



# NZISM submission on the Health and Safety at Work Amendment Bill

March 2026

# Summary of recommendations

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## The Bill should not proceed without major changes

The Health and Safety at Work Amendment Bill (the Bill) will degrade health and safety outcomes for workers and businesses without achieving its stated outcomes of reducing compliance and improving certainty.

There are five areas of major concern for us:

- The carve out of health and safety responsibilities for small PCBUs
- The definition of critical risk
- The prioritisation of critical risk as currently framed
- The proposed interaction between health and safety law and other enactments
- The legal status of approved codes of practice (ACOPs).

**The Bill should not proceed without changes to these areas of concern.**

## Commencement

Commencement of the changes the day after the Bill comes into force does not provide sufficient time for PCBUs and regulators to adequately prepare.

**The changes should come into force six months post-Royal Assent.**

## Carve out for small PCBUs

We fundamentally oppose any reduction in the legal protection afforded to certain groups of workers based solely on the size of the business they work for.

This undermines the principle stated in the Health and Safety at Work Act (HSWA) that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable (HSWA s 3(2)).

**The carve out for small PCBUs should not proceed.**

## Definition of critical risks

The proposed definition of critical risk confuses hazard, risk, likelihood and consequence and assumes regulations have been developed to address critical risks.

**The definition of critical risk should include hazards that could reasonably foreseeably result in death, or injury and illness with permanent or significant, irreversible effects.**

**WorkSafe and other regulators should be given the responsibility to promulgate industry-specific lists of critical risks.**

The concept of criticality (consequence) is already a consideration in risk assessment and in the definition of so far as reasonably practicable in HSWA.

## Prioritisation of critical risk

We do not support a unique or predominant focus on critical risks for the regulators or the health and safety system as a whole given the burden of harm that results from risks not classed as critical.

We support the prioritisation of critical risks by PCBUs in principle but have significant concerns about the framing of the definition, the lack of clarity about what is different about the approach to managing critical risks and the lack of supporting guidance.

**“Prioritise” should be left undefined in the legislation and defined instead via supporting guidance. This will enable a more nuanced and practical approach.**

## Interaction with other enactments

We do not support the proposed approach as it is poorly defined, open ended and does not provide for maintenance of current levels of protection. It appears to have significant unintended consequences. We agree that there may be opportunities to clarify both regulatory boundaries and conflicting requirements, but the analysis to identify where this might be appropriate has not been done.

**In place of the proposed clause and an exemption power should be created (exercised by the Governor General on advice of the Minister following adequate consultation) where compliance with another enactment may be treated as compliance with HSWA provided that doing so does not reduce safety.**

## Officer’s due diligence

The proposed wording does not provide regulatory clarity and may diminish the role of executive officers (such as CEOs) in proactively setting the tone from the top, particularly in organisations that do not have functioning governance processes.

**Changes to due diligence and officer’s duties should not proceed.**

## Industry development of ACOPs

We support the opportunity to increase the number of ACOPs by allowing others to develop them provided that there are appropriate monitoring and oversight to ensure they set best practice standards and are kept up to date.

**All ACOPs should include a sunset clause (deemed if necessary) that requires them to be reviewed say, every 5 years.**

## Legal status of ACOPs

The current status of ACOPs is appropriate and the Courts are able to take account of them when considering whether the so far as reasonably practicable standard has been met. An up-to-date ACOP will provide a ‘safe harbour’, but an out of date one may not.

**ACOPs should retain their current legal status.**

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## Introduction

### About NZISM

The New Zealand Institute of Safety Management is the professional body for health and safety specialists (managers, advisors and consultants). We have 3,200 members across all industries and business sizes. Our members hold advanced qualifications and work at all levels from governance to front-line operational roles.

We have fourteen local branches from Northland to Southland. We provide our members with internationally recognised professional accreditation and a full programme of continuing professional development and learning.

We have consulted widely with our members in drafting this submission including online discussions, surveys and full consultation on the draft.

### Our view of the Bill

Our professional opinion of the Bill is that it is ill-conceived and a missed opportunity to improve both organisational performance and national health and safety outcomes. It does not reflect the more strategic analysis provided in many of the submissions to the 2024 Review. It fails to deliver on each of the three objectives set for it.

The Bill should not be passed as drafted and the scale of changes required to make it fit for purpose are unlikely to be achievable within the ambitious timetable set for its consideration in the current Term.

*"I can't shake the feeling that we may be sleepwalking into a set of fatal unintended consequences in the name of political expediency. Delivering on an election promise is one thing. Delivering well-considered, robust legislation that stands the test of time is another. Once implemented, these decisions ripple through businesses, workers, and communities in ways that are often hard to unwind (dead is dead). Surely the measure of success isn't just "promise delivered", it's whether the outcome is sound, workable, and genuinely in the public interest."*

Response to NZISM member survey

### The case for investment in better safety and health outcomes

The cost of New Zealand's poor health and safety record to workers, families, communities, businesses and Government is massive and from both a moral and cost perspective dwarfs compliance costs.

Our health and safety record compares poorly to many of our peers. The Business Leaders' Health and Safety Forum's economic analysis<sup>1</sup> conservatively estimated the cost of harm due to workplace injuries and illnesses at > \$5.4 billion dollars in 2024. Improvements in New Zealand's health and safety performance should be treated as an investment in our families, communities, and businesses, not as a compliance cost.

Only a relatively small percentage of that cost arises from critical risks that would be prioritised by this Bill. This can only increase the burden of future harm.

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1 2025 State of Thriving Nation Report

We understand that ACC has significant concerns regarding the impact of the proposed changes. ACC's agency feedback on the initial cabinet paper<sup>2</sup> states in part:

- *ACC is concerned about the proposal to limit the duty of small businesses to manage critical risks' and not to minimise hazards so far as reasonably practical (sic).*
- *Lower-grade injuries (eg. musculoskeletal injuries, and slip/trips & falls) are the most frequent workplace injuries, being responsible for over 50% of work injury costs to ACC.*
- *Additionally, small businesses (including self-employed people) account for approximately 75% of ACC's work injury costs. An increased focus on critical risks, to the detriment of more frequent but less severe injuries, could have an impact on ACC Scheme costs.*
- *Lower-grade injuries are also responsible for a large proportion of the productivity costs of injury borne by businesses. ACC sees that this proposed change could contradict the intention of the proposal.*

Reducing the burden of work-related harm has significant value for the Government in a wide range of ways. For example:

- Lower direct health and compensation costs
- Higher productivity and economic output
- Reduced pressure on public services
- More efficient regulatory systems (few investigations, enforcement actions, greater capacity to focus on prevention and system-level risks)
- Stronger economic resilience and workforce sustainability (healthy workers stay employed longer, gain higher skill levels)
- Social wellbeing benefits
- Stronger families and communities.

Investment in the health and safety system should be targeted to where it will return the maximum benefit to New Zealand Inc. This is not what the Bill proposes.

Many of the recommendations from the 2013 Independent Taskforce on Workplace Health and Safety (agreed at the time with cross-party support) have not been implemented. Improving our health and safety system requires careful stewardship and strategic thinking-something that has been sadly lacking over the past 10 years. Making marginal changes of the type proposed here will not achieve that long-term shift in performance.

None of the substantive changes proposed in this Bill have been made by our international peers. There is no evidence that they will make a positive difference. The intervention logic behind them is flawed and poorly articulated.

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<sup>2</sup> (email entitled Consultation on draft Cabinet paper: Health and Safety Reform: System-wide changes for your comment by COP Monday 10 March) sent on 3 March 2025

## Feedback on specific changes

### Commencement

#### ➤ Commencement should be six months post-Royal Assent

The intended commencement of the Bill is the day after Royal Assent. Such a speedy commencement date does not provide sufficient time for regulators and duty holders to prepare for the changes. All PCBUs will need to make changes to their systems, policies and processes, consult with other PCBUs they interact with and their workers to determine their critical risks and prioritise these.

### Carve out for small PCBUs

#### ➤ Removing legal protection for ~25% of the workforce from several major health and safety risks is unethical and the proposal is unworkable in many circumstances. We strongly recommend removing the proposed definition of a small PCBU and retaining the existing duty framework for all PCBUs.

We do not support the proposed definition of a small PCBU or the associated carve-out from core duties under sections 36–43 and related Health and Safety at Work (General Risk and Workplace Management) Regulations.

The proposal risks reducing safety performance in the part of the economy where harm rates are already highest, and introduces significant definitional, operational, and regulatory challenges. It is also ethically questionable as workers should be protected from harms regardless of the size of the PCBU they are working for and contradicts the core principle of HSWA.

Small PCBUs represent a group that are already less safe and consistently experience higher rates of injury than larger organisations. Reducing their duties will not improve outcomes.

*"I recognise the practical challenges faced by many small business owners. They often wear many hats, running operations, managing staff, maintaining financial viability, and navigating regulatory requirements. For many, the legislation can feel complex and difficult to interpret while they are simply trying to run their business and make a living. However, the difficulty of understanding the law should not result in workers being less protected. .... A constructive middle ground may be to invest more in accessible education, clear guidance, and potentially free training programmes that support small businesses to build their capability in managing health and safety."*

Response to NZISM member survey

International experience supports universal obligations. Guidance from Safe Work Australia and the UK HSE consistently emphasises that all PCBUs, regardless of size, should manage all foreseeable risks proportionately. These frameworks show that carve-outs for small businesses can create inconsistent protection, reduce accountability, and hinder effective risk coordination, particularly in shared workplaces (like construction sites) or supply chains. Practical, scaled guidance to support topic or sector specific regulations rather than exemptions is considered best practice to ensure small PCBUs can comply effectively without leaving workers exposed to preventable harm.

We note also that moves to exclude certain types of risk from the ambit of our health and safety law in some workplaces (by determining that they are not critical risks) is likely to fall foul of New Zealand's obligations under International Labour Convention 155 on Occupational Health and Safety. Article 16 of Convention 155 requires that employers ensure that workplaces are, so far as reasonably practicable, safe and without risks to health. Legislating to exclude certain risks from the reasonably practicable test is, on its face, a breach of the Convention.

Because Convention 155 is a fundamental labour convention, it is possible that a breach may also lead to a breach of our international trade obligations (such as the Labour Chapter of the NZ-EU Free Trade Agreement). We are not experts in international trade law but raise this possibility as something that the Select Committee may wish to seek advice on (from other submitters or officials).

### **The definition of “small PCBU” is unclear and creates opportunities for gaming the system**

The proposed definition (fewer than twenty workers for at least nine months of the financial year) creates several risks:

- Record keeping requirements that could be onerous especially as the definition covers workers, not just employees, so includes contractors, interns, labour hire, and some categories of volunteers.
- Unscrupulous PCBUs who may restructure their business into smaller companies (<20) to minimise compliance obligations and reduce cost at the expense of worker protection.
- PCBUs who may restructure work patterns to remain under the threshold -for example concentrating work in 3 months of the year (for example in the horticultural industry).
- The interaction between the ongoing test in s 17(3) and the prospective test in s 17(4) is unclear.
- Small PCBUs often interact with larger PCBUs in supply chains, and exemptions can undermine upstream risk management obligations.
- PCBUs without direct control of risks such as labour hire companies may have duties that the employing or engaging PCBU does not have, creating inconsistency and complexity.
- PCBUs that periodically exceed the threshold will have to rapidly apply controls to all their risks including undertaking risk assessments, providing training, PPE, and supervision.

### **The interaction with overlapping duties creates practical and legal challenges**

Because “worker” includes anyone carrying out work for a PCBU, large PCBUs may have workers who are employed by small PCBUs. This creates challenges:

- Large PCBUs may be unable to rely on small PCBUs to manage non-critical risks that affect shared work environments.
- Small PCBUs may not be required to cooperate, consult, or coordinate under s34 where they do not share a duty.
- Large PCBUs may need to impose additional prequalification or oversight requirements, increasing administrative burden and further distorting contracting markets.
- Overlapping duties could create gaps where no PCBU takes responsibility for non-critical risks, fragmenting accountability.
- Regulators may struggle to enforce duties consistently in shared workplaces due to unclear responsibilities.
- Small PCBUs may inadvertently breach duties because boundaries between obligations are unclear, increasing the risk of harm to workers.

## Exclusions from upstream duties are difficult to justify. The small PCBU exclusion from upstream duties should not proceed

The carve-out appears to remove upstream duties for small PCBUs in ways that are inconsistent with the purpose of the Act. For example:

- A small PCBU controlling a workplace may not need to manage access and egress issues causing slips, trips, or falls.
- A small PCBU designing, manufacturing, importing, supplying, or installing plant or structures may not need to consider a wide range of risks that the end user will have a duty to manage.

These exclusions undermine the principle that upstream duty holders are best placed to eliminate or minimise risks before they reach the workplace. The exclusion of upstream duties for small PCBUs is impractical, difficult to enforce, and may put small PCBUs at a competitive disadvantage if their products or services are perceived to be less safe.

## Definition of critical risk

### The proposed definition of critical risk is complex, poorly articulated, set at too high a threshold and open to variable interpretation

The concept of criticality (consequence) is already a consideration in risk assessment and in the definition of so far as reasonably practicable in HSWA.

However, we support the intent of providing guidance to PCBUs around the management of the most serious hazards they face. The linking of this concept to the purpose statement of the Act, the focus of the regulators and as a threshold for exempting small PCBUs from certain duties makes this definition problematic as it is trying to cover multiple uses and the definition is not well drafted.

*“We can’t use a ‘paint by numbers’ approach for health and safety. A list of critical risks is a dumbed down administrative approach that will fail to take context, complexity and energy into account. The original WorkSafe message around critical risks came out about 10 years ago and was simply to identify the things that matter to your organisation -both safety and health critical risks - and to spend most of your time and energy managing these critical risks. This message had value and provided room to organisations and health and safety professionals to focus on what matters most. The absence of a definition for critical risk is fine - let it be whatever it is for your organisation.”*

Response to NZISM member survey

### Not everything covered by regulations is a critical risk and not every critical risk is covered by regulations

For example, remote or isolated work is elevated to a critical risk when, for some businesses this may not naturally fit that category. Further, certain hazards such as noise are captured but vibration is not and the rationale appears to be that some are referenced in regulations and others are not.

Complying with regulations such as those covering asbestos, hazardous substances, and safety critical plant (cranes and pressure vessels) is already clearly understood as an imperative.

While linking the definition to current regulations makes some sense it assumes (incorrectly) that the suite of regulations was developed around this concept and is comprehensive. Most high-risk sectors and risks are not covered by regulations (for example, farming, forestry, manufacturing, and construction). This means that the second part of the definition will need to be used in most circumstances.

The proposed definition of critical risk is ambiguous. For example, is it about hazard (inherent potential) or risk (current state with controls)?

#### **Example: Assessing risks associated with work at heights**

Take work at heights. How does a PCBU assess if a fall from height is likely to cause death or notifiable injury? It depends on a range of factors: Certainly, death has and can result from such a fall, but what if there is a barrier? This might reduce the likelihood of falling but if it fails it will not affect the consequence. So, is working at height a critical risk or only work at height without a barrier? Who decides; the PCBU, the worker or the Regulator?

- The critical risk catch-all definition should include hazards that could reasonably foreseeably result in death, or injury and illness with permanent or significant, irreversible effects.

WorkSafe and other regulators should be given the responsibility to promulgate industry-specific lists of critical risks through Safe Work Instruments or similar mechanisms for clarity and consistency across sectors.

## **Prioritisation of critical risks**

**Critical risks are important but need to be seen in context of the full range of significant health and safety risks**

Prioritising poorly controlled critical risks that cause death and irreversible harm is consistent with contemporary practice, but it has to be proportionate to other risks that may be a more frequent cause of harm in PCBUs and sectors.

The proposed definition of 'prioritise' for critical risks is too prescriptive and adopts a 'one size fits all' approach for the health and safety system and its regulators that is overly simplistic.

- **"Prioritise" should be left undefined in the legislation and defined instead via supporting guidance. This will enable a more nuanced and practical approach.**

We note also the proposed change to WorkSafe's objectives (cl 33 amending s 9 of the WorkSafe New Zealand Act 2013) to a new main objective "to promote and contribute to a balanced framework for securing the health and safety of workers and workplaces that prioritises the critical risks that arise from work" (proposed text in italics).

The utility of this objective depends again on improvement to the definition of critical risk. Many of the risks that are most costly to ACC and society are not covered by the current definition (musculoskeletal and psychosocial harm chiefly). Restricting WorkSafe unduly to a limited subset of critical risks may hamper the ability to take action to address these risks.

## Interaction with other enactments

This proposal is undefined, risks reducing worker protections and placing regulatory functions on agencies without appropriate powers and resources. There may be opportunities for regulatory alignment and clarification, but these have not been identified.

The proposed replacement of s.35 in the Bill addresses situations where there may be an overlap between HSWA and other enactments. These other enactments are not defined in the Bill (other than in relation to managing seismic risk under the Building Act).

We support narrowly targeted exceptions to HSWA where there is another regulatory regime in place and regulator better suited to oversee that particular sector or issue. However, the current drafting is too vague and could lead to unintended consequences and legal challenges in the event of enforcement action.

We do not think that the Select Committee is in a position to identify what these other enactments could be, hence our suggestion is to create an enabling power. This could be included in s191 (which deals with designated agencies) or in s35 as currently proposed.

➤ Our proposed enabling provision is as follows:

### *Compliance with other enactments*

*1. The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any activity, hazard, group of persons or other defined set of circumstances from one or more duties under this Act where:*

*a. The Minister is satisfied, after consulting with relevant parties including representatives of workers and employers, that another regulatory regime more specifically regulates the health, safety, and wellbeing of affected persons;*

*b. A regulatory mechanism exists to ensure duties under that regime can be enforced; and*

*c. The rights of affected persons to a safe and healthy workplace are not adversely affected as a result.*

*2. Before such an Order is made, the designated agency under this Act shall enter into a Memorandum of Understanding with the other enforcement agency for managing potential overlaps, conflicts, or areas of uncertainty.*

When HSWA was developed, it was all encompassing and covered all situations involving risks to workers and others arising out of or in connection with work carried out by a PCBU. A submission was made to the Select Committee at that time, raising a concern about the possible encroachment of HSWA into areas such as patient safety in health care, where there are already several different regulatory agencies and processes. This was not accepted.

We understand that WorkSafe NZ has informally agreed in certain circumstances not to require notification or freezing of the scene, such as clinical events or some professional sports.

Over the past 10 years, WorkSafe NZ has investigated various incidents where other regulators exist with a more specific focus. We provide some examples below:

- Deaths in police custody or the shooting of police officers that are also investigated by the Independent Police Conduct Authority<sup>3 4</sup>.

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3 [https://www.reddit.com/r/newzealand/comments/w0p2ee/worksafe\\_nz\\_prosecute\\_police\\_with\\_alleged/](https://www.reddit.com/r/newzealand/comments/w0p2ee/worksafe_nz_prosecute_police_with_alleged/)

4 <https://www.nzherald.co.nz/nz/mother-of-killed-auckland-police-officer-matthew-hunt-waiting-months-for-worksafe-report-into-sons-death/U2WCGOZVQDIR7KEDLBHTRTLNWU/>

- Confusion in relation to on-road risk has also led to neither WorkSafe nor NZTA taking action until instructed by the coroner<sup>5</sup>.
- The Office of Radiation Safety (part of the Ministry of Health) is understood to be a highly engaged regulator of the use of radioactive substances, yet HSWA will still apply to this type of work.
- Zoos and high-risk microbiological facilities are regulated by the Ministry of Primary Industries (MPI) under the Hazardous Substances and New Organisms Act from a biosecurity perspective. Yet, when a keeper is killed, or a laboratory-acquired infection is suspected<sup>6</sup>, WorkSafe investigate despite having no knowledge of the sector, relevant technical expertise, or existing relationships.
- Railway Safety Cases are approved by NZTA, but rail accidents are investigated by WorkSafe.

### Standards will be reduced

The main issue we have with the current Bill is that it is open ended regarding what enactments may take precedence over HSWA, and s35(1)(b) states that the other enactment will be applicable *“regardless of whether the purpose ...is to manage work health and safety risks”*.

There are a number of enactments that might exclude application of HSWA if this clause remains:

- **Land Transport Act and Rules.** This would mean PCBUs had no HSWA duties to manage on-road risk for their light or heavy vehicle fleets and most duties would fall to the driver. Specifically, there would be no obligation to train, select appropriate vehicles for the terrain (see ref 3), manage fatigue (beyond managing maximum hours) or the psychosocial risks for a driver involved in a fatal crash. Transport of hazardous cargoes not covered by the Dangerous Goods Rules (such as asbestos waste) would no longer be regulated.
- **Education and Training Act 2020** has a part of its purpose: *“(a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and (b) supports their health, safety, and well-being”*. This might then remove all education facilities from coverage by HSWA.
- **Health and Disability Services (Safety) Act 2021** has as part of its purpose *“(a) promote the safe provision of health and disability services to the public; and (b) enable the establishment of consistent and reasonable standards for providing health and disability services to the public safely”*. This might exclude all patient /service user care issues in health and disability from coverage by HSWA (IHC drowning cases)<sup>7</sup>.

If a targeted series of exclusions is to be considered, it will require a detailed understanding of other regulatory regimes to ensure that the level of protection is no less than under HSWA and meets the overall HSWA expectation of the *“highest level of protection from harm as is reasonably practicable.”*

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5 <https://www.rnz.co.nz/news/national/496449/ruapehu-alpine-lifts-sentenced-over-bus-crash-that-killed-schoolgirl-hannah-francis>

6 <https://www.stuff.co.nz/national/health/562741/Amputee-scientist-infected-at-lab-I-can-move-on-now>

7 <https://www.rnz.co.nz/news/ldr/447618/ihc-service-arm-ordered-to-pay-550k-over-taranaki-bath-drowning>

## Officer due diligence

**The change does not clarify when an executive Officer is acting as a Worker or as an Officer. It does not reflect the range of different governance arrangements**

The issue of who is an officer and how they exercise due diligence duties is important and has been clarified to a large extent by the Institute of Directors and WorkSafe guidance issued in 2025. The District Court decision in *Maritime New Zealand vs Gibson* has been appealed to the High Court, and a decision is imminent which will provide useful jurisprudence. Changing the law may undermine the value of this.

A significant feature of the appeal will be to clarify Mr Gibson's duties as an operational manager within the PCBU against his duties as an Officer of that same PCBU. The development of case law and precedent from this will be a far more effective way of clarifying the extent of a s 44 duty than the proposed changes in the Amendment Bill.

Making the six elements of due diligence an exclusive list and reframing will not add any value. We are unaware that framing officer's duties as non-exclusive list has created any problems to date. The main consequence will be to reduce the value of the Gibson judgement when it is issued.

➤ **Changes to due diligence and officer's duties should not proceed.**

## Industry development of ACOPs

**ACOPs play an important role and expanding the range of them by allowing others to develop them could be positive**

We support solutions that will enable the rapid development of guidance where industry or other stakeholder groups identify a strong need for new approved codes of practice (ACOPs). Gaps in the regulatory infrastructure (Regulations, ACOPs and guidance) was one of the main concerns expressed by the Independent Taskforce and one of the priority actions from the Working Safer blueprint that was never completed. A clear message from the Independent Taskforce was to 'steal with pride' from Australian jurisdictions. This still appears to be the quickest way to make progress using these as starting points.

### **Example: Development of the Forestry ACOP**

The ACOP for Forestry and Harvesting Operations that was introduced in August 2025. The document was drafted by working closely with sectors leaders in this field.

- Forestry Industry Safety Council (FISC)
- Forest Industry Contractors Association (FICA)
- Forest Owners Association (FOA).

This has produced a document that is now recognised as the leading advice for those involved in the forestry sector. However, it took 15 years before the old ACOP was updated, despite a clear agreement to do so in response to the Independent Forestry Safety Review in 2014 and despite multiple attempts over a seven-year period to progress the revision, work repeatedly stalled. When the new ACOP was finally released, parts of it were already outdated. For example, the section on working around waterways did not adequately consider engineering constraints for older machinery. Similarly, the removal of heli-logging guidance quickly became misaligned with practice, particularly on the East Coast where heli-logging has been extensively required for environmental reasons following cyclone recovery.

Most of the current ACOPs (some dating back to 1992) need review and although there is a programme of work to do so it will take considerable time and resource to update them. The currency of ACOPs becomes more significant if they are to be 'safe harbours' (see discussion below).

- **We support the move to industry-developed ACOPs. We propose that any new ACOPs whether produced by regulators or industry should have a sunset clause requiring them to be reviewed every 5 years.**

## Legal status of ACOPs

Under HSWA currently, an ACOP is automatically admissible as evidence of compliance with a duty and the court may have regard to the code as evidence of what is known about a hazard or risk, risk assessment, or risk control to which the code relates and rely on the code in determining what is reasonably practicable in the circumstances (s 226(3) of HSWA).

The proposal that makes compliance with an ACOP a full defence against duties under HSWA may stifle continuous improvement (and undermine the principle of so far as reasonably practicable). PCBUs may have a strong incentive to stay within the bounds of the ACOP and not embrace new ways of working.

This proposal relies too heavily on WorkSafe and industry's ability to produce and update ACOPs that represent best practice rather than current state. Evidence to date suggests a 'set and forget' mentality. Unless there is a requirement that ACOPs are reviewed and regularly updated then business may end up working on information that is outdated with regards to current industry knowledge and the rapid changes in technology.

- **ACOPS should retain their current legal status.**

