

29 July 2014

Employment Standards Policy Team
Discussion document submissions
Ministry of Business, Innovation and Employment
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Developing Regulations to Support the New Health and Safety at Work Act

The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the *Developing Regulations to Support the New Health and Safety at Work Act Discussion Document* (discussion document). The discussion document outlines policy proposals about the development of regulations to support the new Health and Safety at Work Act (the proposed new Act).

This submission addresses questions 40 and 50 in Chapter 3 of the discussion document. Chapter 3 seeks feedback on policy proposals for regulations to support worker participation, engagement and representation under the proposed new Act.

Negotiating work groups for multiple businesses

Question 40: Do you have any comments on the proposed process for determining workgroups where there are multiple PCBUs?

The discussion document proposes that the regulations will set out criteria for a PCBU (person conducting a business or undertaking) to negotiate with workers and any worker representatives to determine one or more work groups. A work group may include workers who work for different businesses and undertakings at one workplace. Where there are a number of PCBUs at the same workplace, the PCBUs and workers will have to decide on the matters prescribed under the Act as well as the businesses or undertakings that the work groups will apply to.¹

¹ Discussion document, at page 67.

The proposal that a work group may include workers who are employed and/or engaged by different PCBUs at one workplace is to enable health and safety issues that affect all of the workers to be raised in one forum, and channelled through to the appropriate PCBU to be addressed. However, the presence of representatives from different PCBUs in one work group may lead to disputes or conflicts of interest between the affected PCBUs, and unnecessary complexity for the work groups at the workplace. It would be desirable for the regulations to provide for a process by which any disputes or conflicts in the work group can be resolved.

Recommendation

The Law Society recommends that consideration be given to including in the regulations mechanisms to address potential conflicts that may arise where a work group includes workers employed and/or engaged by different PCBUs at the same workplace.

Removal of a Health and Safety Representative

Question 50: Do you have any comments on the proposed reasons for someone to cease being a health and safety representative or the process for workers to remove a health and safety representative from office?

The discussion document proposes that a health and safety representative may be removed from office either:

- (a) by the regulator, where that person considers the health and safety representative has not performed his or her functions or exercised his or her power satisfactorily; or
- (b) by the workers, following the process in the Australian Model Regulations.²

The Law Society supports the proposal that the work group ought to have the right to remove a health and safety representative in appropriate circumstances,³ although we note that the Health and Safety Reform Bill in its current form does not yet provide for this.

The Law Society also notes that the Bill in its current form and the discussion document's proposed regulations do not allow a PCBU the right to remove a health and safety representative, even where that representative's conduct is directly impacting the PCBU's business and/or workers. The Law Society reiterates its submission that a PCBU ought to have the right to remove a health and safety representative where the representative's conduct is directly affecting the PCBU's business and/or workers.⁴ A PCBU's lack of power in this regard may be further compounded by the PCBU's fear of falling foul of the provisions of sub-part 6 of part 3 of the Act, in terms of adverse, coercive or misleading conduct.

² Discussion document, p74.

³ See NZLS submission 9.5.14 on the Health and Safety Reform Bill, at [18] – [22] and in particular at [19].
http://www.lawsociety.org.nz/__data/assets/pdf_file/0009/78543/Health-and-Safety-Reform-Bill-9-5-14.pdf

⁴ Ibid, at [20] and [22(b)].

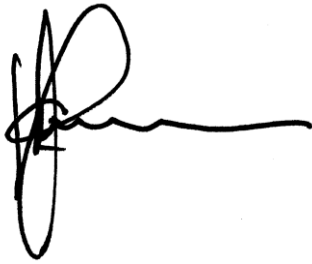
Recommendation

The Law Society:

- (a) supports the proposal that a health and safety representative may be removed from office by work groups in appropriate circumstances, following the process in the Australian Model Regulations; and
- (b) recommends that consideration be given to including a specific power for a PCBU to remove a health and safety representative from office where the representative's conduct is directly affecting the PCBU's business and/or workers.

These comments were prepared by the Law Society's Employment Law Committee and we hope you find them helpful. If you wish to discuss the submission, the committee convenor, Michael Quigg, can be contacted through the committee secretary, Jo Holland (ph (04 463 2967/ jo.holland@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal flourish extending to the right.

Chris Moore
President