

8 May 2014

Secretariat
Transport and Industrial Relations Select Committee
Select Committee Services
Parliament Buildings
Wellington 6160

Submission on the Health and Safety Reform Bill

To the Transport and Industrial Relations Select Committee

Personal details

This submission is from the New Zealand Aged Care Association (NZACA)

I wish to appear before the committee on behalf of NZACA to speak to the submission.

I can be contacted on (04) 499 4173 and email martin@nzaca.org.nz

Yours sincerely

Martin Taylor
Chief Executive
NZ Aged Care Association



SUBMISSION ON

THE HEALTH AND SAFETY REFORM BILL

INTRODUCTION

1. The New Zealand Aged Care Association (NZACA) represents 80% of the aged residential care sector. Currently, our members provide care to 26,000 elderly New Zealanders in 520 rest homes, geriatric hospitals and dementia beds in the country are provided by our members. The services they provide include both long and short-term residential care at rest home, hospital, dementia and psychogeriatric level. Some facilities also provide ACC care and non-weight bearing care.

GENERAL POSITION ON BILL

2. NZACA supports the intent of this Bill because NZACA is generally supportive of measures taken to enhance the protection of health and safety in New Zealand workplaces.
3. However, NZACA has some concerns about :
 - Notification requirements and related definitions.
 - Powers of health and safety representatives to direct that workers cease work.

Notification requirements and related definitions

4. The duty to notify “notifiable events” in clause 51 of the Bill requires immediate notification by the Person Conducting a Business or Undertaking (PCBU) to the regulator of “a notifiable event arising out of the conduct of the business or undertaking”. A failure to notify will constitute an offence with a penalty of a fine of up to \$10,000 for individuals and \$50,000 for other persons.
5. It is essential that PCBUs be in a position to identify quickly and with certainty whether any particular incident or occurrence must be notified.
6. Clause 18 of the Bill provides that, unless the context otherwise requires, a notifiable event means—
 - the death of a person; or
 - a notifiable injury or illness; or

- a notifiable incident.
7. NZACA submits that the words “arising out of the conduct of the business or undertaking” are vague and that cl 51 should be amended to make it clear that only notifiable events that have been caused by workplace hazards (which presumably is the focus of and intent behind the provision) need to be notified.
 8. For example, in the rest home context, if an elderly resident suffers a fall causing an injury within the definition of “notifiable injury or illness”, would that constitute a notifiable event that has arisen “out of the conduct of the business”? If the fall was not due to any workplace hazard, then presumably the fall did not arise out of the conduct of the business, but as a consequence of the resident’s medical condition.
 9. However, the Department of Labour has historically taken a very broad approach to notification of serious harm under the HSE Act, requiring (or purporting to require) the notification of all falls in rest homes. The continuation of that approach would present a problem for rest home providers, when some 5,000 falls in rest homes are reported to ACC each year, and many of these are unrelated to any workplace hazard or indeed any factor other than the physical condition of the person who has fallen.
 10. NZACA considers it should be clearer on the words of the proposed legislation when deaths or injuries or illnesses that would otherwise fall within the definition of “notifiable event” or “notifiable injury or illness” do not need to be notified to the regulator to avoid the application of a similarly and (in NZACA’s view) overly broad approach, which would not fall within the intention and purpose of the proposed Act.
 11. A further example of the potential for confusion as to whether cl 51 would apply is in the hospital context. The performance of an operation by a surgeon is undoubtedly within “the conduct of the... undertaking” in the case of a DHB, and so cl 51 as it is worded would seem to require notification of all deaths during surgery (as death is a notifiable event in terms of cl 18). NZACA doubts that reporting of all such deaths is within the intention of the proposed legislation.
 12. This issue also highlights a potential problem in terms of the omission of the Bill to deal with the relationship between it and other legislation directed towards the protection of public safety. In the health care context, the complaints and discipline jurisdictions of the health registration authorities and the Health and Disability Commissioner have been established to provide a pathway for the reporting and subsequent investigation of medical accidents.
 13. NZACA submits that the notification requirements under cl 51 should be clarified to avoid the unintended duplication of reporting and investigation processes by the superimposition of additional duties on PCBUs under the Bill that overlap with their responsibilities under other legislation including the New Zealand Public Health and Disability Act 2000, the Health Practitioners Competence Assurance Act 2003 and the Health and Disability Commissioner Act 1994.

Powers of health and safety representatives to direct that workers cease work

14. Clause 107 provides that a health and safety representative may direct a worker to cease work if the representative reasonably believes that carrying out the work would expose the worker, or any other person, to a serious risk to the worker's or other person's health or safety, arising from an immediate or imminent exposure to a hazard.
15. Such a direction may be given only where the matter has not been resolved within a reasonable time after consultation with the PCBU (except in cases of a serious or imminent risk which means that it is unreasonable to consult), and after the representative has completed training prescribed by regulations.
16. NZACA is concerned that there is no ability on the part of an employer under the Bill as it is drafted to challenge the direction of a health and safety representative under clause 107, other than the provision in cl 109 that the regulator may assist in resolving the issue related to the cessation of work. Neither is there any provision permitting an employee affected by such a notice to challenge the direction.
17. In the context of an aged residential care facility where continuation and consistency of care are paramount, very serious disruption to the facility's ability to care for its residents could be caused by an unjustified or unreasonable direction under cl 107, particularly if the direction is applied to a number of staff members.
18. Section 28A of the present Act (which permits employees to refuse to perform work likely to cause serious harm) provides that any question about the application of that section to a particular situation is an employment relationship problem for the purposes of the Employment Relations Act 2000. NZACA recommends that the Bill should make similar provision for dealing with any dispute as to the application of cl 107.

END