

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

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

Introduction

The bill would amend the Health and Safety at Work Act 2015. It seeks to reduce work-related harm by improving workers' access to health and safety representatives and committees.

Currently, a person conducting a business or undertaking (PCBU) can decline a request from its workers to initiate an election for a health and safety representative if it is not in a designated high-risk sector or industry and has fewer than 20 workers. These PCBUs can also choose not to decide on a request to establish a health and safety committee. All PCBUs can decline a request for a health and safety committee if satisfied that existing practices sufficiently meet requirements.

The bill would require all PCBUs to initiate elections and establish committees, if requested by workers. The bill would also introduce a timeframe for PCBUs to establish a health and safety committee "as soon as practicable" after receiving a request.

The bill would remove provisions in the Act that enable regulations to prescribe what is considered to be a high-risk sector or industry. These provisions, and the distinction between high-risk and low-risk, would no longer be necessary because the bill would treat all businesses the same.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative design. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers one drafting amendment we recommend to the bill as introduced.

Aligning the bill's wording about triggering an election or establishing a committee

Clauses 4 and 5 of the bill would replace sections 62 and 66 of the Act respectively. We suggest some clarification of the wording.

Proposed section 62(1) says that a worker “may notify” the PCBU that they wish 1 or more health and safety representatives to be elected. Proposed section 62(2) goes on to say that if a PCBU “receives a notification” it must initiate an election. In contrast, proposed section 66(1) says that a health and safety representative or five or more workers “may request” that the PCBU establish a health and safety committee. Proposed section 66(2) says that the PCBU must establish a committee “as soon as practicable after receiving a request”.

Using the terms “notify” and “notification” in section 62, but the term “request” in section 66, may cause confusion about whether the different sections require different actions by workers. “Notify” may also imply a formal process, which is not the intent. We recommend amending proposed section 62 to use “request” instead of “notify” and “notification”. We think this would be clearer and more consistent with section 66.

We wish to point out that the use of the word “request” in sections 62(1) and 66(1) should not be understood to imply that the PCBU can decline. Indeed, sections 62(2) and 66(2) make clear that the PCBU must take certain actions after receiving a request from its workers.

National Party differing view

The National Party opposes this bill.

The previous National Government set the threshold for forming health and safety committees, or electing a health and safety representative, at 20 employees. This was on the basis that for many small businesses, including those that are designated as low risk, training health and safety representatives is forcing unnecessary additional costs and compliance. Most small businesses have the ability to deal with health and safety matters informally and effectively.

It is estimated by the Ministry of Business, Innovation and Employment that it will cost an employer who is employing an individual on the average wage approximately \$1,355.75 to provide two days of training. This does not take into consideration the

loss of productivity of the small business, nor the fact that staff turnover in sectors where that is expected (such as a small café or retail outlet that relies on casual or seasonal employees) would more than likely create a continual and ongoing expense.

This legislation follows a series of actions by the Government adding further cost pressures and burdens on small businesses. It follows rapid increases in the minimum wage, an extra week of sick leave, an extra public holiday, and the misnamed Fair Pay Agreements. All of these have been introduced at a time when employers are grappling with rampant inflation and chronic worker shortages.

Small businesses can only absorb so many additional costs in a short period of time before it becomes unsustainable. For the 105,000 businesses in New Zealand who fall under the threshold, this piece of legislation just adds more pressure and more cost.

Focus would better be placed on ensuring that WorkSafe operates as an effective regulator of the existing laws and regulations.

Appendix

Committee process

The Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill was referred to us on 22 November 2022. We called for submissions on the bill with a closing date of 10 February 2023.

We received and considered written submissions from 21 interested groups and individuals. We heard oral evidence from 7 submitters at hearings in Wellington and via Zoom videoconference. We invited the Minister for Workplace Relations and Safety to make the first oral submission on the bill. He did so on 22 February 2023.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Camilla Belich (Chairperson)

Marja Lubeck (member and Chairperson until 8 February 2023)

Chris Baillie

Jan Logie

Jo Luxton (until 14 February 2023)

Ibrahim Omer

Angela Roberts

Dan Rosewarne (from 8 February to 3 May 2023)

Penny Simmonds

Erica Stanford

Hon Paul Goldsmith also participated in our consideration of this bill.

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Michael Wood

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

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Act **2022**.

2 Commencement

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This Act comes into force on the day after the day on which it receives the Royal Assent.

Part 1

Amendments to Health and Safety at Work Act 2015

3 Principal Act

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This Part amends the Health and Safety at Work Act 2015.

4 Section 62 replaced (Election of health and safety representatives)

Replace section 62 with:

62 Election of health and safety representatives

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|---|---|
| <p>(1) A worker who carries out work for a business or undertaking may notify the PCBU that the worker wishes request the PCBU to initiate the election of 1 or more health and safety representatives to be elected to represent workers who carry out work for that business or undertaking.</p> <p>(2) If a PCBU receives a notification request under subsection (1), the PCBU must, within the time prescribed by regulations, initiate the election of 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking.</p> <p>(3) The PCBU's obligation to initiate an election in response to a worker's request applies only in relation to an election for the work group to which the worker belongs.</p> <p>(4) A PCBU may, on the PCBU's own initiative, initiate the election of 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking.</p> <p>(5) A person who contravenes subsection (2) commits an offence and is liable on conviction,—</p> <p style="padding-left: 20px;">(a) for an individual, to a fine not exceeding \$5,000;</p> <p style="padding-left: 20px;">(b) for any other person, to a fine not exceeding \$25,000.</p> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
|---|---|

5 Section 66 replaced (Health and safety committees)

Replace section 66 with:

66 Health and safety committees

- (1) The following persons may request ~~that~~ the PCBU at a workplace to establish a health and safety committee for the business or undertaking or part of the business or undertaking:
 - (a) a health and safety representative for a work group of workers carrying out work at that workplace; or
 - (b) 5 or more workers at that workplace.
- (2) The PCBU must, as soon as practicable after receiving a request under **subsection (1)**, establish a health and safety committee for the business or undertaking or part of the business or undertaking.
- (3) A PCBU at a workplace may establish a health and safety committee for the workplace or part of the workplace on the PCBU's own initiative.
- (4) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$5,000;
 - (b) for any other person, to a fine not exceeding \$25,000.

6 Section 214 amended (Regulations relating to worker engagement, participation, and representation)

Repeal section 214(1)(b)(v).

Part 2

Consequential amendments to Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

7 Principal regulations

This Part amends the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

8 Regulation 3 amended (Interpretation)

In regulation 3(1), revoke the definition of **ANZSIC classification code**.

9 Subpart 1 of Part 2 revoked

Revoke subpart 1 of Part 2.

10 Regulation 13 amended (Elections)

In regulation 13(2)(b), replace “held” with “conducted”.

11 Regulation 16 amended (Duty in relation to election)

In regulation 16(2), replace “section 62(2) or (3)” with “section 62(2) or (4)”.

12 Regulation 27 revoked (Duty to give notice of decision on health and safety committee)

Revoke regulation 27.

13 Schedules 2 and 3 revoked

Revoke Schedules 2 and 3.

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Legislative history

22 November 2022

Introduction (Bill 194–1), first reading and referral to Education and Workforce Committee