

**House of Representatives**

**Supplementary Order Paper**

**Wednesday, 19 August 2015**

**Health and Safety Reform Bill**

*Proposed amendments*

Clayton Mitchell, in Committee, to move the following amendments:

*Clause 28*

After *clause 28(2)* (page 39, after line 10), insert:

- (2A) Despite **subsection (1)**, a PCBU may impose a levy or charge on a worker (or permit a levy or charge to be imposed on a worker) if any personal protective equipment is persistently lost or damaged by the employee.

*Clause 29AA*

Delete *clause 29AA* (page 39, line 26 to page 40, line 9).

*Clause 43*

After *clause 43(2)* (page 52, after line 16), insert:

- (3) A person does not commit an offence against **subsection (1)** if the person is a self-employed individual who is both a PCBU and a worker in a small- or medium-sized enterprise in the event of an accidental death of their spouse, de facto partner, or civil union partner who is also a PCBU and a worker in the same small- or medium-sized enterprise.

*New cross-heading and clause 65AA*

After the *Subpart 2 heading* (page 63, after line 23), insert:

*Training costs of health and safety representatives***65AA Training costs of health and safety representatives**

- (1) Training costs for health and safety representatives in small- or medium-sized enterprises are to be funded by the Government.
- (2) The training costs referred to in **subsection (1)** include course costs, travel, and time off work to attend training.

*Clause 65*

Replace *clause 65(3)(a)* (page 64, line 7) with:

- (a) is carried out by fewer than 10 workers; and

*Clause 66*

After *clause 66(5)* (page 65, after line 11), insert:

- (6) If a dispute occurs when determining 1 or more work groups, then WorkSafe, as an independent arbitrator, will determine the work groups within a workplace.

*Clause 227*

Replace *clause 227(1)(d)* (page 146, lines 20 and 21) with:

- (d) apply differently to people of a differing age, but only in respect of machinery or equipment, and may only apply to people of a particular age:
- (da) apply differently to people of a differing health status or physical capability, and may apply only to people of a particular health status or physical capability:

After *clause 227(2)* (page 146, after line 29), insert:

- (3) Regulations made under this Act may not hold people liable for any consequences arising from well-intentioned voluntary acts.

**Explanatory note**

This Supplementary Order Paper amends *clause 28* to insert *new subsection (2A)* to allow a PCBU to impose a levy or charge on a worker (or permit a levy or charge to be imposed on a worker) if any personal protective equipment is persistently lost or damaged by the employee and needs to be replaced.

It also deletes *clause 29AA*. Insurance against fines should be lawful. An insurance policy or contract of insurance may indemnify or purport to indemnify a person for the person's liability to pay a fine or infringement fee under this Act.

It also amends *clause 43* to insert *new subclause (3)* to exclude a self-employed individual who is both a PCBU and a worker in a small- or medium-sized enterprise from legal culpability in the event of an accidental death of their spouse, de facto partner,

or civil union partner who is also a PCBU and a worker in the same small- or medium-sized enterprise.

It also inserts *new clause 65AA* to ensure that the financial burden on small- or medium-sized businesses required to conform to the new health and safety requirements will be lessened by Government support to meet the training costs for health and safety representatives. Costs would include course costs, travel, and time off work to attend health and safety representative training.

It also amends *clause 65(3)* to replace *paragraph (a)* with a new provision exempting PCBUs with fewer than 10 staff from the requirement to initiate the election of 1 or more health and safety representatives, rather than fewer than 20 staff as originally stated in the Bill. The health and safety risks of businesses of varying sizes warrant workers in them the right under law to notify a PCBU of their requirement for a health and safety representative, and this will extend the obligations of a PCBU to a wider group.

It also amends *clause 66* to insert *new subclause (6)* to ensure that if a dispute occurs when determining a work group then an independent arbitrator (WorkSafe) will determine the work group within a workplace.

It also amends *clause 227(1)* to replace *paragraph (d)* with *new paragraphs (d) and (da)*, to prevent the unintended consequence of regulations disrupting a key part of the New Zealand way; children accompanying a parent at work or children at work experience. The model regulations propose 15 as the minimum age yet, for example, a child ‘helping’ a tradesperson-parent during holidays, or for that matter, helping in a parents’ café or fish and chip store, would make the PCBU liable for a fine or prosecution. This amendment ensures regulations pertain to age-appropriate machinery or equipment as opposed to the workplace in general. It further introduces “physical capability” in *new clause 227(1)(da)*, given some equipment and machinery demands a certain level of physical aptitude to operate safely.

It further amends *clause 227* to insert *new subclause (3)* to place a “Good Samaritan” clause into the Bill that will prevent regulations descending into the sort of negative jobs-worth health and safety culture in Britain. Such an amendment in Britain has been mooted by Lord Young’s review Common sense, Common safety. This will help to clearly delineate actions taken by a person when working and when they are “off the clock”, despite this potentially being on the same property. The key operative words being “well-intentioned voluntary acts” so if, for example, a farm worker “off the clock” came across loose stock near a busy highway, both them and their PCBU are protected should something, on rarest of occasions, go wrong.