

Legislative Statement for the second reading of the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill

This legislative statement supports the second reading of the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill.

Overview

The objective of this Bill is to contribute to improved health and safety outcomes in New Zealand workplaces and reduced work-related harm. The Bill does so by improving workers' access to the health and safety participation mechanisms that best suit their context and preferences. This follows international evidence that shows that improved worker engagement, participation and representation is associated with lower rates of work-related harm.

To achieve this objective, the Bill removes the limits within the Health and Safety at Work Act 2015 (the Act) which currently allow:

- a Person Conducting a Business or Undertaking (PCBU), with fewer than 20 workers and which is not within a prescribed high-risk sector, to decline a health and safety representative (HSR) election request from their workers, and to not decide on a request to establish a health and safety committee (HSC), and
- any PCBU to refuse a request to establish an HSC where the PCBU is satisfied existing practices sufficiently meet the requirements.

Improving worker access to health and safety representatives (HSRs)

An HSR is a worker who has been elected to represent their fellow workers in health and safety matters. An HSR has powers including requesting information from the business and inspecting a workplace. Trained HSRs may issue a Provisional Improvement Notice to address a health or safety problem, and they may direct a worker to cease unsafe work.

The Bill amends the Act to provide that all PCBUs must initiate an HSR election if one or more of their workers request an HSR election. HSRs will not be mandatory; a PCBU will only have to take steps to set up an HSR election if requested by a worker, or the PCBU may do this of their own initiative.

Improving worker access to health and safety committees (HSCs)

An HSC brings together worker representatives and management to work co-operatively to improve work health and safety.

The Bill amends the Act to provide that all PCBUs must establish a health and safety committee (HSC) if requested by an HSR or by five or more workers.

HSCs will not be mandatory. A PCBU will only have to take steps to set up an HSC if requested to, or the PCBU may do this of their own initiative.

Providing a timeframe for a PCBU to establish an HSC

The Bill provides that a PCBU must, “as soon as practicable” after receiving a request, establish an HSC. This addresses a gap in the Act which did not specify a timeframe for establishing an HSC. The use of “as soon as practicable” is consistent with how the Act refers to timeframes for other requirements and reflects the Act’s focus on flexibility according to the circumstances of the workers and the workplace.

Removing provisions for designating high-risk sectors and industries

The limits on access to HSRs and HSCs require high-risk sectors or industries to be designated. Removing these limits means the following provisions are no longer necessary. The Bill revokes:

- the regulation-making power that enables regulations to be made designating high-risk sectors or industries, and
- provisions within the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 that define those designations.

Drafting change proposed by the Committee

The Bill was introduced on 22 November 2022 and was referred to the Education and Workforce Committee (the Committee). The Committee received and considered 21 written submissions and heard oral evidence from seven submitters on the Bill.

The Committee unanimously recommended one drafting amendment to the Bill as introduced. This amendment was recommended to clarify and align the language used in section 62 to trigger an HSR election with that used in section 66 to trigger establishment of an HSC.

In the Bill as introduced section 62(1) says that a worker “may notify” the PCBU that they wish one or more health and safety representatives to be elected. The Committee recommended that this be changed to a worker “may request the PCBU to initiate the election of one or more health and safety representatives”.

The change to “request” matches the language in section 66(1), where a health and safety representative, or five or more workers, “may request” that the PCBU establish a health and safety committee.

The different wording in sections 62 and 66 could have been taken to imply a difference in the processes and requirements, whereas they are the same; in both cases the workers or HSRs make a request which then triggers an obligation on the PCBU; either initiating an election, or establishing a committee.

The change in section 62(1) also makes it clear that the PCBU’s obligation is to initiate an election, not to deliver an outcome as implied in the original drafting.

These changes are consistent with modern plain English drafting.