

Submission to EDUCATION AND WORKFORCE SELECT COMMITTEE on the:

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

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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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1. Summary of Recommendations

The CTU supports the content and the intent of the Bill to improve health and safety outcomes in New Zealand workplaces.

Improving worker participation, engagement, and representation has a documented improvement on health and safety outcomes. Better WEPR leads to safer workplaces.

Workers in any sized business need to be able to have a real say in their workplace's health and safety management and practices. It is critical that workers are given opportunity to have a real say in the creation and operation of the systems of working safely at work, regardless of the size of the organisation that they work in.

This Bill remedies a fundamental omission of exempting well established worker representation practices in small businesses, these changes will bring small business into line with established good practice.

2. Introduction

- 2.1. The NZCTU welcomes the opportunity to submit on this Bill to improve health and safety outcomes in small businesses. The health and safety of workers in Aotearoa is fundamental to the trade union movement and ensuring effective protection for workers is a core part of union work. Unions play an important role in harm prevention in the workplace, and higher rates of unionisation directly relate to improved safety in the workplace (known as the union effect).
- 2.2. The NZCTU takes on the collective voice of working people at a national and international level on matters of health and safety whether union members or not. This is recognised nationally and through International Labour Organisation Convention 155 on Occupational Health and Safety which mandates consultation between unions (through the CTU), employers (through Business New Zealand) and the Government in the design and implementation of health and safety law.

- 2.3. At its core this Bill seeks to bring stronger Worker Engagement, Participation and Representation ('WEPR') back into small businesses primarily through health and safety representatives (HSRs) and health and safety committees (HSCs).
- 2.4. WEPR is a fundamental pillar on which the New Zealand health and safety system is built on. Based on the Robens' model, the system is predicated on having a strong regulator, capable employers, and informed empowered workers. The literature is clear, systems where workers have a real say in their health and safety are considerably safer. To make good decisions about health and safety PCBU's must draw on the knowledge and experience of the people who do the job.
- 2.5. There is a moral argument for good WEPR too - workers bear the brunt of the outcomes of poor health and safety so therefore should have input into the systems that are meant to keep them safe.
- 2.6. All businesses should be able to deliver good health and safety outcomes efficiently and effectively regardless of their size or health and safety risk profile. All workers, regardless of the size of the organisation they work at should be provided with reasonable opportunity to be actively involved in the ongoing management of health and safety in the workplace.
- 2.7. Overall, this Bill brings small business WEPR into line with established good WEPR practice.

3. Barriers to participation for workers in small business.

- 3.1. Fundamentally, workers who feel safer in their employment are more empowered to stand up and speak out about health and safety in their workplace, both in relation to positive and negative practices.
- 3.2. There are a number of underlying reasons why workers in small businesses do not feel safe speaking out about health and safety

- 3.2.1. Workers in small and medium enterprises are more exposed to the inherent power imbalances in the workplace due to their proximity to management and the nature of their employment.
 - 3.2.2. Small business workers are also less likely to be represented by a union and are therefore missing out on the improved safety that unionised workplaces are documented to bring.
 - 3.2.3. Other employment factors in small businesses such as casual work or flexible hours can also mean that workers are reticent to speak up on matters of health for fear of repercussions to their livelihoods.
 - 3.2.4. Insecurity in work is one of the predominant barriers to effective worker engagement. In this kind of employment, workers cannot risk their job security by raising matters of health and safety.
- 3.3. By extending the provision of the formal structures of HSRs and HSCs in the legislation to all workers, this will provide more security for workers in small businesses to be empowered to engage on workplace health and safety.
- 3.4. Small businesses are also less likely to have established health and safety resource in their business operations which is another barrier to participation for workers. In many cases the businesses health and safety is non-existent. The changes in this Bill will have flow on effects for improving health and safety capacity in small business by bringing in trained representatives, enabling workers to engage proactively. This in turn will help promote good practice in small business and bring worker expertise into small business health and safety practices.

4. Removal of limits on worker access to HSRs and HSCs

- 4.1. We note that the NZCTU strongly opposed the ability for non-high risk small businesses to refuse requests for HSRs when the WEPR regulations were being consulted on.
- 4.2. Even at that time, the literature had long since established that good WEPR (directly including HSRs and HSCs) was best practice. In our opinion

the deviation away from established best practice for small businesses at the time was short-sighted and reckless given New Zealand's' health and safety track record, indeed small businesses in this country often correlates with the highest risk sectors such as forestry, construction, agriculture etc.

4.2.1. The Independent Taskforce, directly preceding the Health and Safety at Work Act 2015, identified lack of worker participation as a crucial weak link New Zealand's health and safety system. The Taskforce found that the failure to get the balance between workers and employers right and a lack of tripartism was the root cause of the systemic problems.

4.2.2. The oft-cited Johnstone and Tooma (2012) aptly summarises the importance of HSRs as a mechanism for effective worker engagement:

"The available empirical research suggests that direct participation by means of individual non-unionised employees engaging with managers appears to have little effect on work health and safety. There are very few studies on the use by individual workers of an individual right to refuse to perform dangerous work, and what research there is suggests that this right is little used in small firms, where workers inhabit 'structures of vulnerability'.

*There is much stronger evidence on the positive effects of collective worker participation on work health and safety. This evidence comes from a number of countries, including from countries where there is no statutory basis for worker participation. The research shows that participatory mechanisms that enable higher levels of worker involvement are better than those that provide for more limited involvement. Many of the studies prove that there is a relationship between objective indicators of work health and safety performance (such as injury rates or exposure to hazards) in workplaces that have implemented structures for worker participation, **such as the presence of trade unions, joint health and safety committees, or***

union or worker health and safety representatives. *International research supports the argument that joint arrangements involving employer representatives and workers, and trade union representation at the workplace, are associated with better work health and safety outcomes than where representative worker participation is absent."*

- 4.3. We are therefore please to see that this error is now to be mended, and workers in small businesses to have their rights aligned with other workers.
- 4.4. We of course note the need for further work that will need to be done to ensure that workers in small businesses are made aware of their health and safety rights. And the need for proper worker-focused training for workers in small business.

5. Providing a timeframe for the PCBU to establish an HSC

- 5.1. Providing a timeframe for PCBU action is a necessary change. Inaction on relatively simple WEPR requests under the legislation and regulations is a common frustration of workers, and their representing unions.
- 5.2. Although noting the change in this Bill aligns with the rest of the legislation, further guidance, or a stronger regulator hand in determining a reasonable timeframe will help workers.

6. Designating high-risk sectors and industries is no longer necessary

- 6.1. This change reflects a simple and necessary change to the legislation aligning with the broader changes in the Bill.
- 6.2. From the outset the definition of high risk was fundamentally flawed so it is positive to see this change incorporated.

7. Costs to small business

- 7.1. It is foreseeable that the main criticism of this Bill will be the introduction of additional cost to small businesses. Notwithstanding that worker health and safety should not be seen through a lens of impact on profit,

improved and streamlined workplace practices, and better health and safety will lead to less accidents, near misses and/ or lost time injuries (which have a disproportionately larger impact on small business).

- 7.2. Although this change may be seen as adding costs to business in the short term, evidence would indicate that in the long run this would benefit the balance sheets of small business. We see that this change is likely to save businesses money in the long term as any upfront costs associated with the 2 days training allowance for elected HSRs are outweighed by the savings in the form of reduction of costs through avoiding harm and near misses and more productive practices from worker input.
- 7.3. Improved worker engagement in the form of trained reps (and/ or committees) will expedite business processes, improve business resilience and expertise. And while the HSR role is not expected to be that of the organisation's specialist who carries out or performs tasks on behalf of management, their engagement on matters of health and safety nonetheless helps upskill small businesses capacity.
- 7.4. Businesses with high health and safety maturity already realise that good health and safety (including proper WEPR) is a value adding investment rather than a cost.

8. Other submissions

- 8.1. We support the additional recommendations in the submission of the Public Service Association which includes:
 - A statutory register of health and safety representatives is created and administered by WorkSafe
 - It should be mandatory for initial health and safety representative training to include New Zealand Qualifications Authority unit standard 29315 as a core part of teaching in paid time
 - Union representatives should have rights to make recommendations and issue provisional improvement notices

- The Government should provide legislative and other support for so-called “roving health and safety representatives.”