



Registered Master Builders Association of New Zealand Incorporated

Submission on Health and Safety at Work Amendment Bill

March 2026

The Registered Master Builders Association submission on the Health and Safety at Work Amendment Bill

The Registered Master Builders Association (Master Builders) welcomes the opportunity to submit to the Education and Workforce Committee on *Health and Safety at Work Amendment Bill*.

About Master Builders

The Master Builders represents over 3,000 commercial and residential builders and are the leading sector advocates on the built environment. Our members have been building the places where New Zealanders live, work, and play, since 1982.

Our sector is a key contributor to the New Zealand economy. For the year ended March 2024, the construction sector contributed 6.2 per cent of the country's real Gross Domestic Product (GDP) accounting for over \$17.2 billion¹. It also employed 294,100 people (or 10 per cent of the country's total workforce) in the year ended September 2024².

We are working hard to lead the change our sector needs by ensuring we have the regulatory systems and processes in place to build faster and better. We are supporting our members to grow their capability and business acumen to ensure a strong and healthy sector; to innovate and make the most of new technologies so we meet the climate change challenge; and to attract, train and retain skilled talent. We are proud to be New Zealand's best builders.

At Master Builders we are committed to transforming the sector and rebuilding our economy. We are focused on building better homes, communities and workplaces, and ultimately better lives for all New Zealanders. We want to ensure that the houses that we build now are well-built, accessible, affordable, and appropriate to the needs of our ever-changing society. We are building a better New Zealand.

Our members are supported on the ground by 23 branches across 6 regional hubs:

Branch hub	Serving
Auckland	Auckland, Northland, Coromandel
Midlands	Waikato, Tauranga, Whakatāne, Rotorua, Taupō
Central North Island	Taranaki, Whanganui, Hawke's Bay, Manawatū, Gisborne
Cook Strait	Wellington, Wairarapa, Nelson, Marlborough, West Coast
Canterbury	Canterbury, Ashburton, South Canterbury
Southern	Otago, Central Otago, Gore, Southland

¹ Statistics New Zealand – Infoshare: Gross domestic product – March 2024

² Statistics New Zealand – Infoshare: Household Labour Force Suvey – September 2024

1. Key recommendations

- 1.1 Support the Health and Safety at Work Amendment Bill's (the Bill) critical-risk focus and ensure practical, construction-relevant guidance is produced so a Person Conducting a Business or Undertaking (PCBU) can apply the Schedule 1A vs catch-all critical-risk test consistently.
- 1.2 Support the intent of compliance recognition under other enactments, while clarifying the boundaries of same subject matter and specified risk to prevent inconsistent interpretation, especially on projects that sit across multiple regulatory regimes and regulators.
- 1.3 Confirm through statutory wording (or committee commentary and regulator guidance) that small PCBU status does not imply low risk in construction, and that small PCBUs undertaking high-hazard work are expected to maintain robust controls.
- 1.4 Fast track a sector-led construction Approved Code of Practice (ACOP) program using the new draft-code pathway and ensure ACOPs remain a practical tool that supports higher standards where reasonably practicable (not a ceiling).

2. Support for a stronger focus on critical risks

- 2.1 Master Builders supports the intent of the Bill to refocus New Zealand's health and safety system on preventing serious harm, reducing unnecessary compliance burden, and increasing certainty for businesses operating in high-risk environments such as construction.
- 2.2 The Bill represents a constructive shift toward prioritising life-threatening hazards and strengthening practical guidance through ACOPs. The Bill defines "critical risk" both by reference to hazards in a new Schedule 1A and through a catch-all test for hazards likely to result in specified serious outcomes. With targeted clarification, it has the potential to improve safety outcomes while remaining workable for builders.
- 2.3 Many of the most serious hazards within the construction industry - such as working at height, excavation collapse, mobile plant interaction and structural failure - are clearly within the policy intent of "critical risks." Findings from a 2025 Site Safe survey³ reinforce that construction stakeholders support a stronger focus on critical risks (85%), paired with clearer guidance (95%).
- 2.4 The Bill also recognises that the Health and Safety at Work Act (HSWA) is performance based and that PCBUs must manage all risks. The reform seeks to reduce confusion and overcompliance by directing attention and resources toward preventing serious harms. We support this objective and believe that the implementation must help firms prioritise critical risks while continuing to manage non-critical risks appropriately using practical sector guidance.
- 2.5 We consider that the success of this approach will depend on clear and practical guidance for industry on how critical risks should be identified and managed. In construction environments, risks often arise from a combination of activities, site conditions, and changing work programmes. Practical guidance and examples will help ensure consistent understanding of what constitutes a critical risk in different construction settings.

³ https://www.sitesafe.org.nz/media/documents/2025_Health_and_Safety_Reforms_Survey_Report_Digital.pdf

2.6 It will also be important that the introduction of a critical risk framework does not inadvertently lead to the perception that other risks no longer require active management. Construction businesses must still manage a wide range of hazards that can lead to injury, illness, or cumulative harm over time while prioritising critical risks.

3. Non-Critical Risks and Safety Culture

3.1 Master Builders welcomes that critical risks continue to include notifiable injuries and incidents and occupational diseases, and that these risks remain fully captured by PCBU duties and officer due diligence obligations. The Bill appropriately preserves governance accountability for the prevention of serious harm.

3.2 We acknowledge industry concern that, depending on how it is interpreted and applied in practice, the structure of the Bill may lead to reduced attention being given to non-critical risks, notwithstanding that a significant proportion of injuries and ill-health in construction arise from cumulative or lower-severity hazards.

3.3 These risks include, but are not limited to:

3.3.1 injuries from lifting, carrying, or moving things by hand;

3.3.2 slipping, tripping, or falling on flat surfaces;

3.3.3 fatigue from working long hours;

3.3.4 noise and vibration exposure below critical thresholds; and

3.3.5 mental health challenges and issues with wellbeing.

3.4 While the Bill does not remove duties in relation to these risks, we are concerned that the emphasis on critical risk may be interpreted by some duty holders as a signal that other risks warrant reduced attention. This risk is particularly acute in construction, where impairment arising from fatigue, stress, or cumulative injury can itself be a precursor to critical risk events, through reduced alertness, impaired judgement, or diminished physical capacity.

3.5 Master Builders therefore considers it essential that guidance and messaging accompanying the Bill clearly reinforce that all risks must continue to be managed, even where prioritisation differs, to avoid unintended weakening of safety practice or culture.

4. Critical Risk: Concerns

4.1 During consultation with our membership, concerns were raised with our membership, concerns were raised that the proposed definitions of critical risk may be too broad and potentially creating a risk that the distinction between critical and non-critical risks becomes unclear in practice.

4.2 Examples provided include the incorporation of Schedule 2 of the Accident Compensation Act 2001, existing HSWA regulations and Schedule 1 of the proposed reforms. Taken together these may significantly expand the scope of what is captured as a critical risk, to the point where it becomes difficult to identify what risks would fall outside the definition (other than psychosocial risks).

- 4.3 Members have noted that this breadth may reduce the effectiveness of the reform, as it could limit the intended shift in focus toward a smaller set of genuinely critical risks (i.e. those most likely to result in death or serious harm).
- 4.4 Concerns were also raised regarding the use of terms such as ‘likely’, which may introduce subjectivity and uncertainty in determining whether a risk meets the threshold of a critical risk.
- 4.5 Suggestions include further refining or narrowing the definition to better ring-fence critical risks from lower-level or well-managed risks, and to ensure the concept remains clear and workable in practice. Members noted that guidance alone may not resolve these concerns if the underlying definition remains too broad.
- 4.6 In particular, members suggested that consideration be given to:
- 4.6.1 providing clearer thresholds or criteria for what constitutes a critical risk and/or;
 - 4.6.2 supporting the definition with detailed WorkSafe guidance and practical, sector-specific examples.
- 4.7 Members also noted that without sufficient clarity, there is a risk that businesses may continue to treat a wide range of risks as ‘critical’ in order to manage uncertainty which could limit any intended reduction in compliance burden.

5. Small PCBUs and mixed PCBU construction environments

- 5.1 The Bill introduces a new category of small PCBU, defined as a business with fewer than 20 workers, including an explicit test for fluctuating workforces (fewer than 20 workers in at least nine months of the current financial year, based on reasonable expectation).
- 5.2 Master Builders understands the intent of this provision, which is to reduce unnecessary compliance complexity for smaller businesses and allow resources to be directed toward managing the most serious risks. New section 25A appropriately limits specified duties, including certain General Risk and Workplace Management regulation duties, to critical risks for small PCBUs, while still requiring the prioritisation of critical risks when complying with all other provisions.
- 5.3 While we do not oppose the concept of a small PCBU, we are concerned about the potential for misinterpretation, particularly in the construction sector where business size is not a reliable indicator of risk. Industry feedback collected by Site Safe³ indicates comparatively lower support for reducing obligations for small businesses (59 percent), with respondents noting that risk in construction is often unrelated to business size.
- 5.4 Construction projects and worksites commonly involve multiple PCBUs operating concurrently, including principal contractors, subcontractors, and specialist trades. These PCBUs may fall on either side of the Bill’s small PCBU threshold.
- 5.5 Master Builders is concerned that the Bill does not sufficiently clarify how duties apply when a small PCBU and a PCBU that is not a small PCBU operate on the same worksite.
- 5.6 In the absence of clear direction, there is a risk of inconsistent safety practices on the same site, misunderstanding of legal obligations, and inadvertent lowering of safety standards.

5.7 Master Builders therefore seeks clear guidance and communications to confirm that:

- 5.7.1 small PCBUs undertaking high hazard construction activities must maintain robust controls appropriate to the risks involved;
- 5.7.2 the prioritisation of critical risks must not be misunderstood as permission to ignore or downgrade the management of other risks; and
- 5.7.3 the “critical risk determination” obligation in new section 25C should be supported by worked construction specific examples to promote consistent application.

5.8 In particular, the presence of a small PCBU should not:

- 5.8.1 reduce sitewide safety expectations;
- 5.8.2 create different safety thresholds for workers performing similar tasks; or
- 5.8.3 require workers to understand legal classifications in order to be protected.

5.9 Clear legislative or regulatory guidance is required to confirm these principles and provide certainty for duty holders operating in mixed PCBU construction environments.

6. Avoiding duplication with other regulatory regimes

6.1 Master Builders supports the Bill’s approach to reducing unnecessary duplication where other enactments already impose requirements addressing the same subject matter as an HSWA duty.

6.2 New section 35 in the bill provides that where a person is subject to a duty under HSWA to manage a specified risk and also subject to external requirements imposed by another enactment in relation to the same subject matter, compliance with those external requirements must be taken as compliance with the HSWA duty (while still requiring compliance with any HSWA-specific regulatory duties for that risk).

6.3 We support the direction, but we seek clearer boundaries to maximize certainty and reduce disagreements on complex projects. We ask the Committee to ensure that guidance clarifies what constitutes “same subject matter” and how partial overlaps are treated, how this interacts with HSWA regulations that impose specific duties and how the approach will be consistently applied across different regulators and sectors.

7. Stronger Role of Approved Codes of Practice

7.1 Master Builders strongly supports the strengthened role of Approved Codes of Practice (ACOPs) and the ability for them to be developed more quickly, with input from industry groups.

7.2 Construction businesses often rely on practical guidance and industry-developed standards to understand what safe practice looks like on site. Strong, up-to-date codes can provide greater certainty for duty holders and improve consistency across the sector.

7.3 Under the current Act, ACOPs are admissible as evidence in proceedings and the court may use them as evidence of what is known and in determining what is “reasonably practicable”. The Act also makes clear that duty holders can introduce evidence of compliance in a different manner that achieves an equivalent or higher standard.

- 7.4 The Bill would create a stronger mechanism for certainty by providing that a person who acts in accordance with an approved code of practice that relates to them and the relevant risk or matter must be taken to have complied with the Act and regulations in relation to that risk or matter.
- 7.5 We support this approach because construction businesses consistently call for practical, up-to-date, industry-developed tools to support compliance. The Site Safe survey³ reported 95% support for greater use of ACOPs and 95% desire for clearer guidance.
- 7.6 We encourage the Bill's pathway allowing any person or organisation to develop a draft code (or amendments/revocation proposal) and submit it through the regulator pathway. We support the development of construction-specific codes that provide practical guidance for managing key risks on worksites and clarifying overlapping duties between contractors and subcontractors.
- 7.7 We request that speed and prioritisation of construction is favoured. The Bill's transitional settings mean the deemed-compliance effect applies only to ACOPs approved on or after commencement, with only two specified existing codes receiving that status immediately while other legacy ACOPs must be reviewed and reapproved to gain the benefit. Construction cannot wait years for refreshed codes.
- 7.8 Further to section 1.4, we recommend the Government and regulators publish a construction ACOP pipeline with timeframes and resourcing, developed with sector leadership (builder and subcontractor representation) starting with overlapping PCBU duties and site coordination, critical-risk controls for common high-hazard work and practical guidance that addresses worksite realities.

8. Approved Codes of Practice (ACOPs): Concerns

- 8.1 Concerns were raised regarding the proposal for ACOPs to operate as a form of deemed compliance or 'safe harbour'.
- 8.2 Members noted that a key strength of the current HSWA framework is its non-prescriptive nature which allows businesses to adopt flexible and context-specific approaches to managing risk, provided outcomes meet an acceptable standard. There is concern that introducing a safe-harbour effect for ACOPs may shift the system toward more prescriptive, rules-based compliance.
- 8.3 Concerns were raised that this could encourage a box-ticking approach to health and safety where compliance with an ACOP becomes the primary focus rather than effective risk management.
- 8.4 Given the interconnected nature of the construction industry, some consider it likely that ACOP compliance could become a de facto requirement imposed through procurement and contractual arrangements by clients and principal contractors. This may limit the ability of businesses to innovate or tailor their approaches to specific risks and contexts. Such an approach may inadvertently contribute to increased overcompliance which would be counter to the stated intent of the Bill.
- 8.5 Concerns were also raised about the practical limitations of ACOPs. By necessity, ACOPs cannot be sufficiently detailed to address all circumstances as they must remain general and accessible. As a result of this, compliance with an ACOP may not always equate to appropriate or effective risk management in all contexts.

8.6 Questions were raised if industry would have sufficient capacity, capability, or resource to develop and maintain high-quality ACOPs. Investment and leadership from organisations such as WorkSafe, Master Builders, and Site Safe would likely be required.

8.7 Members suggested that any deemed-compliance model should be carefully framed to preserve flexibility, including explicitly confirming that alternative approaches which achieve an equivalent or higher standard remain acceptable in practice.

9. Clause references and what Master Builders is asking for

Bill clause / provision	What the Bill does	Master Builders ask
Clause 9: new s22A (Meaning of critical risk)	Defines “critical risk” by reference to Schedule 1A hazards and a catch-all test for hazards likely to result in death, notifiable harm, notifiable incidents, or ACC Schedule 2 occupational diseases.	Publish construction-specific guidance and worked examples so PCBUs classify critical risks consistently and do not shift the burden of interpretation to workers on-site.
Clause 8: new “small PCBU” in s17	Introduces “small PCBU” (<20 workers) including explicit test for fluctuating workforces (fewer than 20 workers in at least 9 months, on reasonable expectation).	Ensure messaging and guidance makes clear that “small” is not a proxy for “low risk” in construction and that high-hazard work requires robust controls regardless of business size.
Clause 11: new s25A–s25C (PCBU duties: role of critical risk)	Limits small PCBU duties under specified “critical risk provisions” (including ss36–43 and specified GRWM regulation duties) to critical risks, requires all PCBUs to prioritise critical risks requires PCBU determinations to be based on what they know/ought to know about their work and hazards.	Provide clear implementation guidance on (1) applying s25C “determination” in construction and (2) maintaining appropriate management of non-critical risks (for example - noise, fatigue) while prioritising critical risks.
Clause 12: replacement s35 (Compliance with other enactments)	Deems compliance with external requirements under another enactment addressing the same subject matter as compliance with the HSWA duty, while preserving HSWA-specific regulatory duties where applicable.	Clarify the boundaries of “same subject matter” and “specified risk” including construction-relevant examples to avoid inconsistent interpretation and regulator-by-regulator divergence.

Bill clause / provision	What the Bill does	Master Builders ask
Clauses 28–29: new s222A plus amended s226(2)(a)	Enables draft ACOP development by any person/organisation and creates “must be taken to have complied” deemed compliance for following an ACOP.	Commit to a fast, sector-led construction ACOP work program and signal that ACOPs are not a ceiling, businesses should still be able to exceed code standards where reasonably practicable (consistent with HSWA s226).

10. Implementation and transition

- 10.1 Master Builders considers that clear implementation guidance will be critical to the successful introduction of the proposed amendment. Many construction businesses, particularly small and medium sized firms, rely on clear and practical regulatory guidance to understand changes in their obligations.
- 10.2 As the Bill introduces several new concepts including the prioritisation of critical risks, the new small PCBU category, and changes to the role of Approved Codes of Practice, industry participants will require clear information on how these changes should be applied in practice.
- 10.3 Master Builders encourages the Government and regulators to provide early and accessible guidance to support the transition to the new framework. This should include practical examples relevant to construction sites, including how critical risks should be identified and prioritised within typical construction activities.
- 10.4 We request that WorkSafe and other regulators publish an implementation package for construction, including:
- 10.4.1 A clear critical risk decision tool aligned to the Bill’s two step approach;
 - 10.4.2 Practical guidance for small PCBUs operating in high-risk construction environments;
 - 10.4.3 A public construction ACOP pipeline and timetable; and
 - 10.4.4 Clear communications on how overlaps with other enactments will be interpreted in practice.

11. Refocused regulator priorities

- 11.1 Master Builders supports the Bill’s intention to refocus regulator activity on guidance, advice, and the development of ACOPs. Clear and practical guidance will be important to help businesses understand how the new critical risk framework should be applied.
- 11.2 The Bill places greater emphasis on regulators, including WorkSafe, providing guidance and advice to support businesses in meeting their duties. We support this approach as many construction businesses rely on clear regulator guidance to understand what good risk

management looks like in practice. We encourage regulators to work closely with industry when developing guidance to ensure it reflects the realities of construction work.

12. Conclusion

- 12.1 Master Builders supports the intent of the Bill to improve clarity and focus the health and safety system on the risks that cause the most serious harm.
- 12.2 With targeted clarifications, particularly for small PCBUs operating in high-risk construction and on the boundaries between this amendment and other enactments alongside the rapid development of construction ACOPs, the amendment could improve outcomes on site.
- 12.3

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