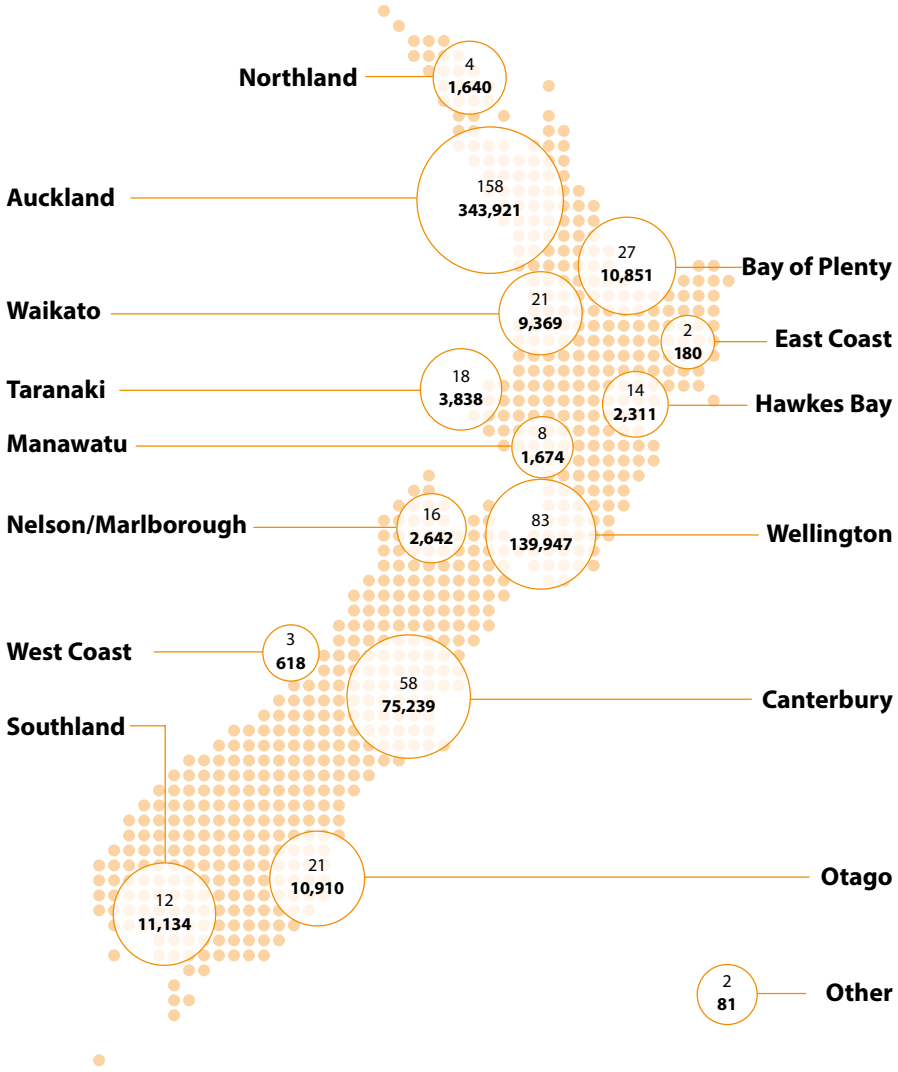
Business Leaders' Health & Safety Forum

Forum Submission on Health and Safety at Work Amendment Bill

MARCH 2026

Business Leaders'
Health & Safety Forum

A national movement of CEOs committed to safer and more productive business



▲ Business Leaders' Health & Safety Forum members locations and the number of employees they represent in their respective regions.

Key: Member Count **Employee Count**

Who we are

The Business Leaders' Health and Safety Forum is a not-for-profit coalition of leaders committed to improving New Zealand's workplace health and safety performance.

The Forum was launched in 2010 by Prime Minister John Key and has grown to be New Zealand's largest CEO membership group, comprising more than 440 Chief Executives, Managing Directors and Country Heads. This includes 36 members who would be classed as small businesses under the Bill.

Our members employ approximately 25% of New Zealand's workforce.

Why this Bill is important to us

New Zealand's poor health and safety performance is costing us as businesses and as a country.

New Zealand workers are 60% more likely to be killed at work than Australians. Nearly half of Kiwis were affected by a workplace incident to themselves, colleagues, family or friends in 2024.

In 2024, work-related fatalities, injury and illness cost New Zealand $5.4 billion.[1] This is $1 billion a year higher than Australia (in relative terms).

As a Forum of CEOs leading significant New Zealand organisations, we know first-hand that effective health and safety is critical to enabling higher productivity.

A prosperous, globally competitive New Zealand needs legislative and regulatory settings that support safer, more productive business practices.

It is no accident that 80% of the OECD countries that are more productive than New Zealand also have lower rates of workplace fatalities.

$5.4b

total cost of harm in 2024

60%

more likely to be killed at work in NZ than Australia

80%

of the OECD countries that are more productive than NZ have lower workplace fatalities rates

1 State of a Thriving Nation report 2025 (forum.org.nz/resources/2025-sotn)

Our overall position on the Bill

We support the Bill's intention to clarify, simplify and reduce rates of harm. We support elements of the Bill that deliver on this intent.

We are concerned, however, that the specific framing of some amendments could increase complexity and risk, pushing up rates of harm and associated costs.

Our submission reflects the views of our members that were gathered through several online meetings, face-to-face conversations, emailed feedback, a webinar and a survey. This feedback was further refined by a reference group of legal and health and safety experts.

Among CEO and safety manager respondents to our survey, sentiment was consistently sceptical that the Bill will reduce harm or the burden of compliance for small businesses.

Our submission addresses the following six areas raised by members:

1. **Approved Codes of Practice (ACOPs):** We strongly support co-designed ACOPs. This would require allocation of resource and robust oversight from WorkSafe NZ.
2. **Critical risk definition:** We support the intention to prioritise critical risk. The proposed prescriptive definition of critical risk should be changed as it is ambiguous, extremely complicated and demanding, particularly for small businesses.
3. **Small business carve-out:** We cannot support the small business carve-out as it is inequitable, ignores the realities of modern workplaces, and will likely lead to higher rates of harm and ACC costs. A better way to reduce unnecessary burden on small businesses is through better guidance, as the Bill proposes through the ACOP provisions.
4. **Overlapping regulations:** We support the intent to clarify health and safety duties in environments with overlapping regulations. However, we believe it is necessary to ensure that this does not lead to lower standards of protection.
5. **Changes to Officer duties:** We support the clarification of Officer duties as relating solely to governance activities.
6. **WorkSafe's focus:** We support WorkSafe having a balanced mix of regulatory functions, including guidance, ACOPs, safe work instruments and enforcement. These functions should not be prescriptively prioritised. WorkSafe needs discretion to apply them in a way that fits the circumstances.

Where possible we have made recommendations for improvements.

Summary of our recommendations

Our recommended changes are summarised below. These seek to support the Bill's intent to simplify and clarify health and safety requirements, while ensuring safety standards are strengthened and applied consistently across all businesses.

Approved Codes of Practice (ACOPs)

- That the ACOP approval process has assurance processes to ensure an appropriate level of input from relevant stakeholders, along with appropriate consultation, Ministerial review and oversight by the Regulator.
- That budgeted resources should be available to support the development and maintenance of ACOPs. This could include WorkSafe and industry co-funding ACOPs.
- That there should be an explicit requirement that ACOPs be kept current, for example by requiring regular reviews (e.g. every 3-5 years), enabling urgent updates following major incidents or technology changes, and requiring monitoring of their impacts.
- A public register of ACOPs with review dates would improve transparency.

Small Business carve-out (<20 Workers)

- Retain the duty for all businesses to manage workplace risks as far as it is reasonably practicable, while supporting smaller businesses through clearer guidance and simplified risk management frameworks that allow them to meet their obligations in a practical and proportionate way.

Critical risk framework

- Move to a clear, principles-based definition of critical risk that emphasises consequences and is supplemented by schedules, not defined by them. Make Schedule 1A illustrative, not exhaustive.
- Replace 'likely to cause' in the catch-all requirement with a clearer, consequence-based test.
- Add a requirement for businesses to identify critical controls, and to monitor and verify the effectiveness of these critical controls.

Overlapping legislation provision

- Require an 'equivalent or better' safety standard test and ensure that outdated legislation cannot be used to by-pass modern safety expectations.

Officer duties

- Further guidance is required to help clarify for senior executives which of their day-to-day activities carry Officer duties and which carry worker duties.

Role of the Regulator

- To avoid any doubt or confusion, the Notes at the front of the Bill should clarify that the list of WorkSafe's regulatory functions is not presented in an order of priority but that the Regulator can deploy any of these functions as appropriate to the circumstances.

Sheridan Broadbent
Chair
Business Leaders' Health and Safety Forum

Francois Barton
CEO
Business Leaders' Health and Safety Forum

Details of our submission

Approved Codes of Practice (ACOPs)

The Forum supports the Bill's intent to improve the guidance provided to businesses on preventing harm by broadening who can develop ACOPs. We believe the lack of clear, practical guidance has undermined New Zealand's ability to reduce harm more than any issues with the current legislation itself.

However, for ACOPs to work as intended it is important that key quality and oversight conditions are met.

ACOPs must be developed collaboratively to ensure effective practices that control risk

- The quality and effectiveness of an ACOP relates directly to who participates in its development.
- ACOPs must reflect pan-industry perspectives, including from large and small businesses, contractors, industry associations, workers and their representatives, regulators, and relevant technical and legal experts.
- Transparent processes will be required to ensure the development process is balanced, fair and that the outcomes are practicably implementable.
- To ensure broad input, thought must be given to how the development process could be funded. ACOP development can cost in excess $250,000 per code. This amount might not be significant for some large and profitable industries. But others might not have enough spare time, people, and financial capacity to fund a code on their own, let alone keep it up to date.
- One way to minimise costs would be to adopt relevant existing Australian codes, with appropriate review and consultation.

Real world example:

The 2024 Ports ACOP for loading and unloading has been widely acknowledged as a success because it was developed jointly by the entire sector, including workers, employers, unions, and regulators. The high level of engagement led to unprecedented co-operation across the sector and enabled the ACOP's development to be fast-tracked to just 15 months. The result was practical and trusted advice that provides clear, consistent expectations that align with HSWA. The ACOP's development was supported by the industry and the Regulator, Maritime NZ.

ACOPs must be maintained and updated

- There is a need for ongoing maintenance of ACOPs, to ensure they do not become outdated due to changes in technology, work practices and available risk controls. Outdated ACOPs (and regulations) are already a problem for many sectors in New Zealand.

Real world example:

A well-documented example of an outdated New Zealand ACOP is the 1995 Approved Code of Practice for Forklift Training and Operations. The failure to maintain the ACOP so it keeps pace with modern legislation, work practices, and equipment has created serious safety risks, legal ambiguity, and industry frustration. The forklift industry has produced modern replacement guidance, but this is still awaiting approval to replace the obsolete ACOP.

Recommendations

- That the ACOP approval process has transparent processes to ensure an appropriate level of input from relevant stakeholders, along with an appropriate level of public consultation, Ministerial review and oversight by the Regulator.
- That budgeted resources should be available to support the development and maintenance of ACOPs. This could include WorkSafe and industry co-funding ACOPs.
- That there should be an explicit requirement that ACOPs be kept current, for example by requiring regular reviews (e.g. every 3-5 years), enabling urgent updates following major incidents or technology changes, and requiring monitoring of their impacts.
- A public register of ACOPs with review dates would improve transparency.

Our biggest concern: The small business carve-out

The proposed exemption for small businesses with fewer than 20 workers to solely focus on critical risks is the strongest and most unanimous concern for the Forum. We cannot support this carve-out. We believe improved guidance is a better way to reduce any unnecessary compliance burden on small businesses, which is partly addressed by the ACOP provisions in the Bill.

Summary – Why we are concerned

The Forum opposes this carve-out on the basis that:

- It is inequitable for workers to have different levels of protection depending on who they work for
- It will increase injury rates and ACC costs and reduce productivity
- It shifts the burden of compliance onto large business
- It will be unworkable in complex, multi-business workplaces
- It is out of step with countries that have better safety records
- It mis-aligns us with Australia, which has lower rates of harm
- Guidance is a better way to reduce any unnecessary compliance burden on small businesses.

"If we put this into a transport context, it would be like saying small businesses only have to obey some road rules, and not others. You don't have to be a safety expert to realise that's not going to end well."

Forum CEO of a major asset owner

The carve-out is inequitable

- Removing the requirement for small businesses to protect workers from non-critical risks creates an inequitable, two-tier safety system that is ethically troubling. Why should a worker in a 19 person business get less protection than one in a 21 person business?
- Some of the injuries that workers in small businesses would no longer be protected from include severe bruising, muscle tears and strains, tendon or ligament sprains or inflammation, fatigue-related harm, noise and dust exposure, and repetitive injuries. Workers deserve protection from this type of harm that can cause significant pain and disruption to lives and livelihoods.
- About 27% of New Zealanders work for small businesses, so under this carve-out a significant number of people would have reduced protection from these types of harm.

"If critical risks become the main focus on small building sites a lot of other safety issues could be overlooked or downgraded. On a residential building site, especially two or three level builds, there are still many risks that can result in harm, so I don't think anything should be watered-down based on the size of the workforce."

Owner, small building contractor (less than 20 workers)

Real world examples

Sectors like cleaning and retail are largely comprised of small businesses and have high volumes of repetitive strain and ergonomic injuries. None of these businesses would be legally required to control these risks under the small business carve-out. This would lead to a rise in injuries and higher ACC claims / costs.

One small engineering consultancy (under 20 staff) pointed out that it would only need to design a piece of equipment to avoid critical risks, while a competitor that was a large business would have to design the same equipment, so that it controlled all risks. This creates an ethical problem and uneven professional standards.

It will increase injury rates and ACC costs and reduce productivity

- ACC notes that about 50% of work injury costs come from less-severe injuries.
- ACC has raised the possibility that focusing solely on critical risks could lead to increase in less-severe injuries, along with higher ACC costs.
- Most work injuries are not 'critical'. About 50% of ACC work-related injuries are non-critical. So, the carve out means small businesses will no longer need to prevent the majority of injury types.
- In addition to raising injury rates, this will lead to more ACC claims, which will flow on to higher ACC costs for businesses and New Zealand.
- Higher injury rates will also cost businesses and reduce New Zealand's productivity through increased rates of lost time.
- A rise in this type of harm puts additional and avoidable pressure on New Zealand's already strained health system, unnecessarily diverting limited health resources away from other important health issues.
- The Forum's State of a Thriving Nation 2025 report states that poor health and safety performance cost New Zealand businesses, workers, and the wider economy $5.4 billion in 2024. This represents 1.3% of New Zealand's GDP. The report notes this cost has risen by nearly $1 billion in real terms over the last decade, driven largely by increasing time off work per injury – even as injury numbers trend downward. This cost could be expected to rise further if the small business carve-out leads to an increase in costs due to a rise in non-critical injuries.

Real world example

Musculoskeletal injuries are a big cost for construction. They account for over $200 million in ACC costs a year. The potential for this cost to rise is considerable if the small business carve-out remains. According to NZ Stats 98% of construction businesses have fewer than 20 workers. Under the carve-out only 2% of construction businesses would have to manage the risk of musculoskeletal injury. An aging workforce, more susceptible to suffering musculoskeletal injuries, makes this risk more prevalent. Wait times for treatment are also extending return to work times. In addition to pushing up costs for ACC and the health system, an increase in musculoskeletal injuries could push up time lost to injuries within the industry and reduce its productivity.

It will shift compliance burden onto large businesses and potentially reduce small business competitiveness

- The commercial reality in New Zealand is that many small businesses work for large businesses. Under the carve-out, small businesses are exempt from managing non-critical risks. But the large businesses they work for remain liable for managing these risks. This includes the non-critical risks their small contractors are exposed to, or expose the public to.
- Large businesses will have to take on responsibility for ensuring non-critical risks are controlled on their worksites. This will shift the burden of liability and cost of compliance onto large businesses.
- Some Forum members indicated they would be more likely to only contract with other large firms to avoid liability, oversight burden, and operational risk caused by the small business carve-out.
- Members say the small business carve-out will lead to confusion and increased tension about who must manage what. Small contractors may say they no longer need to control non-critical risks anymore, even if the large business they contract to still does.
- This will require large businesses to use contractual arrangements to demand that smaller contractors control their non-critical risks. This will effectively cancel any intended 'reduction in burden' from the carve-out for small businesses.

> "This is probably pretty unworkable and actually could drive us to use smaller contractors less – which is not good for a healthy and safe industry."
>
> **CEO of large New Zealand contracting organisation**

Real world example

Large construction contractors are required to engage small businesses as part of public infrastructure contracts. Currently, these small businesses have a shared and equal obligation to manage risks of harm, like their larger clients, creating a 'rising tide' to lift health and safety standards. Concerns have been expressed that the small business carve-out will reverse that shared obligation, causing 'the tide to go out' on small contractors. They foresee that over time there will be a loss in capability within small businesses when it comes to managing their own health and safety. Large businesses will find themselves having to assume responsibility for managing the small contractors' non-critical health and safety risks.

It creates unnecessary complexity in multi-contractor workplaces

- The small business carve-out will create unnecessary complexity in multi-contractor workplaces such as ports and construction sites – where multiple small and large businesses and contractors work together.
- Having different obligations for people working side-by-side breaks the chain of shared duties on these worksites and risks causing gaps in risk controls. This will make these workplaces less safe, increasing the risk of injury and the liability and cost burden for large businesses.

Real world examples

Ports: Commonly, more than 80% of contractors working on ports are small businesses. These small contractors work side-by-side with big operators on high-risk sites. Having inconsistent obligations would create confusion and conflict and would be unmanageable for port companies.

Councils: Councils engage multiple small business contractors, who interact on the council's behalf with the public and public-facing infrastructure. The small business carve-out would lead to inconsistent safety standards that could expose councils to harm and liability.

It is out of step with Australia and the United Kingdom

- The carve-out is out of step with the approach adopted in comparable regimes to New Zealand, particularly Australia and the United Kingdom. In 2015 New Zealand's health and safety law was harmonised with that of Australia, which has significantly lower rates of harm than us.
- The small business carve-out will again put New Zealand out of step with Australia, creating a hinderance to the ease of business for Australian businesses operating here.

It is not backed by evidence

- The Forum is not aware of any comparable regime that uses this approach to health and safety duties for small businesses.
- We are not aware of any published research that supports such an approach.

Guidance is a better way to reduce the compliance burden on small business

- We believe there is a better approach to achieving the Government's goal of reducing unnecessary regulatory burden on small businesses without creating a two-tier system of worker protection.
- This could be achieved by retaining the duty for all businesses to manage workplace risks as far as is reasonably practicable, while providing simplified guidance or compliance pathways for small businesses. For example, smaller businesses could be supported through clearer guidance, industry-specific tools, and simplified risk management frameworks that allow them to meet their obligations in a practical and proportionate way.
- This approach would maintain a consistent baseline of worker protection while recognising that smaller businesses require different forms of support to implement effective safety systems. WorkSafe could be tasked with giving them this support. This underlines the importance of other amendments in this Bill concerning strengthening of ACOPs and confirming WorkSafe's core functions.

Recommendation

Retain the duty for all businesses to manage workplace risks as far as it reasonably practicable, while supporting smaller businesses through clearer guidance and simplified risk management frameworks that allow them to meet their obligations in a practical and proportionate way.

Definition of critical risk

The Forum strongly supports the intent to focus attention on critical risks that can lead to death or life-changing harm. We also acknowledge the intent behind creating a statutory definition of critical risk, to reduce ambiguity and improve clarity.

However, we are concerned the proposed prescriptive wording of the definition is confusing, overly complicated and demanding, particularly for small businesses. This could make it harder for businesses to prioritise the small number of risks capable of causing critical harm. There is also concern that the provisions focus solely on identifying critical risks, not on controlling these risks.

Schedule 1A is complex, incomplete and drives a tick-box approach

- Under the Bill businesses are required to identify their critical risks, with the first step being to look at Schedule 1A, which includes a list of critical risks. However, Schedule 1A refers to multiple types of hazards and multiple regulations. Working through the list and associated regulations would be a complicated and time-consuming compliance burden, particularly for every small business to whom the amendments will apply
- The requirement to consult Schedule 1A could also lead to 'over-compliance'. For example, a business might use a hazardous substance mentioned on the list so might believe it has to put in place critical controls to manage this risk. However, the business might not use the substance in large enough quantities to actually cause significant harm.
- The current schedule of risks is incomplete because it 'cherry picks' across historical hazards and multiple existing regulatory regimes, while ignoring newer and emerging risks not yet covered in other official sources.
- There is concern that businesses will treat Schedule 1A as a tick-box list, rather than focusing on the actual risks present in their business, which would significantly undermine safety. They could work through the list to identify which regulatory categories apply to their operations. This risks shifting the focus from identifying the most serious hazards within a business's own operations toward a process of regulatory cross-referencing.

The catch-all definition is unclear – especially the word 'likely'.

- The Bill includes a 'catch-all' definition so that even if a hazard is not on Schedule 1A, it is still considered a critical risk if it is 'likely' to result in death or serious harm.
- 'Likely' is undefined and we are very concerned it could be interpreted differently across businesses. Does 'likely' mean the *probability of the event occurring,* or the *consequence* if it occurs?
- For example, the 'likelihood' on any one day of someone driving at 100km an hour having a car accident might be very low. But the 'likelihood' of them being seriously harmed if they have an accident would be very high.
- The potential for businesses to mis-understand the meaning of 'likely' is of considerable concern because many critical risks are l*ow likelihood and high consequence.* Under the Bill's current wording businesses might not recognise that a risk is a critical one that needs to be controlled.

A lack of emphasis on controls

- There is a danger that the current wording of the Bill encourages businesses to focus solely on identifying critical risks and not on controlling them effectively. Knowing your critical risks is not enough. Businesses also need to identify, maintain and verify the controls that are critical to preventing fatal or life-altering harm.
- Experience across many sectors shows that serious incidents rarely occur because hazards were unknown; they occur when the controls intended to manage those hazards failed. As members say; 'Risks kill, but controls save'.

Could unintentionally distract from the most serious risks

- The definition of critical risk could unintentionally broaden the category of risks requiring special treatment. The Bill links the concept of critical risk to hazards that can lead to death, 'notifiable' injury or illness, or a 'notifiable' incident. However, the notifiable events framework was originally designed as a reporting mechanism, rather than as a way of classifying critical hazards. So, including notifiable injury, illness or incidents as critical risks could unintentionally expand the category of critical risks to include a wide range of routine operational hazards. If the category becomes too broad, businesses may identify a large number of critical risks. This is problematic because it will dilute attention from the smaller number of hazards most capable of causing fatal or life-altering harm.

Recommendations

- Move to a clear, principles-based definition of critical risk that emphasises consequences and is supplemented by schedules, not defined by them. Make Schedule 1A illustrative, not exhaustive.
- Replace 'likely to cause' with a clearer, consequence-based test.
- Add a requirement for businesses to identify critical controls, and to monitor and verify the effectiveness of these critical controls.

Treatment of overlapping legislation

- The Bill introduces a provision stating that if a business complies with another piece of legislation (e.g., Building Act, geothermal regulations), they are deemed to have complied with their Health and Safety at Work (HSWA) duties for that risk.
- The Forum acknowledges the intent to clarify and simplify duties. But there are unintended consequences that need to be addressed.
- There is concern that this enables businesses to comply with HSWA by meeting other regulations that were not drafted with the intent of improving health and safety, and that might be outdated, of a lower standard, or poorly aligned with modern risk management. This will lower the bar, increase confusion, and enable regulatory gaps.
- The concern about out-of-date regulation is particularly strong because some of our members deal with regulatory regimes that are decades old and do not reflect modern risk controls or best practice.

Real world example

One example of how this would negatively impact safety is fatigue in truck drivers, many of whom are owner-operators or work in small businesses. There is much more to managing fatigue than simply counting hours driven. But that is all the specific transport legislation requires. The roading industry has made great strides in the last few years in better managing the risk of fatigue amongst drivers and this amendment could reverse that improvement. Fatigue is such a problem in transport that the overlapping legislation provisions, as currently worded, would almost certainly lead to an increase in road fatalities.

Recommendations

Require an equivalent or better safety standard test and ensure that outdated legislation cannot be used to bypass modern safety expectations.

Changes to Officer duties

- The Forum welcomes the proposal in the Bill to clarify Officer's duties, in particular to distinguish Governance functions (where Officer duties apply) from Executive functions (where worker duties apply).
- However, many senior executives undertake both functions, often in the same day. So, it would be helpful to have more clarity about which work activities should be regarded as governance functions (when Officer duties apply) and which as executive functions (when worker duties would apply).

Recommendation

Further guidance is required to help clarify for senior executives which of their day-to-day activities carry Officer duties and which carry worker duties.

Role of the Regulator

- The Forum supports the Bill including a range of regulatory functions for WorkSafe. However, we have concerns about these functions being ranked in order of priority, with the first being guidance and information and the last being enforcement.
- To be effective, New Zealand's regulatory system needs to include incentives for good performance (such as lower ACC levies) and consequences for poor performance (including enforcement action by the Regulator).
- Our members support a level playing field when it comes to health and safety. Those who invest in protecting their workers and meeting their obligations should not be under-cut by those who wilfully do not comply, safe in the knowledge they are unlikely to face action from the Regulator.

Recommendation

To avoid any doubt or confusion, the Notes at the front of the Bill should clarify that the list of WorkSafe's regulatory functions is not presented in an order of priority but that the Regulator can deploy any of these functions as appropriate to the circumstances.