
Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill

13/02/2023

Submission on Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill 2022

1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill (**Bill**).
- 1.2 The Explanatory Note of the Bill states the Bill's policy objective as seeking to improve health and safety outcomes in New Zealand workplaces, and enhance worker access to formal worker engagement, participation, and representation mechanisms.
- 1.3 This submission, prepared with input from the Law Society's Employment Law Committee,¹ is concerned with drafting issues and ensuring the workability of the proposed legislation. The submission does not comment on policy matters or express a view on the policy objectives of the Bill.
- 1.4 The Law Society does not wish to be heard.

2 Requirements for giving notice and making requests

- 2.1 Under the current Act, section 62(1) provides that a worker may notify a person conducting a business or undertaking (**PCBU**) that they wish for one or more health and safety representatives (**HSRs**) to be elected. Section 66 of the Act empowers a HSR, or a group of five or more workers, to request that a health and safety committee (**HSC**) be established. However, the existing legislation contains thresholds in respect of these matters, which enable a PCBU to decline an HSR election request or to decline to establish an HSC if the PCBU has less than 20 workers and is not in a high-risk sector or industry. The Bill removes these thresholds.
- 2.2 Neither the existing sections 62 and 66 nor the clauses that replace them specify how notice is to be given of an HSR election request or how requests are to be made for the establishment of an HSC. We suggest that the opportunity should be taken in the Bill to clarify that any notification or request should:
 - (a) be in writing, to give more certainty as to whether notice was in fact given, or whether a request was in fact made; and
 - (b) include the date on which the notice is given, or the request is made, as this is relevant to the timeframes referenced in new sections 62(2) and 66(2).²
- 2.3 We also invite the select committee to consider whether it would be appropriate to prescribe the content of a written notice or request, to help ensure workers include all relevant information.

¹ See the Law Society's website for more information about this Committee:
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/employment-law-committee/>.

² Upon receiving a notification, new section 62(2) requires a PCBU to initiate the election of HSRs within the time prescribed by regulations. New section 66(2) requires a PCBU to establish an HSC as soon as practicable after receiving a request under subsection (1).

- 2.4 Finally, we note that it may be helpful to take the opportunity to align the terminology in the legislation. Both the current and new section 62 refers to “notifications” and the current and new section 66 refer to “requests”. The use of different terms suggests there may be some key differences between the processes and the requirements for giving notice, and for making requests.
- 2.5 However in substance, it appears that no difference is intended – both provisions effectively empower workers to make requests, which must then be actioned by the PCBU within a certain timeframe. We therefore suggest using consistent terminology in new sections 62 and 66 (for example, by replacing the references to “notify” with “request”). These amendments will help clarify that the two provisions do not impose different obligations on workers.

3 Establishment of Health and Safety Committees

- 3.1 New section 66, in clause 5 of the Bill, provides that the following persons may request the establishment of an HSC:
- (a) An HSR for a work group of workers carrying out work at that workplace; or
 - (b) five or more workers at that workplace.
- 3.2 This means in a workplace of less than five employees (or a workplace with just over five employees, where not all employees want to put their name to a request), workers can only establish an HSC by:
- (a) notifying the PCBU that they wish to elect an HSR; and
 - (b) have the winner of the election request the establishment of an HSC.
- 3.3 This appears to be an unnecessarily cumbersome process, where the outcome in any event is that the PCBU is required to establish a committee. By requiring an HSR before this can occur, this process may also impose additional costs on small PCBUs. Where a workplace has fewer than 20 workers, it may be more appropriate to allow a single worker to request the establishment of an HSC, without the additional requirement for that worker to be an HSR. The form and membership of the committee could then be determined, for example, by worker interest and what is practical for each workplace.
- 3.4 We therefore recommend:
- (a) Amending subsection 66(1) so the requirements in that subsection only apply to PCBUs with 20 or more workers; and
 - (b) Inserting a new subsection (1A) which provides that, for a PCBU whose work is carried out by fewer than 20 workers, any worker may request the establishment of an HSC.
- 3.5 In making these recommendations, the Law Society does not seek to express a view on the policy objective of the Bill. Our recommendations simply seek to ensure this provision is practical and workable.
- 3.6 We also note that the requirement to elect HSRs will impose additional costs on PCBUs (for example, in complying with the consequent requirement to provide health and safety

training for representatives, and allowing representatives paid time off work to attend the training).³ These costs may constitute a significant additional expense for a small PCBU. We therefore invite the select committee to seek advice from officials and consider if there may also be other lower-cost means of enhancing worker participation in smaller PCBUs (in addition to our recommendation at paragraph 3.4 above).

- 3.7 The current drafting of new section 66 in clause 5 of the Bill requires the PCBU to establish the HSC “as soon as practicable”. Given that the Bill proposes to incorporate the existing offence provisions in the current legislation, it is submitted that the time period within which a PCBU is required to act should be specified so as to clarify the obligations on PCBUs and increase the enforceability of the offence provision where the obligation is breached.



Taryn Gudmanz
Vice-President

³ Sections 70 and 85 of the Health and Safety at Work Act require HSRs to complete certain training prescribed by regulations. Clause 12 of Schedule 2 of that Act states that PCBUs must allow HSRs to take paid leave to attend health and safety training.