



THE NEWSLETTER  
OF THE NZ  
FEDERATION OF  
MOTORING CLUBS

# WHEEL TORQUE

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## A mixed year of demanding issues for FOMC

By Hon Harry Duynhoven, FOMC President

It has been a mixed year, with good progress on some fronts, less than stellar on others, and, if you are like me, not nearly enough time in the garage.

The last FOMC AGM saw us farewell long-serving Secretary, Roy Hughes, with the appointment of Conrad Petersen to the role. Some time later Conrad offered his resignation from this position, but is prepared to continue as an advisor to FOMC and we thank him for this. His experiences with government departments and with transport entities have given him great knowledge and skills in this area.

We sincerely thank Roy once again for serving as Secretary in the interim and also for his willingness to continue as Submissions Secretary and as Editor of our *Wheel Torque* publication. During this year Roy has produced some excellent articles and submissions, on the Zero Carbon Bill, to the Productivity Commission and on ACC changes. There have also been a variety of other issues to deal with, including some which will require ongoing work, such as the public liability costs imposed by some district councils, compulsory third party vehicle insurance, various NZTA rule changes, and other issues as they arise. We welcome Chris Butler into the role of Secretary and thank Roy for his long and continuing service.

As President I have visited five clubs in my area during the year and hope that we can continue to expand our membership. Over the coming year I plan to

visit the remaining local clubs and my aim is to gradually bring all to see the advantages of being in the Federation.

I also made a courtesy visit to the Associate Minister of Transport, Hon. Julie Anne Genter, who I had not previously met. She seems to be most able and is also our first Minister in years with formal qualifications in transport. A reformer, she has shown a willingness to try new ideas, especially in attempts to reduce the road death and injury rate, with the recent seminars for motorcyclists around the country being a good example. We can be

sure there will be more initiatives in the coming months. I do feel it is time we made a formal approach to visit her and I imagine she or Minister Twyford would be a very good speaker at our AGM next year.

We certainly have no shortage of issues to discuss. There are growing constraints on the ability to drive and use enthusiast and

heritage vehicles in some countries and we need to watch that well-meant initiatives do not compromise the use of our vehicles here. We also continue to advocate for the age of recognition of classic status under the licencing fees regime to be reduced to 30 years from the current 40. There are very few vehicles in daily use older than 30



Delegates at the 24th AGM in Taupo in May

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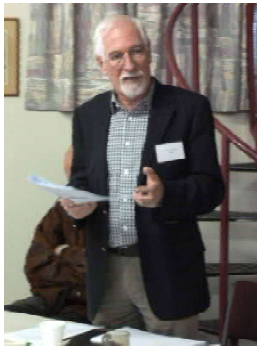


years, and even though a large number of 30 plus year vehicles remain registered, many of these are not continually licenced.

The current push for electrification of the vehicle fleet may also create future issues but current EV prices and today's battery technology make it hard to see worthwhile reductions in CO2 emissions being achieved by massive increases in the numbers of EVs and a corresponding scrapping of partly-used ICE vehicles. Perhaps conversions of existing daily use vehicles may be a more useful approach. Maybe LPG or CNG may make a return as a lower carbon emitting interim solution. The real long-term solution for individual vehicles is likely to be the fuel cell vehicle but costs will have to be slashed before that becomes realistic for most drivers.

So it looks as though the future will still see plenty of issues for us to get involved with, and I haven't even talked about the Incorporated Societies Act or Health and Safety issues yet!

Thanks to all of our executive members, particularly Treasurer David Raven who does such a great job of keeping all our finances in a good state, and welcome to Michael Anderson this year, and to Chris Butler. Thanks for your attendance and your support for the Federation.



*Harry Duynhoven*

## EXECUTIVE CHANGES

An active keen member of various vintage and classic car clubs for more than 50 years, Borgward enthusiast Chris Butler has taken over the role of FOMC Secretary.

During his long involvement in the heritage vehicle movement Chris has organised or assisted with running many vintage, classic and one-make events and rallies for various clubs including the Manawatu and Wellington Vintage Car Clubs, and also the New Zealand National Classic Car Rally. Club Captain of the Greater Wellington Citroen Car Club he is heavily involved in planning Citroen national rallies.

Professionally Chris has managed enterprise and sector-wide computer applications for large organisations in the public and private sectors, and is currently a Senior Applications Engineer with the NZ Transport Agency. Chris brings excellent organisational and technology skills, along with a deep knowledge of the transport sector.



*Chris Butler presenting at the AGM. We'll feature a summary of his presentation in the next issue*

Returning to the Executive this year is past committee member Peter Boys. An Automobile Association Waikato District Councillor since 1980, Peter has been on the committee of the Hamilton Car Club for 10 years and is currently Club Captain. He has also been Secretary of the Hamilton Vintage and Classic Car Club since 2006 and has owned both a 1967 Morris Mini Moke and a 1991 Mitsubishi 4x4 ute since new.

Former Secretary Roy Hughes will continue to assist the Executive as Submissions Secretary and Editor of *Wheel Torque*.



*Photos from the FOMC AGM on May 19th*



*Chris Butler's 1956 Borgward - the oldest in NZ*

## FOMC GROUP LIABILITY INSURANCE SCHEME UPGRADED

Originally arranged and previously managed by Barley Insurance Brokers, management of the FOMC group public liability insurance scheme was taken over by Rothbury Insurance Brokers in 2017. Manager of Rothbury's Nelson branch Phil Thompson attended the recent FOMC AGM in Taupo to provide an update on recent changes to the policy package and the increasing risks clubs are now facing.

The FOMC group policy package offers a suite of liability covers to protect against a wide range of possible risks. There is a standard package available with options to increase some specific cover limits which may be required by a particular club. The scheme is insured through Rosser, an underwriting agency, specialising in association liability. Rosser previously had the policies underwritten through AIG Insurance but has now moved to Chubb Insurance & Lloyds of London.

At the recent renewal in March Rothbury's obtained terms from Rosser, through Chubb/Lloyds, and also from AIG directly. The AIG policy would have continued to provide one level of indemnity across the entire package, but the new Rosser/Chubb/ Lloyds offer provides a separate limit of indemnity for each of the insured sections.

"This second option was seen as an overall improvement in coverage for the clubs so the scheme renewal was placed with Rosser/Chubb Insurance," said Phil. "The scheme provides a very competitive option as it offers shared limits of indemnity. Basically this means that the cover provided for each section is shared across all the clubs in the scheme. Due to a low incidence of claims this provides a much more affordable cover option than if each club had their own stand alone policy with their own full limits.

"In reality a number of smaller clubs would likely not be in a position to afford a standard stand-alone policy. As an example, a standard package through the scheme may cost around \$500 for a smaller club. If this was a stand-alone policy it could be nearer \$900 or more if it included all the sections and sub-limits on offer through the scheme package. Although for some clubs this may still be a large cost, especially with a small membership or subscription base, the alternative of facing a large claim alone, for the club or a member, could be significantly more."

Despite their not-for-profit or charitable nature, the liability risks faced by incorporated societies and associations have significantly increased due to the heightened expectations of responsibility and accountability being applied by the community to all sorts of organisations and their management teams. Legal liability can be incurred through the activities they get up to, and perhaps through the advice or services they provide to their members or to members of the public. Association liability insurance provides an effective insurance solution to protect clubs from serious financial losses and penalties.

"The risks faced by an association or club are not limited to the organisation itself," Phil said. "Members of the board of management, board of trustees or management



*Phil Thompson at the AGM*

committee are legally liable for their conduct, potentially placing their personal assets at risk if a claim is brought against them. The association constitution may say it will indemnify its officers or members for claims made against them, arising from the discharge of their duties on its behalf. This indemnity, however, is not always guaranteed, as there may be insufficient funds or the circumstances may not permit the indemnification to operate. An Association Liability policy can help address the concerns and liabilities of both the association, and the officers/volunteers of the association."

### Professional liability for Incorporated Societies

Professional liability cover will respond in the event of an insured not-for-profit organisation facing legal action for a failure in providing advice or in discharging a professional responsibility to a client or customer. Those who perform professional services are held to a higher legal standard of behaviour, and the FOMC policy covers executives, trustees, and employees for actual or alleged breaches of duty, acts, errors or omissions, misstatements, misleading or deceptive conduct, infringements, libel or slander committed unintentionally, breach of confidentiality, or omissions in the performance or failure to perform professional services.

Under the insuring section Professional Liability for Not for Profits, professional services means the following professional services provided by the Entity:

- (i) *advocacy and promotion of the Entity's objectives and area of focus or interest, including publication or information in any media type;*
- (ii) *registration, training and accreditation of members;*
- (iii) *publication of professional or technical standards;*
- (iv) *acting as an insurance intermediary for the purpose of distributing personal lines, general and / or life insurance to members;*
- (v) *events for members and others that promote the Entity's area of focus or interest; or*
- (vi) *fund raising activities.*

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Phil provided some examples of how claims against the liability cover could arise:

- **Defamation:** A professional body produced a brochure for its members and some unintentional libellous comments resulted in a major defamation claim by a third party. Settlement was reached out of court.
- **Crime:** Claims where a member/ treasurer etc has misappropriated funds from accounts. This could be a one off or perhaps it has happened over a long period.
- **Public Liability:** A club hires a venue and causes accidental damage to neighbouring property
- **Privacy Breach** – under the Stat Liability section: Leave a laptop or file unsecured and somebody accesses private information in the membership database.
- **Sexual harassment or bullying allegation claims:** An increasing risk area for all organisations.
- **Injury claims:** ACC does not cover all potential losses so the injured can now sue liable parties to secure a top up.
- **Resource Management Act:** Perhaps an event on a grass concourse, on a wet day, creates a run off issue and pollutes a neighbouring stream.
- **Health & Safety** – may not always apply, but cover is included.

## Sports clubs duties under HSWA

Whether or not a sporting club owes a duty under the Health and Safety at Work Act (HSWA) depends on whether the club is a volunteer association. A volunteer association is defined in the HSWA as a group of volunteers working together for one or more community purposes where none of the volunteers employs any person to carry out work for the volunteer association. Volunteer associations are not PCBUs and do not owe any duties under the HSWA.

A sports club that does not meet the definition of a volunteer association is considered to be a PCBU and will owe a duty to ensure, so far as is reasonably practicable, that the health and safety of any workers or other persons is not put at risk from work carried out as part of the undertaking.

## Meaning of a PCBU:

- (1) In this Act, unless the context otherwise requires, **a person conducting a business or undertaking or PCBU** —
- (a) means a person conducting a business or undertaking —
- (i) whether the person conducts a business or undertaking alone or with others; and
  - (ii) whether or not the business or undertaking is conducted for profit or gain; but
- (b) does not include —
- (i) a person to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking;

- (ii) a volunteer association;
- (iii) an occupier of a home to the extent that the occupier employs or engages another person solely to do residential work;
- (iv) a statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking;
- (v) a person, or class of persons, that is declared by regulations not to be a PCBU for the purposes of this Act or any provision of this Act.

- (2) In this section, volunteer association means a group of volunteers (whether incorporated or unincorporated) working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

**Volunteer** means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses). If the group can be deemed a volunteer association then they would not be seen as PCBUs and would not have duties under the Act.



## Disclaimers No Protection

"I have also had some clubs mention that when organising events they get **disclaimers or waivers** signed and therefore feel they will not have any liability if something happens to go wrong," Phil said. "Despite there being disclaimers signed by the participants, the club could still be found liable at law if an issue occurred. The most common claim brought in the courts is a claim in

tort. A tort is a civil wrong in which the remedy is a common law action for damages. Under the tort of negligence certain duties are imposed by law (such as the duty to exercise reasonable skill and care), if the duty is relied on by others (i.e. participants) and the duty is breached – it can result in damages being awarded against a defendant (the club). Negligence can be put simply as a lack of proper care and attention, or carelessness. The disclaimer will not prevent actions being brought against the club if it is alleged to have been negligent or reckless. But continue to seek signatures on disclaimers as it has the benefit of reminding the participants that they too have a duty to behave responsibly."

"Even if the club is found to have acted properly they could still incur large legal defence costs, which can be covered by the policy," he said. "It is always important to notify us immediately if a situation arises which could possibly escalate to a claim. It doesn't cost anything for us to run something past the Insurer and in many cases they can provide good advice or support and possibly help avoid the issue getting any worse."