

House of Representatives

Supplementary Order Paper

Tuesday, 17 December 2002

Health and Safety in Employment Amendment Bill

Proposed amendments

Hon Margaret Wilson, in Committee, to move the following amendments:

Clause 4

To omit subclause (4) (lines 15 to 18 on page 5), and substitute the following subclause:

- (4) Section 2(1) of the principal Act is amended by inserting in the definition of the term **employer**, after the word “**employer**”, the words “, subject to **sections 3C to 3E**,”.

To omit subclause (4B) (lines 3 to 9 on page 6).

To insert in subclause (7) in the definition of **matter**, after the expression “**54E**,” (line 1 on page 8), the expression “**56B**,”.

Clause 5

To omit *new section 3C* (lines 11 to 23 on page 13), and substitute the following sections:

“3C **Application of certain provisions to volunteers doing regular work**

“(1) This section applies if—

- “(a) a volunteer does work for another person (being an employer or self-employed person) with the knowledge or consent of the other person; and
- “(b) the volunteer does the work on an ongoing and regular basis for that other person; and
- “(c) the work is an integral part of the business of the employer or self-employed person.

“(2) When this section applies, sections 6 to 12, 19, and Part IV apply with all necessary modifications,—

- “(a) as if the volunteer were an employee of the other person; and

- “(b) as if the other person were the volunteer’s employer;
and
- “(c) as if the volunteer were at work when doing work for
the other person.
- “(3) This section does not apply in respect of a volunteer doing
any of the following voluntary work activities:
 - “(a) participation in a fundraising activity; or
 - “(b) assistance with sports or recreation for—
 - “(i) a sports club;
 - “(ii) a recreation club;
 - “(iii) an educational institution; or
 - “(c) assistance with activities for an educational institution
outside the premises of the educational institution; or
 - “(d) providing care for another person in the volunteer’s
home.

“3CA Protections for other volunteers

- “(1) This section applies in respect of all volunteers doing any
voluntary work activity in respect of whom **section 3C** does not
apply.
- “(2) The person for whom such a volunteer does the work activity
should take all practicable steps to ensure the health and safety
of the volunteer while he or she is doing the work activity, in
particular by taking hazards into account when planning the
work activity.
- “(3) If an inspector becomes aware of a significant hazard relating
to the work activity, the inspector must, as soon as practicable,
contact the person for whom the volunteer is doing the work
activity (or the person’s representative) to discuss means of
eliminating, isolating, or minimising the hazard.
- “(4) If this section applies, sections 39, 41, and 49 do not apply.

Clause 6

To insert in *new section 5*, after paragraph (d) (after line 23 on page 15), the
following paragraph:

- “(da) recognising that volunteers doing work activities for
other persons should have their health and safety pro-
tected because their well-being and work are as impor-
tant as the well-being and work of employees; and

Clause 10

To insert in *new section 18A(3)*, after the words “person must” (line 23 on page
18), the words “take all practicable steps to”.

Clause 14

To omit from *new section 28B(3)* the words “tabled in” (line 1 on page 33),
and substitute the words “presented to”.

Clause 22

To omit from *new section 54A(1)* the words “if an inspector or another person has not taken enforcement action against a possible defendant in respect of the same matter” (lines 33 to 35 on page 38), and substitute the words “unless an infringement notice has been issued to the same defendant in respect of the same matter”.

To insert in *new section 54A(2)*, after the word “Act” (line 37 on page 38), the word “only”.

To omit from *new section 54A(2)(a)* the words “a possible” (line 3 on page 39), and substitute the words “any possible”.

To omit from *new section 54A(2)(b)* the words “a possible” (line 6 on page 39), and substitute the words “any possible”.

To omit from *new section 54A(2)(c)* the words “a possible” (line 12 on page 39), and substitute the words “any possible”.

To omit from *new section 54C(1)* the words “a possible” (line 1 on page 40), and substitute the words “any possible”.

New clause 22A

To insert, after clause 22 (after line 21 on page 41), the following clause:

22A Other provisions relating to offences

(1) Section 55 of the principal Act is amended by adding the following subsections:

“(5) An inspector may lay an information for an offence against the Department of Labour, or any other agency designated under **section 28B** to administer this Act, only with the authority of the Solicitor-General.

“(6) If the Solicitor-General gives authority under **subsection (5)**, the inspector must be represented in the proceedings by the Crown Solicitor.”

(2) Section 25 of the Crown Organisations (Criminal Liability) Act 2002 is consequentially repealed.

Clause 23

To omit from *new section 56B(1)(c)* the words “a possible” (line 4 on page 42), and substitute the words “the same”.

Clause 23C

To omit from subsection (3) the expression “**23C**” (line 24 on page 47), and substitute the expression “**23B**”.

Explanatory note

This Supplementary Order Paper amends the Health and Safety in Employment Amendment Bill.

Clause 4 is amended—

- to reflect the substitution of a new definition into the principal Act by the Crown Organisations (Criminal Liability) Act 2002:

- to omit the definition of **financial gain** in *subclause (4B)* because this term is no longer used in *new section 3C*, as set out in *clause 5*.

Clause 5 is amended in 2 ways. The first amendment substitutes *new section 3C*. The amendment clarifies that sections 6 to 12, 19, and Part IV of the principal Act apply only if a volunteer does voluntary work for another person on an ongoing and regular basis and the work performed by the volunteer is an integral part of the business of that other person. *New subclause (3)* also clarifies that those provisions of the principal Act do not apply in the case of volunteers doing any of the following activities:

- participating in fundraising:
- assistance with sports or recreation for—
 - a sports club:
 - a recreation club:
 - an educational institution:
- assisting in activities for an educational institution offsite:
- providing care for another person in the volunteer's home.

The second amendment inserts *new section 3CA*, which, rather than imposing specific obligations under the principal Act, provides a general, but not enforceable, obligation to take all practicable steps to ensure the health and safety of volunteers who are excluded under *section 3C(3)*. If an inspector becomes aware of a significant hazard in relation to the work of an excluded volunteer, the inspector must, as soon as practicable, contact the person for whom the volunteer is doing the work (or their representative) to discuss ways of dealing with the hazard.

Clause 6 is amended to insert *new paragraph (da)* into the objects section of the principal Act in order to emphasise the importance of protecting the health and safety of all volunteers doing work activities.

Clause 10 is amended to clarify that a person who agrees to install or arrange plant is subject to the “all practicable steps” duty that applies throughout the principal Act.

Clause 14, new section 28B(3), is amended to make a minor drafting change.

Clause 22 is amended to clarify the roles of inspectors and other persons in laying informations.

New clause 22A, which consequentially amends the principal Act, is inserted as a result of the enactment of the Crown Organisations (Criminal Liability) Act 2002.

Clause 23, new section 56B(1)(c), is amended to clarify that the limitation on issuing an infringement notice applies only if enforcement action has been taken against the same defendant.

Clause 23C is amended to fix an incorrect cross-reference.