Notes for oral submission by NZACA on Health and Safety Reform Bill

Introduction

NZACA supports the proposed legislation, because it is generally in favour of measures that will protect the health and safety of NZ workplaces.

Wish to speak briefly to the written submission lodged by NZACA and to comment specifically on two aspects of the Bill which have caused some concern for our members.

Topic 1: Notification requirements under new legislation

First concern relates to the duty to notify the regulator of "notifiable event" under Clause 51 of the Bill.

PCBU must notify the regulator immediately after becoming aware that a "notifiable event arising out of the conduct of the business or undertaking" has occurred.

Our concern arises from the breadth of the wording of cl 51 and similarly broad wording of the relevant definitions of notifiable event. Notifiable injuries and illness include death, injuries that might result from falls, injuries or illnesses requiring immediate hospitalisation. Many of these kinds of events occur often in the aged residential care context due to the health status of the affected resident, and unrelated to any workplace safety issue.

Present situation under 1992 Act:

- requires notification to the regulator of "serious harm": s 25. Serious harm included a variety of illnesses, including for example cancer and neurological diseases.
- In correspondence regarding injuries or illnesses suffered by residents in an aged care facility, the then Labour Department advised that the only cases of serious harm that needed to be notified were injuries or illnesses *arising from hazards in the place of work, and that age-related or other illnesses not arising from the work environment were excluded*. This is obviously consistent with the policy objective of the 1992 Act of promoting safe workplaces, but is not expressed as clearly in the legislation itself.
- NZACA's view is that the new Bill provides an opportunity for the position to the clarified so that PCBUs who provide care for others can be clear from the outset about their notification obligations.

Notification under the new legislation: the potential for confusion

Risk of confusion over new notification requirements arises from the fact that notifiable events are defined without any reference to their cause, so that any death is notifiable, presumably, if it "arises from the conduct of the business or undertaking."

It is suggested that the term "arises from the conduct of the business or undertaking" is rather vague, and should be clarified in the Bill to make it clear that injuries or illnesses that occur as a result of a person's age, state of health or pre-existing medical condition do not arise from the conduct of the business or undertaking.

All PCBUs need to be clear about their notification obligations under the new legislation – it is a criminal offence not to notify when required to do so, and so there is a risk that healthcare providers will err on the side of caution and over-report. This would be undesirable from the point of view of WorkSafe, presumably, which will have to respond on some level to each notification.

Potential for duplication of regimes if all falls must be reported, regardless of whether arise from the work environment

It is submitted that requiring, for example, all falls in rest homes that result in injury to a resident to be reported to Worksafe would serve no policy objective in terms of the new legislation.

As noted in the written submission, there are separate regimes under the legislation governing the provision of care in the aged residential care sector:

- (Health and Disability Services (Safety) Act, which provides for a comprehensive regime of audit against the associated Health and Disability Service Standards),
- As well as the jurisdiction of the Health and Disability Commissioner, the disciplinary regime provided for by the Health Practitioners Competence Assurance legislation, and the Coroners court.

Cease work notices – clause 107

NZACA's concerns regarding cease work notices that may be issued by health and safety representatives under the Bill are set out in the written submission.

Essentially, the concern is that once a health and safety rep has issued such a notice, neither the employer nor any employee who is subject to the cease work notice can do anything about it, other than asking the regulator to assist to resolve the issue under cl 109.

Needs to be some mechanism by which an employer can deal with a notice issued, in its view, unreasonably, in bad faith, or without proper grounds. This is particularly a concern in aged care, where continuity of care is essential, and providers have legal obligations to maintain prescribed staffing levels.