

# **Submission on the Health and Safety at Work Amendment Bill**

## **to the Education and Workforce Committee of Parliament**

18 March 2026

Tēnā koutou,

### **Introduction**

1. The Outdoor Access Commission, Herenga ā Nuku Aotearoa, is the Crown agent responsible for improving and protecting outdoor public access. Therefore, we welcome the opportunity to submit on the parts of the Health and Safety at Work Amendment Bill relevant to public outdoor access.
2. Our governing piece of legislation is the Walking Access Act 2008. The primary purpose of the Walking Access Act 2008 is 'to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors'.
3. We administer a national strategy on outdoor access, including tracks and trails. We play a role in negotiating, establishing and improving outdoor access for New Zealanders. This includes increasing awareness of public access and ensuring it endures over time.
4. Our mandate includes all forms of public access, including by foot, bike, horse and vehicle – and for a variety of uses, including hunting and fishing. We map outdoor access, provide information to the public, oversee a code of responsible conduct in the outdoors, help to resolve access issues and negotiate new access. The commission has a team in Wellington and a network of regional advisors. An independent board governs our work.
5. Misunderstanding of land managers' responsibility for the health and safety of recreational visitors on their land has impeded or removed important recreation opportunities for many New Zealanders.

### **Executive summary**

6. We support the clarification (clause 12, new Section 35) that if a person complies with relevant requirements under other legislation to manage a risk, they must be treated as having complied with the relevant duty under the Health and Safety at Work Act 2015 (HSW

Act). The reinforcement that the focus of the HSW Act is on work-related health and safety—not public health or public safety— is welcomed.

7. We strongly support clarification that PCBUs who manage or control a workplace that includes recreational spaces do not owe any section 37 duties to those lawfully accessing the land for recreational purposes, unless work is being undertaken in the proximity of the access.
8. We are concerned that there may still be room for misunderstanding in rural settings and recommend amendments to clause 14 of the Bill.
9. We support WorkSafe's main functions being set to include providing guidance, advice, and information on compliance with relevant health and safety legislation.
10. We are aware that a joint submission has been made by recreational sector bodies, including Federated Mountain Clubs and Aotearoa Climbing Access Trust. The Outdoor Access Commission supports additional matters raised by them on public access concerns.

## Part 1: Amendments to Health and Safety at Work Act 2015

### Clause 12 Section 35 replaced (Compliance with other enactments)

11. We agree that if a person complies with relevant requirements under other external legislation to manage a risk, they should be treated as having complied with the relevant duty under the HSW Act.

### Recommendation 1

That clause 12 of the Bill, which replaces section 35 HSW Act, be retained.

#### ***35 Compliance with other enactments addressing same subject matter***

*(1) This section applies if a person is subject to—*

- (a) a duty imposed by or under this Act to manage a specified risk (the **work health and safety duty**), regardless of whether regulations also impose 1 or more specific duties in relation to that risk; and*
- (b) 1 or more requirements imposed by another enactment (the **external requirements**) in relation to the same subject matter as the work health and safety duty, regardless of whether the purpose of the external requirements is to manage risk to work health and safety.*

*(2) A person who complies with the external requirements must be taken to have complied with the work health and safety duty.*

*(3) However, if regulations also impose 1 or more specific duties in relation to that risk, the person must comply with those duties.*

## Clause 14 Section 37 amended (Duty of PCBU who manages or controls workplace)

12. The HSW Act aspires to manage workplace safety risks. Notwithstanding the meaning of workplace in the HSW Act, people understand workplaces in different ways. The concept of a workplace in an industrial setting, for example, is much easier to understand than is the concept of a workplace in an agricultural or forestry setting.
13. The introduction of the term “open space” in subsection (2A) (a), in relation to a workplace, is likely to cause misunderstandings. Recreational activity also occurs in places that are not ‘open spaces’, such as land covered with native bush or plantation forestry.
14. The purpose of subsection (2A) (a) appears to be to define where recreation is possible on land (and/or water?) associated with a workplace. Something along the lines of “the workplace includes, or is adjacent to, land or water, that can be used for recreational purposes” would be more appropriate.

### Recommendation 2

That **(2A) (a)** be amended by deleting the words “open space”, and replacing them with the words “or is adjacent to, land or water”, so that section 37(2A) (a) reads:

*(a) the workplace includes, or is adjacent to, land or water, that can be used for recreational purposes (including the purpose of crossing the land to reach other land to be used for recreational purposes); and*

15. The understanding of where and when a location on a farm or forestry block is a “workplace” has become blurred. As work can at times occur on most parts of a farm or forestry block, some owners and managers interpret this to mean that the whole farm or forestry block is always a workplace where they have PCBU duties to recreational users under subsection (1) of section 37. It has also been argued that animals grazing pasture constitute work.
16. Further clarification that a worker (i.e. an individual who carries out work for a PCBU (as per Section 19 HSW Act)) must be present for the duty owed by the PCBU under subsection (1) of section 37 to apply, would remove the possibility for misunderstanding.
17. In line with Recommendation 1 above, the term ‘open space’ should be replaced accordingly.

### Recommendation 3

That **(2B) (b)** be amended by inserting the words “by a worker” after the words “being carried out”, and that the words “open space” be replaced by the words “on the land or water”, so that section 37(2B(b)) reads;

*(b) other work connected to the PCBU's business or undertaking is being carried out by a worker at the time on the land or water near where the entry and use are taking place*

## Part 2 Amendments to WorkSafe New Zealand Act 2013

### Clause 34 Section 10 amended (WorkSafe New Zealand's functions)

18. Anecdotal, it has been difficult for some farming PCBU's and members of the public to obtain relevant guidance and advice from WorkSafe. While the legislation's intention is clear, Worksafe could improve how it functions in practice providing additional training and guidelines.
19. We support WorkSafe's main functions being set to include providing guidance, advice, and information on compliance with relevant health and safety legislation.

### Recommendation 4

That clause 34 of the Bill, which amends section 10 (WorkSafe New Zealand's functions), be retained:

- (a) to provide guidance, advice, and information on compliance with relevant health and safety legislation to –*
- (i) persons who hold duties under that legislation;*
  - (ii) and the public; and*

We would welcome the opportunity to speak to this submission.

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