



THE NEWSLETTER  
OF THE NZ  
FEDERATION OF  
MOTORING CLUBS

# WHEEL TORQUE

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## Car clubs not caught by new work safety law

Much misinformation and misunderstandings of the typically convoluted wording of the new Health and Safety at Work Act may still be causing unwarranted concerns amongst member clubs.

But the Ministry of Business Innovation and Employment has been keen to clear away any misapprehensions about who has been effected by the new legislation now in force. Information sheets available on the WorkSafe New Zealand website clarify any potential misinterpretation of what kinds of organisations and activities are covered by the Act. For those who want a firsthand understanding of how the provisions of the new Act apply to clubs go to [www.business.govt.nz/worksafe/hswa](http://www.business.govt.nz/worksafe/hswa) and access the "FAQ's and Mythbusting" pages.

According to WorkSafe, the new health and safety provisions only apply to individuals or organisations when they become "persons conducting a business or undertaking" (PCBU), and on the information sheet defining those businesses affected it states that "volunteer associations are not PCBUs". The new Act also separates ordinary or "casual volunteers" from those people defined as "volunteer workers". To be covered by the provisions of the Act "volunteer workers" must be undertaking work for a business on an on-going and regular basis. And they are specifically not subject to its requirements if their volunteer employment is participating in fundraising, or assisting with sports or recreation for an educational institute, sports or recreation club.

Where a volunteer's work for a business is on an ongoing and regular basis, but their contribution is not integral to the performance of the business or vice versa, they are also excluded from the definition of a "volunteer worker". For example, volunteer marshals assisting with the running of an annual race, while integral to the event, would not

be classified as "volunteer workers" as they are not doing work for the organisation on a regular and ongoing basis.

A volunteer is defined as "a person who is acting on a voluntary basis, whether or not the person receives out-of-pocket expenses". If a volunteer association (or any of its members) "engages" an individual to work for the association under a contract for service (i.e. a "contractor"), it would still be a volunteer association and not a PCBU. For example, when a function is run as part of recreational activities, there is the ability to engage say the Lions to do the gatekeeping, St Johns to be onsite, and school committees to do the catering on the basis that these organisations are carrying out work for recreational or charitable fundraising purposes.



It was only at a very late stage in the development of the revisions to our health and safety laws that the FOMC became aware of the consequences for clubs if the proposed legislation had been passed as originally drafted. So it took a quickly-organised lobbying campaign,

constructively supported by many of our member clubs, to ensure the provisions of the Health and Safety Bill were appropriately revised before it returned to Parliament for the final reading.

But while volunteer associations including car clubs are now no longer directly subject to the various provisions of the Act there is still a wider community and legal responsibility to ensure good stewardship.

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Everybody undertaking activities or organising events should be able to show they have done what is "reasonably practicable" to manage health and safety risks, and do what a reasonable person would find workable ways to eliminate or minimise risks. Provided clubs can show honest and reasonable attempts have been made to minimise accidents, that will satisfy the law's requirements of volunteers.

While the need or urgency is no longer as pressing, the FOMC executive is working to create simple Safety Templates to assist clubs in the running of their events. When we are satisfied that we can offer sound and appropriate working documents, the templates will be made available on our website for clubs to uplift.

## HERITAGE MOTORING IN A LOW-CARBON, AUTONOMOUS TRANSPORT FUTURE

Since the formation of the NZ Federation of Motoring Clubs the prime directive has been to protect and preserve the right of heritage vehicles to make free unfettered use of the roading network. Two decades on and so far, so good, but twenty-first century technology has us facing a final frontier in which there may be no space for classic and vintage vehicles.

In anticipation of a future of dramatic changes in how we will all move about our country, the Ministry of Transport (MoT) has developed a website at [www.transport.govt.nz/futures](http://www.transport.govt.nz/futures) to seek feedback on how the latest developments in transport technology should be used.

Within 25 years, advances in the development of autonomous vehicles will make it possible to remove fallible human drivers from the road safety equation. If driving yourself was totally banned on all public roads, the MoT projects annual road fatalities would be cut from more than 300 to less than 30. As well as being much safer, autonomous vehicles and ride sharing would make transport systems so much more efficient the roading network we have today could even be drastically reduced.

But would the prospect of faster travel times, no more commuter gridlock, much less expenditure on roading infrastructure, and dramatic reductions in traffic accidents persuade us all to give up our privately owned cars? Would we allow the government to ban human driven vehicles on public roads and effectively eliminate any scope to enjoy our heritage motoring outside special parks and reservations?

And would heritage motoring still be viable in a world where carbon emissions have effectively been eliminated and our vehicles all restricted to other sources of energy. The MoT's low-carbon transport scenario describes a future in which most vehicles would be electric, while those that are not would be highly efficient and use only low-carbon fuels. Again, autonomous vehicles would be used to optimise efficiency with freight moved by fleets of optimally laden trucks or ships capable of carrying more than 7,000 containers

Coincidentally at the same as the MoT is looking at how new technology may reduce transport journeys and the need for roads, the NZ Transport Agency is working on how to re-engineer the highway network to cope with an anticipated doubling of freight traffic within the next two decades. While those freight projections may now be outdated as a result of the recent declines in dairy payouts what enduring pleasure would there be in heritage motoring if every second or third vehicle around us on our main roads was a 60-tonne tractor and trailer unit.

Currently there are four transport scenarios outlined on the MoT "Futures" website. The visions and information on these "futures" pages are not presented as the views of industry or government policy. Rather, it is the Ministry's intention for this work to stimulate wider debate and generate more ideas on the possible future shape of New Zealand's transport system. Through dialogue and debate, the ministry is hoping to prepare us to choose our preferences before the technology comes available.

Of course for the wider population an era of fast, efficient and inexpensive mobility in electric, autonomous community-owned vehicles is likely to be immensely attractive. So we can anticipate that those of us wanting to retain our current right to drive our aged gas guzzlers on public roads will be marginalised. It will take much thought, planning and persuasive lobbying if heritage motoring is to have any future in the future.

## MORE LAW REFORM ON AGM AGENDA

Largely left unchanged for more than a century, New Zealand's Incorporated Societies Act is being replaced by a much more extensive modern statute.

The review process begun in 2010 has resulted in a draft bill which is now open for public input with submissions closing at the end of June. As the proposed changes will impact on most clubs a panel discussion has been arranged for this year's FOMC annual conference so club delegates can raise their concerns and assist in the formation of an appropriate response.

The new law will determine the statutory duties of the officers of societies, and require that provisions for dealing with conflicts of interest and dispute resolution procedures be included in all constitutions.

Primary guest speaker at the FOMC national conference will be Ministry of Transport's Principal Advisor on Technology and Transport Systems, Iain McGlinchey. Entitled "The New Zealand fleet: fact and fiction" his presentation will be an informative review of the trends and changing patterns in the New Zealand light vehicle fleet, including fuel use, fleet travel, emissions and safety.

The 21st annual general meeting and national conference of the FOMC will take place on **Sunday May 22nd** in the Wellington VCC clubrooms in Halford Place off Jackson Street East, Petone beginning at 10.30am. Only appointed club delegates will have voting rights but other club members will be welcome to attend as observers. Catered lunches will be provided for \$15 each to those who register with the secretary before the meeting: [www.fomc.org.nz/events](http://www.fomc.org.nz/events)



## PRESIDENT'S COLUMN

### Health & Safety Act

After a very successful lobbying campaign by the FOMC and other organizations those provisions of the Health and Safety Bill causing concern to vehicle clubs were revised before it returned to Parliament for the final reading. As a result incorporated societies and volunteer associations are not subject to the more punitive regulatory regime imposed on business workplaces unless they are conducting a business activity. The definition of "volunteer worker" is now more strictly limited and any regulatory actions against volunteers are no longer required. The undertakings covered by the Act have been defined so that sports and recreation activities are classified as non-work activities. The care and preservation of heritage vehicles are therefore taken to be recreational activities and not subject to the provisions of the new workplace law.

But there is still a responsibility on all clubs to ensure safety and good stewardship. It will be important to demonstrate that consideration has been given to safety matters when planning and participating in club events and activities. This does not mean dotting every "i" and crossing every "t". Provided it can be shown that honest and reasonable attempts have been made to keep both members and the public safe from injury or accident, then that will satisfy the requirements the new law imposes on volunteer associations.

Under Clause 13 of the Health and Safety at Work Act "voluntary associations" are not included as PCBU's (persons conducting a business undertaking), 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". However when a function is run for recreational reasons, there is still scope to engage the Lions, for example, to do the gatekeeping, St Johns to be on site, and school committees to undertake the catering, all on a paid basis, without being subject to the provision of the new Act as these organisations are carrying out their functions for recreational or charitable fundraising purposes.

Frankly what may prove to be more damaging for clubs and volunteers is the pervasive overbearing insistence on excess attention to detail that often follows the introduction of new laws and regulations. For example when vehicles are used on roads, the traffic regulations apply, not workplace rules – end of discussion. I remind club officials that people join clubs to enjoy fellowship with other people with like interests, not to be buried in bureaucracy and rulebooks. Common sense needs to apply.

What was achieved in forcing a rewrite of the proposed rules as applied to farm workplaces means that the part of a landowner's property subject to the Act is now confined

to the working areas such as sheds or yards and any portion of the farm being worked on at that time. This is a huge concession for landowners as it allows them to let the public utilise their properties for recreational purposes without the fear of something coming back at them. A friend reported to me that a visiting WorkSafe inspector made sure he was aware of this. Well done WorkSafe staff.

While the need is no longer pressing, we are still working to produce some simple Safety Templates to assist clubs to improve their efforts to meet safety standards. In so doing we have obtained some risk assessments and sought guidance from MBIE (formally OSH) and appropriate legal and insurance advice. When we are satisfied that we can offer sound advice, we will place these Templates on our website for Clubs to uplift. Given Parliaments' sensible redrafting of the legislation, we are now in a better position to meet any responsibilities required.

### Incorporated Societies Act

The FOMC has been monitoring potential changes to this Act which has been under review by the Law Commission since 2010. Several of our executive members have attended seminars organised by the Department of Internal Affairs and MBIE. Officials have already recognised the financial reporting requirements in the draft bill could be excessively onerous for smaller clubs to meet

and have indicated they would welcome advice on how they could be revised. Overall their approach was very positive and assurances were given that this is a draft proposal and our input would be both valued and welcome. After discussion with Barley Insurance, issues about the insurance cover of Club Officials arose because of the changes in the bill. An inability of clubs to be able to insure office holders for errors or omissions is not acceptable. We will seek clarification on this point.



Malcolm Lumsden

### ACC

Each year we make submissions on proposed ACC levy changes as applied to vehicles. It has been pleasing to see recent overall reductions, but we remain concerned at the higher levies imposed on some older vehicles that do not have the safety ratings of newer cars. Owners of these serviceable vehicles should not be unduly penalised as many such vehicles do few kms each year yet continue to provide their owners with good service.

### Heritage Vehicle definition and age

It is interesting to note the Australians have proposed reducing the age of heritage vehicles to I believe 25 years or less. Given we always seem to adopt their transport law, it will be interesting to see if we follow suit. Heritage trucks in Australia enjoy a far more considered regime than in NZ. That is an area that needs to be challenged as it is grossly unfair to expect heritage vehicles to continue to be treated as fully commercial vehicles.

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## NEWS FROM AROUND THE WORLD

### 'Historic' is not simply 'old', says FIVA

As the EU moves to maintain air quality standards by excluding older cars from the roads in hundred of cities across Europe, both the survival and continuing use of younger classic and heritage vehicles is coming under serious threat.

While lobbying for heritage vehicles to be exempt from the low emissions zone restrictions, FIVA, the international federation of historic vehicles, is also suggesting the definition of 'historic vehicles' should be limited.

President of the Fédération Internationale des Véhicules Anciens (FIVA), Patrick Rollet, says: "By 'historic vehicle', we mean a mechanically propelled road vehicle at least 30 years old, preserved and maintained in a historically correct condition and not used as a means of daily transport. These vehicles are part of our technical and cultural heritage and, in our opinion, should not be lumped together with old, badly maintained cars that are used as cheap, everyday transport, when considering the problem of urban air pollution.

"Many countries across the EU have already positively decided that historic vehicles should be exempt from their low-emission-zone restrictions – including Germany, Italy, Hungary, the Czech Republic, Denmark, Sweden

and the UK. However, not only do the rules vary between one EU nation and another, but in some instances the rules can be different even when travelling from town to town within the same country. This is extremely confusing for historic vehicle owners.

"In summary, we are lobbying the EU politicians for three things. First, that there is a clear definition of 'historic vehicles' as opposed to simply 'old' vehicles. Secondly, that historic vehicles should be exempt from LEZ restrictions. And thirdly that the exemption is applied consistently – not only within each country, but across the EU as a whole. We warmly encourage historic vehicle clubs and owners to likewise lobby their own national authorities where LEZs exist or are proposed."

But the Federation of British Historic Vehicle Clubs (FBHVC) is strongly objecting to the limited definition of historic vehicle being adopted by FIVA.

"Lobbying for actual harmonisation of exemption from Low Emission Zones across the European Community is not an agreed policy of FIVA and the FBHVC could not support its future adoption by FIVA," says the FBHVC Board in a statement responding to a FIVA media release. "FBHVC, together with their parliamentary colleagues in the All Party Parliamentary Historic Vehicle Group (APPHVG) have

locally negotiated favourable exemptions on behalf of its historic vehicle owning membership in the case of both the existing Greater London LEZ and the forthcoming London ULEZ. It is FBHVC policy that its members' interests will be best served by lobbying at a domestic level for exemptions on a case-by-case basis."

The FBHVC has requested FIVA withdraw its press release to give the FIVA executive time to reconsider their position on LEZs in the appropriate manner and with due consultation with the national federations.

Under the rules as currently proposed when the new Ultra Low Emissions Zone comes into effect in Central London on 7 September 2020 all 'historic' tax class vehicles will be exempt but any classic cars built between 1 January 1980 and 1 January 2006, will have to pay the ULEZ charge, as well as the Congestion Charge, totting up to £24 per visit.

More than 220 cities and towns in 14 countries around Europe already operate or are preparing Low Emission Zones, to help meet EU health-based air quality limits. This means that vehicles may be banned from an LEZ, or in some cases charged if they enter a LEZ when their emissions are over a set level.



## PRESIDENT'S COLUMN

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### FOMC changes

I will be retiring as President this year having done two terms totalling, I think, 8 years in that role. It is not that demanding, but does require one to ensure when matters arise that they are promptly attended to. Having a very capable Secretary in Roy Hughes has ensured we have remained at the top of the game. FOMC has always been a very professional organisation with input from some very influential people with motoring interests. So much so that our incoming President is a former Transport Safety Minister. Being able to say we represent through our member clubs over 75,000 heritage and special interest vehicle owners does carry considerable political clout.

I have enjoyed my time on the FOMC executive and remain confident that being a member will continue to be a good investment for all motoring and heritage vehicle clubs in the future. And remember the future of the heritage vehicle movement is dependent on getting more younger people interested. You cannot take your vehicles with you. Ensure you take interest in the young person looking at your vehicle, because one day, if his interest is cultivated, he may want to own it.

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

