

17 May 2013

Dr Paul Hutchison  
Chair  
Health Select Committee  
Parliament  
WELLINGTON

Dear Dr Hutchison

**Re: Natural Health Products Bill**

I am writing to you in regard to the *Natural Health Products Bill* (referred to as '*the bill*'). While there are various aspects of the bill to consider, BusinessNZ wishes to focus on a few key matters that it considers are most in need of urgent attention.

***Clause 8: Natural Health Products Regulatory Authority***  
***Clause 10: Natural health products advisory committee***

The bill establishes a Natural Health Products Regulatory Authority (the Director-General of Health) who is to operate through an advisory committee. The qualification for committee membership is the possession of '*expertise in at least 1 area of knowledge that relates to or is relevant to natural health products*'. BusinessNZ believes this is a rather broad definition which could, of itself, cause difficulty for anyone seeking a licence to manufacture a natural health product or when an audit is conducted. This is because the makeup of the committee is likely to have a considerable influence on the kind of decisions made.

The bill should be quite clear that '*relates to or is relevant to*' requires the appointment of committee members with actual experience of the use of natural health products and not merely individuals who have some familiarity with the kind of materials likely to be used in such products.

(We also note that the committee's composition could affect the outcome of Authority decisions under clauses 20, 22, 25, 28 and 29)

***Clause 36: Deception***

Overall, BusinessNZ believes this is a particularly onerous clause. The reason for saying so is that its consequence could be the imposition of a criminal sanction on anyone involved with natural health products, possibly for an inadvertent mistake, or because information given to a natural health product consumer by someone

involved in the provision of the product is later claimed to have been misleading since the outcome sought did not eventuate

For the unfortunate product provider, the only defence is that there was no intent to deceive for the purpose of obtaining a material benefit or avoiding a material detriment. Obviously, however, the act of selling a product is a benefit to the product provider while at the same time avoiding the 'material detriment' of a non-sale. Therefore the defence itself narrows to establishing whether or not a product provider (and presumably the intention is to cover the range of providers from manufacturers to sellers) meant to deceive, an allegation the provider may find is difficult to disprove. On this point, it is also unclear whether the onus of proof will lie with the prosecution, or whether there will be a reverse onus on the defendant.

Since most natural health product providers have a genuine belief in their product – even if orthodoxy may not agree – the deception provision is unduly harsh and should be amended to require the deception, at the very least, to have had an established adverse effect. It should not simply be that the product in question did not cure. In short, natural products should not be treated more severely than orthodox therapies.

It is also noted that prosecution for an offence may be proceeded with either summarily or on indictment, indicating in the former case that there would be no preliminary hearing to determine whether or not an offence is likely to have occurred. If that is the intention, there is a conspicuous discrepancy between the maximum fine for an individual that this would impose (\$100,000), together with up to 5 years' imprisonment, and the maximum fine (minus imprisonment) for an intention to deceive as a medium under the Summary Offences Act 1981 (\$1,000). However, the psychological harm that the latter deception might cause is not to be underestimated. With the possibility of such a punitive response to offending, summary prosecution is entirely inappropriate and should not be contemplated. Nor indeed, should the imposition of massive fines and imprisonment.

And it is unclear who would initiate a prosecution. There appears to be no indication that prosecutions are to be initiated by the Authority in its regulatory capacity, although this may be the intention. Presumably, as well, an affected product user would be able to initiate prosecutions for deception, although again this is unclear.

***Clause 37: Sale of natural health products that have not been notified or do not meet standards***

Similar objections outlined above can also be made in respect to this clause.

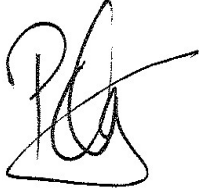
***Clause 40: Endangerment of human health***

Again, BusinessNZ believes this is an unnecessarily punitive clause. As with the orthodox medical profession, few, if any, providers of natural health products deliberately set out to endanger human health but instead offer individuals a choice when other options available prove unsatisfactory.

It is BusinessNZ's view that the bill is not well thought out, should be withdrawn and further consideration given to what legislation of this kind is trying to achieve.

Thank you again for the opportunity to provide comment on the bill.

Kind regards,

A handwritten signature in black ink, appearing to read 'P. O'Reilly', with a long horizontal stroke extending to the right.

Phil O'Reilly  
**Chief Executive**  
BusinessNZ