



THE NEWSLETTER  
OF THE NZ  
FEDERATION OF  
MOTORING CLUBS

# WHEEL TORQUE

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## Safety law reforms could endanger motoring clubs

Pending reforms of our health and safety laws currently before Parliament will make most motoring, machinery and heritage vehicle clubs subject to virtually the same rules and requirements currently imposed on business workplaces.

When the Health and Safety Reform Bill becomes law, all persons conducting a business or undertaking "whether for profit or not for profit", will become liable for fines ranging up to \$600,000, or up to 5 years imprisonment, or both, if they fail to meet the requirements of the new Act.

WorkSafe NZ has advised the FOMC that once the new provisions become law there will be a period of consultation and education to assist clubs to understand how they should meet their new obligations before the inspectorate is mobilised to enforce compliance.

Expected to come into force late this year, the new provisions are modelled on similar Australian legislation and effectively broaden the responsibilities for the health and safety of workers so they potentially impact on work being undertaken by volunteers as part of the activities of most clubs and associations.

The term "Employer" in the present law is being replaced by the term "Person Conducting a Business or Undertaking" (PCBU), and this definition is deliberately broad so that it covers any person overseeing or co-ordinating work efforts being carried out by other persons whether or not in a paid or voluntary capacity.

Under Clause 13 of the Bill "voluntary associations" are not included as PCBUs, but only where "none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association". Effectively, this means that a motoring or heritage vehicle club would become subject to court action and heavy fines if one of its members organises, co-ordinates or oversees the efforts of another member while both are acting voluntarily in

the interests of the clubs and something goes wrong.

Our advice from WorkSafe NZ is that where volunteers are paid or reimbursed in any way for performing tasks such as managing sales of spare parts, editing the club magazine, or collecting admission charges at an event, the clubs or associations will then become PCBUs and will be subject to the provisions of the new Act. But under Clause 14 the meaning of "worker" now includes "volunteer" so there may even be no need for any payment to take place for a club to be classified as a PCBU.



*Could public club events  
like these be under threat  
under the new legislation?*

Under the Act, the personnel of PCBUs will be required to ensure they have appropriate health and safety policies in place, consult with their workers or "volunteers" to identify, minimise or eliminate accident risks, monitor perceived dangers and risks, keep records of "notifiable events", maintain an up-to-date knowledge of health and safety matters, and exercise due diligence to

ensure their club complies with all of its obligations. This is with respect to any occurrence, not just a motoring event.

As well as clubs or associations the PCBU's subject to the Act could be Club Captains, Gymkhana Organisers, Rally Directors, Chief Marshals, persons in charge of manned checks, designated sub-committee members, the person in charge of the cups of tea and the scones, etc. Under Cause 46, officers of voluntary associations will be immune from conviction for breaches of key provisions of the Act, but it is unclear whether the clubs will be similarly exempt.

*cont'd on page 2*



Requiring everyone to exercise due care in all facets of work, voluntary or otherwise, is not a bad thing in essence. Common sense and precautionary measures play a major part in reducing accident risks. But under the under new reforms many clubs will be exposed to significant penalties and costs if the health and safety of a member, or even a non-member for that matter, is put at risk in some way.

A responsible, systematic and documented approach to risk management is going to become essential. The proposed broader definitions of “work” and “worker” and the shift from “employer” to the “PCBU” concept clearly indicates all incorporated societies and voluntary associations need to review how the provisions of the new Act will impact on their activities.

Under the threat of six figure fines will many of our clubs become “headless chickens”, with no branch officers or members prepared to take on the mantle of PCBU? Will members simply “just belong”, but not take any lead in organising or coordinating other volunteer members for the purpose of facilitating the very activities the clubs and societies were set up for?

The proposed reforms are based on Australian workplace health and safety legislation which had a widespread impact on the activities of many motoring clubs across the Tasman. Some simply shut up shop and others were forced to merge to provide sufficient finance and members to meet the costs and do the work required.

To help New Zealand motoring clubs gear up to comply with the requirements of the new Health and Safety Act, Christine Stevens, the President of our sister organisation, the Australian Historic Motoring Federation Inc. will be a guest speaker at our annual general meeting on May 16 to provide enlightening commentary on the application of the new workplace safety laws on vehicle and machinery clubs in Australia.

She will be bringing templates on how to undertake and document hazard assessments, and advice on how Australian clubs are meeting the increased insurance charges and other cost impositions which have resulted from the law changes.

Along with the redefining of the term “workers” to include unpaid volunteers, a clause in the current law which exempts sports and recreations clubs from current workplace safety laws is also being removed. Therefore, it appears that Workplace Relations and Safety Minister Michael Woodhouse is determined that virtually all incorporated and unincorporated societies, or groups conducting any kind of activity, must have active health and safety plans, and hold frequent minuted meetings to identify and reduce or eliminate hazards. In a reply to the Federation, he noted:

*“Under the Bill, a person conducting a business or undertaking (PCBU) has a duty to ensure, so far as is reasonably practicable, the health and safety of workers and others affected by the business or undertaking. However, a club is not automatically a PCBU; what needs to be taken into account is the working arrangement of the organisation. If the club consists of volunteers working together for a community purpose, and it does not employ any workers, it is likely the club will fall under the definition of a ‘volunteer association’. In this case, the club is not a PCBU and does not owe any health and safety duties. If the club has any employees, it would be considered a PCBU and have the corresponding health and safety duties to its workers, be they paid or unpaid.”*

• More information: [www.business.govt.nz/worksafe](http://www.business.govt.nz/worksafe)

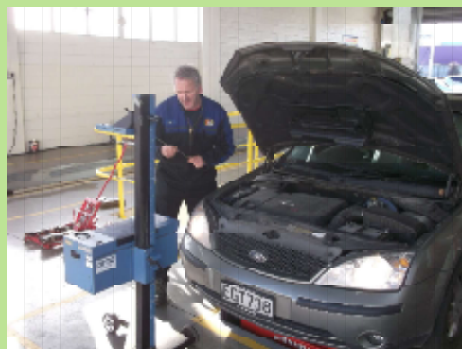
## THE WoF DISPUTES PROCEDURE

By FOMC executive member and retired vehicle inspector  
Murray McLean

So your classic pride and joy has failed its 6-monthly Warrant of Fitness (WoF). You now have 28 days to rectify the problem and have it re-inspected at the same depot at no charge.

If it passes, you are legally back on the road (provided your rego is still current).

But what happens when your vehicle fails and you don't agree with the WoF inspector's reason for rejecting it? They don't know everything - do they? Is their decision final?



No, and you do have several options available to you.

1. Ask the inspector to show you the failed item and then if you think they have made an incorrect decision, ask to see the VIRM (Vehicle Inspection Requirement Manual) which is available online. As all WoF inspection premises are required to have an internet connection in order to issue WoF's this won't be an issue.

The VIRM will have the legal specifications and requirements set out, and also outline the various reasons why an item should be rejected and thus fail.

2. If still not convinced, you can ask for the manager or another senior inspector to provide a second opinion.
3. Go to another inspection centre (you will have to pay) and get them to complete a check. If you pass you have good grounds for a dispute resolution with the original inspection centre. Most reputable inspection depots belong to the Motor Trade Association (MTA) or similar, and can provide access to a disputes resolution service through an 0800 phone number. Another avenue for advice is a Citizens Advice Bureau.
4. The Consumers Guarantees Act also states that the seller or service provider must be given the opportunity to rectify any problems.

As part of being an Authorised Vehicle Inspection Centre (AVIC), they are all subject to regular audits by NZTA inspectors. Having a disputes resolution procedure clearly displayed in the inspection premises is part of the audit requirements, and also the names of all the vehicle inspectors working for that inspection centre.

## PRESIDENT'S COLUMN

Mounting discontent about the impact proposed health and safety reforms currently before Parliament will have on incorporated societies and other voluntary associations has determined the agenda for our annual National Conference and AGM to be held on Saturday 16th May at the VCC headquarters in Auckland. We will have a full presentation from a WorkSafe chief inspector on what clubs will be required to do to meet their obligations under the pending Health and Safety legislation.

The clauses in the current Act protecting volunteers from being subject to its provisions have been removed. The proposed Bill in an early clause excludes volunteers, but then includes them in the definition of worker. If the Bill is not amended before it returns to the House for its third reading, the apparent contradictions as to how it should be applied will be all down to expensive court interpretations.

It has been stated that our reform bill is based on the Australian model. However the Australian law now excludes voluntary organisations with incomes below a certain level, and who only engage the services of voluntary or charitable organisations e.g. St Johns.



As President of the FOMC, my concern is that the proposed reform was released for submissions more than 12 months ago. We looked at it, and received assurances that there would be no significant change to the status of voluntary organisations. But those assurances have proved to be hollow and the Bill has been subsequently tinkered with. I am sure that given the length and complexity of these law reforms, Ministers may not yet have a full appreciation of the consequences for the community if they are implemented as currently worded.

The Federation supports workplace safety and the following of proper processes to reduce or eliminate potential hazards. But we also believe the law should not place undue administrative burdens or excessive financial penalties on the huge number of voluntary groups and clubs in New Zealand to the point where recreational activities may be compromised.

If the current wording is not clarified before the new Health and Safety Act becomes law, many clubs may find themselves unwittingly classified as PCBUs (persons conducting a business or undertaking) whether for profit or not-for-profit and subject to meeting all the obligations imposed by the legislation.

Under Clause 13 "voluntary associations" are not included as PCBUs, but only where "none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association". But our advice from WorkSafe is that all clubs or associations for whom volunteers perform any tasks that could be considered work will become subject to the provisions of the new Act. Under Clause 14 the meaning of "Worker" now includes "volunteer".

So it appears that virtually all incorporated and unincorporated societies or groups conducting any activity will be required to have an active safety plan and keep written records to show

that they have held regular meetings to take all "reasonably practicable" steps to identify and reduce or eliminate hazards.

WorkSafe has advised us that once the new provisions become law towards the end of this year, there will be a period of consultation and education to assist clubs to understand how they should meet their new obligations under the Act before the inspectorate is mobilised to enforce obedience.

At this stage the FOMC executive believes the imposition of these onerous requirements on clubs will detract from the benefits individuals and society gain from encouraging people to participate in good leisure activities. And we suggest most MPs have not fully appreciated the wider potential consequences of this proposed legislative update.

We have received other opinions that appear to exclude volunteers, but even the Law Society suggest the legislation is unclear in its interpretation. Government has a duty to provide citizens with clear and unambiguous legislation.

The select committee considering possible amendments to the Bill is due to report back at the end of May, so I urge you all to contact your local politician before then to express your views. Emails or letters will suffice.

In the meantime the FOMC is working with insurance broker John Barley to provide clubs with comprehensive advice on how to prepare for these changes and we will be including full details in our next Wheel Torque.

Please keep raising your concerns with your local MPs.

**Malcolm Lumsden**  
**FOMC President**

## RISK OF FINES TO INCREASE

One of our member clubs has already suffered a foretaste of how the proposed Health and Safety legislation will impact on voluntary associations.

Sadly a volunteer member using vintage machinery lost the lower part of a leg when his overalls caught in the drive mechanism.

His already traumatised fellow club members were interrogated by WorkSafe inspectors as to whether any money had changed hands. But as there had been no payments involved the present Health and Safety Act did not apply.

However as the club member had been involved in preparing for an upcoming event at which the public would be charged admission, the WorkSafe inspectors indicated to the club's insurers that there would have been a prosecution if the reform Bill had already been passed.



## LETTER TO THE EDITOR

### Safety reforms a threat to backbone of healthy community activities

The New Plymouth Classic Motor Cycle Club is deeply concerned about the implications of the Health and Safety Reform Bill if it becomes law in its present form.

Our club was formed some 34 years ago to foster the preservation and safe use of historic motorcycles in a club environment. Our safety record over this period has been impeccable.

The greatest dangers lie in the interpretation of any legislation, particularly if it overrides the current authority of police, and where hazards may be beyond the control of any club's responsibility.



To copy legislation from Australia is not a fair or reasonable act, as they do not have an ACC type insurance, and most cases are settled in court to apportion blame and award damages, involving insurance companies.

For a government elected on promises of less legislation, this is a can of worms showing every possibility of creating endless problems for sporting clubs and their great achievements using volunteers, and which are the backbone of healthy community activities.

Many clubs have situations where members participate on a solo basis, i.e. orienteering, cycling races, and endurance events where they are not overseen, or able to be warned of unexpected hazards.

Club organisers or individuals cannot be held responsible for the actions of others, moreover if that became the case, most volunteers would withdraw their support and many clubs would cease to exist.

A Health and Safety Plan would be required for every sport individually, and any new participants would be required to be inducted, and that is not feasible for events such as marathons where thousands participate.

Many clubs exist on very low budgets with little income, and the costs to comply with such legislation would probably lead to those clubs ceasing to exist.

We hope that commonsense will prevail and support for the volunteers helping in club activities take precedence over unduly harsh changes which, in the main, are not necessary, and have the potential to criminalise individuals on the basis of interpretation of the Health and Safety Act.

**Ivan Turnbull, Club Secretary  
New Plymouth Classic Motor Cycle Club Inc**

## NEWS FROM AROUND THE WORLD

### Goodwood Revival provides massive economic benefits

According to a study by the Federation of British Historic Vehicle Clubs (FBHVC) the British economy benefits to the tune of £35 million from the annual Goodwood Revival Meeting with nearly £5 million raised in VAT alone for the Government.

The data was gathered at the 2012 Revival by University of Brighton researchers who questioned almost 1500 organisers, visitors, competitors and exhibitors.

Using a study area of 20km around Goodwood, the survey showed that the local economic benefit in cash paid for accommodation, fuel and travel, shopping and entertainment totalled some £12 million.

The event also provides temporary employment for 350 people and generated almost 50,000 "person nights" accommodation both inside and close to the study area.

The FBHVC has undertaken studies into the economic impact of events like Goodwood and Beaulieu Swap Meet because demonstrating the benefits to the whole community is expected to help safeguard classic car events from moves by central government and local authorities to impose restrictions on their future viability.

Some of the results from the study:

- 145,398 people attended the 2012 Revival, with 60% of the general public attending just one day.
- Some 90% of the public (of whom 30% plus were first-timers) also said that they would come again.
- More than 40% of the public own an historic vehicle, but only 15% travelled to the Revival in one.
- Upwards of 55% of the public were aged under 55 and roughly the same number were from the South East of England.
- 21% of competitors and around 10% of visitors were from outside the UK.
- The Bonhams auction raised £13 million and with it £500,000 in VAT receipts.



The full report can be downloaded from the FBHVC website: [www.fbhvc.co.uk](http://www.fbhvc.co.uk)

