terms of safety outcomes and employee participation before consideration of the regulatory amendments suggested in this paper;

OR (Department of Labour preferred option)

2. **agree** that the Health and Safety in Employment Act 1992 be amended to provide for the following:
  - 2.1. an enforceable duty on employers to ensure that there are real opportunities for employees to participate effectively in the ongoing management and improvement of health and safety in the workplace, in order to assist the employer to comply with sections 7 to 13 of the HSE Act;
  - 2.2. an enforceable duty on employers where one or more employees request involvement, **or** who employ 30 or more employees, to decide jointly with employees how to develop and implement a formal and co-operative system for the ongoing employee participation required by recommendation 2.1;
  - 2.3. an enforceable duty on employers of less than 30 employees, where **no** agreement can be reached on a formal and cooperative system (as described in recommendation 2.2), to arrange for the election of at least one health and safety representative;
  - 2.4. an enforceable duty on employers of 30 or more employees, where **no** agreement can be reached on a formal and cooperative system (as described in recommendation 2.2), to either:
    - option (a)** arrange for the election of at least one health and safety representative; or
    - option (b)** arrange for the establishment of a joint health and safety committee with elected health and safety representatives on that committee.
  - 2.5. a provision for trained health and safety representatives to issue hazard notices when a health or safety matter has not been resolved and after having discussed the matter with their employer;
  - 2.6. a provision requiring health and safety representatives to train to achieve a prescribed level of competency before they can issue hazard notices;
  - 2.7. an enforceable provision to require employers to release health and safety representatives for training for two days per year; and
  - 2.8. a confirmation of the individual common law right to refuse or stop work if the individual reasonably believes that the work is likely to cause them serious harm.

**Financial Implications (if Ministers agree to recommendation 2 above)**

3. **note** that the fixed costs for implementing any one of the proposed changes to the Health and Safety in Employment Act are:

Fixed costs if any change occurs	2001/02	2002/03	2003/04	2004/05	Outyears
	\$m	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.247	1.866	0.294	0.243	0.084
Outside the provisions	-	0.051	-	-	-
Capital costs (GST n/a)	-	0.562	-	-	-

4. **note** that the estimated additional cost of the employee participation proposals are as follows:

Employee participation	2001/02	2002/03	2003/04	Outyears
	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.068	0.798	2.195	2.187
Outside the provisions (GST incl)	-	0.011	-	-
Capital costs (GST n/a)	-	0.123	-	-

5. **note** that any costs associated with the HSE Act amendments that are incurred in the 2001/02 financial year, will be funded within the Department of Labour baseline through absorption or reprioritisation;
6. **note** that this approach carries a number of risks and will therefore will be closely monitored by the Department of Labour , with progress reported to Ministers on a regular basis;
7. **note** that funding of the remainder of the HSE Act amendments costs will be considered as part of the 2002/03 Budget round;

**Drafting instructions**

8. **invite** the Minister of Labour to prepare drafting instructions for Parliamentary Counsel Office to amend the HSE Act as set out in recommendation 2 above.

Hon Margaret Wilson  
Minister of Labour

### Results from discussion paper

*Question 6: Should the HSE Act provide for the election of health and safety representatives in those workplaces where employees want a representative?*

- 1 From a total of 142 submitters, 43 questioned whether health and safety representatives should be legislated. Comments were that health and safety representatives should not be compulsory, and the form of employee participation should not be prescribed. In addition, 17 submitters commented that any new mechanism must be flexible. A further 33 submitters commented that the current system is adequate.
- 2 Thirty-four businesses indicated that they already had employee participation. Half of this group supported or conditionally supported the proposal and half opposed it.
- 3 Sixty submitters commented that employee participation was positive (including 28 employers). Seventeen submitters believed that health and safety representatives should be mandatory.

*Question 7: Should a trained health and safety representative be able to issue provisional improvement notices?*

- 4 From a total of 78 submitters, 51 (mainly employers or employer/sector groups) expressed concerns about potential abuse of PINs. In addition, 34 submitters commented that the current system is adequate. Twenty-six submitters believed that PINs would duplicate the existing individual right to refuse dangerous work, and the right to strike in the Employment Relations Act. Thirteen employers and employer/sector groups commented that health and safety representatives might apply PINs inconsistently across businesses.
- 5 Supporters of the proposal mainly commented on how PINs should work. Ten submitters commented that there is a need to ensure there is a clear procedure for health and safety representatives to follow. Six submitters commented that without tools, health and safety representatives would be ineffective.

*Question 8: Should a trained health and safety representative be able to issue provisional prohibition notices?*

- 6 From a total of 77 submitters, 55 (mainly employers or sector/employer groups) expressed concerns about potential abuse of the mechanism). In addition, 33 submitters commented that the current system is adequate. Thirty-four submitters believed that PPNs would duplicate the existing individual right to refuse dangerous work, and the right to strike in the Employment Relations Act. Ten employers and employer/sector groups commented that health and safety representatives might apply PPNs inconsistently across businesses.
- 7 Supporters of the proposal tended to focus on how PPNs should work. Six submitters commented that there would be a need to make sure that health and safety representatives have a clear procedure to follow.

*Question 9: What arrangements should be made for training Health and Safety Representatives?*

- 8 There were 107 submitters who commented on question nine. Thirty-eight submitters commented that training is necessary and 39 submitters commented about the need for national standards. A number of submitters made comments about what training should cover, and who should or should not be involved in the training.

# Regulatory Impact and Compliance Cost Statement

## Statement of the problem and the need for action

- 1 New Zealand has a relatively poor record of workplace fatalities. Compared with the United States and Australia our rates have been 10 percent higher when adjusted according to industry size.<sup>12</sup> Research in New Zealand and overseas indicates that employee participation in health and safety is associated with best practice in health and safety management. Participation will generally improve accident, illness and injury rates in the workplace and therefore reduce economic costs and negative social consequences.

## Statement of the public policy objective

- 2 There is no enforceable obligation in the HSE Act for employers to involve employees in workplace health and safety. Requiring employee participation will help in developing best practice in health and safety management.

## Options considered

- 3 Employee participation could be implemented in legislation in many ways. Several options and mixes of options were considered. The recommendations in this paper will create a system with a mix of employee participation options flexible enough to apply across a broad range of workplaces.
- 4 Other individual options that were considered are set out below:
  - Retain the status quo: This option was not preferred, as research shows that employee participation in workplace health and safety management is linked with lower costs and incidence of injury.
  - Compulsory health and safety representatives for all or certain size workplaces: This option was not preferred, as it is not flexible enough to cater for the diversity of the New Zealand labour market. In particular, there was concern that health and safety representatives may not be practical for businesses with small numbers of employees, or very large businesses.
  - Compulsory health and safety committees for all workplaces: This option was not preferred, as it is not flexible enough to cater for the diversity of the New Zealand labour market. In particular, there was concern that health and safety committees may not be practical for businesses with small numbers of employees, or for larger businesses with scattered and remote employees.
  - Enable trained health and safety representatives, after consultation with the person to whom the notice is being issued, to issue provisional improvement and prohibition notices: The recommended individual right to refuse dangerous work and the individual right to issue a hazard notice were considered non coercive and more effective than allowing health and safety representatives to issue provisional improvement and prohibition notices. The option of PINs and PPNs also attracted significant opposition from submitters.

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<sup>12</sup> Feyer, AM, Williamson AM, et al Comparison of Work-Related Fatal Injuries in the United States and New Zealand: Method and Overall Findings, unpublished paper, 2000.

## Statement of the benefits and costs of the recommended proposal

- 5 The overall effect of the changes to the HSE Act described in this paper is to empower employees to become more involved in health and safety in the workplace. It is expected that the result of the amendment will be, over time, to contribute to a decrease in the cost and incidence of workplace injury and illness.
- 6 The cost of workplace injury and illness has been estimated at \$3.18 billion per year.<sup>13</sup> One study of employee participation in the United Kingdom has shown that workplaces with health and safety committees have an average of fifty percent fewer injuries than workplaces without health and safety committees.<sup>14</sup>
- 7 The operating cost of implementing these amendments, including a fund of \$1.688 million in 2003/04 and outyears to purchase training for employee Health and Safety Representatives, is:

Employee participation	2001/02	2002/03	2003/04	Outyears
	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.068	0.798	2.195	2.187
Outside the provisions (GST incl)	-	0.011	-	-
Capital costs (GST n/a)	-	0.123	-	-

## Business compliance cost statement

- 8 The recommendations in this paper will impose compliance costs on the following groups of employers:
- employers who currently do not involve employees in workplace health and safety management; and
  - employers whose employees have requested involvement in health and safety management, and employers of 30 or more employees who already have employee participation in their workplace but have not developed the system co-operatively with employees.
- 9 The costs to employers will be for the following activities:
- establishing and maintaining systems for employee participation;
  - (where applicable) releasing health and safety representatives on paid leave for health and safety education;
  - (where applicable) responding to hazard notices by either complying with the notice, or calling an HSE inspector to advise on the notice; and
  - responding when an employee exercises the right to refuse dangerous work.
- 10 Investing in health and safety will result in lower costs through lost time, absenteeism due to illness or injury, and increased employee empowerment and ‘ownership’ of health and safety. For some employers, the costs of complying may be offset by qualifying for ACC premium discounts for establishing and maintaining well-developed health and safety

<sup>13</sup> Occupational Safety and Health Service, *State of New Zealand’s Occupational Safety and Health*, unpublished report, December 1999.

<sup>14</sup> B. Reilly, P. Paci and P. Holl, ‘Unions, safety committees and workplace injuries’, in *British Journal of Industrial Relations*, June 1995, pages 275 – 288.

systems, either through the Partnership Programme or the Workplace Safety Management Programme.

## **Consultation**

11 Consultation has included the following:

- 177 submitters to the Discussion Paper on the Review of the Health and Safety in Employment Act 1992, including key unions, employer organisations and employers;
- ACC, Department of the Prime Minister and Cabinet, the Treasury, Ministry for Economic Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Agriculture and Forestry (Rural Affairs division), Ministry for the Environment, Department for Courts and Te Puni Kōkiri. The Ministry of Women's Affairs declined the opportunity to comment on this paper.