The biggest shake-up of health and safety law since the Pike River reforms

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Introduction

A new law is coming

Key changes:

1. A carve-out for Small PCBUs
2. Compliance with risk requirements in other enactments
3. A clearer line for officers?
4. WorkSafe leans towards education

Will it survive the Election?

Scene-setting

New Zealand's Safety Record:

2x Australia's workplace injury rate

6.5x the United Kingdom's injury rate

- HSWA followed Pike River mine tragedy and Canterbury Earthquakes
- Based on Australia's Model WHS law

A decade on outcomes have flat-lined or deteriorated

LAW REFORM

A new law is coming

THE GOAL

- Cut red tape
- Reduce burden
- Reduce complexity, uncertainty and overcompliance
- Especially for small PCBUs and low-risk activities

THE RESERVATION

- Contentious
- Bipartisan opposition to Bill

- Commencement date pushed back to 1 April 2027
- Political risk with General Election on 7 November

KEY CHANGE 1

New definition of “critical risk”

s 22A

THE NEW DEFINITION

- A risk associated with a hazard that is “likely” to cause death, serious harm injury or illness, near-miss
- A risk associated with a hazard in Schedule 1A
  Covers things like asbestos, mining, hazardous substances, pressure equipment

THE CONCERN

- “Likely” isn’t defined, untested, ambiguous
- List of hazards is seen as incomplete and arbitrary

Prioritisation of critical risks

ss 25A, 25B

THE NEW FOCUS

- Small PCBUs and Large PCBUs must prioritise critical risks before managing other risks
- Monitor, review and revise controls for CRs more often than for other risks
- Apply a higher proportion of risk management resources to managing CRs

THE CONCERN

Failure to prioritise critical risks is not an offence

Small PCBU carve-out

s 25A – MOST CONTENTIOUS

97%
of NZ businesses will be all but exempt outside critical risks

- Businesses with less than 20 workers only have to manage critical risks
- Normal WHS duties, training and PPE still apply, but little else
- Averaging approach for fluctuating workforces

WHY IT'S CONTROVERSIAL

- Creates a two-tier system
- Staff numbers don't tell you how risky the work is
- ACC data – Small businesses account for 75% of work-injury costs
- A 4-person abseiling firm owes fewer duties than a 125-person accounting firm

Overlapping duties

s 34

THE RULE

- Small PCBU must cooperate with Large PCBU on critical risks, and may cooperate on other risks
- Large PCBU may require Small PCBU to cooperate with other PCBUs on all risks
- PCBUs may enter into an agreement that requires them to cooperate on all risks

THE GAP

- Risk that a PCBU will assume critical risks are being managed by others

KEY CHANGE 2

Compliance with risk requirements in other enactments

s 35

THE RULE

- If a PCBU is subject to a WHS duty
- And a requirement under another Act to manage a risk under same situation or set of circumstances
- Then if that PCBU complies with an external risk requirement, they are taken to have complied with their HSW duty

THE CRITICISM

- Too open-ended
- Other legislation may not provide equivalent protection
- Not designed as comprehensive WHS framework
- Unintended consequences
- Create gaps

De-duplicate, or displace HSWA?

s 35

EXISTING POSITION

- *Maritime NZ v Sealord* [2025] NZDC 20566
- Maritime Rules – controls for risk of serious illness or medical emergency
- HSWA operates alongside the Maritime Rules
- If there are gaps, HSWA will apply

QUERY

Does HSWA no longer apply where there are gaps or shortcomings?

KEY CHANGE 3

Mischief: One Person, Many Hats

ss 18, 44(1)

THE CONCERN

- Officer duty is a governance duty
- Requires due diligence to ensure PCBU complies with its WHS duties
- Current ambiguity: How far does that duty extend?
- Especially unclear where one person holds multiple roles within the same PCBU
- e.g. Chief Executives, Managing Directors, Owner-Operators

The fix: Drawing a clearer line

s 44(4)

THE CLARIFICATION

- If someone is both an officer and has an operational role,
  their officer duty only covers their role as an officer

THE GAP

- Diminishes *Gibson*
- Doesn't resolve when an executive, like a CEO, is acting in a governance, rather than operational, capacity
- Doesn't attempt to define distinction between governance and operations
- Root issue lies in the definition of an "officer"

Drawing a clearer line

s 44(5)

DUE DILIGENCE STEPS

- List of DD steps is now exhaustive, not open / inclusive
- Steps have been re-organised into themes
- Reworded for clarity

COMMENTS

- Conversion of DD elements into exhaustive list adds no value

KEY CHANGE 4

WorkSafe leans toward education

THE CHANGE

- WorkSafe's focus has shifted to promoting advice, information and training
- Aim: To give businesses more confidence they're doing the right thing

THE CRITICISM

- Why not provide both education and enforcement?
- Businesses still won't always know exactly what's expected of them

POLITICAL RISK

Will it survive the Election?

7 November 2026

General Election

Labour and NZ First have promised to repeal these changes if elected

WORKING ASSUMPTION

- Hard to see a new Government acting on promise to repeal within its first 100 days
- Assume the changes come into force as planned
- Prepare now, but don't overinvest in case provisions are later repealed

Questions?

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