

15 June 2007

Review of Serious Harm
Workplace Policy Group
Department of Labour
PO Box 3705
Wellington

seriousharm@dol.govt.nz



SUBMISSION FROM THE
CANTERBURY MANUFACTURERS'
ASSOCIATION
FOR THE

Discussion Paper on the Revision of the Definition of Serious Harm

**Canterbury Manufacturers' Association
P O Box 13152 Armagh
CHRISTCHURCH
Email: johnwalley@clear.net.nz**

The Canterbury Manufacturers' Association is pleased to have this opportunity to provide feedback from our members.

BACKGROUND

The Canterbury Manufacturers' Association represents manufacturers predominantly in Canterbury and Westland, with members from the rest of the South Island and Auckland; the numbers of staff employed by our members represent approximately 40% of those employed by the manufacturing sector in the Canterbury region. Locally the manufacturing sector is a significant contributor to the economy, representing about 15% of employment.

Elaborately transformed manufactures comprise over 30% of New Zealand tradeable exports; sector sales total over \$30 billion and total national employment numbers around 170,000. New Zealand manufacturers face the ever-increasing onslaught of the cost of local regulation, and global competition from low cost countries, without any significant support and protection. The Canterbury region has a disproportionately high number of high value elaborately transformed manufacturers who have significant export sales when compared with all the other regions of New Zealand.

The historical reliance that New Zealand has placed in the primary sector and basic manufactured goods has seen the position that New Zealand has in the rankings of the Organisation of Economic Co-operation and Development fall from 5th in 1950 to 21st in 2005, between Spain and Greece, well into the lower middle bracket of global income per capita. New Zealand has grown more slowly than other countries due to the dependence on the primary sector. The manufactured goods sector of the internationally traded economy has grown much faster.

Without economic development, based on elaborate transformation commanding high prices from global customers, we will increasingly see issues such as "health problems" correctly characterised as "wealth problems", recent headlines on the "management" of the waiting lists is bringing this issue to the general public. The Canterbury Manufacturers' Association is of the view that provided we have a balanced and practical approach to environmental regulation and cost allocation, we can enjoy an improving environment and a growing economy.

Perhaps more than any other form of enterprise, the elaborate transformation of materials involves new and sometimes difficult to quantify environmental issues. In this sector the poor application of good regulation, or poor regulation and inequitable cost allocation, has the capacity to wipe away any comparative advantage; threatening jobs, businesses and economic growth as businesses do not develop, or relocate to take the advantages offered by other centres or jurisdictions.

The Canterbury Manufacturers' Association does wish to be heard on this submission

The Canterbury Manufacturers' Association is pleased to have this opportunity to provide feedback from our members.

Question 1

Should the review focus primarily on the use of the definition to describe notification requirements?

Use of the definition approach is not supported. Lists are seen as more precise and accessible than any definition that will always be open to ever-broader interpretation.

Adequate lists and good processes to support list modification are preferred.

Question 2

Is the avoidance of lists in the definition appropriate and effective?

No, our members want the list approach.

Question 3

Is there sufficient inclusion of gradual process injuries?

The definition of serious harm includes injury "caused by a gradual process". Our members who have a practice of pre-employment medicals, report, for example, "every young male tested in the past 10 years has displayed some early signs of noise induced hearing loss". The associated workplace is noisy and it is a requirement that hearing protection is used.

It will be difficult for employers, who do not have a practice of pre-employment medicals to establish the pre-existing levels of injury. Any investigation triggered by notification of serious harm will be unable to establish a definitive causal relationship with the noise hazards encountered by the individual in the working environment and elsewhere.

Dealing with the gradual process triggering serious harm notification will be difficult, expensive and largely ineffective in reducing harm, thereby increasing cost with no positive outcome.

Question 4

Should clause 1 be limited to “bodily function”?

Yes.

Question 5

Should the phrase “temporary severe loss” be retained, while supplemented with a time-activated definition?

The “temporary severe loss” criteria should be deleted. If it is retained, the seven days proposed as the time period to determine “temporary” is far too short, this should be at least four weeks.

The period should be defined as “away from the workplace” to avoid selecting against physical activity. For example, two individuals; one from a job that requires lifting safe weights, the other does not routinely move materials in the workplace; it is possible to imagine, say, both are subject to the same hazard that leads to an acute back injury, one would be precluded from normal duties, the other could return to work sooner. Same hazard, same bodily impact, but different classifications. To avoid this, “away from the workplace” should be used. It is hard to understand why this approach is not applicable to non-employees in the workplace, presumably they work somewhere and the “away from workplace” assessment still applies.

Question 6

Will there be sufficient inclusion of “temporary severe loss of bodily function” for non-employees?

See the answer to Question 5.

Question 7

Should the definition of “temporary severe loss” be based on absence from the workplace, or, alternatively, being unable to complete normal duties?

The period should be defined as “away from the workplace” to avoid selecting against physical activity. For example, two individuals; one from a job that requires lifting safe weights, the other does not routinely move materials in the workplace; it is possible to imagine, say, both are subject to the same hazard that leads to an acute back injury, one would be precluded from normal duties, the other could return to work sooner. Same hazard, same bodily impact, but different classifications. To avoid this, “away from the workplace” should be used. It is hard to understand why this approach is not applicable to non-employees in the workplace, presumably they work somewhere and the “away from workplace” assessment still applies.

Question 8

Is seven days an appropriate period of incapacity, and if not, what is, and why?

In physical work, particularly heavy physical work, say, on a building site, even minor injuries can lead to an absence of more than a week, the hazard is really the type of work being done and if the definition of “temporary severe loss” is not eliminated, absence should be much longer, say 28 days. It is worth noting that some soft tissue injuries are associated with cumulative loading where acute and sub-acute pain presents some time after the injury has been done, the actual cause of cumulative loading injuries is by definition indeterminate. This type of problem mirrors the hearing loss position outlined in Question 3; causal relationships are not precise and the problem could well have been as a result of circumstances outside the workplace.

We see the arguments around consistency and administrative simplicity as far less important than the specific application and intent of the review of **Serious Harm**.

Question 9

Has “mental harm” been adequately caught by the draft definition?

We feel that adequate diagnosis and a list approach is a much simpler approach to the “mental harm” than a definition based approach.

One member quotes the following example “around a month ago I was approached in confidence by an employee (A) who had a conflict with a workmate (B). This conflict was causing employee A great concern and they felt it was having a significant impact on their work performance and mental state to the extent where they were very distressed.

Employee B was unaware of the conflict and was simply going about their job competently and efficiently.

After listening to employee A, I was able to reassure them that the issue could be dealt with and referred them to our Employee Assistance Programme. A week later employee A told me they had had a session with a counselor (a registered psychologist) and would make a further appointment, but already felt much better about the situation and that their state of mind was much improved.

As often happens, I was approached by another employee (C) who told me that they had the same issue with employee (D). After listening to employee C, I heard almost the same story as relayed to me by employee A and took the same action.

Interpersonal conflicts such as these are not uncommon in the workplace and we are best able to deal with them by utilising the services of trained professional counselors (who are often trained psychologists) with good success. Both these occurrences would be classed as Serious Harm in the proposal to use “treatment by a registered medical practitioner” as the threshold.

Having triggered the Serious Harm threshold, an investigation would necessarily follow which would be nothing less than a serious and unwelcome intrusion into the employee’s lives. I don’t have the required skills to do this which is why we have the Employee Assistance Programme – a programme we might cancel if Clause 4 remains unchanged.”

Question 10

Should all cases of amputation or surgical removal of body part be included in the definition?

There should be a threshold of actual severity – for example trivial treatments dealt with by a primary health care contact, or by example, of a minor or indeterminate causal link with the workplace. The classification “diagnosis followed by treatment” is inadequate as the treatment could well be trivial more work is needed in that area.

Surgery should exclude that carried out in general practice.

Question 11

Is there sufficient coverage of dangerous incidents or events to highlight “significant hazards” in workplaces?

We would agree that contact with an electrical energy source, of any kind, that results in unconsciousness should be included.

Question 12

In clause 4, is there a need to include a time limit between the occurrence of the injury itself and the treatment provided?

Problems caused by a “gradual process” will have difficult causal relationships between workplace and lifestyle exposure to hazards. Acute reactions will be clear and obvious; we are not sure how a time limit can be applied to “gradual process” and severe acute incidents, we feel, will be obvious.

Question 13

What explanatory material should be made available for employers and others?

Clear guidelines and explanations; hopefully with extensive lists, to avoid interpretation difficulties, detailing how the requirements will be interpreted by officials, to be supplemented by the training of officials on the uniform interpretation of standards, regardless of when or where the interpretation is being made.

Question 14

What information should be included in the prescribed manner of written notice for occurrences of serious harm? (Refer to the proposed fields in appendix 3).

No comment.

Question 15

What information should be included in the prescribed form of accident register, and should it contain the same information as the manner of written notice?

Much of the written notice is not location specific, there is little point in giving location information or other information, that is either recorded elsewhere by the employer or is self evident by circumstance. Clearly the incident specific information should be recorded, the requirement should be; it is not necessary to record in the accident register unnecessary information or information available elsewhere in the company, for example, Personnel Records.

Question 16

What are the resource and compliance implications of the new definition, and are these reasonable for your business or organisation?

The comments above indicate our problem with causal relationship with “gradual” or “cumulative” processes – life is hazardous, not only the work bit. Hazard identification, elimination or minimisation is sensible, however the examples given show that taken to extremes this becomes something of a nonsense. Care is required when adding unnecessary burdens on the work element of gradual processes, or seeking to determine where, across a particular individuals life experience, the stress and mental pressure is coming from. Seeing work as the root of all evil and making it the responsibility of the employer to sort it out impacts competitiveness and drives costs. Finding the causal relationship is rather like identifying which straw broke the camels back – was it the first or the last, or were all or some to blame. If the employment relationship only impacts a few straws, the problem lies elsewhere and should not be simply dumped on the employer as an easy target of blame.

Question 17

Will the revised definition help employees to exercise the right to refuse work likely to cause serious harm?

We can see no reason why it should, it will however enable employees to imagine harm without any basis and then go on to claim mental or some other stress based harm. Including mental stress means that hazards do not have to be real or manifest, an individual simply has to believe that hazards exist, and they do, this is a self-fulfilling proposition.

If the proposal goes as planned, some companies will dismantle their Employee Care Programmes fearing what they might identify – better to not know, than be forced to do things that will simply make matters worse. By introducing specialist care into the workplace and thereby characterising all interventions by that specialist care, as Severe Harm does not help anyone. This is a direct outcome of definition rather than a list based approach to the specification of Serious Harm.

John Walley

Canterbury Manufacturers' Association