Rail and Maritime Transport Union (RMTU) Submission on the Health and Safety at Work Amendment Bill

Introduction

The Rail and Maritime Transport Union (RMTU) are the transport workers' union of choice in New Zealand. Our union has over 6,000 members working across the rail, ports, and freight transport sectors.

We believe workers' health and safety is a fundamental aspect of decent work, and that every worker has the right to work that is safe and healthy. The RMTU considers the Health and Safety at Work Act 2015 (HSWA) to be largely fit for purpose.

The Minister for Workplace Relations and Safety, Brooke van Velden, stated in a media release that the proposed changes would increase certainty, reduce a "culture of fear" among New Zealand businesses, and improve safety.

The RMTU does not believe the Government's proposed changes will achieve these objectives. Rather, we believe the changes will increase the risk of injury, ill health, and death for workers, while also creating uncertainty about the status of the HSWA in relation to other legislation and which legislation should take precedence. Lastly, we do not believe a culture of fear regarding compliance is widespread or justified based on the actual number of Worksafe prosecutions. WorkSafe New Zealand took 39 prosecutions last year (2025), despite 70 acute fatalities, hundreds of disease-related deaths, and 600,000 businesses. The relatively low number of prosecutions, amidst high harm rates, indicates a light-handed regulatory approach to enforcement rather than a, "climate of fear," for businesses.

The Burden of Harm in the Rail and Ports

New Zealand ports are disproportionately unsafe compared with other high-risk industries and with ports overseas.

In 2023, Maritime New Zealand coordinated review of the port industry. The review found that New Zealand port workers have been killed at work at twice the rate of port workers in the United Kingdom and three times the rate of port workers in Hong Kong.

Between 2012 and 2022, there were 18 deaths of port workers in New Zealand, averaging almost two fatalities per year. Critical risks include falls from height (including falls from vessels) and workers being crushed by or caught between vehicles, machinery, or cargo.

Since the review, considerable work, involving a tripartite approach, has been achieved to improve safety in the sector, including the development of an Approved Code of Practice for Loading and Unloading Ships.

In the rail industry, the late 1990s and early 2000s were a devastating time for worker health and safety. During this time 11 rail workers were killed within a five-year period, with rail recording a worker fatality rate eight times the national average.

The unacceptable state of health and safety in the industry led to a Ministerial Inquiry, which resulted in significant improvements. One of the key outcomes was that rail operations were brought within the scope of the health and safety legislation. Prior to this rail was excluded from the health and safety legislation.

The RMTU is very concerned that the Health and Safety at Work Amendment Bill will negatively affect the safety of rail and port workers by making the Health and Safety at Work Act subordinate to other legislation relevant to these industries. We will discuss this further below.

Equity Gap

The equity gap in workplace safety must be addressed.

The serious non-fatal injury rate for Māori workers is at least 30 percent higher than for non-Māori workers. Priority must be given to addressing the disproportionate levels of workplace harm and death experienced by Māori workers.

The H&S Amendment Bill does not address the equity gap.

Key Issues

The Bill aims to reduce compliance costs by introducing a two-tier system of health and safety obligations.

Businesses employing fewer than 20 workers would only be required to manage risks if they are already covered by existing regulations or if they meet a new “critical risk” test.

Under this proposal, small businesses could focus solely on “critical risks” in the workplace and would be exempt from many current health and safety obligations. While risks that cause death or the most severe injuries are clearly important, this approach ignores the fact that most workplace injuries do not result in death or serious injury, yet they still account for approximately 75 percent of ACC’s work-related injury costs.

The RMTU believes these changes will create significant confusion for small businesses regarding what constitutes a “critical risk.”

The amendment would require small businesses to analyse whether workplace risks are covered by existing regulations. If not, employers would then need to apply a “likelihood” test to determine whether a risk is likely to result in death or serious injury.

If the employer decides the risk does not meet the likelihood threshold, they may not be required to provide training, induction, personal protective equipment, or supervision.

In practice, it will be very difficult for small businesses to assess “likelihood” because the term is highly subjective. Many significant risks — including violence and aggression in retail, back injuries, occupational diseases, and work-related mental harm — are unlikely to meet the threshold of a “critical risk”, yet they still cause serious harm to workers.

In rail ACC data shows that the most common injuries experienced by rail workers are lower back and spinal injuries, often requiring more than a week away from work. Workers operating commuter trains are also facing an increasing risk of violence from aggressive passengers. Under the Bill’s proposed changes these risks would be unlikely to meet the “critical risk threshold” and therefore would not require controls.

The Bill effectively encourages small employers to step back from addressing these risks. The likely outcome will be more injuries, more time off work, and lower productivity.

Lack of Clarity and Mixed Messages

Even where an employer identifies a critical risk, the Bill does not provide clear guidance on how that risk must be prioritised or managed.

Although the Bill requires employers to identify and prioritise critical risks, it also states there will be no legal repercussions for smaller workplaces that fail to prioritise those risks. That means there is a legal duty to prioritise critical risk, not no enforcement opportunity by the Regulator for failing to do so.

This raises an obvious question: what is the purpose of requiring employers to identify and prioritise critical risks if there is no obligation to act on them?

In summary, the introduction of a two-tier system and a new definition of “critical risk” is likely to create more confusion than clarity for small workplaces.

The changes would create an unfair two-tier system, affecting approximately 25 percent of New Zealand workers who are employed in smaller workplaces. These workers would receive less protection than workers in larger organisations, even when facing the same risks.

Clarifying Overlaps with Other Legislation

The Bill states that if a Person Conducting a Business or Undertaking (PCBU) complies with relevant requirements under other legislation to manage a risk, they will be treated as having complied with their duties under the Health and Safety at Work Act.

The railway industry is currently regulated under both the Railways Act 2005 and the Health and Safety at Work Act 2015.

The Railways Act provides a lower level of protection for workers than the HSWA. It is administered by NZTA, which does not have the same regulatory mandate as WorkSafe New Zealand, the agency responsible for administering the HSWA.

WorkSafe — particularly its High Hazards Unit — has worked with KiwiRail to improve safety standards for workers operating in complex environments such as rail tunnels. WorkSafe's engagement in rail has been integral to safety improvements such as the provision of adequate respiratory protection for Loco engineers working inside long rail tunnels.

The RMTU is very concerned that the Amendment Bill could result in the Railways Act becoming the dominant legislation governing rail worker safety.

The Railways Act, now more than 20 years old, provides a narrower duty requiring rail companies to ensure that rail activities are managed so that they are not likely to cause death or serious harm, so far as reasonably practicable.

As discussed earlier, the concept of "likely" is subjective and sets a very high threshold before action must be taken to control risk.

By contrast, the Health and Safety at Work Act imposes a broader duty of care requiring employers to ensure, so far as reasonably practicable, that workers are not exposed to health and safety risks arising from work.

The HSWA therefore provides wider protection, requiring risks of harm to be managed before they result in death or serious injury.

If the Railways Act became the dominant legislation and employers were no longer required to meet the HSWA standard, the RMTU believes there would result in an increased risk of serious injuries and fatalities in the rail industry.

It is important to stress that rail operations were excluded from general health and safety legislation in 1991. This exemption resulted in a worker fatality rate *eight times* the national average, with 39.3 deaths per 100,000 workers compared with the national average of 4.9.

In the maritime sector, seafarers on New Zealand-flagged ships are covered by both the Health and Safety at Work Act and the Maritime Transport Act 1994.

Maritime New Zealand administers both pieces of legislation — the Maritime Transport Act focuses on vessel and navigational safety, while HSWA provisions relate to the safety and health of people working on board ships. These two regulatory frameworks currently operate together.

The RMTU is concerned about the potential negative consequences of making the HSWA subordinate to the Maritime Transport Act, which could weaken protections for workers in the maritime sector.

Conclusion

The Rail and Maritime Transport Union strongly opposes the Health and Safety at Work Amendment Bill.

The proposed changes will weaken New Zealand's health and safety framework by creating a two-tier system of protection, reducing the obligations on small businesses to manage workplace risks, and

introducing unnecessary confusion around the concept of “critical risk”. These changes risk increasing workplace harm rather than reducing it.

Of particular concern to the RMTU is the proposal that compliance with other legislation could be treated as compliance with duties under the Health and Safety at Work Act. In safety-critical industries such as rail and maritime, this could result in older and less robust legislation becoming the dominant framework governing worker safety.

New Zealand has made significant progress in improving workplace safety since the introduction of the Health and Safety at Work Act 2015. Weakening the Act now risks reversing that progress.

The RMTU therefore urges the Select Committee to reject the proposed amendments and retain the existing framework of the Health and Safety at Work Act, which provides a more comprehensive and preventative approach to managing workplace risk.