Energy Resources Aotearoa
POWERING A BETTER NEW ZEALAND TOGETHER

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Education and Workforce Select Committee
(via the online submission process)

Submission on Health and Safety at Work Amendment Bill

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios, such as sound regulatory frameworks. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net-zero carbon emissions by 2050.

2. This document constitutes our submission on the Health and Safety at Work Amendment Bill ('the Bill'). We have focused on matters that are most relevant to the energy and resources sectors.

3. We wish to present our submission to the Select Committee.

Key messages

4. We support the aims of the Bill to reduce unnecessary compliance costs, increase certainty for businesses and sharpen the focus of the work health and safety systems on the prevention of serious harm.

5. The elements of the Bill that we are supportive of are the clarification of officers' duties, the pathway and process for organisations to be able to suggest new Approved Codes of Practice ('ACOPs') or amendments to existing ACOPs and the direction to regulators to prioritise core regulatory activities.

6. These reforms represent a significant recalibration of New Zealand's work health and safety framework, but the proposed changes mainly apply to small (under 20 staff) Persons Conducting a Business or Undertaking ('PCBUs') to the extent they will generally only be required to comply with duties in relation to critical risks.

7. We have significant concerns about the carve out for small PCBUs. It will create a two-tier system that could undermine supply-chain consistency, increases risk for contractors, and shifts the compliance burden to large businesses. The Bill could instead require consistent risk management expectations across supply chains based on risk, regardless of business size, particularly in relation to work that interfaces with high-hazard operations.

8. We also have concerns about the proposed definition of 'critical risk'. The current framing is problematic, particularly the reliance on 'likely' and the use of a rigid Schedule 1A list of critical risks.

9. The effectiveness of the new process for amending and developing new ACOPs will be constrained by the availability of both regulator and industry resources. The wide discretion of the regulator to progress these proposals could also act as a barrier.

10. Our specific recommendations are:

    a the definition of 'critical risk' is amended to a consequence-based framing, centred on credible worst-case outcomes, rather than likelihood;

    b the hazards associated with critical risk listed in the new Schedule 1A are replaced by regulator-led, sector-specific guidance developed collaboratively with industry;

    c in relation to the duties of PCBU officers, a safe harbour tied to demonstrable governance behaviours should be introduced;

    d when industry develops a new draft code of practice, or a draft amendment, the regulator should be obliged to submit the proposal to the Minister, along with any suggested revisions and a recommendation, and the Minister can then decide whether to approve them or not (providing published reasons for the decision within a set timeframe);

    e all ACOPs should include mandated review timeframes; and

    f if progressed, the Bill includes a minimum transition period (for example, six months following Royal Assent) to ensure a consistent and effective implementation.

Submission

Support for the policy intent

11. We support the stated objectives of the Bill to reduce unnecessary compliance costs, increase certainty for businesses and organisations about what they need to do, and support continued reductions in the incidence of workplace fatalities, injuries and illnesses.

12. To achieve these objectives the Bill focuses the work health and safety system on critical risk, clarifies areas of confusion, creates greater certainty through strengthening ACOPs, and prioritises the regulators' powers and functions. It is the most significant reform to New Zealand's work health and safety regime since the Health and Safety at Work Act 2015 (the 'HSW Act'), came into force in 2016.

13. There are a number of issues with the current work health and safety system. Businesses report a lack of clarity and certainty regarding how to meet their obligations under the HSW Act, which has been interpreted to apply more broadly than was intended.[1] There has been a lack of consistency across the gas and electricity industries, with regulatory overlaps, inconsistent terminology and shifting expectations around what constitutes 'reasonably practicable' in terms of managing risks. The strategy of the regulator has at times not been clear and consistent and there has not been enough focus on providing advice and guidance or critical risks.[2]

14. New Zealand's oil and gas sector maintains a solid safety record compared to other primary industries, with no recorded major accidents involving multiple fatalities in its over 50-year history.[3]

Focusing the system on critical risks

15. The work health and safety system currently requires Persons Conducting a Business or Undertaking ('PCBUs') to manage all their risks. The broad nature of PCBUs' general duties has led to confusion and overcompliance.

16. The Bill represents a deliberate shift away from a system that requires all risks to be considered, to one that prioritises the prevention of serious harm. In principle, we consider that it makes sense to focus the system on 'critical risk' to direct attention and resources towards preventing serious workplace harms and away from more minor issues.

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1 See MBIE's 'Regulatory Impact Statement – Work Health and Safety Reforms' (12 March 2025).

2 *ibid*.

3 See https://www.energymix.co.nz/our-environment/work-environment.

17. Signalling the overall intent of the reform to focus the system on critical risks, the Bill amends the main purpose of the HSW Act and WorkSafe New Zealand's ('WorkSafe') main objective under the WorkSafe Act 2013 to explicitly prioritise critical risk. We support these changes to the purpose and objectives under these Acts.

Defining critical risk

18. To support the shift in focus of the system, the Bill introduces a two-limb definition of 'critical risk'[4] as a risk associated with either a hazard described in the new Schedule 1A, or a hazard of any kind that is likely to result in death, a notifiable injury or illness, a notifiable incident, or an occupational disease listed in Schedule 2 of the Accident Compensation Act 2001.

19. We have significant concerns about this definition. The first is about the use of the undefined term 'likely' and the tests that might be associated with this. This may be interpreted as statistical frequency rather than inherent catastrophic risk. In major accident hazard environments such as those found in our sectors, catastrophic events are low-frequency but high-consequence (including process safety incidents in the oil and gas industry). The current definition may lead to governance uncertainty as officers of PCBUs (see the '*Officer duties*' section) would have difficulty discharging their due diligence obligations if the threshold for critical risk is subjective and uncertain and may be interpreted differently by sectors, supply chain participants, or inspectors.

20. We recommend a stronger focus on consequence-based framing, centred on credible worst-case outcomes, rather than likelihood. This would better align with how safety-critical risks are understood and managed in practice, particularly in high-hazard sectors such as oil and gas. A consequence-based test is also consistent with international practices (such as major accident hazard regimes in the United Kingdom, European Union and Australia, which ask what the consequence of a hazard is rather than how likely it is to occur) and with the Bill's stated purpose to prioritise serious harm.

21. In addition, the hazards associated with critical risk listed in the proposed new Schedule 1A are too rigid and static. They should be replaced by sector-specific guidance developed by the regulator in conjunction with industry, rather than being in statute. The lists of particular interest to our sectors would be for 'Geothermal energy', 'Mining and quarrying', 'Petroleum exploration and extraction' and 'Pipelines'. This should help to ensure that the lists are fit for purpose and can be updated regularly, which is consistent with good regulatory practice.

[4] See Clause 9 and the proposed new section 22A.

22. **We recommend** that:

    a the definition of critical risk be amended to a consequence-based framing, centred on credible worst-case outcomes, rather than likelihood; and

    b the hazards associated with critical risk listed in the proposed new Schedule 1A be replaced by regulator-led, sector-specific guidance developed collaboratively with industry;

Officer duties

23. An officer of a PCBU includes a director, a partner, or anyone who exercises significant influence over the management of the business or undertaking. There has been some ambiguity about the extent of their duties, especially when an officer also has other roles in the PCBU, such as chief executives, owner-operators or partners.

24. We support in principle the clarification that an officer's duty is confined to their governance role and does not extend to operational tasks performed in another capacity. There are, however, practical challenges to clearly delineating the boundaries of governance and operational roles. For example, an officer through their operational role may become aware of information that otherwise does not surface to their governance role. It is not clear how they would be expected to act in this scenario and circumstances such as this may be fertile ground for future litigation.

25. Government announcements have also emphasised that day-to-day management of health and safety risks should sit with managers and not directors and boards.[5] However, this is not reflected by a true safe harbour in the proposed legislative amendments as officers remain responsible for ensuring that the PCBU complies with its duties.

26. The introduction of a safe harbour tied to demonstrable governance behaviours would be useful. These behaviours could include maintaining an up-to-date understanding of critical risks, ensuring independent verification and adequate resourcing for high-risk hazards and maintaining clear governance and management boundaries.

27. **We recommend** that:

    c in relation to the duties of PCBU officers, a safe harbour tied to demonstrable governance behaviours should be introduced;

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5 See the Government press release of 2 April 2025: https://www.beehive.govt.nz/release/health-and-safety-governance-and-management-change-coming.

Notification requirements

28. PCBUs have a duty to notify the regulator of certain serious workplace events, including specified injuries, illnesses and incidents. The Bill aims to reduce uncertainty around this obligation by expanding current definitions and adding clear examples - such as serious head, eye, burn and spinal injuries, to illustrate when the notification threshold is met. The addition of these examples provides helpful guidance for businesses, which we support.

Limiting duties for small PCBUs

29. The Bill creates a new category of 'small PCBU', which have fewer than 20 workers for at least 9 out of 12 months of the financial year.[6] Subject to limited exceptions, these small PCBUs would be required to discharge core health and safety duties only in relation to critical risks while all other PCBUs would continue to manage all risks, but prioritise critical risks under all duties. This effectively creates a two-tiered system for PCBU duties based on head count.

30. We can anticipate a range of issues with this carveout for small PCBUs in our sectors. Small PCBUs typically work alongside larger ones, often as contractors or sub-contractors, in high-hazard workplaces (such as a petroleum production station or pipeline corridor). They are also integrated into many supply chains. The Bill seems to give adequate provision that the obligations fall equally for both in relation to critical risks, but it may be less clear how the additional requirements that the larger PCBU must meet will be applied to the smaller one leaving possible governance gaps across shared worksites.

31. It is likely that the burden will fall on the larger PCBUs to ensure that all requirements are met meaning the cost of compliance moves to them. They may seek to impose full health and safety risk management by contractual controls, audits and verifications on small contractors. This does not make sense where expert contractors have been hired with expertise to manage the operational risks of their own services in the field. It will also lead to an increased administrative load for large PCBUs in relation to interpretation, assurance, internal and external guidance and clear direction defeating the overall purpose to reduce regulatory burden.

32. The proposals may also encourage perverse outcomes and unintended consequences. Businesses may choose to restructure into smaller entities to fall under the threshold, which would undermine the integrity of the system. Small contractors may be used less because their health and safety duties are weaker and not aligned with the duties of the principal, negatively impacting many contracting organisations. Stricter commercial or more complex contractual requirements may need to be introduced as the only available mechanism to

[6] See Clause 8 and the proposed amendment of section 17.

larger PCBUs to contract smaller PCBUs in the future. This would assist them in accounting for assumed increase in risk, which may further commercially disadvantage smaller PCBUs.

33. There are wider issues with the proposed carve-out for small PCBUs. Many small firms in New Zealand operate in other high-risk sectors such as construction, forestry and transport. These firms already experience higher harm rates and have less resources to manage health and safety risks. New Zealand workers are twice as likely to die in workplace incidents compared to workers in Australia, with New Zealand's fatality rate 60% higher and serious injury rates 35% higher[7], and 97% of all businesses in New Zealand are small businesses[8]. It could be argued therefore that the proposals weaken worker protections and create ethical issues. There will also be issues when workers and leaders transfer from smaller organisations to larger ones having learnt their trade with a different set of rules.

34. We suggest that the tiered approach based on head count should be reconsidered. The threshold could be removed or replaced with a proportionality test that applies to all PCBUs. As an alternative approach, the Bill could require consistent risk management expectations across supply chains based on risk, regardless of PCBU size, particularly where work interfaces with high-hazard operations.

Approved Codes of Practice (ACOPs)

35. ACOPs play a central role in explaining how duty holders can meet their obligations under the Act. While regulators will retain responsibility for reviewing and recommending ACOPs to the Minister for approval, the Bill allows for other persons or organisations to develop and submit draft ACOPs for consideration.

36. Our sector has a clear interest in ACOPs as it is regulated by many of them. Our members advise that some of these ACOPs are outdated (or non-existent), have requirements that are not consistent with international standards or are insufficient to support current, high-risk facilities. One that is of particular concern is the *Approved Code of Practice for Pressure Equipment (Excluding Boilers)* ('the Pressure Equipment Code'). The standards imposed in this ACOP make the cost of operating this equipment higher than other jurisdictions such as Australia. We consider that it needs to be amended as it adds unnecessary costs that impact on the economic life of oil and gas fields.

37. The proposed changes provide a pathway and process for organisations such as oil and gas operators to suggest amendments to existing codes like the Pressure

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7 See the Business Leaders Health & Safety Forum submission on the HSWA Amendment Bill, 6 March 2026.

8 See https://www.business.govt.nz/browse-our-resource-library/business-planning-online-learning/data-for-business.

Equipment Code. Empowering industry groups to take a more active role in developing practical guidance for their sectors should support much-needed modernisation of existing ACOPs and provide a clearer path to achieve compliance with the HSW Act. We support this proposal as it allows industry to be proactive about issues they have with ACOPs and means they do not have to wait for the regulator to initiate the process.

38. There are, however, constraints and limitations on the ability to make use of this new pathway. For industry, the time, cost, and technical resource required to develop robust, consensus-based guidance is substantial and difficult to sustain without clear regulatory leadership. Strong co-ordination and facilitation would be required by WorkSafe or a recognised industry body. In addition, we understand that the expectation is that WorkSafe will be involved in the development of new or amended ACOPs from the start and must comply with existing consultation procedures before making a recommendation.

39. These processes will require a significant investment by WorkSafe of their already stretched resources. This has been demonstrated recently with delays to providing updated guidance on safety critical element notifications, which are relied upon by high-hazard industries to consistently meet current compliance requirements. There will therefore be resource constraints on both sides.

40. In terms of limitations, in the Bill the regulator would have broad discretion to revise drafts, and whether to recommend changes to ACOPs to the responsible Minister.[9] This could prove to be a significant barrier to getting changes made. It would also mean that there was very little incentive for industry to invest time and resources into developing proposals if they might not ever be recommended to the Minister. We therefore recommend that when industry develops a new draft code of practice, or a draft amendment, the regulator should be obliged to submit the proposal to the Minister, along with any suggested revisions and a recommendation. The Minister can then decide whether to approve them or not, providing reasons for the decision that should be made public (within a set timeframe).

41. If these issues are not addressed, there is a real risk that necessary updates and new ACOPs will stall, leaving duty holders without clear, current, and authoritative guidance. It is imperative that WorkSafe and relevant regulators are suitably resourced to undertake such a significant task. Industry participants or industry representative bodies cannot be relied upon to always lead the drafting process. It would also make sense for all ACOPs to include mandated review timeframes and for priority be given to developing sector-specific guidance for high-hazard industries such as oil and gas.

[9] See Clause 28 and the proposed new section 222A.

42. It is acknowledged that ACOPs will remain non-binding, so PCBUs and officers can still demonstrate compliance through other means. However, this could again result in a two-tier safety model that may undermine a level playing field whereby some companies require significantly higher standards to be met through their corporate governance, compared to others undertaking the same activity. This would impact competitiveness in the same market.

43. **We recommend** that:

    d when industry develops a new draft code of practice, or a draft amendment, the regulator should be obliged to submit the proposal to the Minister, along with any suggested revisions and a recommendation, and the Minister can then decide whether to approve them or not (providing published reasons for the decision within a set timeframe);

    e all ACOPs should include mandated review timeframes;

Regulators' functions

44. Finally, the Bill contains amendments to the statutory functions of WorkSafe and designated regulators (such as Maritime NZ and the Civil Aviation Authority) to explicitly prioritise core regulatory activities.

45. The Bill describes the main functions of these regulators as:

    a providing guidance and advice;

    b developing and reviewing ACOPs and safe work instruments; and

    c monitoring and enforcing compliance.

46. We agree with providing this direction to regulators. The main functions listed are also appropriate. Specifying that regulators should focus on developing and reviewing ACOPs should help to ensure that they are resourced to do this work.

Recommend a transition period

47. A reasonable timeframe for implementation would be sensible, but the Bill currently proposes that changes would come into force on Royal Assent. A lot of preparatory work will need to be done by businesses such as to reassessing risks, updating systems, policies and procedures and reviewing contractor arrangements. These things take time, especially in high-risk sectors, and there is a risk that businesses will not be ready.

48. We recommend that, if progressed, the Bill includes a minimum transition period (for example, 6 months following Royal Assent) to ensure consistent and effective implementation.

49. **We recommend** that:

    f if progressed, the Bill includes a minimum transition period (for example, six months following Royal Assent) to ensure consistent and effective implementation.

Concluding comments

50. Our overall assessment is that, while the objectives of the Bill are laudable, substantive changes need to be made to meet the needs of our high-hazard sectors and achieve the Bill's objectives. This would include reframing how 'critical risks' are defined and replacing the carve out for small PCBUs with a consistent approach based on risk not business size. WorkSafe would need to be adequately resourced to support the changes, particularly ACOP review and development. There should also be an adequate transition period.