

11 April 2014

Submission on the Health and Safety Reform Bill

To the Transport and Industrial Relations Committee

In general I totally support the intent of this bill because of the importance and urgency of addressing the state of health and safety in New Zealand workplaces. I am an HR Consultancy organisation working with Small to Medium Sized Enterprises. My observations and recommendations are the result of my experiences and understanding of how smaller businesses operate and the challenges that they face. My concerns are purely to do with the practicality of making these changes work in this environment – and to the extent they can be addressed when the legislation is being formed the better it will be both for smaller businesses and for the Court system that would have to manage the practical implications.

I wish to make the following comments and recommendations for your consideration:

Clause 19 (1)

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that “Serious Risk” be defined. I believe this can be easily defined as the risk of a notifiable injury or illness as defined in Clause 18 (1).

because: As far as possible the law should avoid ambiguity.

Clause 28

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that between Cl 28(3) and 28 (4) an additional sub-clause is added “Nothing in this clause shall be interpreted as meaning that a recovering costs from a worker for damage to protective clothing or equipment, other than for reasonable wear and tear, shall contravene sub-clause (1) above.”

because: This is really just to clarify that a worker does not have the right to mistreat such equipment or clothing, just because the PCBU has to provide it.

Clause 61 (1)

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that “reasonably practicable” is at least in part defined. This can be done by reference to the definition of “reasonable” in cl 64(3); but I believe it would be very sensible to indicate that, in the absence of other motivating reasons, a PCBU responsible for 19 or less workers would not normally be expected to require a Health and Safety Representative or a Health and Safety Committee.

because: Although at no stage should the liability or responsibility of the PCBU be reduced in terms of their responsibility to engage with their workers, I believe that as the Bill stands it can create a great deal of unnecessary time and cost for small businesses. The reference to 19 or less workers would then be similar to certain exemptions being identified under the Employment Relations Act, and will help to avoid potential costly Court procedures in determining what is or isn't reasonably practicable.

Please consider an extreme example where a PCBU has two workers in addition to himself. If one of them wanted to, they would be able to require a Health and Safety representative be appointed (cl 65 and 66) and assuming the other worker votes for this one, the worker would then have all the rights of a Representative, including the ability to require a Committee (cl 88). With all the time that the two employees (now both on the Committee) could "require" under cl 78(1) (c) it is not difficult to see that this process could result in an increase in staff costs to the PCBU of some 2% - an outcome I do not believe the Bill envisages. (See also recommendation under cl 65 below)

Clause 62(1) (b)

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that if the proposed amendment to cl 61(1) above is not agreed, the words "reasonable opportunity" are given the same broad definition that the words are given in cl 64(3)

because: again it is important to be as clear as possible in law and if this is not so defined it begs the question why not – and in what way it was supposed to differ?

Clause 65

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that if the proposed amendment to cl 61(1) above is not agreed, the right to require a Health and Safety representative is restricted to a PCBU responsible for 19 workers or more. Alternatively that some other lesser minimum be agreed. Alternatively that the rights of Representatives in these smaller organisations be restricted, say, to issuing provisional improvement notices.

because: of the reason given under 61(1) above

Clause 66

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that "Work Groups" should be defined at least in concept.

because: Currently cl 12 defines them as described in cl 66, which doesn't actually give any indication of what the intention is for their definition.

Clause 69

Although I agree with the need for Health and Safety representatives, I believe the contents of this clause do not go far enough, and I would like you to consider making the following amendment for the reason set out:

that additional responsibilities should be added to this clause:

- To present the health and safety needs and processes of the organisation, and changes/developments in these, to the workers
- To advise and encourage workers to comply with health and safety policies and procedures and codes of practice

because: the way the Bill is currently written it comes across as a little adversarial. It seems to make more sense to have the representatives as a link between the PCBU and the Workers. As such their responsibilities should include some “downward communication” as well as upward. This way the Representatives could be seen as providing a really positive and constructive role in any organisation.

Clause 88

Although I agree with the general intent of this clause, I would like you to consider making the following amendments for the reason set out:

that if the proposed amendment to cl 61(1) above is not agreed, the right to require establishment of a Health and Safety Committee is restricted to a PCBU responsible for 19 workers or more or if required by Regulation. Alternatively that some other lesser minimum be agreed. And

that some guidance is given on the size of a committee, for example that a reasonable size may be 3 people, provided that every significant Work Group is represented.

because: of the reason given under 61(1) above

Clause 111

Although I agree with the general intent of this clause, I would like you to consider making the following amendment for the reason set out:

that Cl 111 is amended by adding an exception as follows:

111A Clause 111 above shall not be applicable where a worker has acted unreasonably in their involvement in the Health and Safety reason used as a basis for adverse conduct.

because: A PCBU has to have recourse to damaging behaviour by a worker in a situation where it is just in a health and safety context. Otherwise a Health and Safety rep with a grudge could cost an employer large sums by applying improvement notices and stop work notices inappropriately.

Yours sincerely

Mike Johnson

Essential HR Limited