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Submission to the Health and Safety Reform Bill

From

Habitat for Humanity Auckland

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Building Homes, Building Hope.

www.habitat.org.nz

Habitat for Humanity Greater Auckland Ltd

a. Who we are

Habitat for Humanity Greater Auckland Limited is a limited liability company and a registered charity under the Charities Act 2005, operating in the Greater Auckland region covering the geographic area of the Auckland Council. It now trades as Habitat for Humanity Auckland (HFHA).

b. What we do (Mission Statement)

“Habitat for Humanity Auckland is a Christian-based , not-for-profit organization that works in partnership with people in need and others of goodwill who combine their resources to achieve positive housing outcomes by building, renovating or by other innovative solutions, to provide decent, affordable places to live”.

c. How we do it

HFHA works in partnership with the families it selects to achieve positive housing outcomes through a variety of means:

- i. Advocacy and advisory actions
- ii. Minor essential house maintenance or health and safety enhancing works
- iii. Major renovations
- iv. New house construction

Planning and on-site supervision for all construction and home improvement services is generally undertaken by paid staff while the bulk of the on-site labour is provided by volunteers who come as individuals or members of teams drawn from companies, Churches or other community organisations.

Partner families are supported through the transition from renting into the Habitat home purchasing scheme and ongoing assistance is offered in a non-intrusive manner by the Family Support function. Partner Families receive their houses at Current Market Value as at time of occupation and are loaned the finance on affordable repayment terms for a period of up to 10 years. They are required to refinance their loan balances at that time leveraging off the equity they have built in their property.

Home improvement services are provided on an affordable basis, recognizing that the service recipients are usually asset-rich but cash-poor. Therefore the cost of such services will be close to market but repayments will be interest-free on terms that are affordable

d. Who we serve

With respect to purchasing of a new house, HFHGA selects families in accordance

with a set of criteria. Generally, selected partners will be those with school or pre-school aged children who are living in strained housing situations, whether overcrowded, sub-standard, unsuitable for the needs of the family or where rental payments are unaffordable. Selected partner families will need to be ineligible for conventional housing finance but generally have an income that can sustain housing payments at least 75% of the median rental for the size and locality of the house they need.

With respect to projects for the “A Brush with Kindness” programme, Habitat selects projects where essential repairs, home preservation or disability access improvements are required and where the houses are owned by the occupants who cannot afford to have the work carried out on normal commercial terms. The homeowners we serve with the ABWK programme will usually be either elderly, single parent families or people who are disabled. However, other categories of homeowners are also eligible and will be considered on merit of their circumstances.

Submission:

1. Very short time for public consultation and preparation of submissions for such an important and far-reaching piece of legislation.
2. HFH acknowledges the need to improve H&S outcomes across the spectrum of NZ workplaces but believes that this Bill goes too far and is one-sided in its approach.
3. The Bill is punitive in nature and appears to leave the Crown with no responsibility other than to police and prosecute, almost like a command economy. There is no apparent need for the Crown to advise, educate or promote safety at the workplace. A more effective strategy would be to offer both a carrot and a stick and appoint advisors and more inspectors.
4. The nature of the Bill is adversarial and sets businesses against the State. It is far-preferred that businesses and the State work in collaboration to produce a more harmonious and productive society where improved safety and associated improvements in productivity and efficiency outcomes all lead to a more prosperous New Zealand.
5. It is acknowledged that the Pike River mining disaster exposed many shortcomings in the existing Safety Practices and associated law, however this Bill seems to be excessively focused on responding to that specific event without acknowledging that the disaster may not have occurred had there been adequate numbers of Mining Inspectors checking that the requirements of the law as it existed were being applied.
6. It is unjust and impractical to sheet all responsibility back to individual Officers. The inability to consider staff jointly and severally responsible (can't delegate duties) places an almost impossible burden on the Officers who cannot be expected to understand every nuance, every detail, every regulation and every part of every Code of Practice which, if the Australian context is followed will run

out to 700 pages or more. An officer will almost certainly need to rely on a staff member or qualified consultation to provide advice and yet those advisors cannot be held to be accountable under this Bill for any poor advice given.

7. Penalties are out of line with any other legislation. The risk of possible prosecution could make it more difficult for Not for Profit organisations such as Habitat for Humanity to recruit good quality Trustees or Board members who invariably serve on a voluntary basis.
8. The Bill marks a significant movement towards a more litigious society. Could be a harbinger of more similar Bills in other fields, eg Are we going to see ACC being given the right to prosecute an individual who has a self-caused non-work related accident?
9. There are still many factors contained within the Bill that are based on subjective assessment. There appears to be no provision for Worksafe NZ to act in an advisory capacity so an Officer must make their own subjective assessment based on their understanding of the future whereas H&S Inspectors and the Courts will make their decisions with the significant advantage of hindsight. For example, what is “reasonably practicable” for a SME or a struggling Charity when compared with a large multi-national corporation and what does “grossly disproportionate” mean in similar contexts? With such large fines possible, it is imperative that all ambiguity is removed.
10. Proving that an illness is work-related will be extremely challenging given the difficulty that medical science has in determining the precise cause of virtually any significant illness, yet the Courts may be required to fine up to \$3M presumably based on the evidence of so-called expert witnesses.
11. The Bill and ensuing Act, Regulations and Codes of Practice will add significantly to the cost of doing business in NZ. This is of particular concern for Not for Profit agencies and will undoubtedly result in a diminution of the impact of the charitable sector as a whole.
12. The provisions relating to suppliers may place impossible burdens on operators of secondhand goods shops (operated by many charities) or prevent the recycling of good quality secondhand equipment.
13. Clause 12; Definition of Officer needs clarifying. It is clear that a CEO is an officer but less clear whether a Chief Operations Officer or Chief Financial Officer is an Officer under this definition. It is noted that a CFO or COO are both classified as officers for the purposes of the Charities Register but it is arguable as to whether that definition also applies in the context of this Bill. This ambiguity requires addressing.
14. Clause 13; The definition of PCBU is confusing. Cl 13 (1) refers to a PCBU being a person but Cl 13 (1) (b) (i) excludes a person who is solely employed as a worker or who is solely an officer. This seems to exclude most CEOs and Directors so by deduction, a PCBU is therefore the owner of the business. If so, does this mean that the PCBU comprises the shareholders of a business or undertaking? If that is what is meant, why not say so explicitly instead of indicating who it is not?
15. Clause 15 (2) (a); Definition of a workplace now includes a worker being in a

vehicle. Under ACC an accident that happens while a worker is in transit from home to work is classified as work-related. A PCBU cannot reasonably be expected to ensure a worker's safety while driving their own vehicle to or from work. Similarly, a worker who is on company business in a vehicle and has an accident may have made an error in judgment. It is difficult to see how this could reasonably have been avoided by mitigation efforts of the PCBU.

16. Clause 18; Meaning of Notifiable injury or illness needs to be more specific eg separation of skin from underlying tissue could mean a blister; hardly a serious harm injury. Loss of bodily function is a bit vague; does this mean permanent loss only, does it apply to partial loss? Also serious laceration is unspecific. Does this mean a laceration that requires more than "x" stitches or that is longer or deeper than a specified amount?
17. Clause 47 exempts certain officers from committing offences under the Act. These include elected people eg School Board, Community Board etc. This should be extended to Trustees and Board members of Charities who undertake their work on a voluntary basis.
18. Clauses 65 ~ 87; The provisions around worker participation seem overly prescriptive and are probably more onerous to small businesses than larger operations. There seems to be little provision for constraining the behavior of a H&S Rep who may have malicious intent.
19. Clauses 116 ~ 118; The presumption of guilt is a move away from the traditional presumption of innocence until guilt is proven which applies to most other laws of the country. It is not established why this departure from the traditional is necessary.
20. Clause 167 provides for a 2 year limitation for prosecutions to be brought. This seems to be an inordinate period of time and leaves a PCBU in a state of uncertainty for an undue length of time.
21. The inadequate length of time to prepare submissions has restricted Habitat's submission to the above reflections.
22. Habitat requests the opportunity to address the Select Committee when hearings are being held.