



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Health and Safety at Work (Volunteer Associations) Amendment Bill

26/06/2018

Health and Safety at Work (Volunteer Associations) Amendment Bill

1. Introduction

- 1.1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Health and Safety at Work (Volunteer Associations) Amendment Bill (the Bill).
- 1.2. The Bill amends the Health and Safety at Work Act 2015 (the Act) to “allow volunteer associations that employ a person or persons for not greater than 100 hours per week to be excluded from the definition of a person conducting a business or undertaking (PCBU).”¹
- 1.3. The Law Society suggests some technical amendments to the new definition of volunteer association (VA), to provide greater clarity.
- 1.4. The Law Society does not seek to be heard.

2. “Volunteer Association” – expanded definition (clause 4)

- 2.1. The Act’s current definition of a PCBU excludes “volunteer associations”, which are defined as:²

“... a group of volunteers (whether incorporated or unincorporated) working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, **employs** any person to carry out work for the volunteer association.” [emphasis added]

- 2.2. The section 17(2) definition of “volunteer association” only refers to the engagement of *employees*, and a VA that engages *contractors* would therefore qualify as a PCBU (with all of the attendant obligations of PCBUs under the Act).
- 2.3. Clause 4 of the Bill amends section 17 to change the definition of a VA to include associations which have people in paid employment [employees and contractors] for no greater than 100 hours per week.³ The new definition of volunteer association “does not include an association for which any person or persons are **employed or engaged** to carry out paid work for the association for greater than 100 hours per week” (new section 17(2)(b), emphasis added).
- 2.4. The new expanded definition is subject to the paid work not exceeding “100 hours per week” (threshold). The threshold incorporates any hours worked by employees and contractors engaged by the VA. If the hours worked in total exceed 100 hours per week across all employees and contractors, the VA will not be excluded from being a PCBU.

Threshold – “greater than 100 hours per week”

- 2.5. The Law Society considers that the threshold of “*greater than 100 hours per week*” should be clarified:

¹ Health and Safety at Work (Volunteer Associations) Amendment Bill, explanatory note at p1.

² See Health and Safety at Work Act 2015, s17(1)(a), (b) and s17(2).

³ Note 1 above.

- i. Despite the reference in clause 4 to “person or persons”, presumably more than one person’s hours of paid work are intended to be included in the calculation of the threshold of 100 hours per week. (The Bill presumably does not envisage that an individual employee or contractor would undertake 100 hours’ work per week.) The threshold should confirm that it refers to the total hours of paid work by contractors and/or employees during a one-week period.
- ii. The method of calculating the threshold is currently confined to weekly, which may be too rigid. For example, a VA which has 101 hours worked in a one-week period will exceed the threshold even if they are consistently under the threshold for the remainder of the year. The Committee may wish to consider whether the threshold is calculated as being over a longer period of time during which there has been paid work performed for greater than 100 hours per week.

Recommendation

- 2.6. The threshold could be expressed more clearly and flexibly by stating that it includes all hours performed by employees and/or contractors, averaged over the course of a longer period, for example 6 or 12 months. This would provide more certainty that the VA is not subject to being either included or excluded from the definition of a PBCU from one week to the next.

Inclusion of contractors

- 2.7. We also note the inclusion of contractors in the definition of a VA could be problematic where, for example, a contractor does not break down their fee on an hourly basis. In practice, a VA would need to keep records of the hours performed by all contractors to ensure they can prove whether the VA remains below the threshold.⁴ The Committee may wish to seek the advice of officials on this point.

Definition of Volunteer – section 16 of the Act

- 2.8. The amendment in clause 4 also interacts with the definition of a volunteer in section 16 of the Act. Section 16 states:

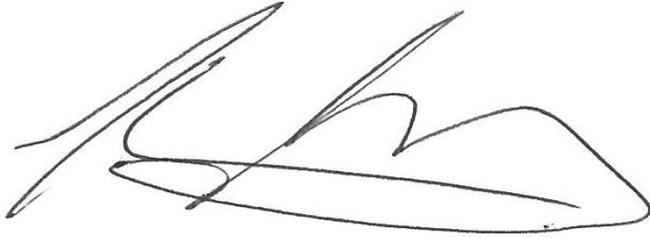
“A volunteer means a person who is acting on a voluntary basis (whether or not the person receives out of pocket expenses).”

- 2.9. It is unclear whether this definition allows a volunteer to receive a token payment such as an honorarium and remain a volunteer for the purposes of the VA definition. The reference to “paid work” in the definition of a VA in clause 4, could be clarified to include or exclude such payments.

⁴ It is likely the hours performed by an employee will be straightforward to record if the VA keeps compliant employment records (including hours worked to show compliance with minimum entitlements as required by sections 4B and 130 of the Employment Relations Act 2000).

Recommendation

2.10. The Bill should clarify if “paid work” in proposed section 17(2)(b) also includes payment of an honorarium.

A handwritten signature in black ink, appearing to be 'K. Beck', written in a cursive style.

Kathryn Beck
President
26 June 2018