

Health and Safety in Employment Act 1992

DEFINING SERIOUS HARM

**A discussion paper on the revision
of the definition of serious harm**

SUBMISSION BOOKLET FOR TYPING AND E-MAILING

Please post or email your submission
by 15 June 2007 to:

Review of Serious Harm
Workplace Policy Group
Department of Labour
PO Box 3705
Wellington
email seriousharm@dol.govt.nz

Department of Labour
TE TARI MAHI



INTRODUCTION

Using this booklet

This booklet has been developed to guide individuals and organisations making a submission on the revision of the Health and Safety in Employment (HSE) Act's definition of "serious harm".

It is set out in the same order as the discussion paper, and sets out the questions for discussion contained in the paper. You may, however, need to refer back to the discussion paper when completing your submission.

Answer as many or as few questions as you wish. Where you can, please provide any examples or summarise your experience in support of your submissions.

Written submissions should be posted to the address on the front cover of this booklet to arrive by 15 June 2007.

Submissions by email

Electronic submissions are encouraged as they aid our analysis.

Word or pdf versions of this submission booklet can be downloaded from the department's website: www.dol.govt.nz

Electronic submissions can be emailed to: seriousharm@dol.govt.nz

Please note

Any submission you make may be the subject of a request under the Official Information Act 1982. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with that Act.

Please indicate if you:

- are happy for your submission to be released; or
- would like to be consulted prior to release.

A document providing a summary of submissions will be posted on the Department of Labour website by the end of July 2007, after the analysis has been completed.

INFORMATION ABOUT YOU

This submission was made by:

Name:

Paul Jarvie.

Postal Address

c/o EMA (N) P .Bag 92066, Auckland.

Organisation (if applicable)

the "Occupational Health and Safety Industry Group".

(OHSIG).

Role/position (if applicable)

Chairperson.

Which of the following best describes you and your organisation?

(Please type X in the appropriate box)

<input type="checkbox"/>	Employer
<input type="checkbox"/>	Employee/individual
<input type="checkbox"/>	Central government organisation
<input type="checkbox"/>	Education provider
<input type="checkbox"/>	Industry or employer association
<input type="checkbox"/>	Industry training organisation
<input type="checkbox"/>	Local government organisation
<input type="checkbox"/>	Māori organisation
<input type="checkbox"/>	Pacific Island organisation
<input type="checkbox"/>	Professional association
<input type="checkbox"/>	Union/employee representative
<input checked="" type="checkbox"/>	Volunteer/not for profit organisation

X	Other, please specify	A national forum for some 10 OH&S associations representing OH&S practitioners within NZ
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Which of the following best describes your industry or sector?
(Please type X in the appropriate box)

<input type="checkbox"/>	Agriculture/horticulture	
<input type="checkbox"/>	Communication services	
<input type="checkbox"/>	Construction	
<input type="checkbox"/>	Education	
<input type="checkbox"/>	Finance and insurance	
<input type="checkbox"/>	Fishing	
<input type="checkbox"/>	Forestry	
<input type="checkbox"/>	Government services	
X	Health services	
<input type="checkbox"/>	Manufacturing	
<input type="checkbox"/>	Meat processing	
<input type="checkbox"/>	Retail and wholesale trade	
<input type="checkbox"/>	Tourism and hospitality	
<input type="checkbox"/>	Transport and storage	
<input type="checkbox"/>	Other, please specify	The OH&S service providers

DRAFT DEFINITION

The HSE Act defines serious harm as “death, or harm of a kind or description declared by the Governor-General by Order in Council”. The following draft definition has been prepared as a basis for consultation:

1. Injury (including that caused by gradual process) or disease which causes:
 - a) permanent loss of bodily function; or
 - b) temporary severe loss of bodily function (including any harm causing the person to be unable to perform their normal duties for more than 7 calendar days); or
2. Amputation or surgical removal of body part; or
3. Loss of consciousness or acute illness requiring treatment by a medical practitioner from:
 - a) lack of oxygen; or
 - b) absorption, inhalation, or ingestion of any substance; or
 - c) contact with any energy source; or
 - d) a fall or other physical impact; or
4. Any physical or mental harm that requires hospital admission, surgery, or treatment by a medical practitioner who is a registered specialist operating within their scope of practice.

CONTENT OF THE DEFINITION

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

Yes. However the proposed wording is also un clear and un helpful to determine serious harm. Caution is required as it applies to other important sections of the Act and Amendment Act.

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

Yes. However :a) a list simplifies reporting by employers and b) if a definitive list is not provided then guidance will be needed for employers and employees.

3. Is there sufficient inclusion of gradual process injuries?

Yes, if supported by a diagnosis from a recognised medical specialist eg an Occupational Health Physician.

4. Should clause 1 be limited to "bodily function"?

NO. Serious harm and bodily function are not necessarily related. The clause focuses on bodily function while the draft definition is attempting to capture incapacity.

5. Should the phrase "temporary severe loss" be retained while supplemented with a time-activated definition?

Yes, if clear guidance notes are supplied or the definition is self evident. The current definition and proposed definition is unsatisfactory.

A time activated definition is not supported because minor injuries can become serious harm due to allocation of days off work given by well meaning GP's.

6. Will there be sufficient inclusion of "temporary severe loss of bodily function" for non-employees?

NO.

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

No to both propositions.

A medical certificate should accompany all work related injury/illness and be time bound recognising that rehab is an important proactive practice by employers.

8. Is 7 days an appropriate period of absence from the workplace, and if not, what is, and why?

No. ACC use of 7 days has little to do with injury but entirely to do with the first week of compensation payable to employees.

Seven calendar days include weekends. These days should not be included in relation to an inability to perform normal duties.

9. Has "mental harm" been adequately caught by the draft definition?

Yes if there is a confirmed diagnosis by a Psychiatrist under the DSM 1V tables.

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

No as the incapacity through injury should be already be captured by clause 1.

11. Is there sufficient coverage of dangerous incidents or events in workplaces?

Yes and remove clause 3 altogether as incidents should be captured by clause 1.

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

Yes. There must be a clear cause and effect relationship established linking the condition and the exposure. The current wording is difficult to implement. How will people know who is a medical specialist?. We feel that clause 1 should capture these conditions.

ISSUES RELATED TO THE DEFINITION

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

Clear concise text documents both for employers and employees should be available in common languages.

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.)

The fields must relate to the definition re serious harm. No extra information is required as this is merely the notification.

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?

Stay relevant with the definition of serious harm

RESOURCE AND COMPLIANCE IMPLICATIONS

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

1. Increased workload for employers
2. Stated less action from DoL
3. Less accidents will be reported as there is to be no action from DoL
4. The definition will not aid reporting as it is confusing.

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

NO as it is still unclear and many employees do not understand the current definition and are unlikely to understand the proposed definition therefore the right to refuse remains unclear.

FURTHER COMMENTS

18. Please write any further comments you may have here.

The first point to be considered is why is this information being collected? This will determine what needs to be collected and why. The discussion document indicates that this collection of data is to determine incapacity, to be 'instep with the ILO reporting and recording procedures.'

In the current environment reporting of a serious harm incident by employers is understood to be the trigger of a potential investigation by the DOL. If it is the intention of the DOL to align itself with the ILO COP for reporting and recording of accidents then this should be made clear and at the outset. The inclusion of sprains and strains has lowered the threshold of what is considered 'serious' and if the DOL only intends to follow up and investigate selected injuries it appears that this is simply a reporting exercise designed to capture similar rates as ACC.

Redefining when 'freezing' of the scene occurs may well be required. Increasing the definition to include injuries/illness resulting in 7 calendar days absent from work is not viable if 'freezing' of the scene is required at this point.

Clauses 2-4 are redundant in that they do not cover incapacity but injury/illness

causes (hazards) and treatments. Clause 4 is unworkable as it is difficult to determine the status of medical practitioners. The time of day/night of admission to hospital determines the level of the examining medical practitioner, as does the geography of which district the hospital is in. Many hospitals do not have resident specialists e.g. Ashburton.

Relating capture of mental harm to a hospital admission is flawed (Clause 4). Reporting should occur after a diagnosis by a registered psychiatrist consistent with DSM IV guidelines.

It is of paramount importance that all injury/illnesses demonstrate a definite cause and effect process. This is usually outside the scope of GP's who have not had training in occupational medicine principles.

The term 'temporary severe loss of bodily function' is ambiguous and confusing. Clarification could be to include not 7 calendar days but maybe 7 consecutive working days absent from work. Seven calendar days includes rostered days off that have no bearing on the incapacity sustained.

The DOL and ACC need to work more closely to gain the information relating to occupational disease or gradual process injuries. Serious Harm reporting along with freezing the scene relate to trauma injuries. Gradual process, mental stress and fatigue require specialist medical diagnoses followed by reporting.

Thank you for taking the time to make a submission. Your contribution is important and will be given due consideration.