

Health and Safety reforms update – Select Committee report back

Introduction

Last Friday the Transport and Industrial Relations Select committee reported back to Parliament on the Health and Safety Reform Bill. The Committee proposed significant amendments to the Bill.

The wide ranging nature of the amendments has resulted in the Labour Party and New Zealand First indicating that they will no longer support the legislation.

A summary of the main changes recommended by the Select Committee follows.

Definition of “officer” narrowed

- An officer is defined in original Bill as a director, a partner, or a person who makes decisions that affect the whole, or a substantial part of the business of the PCBU. The responsibility of officers is to exercise due diligence in ensuring that the “PCBU” (Person Conducting the Business or Undertaking) complies with its health and safety duties.
- The category of persons who are officers is narrowed to include only people in very senior governance roles: as well as directors and partners, these will be people who are in positions that allow them to “exercise significant influence over the management of the business or undertaking.”
- A provision is to be added to make it clear that those people who only advise or make recommendations are not officers.

Notifiable injuries, illnesses, incidents and events

- The requirement to notify WorkSafe of “notifiable events” has been modified by changes in the definitions of “notifiable injury or illness”, including by making it clear that where hospitalisation or immediate treatment is required, there will be a duty to notify even if the hospitalisation or treatment does not occur, eg because the person has refused treatment.
- There is an amendment to make it clear that “immediate treatment” does not include first aid.
- The definition of notifiable event has been amended to make it clear that the event must have arisen from work (and not as a result of any extantaneous factor).

“Risk” and “hazard” to bear their common meanings

- The definition of “risk” is to be deleted and “hazard” is to be defined less prescriptively “to encourage people to consider what risk means to them.

Cessation of work

- Under the Bill, employees may decline to work on health and safety grounds and a health and safety representative may issue a notice to cease work. The Select Committee has recommended that WorkSafe must assist in resolving any issue in relation to cessation of work as soon as practicable after it has agreed to assist.

PCBU's primary duty

- The primary duty of a PCBU has been simplified from being required to ensure the health and safety of those "employed or engaged or caused to be employed or engaged" by the PCBU, to apply to those who "work for the PCBU". This does not appear to be a substantive change.
- The Select Committee has also recommended clarification that it is the PCBU who has the duty to consult, cooperate and coordinate activities, not all duty holders (other duty holders include workers and officers).

Less onerous obligations on small workplaces in low risk sectors

- PCBUs in low risk sectors with fewer than 20 workers are no longer required to appoint a health and safety representative even where requested to do so by workers.
- The PCBU does not need to establish a health and safety committee if workers are already "participating effectively in improving health and safety" or if the workplace has fewer than 20 employees and is not in a high risk industry.
- WorkSafe NZ has a power to remove health and safety representatives for failing to properly discharge their functions.

Volunteers

There will be a distinction between casual volunteers and volunteer workers (who work regularly for a PCBU and are integral to the business).

Volunteer worker will not include persons undertaking specified voluntary activities:

- fundraising
- assisting an educational institute, sports or recreation club with sports or recreation
- assisting with educational activities outside the premises of an educational institution, and
- caring for another within the volunteer's home.

Limitation period for prosecutions reduced –

- The limitation period for prosecutions by WorkSafe (two years in the original draft bill) has been reduced to 12 months, with the possibility of a 12 month extension will be possible.
- The limitation period will be two years for private prosecutions.

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Disclaimer: this article is not intended to be a substitute for legal advice in relation to any of the topics covered.