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Health and Safety at Work Amendment Act 2026

The Health and Safety at Work Amendment Act 2026 (the Act) has been given Royal Assent and will come into force on 1 April 2027.

The reforms come against a backdrop of persistent and costly workplace harm in New Zealand. Recent reporting suggests that nearly half of New Zealanders are affected in some way by a workplace incident, whether directly or through colleagues, family or friends. The economic cost is also significant, estimated at $4.9 billion in 2023. Additionally, New Zealand continues to lag behind comparable jurisdictions, with workers significantly more likely to be killed at work than in Australia and the United Kingdom.

The Government has presented the Act to simplify the system, reduce unnecessary compliance, and shift attention to critical risks. Whether it will achieve those aims in practice is, however, uncertain.

Focus on Critical Risk

One of the central changes in the Act is the introduction of the concept of "critical risk". Currently, PCBUs are required to manage all risks, so far as is reasonably practicable. In practice, that broad obligation has caused problems. Many PCBUs have struggled to work out where to focus their effort, with the result that attention can drift towards the risks that are easiest to manage, rather than those that can cause real harm.

The Act attempts to reset that approach. A "critical risk" is either a risk linked to certain high hazard activities listed in regulations (including asbestos, mining, hazardous substances and adventure activities), or any hazard that is likely to result in death, a notifiable event, or an occupational disease. The Act's intention is to draw a clearer line between critical risks and those which are at a lower level.

For many PCBUs, that will feel like a sensible shift. It reflects what good safety management already looks like in practice. But it also raises new questions. Deciding what is "likely" to cause a notifiable event is not always straightforward, and the definition of critical risk remains ambiguous. There is likely to be a period of uncertainty until guidance and case law develops.

The shift is not without practical challenges. It may require time and effort to reframe existing risk assessments, documentation, and processes so that they align with the new concept of "critical risk". In that sense, even PCBUs that are managing risks effectively may still face a period of adjustment as they translate what they already do and cross-check it against this new definition.

Small PCBUs

The Act also introduces a new category of "small PCBU", defined as PCBUs with fewer than 20 workers (with some flexibility for seasonal workforces). 97% of businesses in Aotearoa will fall within the small PCBU definition, employing 27% of workers. This matters because the duties for small PCBUs are reduced. They will only be required to manage and prioritise critical risks, rather than all risks. Small PCBUs will still need to identify what their critical risks are, document those assessments, and prioritise them properly. They also continue to have baseline obligations such as providing adequate facilities and ensuring workers are properly supported.

Pulling Officers' Duties Back Towards Governance

The scope of officers' duties has been a contentious issue since the HSWA was introduced, particularly following cases such as *Sarginson* and *Gibson*. Those decisions highlighted how difficult it can be to separate governance and operational roles where an officer is also involved in the day-to-day work of the business. The Act takes a clear position on this. It states that an officer's due diligence duty applies only to their governance role, not to activities carried out in another capacity within the business.

The way due diligence is described is also tightened. The Act retains much of the existing list of reasonable steps an officer may need to take but reframes due diligence as a defined set of obligations rather than an open-ended concept. The apparent aim is to give officers greater certainty about what is expected of them.

For directors of large organisations, this may not change much in practice. But for owner operators and others who wear multiple hats, it could be significant. It provides some protection, but it also means those different roles need to be clearly understood and, in many cases, well documented.

Consultation, Co-operation and Coordination

The Act has made substantial changes to the duty of consultation, co-operation and coordination when there are multiple PCBUs. The changes are intended to introduce a more targeted, risk-based approach to these overlapping duties. The amendment distinguishes between large and small PCBUs and limits mandatory co-operation for smaller entities to "critical risks" only.

In practice, this will mean that where multiple PCBUs are carrying out the same work, large PCBUs must continue to co-operate on all risks so far as is reasonably practicable. In contrast, small PCBUs are only required to co-operate in relation to risks that are likely to result in notifiable events. Small PCBUs are not required to co-operate in relation to lower-level risks but may choose to do so.

This change aligns with the Act's broader shift toward prioritising critical risks.

However, in practice, the distinction may create difficulties where PCBUs working together are subject to different obligations, which could complicate effective co-operation. Where small PCBUs are involved, the Act allows parties to enter agreements that require co-operation in relation to any or all risks.

Codes of Practice

Approved Codes of Practice (ACOP) are also given a stronger role under the proposed reforms. The Act allows industry groups and other organisations to develop draft codes, which can then be reviewed and approved. More importantly, it introduces a form of "safe harbour". If a PCBU follows an ACOP for a specific risk, they are deemed to have met their legal duty for that risk. While the ACOPs remain technically non-binding, this change is likely to increase their practical importance. At least in some areas, following an ACOP may become the simplest and most defensible way to demonstrate compliance.

Conclusion

The reforms have attracted concern across parts of the health and safety community, particularly about whether the proposed changes will create greater clarity in practice or instead introduce new uncertainty. As with most reform in this area, the practical impact is likely to vary across organisations.

Want to know more?

If you have any questions, please contact our specialist [Employment Team].