



Meat Industry Association of New Zealand (Inc)

Submission to the Department of Labour on  
Proposed Amendments to Schedule 2 of the  
Injury Prevention, Rehabilitation, and  
Compensation Act 2001

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## I: Introduction

1. The Meat Industry Association of New Zealand Incorporated ('MIA') is a voluntary trade association representing New Zealand meat processors, marketers and exporters. It is an Incorporated Society (owned by members) that represents companies supplying virtually all of New Zealand sheepmeat exports and all beef exports, producing 17 per cent of our nation's exports by value (30 percent of New Zealand's primary sector export revenue). The New Zealand meat industry earned \$5 billion in export revenue in the year ended May 2006.
2. MIA member companies operate approximately 80 processing plants dispersed throughout the country. The plants slaughter and process approximately 24 million lambs, 4.4 million sheep and 4.2 million cattle and calves each year. Ninety percent of this production is processed into value-added products. Approximately 800,000 tonnes or 85% of the production is exported to overseas destinations. Our affiliate members add to the depth of expertise available from the membership, with representation throughout the meat supply chain, including road and rail transport, shipping lines, ports, packaging firms, specialist product exporters, research and technology.
3. The Association advocates on behalf of its members and provides advice on economic, trade policy, market access, employment relations, business compliance costs and technical and regulatory issues facing the industry, with a particular focus on:
  - Food safety trends and developments in importing countries
  - Economic and trade aspects of market access to key overseas markets
  - Major public policy proposals that could impact on industry operations
4. The MIA is also the interface between the meat industry and government (i.e., it is the consultative body referred to in various New Zealand statutes, such as the Meat Board Act 2004 and the Animal Products Act 1999).
5. The Association's mission is to:
  - Provide a forum for consideration of industry-wide commercial, human resource, marketing, and sanitary and zoosanitary issues; and
  - Provide the means of formulating a collective view on issues of industry-wide interest, and of conveying that position to government, departments of state, trade bodies, and other appropriate external agencies and organisations.
6. A list of Association members is attached as Appendix 1.

## Background to this Submission

7. This submission is made by the MIA in response to the Department of Labour Consultation Document: *Proposal to add further occupational diseases and their corresponding agents to Schedule 2 of the Injury Prevention, Rehabilitation, and Compensation Act 2001*. Although there is potential for the industry to be

affected by a range of the proposed additions to Schedule 2 of Injury Prevention, Rehabilitation, and Compensation Act 2001 ('the Act'), this submission focuses on just four specific proposed additions – brucellosis, orf, noise-induced hearing loss and contact dermatitis. We would consider, however, that the Association's views on process are equally applicable to most, if not all, of the conditions proposed for inclusion on Schedule 2 (and even those conditions currently listed on Schedule 2).

8. In preparing this submission all members and affiliate members were consulted and asked for input. MIA members may also make individual submissions reflecting concerns relating to their specific operations.

## **II: Brucellosis and Orf**

9. The MIA does not dispute that these two diseases are predominantly caused by exposure to certain types of animals and animal products, and that the types of animals and animal products that give rise to the diseases are present in areas within meat processing plants. We also do not dispute that certain tasks performed by some meat process workers would put them at a greater risk of contracting these diseases than the general population.
10. We understand these facts to be generally accepted, and as such are not aware that they give rise to any real debate in assessing a claim for cover under the three-step process set out in section 30(2) of the Act.
11. The only real point of contention in assessing a claim relating to these two diseases under the three-step process, then, is whether the causal property (i.e., exposure to certain animals or animal products) exists to a material extent in the claimant's non-employment activities. Adding brucellosis and/or orf to Schedule 2 of the Act will not change this, however.
12. Meat processing plants are almost exclusively located in rural regions, and as such they draw their labour force predominantly from the rural population. As a result, much of the industry's labour force either live on farms (hobby or otherwise) or regularly come into contact with animals in their non-employment activities. In other words, the nature of the industry's labour force is such that there are often legitimate questions over whether zoonotic diseases (such as brucellosis or orf) are contracted through employment or non-employment exposure.
13. With regard to brucellosis and orf, these questions are currently addressed through the second step of the three-step process set out in section 30(2) of the Act – i.e., is the causal property or characteristic present to a material extent in non-employment activities? Adding brucellosis and orf to Schedule 2 of the Act will make little if any, appreciable difference to this, as essentially the very same question will be asked through section 60 of the Act – i.e., is there a 'cause other than his or her employment'?
14. This has certainly proven to be the case with regard to one disease that is already included in Schedule 2 of the Act – leptospirosis. Despite its Schedule 2 listing, a significant number of leptospirosis claims are disputed on the basis of whether infection was a result of employment activities or non-employment activities such as hunting – or even exposure to mice or rats.

15. On this basis, adding brucellosis and orf to Schedule 2 would appear to do little, if anything, to assist in the processing of claims or the provision of certainty to claimants. The only matter of any real contention (i.e., the effect of non-employment activities) would be unchanged.
16. Inclusion on Schedule 2 would, however, result in a shifting of the burden for establishing the impact of non-work activities onto employers. All things being equal, one may argue that this is appropriate given the existence of strong connection between performing certain employment tasks and contraction of these diseases.
17. In reality, however, all things are not equal. The strength of the presumption that a Schedule 2 disease results from employment means that it is significantly more difficult for ACC or accredited employers to establish a non-employment cause under section 60 of the Act than it is for employees to counter a suggestion that non-employment activities have been material in exposing him/her to the causal agent under the three-step test in section 30(2) of the Act. Placing brucellosis and/or orf onto Schedule 2, then, effectively replaces a relatively low hurdle faced by a claimant with a relatively high hurdle faced by ACC or an accredited employer.
18. What is more, inclusion of a disease on Schedule 2 can also lead to infections being incorrectly attributed by general practitioners to occupational exposure because Schedule 2 oversimplifies the link between a disease and a particular occupation. For example, there have been numerous incidences where general practitioners have diagnosed leptospirosis in individuals that work in the meat processing industry and assumed that because the individual works in a meat processing plant, the disease must therefore be 'caused by working with animals and their carcasses'.
19. In reality, however, there are a huge range of different roles within a meat processing plant. While most could be fairly called 'working with carcasses' not all of them carry with them an increased risk of exposure to leptospirosis. 'Kidney-poppers' may face a greater risk of exposure, whereas there would seem to be little increased risk of exposure for a person working in a chiller, for example, or in a boning room.
20. However, the inclusion of leptospirosis in Schedule 2 has had the effect of prompting general practitioners to conclude that leptospirosis contracted by a meat processing worker must be occupationally acquired without gathering a full understanding of the specific environmental conditions within which the person works.
21. Such errors may be undone once an occupational specialist is engaged to look more closely at a claim. In the interim, however, a claimant will often have been receiving compensation which he/she may then be required to repay to ACC. We submit that this is a clearly undesirable outcome that benefits neither ACC, accredited employers, nor claimants themselves.

### **Summary of Position on Brucellosis and Orf**

22. In summary, then, we submit that including brucellosis and orf in Schedule 2 would not materially assist in the processing of claims for cover under the Act. It would, however, make it more difficult to meaningfully address legitimate questions regarding the role of non-employment activities as means of infection. We

submit that the current three-step test is entirely appropriate as it allows such questions to be considered, while not unduly hindering the timely consideration of claims where non-employment activities are not a legitimate issue.

### **III: Noise-induced Hearing Loss**

23. The proposal to include noise-related hearing loss in Schedule 2 is undoubtedly the biggest concern the MIA has with regard to the Department of Labour's proposed additions.
24. Again, the MIA does not dispute that noise levels in certain workplaces can lead to hearing impairment if appropriate measures are not taken to prevent or minimise exposure. However, as with our comments on brucellosis and orf, we are very concerned at the part that non-employment activities can play in the development of hearing loss. Inclusion in Schedule 2 makes it more difficult for decision-makers to give legitimate consideration to non-employment activities and to recognise the measures taken in the workplace to minimise exposure to harmful levels of noise.
25. The Health and Safety in Employment Act 1992, and regulations 10 and 11 of the Health and Safety in Employment Regulations 1995, demand that employers take all practicable steps to eliminate harmful noise, or to protect against exposure where noise cannot be reduced below harmful levels.
26. Further, in late 2002, a revised Code of Practice for the Management of Noise in the Workplace ('the Code') was issued by the Occupational Safety and Health Service to further elaborate and provide guidance to employers, and ultimately the Courts, as to appropriate best practice. The Code effectively requires employers to implement 'Noise Reduction Programmes' to bring noise levels below a 'safe' threshold (85dB over 8 hours). Where it is not possible to reduce to this level, employers must provide hearing protection.
27. Given that an employer is in a generally indefensible position with regard to a health and safety prosecution if the Code is not complied with, one would expect that the requirements of the Code would have an extremely high level of uptake – and this is certainly the case in the export meat industry. Accordingly, one would expect that in most workplaces workers will either not be exposed to 'harmful' noise levels, or at an absolute minimum be provided with appropriate personal protective equipment.
28. There are no equivalent obligations acting to minimise the detrimental impact of non-employment activities, however, but such activities can contribute significantly towards noise-related hearing loss. For example, gunshots (hunting is a relatively common pastime among meat process workers) produce between 140 and 150 dB depending on calibre – which are levels that can cause instantaneous damage to unprotected ears. Mp3 players can produce up to 120 dB, at which point hearing starts to become damaged in under a minute<sup>1</sup>. So too with chainsaws, which operate at around 115 dB.

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<sup>1</sup> Note that this has led some countries to restrictions on the output of mp3 players – with France being a leading example is requiring such players to be restricted to a maximum 100dB output.

29. Unlike the situation in the workplace, there is no way to verify that employees protect themselves appropriately while using recreational or non-employment devices that generate noise at such levels. Therefore, we seriously question the suggestion that the Act should make a presumption that noise-induced hearing loss is employment-related and oblige ACC or an accredited employer to attempt to rebut that presumption if it proposes to decline cover.
30. Rebutting this presumption would be a very difficult task, as all one could do is demonstrate compliance with the Code and argue that this eliminates employment activities as a cause and therefore must mean that there is an alternate cause. It would be rarely possible to pin-point the alternative cause due to difficulties in proving matters such as how loud and for how long an individual plays an mp3 player. In our view, this is an unsatisfactory situation and in all likelihood will lead to an increase in disputes regarding decisions over cover for noise-related hearing loss.

### **Summary of Position on Noise-induced Hearing Loss**

31. As a result, we consider claims for noise-induced hearing loss should continue to be considered using the three-step process in section 30(2) of the Act. This does not remove cover for genuine employment-related injury, it merely requires that an appropriate process is followed if one is making an exception to the general rule that degenerative conditions are not covered under the Act.

### **IV: Contact Dermatitis**

32. The MIA's position with regard to the inclusion of contact dermatitis on Schedule 2 is closely linked to the concerns raised above with regard to noise-induced hearing loss. The MIA agrees that many workplaces may contain potential sensitising agents, but such agents are equally present outside of the workplace where measures to prevent exposure to them are more likely to be lax or non-existent.
33. While there may be a link between certain occupations and incidence of contact dermatitis, unless it is highly unlikely that a disease or condition could have a non-employment-related cause it is inappropriate to create a presumption that a condition is occupationally-acquired. Given that sensitising agents for contact dermatitis are so widely available in the domestic environment (e.g., in household paints), it is entirely appropriate for the potential for non-employment exposure to be tested before extending cover to an individual that would otherwise not be entitled.

### **Summary of Position on Contact Dermatitis**

34. As with noise-induced hearing loss, the MIA maintains that claims for contact dermatitis should continue to be considered using the three-step process in section 30(2) of the Act. Due to the wide availability of sensitising agents, and the likelihood that measures to protect against exposure are likely to be lesser in a domestic environment, non-occupational exposure cannot be simply discounted in any consideration of whether contact dermatitis. The three-step test provides an appropriate process for this.

#### **IV: Contact Details**

35. To discuss this submission further, please contact:

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## Appendix: List of MIA Members – 1 July 2006

Members
Advance Marketing Ltd
AFFCO New Zealand Ltd
Alliance Group Ltd
ANZCO Foods Ltd
ANZCO Green Island Ltd (ANZCO group)
ANZPAC Foods Ltd
APJ Meats Ltd
Auckland Meat Processors Ltd
Ballande New Zealand Ltd
Bernard Matthews New Zealand Ltd
Blue Sky Meats (NZ) Ltd
<i>Brookland (NZ) Ltd (in receivership)</i>
Canterbury Meat Packers Ltd (ANZCO group)
CMP Rakaia
Columbia Exports Ltd
Crown Marketing Ltd (ANZCO group)
Crusader Meats New Zealand Ltd
Dairy Meats NZ Ltd (AFFCO group)
Davmet New Zealand Ltd
Fern Ridge Ltd
Frasertown Meat Company Ltd
Garra International Ltd
Glovers Foods Ltd
Greenlea Premier Meats Ltd
Harrier Exports Ltd
Horizon Meats New Zealand Ltd (wholly owned subsidiary of Blue Sky Meats (NZ) Ltd)
Hygrade Casings Company (wholly owned subsidiary of New Zealand By-Products)
Lamb Packers Feilding Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Land Meat (NZ) Ltd (AFFCO group)
Lanexco Ltd
Lowe Corporation Ltd
Malvern Meat Processors Ltd (AFFCO Group)
Mathias International (Mathias Meats NZ Ltd)
New Zealand By-Products
Pilot (NZ) Ltd
Primary Producers Co-operative Society Ltd (PPCS)
Progressive Gisborne Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Progressive Meats Ltd
Riverlands Ltd (ANZCO group)
South Pacific Meats Ltd
Tara Exports Ltd
Taylor Preston Ltd
Te Kuiti Meat Processors Ltd
Towers Thompson (New Zealand) Ltd
Universal Beef Packers Ltd (UBP)
Wallace Corporation Ltd

<b>Affiliate Members</b>
AgResearch-MIRINZ Centre
Aon New Zealand Limited
Axis Intermodal (Ports of Auckland Ltd)
Carter Holt Harvey, Packaging
CentrePort Wellington
Energy for Industry (ex Meridian Solutions)
Hamburg-Sud New Zealand Ltd
Hapag Lloyd (New Zealand) Ltd
Maersk New Zealand Ltd
Oceanic Navigation Ltd
Port of Napier
Port Otago Ltd
Port Taranaki Ltd (previously Westgate Transport Ltd)
ProAnd Ltd (Meatek Ltd)
Rissington Breedline Ltd
Sealed Air (New Zealand), Cryovac Division
Thompson Clarke Shipping Pty Ltd (ANZ Marketing Representative for the Port of Los Angeles)
Vero Marine Insurance