

Analysis and submission on the Health and Safety at Work Amendment Bill

Government Bill 244-1

Submission to the Education and
Workforce Select Committee

Prepared by ShopCare – the sector group for retail and its supply
chain including manufacturing, transport, wholesale and logistics

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About ShopCare

ShopCare is the recognised health, safety and wellbeing (HSW) charitable trust for the New Zealand retail sector and its full supply chain – manufacturing, transport, wholesale and logistics – representing approximately 570,000 kaimahi/workers.

Funded by ACC, we work alongside businesses of all sizes, providing practical, evidence-based guidance, resources, and specialist training to improve worker outcomes across some of the country's highest-injury industries.

Our sector represents a significant share of New Zealand's workforce and economy. It includes some of the highest-injury industries – manufacturing, transport, postal and warehousing. Retail alone faces its own distinct risks including violence and aggression, manual handling, and the management of psychosocial hazards.

ShopCare is governed by a steering group drawn from leading New Zealand retailers and supply chain businesses, and our work is informed by an advisory group of health and safety professionals, sector representatives, and subject matter experts.

Our purpose is to transform health, safety and wellbeing outcomes for workers in the New Zealand retail sector and its supply chain through collaboration, trusted knowledge, and collective expertise.

Executive summary

We welcome the opportunity to submit on the Health and Safety at Work Amendment Bill (the Bill) and support the Government's stated intention to provide greater clarity for businesses and to focus attention on critical risks. The retail supply chain, from factory floor to warehouse to delivery route to shopfront, needs a regulatory framework that is practical, proportionate, and effective.

However, after detailed analysis of the Bill against the current Health and Safety at Work Act 2015 (HSWA), the accompanying Regulatory Impact Statement (RIS), the Royal Commission on the Pike River Coal Mine Tragedy, and the Independent Taskforce on Workplace Health and Safety, we have significant concerns that the Bill as drafted, will not achieve its stated aims. In several important areas, the Bill risks creating confusion rather than certainty, reducing protection for workers, weakening key parts of the regulatory framework and potentially more costly for the system as a whole.

The concerns must also be considered alongside the Crimes Amendment Bill. The Government has signalled that retail crime is serious enough to warrant legislative reform and targeted investment. Yet the Regulatory Impact Statement accompanying the HSWA Amendment Bill suggests that armed robbery in retail is not a critical risk for small businesses. These two positions are difficult to reconcile. If retail crime warrants reform to protect property, then violence and aggression must also be treated as a critical risk to protect people.



Our four top concerns are:

1. **The Bill does not increase certainty for business.** The Bill introduces a two-tier system where small PCBU's (those with less than 20 workers) manage only critical risks. Under their duties and under the requirements in the Health and Safety at Work Regulations 2016, this creates new risk classification requirements, is likely to create confusion, results in an inequitable exposure of harm for workers in small business, and introduces further complexity between large and small businesses working within the same workspaces.
2. **Approved Codes of Practice: the safe harbour issue.** Elevating Approved Codes of Practice (ACOPs) from guidance to deemed compliance instruments alters the regulatory hierarchy and risks turning flexible guidance into de facto binding standards without Parliamentary process and public consultation.
3. **Statutory prioritisation of education over enforcement.** Repositioning enforcement below education in WorkSafe statutory functions risks weakening deterrence and conflicts with the root-cause findings of the Pike River Royal Commission and the Independent Taskforce – that effective enforcement and education must operate together. Additionally, enforcement may risk reduced funding as government departments adapt.
4. **Compliance with other laws: a particular problem for transport.** Treating compliance with other enactments as automatic HSWA compliance assumes equivalence between regimes designed for different purposes, particularly in transport, maritime and aviation.

Additional concerns:

- **International obligations: risks the Government has not assessed.** The Regulatory Impact Statement (RIS) does not assess whether reducing duties for small PCBU's or reprioritising enforcement is consistent with ILO Convention 155 obligations, the EU-NZ Free Trade Agreement (FTA) non-regression clause, or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) labour provision.
- **The consultation process was limited.** Only four employer/business groups were included in the targeted consultation and key stakeholders – including Ministry of Foreign Affairs and Trade (MFAT), Treasury, ACC, safety associations and sector and worker groups were not consulted on the critical provisions. The Regulatory Impact Statement (RIS) provides no quantified cost-benefit analysis, or modelling of worker injury rates, levy and productivity impacts.
- **Performance-based regulation and the backward move toward prescription.** The combined effect of the reforms weakens the performance-based framework of PCBU's assessing and managing their own risks, without delivering a coherent prescriptive alternative. It combines the weaknesses of the prescriptive model with the weaknesses of an under-implemented performance model, while discarding the strengths of both.



- **Cost shifting: who pays when injuries increase?** Reducing obligations for approximately 97% of businesses that qualify as small PCBUs under the Bill's definition does not remove risk. Injuries will continue, and costs will be transferred to businesses through the ACC levy system, and to workers and their whānau through lost income and long-term health effects.

This submission sets out our analysis across four core areas of concern, with additional concerns raised, and we have outlined high-level recommendations for each. We ask the Committee to consider these concerns carefully and to ensure that any reform of the HSWA genuinely improves outcomes for all working New Zealanders.

Our four top concerns

1. The Bill does not increase certainty for business

The scale of the carve-out

The Bill introduces a new distinction between 'critical risks' and all other workplace risks. Critical risks are defined in a new Schedule 1A and a catch-all covering hazards likely to result in death, notifiable injury or illness, notifiable incident, or occupational disease. Small PCBUs, businesses with fewer than 20 workers, are required to manage critical risks but face reduced obligations for everything else.

The RIS frames this as relieving small, low-risk businesses of disproportionate burden. But the Bill contains no sector-based filter. A small food processing operation, a three-truck freight company, a retail store regularly subjected to armed robbery all qualify as small PCBUs regardless of their actual risk profile.

Where the harm actually sits

ACC claims data consistently shows that most workplace injuries sit below the critical risk threshold. In manufacturing alone, lifting, carrying and strain injuries account for nearly 24% of active claims. Combined with work property characteristics and twisting movements, approximately 58% of manufacturing active claims fall in categories that small PCBUs would no longer be legally required to actively manage.

The pattern is similar across our retail sector where the dominant injury causes are manual handling, slips, trips and falls, and ergonomic strain, none of which typically meet the critical risk threshold. In warehousing, the picture is dominated by musculoskeletal injuries from repetitive lifting and movement in constrained spaces. In transport, fatigue management, loading and unloading injuries, and vehicle interaction risks present a complex mix of critical and non-critical hazards that the binary distinction struggles to accommodate.

The Bill's supporting guidance material incorrectly states that armed robbery is not a critical risk in retail. ShopCare strongly disagrees. Both major supermarket chains Woolworths and Foodstuffs classify violence and aggression among their top 3 critical risks.



Workers in retail are killed and sustain life-changing injuries because of violence and aggression, including armed robbery. Violence and aggression, including armed robbery, must be included in the catch-all limb of the critical risk definition, given it can result in death, notifiable injury or illness, notifiable incident, within the meaning of the Act and the Accident Compensation Act 2001.

The judgement problem

The Government has stated that the critical risk/non-critical risk distinction will make things clearer for businesses. We contend the opposite. The distinction between critical and non-critical risks requires small PCBUs to make probabilistic judgements about whether hazards are 'likely to result in' death, notifiable injury or illness. This is not a simple factual assessment. It introduces a new classification exercise for precisely those businesses least equipped to undertake it.

The reform claims to address the complexity that confuses small businesses, yet it introduces a new classification exercise that requires precisely the kind of judgement that small businesses find most difficult.

Overlapping duties: Larger businesses either absorb or control small business risk. Under the current HSWA, overlapping duties work because every PCBU at a shared workplace has the same obligations. The large retailer managing the store and the small merchandising company whose workers come on site to stock shelves carry the same duty to manage all risks so far as is reasonably practicable. The consultation and coordination requirements in sections 34 function because both parties have the same incentive and the same duty to act.

The reform disrupts the current overlapping duties framework. Where large and small PCBUs share a workplace, one may retain full duties while the other is relieved of obligations for non-critical risks. This does not remove risk. It transfers responsibility and cost, undermining the symmetry that makes sections 34 consultation and coordination effective.

An inequitable system for workers

This two-tier system creates a riskier environment for workers in small business who are already more likely to be injured at work. Workers in 97% of businesses across New Zealand whose risks fall outside the statutory scope will now be unprotected.

More musculoskeletal injuries, because small PCBUs won't have legal duties to manage manual handling or ergonomics. Workers experience:

- heavier lifts
- unsafe trolleys
- poor storage layouts
- fewer mechanical aids
- chronic back/shoulder injuries



More fatigue and longer shifts, fatigue is not critical, so small PCBU's may:

- run skeleton crews
- schedule long shifts
- avoid breaks
- ignore safe rostering

This hits retail, manufacturing, and warehousing workers hardest in our sectors.

Recommendation

- Remove the requirement for small business to focus only on critical risks.
- Retain the critical risk focus as an additional layer of attention for all PCBU's, rather than as the ceiling on obligations for small PCBU's.
- Revise the supporting guidance to explicitly include violence and aggression (including armed robbery) as a critical risk in retail and other customer-facing settings.

2. Approved codes of practice: the safe harbour issue

Approved Codes of Practice (ACOPs) are a valuable part of the current HSWA framework. They translate the broad legal duty to manage risks "so far as is reasonably practicable" into practical, sector-specific actions. They provide clarity for businesses, particularly smaller ones without in-house safety professionals, by demonstrating one way to comply with the Act. They provide confidence in compliance, because following an ACOP is admissible as evidence of good practice, but they are not binding standards.

They reduce the cost of figuring it out, providing a regulator-endorsed approach that saves businesses from having to develop their own or hire consultants. They create a level playing field by setting a visible standard that competitors can be measured against. And under the current framework, they preserve flexibility, a business can follow the ACOP or do something different and demonstrate its approach meets the same standard.

We wholeheartedly support an increased focus on the development of ACOPs. The issue is not ACOPs themselves. The issue is what happens when their legal status changes from "evidence of good practice" to "deemed compliance".



ACOPS as safe harbours: The regulatory hierarchy problem

The Bill introduces a safe harbour model under which compliance with an ACOP is deemed compliance with the relevant HSWA duty. While this may provide some legal certainty, it changes the character of ACOPs from guidance that assists compliance to instruments that define it.

Under the current hierarchy, the Act sets general duties, regulations establish mandatory requirements where Parliament determines they are needed, and ACOPs provide practical guidance. Regulations are subject to Parliamentary process, public consultation and disallowance. ACOPs are developed by WorkSafe and approved by the Minister. The accountability chain is much shorter. Elevating ACOPs to deemed compliance status gives administrative instruments the legal effect of regulation without the same level of Parliamentary scrutiny.

Where binding standards are required, regulation remains the appropriate instrument.

ACOPs as ceilings, not floors

There is a further structural concern. The shift from ‘admissible as evidence’ to ‘deemed compliance’ changes the incentive structure. Under the current framework, an ACOP provides guidance on good practice, and businesses can demonstrate compliance through other means. The ACOP functions as a floor, a minimum standard that businesses should meet, with many exceeding it.

The safe harbour model places significant reliance on ACOPs as the primary mechanism for demonstrating compliance. Many high-injury sectors – including food and beverage processing, metal fabrication, wood products, retail, warehousing and most transport operations – do not currently have ACOP coverage.

ACOPs have historically taken considerable time to develop. The 2024 Ports ACOP for Loading and Unloading was developed by the entire sector leading to unprecedented co-operation enabling the ACOP’s development to be fast-tracked to 15 months. However, the Forestry ACOP Safe Practice for Forestry and Harvesting Operations took 2.5 years to complete with the entire sector engaged. Using them as a substitute for regulation risks creating gaps during the transition and places weight on an instrument the regulator has not yet demonstrated the capacity to produce at the scale required.

The current performance-based model, for all its complexity, has the advantage of encouraging businesses to find the best practicable approach rather than simply following a code.



Recommendation

- Maintain the performance-based model as the foundation of the Act, with ACOPs as sector-specific guidance that assists compliance rather than as the primary compliance mechanism.
- Preserve the proper regulatory hierarchy: where binding requirements are needed, they should be achieved through regulations subject to full Parliamentary process, not through administrative instruments given legislative effect.
- Increase the amount of ACOPS in the system, by ensuring increased funding and resources are available for WorkSafe and industry bodies who can develop industry led ACOPS.
- Prioritise ACOP development for manufacturing (food processing, metal fabrication, wood products), retail (violence and aggression, manual handling), and transport/warehousing (fatigue management, loading/unloading, vehicle interaction).

3. Statutory prioritisation of education over enforcement

What the Bill does to WorkSafe's functions

The Bill reorganises WorkSafe's statutory functions under the WorkSafe New Zealand Act 2013. By placing this hierarchy in legislation, the Bill goes further than a statement of operational intent. It creates a statutory framework that positions education first, ACOPs second, safe work instruments third, and enforcement last, changing the character of the regulatory architecture.

The evidence on enforcement and deterrence

There is a substantial body of international research on the relationship between regulatory enforcement and workplace safety outcomes. The evidence does not support a binary choice between education and enforcement. It consistently shows that both are necessary, and that enforcement provides a deterrence effect that education alone cannot replicate.

- A 2016 systematic review by Tompa and colleagues, published in the American Journal of Industrial Medicine, found strong evidence that several occupational health and safety policy levers, including inspections, citations, and penalties, are effective in reducing injuries and increasing compliance.
- A 2013 Cochrane review by Mischke and colleagues found evidence that workplace inspections led to decreases in injuries, with specific, focused inspections showing potentially larger effects than general inspections.



- A 2022 Campbell Collaboration systematic review confirmed that regulation and enforcement contribute to accident prevention, noting that while individual effect sizes may be modest, the population-level impact is significant because enforcement reaches broad groups of workers.

The evidence is clear: enforcement and education work together. Removing enforcement as a co-equal priority weakens both.

New Zealand's pattern of inquiry and forgetting: the Pike River lesson

The lessons of Pike River are directly relevant here. The Royal Commission on the Pike River Coal Mine Tragedy identified the decline of effective enforcement as a root cause of the regulatory failure that contributed to 29 deaths. The Commission found that Department of Labour inspectors 'relied principally on physical inspections' but in practice 'favoured negotiated agreements with mining companies rather than using the range of tools available to them.' The inspectors assumed the company was compliant and used only informal methods. The Commission concluded that a more decisive regulator, using the full range of enforcement tools, would probably have intervened.

The Independent Taskforce on Workplace Health and Safety, established in the wake of Pike River, reinforced this finding. It identified that the regulatory system 'had not provided the right incentives and enforcement measures to drive high standards' and found that some businesses 'will only respond positively if they are compelled to do so' calculating 'the likelihood of getting caught for having poor health and safety practices and the costs to them if they are caught.' The Taskforce explicitly proposed that the regulator's functions should include both developing and enforcing approved codes of practice as a single integrated function: 'develop technical regulations and make approved codes of practice and monitor and enforce these to ensure effective compliance.' Education and enforcement were conceived as inseparable.

The pattern is familiar in New Zealand's history: tragedy, inquiry, recommendations, reform – followed by gradual erosion of commitment and a slow drift back toward the conditions that created the tragedy in the first place. We urge the Select Committee not to allow this Bill to become another chapter in that cycle. Its provisions should not be weakened without rigorous evidence that the weakening will produce better outcomes.

The Robens model: self-regulation requires credible enforcement

New Zealand's workplace health and safety framework, like Australia's and the United Kingdom's, is built on the Robens model of shared responsibility and goal-setting regulation. This model places primary responsibility on those who create risks (employers/PCBUs) and reduces prescriptive rules in favour of performance-based duties.



But the Robens model was never intended to operate without credible enforcement. Lord Robens himself addressed concerns that his recommendations might be interpreted as a relaxation of control, acknowledging that non-statutory standards ‘might be difficult to enforce in precisely those cases where strict enforcement measures might be needed.’ The model works because the general duties are backed by a regulator with the authority and willingness to enforce them. Remove that backing, and the self-regulation rationale collapses.

The Bill risks repeating the exact pattern the Robens model was designed to avoid, broad duties without the enforcement infrastructure to make them meaningful.

What happens in practice

The practical effect of this legislative reprioritisation will be felt through changed behaviour – both by the regulator and by businesses. WorkSafe will face institutional pressure to allocate resources toward its ‘main’ functions at the expense of its other functions. Enforcement activity will reduce, and business will notice.

The deterrence effect of regulatory enforcement extends well beyond the businesses that are directly inspected or subject to action. It operates through general deterrence, the awareness across an industry that non-compliance carries consequences. When businesses see enforcement notices issued, prosecutions initiated, and penalties applied, it influences their own compliance behaviour. Research consistently finds this general deterrence effect is more significant than the direct impact on individual businesses.

The RIS itself acknowledges this dynamic. It notes that proactive compliance activity for small PCBU’s ‘may not be worthwhile’ under the new settings, stating it is ‘not efficient for the regulator to sort through different duties.’ This suggests the outcome of the bill will reduce enforcement for the majority of New Zealand businesses. The question the RIS does not answer is: what will that cost?

Using a statement of intent, not legislation

If the Government’s intent is to signal that WorkSafe should prioritise education and guidance in its operational approach, the appropriate mechanism is a statement of intent or a Government Policy Statement, not a statutory hierarchy of functions. A statement of intent can be updated as circumstances change. Legislation is not easily changed.

Embedding the education-over-enforcement hierarchy in statute creates rigidity. If injury rates rise during the transition period, if the ACOP gap proves longer than expected, if economic recovery brings new workers into high-risk sectors faster than education can reach them, WorkSafe will be constrained by a legislative framework that limits its ability to respond.



Recommendation

- Remove the statutory hierarchy between WorkSafe’s main functions. List all functions as equal, with operational prioritisation left to WorkSafe’s board and Government direction through the statement of intent.
- If the Committee proceeds with the hierarchy, explicitly include enforcement as having equal priority to the other main functions, consistent with the Independent Taskforce’s recommendation that education and enforcement are inseparable.
- Require WorkSafe to publish annual enforcement activity data by sector and business size to maintain transparency and accountability.
- Require the Select Committee’s report to include an explicit assessment of how each major provision of the Bill aligns with or departs from the recommendations of the Pike River Royal Commission and the Independent Taskforce.
- Establish a mandatory tripartite consultation requirement for any future amendments to the HSWA that affect worker safety obligations.

4. Compliance with other laws: a problem for transport

What the Bill does

The current HSWA provides that in determining compliance, a person or court ‘may have regard to’ requirements under other laws that affect health and safety. This is a discretionary, evidentiary provision. Other legislation is a relevant consideration, nothing more.

The Bill replaces this with a deemed compliance provision. Under new section 35, where a person has both a HSWA duty and an obligation under another enactment on the same subject matter, compliance with the external requirement ‘must be taken’ as compliance with the HSWA duty. This is a fundamental shift from ‘may have regard to’ to ‘must be taken to have complied.’

The impact on the retail sector and its supply chain

This provision creates its most serious problems in transport, postal and warehousing, where multiple regulatory frameworks already overlap. The Land Transport Act was not designed as a comprehensive health and safety management framework.



The same issue arises across the supply chain. Maritime safety rules were designed for vessel safety, not comprehensive worker health and safety. Aviation rules address flight safety, not the full range of ground crew and warehouse worker risks. Building regulations address structural and fire safety, not the occupational health risks of the people working within them.

Each of these regulatory regimes was designed for a different purpose. Treating compliance with them as automatic HSWA compliance assumes an equivalence of protection that does not exist.

The clarity problem

The Government contends that this provision will make things clearer for businesses. For transport operators and others, it will do the opposite. A freight company already navigates the Land Transport Act, the Land Transport Rule: Work Time and Logbooks, the Hazardous Substances and New Organisms Act (for dangerous goods), the Civil Aviation Act (for intermodal operations), and the HSWA. The deemed compliance provision does not eliminate this complexity. It adds a new layer: the business must now determine which of its HSWA duties are 'on the same subject matter' as an obligation under another enactment, and whether compliance with the other enactment fully discharges the HSWA duty or only partially overlaps with it.

The introduction of a new legal interpretation exercise that will require professional advice to navigate – advice that small transport operators typically cannot afford.

Recommendation

- Retain the current discretionary approach ('may have regard to') rather than adopting deemed compliance.
- If deemed compliance is retained, provide a mandatory schedule of specific legislative overlaps with worked examples for each affected sector, developed in consultation with sector groups, regulators, and worker representatives.
- Ensure WorkSafe develops specific guidance for transport, postal and warehousing operators on how the deemed compliance provision interacts with their existing multi-regulatory obligations.



Additional concerns

- **International obligations: risks the Government has not assessed**

The Bill's Regulatory Impact Statement (RIS) does not assess whether the proposed changes are consistent with New Zealand's international obligations on occupational safety and health. This is a significant omission. New Zealand is bound by several international instruments that set expectations for the level of worker safety protection a government must maintain and limit the circumstances in which those protections can be reduced. Three are directly relevant, as outlined below.

1. **ILO Convention No. 155: a fundamental convention**

New Zealand ratified ILO Convention No. 155 (International Labour Organisation Occupational Safety and Health Convention, 1981) in 2007. In June 2022, the ILO elevated Convention 155 to a fundamental convention, one of only five categories of fundamental principles and rights at work.

Convention 155 requires New Zealand to formulate, implement and periodically review a coherent national policy on occupational safety and health aimed at preventing accidents and injury arising from work by minimising the causes of hazards inherent in the working environment (Article 4). The Convention applies to all branches of economic activity and all workers (Article 1). It requires an adequate and appropriate system of inspection to enforce laws and regulations concerning occupational safety and health (Article 9). It requires employers to ensure that workplaces, machinery, equipment and processes under their control are safe and without risk to health, so far as is reasonably practicable (Article 16).

The Bill creates tension with these requirements on several fronts. Reducing the duty of care for small PCBUs – approximately 97% of New Zealand businesses – on non-critical risks narrows the scope of Article 16's obligation. Repositioning enforcement below education in WorkSafe's statutory functions is difficult to reconcile with Article 9's requirement for an adequate inspection system. The acknowledged position in the RIS that proactive compliance activity for small PCBUs 'may not be worthwhile' sits uncomfortably alongside a Convention that requires the minimisation of hazards across the entire working environment, not just critical risks.

The practical risk is reputational rather than immediately punitive, the ILO does not impose sanctions in the way trade agreements can. But the ILO Committee of Experts periodically reviews compliance with ratified conventions, and worker organisations can submit information highlighting concerns.

The risk of New Zealand being named in ILO supervisory reports as having weakened protections under a fundamental convention, at the very moment the ILO is campaigning for universal ratification and stronger implementation of Convention 155, would be an uncomfortable outcome.



2. The EU-New Zealand Free Trade Agreement

The EU-New Zealand Free Trade Agreement, in force since 1 May 2024, contains explicit enforceable labour provisions within its Trade and Sustainable Development (TSD) chapter.

The TSD chapter commits both parties to strive for high levels of labour protection. It requires effective implementation of all ILO conventions that each party has ratified, which, for New Zealand, includes Convention 155. It specifically welcomed the ILO's June 2022 decision elevating occupational safety and health to a fundamental principle and committed both sides to a joint process to incorporate this new principle into the agreement.

Most significantly, the TSD chapter contains a non-regression clause. It prohibits either party from weakening the levels of protection in their labour laws, or from poorly enforcing those laws, in a manner that encourages trade or investment. New Zealand's HSWA settings as at May 2024 effectively form the baseline. The Amendment Bill would reduce statutory obligations on approximately 97% of New Zealand businesses and structurally reduce the enforcement posture of the regulator. Both changes post-date the baseline.

The EU has shown willingness to use labour provisions in trade agreements. It initiated proceedings against South Korea under the EU-Korea FTA on labour standards grounds. The mechanism is important for New Zealand in two ways.

- Competitiveness: EU manufacturers competing with New Zealand imports could argue that reduced safety obligations give New Zealand producers a cost advantage obtained through lowered worker protections. This is precisely the scenario the non-regression clause was designed to prevent. It need not be the Government's intent, the clause addresses effect, not intent.
- Supply chain due diligence: The EU will be progressively tightening supply chain standards through the Corporate Sustainability Due Diligence Directive and related instruments. EU importers are increasingly required to verify that goods in their supply chains are produced in compliance with fundamental labour rights, including occupational safety and health since the 2022 ILO elevation. A New Zealand legislative change that deliberately reduces safety obligations and enforcement creates a due diligence complication for EU importers of New Zealand goods, including the dairy, meat, wine, forestry, and manufactured goods that form the core of our EU trade. Whether the EU would formally initiate dispute proceedings is uncertain. But the legal basis exists.

The diplomatic discomfort of being seen to weaken labour protections within two years of an FTA entering into force, an FTA whose labour provisions New Zealand held up as evidence of its commitment to high standards, is itself a material risk to New Zealand's trade credibility.



3. CPTPP

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) includes obligations to adopt and maintain laws and practices governing acceptable conditions of work, including occupational safety and health. Parties committed to not waiving or derogating from laws that implement these protections in a manner affecting trade or investment between CPTPP parties. The agreement further provides that a failure to enforce labour laws cannot be excused on grounds of resource allocation, a provision directly relevant to the Bill's acknowledged position that proactive enforcement for small PCBUs may not be worthwhile.

The assessment gap

The RIS contains no analysis of the Bill's compatibility with New Zealand's international occupational safety and labour obligations. There is no assessment of whether the Bill is consistent with Convention 155, the EU-NZ FTA non-regression clause, or the CPTPP labour provisions.

For a Bill that restructures the foundational workplace health and safety legislation – in a small, trade-dependent nation with significant international commitments in this area – the absence of an assessment is a material omission.

We are not suggesting that the Bill breaches these obligations. Rather, the issue is that compatibility has not been assessed. The Select Committee should require MBIE and the Ministry of Foreign Affairs and Trade to evaluate and report on the Bill's alignment with New Zealand's current international obligations before it proceeds further.

Recommendation

- Require MBIE and MFAT to jointly assess and report to the Select Committee on the Bill's compatibility with ILO Convention No. 155, the EU-NZ FTA Trade and Sustainable Development chapter (including the non-regression clause), and the CPTPP labour provisions.
- If the assessment identifies risks of inconsistency, require amendments to the Bill to ensure compliance before it proceeds to final reading.
- Ensure that future periodic reporting to the ILO on Convention 155 compliance addresses the Bill's changes and their effect on the scope of worker protections and enforcement activity.



- **The consultation process was limited**

The Bill's Explanatory Note references two Regulatory Impact Statements (12 March 2025 and 20 May 2025) and a 2024 public consultation. The May 2025 RIS notes that the targeted consultation included only four employer/business groups for the specific provisions examined.

No unions, worker representatives, safety associations or safety sector groups were consulted. ACC does not appear to have been consulted on provisions that will directly affect claims volumes and costs. Neither MFAT or Treasury were consulted on potential impacts to international agreements. The QA panel assessed the RIS as only 'partially meets' the required standard.

The Independent Taskforce explicitly recommended a tripartite approach at every level of the system: workers, employers, and Government working together on the regulations, ACOPs, and guidance that affect them all. We know this improves implementation, reduces unintended consequences, and increases voluntary compliance. A consultation process that excludes worker representatives from input on provisions that reduce worker protections fails this standard.

The exclusion of a tripartite approach has produced a Bill that, in several places, does not account for the consequences of its own provisions.

Recommendation

- Require the Select Committee to extend the process for further consultation with worker representatives, unions, safety associations, sector groups, ACC, MFAT and Treasury.
- Require that any regulations, ACOPs, or guidance material developed under the amended Act be developed through a tripartite consultation process, as recommended by the Independent Taskforce.

- **Performance-based regulation and the backward move toward prescription**

The future model risks

The HSWA is built on a performance-based regulatory model. It sets general duties and requires PCBUs to assess and manage their own risks, supported by regulations and ACOPs

The Bill amendment retains the general duty but introduces elements that move toward prescription, including safe harbour ACOPs and the critical risk distinction, while simultaneously reducing duties for small PCBUs and reprioritising enforcement.



The combined effect risks weakening the strengths of the performance-based framework without delivering the clarity of a fully prescriptive system.

The Amendment Bill – where does it sit?

The Amendment Bill doesn't fit neatly on the forward trajectory. In several important respects, it reverses it.

- The **two-tier duty structure**, full duties for large PCBUs, critical risks only for small ones, reintroduces the kind of coverage gap that the pre-1992 legislation had. Before 1992, if your industry wasn't covered by specific legislation, you had limited protection. Under the Bill, if your risk isn't classified as critical, and your employer is small, you have no statutory protection. The mechanism is different, but the outcome is similar: workers whose risks fall outside the statutory scope are unprotected.
- The **safe harbour ACOP model** moves back toward prescription. The pre-1992 system told businesses exactly what to do. The 1992 and 2015 Acts said, "manage your risks, here's guidance on how." The Bill says, "follow the code and you've complied." That's prescription by another name. It's more sophisticated than the early prescription legislation, but the fundamental character is the same: compliance defined by following a specific instrument rather than by managing risks in context.
- The **repositioning of enforcement below education** echoes the pre-Pike River period. The Royal Commission found that inspectors favoured education and negotiation over enforcement. The Taskforce found the system lacked effective deterrence. The entire post-Pike River reform was built on the principle that enforcement and education must work together. The Bill legislates the hierarchy that Pike River taught us was dangerous.
- The **deemed compliance with other laws** is perhaps the most telling reversal. The pre-1992 patchwork of legislation meant different laws covered different aspects of workplace risk, with gaps between them. The 1992 and 2015 Acts solved this by creating one overarching duty that covered everything, regardless of what other legislation said. The Bill reintroduces fragmentation by allowing compliance with other laws to displace the HSWA duty, recreating, in a more sophisticated form, the gaps that the unified model was designed to close.

The Bill does not formally abandon the performance-based model. The general duty remains. But the combination of safe harbour ACOPs, the critical risk/non-critical risk distinction, and the deemed compliance provision for other laws collectively moves the system toward greater prescription. Greater clarity can be achieved by completing the regulations and providing more ACOPS and supporting guidance.



This shift places greater pressure on the prescriptive instruments, particularly ACOPs, to be comprehensive, up to date, and practically applicable. It also places greater pressure on the regulator to produce, maintain, and update those instruments quickly enough to keep pace with emerging risks.

The pressure on the regulator

WorkSafe has produced only two ACOPs that the Government considers fit for safe harbour status since 2016. The Bill proposes to make ACOP compliance the primary mechanism for demonstrating legal compliance across the entire economy. This is an extraordinary mismatch between the instrument's importance and the system's capacity to produce it.

If ACOPs are to be the foundation of the new compliance framework, WorkSafe and the Government must invest in the capacity to develop them at scale and pace. This means dedicated resource, a standing programme of ACOP development and review, and a commitment to keeping codes current as hazards and best practice evolve.

Recommendation

- Maintain the performance-based model as the foundation of the Act, with ACOPs as guidance that assists compliance rather than as the primary compliance mechanism.
- Complete the development of regulations to support HSWA.

• **Cost shifting: who pays when injuries increase?**

The costs do not disappear

When a small PCBU's obligations for non-critical risks are reduced, the risks themselves do not change. A lifting task in a small food processing operation is just as likely to cause a musculoskeletal injury under the new settings as under the old. The difference is that the business is no longer legally required to actively manage that risk. If the injury occurs, it still generates an ACC claim. The worker still loses income. The health system still bears the treatment cost.

The RIS does not quantify these costs. It acknowledges the possibility of increased injuries but provides no modelled estimate. This is a significant gap given the scale of the change, reduced obligations for approximately 97% of New Zealand businesses.

The broad cost picture

The Business Leaders' Health and Safety Forum's 2025 State of a Thriving Nation report puts the total cost of workplace harm in New Zealand at \$5.4 billion in 2024, an increase of nearly \$1 billion in real terms over the past decade.



This figure encompasses fatalities, serious injury claims, lost income, and occupational illness. It represents 1.3% of GDP, and the Forum’s analysts consider this a conservative estimate.

The structural dynamics within the retail and supply chain sectors are already moving in the wrong direction. While total new claims have fallen over the past decade, the cost per claim has risen sharply. In manufacturing, the average cost per active claim has increased from \$3,492 in 2023 to \$4,364 in 2025 – a 25% rise in two years. The proportion of claims involving time off work has risen from one in four to nearly one in three. Injuries are becoming fewer, but the ones that occur are more serious, more costly, and take longer to resolve.

The Bill’s reduced obligations for small PCBUs intersect with these existing structural trends. They are highly likely to compound an already deteriorating cost trajectory.

Where the costs land

ACC’s work levy system is structured so that claims costs are shared across levy payers within industry classifications. When a small PCBU’s reduced safety effort generates additional injuries, the resulting claims costs are distributed across all businesses in that classification –including mid-sized and large employers who maintain stronger safety systems. Only companies who are in the Accredited Employers Scheme would not be affected.

Businesses that invest in comprehensive safety management pay more through the levy to cover injuries generated by businesses that invest less. This is the opposite of the incentive structure the system is designed to create.

The wider economic costs – lost productivity, employee replacement costs, delayed projects, health system burden – are absorbed by the economy as a whole. The State of a Thriving Nation 2025 reports that 0.75% of New Zealand’s total workforce capacity is lost to injury-related time off work, and that this proportion has been trending upward since 2015.

The procyclical risk

The Bill arrives at a structurally difficult moment. New Zealand’s economy is in the early stages of recovery from a sustained downturn. As economic activity returns, more workers will enter the labour market – many of them new to their roles, young, or in temporary and casual positions. Economic research consistently shows that injury rates are sensitive to the economic cycle: new workers, production pressure, and under-investment in safety during downturns all contribute to higher injury rates during recovery phases.

Reducing PCBU obligations during a procyclical recovery phase compounds the natural upward pressure on injuries at the moment they are already most likely to increase.



Recommendation

- Require MBIE to commission and publish a comprehensive cost-benefit analysis of the Bill's provisions, including modelled impacts on ACC claims costs, levy impacts, and wider economic costs, before the Bill proceeds to final reading.
- Ensure the ACC Board is formally consulted on the Bill's likely impact on claims volumes and costs, and that its assessment is made available to the Select Committee.



Conclusion

ShopCare supports the intent of clear, proportionate and effective workplace health and safety regulation.

However, the Bill, as drafted, restructures key elements of the HSWA framework in ways that risks increasing complexity, weakening protections for workers and shifting costs across the system.

These changes are proposed without quantified modelling of system-wide impacts, without full tripartite consultation, and without assessment of compatibility with New Zealand's international obligations. It creates foreseeable risks under New Zealand's international obligations, including the recently elevated ILO Convention 155 and the enforceable non-regression clause in the EU-NZ FTA. For legislation that underpins workplace safety across all sectors of the economy, this level of analysis is essential.

The retail supply chain employs approximately 570k workers. Our kaimahi/workers deserve a regulatory framework that protects them and supports the businesses they work in.

ShopCare urges the Select Committee to review the four key concerns we have raised, and consider the additional concerns, and ensure that reform strengthens, rather than weakens, workplace and safety outcomes. Reform of the HSWA affects every working person in Aotearoa New Zealand.

We are ready to work constructively with the MBIE and the government, the Select Committee, WorkSafe, and other sector stakeholders to develop improvements that are practical, evidence-based, and aligned with both domestic and international commitments

Ngā mihi,



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Appendix A: Summary of recommendations

The following is a consolidated list of ShopCare recommendations to the Select Committee.

Addressing our four key concerns:

1. The Bill does not increase certainty for business

- Remove the requirement for small business to focus only on critical risks.
- Retain the critical risk focus as an additional layer of attention for all PCBUs, rather than as the ceiling on obligations for small PCBUs.
- Revise the supporting guidance to explicitly include violence and aggression (including armed robbery) as a critical risk in retail and other customer-facing settings.

2. Approved Codes of Practice: the safe harbour issue

- Maintain the performance-based model as the foundation of the Act, with ACOPs as sector-specific guidance that assists compliance rather than as the primary compliance mechanism.
- Preserve the proper regulatory hierarchy: where binding requirements are needed, they should be achieved through regulations subject to full Parliamentary process, not through administrative instruments given legislative effect.
- Increase the amount of ACOPS in the system, by ensuring increased funding and resources are available for WorkSafe and industry bodies who can develop industry led ACOPS.
- Prioritise ACOP development for manufacturing (food processing, metal fabrication, wood products), retail (violence and aggression, manual handling), and transport/warehousing (fatigue management, loading/unloading, vehicle interaction).

3. Statutory prioritisation of education over enforcement.

- Remove the statutory hierarchy between WorkSafe's main functions. List all functions as equal, with operational prioritisation left to WorkSafe's board and Government direction through the statement of intent.
- If the Committee proceeds with the hierarchy, explicitly include enforcement as having equal priority to the other main functions, consistent with the Independent Taskforce's recommendation that education and enforcement are inseparable.
- Require WorkSafe to publish annual enforcement activity data by sector and business size to maintain transparency and accountability.
- Require the Select Committee's report to include an explicit assessment of how each major provision of the Bill aligns with or departs from the recommendations of the Pike River Royal Commission and the Independent Taskforce.



- Establish a mandatory tripartite consultation requirement for any future amendments to the HSWA that affect worker safety obligations.

4. Compliance with other laws: a particular problem for transport

- Retain the current discretionary approach ('may have regard to') rather than adopting deemed compliance.
- If deemed compliance is retained, provide a mandatory schedule of specific legislative overlaps with worked examples for each affected sector, developed in consultation with sector groups, regulators, and worker representatives.
- Ensure WorkSafe develops specific guidance for transport, postal and warehousing operators on how the deemed compliance provision interacts with their existing multi-regulatory obligations.

Four additional concerns

- **International obligations: risks the Government has not assessed**
 - Require MBIE and MFAT to jointly assess and report to the Select Committee on the Bill's compatibility with ILO Convention No. 155, the EU-NZ FTA Trade and Sustainable Development chapter (including the non-regression clause), and the CPTPP labour provisions.
 - If the assessment identifies risks of inconsistency, require amendments to the Bill to ensure compliance before it proceeds to final reading.
 - Ensure that future periodic reporting to the ILO on Convention 155 compliance addresses the Bill's changes and their effect on the scope of worker protections and enforcement activity.
- **The consultation process was limited**
 - Extend the Select Committee process to allow for further consultation with worker representatives, unions, safety associations, sector groups, ACC, MFAT and Treasury.
 - Require that any regulations, ACOPs, or guidance material developed under the amended Act be developed through a tripartite consultation process, as recommended by the Independent Taskforce.
- **Performance-based regulation and the backward move toward prescription**
 - Maintain the performance-based model as the foundation of the Act, with ACOPs as guidance that assists compliance rather than as the primary compliance mechanism.
 - Complete the development of regulations to support HSWA.
- **Cost shifting: who pays when injuries increase?**
 - Require MBIE to commission and publish a comprehensive cost-benefit analysis of the Bill's provisions, including modelled impacts on ACC claims costs, levy impacts, and wider economic costs, before the Bill proceeds to final reading.



- Ensure the ACC Board is formally consulted on the Bill's likely impact on claims volumes and costs, and that its assessment is made available to the Select Committee.

Appendix B: Evidence-based sources

This appendix lists the principal sources relied upon in this analysis.

Legislation and regulatory documents

- Health and Safety at Work Act 2015 (as at 5 April 2025)
- Health and Safety at Work Amendment Bill (Government Bill 244-1)
- Regulatory Impact Statement: Work Health and Safety Reforms – Further Policy Decisions on the Reform Bill (MBIE, 20 May 2025)
- Regulatory Impact Statement: Work Health and Safety Reforms (MBIE, 12 March 2025)

Royal Commission and Taskforce

- Royal Commission on the Pike River Coal Mine Tragedy, Volume 1 (2012)
- Royal Commission on the Pike River Coal Mine Tragedy, Volume 2 (2012)
- Independent Taskforce on Workplace Health and Safety: Report to the Minister of Labour (2013)
- Independent Taskforce on Workplace Health and Safety: Executive Report (2013)

Sector data and reports

- ShopCare Manufacturing Sector Key Insights 2025 (ACC claims data analysis)
- ShopCare: HSWA Amendment Bill Comparative Assessment (February 2026)
- Business Leaders' Health and Safety Forum: State of a Thriving Nation 2023
- Business Leaders' Health and Safety Forum: State of a Thriving Nation 2024
- Business Leaders' Health and Safety Forum: State of a Thriving Nation 2025

Academic and international evidence

- Tompa, E. et al. (2016). A systematic literature review of the effectiveness of occupational health and safety regulatory enforcement. *American Journal of Industrial Medicine*, 59(11), 919–933.
- Mischke, C. et al. (2013). Occupational safety and health enforcement tools for preventing occupational diseases and injuries. *Cochrane Database of Systematic Reviews*.
- van der Molen, H.F. et al. (2022). Safety interventions for the prevention of accidents at work. *Campbell Systematic Reviews*, 18(2).
- Sirrs, C. (2016). Accidents and Apathy: The Construction of the 'Robens Philosophy' of Occupational Safety and Health Regulation in Britain. *Social History of Medicine*, 29(1), 66–88.



International obligations

- ILO Convention No. 155 – Occupational Safety and Health Convention, 1981 (ratified by New Zealand 2007; elevated to fundamental convention June 2022)
- ILO Convention No. 187 – Promotional Framework for Occupational Safety and Health Convention, 2006 (fundamental convention; not yet ratified by New Zealand)
- EU-New Zealand Free Trade Agreement, Chapter 19: Trade and Sustainable Development (signed 9 July 2023; entered into force 1 May 2024)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Chapter 19: Labour
- MBIE (2015). International Labour Conventions Ratified by New Zealand.
- EU Corporate Sustainability Due Diligence Directive (CSDDD) – Directive (EU) 2024/1760 (published in EU Official Journal 5 July 2024; entered into force 25 July 2024; scope and timeline amended by Omnibus I package, approved by European Parliament 16 December 2025). Summary: ICAEW, "EU approves updated CSRD and CSDDD," January 2026.

