

# Written summary of webinar: Understanding the Health and Safety at Work Amendment Bill

Keynotes: Olivia Lund, Partner at Duncan Cotterill; Mike Cosman, health and safety expert.

Developed by the Business Leaders' Health and Safety Forum

## Context

The webinar examines the Health and Safety as Work Amendment Bill, which seeks to:

1. Reduce unnecessary compliance costs
2. Increase certainty for businesses
3. Support reductions in workplace fatalities, injuries and illnesses

Experts argue that New Zealand's harm burden remains high (estimated at \$5.4 billion in 2024, according to [State of a Thriving Nation 2025](#)), and reforms must target what actually improves outcomes.

## What the Bill changes

The Bill amends the Health and Safety at Work Act (HSWA), the WorkSafe New Zealand Act, and makes consequential regulation changes. Key planks discussed were:

- A stronger system-focus on critical risk
- Narrowing obligations for small businesses to critical risks
- Subordination of HSWA to other enactments in certain areas
- Adjustments to Officer duties
- Clarifications on landowner duties for recreational activities
- Uplift of Approved Codes of Practice (ACOPs)

## Experts' overall view

Experts contend the package risks adding cost and complexity while not demonstrably reducing harm, with potential to increase it. They argue the proposals do not deliver the promised certainty and may dilute protections for workers in small businesses.

## Critical risk – definition and practicality

Critical risk becomes the organising concept: any risk already regulated (e.g. asbestos, hazardous substances) or other hazards that are “likely” to result in a notifiable event or ACC Schedule 2 disease.

The discussion highlights the ambiguity of “likely”: Does it mean likelihood in a specific business context or inherent potential based on energy/consequence? The experts favour a consequence-based framing (foreseeable severe harm), warning that a subjective likelihood test invites inconsistency and weakens prioritisation clarity.

They also note that the Bill’s prioritisation requirements (e.g. review critical controls more frequently) are not enforceable duties, reducing their impact.

### Small vs large PCBU duties

Under the Bill, small PCBUs would only be obligated to manage critical risks, not broader health risks (e.g. musculoskeletal, psychosocial) unless they meet the critical threshold.

Experts warn this creates a two-tier protection system, complicates supply chains, shifts costs to large clients (who will use contractual controls anyway), and could be gamed via entity structuring to remain “small”.

They stress duty should be risk-proportionate, not size-based, noting smaller firms often have higher harm rates and fewer resources to manage risk.

### Regulatory infrastructure & enforcement

A recurring theme in New Zealand’s regulatory gap: a high-level Act, thin regulations and dated guidance, leaving businesses without clear “tramlines” on how to control risks. While elevating ACOPs could help, experts doubt the system is resourced to develop and maintain enough codes at the right standard.

On enforcement, recent direction emphasises guidance over prosecution, potentially reducing jurisprudence and long-term clarity. Expect more warnings and improvement notices, fewer prosecutions.

### Other enactments & system stewardship

Subordinating HSWA duties to other sector laws may help clarity if those regimes are robust and resourced.

Experts urge careful drafting (e.g. an enabling clause with criteria) and active system stewardship, especially because keeping “critical lists” (HSWA Schedule 1A and ACC Schedule 2 linkages) current has historically been a weak point.

### International considerations

The conversation raises potential trade and International Labour Organisation implications if worker protections are effectively reduced for small-business workers, though this requires further government-to-government assessments.

## FAQ from members

### 1. What is the Amendment Bill trying to achieve?

The Government's stated aims are to:

- Reduce unnecessary compliance costs
- Increase certainty for businesses
- Support reduction in fatalities, injuries and illness

### 2. What is a critical risk and why does the definition matter?

A critical risk is either:

- A risk already covered by regulations (e.g. asbestos, hazardous substances), or
- A hazard "likely" to lead to a notifiable event or an ACC Schedule 2 occupational disease

The problem:

- The term "likely" is undefined, creating uncertainty.
- Businesses may interpret it differently – some by inherent consequence, some by subjective likelihood
- This inconsistency affects which risks get prioritised and controlled

### 3. How does the Bill treat small vs large PCBUs?

Small PCBUs (under 20 workers for 9 of 12 months) would only need to manage critical risks – nothing else.

Large PCBUs must continue managing all risks.

Implications raised by experts:

- This creates a two-tier health & safety system
- Small-business workers may have fewer legal protections
- It complicates contracting chains – large businesses will likely absorb more risk and cost
- It may encourage gaming by splitting entities to avoid obligations

### 4. How will this affect contractors and supply chains?

Large businesses will not be able to rely on SME duties alone:

- They may impose stricter contractual requirements, increasing complexity
- Tendering may become inconsistent: small businesses appear cheaper because they carry fewer legal duties

- In practice, large PCBU's may need to “lift” small contractors up to their standard, shifting cost and responsibility

## 5. What changes are proposed to Officer duties?

The Bill distinguishes between:

- Executive functions (treated as worker duties – reactive), and
- Governance functions (officer duties – proactive)

Experts noted this may soften accountability for executives and create uncertainty in practice. They also highlighted the relevance of the upcoming *Maritime v Gibson* appeal decision.

## 6. How will WorkSafe's role and enforcement approach change?

WorkSafe's functions would be reprioritised to emphasise:

1. Guidance and information
2. Codes of practice
3. Safe work instruments
4. Enforcement (as the final priority)

Experts noted:

- This aligns with the current political direction to limit prosecutions
- We may see more warnings and improvement notices, fewer court cases
- Reduced case law could increase uncertainty for businesses long-term

## 7. Will ACOPs help?

Potentially yes – ACOPs can provide clearer, practical guidance.

BUT:

- Only two ACOPs currently meet the required standard
- Significant WorkSafe and industry resourcing is needed to build more

Experts express low confidence that resourcing will be sufficient.

## 8. What happens when HSWA overlaps with other laws?

The Bill allows HSWA duties to be subordinated to other enactments (except seismic-risk rules).

Concerns raised:

- Other regimes may not be as strong or well-resourced as HSWA
- The Bill does not define how equivalency is determined
- This could create gaps and uncertainty about which standard truly applies

## 9. What are the risks if the “critical list” becomes outdated?

The HSWA schedule and ACC Schedule 2 lists will only work if kept current.

Experts noted:

- New Zealand has a history of not maintaining regulatory lists
- Outdated lists could weaken protections or lead to misaligned priorities

## 10. Will these changes affect international obligations or trade?

Possibly.

Experts noted work suggesting the Bill may be inconsistent with:

- International Labour Organisation on worker health and safety
- Free trade agreement commitments with the EU and UK

This requires further government assessment.

## 11. What should members include in a Select Committee submission?

Based on webinar insights, members may want to comment on:

- Clarifying the definition of critical risk (focus on consequence, not subjective likelihood)

- Removing or modifying the small PCBU carve-out
- Ensuring WorkSafe and sector regulators are properly resourced
- Creating a clear framework for HSWA overlap with other enactments
- Maintaining regulatory lists and guidance regularly
- Providing real-world examples of impact on tendering, contractor management or compliance effort

## 12. What are the key dates?

- Written submissions due 18 March
- Forum draft submission available for member review: 9-11 March
- Select Committee report back: 12 June

Members are encouraged to submit individually – “numbers matter” for this government.