



Health and Safety at Work (Volunteer Associations) Amendment Bill

30—1

Report of the Education and Workforce
Committee

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Deputy Chairperson

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Recommendation

The Education and Workforce Committee has examined the Health and Safety at Work (Volunteer Associations) Amendment Bill and recommends that it not be passed.

About the bill as introduced

The Health and Safety at Work (Volunteer Associations) Amendment Bill is a Member's bill in the name of Harete Hipango MP.

The bill seeks to amend the Health and Safety at Work Act 2015 to allow volunteer associations to employ people to work for a limited amount of time (up to 100 hours) each week, without incurring the duties of a “person conducting a business or undertaking” (PCBU).

Current application of the Act

Volunteer associations are currently excluded from duties under the Health and Safety at Work Act. A volunteer association is defined as “a group of volunteers (whether incorporated or unincorporated) working together for one 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”. Under this definition no volunteer association can have any paid employees.

If an organisation employs one or more staff it is considered a PCBU, and must comply with the Act. A PCBU is defined in the principal Act. It has duties towards workers as it is considered to be in the best position to manage the risks associated with the work.

The PCBU must ensure, so far as is reasonably practicable, the health and safety of its workers and others affected by the work. This includes:

- paid employees and other workers
- “volunteer workers” that, with the knowledge and consent of the PCBU, do regular and ongoing work that is integral to the PCBU as if they were paid workers
- other people, including other volunteers, that are affected by the work.

Themes raised by submitters

The bill proposes that volunteer organisations should be excluded from duties under the Health and Safety at Work Act if their paid employees work for less than 100 hours a week. Arguments for and against the bill were well represented in submissions. We received 34 written submissions on this bill, of which eight were in favour, four neutral, and 22 opposed.

Burden of compliance

Small voluntary organisations and sports clubs sought an exclusion from the Act. They said that they find it hard to attract volunteers, employ people to support the work of their volunteers, and reward volunteers because of the obligations they incur under the Act as a PCBU.

Some submitters supported the bill, saying it would remove obligations that are inconsistent with the aims and functions of sports and recreational clubs and societies, which are run mainly by volunteers. They said it would also allow voluntary organisations to employ paid workers to help run their organisations and reward workers without being considered a PCBU.

Several larger voluntary organisations stated that their efforts to comply with the Act are justified and that there are benefits to complying. Volunteering New Zealand submitted that compliance costs and effort are less of a concern for volunteer associations since the Act came into force. Several submitters suggested that more targeted training would help volunteer associations, and show that compliance with the Act is not onerous or a significant barrier to recruitment and retention of staff.

Implications for paid and voluntary workers

Larger volunteer organisations, employee organisations, and umbrella groups for voluntary workers supported the current regime, saying it is working well to improve health and safety of volunteer workers. Several submitters raised the concern that an exclusion from the Act would unfairly remove the rights of vulnerable paid and volunteer workers, and that it could remove incentives for the sector to continue improving health and safety.

Non-regulatory solutions

Some submitters suggested that more targeted training would help alleviate the concerns of volunteer associations, and show that compliance with the Act is not onerous or a significant barrier to recruitment and retention of staff.

Several larger non-profit organisations and umbrella groups said that there is a perception problem for some smaller voluntary organisations which find it difficult to gain information about what they need to do to comply. They suggested that guidance and support for smaller voluntary organisations would help them understand their obligations and what is reasonably practicable for them to do to manage risks.

Eligible entities

The potential application of the exclusion to the education sector is a concern for advisers as well as submitters. Educational facilities that employ workers for 100 hours or less could be covered by the proposed exception and therefore exempt from the duties of a PCBU. This could include sole-charge schools, Te Kōhanga Reo, playcentres, and other types of organised educational groups that were always intended to be covered by the legislation.

Advisers consider that the bill as introduced presents a risk that it could extend the exclusion considerably wider than intended.

Interpretation of community purpose

The bill would change the legal test for a volunteer association from whether they employ a worker to whether they are for a “community purpose”. Under the bill, any volunteer association that employed or engaged workers for 100 hours or less would fall within the exception for volunteer organisations (and therefore be exempt from the duties of a PCBU).

The term “community purposes” is not defined in the Act or related legislation. Advisers and submitters said that this could create uncertainty in the law and confusion as to how it should be interpreted. They also said that some organisations could find it difficult to assess whether they fall within the new exception because the term is not defined.

Party views

Government Parties

A significant number of submitters against the bill referred to it having adverse impacts for paid workers, volunteers, and others beyond what was intended.

Given the lack of clear evidence, it is doubtful the bill would achieve its stated purpose for any smaller voluntary organisations that are currently finding it difficult to comply with the law. It would, however, be likely to have adverse impacts on the status quo.

The HSW Act is complex and imperfect in its treatment of volunteers, and this Member's bill will create further uncertainty and complexity in the law. It is the view of Labour and the Green Party of Aotearoa New Zealand that all workers, in all organisations, have a right to safe and healthy workplaces. We understand that the Minister of Workplace Relations and Safety is thinking about a wider review of the HSW Act and we would encourage him to include these issues.

New Zealand First accept the principle of the bill and have only withdrawn support at this stage due to assurances from the Minister that these concerns will be addressed in a wider body of work.

National Party

The National Party members of the Education and Workforce Committee support the Health and Safety at Work (Volunteer Associations) Amendment Bill proceeding.

The purpose of the bill is to allow a volunteer association that employs (or engages) a person or persons for not greater than 100 hours a week to be excluded from the definition of a PCBU (person conducting a business or undertaking) under the Health and Safety at Work Act 2015 (the HSW Act).

The rationale is to aid, assist, and alleviate those purely volunteer associations (ie serviced by volunteers/unpaid workers) which struggle to source, recruit, and retain volunteers, in addition to operating on limited resources (personnel and fiscal/financial capacity) to service the needs of their community purpose association/organisation but which would otherwise remain exempt from the HSW Act if not for the fact that necessity requires having to employ (or engage), that is, pay for services for not greater than 100 hours per week (the equivalent of a 2.5 FTE either cumulatively or over a defined period) to service the community purpose need/s of the volunteer association.

The bill seeks an exemption from the HSW Act and its somewhat onerous regulations, burdens, penalties/tariffs, and liabilities for those smaller volunteer associations (which do not share the same people and funds resources of big volunteer associations) and which would otherwise be purely voluntary but for the fact of having to employ or engage a paid person/worker to undertake the tasks performed by a volunteer if available.

Of note also, is that the exemption of volunteer association from the definition of a PCBU under the HSW Act does not purport to, nor diminish or compromise the legal rights and protections of health and safety and legal remedies which remain available under civil law.

New Zealand First (NZF) supported the bill at the first reading. However, at committee stage NZF withdrew its support with the view that, whilst acknowledging and supporting the intent and spirit of the bill in seeking to alleviate cost, regulatory compliance, and burdens upon smaller and certain sector volunteer associations thus impeding capacity, NZF does not support the limited scope of the bill whilst considering there to be a wider scope of work and interests to encompass with further amendments proposed to the Health and Safety at Work Act 2015.

Whilst disappointing that NZF has withdrawn its support, deferring to the Minister for Workplace Relations' indication of a post implementation review of the Act in 2020, it is disconcerting that such delay, both avoidable and unnecessary, continues to disadvantage and constrain smaller volunteer associations especially in the sport and recreation sectors. Submissions from these sectors were heard in support of this bill whilst submissions opposing were predominantly from larger well-resourced (people and financial) volunteer or other professional (and unionised) sector bodies.

The National Party and its select committee members recognise the significant and valued contribution and community-purpose service given by the voluntary sector and particularly those small volunteer associations which struggle to provide their particular community purpose due to limited resources of volunteer time and funds. We consider that the proposed bill would seek to alleviate and address such demands and constraints without limiting the necessary legal protections and entitlements to ensure and maintain responsible duty of care to the health and safety of New Zealanders.

Appendix

Committee procedure

The Health and Safety at Work (Volunteer Associations) Amendment Bill was referred to the committee on 2 May 2018. The closing date for submissions was 29 June 2018. We received and considered 34 submissions from interested groups and individuals. We heard oral evidence from 12 submitters.

We received advice from the Ministry of Business, Innovation and Employment.

Committee members

Parmjeet Parmar (Chairperson)
Simeon Brown
Clare Curran
Nikki Kaye
Denise Lee
Marja Lubeck
Jo Luxton
Mark Patterson
Chlöe Swarbrick
Jan Tinetti
Nicola Willis

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.