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Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington 6011

Tēnā koutou katoa

Re: Health and Safety at Work Amendment Bill

Thank you for the opportunity to submit on the Health and Safety at Work Amendment Bill. This submission reflects the views of Engineering New Zealand, the largest professional body for engineers in Aotearoa New Zealand, representing over 23,000 members. Our members work across sectors to design, build, operate, and assure safe systems, and many provide technical leadership and risk management advice that supports compliance with health and safety duties and helps prevent harm in workplaces. We therefore have a strong interest in ensuring the Amendment Bill delivers clear, workable obligations, supports effective risk management, and ultimately improves health and safety outcomes for workers and the public.

Overview

Engineering New Zealand supports reforms that improve practical clarity for persons conducting a business or undertaking (PCBUs) and officers, especially through clearer guidance and high-quality Approved Codes of Practice (ACOPs). However, the Bill frames "reducing unnecessary compliance costs" and providing "certainty" as central objectives, and it does so by narrowing the scope of legal duties for some duty holders (particularly "small PCBUs"), rather than primarily fixing implementation, guidance quality, and regulator capability.

There is a risk that the Bill could shift costs rather than reduce them (for example into contract management and procurement) and could increase uncertainty through new thresholds and definitions. We support practical clarity and better guidance but are concerned the Bill's current approach may weaken consistent worker protections and create new grey areas across supply chains.

Health and safety legislation must remain centred on preventing harm to workers and other persons. We are concerned the Bill's move to a two-tier duty system based on firm size risks weakening consistent protections and creating uncertainty across project supply chains, including for engineering design work and other upstream duties.

We are also concerned there was limited opportunity for early policy engagement on the problem definition and options before the Bill was introduced. This made the breadth of the changes, particularly the move toward a size-based, two-tier duty model unexpected and has reduced the sector's ability to test workability and identify unintended consequences in advance. We encourage the Committee to seek and publish the underlying evidence base and rationale for the proposed approach so submitters can engage meaningfully with the policy intent.

In this submission we:

- Support stronger, more usable guidance and ACOPs if they are properly resourced, quality-assured, and kept current.
- Support, in principle, a sharper focus on preventing serious harm only if "critical risk" is defined and applied in a way that is workable and consistent.

- Do not support introducing a two-tier duty regime for PCBUs based on worker numbers.
- Seek safeguards to ensure the Bill does not unintentionally weaken prevention-through-design by narrowing upstream duties for small PCBUs.
- Recommend that psychosocial harms are explicitly addressed so the Bill does not unintentionally narrow attention to physical harm only.
- Seek safeguards for the new Health and Safety at Work Act (HSWA) "overlap" rule so HSWA duties aren't treated as met where another law only sets a minimum standard.
- Support the regulator prioritising guidance, while maintaining credible enforcement, and recommend monitoring to ensure deterrence is not reduced in practice.

Our submission is closely aligned with the submissions of the New Zealand Society for Engineering Safety (NZSES) and the Recreation Safety Engineering Group (RSE). These submissions add important technical insight and reinforce several of the key issues we have identified, including the need for clear, consistently applied thresholds (notably for "critical risk"), robust stewardship and quality assurance for guidance and ACOPs, and regulator settings that enable consistent and safe practice in implementation.

Specific areas of concern

Critical risk definition

It is essential that "critical risk" is defined clearly. Unfortunately, the Bill's definition introduces new ambiguity. It uses a hybrid approach: (1) hazards listed in Schedule 1A (by reference to regulations), and (2) a catch-all test for hazards likely to result in death, notifiable events, or specified occupational disease.

The phrase "likely to result" is not defined and may be interpreted inconsistently across sectors and projects. This is likely to create uncertainty and disputes about whether a hazard is "critical" or not, particularly on complex projects involving multiple contractors and designers. Rather than improving clarity, the definition may increase compliance documentation and contested interpretations. We recommend a clearer, consequence focused test (for example, foreseeable severe harm) for "critical risk", rather than one that turns on a subjective assessment of likelihood.[1]

Recommendation: We recommend amendments or authoritative guidance to make the threshold clearer and more consistently applied, including by:

- Clarifying the "likely to result" test (for example, by defining "likely" or replacing it with a clearer foreseeable severe harm test); and/or
- Requiring clear regulator guidance on consistent classification and the evidential basis for determinations under the catch-all test, to reduce disputes between parties in a supply chain.

Two-tier system for PCBUs

The Bill creates a two-tier duty framework by limiting "small PCBUs" (under 20 workers) to managing only critical risks under key HSWA duties, while other PCBUs must manage all risks but prioritise critical risks. Engineering New Zealand does not support a two-tier statutory duty regime based on workforce size. From an engineering systems perspective, risk is driven by the nature of work and hazards, not by the number of workers on a payroll.

[1] HSW Amendment Bill cl 9 (critical risk definition; Schedule 1A amendment power); cl 31 (Schedule 1A, critical-risk hazards list); cl 11 (critical risk determination); cl 10 (notifiable injury/illness clarified); HSWA ss23–24 (notifiable events).

A size-based duty split risks inconsistent worker protections and complicates coordination across contracting chains and projects where multiple PCBUs must align controls.

We are also concerned about behavioural incentives; a threshold may discourage firms from growing or encourage structuring to remain below the threshold. In engineering supply chains where "worker" counts can fluctuate by project stage, this may create additional uncertainty and administrative effort, rather than reducing burden.[2]

Recommendation: If Parliament wishes to reduce low-value compliance effort, we recommend doing so through better guidance, sector-specific ACOPs, and consistent regulator support, rather than narrowing core duties for a class of duty holder based on size.

Unintended impacts on upstream duties (engineering design and other upstream PCBUs)

Good engineering design prevents harm before it happens. This prevention-first approach is why upstream duties (particularly designer duties) are so important in the HSWA. However, the Bill's small-PCBU critical-risk limitation flows through to upstream duties, meaning that, if a design firm (or other upstream duty holder) is a "small PCBU", its upstream HSWA duties apply only in relation to critical risks.

The problem is that this isn't how design safety works in practice, and it cuts across consistent engineering practice. A designer's obligation to foresee and control hazards should not depend on whether the firm employs 19 or 21 people. Put simply, the same bridge, machine, or building element should be approached with the same safety thinking regardless of who designed it. In practice, this also creates commercial pressure on smaller firms to treat issues as "not critical" and leave them for others to manage later potentially shifting the burden rather than reducing it.

On complex projects involving multiple PCBUs, this change risks fragmenting how hazards are identified and controlled, because different parties may be operating to different legal duty sets depending on size potentially increasing disputes rather than improving coordination.[3]

Recommendation: We recommend that upstream duties (design, manufacture, import, supply, install/construct/commission) are either:

- Excluded from the small-PCBU critical-risk limitation; or

  Subject to an explicit safeguard, ensuring prevention-through-design expectations remain consistent regardless of firm size, particularly where the engineered product or structure can expose workers or the public to foreseeable harm.

Omission of psychosocial risks

The Health and Safety at Work Act 2015 (HSWA) defines health broadly, including mental health, and requires PCBUs to manage risks to health and safety so far as reasonably practicable. However, the Bill's "critical risk" framework (including Schedule 1A) appears primarily oriented toward physical hazards and regulated activities. As a result, it does not provide a clear pathway for psychosocial risks to be consistently treated as "critical" when they are a significant source of harm (e.g., bullying, fatigue, excessive job demands).

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[2] HSW Amendment Bill cl 8 (small PCBU definition); cl 11 (small PCBU scope); cls 13–20 (small PCBU limitation across ss36–43); HSWA ss36–43 (PCBU duties); s17 (PCBU / small PCBU, as amended).

[3] HSW Amendment Bill cl 16 (designer duty, small PCBU limitation); cl 11 (small PCBU scope); cl 9 (critical risk definition); cls 17–20 (upstream duties—small PCBU limitation); HSWA ss39–43 (upstream PCBU duties).

This gap is likely to be most significant for small PCBUs in lower physical risk environments (such as professional services and sales), where psychosocial harm can be one of the most material risks to workers. Without an explicit mechanism or clear guidance, the Bill may unintentionally narrow organisational attention to physical harm only. This is an outcome that would be inconsistent with the HSWA's broader concept of health and with the realities of modern workplaces.[4]

We note that construction workers are nine times more likely to die from suicide than an accident at work.[5] To prevent harm, psychosocial risks must be treated as critical risks.

Recommendation: We recommend explicit assurance in the Bill, in Schedule 1A stewardship settings that psychosocial harms are within scope and can be treated as "critical" when the foreseeable consequences align with the statutory test.

HSWA overlap/subordination to other enactments

The Bill replaces the HSWA's overlap clause with a new deeming rule: where a person complies with external requirements under another enactment addressing the "same subject matter", they must be treated as having complied with the relevant HSWA duty to manage that risk (while still needing to meet any specific HSWA regulatory duties).

However, this has the potential to produce weak outcomes where the other regime is not built around workplace risk management, or where its minimum standards fall short of the HSWA's "reasonably practicable" and continuous-improvement orientation. Without clearer criteria for when another law is truly addressing the "same subject matter" in an equivalent way, the change may reduce certainty (more arguments about which law applies) and weaken protection where HSWA currently fills gaps.[6]

Recommendation: Add an explicit equivalence safeguard so "deemed compliance" applies only where the other enactment provides HSWA-equivalent protection, i.e., it is outcomes-based, covers workplace risk management, and is effectively enforced (supported by clear criteria or authoritative guidance).

Earthquake-prone buildings (EPBs) and seismic risk

Engineering New Zealand members are actively engaged in seismic assessment, risk communication, and retrofit design, and are already receiving client and workplace questions as EPB reforms progress. The Bill introduces an exception to HSWA section 37 so that, where a workplace includes all or part of a building and the building owner is not in breach of duties or requirements under subpart 6A of Part 2 of the Building Act 2004 relating to EPB determination or seismic work, section 37 would not require the PCBU to take action in relation to seismic risk unless an emergency is occurring. We support this exemption, noting our call for clear guidance for both the engineering profession and building owners in our submission on the Building Act (Earthquake-prone building) Bill**.** Building owners will need clear guidance on how to communicate risk to occupants, interim risk management, and their responsibilities under the EPB regime while affected buildings remain occupied and until any required seismic work is completed.

WorkSafe's role: guidance and enforcement must both remain credible

Engineering New Zealand supports the Bill's intent to lift the quality and usability of guidance and codes, and we recognise that clearer "how-to comply" material can improve outcomes when it is well-resourced and kept current. At the same time, effective health and safety systems require both the carrot (practical guidance) and

[4] HSW Amendment Bill cl 9 (critical risk definition); cl 31 (Schedule 1A, critical-risk hazards list); cl 11 (small PCBU scope); HSWA s16 (health definition); s36 (primary duty).

[5] **https://mates.net.nz/research/**

[6] HSW Amendment Bill cl 12 (HSWA overlap / deeming compliance—s35 replaced); cl 14 (workplace duty exceptions); HSWA s35 (overlap, replaced); s36 (primary duty); s37 (workplace duty).

the stick (credible monitoring and enforcement). The Bill reprioritises regulator functions, so guidance and the development of instruments and codes are listed ahead of monitoring and enforcement, including for WorkSafe and designated agencies.

If enforcement activity reduces materially, there may be fewer court decisions interpreting duties in real situations. Over time this could reduce, not increase system certainty, because case law is one of the main ways duty boundaries become clearer. We support prioritising guidance and advice, recognising this requires appropriate resourcing and quality assurance. We do not support the removal of credible enforcement: enforcement sets a consistent minimum standard, particularly for duty holders who will not improve unless they anticipate scrutiny. [7]

Recommendation: We recommend monitoring and transparent reporting on regulator performance across both guidance and enforcement, so reprioritisation does not weaken deterrence in practice.

Approved Codes of Practice (ACOPs)

Engineering New Zealand supports strengthening ACOPs to provide clearer, sector-relevant guidance. The Bill materially changes ACOP development and legal effect by (1) enabling non-regulators to draft codes for regulator review and Ministerial approval, and (2) introducing a "deemed compliance" (safe harbour) effect where acting in accordance with an ACOP for a specific risk/matter is treated as compliance for that risk/matter. We recognise the potential value in stronger ACOPs to help address the long-noted "regulatory gap" (high-level duties, thin regulations, and dated guidance).

In addition, while this is not a primary focus of the Bill, we note a related, second-order systems issue: the current approach for developing and maintaining standards is outdated and no longer fit for purpose. This contributes to inefficiencies and change is needed to enhance productivity. While outside of the scope of this Bill, the development and maintenance of standards will be important to its success. For more information on the challenges and potential solutions for the New Zealand standards system, please see our position statement: Engineering a Standards System that delivers for New Zealand.

For ACOPs we see three key implementation risks. First, who will fund the development and ongoing updating of enough high-quality ACOPs? Second, will WorkSafe have the capacity to review them in a timely manner and maintain quality? Third, if ACOPs become a legal "safe option", some organisations may treat them as the minimum standard even when better solutions exist.

We support stronger ACOPs, but only if they are properly resourced, kept current, and designed to allow equivalent alternative solutions, not a race to the lowest common denominator.[8]

Recommendation: Support the ACOP "deemed compliance" model only with clear quality assurance, resourcing, and update requirements, plus timely regulator review and scope for equivalent solutions.

Officer duties (governance clarity, practical application)

The Bill clarifies that an officer's due diligence duty applies to their governance role, distinct from actions taken in another capacity (for example, operational management), and re-expresses the due diligence steps in a more structured way. This may improve conceptual clarity, but it may be difficult to apply in practice.

In many organisations, particularly owner-operator or technical director models, governance and operational decisions are closely intertwined. That makes it harder to predict how courts will distinguish "officer" conduct

[7] HSW Amendment Bill cl 24 (designated regulators' functions reprioritised—s190); cl 34 (WorkSafe functions reprioritised, WorkSafe Act); HSWA s190 (designated regulators including Maritime NZ & CAA, as amended).

[8] HSW Amendment Bill cl 27 (ACOP approvals); cl 28 (ACOP development pathway); cl 29 (ACOP "safe harbour" / deemed compliance); cl 30 (ACOP transitional settings); HSWA ss222, 226 (ACOP framework, as amended).

from “worker/manager” conduct in real settings. Relatedly, officer due diligence is linked to the PCBU’s underlying duties; if small-PCBU duties narrow to critical risks, the scope of officer oversight may narrow as well, potentially softening accountability in smaller entities. We support clearer expectations for governance, but the law must still drive strong oversight of the controls that prevent serious harm, and not create loopholes based on role labels.[9]

Recommendation: Provide guidance (and if needed legislative clarification) on how the governance-only officer duty works in owner-operator/technical-director models, with examples of “reasonable steps” and “verification” where roles overlap.

Oversight of Schedule 1A

Schedule 1A will be a key tool in the Bill because it places certain hazards and activities on the “critical” list. This has wider implications for what gets attention first and, for smaller businesses, what they are legally required to manage.

We are concerned that Schedule 1A, as drafted, is incomplete, internally inconsistent and does not appear to reflect an evidence-based assessment of what causes serious harm in New Zealand. For example, “abrasive grinding and woodworking machinery” is explicitly listed, but comparable machinery used in other sectors (e.g., metal or food processing) is not clearly captured. This risks arbitrary differences in treatment for materially similar hazards and creates avoidable disputes about whether something is “critical” under the schedule or only via the catch-all, undermining certainty and increasing low-value compliance effort.

These drafting gaps also point to a broader risk: prescribed lists can quickly become outdated without active stewardship. Engineering New Zealand supports, in principle, a ‘critical list’ of hazards already subject to specialist regulation. This can improve transparency and focus attention on preventing serious harm, provided the list is complete, coherent, and maintained through an open, evidence-based process.

The Bill allows Schedule 1A to be updated (including by Order in Council), but that amendment power is not, by itself, an oversight framework. We recommend a transparent, regular review (for example, every five years), based on injury and illness data, emerging technologies, and new sources of harm, with clear requirements to consult and publish the reasons for changes. Without this, the list could change with political priorities or simply fall behind, reducing certainty and weakening safety outcomes.[10]

Recommendation: In principle, we support having a “critical” list of hazards and activities in Schedule 1A. However, the current Schedule 1A is not fit for purpose. We also consider that the Bill should include a transparent stewardship framework covering periodic review, consultation, and published reasons for any changes so the list remains evidence-based, current, and durable. We recommend revising the drafting of Schedule 1A and adding explicit stewardship/oversight provisions.

Conclusion

Engineering New Zealand supports reforms that improve practical clarity particularly through high-quality guidance and Approved Codes of Practice provided they are properly resourced, quality-assured, and kept current. However, we are concerned the Bill’s size-based two-tier duty model and related settings could weaken consistent worker protections and create new uncertainty across supply chains, including for upstream duties such as engineering design. We urge the Committee to adopt the safeguards set out in this submission. This includes stronger settings for “critical risk” (definition and stewardship), psychosocial harm, the HSWA overlap

[9] HSW Amendment Bill cl 21 (officer duty clarified; due diligence steps); HSWA s44 (officer due diligence, amended); s45 (worker duty); ss36–43 (PCBU duties).

[10] HSW Amendment Bill cl 9 (Schedule 1A amendment power); cl 31 (Schedule 1A inserted); HSWA Schedule 1A (critical-risk hazards list, as inserted).

rule, and seismic/EPB provisions, and to ensure improved regulator guidance does not come at the expense of credible enforcement.

We would welcome the opportunity to appear before the Committee to further discuss the contents of this submission.

Nakū, na

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