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Kia ora Education and Workforce Committee Members

Health and Safety at Work Amendment Bill

The Institute of Directors (IoD) appreciates the opportunity to make this submission on Health and Safety at Work Amendment Bill.

The IoD supports good practice governance that is one of the underpinnings of improved health and safety outcomes in workplaces. From the beginning of the current reform process we have supported work to improve this, including publishing, with WorkSafe New Zealand, "[Health and Safety Governance; a good practice guide](#)". We have also advocated for legislative and other changes that support directors and boards across a range of organisations to govern health and safety well, and have the encouragement to do so.

Scope of submission and summary:

This submission is a continuation of that effort alongside others, including the Business Leaders Health and Safety Forum. The focus of this submission is on:

- IoD's submission through the consultation process on the current reforms from October 2024
- The Minister of Workplace Relations and Safety's health and safety reform announcements in March 2025
- The Health and Safety at Work Amendment Bill and recommended amendments to it that would support improved health and safety governance and encourage directors, boards and their equivalents to improve health and safety outcomes in New Zealand.

About the Institute of Directors

The IoD has over 10,500 members, is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community.

We believe in the power of governance to create a strong, fair and sustainable future for New Zealand. Our role is to drive excellence and high standards in governance.

We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

We also supported ongoing professional governance development and recognise this through the Chartered Member pathway

Background

Working with partners in the Business Leaders Health and Safety Forum and the General Manager Safety Forum, IoD has long seen the role that directors and boards play with health and safety as a key part of governance. For that reason, IoD engaged directly in the 2024 consultation process run by the Minister of Workplace Relations and Safety, including making a detailed [submission](#) on 30 October 2024. With the [Government announcements](#) in March 2025, the [IoD welcomed](#) the move to clarify the respective roles of managers and directors as officers, while looking forward to hearing more detail about how this would be addressed in legislation and seeking further measures to address collective board accountability.

Comparing the provisions in the Amendment Bill to the IoD submission and the Minister’s March 2025 announcements

The “devil is always in the detail” and that is never truer with the Health and Safety at Work Amendment Bill. The following table outlines the key themes in the IoD’s October 2024 submission, the Minister’s March 2025 reform announcements and the extent to which both are reflected in the Health and Safety at Work Amendment Bill.

IoD Submission Theme	Minister’s reform announcement	Extent to which this is reflected in the Amendment Bill
Clarifying the distinction between governance and management for officer duties in the Health and Safety at Work Act 2015	Confirmed	Not addressed as the IoD sought, except for: <ul style="list-style-type: none"> • Smaller organisations where directors or managers hold multiple roles, with the focus on their responsibilities as officers or owners • Providing an exhaustive list of duties for officers (i.e. directors and executive management)
Ensuring that penalties for directors create appropriate incentives for good practice health and safety governance.	Not addressed	Not addressed
Promoting collective board accountability.	Not addressed	Not addressed
Balancing enforcement with proactive support.	Move to a more educative function for WorkSafe and other Health and Safety regulators. Limited, if any, focus on governance understanding and enforcement capability.	Changes to legislation to reduce the emphasis on enforcement.
Encouraging transparency in settlements for health and safety at work breaches.	Not addressed	Not addressed
Strengthening centralised and consistent guidance.	Not addressed explicitly	Not addressed

IoD’s perspective and proposed amendments to the Bill

As outlined above, the Amendment Bill picks up some, but by no means all, of the actions the IoD sought to have included in the health and safety legislative reform from a governance perspective. In some cases, while the reform announcements reflected the IoD’s recommendations for change, the Bill does not generally reflect them.

IoD’s submission, which reflects feedback from IoD director members, therefore:

- Supports areas where there is alignment between the Amendment Bill, the reform announcements and the IoD’s submission
- Proposes additions to the Amendment Bill where the IoD’s recommendations were reflected in the reform announcements but not included in the Bill
- Proposes changes to the Amendment Bill in areas not included in either the reform announcements or the Bill.
- Highlights some wider, non-legislative change that could support improved health and safety governance and, therefore, better health and safety outcomes.

Provisions in the Amendment Bill IoD supports

Based on alignment between the IoD submission, the reform announcements and the provisions of the Bill, the IoD supports:

Proposed support for Bill provision	Reasons
Approved Codes of Practice (Clause 28 of the Bill)	Provides a basis for developing a health and safety governance Approved Code of Practice, based on “Health and safety governance: a good practice guide” .
Role clarification with multiple roles (Clause 21 of the Bill)	Those with multiple roles working in an organisation and in “officer” roles will be clearer that their duties in health and safety are as an officer. In practice, this primarily applies to those working in smaller businesses and organisations.
Clearer duties (Clause 21 of the Bill)	Moves from an open-ended to an exhaustive list of duties for officers. This provides more certainty for board members than the current arrangements.

Proposed amendments to the Bill sought by IoD

IoD’s suggested amendments to the Bill are outlined in the **Appendix**.

In summary, these include:

- **Clarify officer duties for larger organisations with separate governance:** Introduce a new provision applying to organisations with more than 20 employees where governance is clearly separate from executive management. The provision would explicitly define how officer duties

are shared between the governing body and executive management, including recognition of a collective governance role.

- **Define collective and individual responsibilities within section 44 (Duty of Officers):** Add a new clause to section 44 to confirm that governing bodies are collectively responsible for exercising due diligence in their governance capacity, including setting health and safety expectations, oversight systems, and assurance processes. Executive management would be responsible for implementing those expectations operationally and providing accurate, timely information to enable effective board oversight. This is consistent with the "[Health and safety governance: a good practice guide](#)".
- **Confirm collective board accountability alongside individual duties:** The amendment would make clear that officer duties are owed both individually by members of the governing body and collectively by the governing body as a whole. It would clarify that collective responsibility cannot be discharged solely through the actions or omissions of one or more individual board members or equivalent.
- Make amendments to the Health and Safety at Work Act 2015 to **realign officer obligations with core directors' duties under wider governance legislation, reinforcing due diligence, care, skill and good-faith judgement** rather than fear- and uncertainty-based compliance. The current director duty, liability and penalty settings in the Health and Safety at Work Act 2015 are producing unintended, compliance-driven behaviours that detract from effective governance and improved health and safety outcomes. Further amendment to the Act (through the Amendment Bill to realign officer obligations with core directors' duties under wider governance legislation, reinforcing due diligence, care, skill and good-faith judgement rather than fear-based compliance. Experience under other regimes, including the [CCCFA](#) and [climate-related disclosure](#) legislative provisions, shows that director duty and personal liability settings can lead to overly conservative behaviour and reduced transparency rather than better outcomes, albeit in a civil rather a criminal legislative regime. In addition, a stronger focus on sound governance practice, supported by established IoD governance frameworks (such as the "*Four Pillars of Governance Best Practice*" and "*Health and Safety governance: a good practice guide*" and more governance-informed health and safety regulatory enforcement, would better promote genuine and sustained improvements in workplace health and safety.
- **Amend the Health and Safety at Work Act 2015 to align officer obligations with core directors' duties under broader governance law, emphasizing due diligence, care, skill, and good-faith judgement** instead of fear-based compliance. Current regulations foster compliance-driven behaviour, undermining effective governance and health and safety outcomes. Lessons from the [Credit Contracts and Consumer Finance Act 2003 \(CCCFA\)](#) and [climate-related disclosure](#) legislative provisions show that strict director liability can cause overly cautious conduct and less transparency. Strengthening governance practices would support lasting improvements in workplace health and safety using:
 - Established frameworks like the "*Four Pillars of Governance Best Practice*" and "*Health and Safety Governance: A Good Practice Guide*"
 - Regulatory enforcement informed by governance.
- **Strengthen whole-of-government coordination on health and safety:** Establish a more effective cross-government coordination mechanism to ensure a systemic approach to health and safety regulation and policy. This would include amending section 195 to require the Minister to publish or refresh the Health and Safety at Work Strategy at least every three years.

- **Enable publication of lessons from enforcement and good governance practice:**
Introduce a provision allowing the regulator to publicise lessons learned from poor health and safety governance and to highlight sound governance practices arising from enforceable undertakings and settlements. This would be achieved through amendments to Part 4, Subpart 4 of the Act, with appropriate safeguards for personal, privileged, and commercially sensitive information.

Clause the Select Committee should review further

The IoD welcomes the effort to address the areas of health and safety at work overlaps between the Health and Safety at Work Act 2015 and other legislation as reflected in Clause 12 of the Bill. For directors, boards and their duties uncertainty and tension between legislation have been an ongoing concern. That said, IoD member directors are focused on health and safety outcomes, certainty **and** the extent of compliance effort required to meet their obligations.

Clause 12 of the Amendment Bill related to health and safety related matters in overlapping legislation has the potential to lower expectations for health and safety governance. This requires particularly Select Committee attention. Clause 12 of the Bill which looks like a simple “fix” to a complex and vexed issue of other “enactments addressing [the] same subject matter” as the Health and Safety at Work Act 2015. To provide the certainty for directors (and officers generally) and ensure standards for health and safety governance are not eroded, the amendments need to be more specific and case by case than the “blanket” approach taken in the Amendment Bill.

Other relevant non-legislative matters

Changing legislation does not result in improved outcomes on its own. Implementation approaches and the capability to implement legislative changes are also required. A Crown Law review of the [WorkSafe New Zealand prosecution function](#) made clear that WorkSafe lacked the capability and understanding of officer duties and, by implication, the role of governance in its enforcement function. The officer/governance-related amendments in the Bill and the IoD’s proposed amendments to the Bill will put more pressure on WorkSafe (and potentially other regulators) to improve capability in relation to governance and the roles of directors and boards in health and safety through governance practice.

Conclusion

The Health and Safety at Work Amendment Bill takes up a few of the proposals in the IoD submission on the health and safety reforms made to the government in October 2024. More is needed to support improved health and safety governance that will deliver improved outcomes in workplaces and beyond.

The IoD would like to appear before the Select Committee in support of this submission.

Ngā mihi



Guy Beaton

General Manager – Governance Leadership Centre

Proposed amendment to the Bill

The proposed amendments sought by IoD are:

Proposed amendment to the Amendment Bill	Reasons
<p>Include a new provision for organisations with more than 20 employees and a board, committee or similar governing body where governance is separate from executive management. The provision would define the specific responsibilities of the board and executive management in relation to “officer duties”, including a collective duty for boards.</p> <p>Add a new clause, in addition to clause 21 of the Amendment Bill, along the following lines to sit within Section 44 (Duty of Officers):</p> <p><i>“(X) This subsection applies to a PCBU that –</i></p> <p><i>(a) is not a small PCBU; and</i></p> <p><i>(b) has a board, council, committee, or other governing body whose role is separate from the day-to-day management of the business or undertaking.</i></p> <p><i>(Y) For the purposes of this [section] –</i></p> <p><i>(a) the governing body, acting collectively, is responsible for the exercise of due diligence in its governance capacity, including –</i></p> <p><i>(i) setting clear expectations, policies, and strategic priorities for the management of work health and safety, including the management and prioritisation of critical risks</i></p>	<p>Where an organisation has a governance board and separate executive management (most often in organisations with more than 20 employees) the responsibilities of “officers” for health and safety are different (i.e. boards are responsible for strategy, policy and oversight, and executive management is responsible for day-to-day operations). In smaller organisations, as the Bill highlights, these roles are not separate and the Bill clarifies this. However, the Bill does not address the current lack of attention to the difference between governance and management for organisations with boards. The resulting lack of clarity continues to create confusion and compliance costs.</p>

Proposed amendment to the Amendment Bill	Reasons
<p><i>(ii) ensuring that the PCBU has in place appropriate systems for oversight, assurance, and reporting to enable the governing body to verify that the requirements of subsection (5) are being met; and</i></p> <p><i>(iii) monitoring, through appropriate assurance processes, the effectiveness of those systems and the PCBU's performance in meeting its duties under this Act; and</i></p> <p><i>(b) executive management is responsible for –</i></p> <p><i>(i) implementing the policies, priorities, and expectations set by the governing body; and</i></p> <p><i>(ii) establishing, operating, and maintaining the resources and processes necessary to manage risks to health and safety in accordance with this Act; and</i></p> <p><i>(iii) providing timely, accurate, and sufficient information to the governing body to enable it to meet its duties under this section.</i></p> <p><i>(Z) The duty under this [section] is owed –</i></p> <p><i>(a) by each member of the governing body individually; and</i></p> <p><i>(b) by the governing body collectively, and the collective duty is not discharged solely by the actions or omissions of 1 or more individual members.”</i></p>	
<p>Amend the Health and Safety at Work Act 2015 to ensure that any penalties, liabilities (including personal liability for officers – including directors) and duties in the Health and Safety at Work Act 2015:</p> <ul style="list-style-type: none"> Reinforce the understanding of their duties under the Health and Safety at Work Act, and other due diligence and related duties in other legislation (e.g. the Companies Act 1993 and the Incorporated Societies Act 2022) 	<p>Feedback from IoD members during the Health and Safety at Work reform process suggests that directors are being driven to compliance rather than good governance practice that would support improved health and safety outcomes. This appears to be a perverse outcome of the current legislation including its duty, liability and penalty settings. These mirror perverse</p>

Proposed amendment to the Amendment Bill	Reasons
<ul style="list-style-type: none"> • Provide the strongest motivations directors (and other officers) adopt and following governance practices that support improved health and safety outcomes, rather being seen as a compliance action taken out of fear in the face of uncertainty. <p>Reinforce this change by more concentrated efforts:</p> <ul style="list-style-type: none"> • To rely on core directors' duties as outlined in the Companies Act 1993, Incorporated Societies Act 2022 and similar legislation, including the obligations to exercise due diligence, care and skill, act in good faith, and serve the best interests of the company.¹ • To promote sound governance practices, as detailed in our: <ul style="list-style-type: none"> ○ Four Pillars of Governance Best Practice ○ Chapter Zero New Zealand Board Toolkit (related to wider risk management and identifying opportunities broader than climate change) ○ Health and Safety: A good practice guide. <p>To support robust governance and board capability in relation to health and safety at work through a range of relevant governance development offerings and through enforcement by regulators that better understands governance (and the officer duties).</p>	<p>outcomes in other legislation² although with potentially more significant impacts, including:</p> <ul style="list-style-type: none"> • The Credit Contracts and Consumer Finance 2003 (CCCFA) for which personal director liability for the due diligence obligations (s 59B) was shown to be resulting in more conservative lending than required. • The liability for climate-related disclosures for larger New Zealand companies with personal liability for directors which resulted in directors and their boards providing less information about climate change strategies, risk and opportunities than the regime intended.

¹ Note that the recent Australia Federal Court [Australian Securities and Investments Commission v Bekier \(Liability Judgment\) \[2026\] FCA 196](#)) paragraph 405 reinforces the duties on directors in a provision equivalent to s. 137 of the New Zealand Companies Act 1993 that due diligence, care and skill as a director applies to “reasonably foreseeable risks”, of which health and safety risks would likely be considered caught by.

² In this submission, IoD recognises that the Health and Safety at Work Act 2015’s liabilities and penalties are part of the criminal law and the other legislation referred to is civil in nature. The focus in our reasoning, however, is on the perverse outcomes these provisions in legislation create and the need to address this in the Health and Safety at Work Act 2015, given the continued [poor health and safety outcomes in New Zealand with significant cost](#).

Proposed amendment to the Amendment Bill	Reasons
<p>Create an effective co-ordination mechanism across government to ensure a systemic approach to health and safety matters, rather than the current piecemeal approach (for example, current policy and legislation may increase the potential for ACC insurance claims and cost more, which may not have been considered in the cost-benefit analysis of the measures in the Bill).</p> <p>This might include amending the Health and Safety at Work Act 2015, section 195 – Health and Safety at Work Strategy to require the Minister to publish the strategy in this section at least every three years.</p>	<p>One of the biggest issues in the health and safety at work regulatory and wider system is the inconsistency and lack of connection within government for policy development, legislative design, implementation and monitoring. A legislative requirement would provide a foundation and platform for addressing this issue.</p> <p>Requiring the Minister to publish a Health and Safety at Work Strategy every three years would support a systemic approach, as section 195 requires cross-agency input and analysis.</p>
<p>Include a provision in the Bill that makes it easier to publicise lessons from poor health and safety governance practice, and to highlight sound health and safety governance practice arising from settlements with organisations following regulator enforcement action.</p> <p>This could be done by adding relevant provisions to Part 4, Subpart 4 (Enforceable undertakings) of the Health and Safety at Work Act 2015 – for example, a new section 124A authorising the regulator to publish lessons and governance practices arising from settlements and enforceable undertakings. Such a provision would need to include appropriate safeguards relating to personal safety, personal information, legally privileged information and commercially sensitive information, among other matters.</p>	<p>Adopting this proposal would extend provisions in the Amendment Bill that provide greater guidance from regulators on approved codes and standards. It would also build on the “Health and Safety governance good practice guide” by providing illustrations of governance practice that supports improved health and safety outcomes – and those that do not.</p>