



UNINTENDED CONSEQUENCES

Changes designed to improve workplace safety are due to become law next year. How will the changes affect those who manage schools? The answer is unclear, says Paul Robertson. The outcome may be an example of the Law of Unintended Consequences in operation.

THE RATE AT WHICH

employees in New Zealand are killed or injured at work is significantly higher than similar countries. Forestry and building are industries with particularly poor safety records.

The proposed Health and Safety Reform Bill is an important step in reducing the toll. The Bill is intended to become law in 2015. The consequences for schools are unclear.

WHO IS IN CHARGE?

The management of schools is complex. Boards of trustees make decisions on governance. Day-to-day management is left to the principal, while decisions affecting schools are also made by the secretary of education.

The current Health and Safety in Employment Act (HSEA) is a blunt instrument when it comes to penalising those who fail to ensure the safety of employees. For this reason the Bill extends its reach to those in charge of a business (defined in clause 13 as PCBUs—ie, any 'person conducting a business or undertaking') and

those making decisions that affect the whole or a substantial part of a business (known as officers). The penalties have been increased to up to five years in prison and fines of up to \$500,000.

Boards, principals and senior managers of schools are likely to be captured by the requirements of the Bill. The individual trustees of a board are protected from liability, but it is unclear where this leaves the principal and senior managers.

In submissions, the School Trustees Association highlighted another problem:

"29 ... Although boards are entitled to stand down, suspend, exclude or expel students for behaviour that would qualify in this legislation as a 'hazard', boards are under considerable pressure from the Ministry of Education to enrol and retain such students in their schools. Indeed the Ministry can, and sometimes does, direct a school to enrol a student against their better judgement and in spite of their belief that they do not have access to the support and

resources necessary to ensure the safety and wellbeing of other students and staff.

"30. With the current policy settings favouring the closure of specialist schools in favour of mainstreaming students with 'intensive wraparound care' provided by the Ministry, this is an area that is likely to leave boards vulnerable to prosecution for circumstances that are not entirely within their control."

WORKPLACE HAZARDS AND THE ACTIONS OF OTHERS

Boards are required to appraise teaching staff to ensure competence. It is not uncommon for a teacher to characterise appropriate support and guidance as stressful, bullying behaviour and to raise a personal grievance. The Bill defines a workplace hazard to include the adverse consequences of a person's behaviour.


Any disciplinary action against an employee who alleges a workplace related health condition, such as stress (perhaps because of alleged bullying) is

presumed to be unjustified.

Meanwhile, Workplace New Zealand has issued new guidelines on workplace bullying. The guidelines extend the definition of bullying. Institutional bullying is now recognised where "... work structures, practices, policies or requirements ... unreasonably burden staff without concern for their wellbeing."

The combined effect of these measures designed to improve the wellbeing of employees may make it more difficult for boards to take action against non-performing teachers.

GUIDANCE

The Ministry of Education has prepared guidelines to assist trustees meet the requirements of the HSEA. We anticipate that they will be updated once the Bill becomes law. It would be prudent for boards to become familiar with the requirements of the Bill ahead of it being passed into law. 

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