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# SELECT COMMITTEE SUBMISSION



## HEALTH AND SAFETY AT WORK AMENDMENT BILL

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# Submission to the Education and Workforce Select Committee on the Health and Safety at Work Amendment Bill 2026 (Bill No. 244–1)

## 1. Submitter details

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<b>Organisation</b>	Health and Safety Association New Zealand (HASANZ)
<b>Role</b>	Independent Chair
<b>Authority to submit</b>	This submission is made on behalf of HASANZ and incorporates feedback from health and safety professionals across disciplines.
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<b>Organisation introduction</b>	HASANZ is the umbrella organisation for health and safety professional associations in Aotearoa New Zealand. Our members work with PCBUs, workers, officers, regulators, and sector bodies to prevent harm and improve workplace health and safety outcomes.
<b>Request to appear</b>	HASANZ requests the opportunity to appear before the Committee to speak to this submission.

## 2. Executive summary

### 2.1 Overall position

HASANZ supports meaningful efforts to improve the health and safety of workers in Aotearoa.

We support a stronger focus on preventing fatalities and serious harm. However, health and safety professionals and key worker groups have consistently raised concerns that the Bill as drafted may:

- Shift the system’s “centre of gravity” toward only “critical risks”, weakening attention to other harms, including occupational health and psychosocial risks.
- Create a “two-speed” system in which workers in small PCBUs have weaker legal levers over significant non-critical hazards. This was the strongest area of convergence in HASANZ member discussions.
- Narrow and complicate some PCBU and officer duties in ways that reduce accountability and confuse governance, particularly where executives straddle governance and operational

roles, and by weakening accountability settings for small PCBUs in ways that could disadvantage vulnerable workers.

- Elevate Approved Codes of Practice (ACOPs) into an effective “safe harbour” without sufficient resourcing, transparency, and revision mechanisms, creating risks of delays and uneven coverage.
- Refocusing regulator functions toward guidance and codes with enforcement as a lower priority may reduce proactive prevention and longer-term clarity (including through reduced jurisprudence).

## 2.2 Key recommendations (summary)

HASANZ asks **the Committee to recommend** amendments that increase clarity and effectiveness **without narrowing protection**.

1. **Purpose and critical-risk framework:** The Committee should recommend amendments to clauses 4, 7, 9, 11, 13 and 31 so that “prioritising critical risks” does not narrow duties to manage all reasonably practicable risks, including occupational health and psychosocial risks.
2. **Avoid a two-tier system:** The Committee should recommend amending clauses 8, 11, 13, and 36–38 to remove the small-PCBU carve-out that limits compliance with sections 36–43 to “critical risks” only. This will help ensure the Bill does not weaken protection for workers in small PCBUs against significant non-critical hazards, including psychosocial and musculoskeletal harms.
3. **Officer duties:** The Committee should recommend amendments to clause 21 (section 44) to clarify governance accountability, absent narrowing due diligence or enabling loopholes for role-splitting.
4. **ACOP status and resourcing:** The Committee should recommend amendments to clauses 27–30 (sections 222, 222A, 226 and the transitional provisions) to strengthen Approved Codes of Practice as practical guidance, without creating a statutory “safe harbour”. The Bill should require transparency, adequate resourcing, timeliness, and clear pathways to equivalent or better controls, along with sector-specific guidance.
5. **Regulator prioritisation:** The Committee should recommend amendments to clauses 24 (section 190) and 34 (WorkSafe Act section 10) so that proactive prevention, worker voice, and occupational health/long-latency harms remain explicit priorities alongside guidance and enforcement.
6. **Deemed compliance with other enactments:** The Committee should recommend amendments to clause 12 (new section 35) so that deemed compliance applies only where external requirements provide an equal or higher standard of work health and safety protection and do not displace workplace-specific controls.
7. **Implementation and list maintenance:** The Committee should recommend amendments to clause 2 and related settings to provide adequate lead-in time, require publication of guidance/ACOPs before the framework takes effect, and ensure the new critical-risk lists and linkages are maintained and reviewed regularly.

8. **Review:** The Committee should recommend the insertion of a statutory post-implementation review requirement.

### 3. Overview of position

HASANZ supports the Government's objective to improve system effectiveness and reduce serious harm and fatalities. However, we do not support reforms that may unintentionally reduce clarity of duties, weaken worker protections, or shift risk management toward a narrow compliance model. A narrow compliance approach creates a false sense of security, especially where PCBU's lack the expertise to recognise long-latency or cumulative health risks.

Health and safety practice in New Zealand is based on HSWA's broad, principles-based duties to manage risks "so far as is reasonably practicable." This includes occupational health and psychosocial risks, which are foreseeable harms arising from how work is designed, led, resourced, and changed. Psychosocial risk factors include excessive workload, fatigue, poor role clarity, bullying or harassment, inadequate supervision, and poorly managed organisational change. These risks can be identified and managed like other risks and are major contributors to harm and cost, including avoidable pressure on ACC and the wider health system.

We therefore support the Bill in part, provided amendments preserve HSWA's integrity as a risk-based framework and increase clarity and pragmatic implementation.

### 4. Comments on specific clauses and issues

#### 4.1 Purpose shift and system signal: "prioritises the critical risks"

*(Clause 4 – section 3 replaced (Purpose))*

##### **Position: Support in part**

Clause 4 rewrites HSWA's purpose to make the *main purpose* a framework that "prioritises the critical risks that arise from work." While prioritising high-consequence hazards is reasonable, HASANZ members are concerned that this focus may unintentionally suggest that other harms, especially occupational health and psychosocial risks, are less important. Psychosocial harm is often a foreseeable result of how work is designed, led, resourced, and changed, including factors such as workload, fatigue, poor role clarity, bullying or harassment, inadequate supervision, and poorly managed organisational change. If these are treated as outside the core framework, the system may weaken prevention efforts, as psychosocial factors often contribute to serious incidents.

Comparable jurisdictions and standards are moving toward making psychosocial risk management more explicit, not less. Australia amended its model WHS Regulations in 2022 to address psychosocial risks, and Safe Work Australia has issued a Model Code of Practice on managing psychosocial hazards at work. ISO 45003 also provides an established international reference point for managing psychological health and safety at work. A practical alternative for New Zealand is to retain strong visibility of psychosocial risks in the HSWA framework while supporting SMEs with

plainer guidance, simple tools, and proportionate expectations (consistent with “reasonably practicable”).

This is important because PCBUs, officers, advisers, and regulators rely on the statutory purpose to determine what to resource, measure, and prioritise.

### **What success looks like**

The Act’s purpose reinforces broad health and safety protection, including occupational health and psychosocial risks, while demanding *prioritisation* of critical risks without implying that other significant harms can be deprioritised.

### **Recommendations**

- Committee recommendation 1.1: The Committee should recommend amending clause 4 so that the main purpose does not imply a narrowing of HSWA from “health and safety” to only “critical risks”.

Draft wording option (illustrative): amend section 3(1) to read:

“The main purpose of this Act is to provide a balanced framework for securing the health and safety of workers and workplaces by eliminating or minimising risks arising from work so far as is reasonably practicable, while requiring PCBUs and regulators to prioritise critical risks.”

- Committee recommendation 1.2: The Committee should recommend inserting an interpretive safeguard in section 3 confirming that prioritising critical risks does not reduce duties to manage other significant risks, including occupational health and psychosocial risks.

## **4.2 Defining “critical risk”, Schedule 1A coverage, and the “likely” test**

*(Clauses 7, 9 and 31 – definitions of “prioritise” and “critical risk”; new Schedule 1A)*

### **Position: Support in part**

HASANZ members broadly supported a focus on “critical risks” in principle, but stated the current definition is unclear and risks confusion. The ambiguity about what “likely” means in practice (for example, whether it is assessed in a specific workplace context or by inherent potential/consequence), with a preference expressed for a consequence-based framing (foreseeable severe harm) to avoid inconsistency. Members also noted that many SMEs have limited access to specialist health and safety support, making it unrealistic to expect consistent decision-making on a complex “critical risk” threshold devoid of clear, practical guidance and examples.

HASANZ recognises that Schedule 1A includes many high-consequence hazards, such as asbestos and hazardous substances. However, members emphasised that a schedule-based approach may understate harms that are significant but do not present as single catastrophic events, such as chronic occupational disease and psychosocial harm. Psychosocial risk factors, including fatigue, time pressure, weak supervision, and poor communication, may also contribute to critical-risk events. Treating these as peripheral is conceptually difficult and may undermine the Bill’s intent to prevent serious harm.

The schedule of critical risks appears flawed, as it relies on historical regulatory coverage rather than current data. For example, "abrasive grinding and woodworking machinery" is classified as a critical risk under schedule 1A, while similar machines used for cutting metal or processing food are not, despite minimal substantive differences. As a result, a bandsaw used for wood is automatically considered a critical risk, but a bandsaw used for steel only qualifies under the catch-all provision. Beyond concerns with the framework's reliance on both a schedule and a broad catch-all definition, the schedule itself lacks thorough consideration.

### **What success looks like**

PCBUs can identify "critical risks" consistently and confidently (with clear, plain-language guidance and worked examples for the "likely" test), while occupational health and psychosocial harms remain visible, resourced, and addressed as part of HSWA's core risk-management expectations—including through practical, proportionate tools to support SMEs.

### **Recommendations**

- Committee recommendation 1.3: The Committee should recommend amendments to clause 9 (section 22A) and/or clause 31 (Schedule 1A) to ensure occupational health and psychosocial harms are not unintentionally deprioritised or treated as outside HSWA's core protections.
- Committee recommendation 1.4: The Committee should recommend requiring guidance (linked to ACOPs or published guidance) on how "likely" is to be assessed under section 22A(1)(b), so classification is consistent and not gamed, avoided, or applied subjectively.
- Committee recommendation 1.5: The Committee should recommend making any "prioritisation" expectations that are intended to drive behaviour (for example, review of critical controls) enforceable where appropriate, noting that some prioritisation requirements are not enforceable duties as drafted.

## **4.3 The "two-speed system": small PCBUs managing only critical risks**

*(Clauses 8, 11 and 13; and Part 3 clauses 36–38 – new section 17(3)–(5), new sections 25A–25C, new section 36(7), and regulatory scope limits)*

### **Position: Oppose as drafted (seek amendment)**

HASANZ members expressed strong opposition to the small-PCBU carve-out as drafted, describing it as creating "different rules for different workers." This approach establishes a two-tier protection system, complicates supply chains, and could be exploited through entity structuring to remain "small." Members also cautioned that reducing small-PCBU accountability is likely to affect workers with the least bargaining power, including seasonal and migrant workers, and may disproportionately impact Māori, Pasifika, and young workers.

Members also raised concerns that a two-tier system would increase compliance burdens for larger PCBUs due to contractor and supply chain obligations.

Members also identified a practical inconsistency for specialist SMEs, including many health and safety professional practices. Even when a PCBU has fewer than 20 workers, it may contract with larger clients and be required, through procurement and site access conditions, to manage all

reasonably practicable work risks, not just “critical risks.” A statutory carve-out for small PCBUs could create a situation where the law sets lower expectations for small contractors, while the market and upstream duty holders require comprehensive controls. This would undermine consistent risk management in supply chains and create confusion.

Members also noted that the small-PCBU carve-out affects upstream duty holders, such as designers, manufacturers, suppliers, and installers. If upstream duties are narrowed for “small” duty holders to address only “critical risks,” this creates inconsistent standards in design and procurement based on firm size, increases uncertainty about required controls, and shifts additional verification and coordination burdens onto larger clients and downstream PCBUs that remain responsible for managing all reasonably practicable risks.

*Profession-specific example (occupational health / long-latency exposure – exposure control drift):*

Occupational hygienists and health professionals, such as occupational health nurses, report that exposure controls for dusts, fumes, solvents, and noise depend on consistent practices, including ventilation, housekeeping, maintenance, appropriate PPE, and health monitoring. In small workplaces, these controls are more likely to be deprioritised unless legal requirements and regulator messaging clearly mandate systematic prevention. Members are also concerned that, if the Bill is interpreted as limiting duties to “critical risks” only, some small PCBUs may believe they no longer need to engage occupational health expertise, thereby losing opportunities for early intervention and prevention. Members further note that occupational health and allied health workforce capacity is limited; increased preventable injury and ill-health shifts effort into reactive case management and rehabilitation, reducing availability for proactive prevention support.

The Bill raises expectations for SMEs to identify and prioritise critical risks and implement effective controls, but without clear direction this may lead to inconsistent judgments and superficial compliance where specialist expertise is needed.

*Profession-specific example (psycho-social and work design harms – normalisation):*

HASANZ members expressed frustration that the Bill does not clearly address psychosocial risk, despite its high prevalence. Human factors & ergonomics and organisational psychology professionals note that psychosocial harm is often a foreseeable result of how work is designed, led, resourced, and changed. Common risk factors include excessive workload, fatigue, poor role clarity, bullying or harassment, inadequate supervision, and poorly managed organisational change. These are not random issues; they can be identified, discussed with workers, and managed through job and workload design, adequate staffing, training and supervision, clear role expectations, respectful behaviour processes, and structured change management. Importantly, psychosocial factors such as fatigue and time pressure may also contribute to serious incidents in high-hazard work. Excluding them from the core focus risks weakening prevention.

*Sector example (harm shifting):*

Members noted that in forestry, mechanisation reduced critical harm but increased musculoskeletal and fatigue issues. This illustrates that “non-critical” risks remain important and can increase as systems evolve, with downstream costs borne by workers, businesses, and the ACC scheme.

### What success looks like

Workers in small workplaces have *meaningful* protection and effective mechanisms for worker voice regarding significant non-critical hazards, including health, psychosocial, and cumulative harms. Duty settings remain simple, proportionate, and workable for small businesses.

### Recommendations

- Committee recommendation 2.1 (preferred): The Committee should recommend removing the limitation that small PCBUs must comply with sections 36–43 only in relation to critical risks.
- Committee recommendation 2.2: The Committee should recommend amending new section 25A(3) (and any associated consequential provisions) so that worker participation and enforcement tools remain effective for significant non-critical hazards in small PCBUs.
- Committee recommendation 2.3: The Committee should recommend that Government and WorkSafe guidance and communications explicitly direct duty holders to engage qualified health and safety professionals when required—for example, for critical-risk determination, risk assessment, control design and verification, and exposure and health risk management—to support consistent, reasonably practicable decision-making.

## 4.4 PCBU and officer duties: clarity without narrowing accountability

*(Clause 21 – section 44 amended (Duty of officers))*

### Position: Support in part

HASANZ members had mixed views on whether the officer duty changes deliver clarity or add complexity. Some noted ongoing ambiguity for CEOs who hold both governance and management roles. Distinguishing executive functions as worker duties and governance functions as officer duties may reduce executive accountability and create practical uncertainty.

### What success looks like

Officer due diligence remains a strong governance duty that cannot be reduced by splitting roles. Officers are expected and enabled to actively oversee health, safety, and welfare risks, rather than withdrawing from safety leadership.

### Recommendations

- Committee recommendation 3.1: The Committee should recommend amending clause 21 to confirm that subsection (4) does not reduce governance due diligence where an officer also has substantial operational influence.

Draft wording option (illustrative): add to section 44(4):

“For the avoidance of doubt, nothing in this subsection limits an officer’s duty to exercise due diligence in relation to the PCBU’s compliance with its duties under this Act.”

- Committee recommendation 3.2: The Committee should recommend ensuring the due diligence steps remain future-proof. If the list is treated as exhaustive, include a final step

requiring officers to take “any other reasonable steps” necessary, given the nature of the operations and risks.

## 4.5 Approved Codes of Practice (ACOPs): strengthen guidance, avoid “safe harbour” deemed compliance

*(Clauses 27–30 – sections 222, 222A, 226, and transitional provisions in Schedule 1)*

### **Position: Oppose as drafted (seek amendment)**

HASANZ members broadly support strengthened ACOPs as practical “how-to” guidance, especially for SMEs, provided they are well-constructed and well-**resourced**. New Zealand’s regulatory framework is a high-level Act with limited regulations and outdated guidance. While ACOP improvements could help, HASANZ does **not** support creating a statutory “safe harbour” (deemed compliance) for ACOPs, as this risks locking in incomplete or outdated controls, creating uneven coverage where codes do not exist, and shifting the burden of keeping guidance current onto under-resourced processes.

Feedback from hazardous substances and compliance certification practitioners reinforces this concern. In some areas, legacy codes from earlier regimes served as recognised means of compliance and were developed with robust consultation. In contrast, members report that many regulator guidance products, such as performance standards and guidance notes, are issued without consultation and may contain substantive errors, yet are still used as de facto audit criteria. HASANZ is concerned that establishing an ACOP “safe harbour” in this context could entrench inconsistent quality and shift compliance toward documents rather than the statutory standard.

HASANZ also notes that in cases where regulations are highly prescriptive or do not fit specific industries, well-designed instruments enabling alternative compliance, such as Safe Work Instruments, can be valuable if developed through strong, transparent consultation and informed by strong industry and professional expertise. If these instruments are expanded, the Committee should emphasise co-design expectations, including sincere engagement with relevant professional communities and technical specialists, and ensure quality assurance to prevent errors and preserve safety standards.

Members also expressed differing views on ACOP development models, including industry-led, regulator-led, and co-design approaches. There are fears about a potential “race to the bottom” if codes are influenced by the most vocal industry segments without strong safeguards.

### **What success looks like**

ACOPs provide clear, practical guidance that is well-resourced, transparent, and regularly updated. ACOPs should sit within the wider HSWA regulatory landscape as an authoritative reference point which supports consistent practice, without displacing the Court’s role in assessing what is reasonably practicable in the circumstances.

### **Recommendations**

- Committee recommendation 4.1: The Committee should recommend amending clauses 27–30 so that acting in accordance with an ACOP does **not** create deemed compliance (whether absolute or presumptive). ACOPs should remain an important source of practical guidance that may be relied on as evidence of good practice, but duty holders and regulators should

still be required to consider whether additional or different controls are needed to meet the HSWA standard of “so far as is reasonably practicable” in the specific circumstances.

- Committee recommendation 4.2: The Committee should recommend strengthening clause 28 (section 222A) and related processes to require minimum transparency and timeliness standards, including:
  - a public register of proposed and current ACOP work programmes
  - clear timeframes for review/update (especially when science or international standards change)
  - publication of consultation summaries and reasons for acceptance/rejection of drafts
- Committee recommendation 4.3: The Committee should recommend that the Government ensure adequate resourcing for ACOP development, maintenance and review so guidance is available across key risks and sectors and does not become “clarity for those covered, silence for those not covered”.

## 4.6 Regulator function prioritisation: keep prevention, worker voice, and occupational health explicit

*(Clause 24 – section 190 amended; and Part 2 clause 34 – WorkSafe Act section 10 amended)*

### **Position: Support in part**

HASANZ members observed that the Bill would shift WorkSafe’s focus from enforcement to providing guidance, codes of practice, and education. They noted that prioritising warnings and improvement notices over prosecutions may reduce case law, potentially increasing uncertainty over time. An effective regulatory framework requires both incentives and credible enforcement; without enforcement, compliance is unlikely.

### **What success looks like**

Regulators have a clearly defined and well-resourced mandate to prevent harm across both acute and long-latency risks. Worker engagement and consultation remain visible and effective, alongside guidance and enforcement.

### **Recommendations**

- Committee recommendation 5.1: The Committee should recommend amending clause 34 (WorkSafe Act section 10) and clause 24 (HSWA section 190) to explicitly include proactive prevention of occupational health and **psychosocial** harms as a priority, alongside acute serious-harm prevention.
- Committee recommendation 5.2: The Committee should recommend that worker engagement and consultation continue as a visible regulator priority. Where functions relating to worker participation/representation are affected, retain them or restate them explicitly in the “main functions”.
- Committee recommendation 5.3: The Committee should recommend that the Committee (or the Government) consider whether the reprioritisation settings will reduce longer-term legal certainty, noting that fewer prosecutions could reduce jurisprudence and certainty.

## 4.7 Deemed compliance with other enactments: avoid weakening workplace-specific protection

*(Clause 12 – section 35 replaced (Compliance with other enactments))*

### **Position: Support in part**

Subordinating HSWA duties to other sector laws may increase clarity if those regimes are robust and well-resourced. However, this requires careful drafting with clear criteria and active system stewardship, including list maintenance.

HASANZ supports reducing genuinely duplicative compliance. However, health and safety professionals are concerned that a broad deemed-compliance rule could weaken integrated risk management, especially when external regimes serve different purposes and may not address workplace-specific exposure and operational risks.

Practitioner feedback indicates that achieving “equivalency” is complex in highly regulated areas such as hazardous substances and facilities. For example, a facility may comply with health and safety regulations for hazardous substances but not meet Building Act requirements, especially where fire safety and structural provisions interact with operational controls. Members noted that outdated cross-references in other regimes can persist for years, increasing the risk that a deemed-compliance pathway could introduce outdated or mismatched requirements instead of guaranteeing effective worker protection in the specific workplace.

### **What success looks like**

Deemed compliance reduces duplicate paperwork *only* when another regime provides an equal or higher level of work health and safety protection. Duty holders must still manage any residual workplace-specific risks.

### **Recommendations**

- Committee recommendation 6.1: The Committee should recommend amending new section 35 so it applies only where the external requirements provide an equal or higher level of protection for work health and safety in the specific workplace context.
- Committee recommendation 6.2: The Committee should recommend inserting a safeguard that deemed compliance does not remove the duty to manage residual workplace-specific risks not addressed by the external regime.
- Committee recommendation 6.3: The Committee should endorse including criteria (either in the Act or required published guidance) for how equivalency is determined, the Bill does not define how equivalency is assessed.

## 4.8 Commencement, implementation readiness, and list maintenance

*(Clause 2 – commencement; consequential guidance requirements; Schedule 1A maintenance)*

### **Position: Support in part**

The scale of change, including the purpose rewrite, the new critical-risk framework, the ACOP safe harbour, and the regulator function changes, means that immediate commencement could lead to confusion and inconsistency.

Keeping the “critical lists” current, including HSWA Schedule 1A and the ACC Schedule 2 linkages, is essential. Unfortunately, maintenance has historically been a weak point in New Zealand’s regulatory system.

### **What success looks like**

Duty holders and workers receive clear guidance and updated tools before changes take effect. Critical-risk lists and linkages are maintained to ensure prioritisation is consistent with current evidence and practice.

### **Recommendations**

- Committee recommendation 7.1: The Committee should recommend amending clause 2 to provide a commencement period (for example, 4–6 months) to allow:
  - publication of guidance and education materials on “critical risk” determination
  - ACOP process arrangements and a visible work programme
  - alignment of regulator expectations and communications
- Committee recommendation 7.2: The Committee should recommend requiring publication of key guidance/ACOP materials before the new framework is relied on in enforcement expectations.
- Committee recommendation 7.3: The Committee should recommend inserting an explicit requirement or mechanism for periodic review and updating of Schedule 1A and any linked lists/settings that affect the critical-risk definition.

## **5. Monitoring and review**

### **What success looks like**

A time-bound review assesses whether the amendments reduce serious harm *and* avoid increased burden or harm shifting, such as to occupational health, psychosocial harm, and musculoskeletal injury. It also enables prompt course correction if unintended consequences arise.

- Committee recommendation 8: The Committee should recommend inserting a new clause requiring a statutory post-implementation review within a specified period (for example, within 24 months of commencement), focusing on:
  - impacts on fatalities and serious harm
  - impacts on occupational health and long-latency harms
  - impacts on psychosocial harm
  - impacts on musculoskeletal harm
  - effects of the Bill’s small-PCBU provisions (including any two-tier impacts) on worker protection and participation
  - ACOP coverage, update timeliness, transparency, and resourcing
  - regulator activity mix (prevention, engagement, enforcement)

- maintenance of critical-risk lists and linkages

## 6. Conclusion

HASANZ supports reforms that strengthen New Zealand's health and safety system and improve real-world outcomes. We urge the Committee to recommend amendments that preserve broad duties to protect health and safety, avoid a two-tier system for workers in small workplaces, maintain accountability in governance, and ensure ACOPs are developed and updated through transparent, well-resourced processes, without creating deemed-compliance safe-harbour settings. This should include keeping psychosocial risks clearly within the system's core prevention focus, supported by practical guidance and proportionate expectations for small businesses.

**We thank the Committee for the opportunity to submit and request the opportunity to speak to this submission.**