



Health and Safety Reform Bill

Submission to the Transport and Industrial Relations Select Committee

By Z Energy Limited
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Introduction

Z Energy is pleased to support the intent of this legislation and welcomes the opportunity to contribute to discussions about improving New Zealand's workplace health and safety performance.

New Zealand's health and safety performance is at odds with our status as a first world economy. On average, 55 people died each year in workplace accidents between 2007 and 2013. That's one Kiwi worker per week.

On a per capita basis, the number of New Zealand workplace deaths exceeds those of our major trading partners, even those with economies based around heavy, extractive industries.

In the context of New Zealand's poor workplace health and safety performance, Z strongly supports the overhaul of New Zealand's workplace health and safety legislation. It has been a long time coming.

While the overhaul of the legislation is important, Z believes the value of the new legislation is as much around the opportunity to relaunch conversations around workplace health and safety and focus the country's attention on why this matters as it is about the Bill itself.



The Health and Safety Reform Bill sends an important signal that New Zealanders cannot tolerate our current workplace health and safety performance and that we aspire for better.

To give effect to the new obligations and the strengthened enforcement provisions contained in the Bill, it is essential that modern, fit-for-purpose codes of practice, guidelines and regulations are implemented so as to clarify precisely what employers and workers must do.

For most New Zealand workers and workplaces, 250 pages of legislation will not be overly relevant to them. What really matters are the processes and systems set in industry specific codes and regulations they are required to adhere to in their jobs every day.

It matters that the supporting codes of practice, guidelines and regulations are current, fit-for-purpose and periodically reviewed to ensure they are consistent with the intent of the legislation.

The success of this significant legislative reform will be judged by the value of industry-specific codes of practice and regulations that are relevant to the workplace as well as the consistency of enforcement.

However, while this Bill overhauls out-of-date legislation, for it to achieve its purpose, it must also act as a catalyst for an overhaul of New Zealand's workplace health and safety culture.

Z Energy believes that one of the key reasons why New Zealand has such a poor workplace health and safety record – in which too many Kiwis die or are hurt at work every year – is because of our workplace health and safety culture. We see the report of the Independent Taskforce on Workplace Health and Safety, the introduction of this Bill, and the broad cross-party support for its enactment, as appropriate acknowledgments that New Zealand's health and safety culture needs to change.

This legislation is a much-needed start to building a new workplace health and safety culture in New Zealand in which all workers are safe and healthy at work and are empowered to keep themselves safe and healthy.

This comment shouldn't occur as a suggestion that health and safety culture change can or should be driven by a change in legislation or by employers. Genuine culture change requires leadership and the desired behaviours that underpin a culture need to be consistently modelled by a company or organisation's senior leadership.

Z Energy would be pleased to discuss this submission with the Committee, should the Committee wish.



Introducing Z Energy

Z Energy is a publicly-listed transport fuels company. We operate in a hazardous industry with some inherent risks and we consider that the safe operation of our long and complex supply chain lies at the heart of our business.

We supply around 30 per cent of New Zealand's total fuel demand, including petrol, diesel, jet fuel, marine fuel oil and bitumen. Z imports approximately 2.5 billion litres of crude oil and refined fuel from various parts of the world, with the crude oil processed into transport fuel at the Marsden Point oil refinery and the refined fuel imports shipped directly into port storage terminals around the country.

Z's fuel products are distributed from the refinery around the coast via two coastal tankers, fuel oil via a marine barge in the Ports of Auckland and petrol, diesel and jet fuel into the heart of the Auckland market via a 170 kilometre long pipeline. Fuel is trucked from 11 storage terminals to 213 retail service stations across the country with a network of contracted fuel delivery trucks travelling approximately eight million kilometres on public roads per annum.

At a retail level Z's operations are franchised, with 20 Z Retailers running the network of service stations and employing some 2,500 retail site staff. Z's 213 retail service stations process approximately 60 million customer transactions per year, which means Z is in the top five businesses in the country by customer count.

Half of Z's total fuel volume is supplied to commercial customers and the company owns and operates fuel storage terminals around the New Zealand coast. Z is a shareholder in Refining New Zealand and the coastal shipping network which distributes fuel from the refinery to ports.

Z is also listed on both the NZX and ASX and has approximately 10,000 mostly local shareholders.

Z's commitment to improving health and safety culture

The Independent Taskforce on Workplace Health expressed its vision for a national culture that is more risk aware and in which New Zealanders are engaged in a campaign to improve workplace health and safety outcomes. This vision is consistent with Z's own commitment.

Z is a founding member of the New Zealand Business Leaders' Health and Safety Forum and signatory of the Forum's 'Zero Harm' pledge.

Z strives to be vigilant on Health, Safety, Security and the Environment (HSSE as we call it at Z) and is committed to building a genuine health and safety culture that influences the way we operate, communicate, and treat one another, including our employees, contractors and suppliers. Cultivating a generative health and safety culture is by its very nature an aspirational exercise as there is always room for improvement. With this in mind, Z aspires for continuous improvement in our health and safety culture.



To this end, in parallel with this legislation, Z has recently started what will be a two year journey to introduce a new organisational risk management system to guide all of the company's processes and systems from a health and safety perspective.

As part of our commitment to improving health and safety culture, Z has 12 Life Saving Rules that are mandatory across all Z Energy operations. The Rules aim to prevent harm to people and cover 12 high-risk operations at work. Z's contractors are required to adhere to the Rules and our business partners are also encouraged to participate. By seeking to share our commitment to the Rules with our contractors and business partners and striving continuously to address any breaches of the Rules – while at the same time encouraging a 'just culture' with a focus on openness and learning from health and safety incidents - we hope to make a meaningful contribution to our people and local communities.

As an example, one of Z's Life Saving Rules requires that everyone at Z must wear a seatbelt when they are in a vehicle. As part of this Rule, it is a requirement that we check that everyone in the vehicle is wearing a seatbelt properly before starting to drive and that we intervene when fellow passengers are not wearing their seatbelts properly. This requirement is something that our people take out into the community as part of their everyday lives. It causes them to require the person driving their taxi or with whom they otherwise drive to use a seatbelt. It means their family members and friends witness a small, but significant, commitment to health and safety. It influences and changes culture.

The role of capital markets

As a listed company, Z believes capital markets can and should play a greater role in holding companies to account for their health and safety performance. People do not, unfortunately, have to look too far to find examples of how health and safety mismanagement can destroy shareholder value. Particularly in industries with inherent operational risk, health and safety performance is one of the foundations on which to build shareholder value.

In reporting the company's financial results to the market, Z makes a point of starting its results with its health and safety performance and inviting further scrutiny. Z seeks to welcome and encourage investor inquiries into all elements of our performance, including health and safety.

An independent, well-resourced regulator

Z welcomes the establishment of Work Safe New Zealand and looks forward to a robust and constructive engagement with the agency on an ongoing basis. Z believes it is very important that the regulator be well resourced so as to be able to perform its role properly and with well-trained and experienced inspectors.

To be successful, the regulator must bring a strong industry background to the role and a deep commercial and practical understanding of health and safety best practice in the workplace. The risk of a regulator operating without sufficient level of working subject matter expertise and understanding will compromise its credibility and efficacy.

Z considers that health and safety inspectors must be well-grounded in the industry or industries in which they operate. The regulator must ensure it recruits the best people with a demonstrable commitment to health and safety best practice as well as solid industry expertise. It must also invest in continuous training and development for its people such that inspectors are abreast of industry developments and international best practice.

For example, the success of the proposed regulatory regime for Major Hazard Facilities in New Zealand requires specialist inspectors who have an in-depth understanding of best practice health and safety management and, ideally, operational experience. This is a piece of work that Z supports. Assuming that one or more of the company's bulk fuel storage terminals is classified as a major hazard facility, Z would expect the inspectorate to be up to speed with best practice health and safety management in bulk fuel storage terminals and, preferably, to have had some working operational experience within this environment.

Working experience within an industry as opposed to purely theoretical or academic understanding is important to the credibility of the regulator.

Additionally, the independence of any regulator is important and should be protected. Z supports the view of the Productivity Commission's recent draft report on regulation in New Zealand in which it notes:

"It is important that the independence of [regulatory] bodies continues to be respected. Tensions between the needs of politics and regulators are inevitable. If political intervention is necessary, providing transparent mechanisms for it is better than fundamentally overhauling regulatory regimes to solve specific or short-term political problems."

Specific comments on elements of the legislation

Facilitating culture change

As per Z's introductory comments, the success or otherwise of this legislation will be determined by the extent to which New Zealand's workplace health and safety culture is changed.

Perhaps the most material way to move this forward through this process lies in the application within the Bill regarding a "positive duty" on directors and officers in relation to their health and safety responsibilities. In the same way that Z's Life Saving Rules apply equally to everyone at Z, regardless of their role, Z considers that the same positive duty imposed on directors and officers should also be extended to all workers.

Approved Codes of Practice – currency, review and approval

The regulatory impact statement emphasises that codes of practice and regulations are critical to the implementation of the new legislation. It states that many of existing codes of practice and approved codes of practice are outdated or lacking in specificity. As

outlined in the preceding comments, Z shares the view that current, fit-for-purpose codes and regulations are essential to the success of the legislative reform. It is of some concern therefore that there is no indication as to how it is envisaged that the regulator will maintain up-to-date codes of practice and regulations.

As arguably the most prescriptive element setting the standards for workers on the job, Z seeks a mechanism enshrined into the legislation setting out the review process by which the regulator is required to ensure that codes and regulations remain current and fit for purpose.

Part of Z's concern in this area is well summarised in the Productivity Commission's most recent report on regulation in New Zealand. The report notes that:

“Regulation in New Zealand can easily become obsolete and fail to keep up with technology or public expectations. Almost two-thirds of regulator chief executives that the Commission surveyed reported that agencies often work with legislation that is outdated or not fit-for-purpose. As a result, regulators may lack important powers or be unable to tackle emerging problems” and “regulatory regimes are not evaluated regularly enough. Governments tend to ‘set and forget’ regulation. This means that ministers and officials may not know where the emerging areas of risk are, or where regulations are not having their intended effect.”

The Bill enables the Minister to approve a code of practice where (s)he is satisfied that the code was developed through a process that involved consultation between unions and employer organisations and other persons or their representatives who are reasonably likely to be affected by the code. The Bill provides that the Minister may delegate approval of codes of practice to the regulator.

This provision is not contained in the current Health and Safety in Employment Act, nor is it provided for in the Australian Model Work Health and Safety Act. While Z supports mechanisms to enable regulations to be amended as required in order to maintain relevance and suitability, Z questions the appropriateness of delegating the approval of codes to the regulator when it is the regulator that is responsible for preparing the code in the first place.

The proposed delegation process has the potential to undermine, or be perceived to undermine, the integrity of approved codes of practice. Z requests that the Committee consider whether it would be more appropriate for the Minister to have the ability to delegate approval to another entity that has not played a role in preparing the code of practice.

Consequential amendments to other legislation

The Bill makes various consequential amendments to other pieces of legislation, including the Hazardous Substances and New Organisms Act 1996 (HSNO Act). However it does not capture all of the provisions in the HSNO Act which currently refer to the Health and Safety

in Employment Act. For example, the HSNO Act imposes refers to the storage of hazardous chemicals in “*places of work*,” which is defined by reference to the Health and Safety in Employment Act. With the enactment of the Health and Safety Reform Bill, the Health and Safety in Employment Act (and thus the definition of “*place of work*”) will be repealed. If the HSNO Act is not amended to refer to the Bill, there is the potential for confusion. The Bill needs to amend the HSNO Act to refer to the definition of “*workplace*” contained in the Bill.

Similarly, the Bill proposes various amendments to the Accident Compensation Act 2001. Section 71(2) of that Act requires “*employers*” (which is defined differently from the definition in the Health and Safety in Employment Act) to “*take all practicable steps to assist the claimant with the claimant’s vocational rehabilitation under his or her individual rehabilitation plan*”. Unless the Accident Compensation Act is amended so that section 71 refers to PCBUs, there is the potential for PCBUs to be in breach of their obligations under the Health and Safety Reform Bill by not supporting a worker’s rehabilitation. Absent provision in the Accident Compensation Act, however, a PCBU which is not an employer within the meaning of the Accident Compensation Act would have no ability to access a worker’s individual rehabilitation plan so as to enable the PCBU to assist the worker with his or her rehabilitation. Z recommends that the Bill amend the Accident Compensation Act so that provisions such as section 71 apply to PCBUs. Similar consideration may also be required as to the interface between the Bill and other pieces of legislation that use the term “*employers*”.

Worker engagement / health and safety representatives

Z supports the principle of worker engagement and participation in building safer workplaces. Z has a staff HSSE Committee and regularly engages its own subject matter experts in the development and implementation of policy, process and procedures.

The Bill defines a “work group” as “a work group determined under clause 66”. However clause 66 does not define what a work group is; it simply provides that PCBUs are required to “facilitate the determination of one or more work groups”. A specific definition of “work group” would assist PCBUs to understand precisely what they are required to do to comply with their worker engagement obligations.

Given the diversity of New Zealand workers and workplaces, Z considers it desirable that the worker engagement provisions are sufficiently flexible to enable different means of worker participation and engagement. Z is concerned that any definition must facilitate staff participation in different ways to might suit different workforces. Z regards it as important that the worker engagement provisions are not overly prescriptive so as to avoid the risk of inhibiting the development of innovative approaches to health and safety.

Clause 71 allows a health and safety representative to enter and inspect “any area of a workplace” and requires the representative to give “reasonable notice” to the PCBU before doing so. It would assist PCBUs for “reasonable notice” to be defined, ideally by reference to a minimum time period. Alternatively, further prescriptive guidance in

regulations or a code of practice would assist PCBUs to understand the precise scope of this provision.

In the event of an incident or a situation involving a serious risk to the health and safety of a person, health and safety representatives are empowered by the Bill to enter and inspect “*at any time*” and “*without notice*” any area of a workplace. As presently worded, this provision has the potential to conflict with the duty of a person with management or control of a workplace under clause 53 to ensure that the site where an incident occurs is not disturbed until authorised by an inspector. The potential conflict could have the result that a PCBU or person with management or control of a workplace will inevitably breach one of two provisions in the event of an incident where a health and safety representative seeks to access the area where the incident occurred: if the PCBU or person with management or control of the workplace seeks to comply with its duty to preserve the incident scene under clause 53, it will breach clause 71 in preventing the representative from accessing the incident site. Conversely, if the PCBU or person with management or control of the workplace seeks to comply with clause 71 and allow the representative to access the area in which the incident occurred, it may breach clause 53 by failing to preserve the site. Z suggests that clause 53 be amended to remove the ability of health and safety representatives to access an area of the workplace in which an incident occurs so as to avoid the current conflict.

Clause 74 allows a representative to accompany an inspector who has entered a workplace. The inspector is able to refuse to allow the representative to be present during

any discussion in which personal information may be disclosed, or if the inspector believes that the presence of the representative would prejudice the maintenance of the law. Z supports this principle of ensuring health and safety representatives are apprised of inspectors' inquiries, but suggests it may be preferable for other parties to discussions with the inspector (particularly in an investigation) also to be able to refuse to consent to the presence of a health and safety representative on the same grounds.

Other comments / clarifications

The Bill imposes significantly higher maximum penalties than the Health and Safety in Employment Act. Z supports the principle of appropriate penalties in relation to health and safety breaches and questions whether a cap is actually required.

The Bill refers several times to "*persons with management or control of a workplace*" (including the duty to preserve an incident sites in clause 53, the provision enabling an inspector to issue a non-disturbance notice in clause 130 and inspectors' powers of entry and inspection in clause 185). However, the term "*persons with management or control of a workplace*" is not defined. Absent definition, there is the potential for confusion as to which party or parties are "*persons with management or control of a workplace*", particularly in light of clause 32, which imposes a duty on PCBUs with management or control of a workplace. Z recommends that the term be defined.



Conclusion

In light of the significance of this long-awaited reform, Z has been disappointed by the short amount of time allowed for submissions, particularly when some key aspects of the Bill have changed from the Exposure Draft. Z hopes the Select Committee process and subsequent debate will be less constrained in terms of time so as to enable full participation and detailed consideration of the new legislation. In Z's view, it is in the interests of all New Zealanders that more time be spent now – before the Bill is enacted – refining the legislation so that workplaces and workers have the highest possible degree of clarity as to their obligations rather than to resort to later amendments that have the potential to give rise to confusion.

Regardless, Z is pleased to support the intent of the Bill. Legislative reform is overdue and has the potential to help drive the culture change that New Zealand needs to make our workplaces – and ultimately all of us as individuals - safer.