



Meat Industry Association of New Zealand (Inc)

Submission to the Department of Labour on

Defining Serious Harm

15 June 2007

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I: Introduction

1. The Meat Industry Association of New Zealand Incorporated ('MIA') is a voluntary trade association representing New Zealand meat processors, marketers and exporters. It is an Incorporated Society (owned by members) that represents companies supplying virtually all of New Zealand sheepmeat exports and all beef exports, producing 17 per cent of our nation's exports by value (30 percent of New Zealand's primary sector export revenue). The New Zealand meat industry earned \$5 billion in export revenue in the year ended May 2006 and \$1.22 billion from domestic meat sales in the year ended March 2006.
2. MIA member companies operate approximately 80 processing plants dispersed throughout the country. The plants slaughter and process approximately 24 million lambs, 4.4 million sheep and 4.2 million cattle and calves each year. Ninety percent of this production is processed into value-added products. Approximately 800,000 tonnes or 85% of the production is exported to overseas destinations. Our affiliate members add to the depth of expertise available from the membership, with representation throughout the meat supply chain, including road and rail transport, shipping lines, ports, packaging firms, specialist product exporters, research and technology.
3. The Association advocates on behalf of its members and provides advice on economic, trade policy, market access, employment relations, business compliance costs and technical and regulatory issues facing the industry, with a particular focus on:
 - Food safety trends and developments in importing countries
 - Economic and trade aspects of market access to key overseas markets
 - Major public policy proposals that could impact on industry operations
4. The MIA is also the interface between the meat industry and government (i.e., it is the consultative body referred to in various New Zealand statutes, such as the Meat Board Act 2004 and the Animal Products Act 1999).
5. The Association's mission is to:
 - Provide a forum for consideration of industry-wide commercial, human resource, marketing, and sanitary and zoosanitary issues; and
 - Provide the means of formulating a collective view on issues of industry-wide interest, and of conveying that position to government, departments of state, trade bodies, and other appropriate external agencies and organisations.
6. A list of Association members is attached as Appendix 1.

Background to this Submission

7. This submission is made by the MIA in response to the Department of Labour ('DoL') Discussion Paper *Defining Serious Harm: A Discussion Paper on the Revision of the Definition of Serious Harm* ('the Discussion Paper'). In developing this submission all members and affiliate members were consulted and asked for input, but MIA members may also make individual submissions reflecting concerns relating to their specific operations.

II: Overview of Comments

8. The Discussion Paper asked a series of questions in respect of the proposed new definition of 'serious harm' ('the Proposed Definition') for the purposes to the Health and Safety in Employment Act 1992 ('the Act'). Our responses to these specific questions are set out in the table below, which is followed by a more detailed discussion that elaborates on our responses to the questions – as well as commenting on some matters not directly addressed through the questions posed.

Table 1: Summary of Responses

Question	Response
1. Should the review focus primarily on the use of the definition to describe notification requirements?	We see this as a risky approach. The full range of applications for the definition need to be considered to avoid generating unintended consequences. We suggest, however, that creating a definition that meets all purposes is unduly complex, and consideration should be given to introducing additional definitions (Refer paragraphs 18-20)
2. Is the avoidance of lists in the definition appropriate and effective?	This is finely-balanced, and is really a trade-off of flexibility vs. certainty. We support the avoidance of lists – provided that there are still clear and appropriate trigger points for when the definition is met. As discussed below, we are not convinced that

Question	Response
	the trigger points in the Proposed Definition are set appropriately.
3. Is there sufficient inclusion of gradual process injuries?	The Proposed Definition would certainly capture gradual process injuries. We would argue, however, that the Proposed Definition would cast the net too widely for some of the purposes for which the definition would apply, creating compliance costs that produce little relative benefit. (Refer paragraphs 9-16 and 21-25)
4. Should clause 1 be limited to 'bodily function'?	<p>We agree with the argument in the proposal that clause 1 should not capture mental harm. Diagnosis of such harm is highly specialised, and we therefore support an where psychiatric diagnosis would be required for such harm to qualify as 'serious harm' under the Act. We note this is the approach advocated under clause 4 of the Proposed Definition.</p> <p>However, we question whether clause 1 is really necessary, and whether the general approach in clause 4 of the Proposed Definition would provide sufficient coverage on its own. (Refer paragraphs 26-38)</p>
5. Should the phrase 'temporary severe loss' be retained, while supplemented with a time-activated definition?	We agree that 'temporary severe loss' should be capable of being recognised as a form of serious harm. However, we argue that it need not be retained as a stand-alone example of 'serious harm', and are strongly opposed to the

Question	Response
	time-activated definition as described in the Proposed Definition. (Refer paragraphs 26-38)
6. Will there be sufficient inclusion of 'temporary severe loss of bodily function' for non-employees?	We see that non-employees would be covered by this aspect of the definition. However, we would see that the alternative discussed in paragraphs 26-38 would also sufficiently cater for non-employees.
7. Should the definition of 'temporary severe loss' be based on absence from the workplace or, alternatively, being able to carry out normal duties?	In our view, the way in which absence from work is applied as a test in the Proposed Definition would give rise to inconsistent treatment of like injuries. We suggest the focus should fall on the treatment required with respect to an injury. (Refer paragraphs 26-38)
8. Is seven days an appropriate period of incapacity, and if not, what is, and why?	No. Refer answer to question 7 above.
9. Has 'mental harm' been adequately caught by the draft definition?	Yes. Refer answer to question 4 above.
10. Should all cases of amputation or surgical removal of body part be included in the definition?	We are not convinced that it is necessary to refer separately to amputation and surgical removal. (Refer paragraphs 39 and 40 below)

Question	Response
<p>11. Is there sufficient coverage of dangerous incidents or events to highlight significant hazards in workplaces?</p>	<p>In our view, the Proposed Definition does provide coverage of an appropriate range of harms to assist in highlighting significant hazards in the workplace. The Proposed Definition of 'serious harm' seems appropriate in terms of defining the hazards employers should seek to eliminate, isolate or minimise.</p> <p>As discussed in paragraphs 18-20, however, we question whether the Proposed Definition is particularly well-suited to other provisions that rely upon the definition of 'serious harm'. We suggest that it would be appropriate to consider a series of definitions rather than rely on a single definition to cover a number of bases.</p>
<p>12. In clause 4, is there a need to include a time limit between the occurrence of the injury itself and the treatment provided?</p>	<p>We would support some form of differentiation between first aid and more significant treatment. (Refer paragraph 41)</p>
<p>13. What explanatory material should be made available for employers and others?</p>	<p>In our view, the Department should provide employers with information about how serious harm reports will be used - to justify to employers the value of any increased compliance cost, however small that may be.</p> <p>We would see that it is important to provide guidelines to the Department's interpretation of 'serious harm' - including some</p>

Question	Response
	hypothetical examples – to assist employers to understand what is expected of them.
14.What information should be included in the prescribed manner of written notice for occurrences of serious harm?	We have no particular objection to the data it is proposed to collect in a ‘serious harm’ notice. Our primary concern is to ensure that the thresholds at which the need to provide a notice are set at an appropriate level.
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?	Refer answer to question 14 above.
16.What are the resource and compliance implications of the new definition, and are these reasonable for your business or organisation?	In our view, the reporting requirements that the Proposed Definition would impose are unreasonable. We argue that point at which reporting becomes an unreasonable compliance cost is very low – particularly with regard to soft tissue and gradual process injuries. This is because trend data on such injuries is already captured by ACC, and the number of investigations of single, isolated instances of such injuries will be negligible. (Refer paragraphs 9-16)

Question	Response
<p>17. Will the revised definition help employees to exercise the right to refuse work likely to cause serious harm?</p>	<p>Not particularly. It seems to us that there are two difficulties associated with exercising this right. Firstly, it requires the employee to speculate as to the likelihood of a particular type of injury occurring. Secondly, it requires employees to interpret the definition of 'serious harm' to assess whether the injury they foresee might fall within the definition.</p> <p>In some cases, this might be a simple process – e.g., with regard to a task involving a real risk of falling from a significant height. In others, however, it will be much more complex. The Proposed Definition will not make things any easier as the two step assessment and interpretation process remains unchanged.</p>

III: Cost: Benefit Analysis of Increased Reporting

9. The MIA agrees with the comments made in the Discussion Paper regarding the likely increase in the number of reports of 'serious harm' as a consequence of the Proposed Definition. Page 27 of the Discussion Paper notes that fewer than 6,000 cases of 'serious harm' were reported to the Department in the year ending 30 June 2006. In comparison, there were over 28,500 work-related compensation claims lodged with ACC over the same period.
10. One could reasonably assume that virtually all work-related ACC weekly compensation claims would be captured by the Proposed Definition because (broadly speaking) entitlement to ACC weekly compensation arises where a claimant has been unable to work for more than seven days – which will be captured under clause 1 of the Proposed definition. In fact, if 'serious harm' is defined by reference to periods where an employee is at work, but not performing 'normal duties' (which the MIA opposes – see paragraphs 32-38 below), one could reasonably expect the number of reported instances of 'serious harm' would exceed the number of ACC work-related weekly compensation claims.

11. Assuming full compliance, then, the number of 'serious harm' reports could quite conceivably increase by 375% to around 28,500 per year – and as noted in the above paragraph even this may be a conservative estimate. This will clearly bring into question the Department of Labour's capacity to deal with these reports, which in turn raises questions around the purposes to which the Department will put the information received by way of 'serious harm' reporting.
12. It is unclear to us from the Discussion Paper whether it is proposed to provide additional resources to the Department of Labour inspectorate to enable it to investigate a greater number of occurrences of 'serious harm'. We assume, however, that additional reporting would be used to better target investigative resources rather than to increase the number of investigations by 375%.
13. We agree with the principle of better targeting investigative resources, but we question whether the increase in the reporting of 'serious harm' that would arise as a consequence of the Proposed Definition is necessary to achieve this. It occurs to us that a large proportion of the increased 'serious harm' reports would fall within the category of a 'temporary severe loss of bodily function' impairing ability to work for more than seven days.
14. 'Strain and sprain' injuries will feature heavily among these – with page 27 of the Discussion Paper itself suggesting around two-thirds of the 28,500 work-related compensation claims received by ACC are for such injuries. However, we would expect that in most cases investigation of such injuries would be a relatively low priority – with the exception being where a particular employer or workplace develops a pattern of such injuries.
15. As long as the definition of 'serious harm' captures such injuries, then, it would appear that a large volume of the increased reporting arising as a direct result would be used to identify trends – i.e., patterns of strain and sprain injuries that might suggest a need to investigate a particular workplace. To the extent that such information is already held by ACC, any compliance cost associated with providing duplicate data – however minimal one might consider that cost to be – is unjustifiable.
16. In summary, we submit that requiring the reporting of strain and sprain injuries will not, in most cases, expose a single incident requiring investigation, and the Department would not have the resources to investigate more than a tiny proportion of reports in any event. Realistically, it seems to us that the uses to which such data would be put could be accomplished through the use of data already held by ACC, and as a result the threshold at which the costs associated with reporting will exceed the resulting benefits are very low.
17. We submit that, with regard to the requirement to report strain and sprain injuries that would arise under the Proposed Definition, this threshold is exceeded – i.e., the costs outweigh the benefits.

IV: Wider Implications of Definition

18. We note that the Discussion Paper proposed to approach the review of the definition of 'serious harm' primarily from the perspective of its impact on reporting requirements. We agree that this would be the area in which the Proposed Definition would have the most significant impacts. However, in our view, it is dangerous to focus too much attention on one aspect of the definition and such an approach is likely to generate unintentional or ill-considered consequences.
19. In our view, the variety of applications of 'serious harm' under the Act make defining the concept quite complex. To illustrate, one could well argue that it was appropriate for all types of harm covered by the Proposed Definition to be relevant to the identification and management of 'significant hazards', but that (as we submit in paragraphs 9-16 and 21-25) the Proposed Definition is too broad in terms of specifying the types of incidents that should be reported to the Department.
20. We suggest that an approach to address this problem would be to reduce the reliance on a single defined term in the Act, and introduce multiple definitions that could be more intimately aligned to each of the duties in respect of which they are relevant.

V: Gradual Process Injuries

21. In paragraphs 9-16 we argue that reporting of soft tissue injuries imposes an unwarranted cost on employers that outstrips the benefits of reporting. We submit that this is also the case with gradual process injuries (which we note are often seen as a sub-set of strain and sprain injuries). There are a number of reasons why this is the case.
22. Firstly, we seriously question the capacity of the Department of Labour to investigate, for example, every reported instance of carpal tunnel syndrome reported in the meat processing industry. As with other strain and sprain injuries, we would imagine the Department would only investigate where there were unusual trends of similar injuries occurring within a particular workplace. In our view the Department should access existing trend data held by ACC rather than impose any additional reporting cost on employers – irrespective of the size of the additional cost.
23. Secondly, staying with the carpal tunnel example, we find it strange that an employer would have to report specifically report every instance of carpal tunnel syndrome, but an employee would not be able to refuse to undertake processing tasks that are understood to give rise to the syndrome. Section 28A of the Act allows employees to refuse to perform work likely to cause serious harm, but goes on to say that they cannot refuse work that 'because of its nature, inherently or usually carries an understood risk of serious harm'.
24. the fact that a certain task carries an inherent risk of causing a certain type of injury is no excuse for not seeking to address that risk. However, the Department's resource constraints (refer paragraphs 9-15 and 22 above), and the fact that section 28A of the Act recognises the inherent risk of injuries such as carpal tunnel syndrome in some occupations and denies workers the ability to refuse to perform

tasks despite that risk, it is difficult to see justification for requiring employers to report every occurrence of carpal tunnel syndrome to the Department. In our view, this reinforces that argument that individual reports of gradual process injuries will rarely be investigated. The Department will use these reports to gather trend data, and rather than add additional reporting requirements on employers, the Department should explore how it could better access existing datasets – such as those held by ACC - for this purpose.

25. In our view, to the extent that it applies to reporting requirements, 'serious harm' should be limited to injuries of a nature that the Department would genuinely consider investigating every single time they are reported.

VI: 'Temporary Severe Loss'

26. We recognise that 'temporary severe loss of bodily function' needs to be recognised in some way as a form of 'serious harm' - simply from the perspective that the effects of an accident need not be permanent to be significant. The proviso, though, is that the threshold of 'severe' needs to be set at an appropriate level, and be consistent and easily recognisable.
27. We submit that the way in which 'temporary severe loss of bodily function' is catered for in the Proposed Definition does not meet these provisos.

Time-Activated Definition

28. The Proposed Definition states that any type injury will cause 'serious harm' if it keeps an employee away from work for seven calendar days. However, we submit that imposing a blanket time-activated definition based around a period of calendar days creates irreconcilable distortions.
29. To illustrate, some employees within our industry work a '4 day on, 4 day off' shift rotation. Such an employee may suffer an injury on the first day of the rotation that keeps him/her away from work for 4 days. He/she may have been fully able to return to work on the fourth day following injury, but would by this point have moved into the cycle of '4 days off'. Under the Proposed Definition, the employee would have suffered 'serious harm' because he/she would not return to work (on normal duties or otherwise) within 7 calendar days of the injury.
30. Another employee suffering exactly the same injury to exactly the same severity, however, may not suffer 'serious harm' under the Proposed Definition. An employee that suffered the injury on the fourth day of a '4 day on, 4 day off' shift rotation, for example, would have returned to work on normal duties within 7 calendar days. Similarly, a 'Monday-to-Friday' employee suffering exactly the same injury would always return to work within 7 calendar days irrespective of the day of the week on which he/she was injured.
31. A definition that would classify an injury suffered by one employee as 'serious harm', but not an identical injury suffered by another employee - simply on the basis of their work patterns - is

fundamentally flawed. The way in which a workplace's shifts are structured should have no bearing whatsoever on the categorisation of the severity of an individual injury.

'Normal Duties'

32. The reference to returning to 'normal duties' as a test for 'temporary severe loss of bodily function' in the Proposed Definition produces similar issues of inconsistency. With regard to 'normal duties' this occurs on two levels.

33. To begin, we have some difficulty in grasping the logic of the following extract from page 14 of the Discussion Paper.

The employee's 'normal duties' would be those she or he would normally carry out at the time of the impairment, not a hypothetical range of activities throughout the year. So, to return to the injured orchard worker [who is unable to perform pruning work, but is capable of spraying trees], the "temporary severe loss" of bodily function might be considered serious harm during the pruning season, but not at the time of spraying.

34. We do not understand the relevance of the time of year in which an injury is sustained to the assessment of the relative 'seriousness' of that injury. Such a suggestion is even more questionable when one considers the other purposes for which the Proposed Definition would apply. For example, is a potential safety issue only a 'significant hazard' under the Act at certain times of the year, depending on the tasks being performed by employees (or visitors) at the relevant time of the year? Would the range of tasks an employee could refuse to perform under section 28A of the Act change throughout the year, depending on the other tasks he/she was performing as part of his/her 'normal duties'?

35. These issues could be addressed by accepting that 'normal duties' included the range of activities provided for in an employee's employment agreement. However, there would still be inconsistency in the way in which identical injuries were categorised on the basis of the fields in which injured people were employed. A knee ligament injury, for example, may render a traffic warden unable to perform normal duties for several weeks. However, exactly the same injury, to exactly the same severity, may keep a clerical worker away from normal duties for only 2-3 days.

36. We submit that the threshold for determining whether an injury is serious should be consistent and objective - unaffected by the occupation of the injured person or the time of year at which an injury occurs.

37. For the reasons set out in paragraphs 28-36, we do not support defining temporary severe loss of bodily function with reference to an arbitrary period of time away from normal duties. A test based on seven days away from work may be useful as a rough yardstick in guidance material, but in our view should not be written into law as it creates inconsistencies that have nothing to do with actual severity of injury.

38. In our view, a better approach would be to link an assessment of the 'severity' of a temporary loss of bodily function to the treatment received in respect of the injury giving rise to the loss. In fact, clause 4 of the Proposed Definition may of itself provide sufficient coverage for temporary severe loss of bodily function (i.e., harm requiring hospital admission, surgery, or specialist medical treatment).

VII: Amputation and Surgical Removal

39. In our view, there is no need for a specific clause around amputation and surgical removal as these are already covered by the more generic clause of the Proposed Definition. It is difficult to imagine circumstances in which amputation or surgical removal would not result in a loss of bodily function, and as such would be addressed by the generic clause 1 of the Proposed Definition. Alternatively, one would expect that an amputation would lead to a hospital admission. Only cases of very minor amputation (e.g., the very tip of a finger) are likely to be excluded, and we note that page 18 of the Discussion Paper indicates a desire to exclude 'less serious cases of amputation'
40. We also note that 'surgical removal' has been specifically included to cater for matters such as the removal of a tumour caused by occupational exposure. We see that this would be already covered by clause 3 as an acute illness requiring medical treatment, and/or the reference to 'surgery' in clause 4.

VIII: Medical Treatment

41. We note the comments on page 20 of the Discussion Paper regarding the possibility that the reference to 'surgery' in clause 4 of the Proposed Definition may be interpreted liberally to apply to less serious treatment such as the removal of shards or splinters from a relatively minor wound. We support inserting a clarification that differentiates between minor, first-aid-type surgery, and more serious surgery to repair trauma injuries.
42. However, we are not sure that using a time limit between the time of injury and time of treatment is an appropriate way to make this differentiation. We would favour a differentiation that focussed on the significance of the surgery itself.

IX: Contact Details

43. To discuss this submission further, please contact:

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Appendix 1: List of MIA Members – 1 July 2006

Members
Advance Marketing Ltd
AFFCO New Zealand Ltd
Alliance Group Ltd
ANZCO Foods Ltd
ANZCO Green Island Ltd (ANZCO group)
ANZPAC Foods Ltd
APJ Meats Ltd
Auckland Meat Processors Ltd
Ballande New Zealand Ltd
Bernard Matthews New Zealand Ltd
Blue Sky Meats (NZ) Ltd
<i>Brookland (NZ) Ltd (in receivership)</i>
Canterbury Meat Packers Ltd (ANZCO group)
CMP Rakaia
Columbia Exports Ltd
Crown Marketing Ltd (ANZCO group)
Crusader Meats New Zealand Ltd
Dairy Meats NZ Ltd (AFFCO group)
Davmet New Zealand Ltd
Fern Ridge Ltd
Frasertown Meat Company Ltd
Garra International Ltd
Glovers Foods Ltd
Greenlea Premier Meats Ltd
Harrier Exports Ltd
Horizon Meats New Zealand Ltd (wholly owned subsidiary of Blue Sky Meats (NZ) Ltd)
Hygrade Casings Company (wholly owned subsidiary of New Zealand By-Products)
Lamb Packers Feilding Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Land Meat (NZ) Ltd (AFFCO group)
Lanexco Ltd
Lowe Corporation Ltd
Mathias International (Mathias Meats NZ Ltd)
New Zealand By-Products
Pilot (NZ) Ltd
PPCS Ltd
Progressive Gisborne Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Progressive Meats Ltd
Riverlands Ltd (ANZCO group)
South Pacific Meats Ltd
South Pacific Meats - Malvern (AFFCO Group)
Tara Exports Ltd
Taylor Preston Ltd
Te Kuiti Meat Processors Ltd
Towers Thompson (New Zealand) Ltd
Universal Beef Packers Ltd (UBP)
Wallace Corporation Ltd

Affiliate Members
AgResearch-MIRINZ Centre
Aon New Zealand Limited
Axis Intermodal (Ports of Auckland Ltd)
Carter Holt Harvey, Packaging
CentrePort Wellington
Energy for Industry (ex Meridian Solutions)
Hamburg-Sud New Zealand Ltd
Hapag Lloyd (New Zealand) Ltd
Maersk New Zealand Ltd
Millers Mechanical NZ Ltd
Oceanic Navigation Ltd
Port of Napier
Port Otago Ltd
Port Taranaki Ltd (previously Westgate Transport Ltd)
ProAnd Ltd (Meatek Ltd)
Rissington Breedline Ltd
Sealed Air (New Zealand), Cryovac Division
Thompson Clarke Shipping Pty Ltd (ANZ Marketing Representative for the Port of Los Angeles)
Vero Marine Insurance