



**New Zealand Nurses Organisation**

**Submission**

**to the**

**Health Select Committee**

**on the**

**Injury Prevention Rehabilitation and  
Compensation Amendment Bill (No 3)**

**September 2004**

## **1.0 INTRODUCTION**

- 1.1 These submissions are made on the Injury Prevention Rehabilitation and Compensation Amendment Bill (No 3) 2004 (the Bill) by the New Zealand Nurses Organisation (NZNO). NZNO represents 36,500 nurses, midwives, and health care professionals and workers and is the country's largest health union and professional organisation of nurses and health-care workers. NZNO works with members to promote their industrial and professional interests and rights. NZNO is an affiliate of the New Zealand Council of Trade Unions and a member of the International Council of Nurses (ICN) - a federation of nurse associations representing millions of nurses worldwide.

## **2.0 ILO CONVENTIONS COMPLIANCE**

- 2.1 NZNO supports the submissions on the Bill made by the New Zealand Council of Trade Unions (NZCTU) relating to the International Labour Organisation Conventions that have been ratified by New Zealand.
- 2.2 Specifically we refer to ILO Convention 17: Workmen's Compensation (Accident) Convention 1925 ratified by New Zealand in 1938 and ILO Convention 42: Workmen's Compensation (Occupational Diseases) Convention (Revised) 1934, ratified by New Zealand in 1938. We agree with the NZCTU that New Zealand's national legislation does not provide for compliance with these conventions and that the Injury Prevention Rehabilitation and Compensation Act (the Act) should be amended in this Bill to ensure such compliance.

### **3.0 MEDICAL MISADVENTURE CHANGES**

- 3.1 NZNO participated in the Review of Medical Misadventure process undertaken by the Accident Compensation Corporation (ACC) on the medical misadventure provisions in the Act. The process of the review was one of thorough and genuine consultation, and we commend it.
- 3.2 Overall NZNO supports the amendments in the Bill to the medical misadventure provisions in the Act. This is because the proposed amendments abolish the finding of fault that is currently needed for cover.
- 3.3 However, NZNO has concerns that there seems to have been a departure from the original objectives of the reform which were to move away from a focus of finding error. An objective of the reform was to gain the co-operation of the health sector by participating in the claims process and supporting claimants to make claims. The proposed changes benefit claimants but NZNO is concerned about the reporting provision in the Bill: Clause 38 repeals section 284 of the Act and substitutes it with a new reporting provision which NZNO considers will not be sufficient to encourage Registered Health Professionals (RHPs) to participate openly in the claims process.
- 3.4 The current reporting provisions in the Act – which require mandatory reporting to the Health and Disability Commissioner, and the RHPs regulatory body where medical error is found, and discretionary reporting where medical mishap is found – do not encourage RHPs to disclose things that go wrong to assist future prevention by learning in relation to patient safety. This was found to be a concern of many of those key stakeholders consulted during the Review of Medical Misadventure.

- 3.5 The amendment to section 284 that is proposed by Clause 38 of the Bill is that “*If the Corporation believes, from information [that it has collected during the claims process], there is a risk of harm to the public [it] must report the risk and any other relevant information to the person or authority responsible for patient safety in relation to the treatment that caused the personal injury*”. (Proposed section 284(2))
- 3.6 We are concerned that the phrase “*a risk of harm to the public*” is still likely to mean that RHPs will practice defensively and be reluctant to take part in the claims process unless the phrase is interpreted by ACC such that the threshold for reporting will be only where there is a *serious* risk of harm to the public. It is likely to be only in such a case that RHPs will disclose things that go wrong so that these can be used to learn and prevent further injury.
- 3.7 We thus submit that there be a higher threshold for reporting expressly included in the legislation and would like to see Clause 38 section 284 amended by including in section 284(2) the word *serious* in front of the phrase “risk of harm to the public” This will then reassure RHPs that whilst the obligation of ACC to report still remains in the legislation, ACC’s role is not seen to be one of holding RHPs accountable. Alternatively we would like to see the phrase “*a risk of harm to the public* defined in the interpretation section to mean” a *serious* risk of harm to the public”.
- 3.8 In our view the reporting provisions of the Bill still focuses attention on the fault of individuals, or the actions of individuals, whereas ACC’s function should be to prevent injury and thus encourage disclosure of mistakes. We consider that the only way this can be done is to ensure that the threshold for reporting is where there is a serious risk of harm. In our view only then will RHPs have the confidence to disclose a mistake without fear of the consequences.

3.9 NZNO is also concerned that the Bill contains no provision for reporting - and thus preventing further harm - risks of harm to the public by anyone other than by RHPs or other treatment providers. We submit there are highly significant risks to the public posed by employers and it is discriminatory to include a reporting provision only for RHP's and treatment providers. We would like to see reporting provisions to the Police or OSH included for employers if there is to remain reporting provisions for RHPs.

3.10 NZNO is also concerned that the phrase "*to the person or authority responsible for patient safety*" is vague. In our submission it should be made clear who the person or authority is. Currently it is the Health and Disability Commissioner and the RHPs regulatory body. We consider that this should continue to be the case (although as submitted only if there is a *serious* risk of harm) and that this should be made express.

Thank-you for the opportunity to make these submissions.