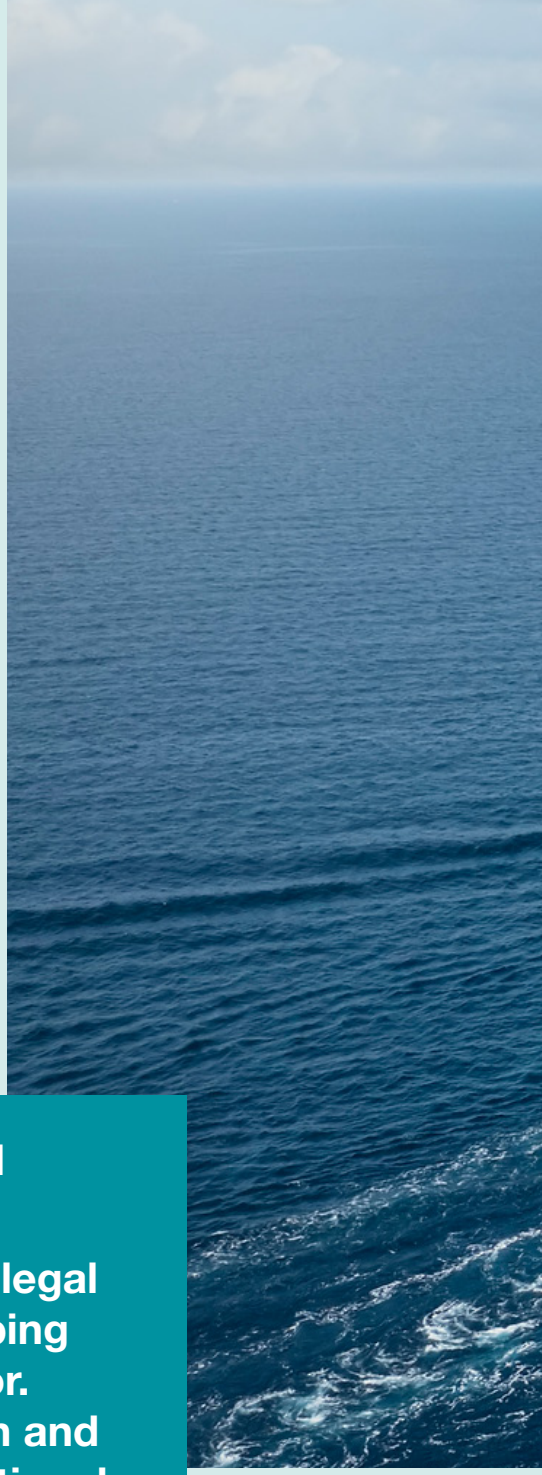
Duncan Cotterill

Freight & Logistics in Focus

Legal Guidance for Freight Businesses

APRIL 2026



Welcome to the Duncan Cotterill Freight Sector Guide.

This edition brings together key legal and industry developments shaping the transport and logistics sector. You will read about recent health and safety reforms, the proposed national fuel plan, and the contractor gateway test and its implications for freight operators. We also discuss the impact of the Middle East conflict on global supply chains and insurance, the growing role of AI in contract review and its limitations, and the challenge of overlapping duties across supply chains.

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2025 saw WorkSafe thrown into the spotlight by the Minister for Workplace Relations and Safety. The regulator was directed to shift its priorities away from enforcement and focus on supporting businesses through education and guidance. The Minister also signalled a series of amendments to come throughout the year.

The Health and Safety at Work Amendment Bill was published in early February and gives us all some detail about changes in the pipeline. We take a look at whether the Bill might achieve the goal of getting businesses more focused on the risks that matter.

Focus on critical risks

The Bill puts the concept of "critical risk" front and centre. Critical risks are risks associated with hazards that are likely to result in death, serious injury or illness, or certain other occupational diseases and hazards specific to particular industries.

This new approach to critical risks would require PCBUs to be proactive in monitoring a schedule to see whether any listed regulations and hazards apply to their work. PCBUs will also need to examine all their workplace hazards to consider whether they might lead to any of the serious outcomes.

At face value, the new focus on critical risks may help PCBUs to reassure themselves they are concentrating their resources in the right place and ultimately meeting their obligations under the Health and Safety at Work Act. Having said this, it remains to be seen whether the new legislation will deliver sufficient precision and certainty and also avoid the problem of significant (but not necessarily "critical") risks falling by the wayside and generating exposure in other areas of the business.

A bone for "small business"

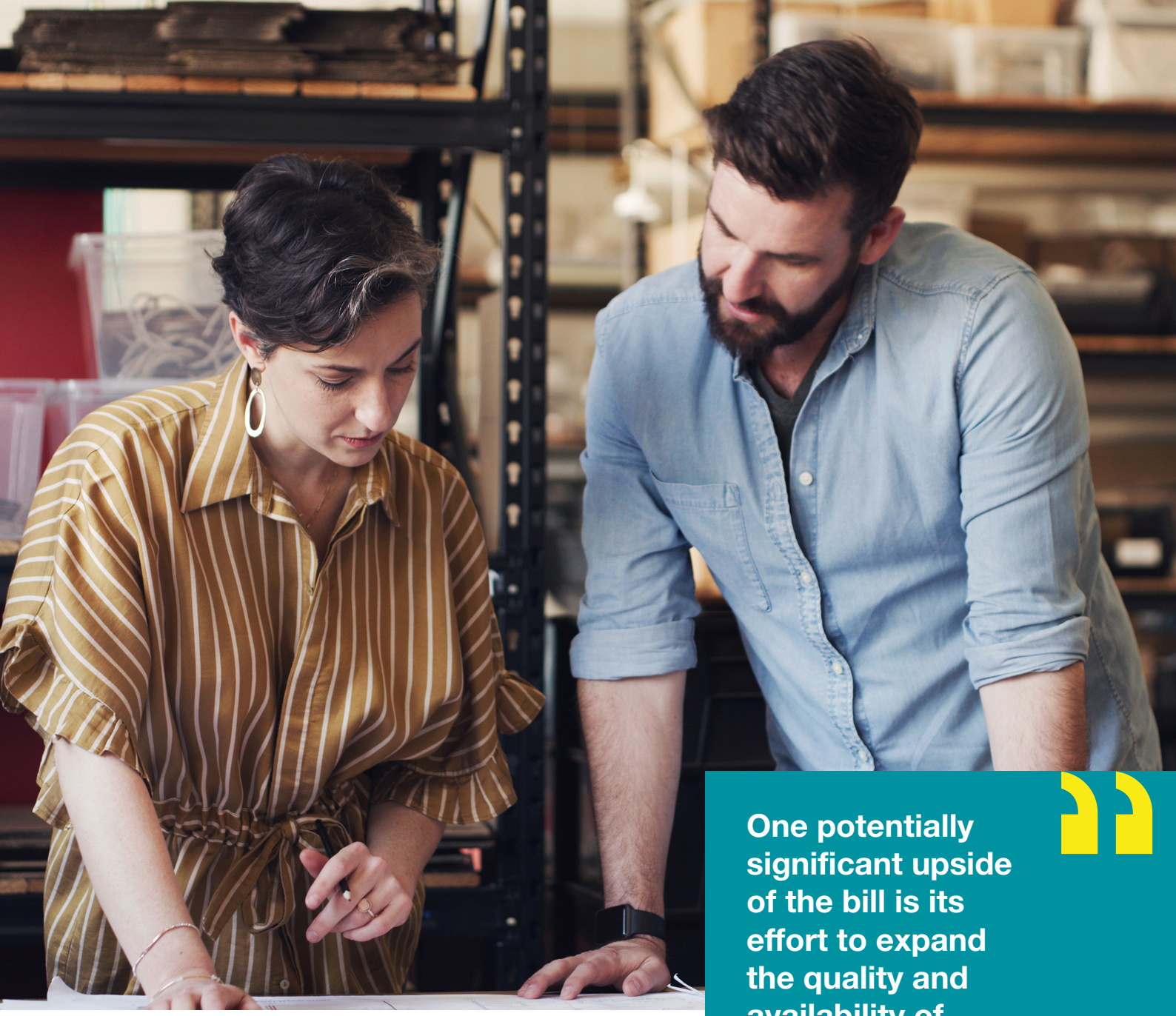
The focus on critical risks will be particularly relevant to businesses meeting the definition of "small PCBU": these will be required to manage *only* critical risks and to comply with limited obligations relating to providing information, supervision, training, instruction, and PPE to workers.

As the engine room of New Zealand's economy, the definition of a "small PCBU" might be ripe for debate as the bill goes through consultation and refinement. At this stage, a "small PCBU" is proposed to be defined as a PCBU with fewer than 20 workers carrying out work in any capacity for at least nine months of the year.

One obvious difficulty here is the broad definition of "worker" in the Health and Safety at Work Act, which can include contractors and subcontractors as well employees. For PCBUs in the transport and logistics sector, considerations around whether they still meet the definition of a "small PCBU" could quickly become confusing.

Increase in approved codes of practice (ACOPs)

One potentially significant upside of the bill is its effort to expand the quality and availability of guidance through the use of ACOPs. ACOPs are essentially industry-specific, Minister-approved guidance which give specific detail about how to discharge duties under the legislation, in recognition of the Act's duties generally being expressed very broadly. Compliance with ACOPs means PCBUs are deemed to have met their health and safety functions – referred to as a "safe harbour".



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PCBUs with established health and safety systems and industry organisations should see this indication about increasing the use of ACOPs as an opportunity to influence work practices and establish norms to benefit industry generally. While presenting that opportunity, this does pose something of a resourcing question: development of ACOPs will require some real elbow grease from industry leaders.

Innovation and technology in ACOPs

Engineering controls – methods of managing risk which aim to design human error out of human interactions with machinery – will likely be a key focus for WorkSafe and the Minister when assessing ACOPs.

In an ever-evolving technological landscape, we can see tools such as AI fatigue-monitoring systems, lane departure warnings, collision avoidance systems, and geo-fencing tech becoming increasingly embedded and expected by the regulator as the means by which PCBUs discharge their duties. Keeping ACOPs and other expectations current will prove challenging: an ACOP approved in 2026 might include engineering controls that within a few years might be totally out of date. Industry and the regulator will need to be careful about keeping ACOPs current and workable.

At a level of principle, the Bill's goal of clarifying health and safety obligations is obviously to be welcomed. Likewise, the pathway for PCBUs to play an active role in setting standards for their industries through the ACOP process would allow for a wealth of industry knowledge and experience to be brought to the table in determining what these standards should be.

Key areas to monitor will be the Bill's new foundational concepts – "critical risks" and "small PCBUs". And in time, we see ACOP development as a potential game-changer.

National fuel plan – impacts on the road transport sector

New Zealand's road transport sector continues to bear the impact of global disruptions to fuel supply linked to ongoing conflict in the Middle East. In response to these disruptions, the Government has released the National Fuel Plan, designed to scale the extent of government intervention as risks increase or decrease.

The National Fuel Plan is somewhat reminiscent of the COVID-19 response framework, with four distinct phases that respond to different levels of risk to New Zealand's fuel security.

Just as we saw the impact of COVID-19 rapidly change our ways of working, New Zealand industry may need to quickly adapt to the impact of constrained fuel supplies. For the transport sector in particular, the more restrictive phases of the National Fuel Plan could lead to widespread necessary investment into alternatively-fuelled trucking fleets.

We set out here some general information about what the National Fuel Plan may mean for New Zealand's road transport sector, and how this may impact the uptake of fleet electrification.

What are the different fuel phases?

In short, New Zealand is currently sitting at Phase 1. This is a "watchful" phase, where fuel stocks are closely monitored, but no actual usage restrictions are in place. Phase 2 would see the Government taking precautionary measures to maintain supply and promote responsible use of fuel across government services, as well as working with key stakeholders to ensure effective regional distribution of fuel. Phase 3 may lead to restrictions on fuel supply based on priority of supply, with Phase 4 potentially putting strict fuel purchase restrictions into action.

When might New Zealand experience a move between fuel conservation phases?

Six official criteria have been determined, with the Fuel Security Oversight Group being required to consider a move in phases whenever any of these criteria change. The criteria include:

1. Source refineries introducing or relaxing export restrictions;
2. Changes to New Zealand's fuel stock levels of plus or minus three days since the most recent published update;
3. A fuel company informs the government that they are unlikely or unable to fill future orders;
4. A breach, or notification of an imminent breach, of the minimum storage obligations;
5. Any significant policy changes in Australia or from the International Energy Agency; or
6. A significant disruption to regional distribution.

It is also possible that a change in phase will apply to one type of fuel, but not another. For example, petrol may remain at Phase 1, while diesel goes up to Phase 2.

How does the National Fuel Plan impact the transport sector?

At Phase 2, the Government will work with fuel suppliers to prioritise supplies to essential services. At present, fire and emergency services are the primary example of an essential service provided by the government, and little guidance has been provided as to the degree of priority the transportation sector would be afforded at Phase 2. However, it is difficult to envisage a

situation where the transport sector would not be classified as an essential service, recognising the necessity of many transport operations such as grocery supply.

The National Fuel Plan would likely start to most noticeably impact the transport sector if it reached “Phase 3”. At this stage, the Government may take steps to help direct fuel supply to customers according to their level of priority. Priority bands, ranked from A – D, outline where the provision of fuel would be prioritised.

The transport sector would see many operators placed in Band B “economically important services”, which are critical transport services such as freight for supermarket and grocery supply chains, international air links, food supply and primary production during time-critical periods. Others may be lower down the chain at Band D, encapsulating “other commercial customers – all other commercial and business fuel uses”.

We note that Phase 3 has not been confirmed and is still subject to consultation, so the way in which supplies are managed for economically important services remains to be seen.

Phase 4, which is also subject to consultation at this stage, would impose strict rules on the supply of fuel. Supply of fuel to life-preserving services would be prioritised (those in Band A of the Phase 3 Bands), as well as food supply.

Fleet electrification impacts

While electric and hybrid light vehicles make up nearly half of the light vehicle market in New Zealand[1], electric and alternatively fuelled heavy vehicles are still gaining traction. Hydrogen-powered trucks, while proving to be a promising development for the industry, are still in their infancy.

The impact of current global disruptions to fuel supply has been sudden and most road transport operators would have no choice but to bear the brunt of the rapid increase in fuel costs this time around. Many would argue that the technology is simply not yet sophisticated enough to justify the rollout of alternatively fuelled trucks out across their fleet. However, responding to fuel supply constraints may prove to be a thought-provoking exercise for business owners wanting to future-proof their fleet from further disruptions to the fuel supply chain.

It remains to be seen whether New Zealand will work its way up the phases of the National Fuel Plan and be further impacted by fuel scarcity and associated cost increases. As electric and hydrogen-powered heavy vehicle technology develops further, road transport operators might consider prioritising these technologies, to provide future assurance that fuel supply disruptions will not flow through to their business.

1 EV Market Stats (2026)

It is also possible that a change in phase will apply to one type of fuel, but not another.

The contractor gateway test – what it really means for the freight industry

The introduction of the new contractor gateway test as part of the Government's recent employment law reforms is one of the most significant changes the freight industry has seen in recent years. For an industry built on owner drivers, fleet contracting and flexible labour models, the gateway test promises greater certainty – but only if operators clearly understand the compromises required to get there.

What the gateway test does – and doesn't do

The gateway test creates a statutory "safe harbour". If all criteria are met, the individual is conclusively treated as a contractor and cannot later argue they are an employee under the Employment Relations Act.

To satisfy the gateway test, five things must be present in a contractor engagement:

- A written contract stating the person is an independent contractor (or not an employee)
- No restriction on working for others
- Either:
  - No obligation to work set days or hours, or to be available for a minimum period of availability, **or**
  - A genuine right to subcontract the work (although this right can be qualified by genuine occupational pre-requisites such as the sub-contractor needing to hold certain licences or passing drug and alcohol testing)
- The contract does not terminate if the contractor declines additional work
- The contractor had a reasonable opportunity to seek independent advice before signing

The test is strict. Miss any one of these requirements, and the gateway closes. In these cases, disputes about the status of the contractor will instead be determined under the pre-existing legal framework.

The upshot is that the gateway test offers freight operators a choice. They can achieve certainty as to the legal status of the contractors they engage, however at the cost of sacrificing operational control. For some freight businesses, that trade off will be worthwhile. For others, it will be unworkable.

The trade off: certainty versus control

The gateway test will be an excellent option in the case of operators who are relaxed about the control they need over how contractors deliver services. Examples include:

- Operators who engage owner drivers servicing multiple freight clients
- Engagements where sub-contracting can be tolerated
- Arrangements where the contractor is permitted to accept or decline jobs, rather than being rostered

Conversely, the gateway test will not be a viable option for operators who are unwilling to:

- Give up fixed start times or guaranteed availability
- Accept that contractors can decline work without penalty
- Allow subcontracting (even while retaining limited vetting rights)
- Tolerate contractors working for competitors

The fallback option: contractors under the existing legal tests

If the gateway test is not workable – and for many freight operators it won't be – a fallback option is to still engage contractors in more traditional ways, while accepting that their status could be called into question.

While this approach offers less certainty than the gateway test, it is familiar territory for the freight industry. When managed properly, it can still support robust and defensible contractor models. In this regard, key risk mitigants include:

- Contracts reflecting the true nature of the relationship
- Ensuring day to day practices align with the contract
- Structuring arrangements so that contractors have the opportunity to increase their revenue and profit through ways other than simply working more hours
- Exercising control only where necessary for safety, compliance or service delivery
- Limiting contractor engagements to those who operate through businesses or genuine commercial arrangements, rather than those who contract in a personal capacity.

For many freight operators, this remains the most realistic pathway, even if it carries some residual legal risk.

The test is strict. Miss any one of these requirements, and the gateway closes.

When employment is the right answer

While contracting engagements provide operators with clear benefits, there are times where an engagement ultimately looks and feels like employment – and needs to be treated as such. Key indicators that this is the appropriate way to proceed include:

- Reliance on fixed shifts or guaranteed availability
- A requirement for exclusive service
- Close supervision and direction
- Prohibitions on sub-contracting
- Long term or continuous engagements

While employment can appear more expensive upfront, it often provides greater operational certainty, supports retention in a tight labour market, and reduces the risk of costly misclassification disputes down the track.

Takeaway for the freight industry

A mistake we have already been seeing in the lead up to and since the law change are attempts to layer the gateway test over existing contractor models where it simply does not fit or without changing their operational expectations. That approach undermines the very certainty the gateway test is designed to provide and will only serve to increase risks and costs rather than reducing them.

The contractor gateway test is a useful addition to the freight industry's toolkit – but only when used deliberately and appropriately. The real risk lies not in choosing the wrong model, but in trying to force a model that does not fit the commercial and operational realities of the business.

Middle East conflict: implications of the war on the freight and logistics sector

The conflict in the Middle East has disrupted critical maritime corridors, driven up fuel and insurance costs, and destabilised both air and sea freight networks. Together, these pressures are having a significant impact on goods moving in and out of New Zealand.

We take a look at the implications of the conflict on the freight and logistics sector, and how the insurance sector has responded accordingly.

Impact of force majeure clauses

A force majeure event occurs where the shipping line is freed from its delivery obligations, as a result of unforeseen events such as war, severe weather or natural disaster. A force majeure clause in a shipping contract protects parties from liability when such an event occurs, essentially relying on the fact that the contractual obligations could not be carried out for reasons out of that party's control.

The most obvious impact of a shipping line invoking a force majeure clause is delivery delay. For perishable stock this is a significant issue, with non-delivery, or delayed delivery of goods in some cases rendering these unusable. For the New Zealand market in particular, RNZ have reported New Zealand freight companies experiencing the effects of delays created by force majeure clauses, with cargo being dropped off at the nearest safe port. In these instances, freight companies must navigate the challenge of arranging their cargo to be loaded onto another ship and safely rerouted.

In the New Zealand market, the invoking of force majeure clauses could further contribute to the tightening of fuel supplies, should crude oil exports from the Middle East be impacted.

While New Zealand no longer imports crude oil directly, oil refineries in Asian countries that supply the New Zealand market will be required to compete for oil from other sources if the Middle East supply is reduced.

While force majeure clauses have been relied on to an extent where acts of war create genuine impossibility in fulfilling an import / export contract, as the situation in the Middle East begins to stabilise, extreme care will need to be taken in relying on these clauses. Recent case law has upheld the principle that, in order to rely on a force majeure clause, performance of the contract must be physically or legally impossible, not merely more difficult or unprofitable. For a transport operator experiencing the effects of a sudden spike in fuel costs and thereby a reduced profit margin in existing transport agreements, re-negotiating existing service agreements is likely to be a better tactic than attempting to invoke force majeure.

Impact on premiums for vessels travelling through high-risk areas

With the war in the Middle East significantly increasing the risk of harm to vessels travelling through these regions, the international insurance industry has responded by expanding the range of locations meeting the definition of geographic risk areas. A geographic risk area is a specific maritime zone or region where vessels, cargo and crew face elevated hazards due to factors such as war, terrorism, piracy or political instability.

The International Underwriting Association of London and Lloyds Joint War Committee (JWC) have categorised a number of geographic risk areas, most recently updated on 3 March

The most obvious impact of a shipping line invoking a force majeure clause is delivery delay.

2026. This added Bahrain, Djibouti, Kuwait, Oman and Qatar to the JWC listed areas, and amended the areas included in the JWC for the Persian/Arabian Gulf, Gulf of Oman, Indian Ocean, Gulf of Aden and Southern Red Sea.

Where a port, place or coast is featured on a JWC risk list, shipowners with vessels travelling through these areas are required to pay war risk premiums. With a significant increase in war risk to vessels travelling through these areas, war risk premiums for these voyages have increased significantly. US broker Marsh McLennan has reported that premiums which previously averaged 0.2-0.25% of a vessel's value, have recently sat at1-1.5%. For a vessel worth $100,000,000, this is a cost of $1.5 million per voyage. This is a significant cost to the freight and logistics sector which will inevitably be passed down to the consumer.

War risk insurance cancellation notices

Although the Strait of Hormuz cannot be legally closed, when insurers consider the risk is too high to provide war risk coverage, vessel journeys through the strait decrease dramatically where vessel owners are unable to obtain appropriate war risk insurance. Without war risk insurance, shipowners bear significant risk of liability for damage, loss or salvage. In addition, without war risk insurance, shipowners may face significant difficulties in obtaining the relevant permits to pass through a particular area.

Some shipping lines are experiencing the effects of their war risk coverage being cancelled as a result of the conflict, following the targeting of merchant vessels. While cancellation notices do not apply where a vessel is already in transit, it means that after the cancellation comes into effect, no new war risk cover will apply.

Some insurers are still willing to provide war risk coverage on a voyage-specific basis; however, the cost of this is now greater.

Summary

The Middle East conflict is an ever-evolving situation. Talks of ceasefire and negotiations to reopen the Strait of Hormuz create a degree of optimism; however, in the meantime, New Zealand's import and export networks will continue to feel the pressure.

Overlapping duties – a coordination challenge few get right

New Zealand is no stranger to complex multi-business environments. In a transport and logistics setting, a multi PCBU environment exists, where for example, a freight operator, warehouse operator, labour hire company and other contractors are working at the same site, with overlapping activities such as vehicle movements, loading and unloading, and traffic management creating shared risks.

These environments require high levels of coordination, especially when it comes to management of workplace health & safety.

The Health and Safety at Work Act 2015 (**HSWA**) requires PCBUs[1] (persons conducting business aka the business) to actively consult, cooperate and coordinate with each other when they share a workplace, or work together and have shared health and safety risks This is commonly known as the '**three Cs**', or the '**overlapping duties**'.

In a multi business environment, managing risk means working together, and not assuming someone else has it covered. Assumptions about who is managing risk are a common cause of health and safety failures.

In the transport & logistics sector, management of risks can be amplified by mobile work, time pressures, shared control of vehicles, loads and routes, traffic, weather, fatigue, and various other human factors.

Increasingly, technology and AI systems will play an important role in supporting compliance with the triple-Cs, and regulatory expectations in this area are likely to increase accordingly.

1 Persons conducting a business or undertaking.

Q: What is the overlapping duty?

- When there are overlapping duties in a multi-business environment, each business must, so far as reasonably practicable **Consult, Co-operate, and Co-ordinate** activities with all other businesses who have a duty in relation to the same matter.

Q: What are the three C's?

- **Consult:** Discuss the work being carried out by each business, and the risks that could arise from each other's activities.
- **Co-operate:** Make a plan to manage shared risks. This includes deciding who is responsible for managing each risk - who will take action, monitor safety, and communicate with the workers.
- **Co-ordinate:** Co-ordinate risk management efforts to avoid doubling up. Agree on how you will check in with each other on an ongoing basis.

The level of responsibility each business has depends on how much influence and control they have over the work. If one business has more control over the site or the work being done, they may have more responsibility for managing the risks.

Q: Does an overlapping business duty only apply if there is a contract in place between the businesses?

No - a contract does not need to be in place between you and another business for the overlapping duty to apply.

A breach of the overlapping duty, is an offence. Accordingly, a failure to consult, cooperate and coordinate can lead to enforcement action, reputational damage and director scrutiny, particularly where risks were foreseeable and data was available but not acted upon.

Q: What are examples of overlapping risks in trucking and logistics?

Transport operations routinely involve multiple businesses – including fleet owners, drivers, logistics providers, freight customers, ports, and warehousing operators who are often working simultaneously.

Common overlapping risks may include:

- Vehicle safety and maintenance
- Human factors including driver fatigue and speeding
- Load restraint and handling
- Traffic management at depots and customer sites

Q: What does 'consult, cooperate and coordinate' look like on the road and at depots?

HSWA requires businesses to proactively align how risks are managed, not simply assume another party is responsible, or keep them written on the paper. Proactive action is required.

In practice, this may include, for example:

- **Pre-engagement discussions clarifying:**
  - who controls vehicle safety, scheduling to monitor fatigue management, or traffic management;
  - shared site rules for depots, yards and customer premises
- **Agreeing on;**
  - processes for incident and near-miss reporting, breakdowns and emergencies;
  - communication channels when routes, delivery schedules or conditions change; and
- **Monitoring practices** to ensure the engagement is working as intended.

For example, if delivery windows create time pressures and fatigue risks, both the logistics provider business and contractor driver business should actively discuss operational decisions being made, and review existing controls to ensure they are effective at managing the risk. The businesses should not simply rely on contractual terms.

Q: How can technology and AI assist duty holders to comply with the overlapping duty?

Technology can support the overlapping duty by providing real-time visibility of shared data, improving the quality, timeliness, and consistency of information sharing to enable the right practice action to be taken. Examples include:

- Telematics and AI-driven driver monitoring that enables identification of fatigue, speeding, or driving trends, enabling timely review of existing controls and early intervention (if required) to prevent harm.
- Shared contractor platforms to align inductions, competencies and safety expectations that enable businesses with different roles to access, for example, the same risk information, site rules, traffic management plans, and incident learnings in real time, to ensure all PCBUs have a common and current understanding of the work, and its risks.
- AI-assisted route planning can be used to reduce high risk driving conditions by enabling agreement on routes and schedules that minimise exposure to known risks (such as congestion or high incident areas), rather than each business planning in isolation, and relying on workers to manage the consequences of poor work design.
- Shared dashboards showing incidents, near misses and learnings. Used appropriately, these tools can support evidence based decisions about where controls are needed and who is best placed to implement them, reflecting each business 'actual influence and control.

Although positive action is still required by each PCBU, rather than a focus on data collection alone, these tools can, if used effectively, demonstrate proactive risk management and coordinated oversight.

Q: What should boards and executives ensure is in place?

At a governance level, some examples may include:

- A contractor management framework explicitly addressing the overlapping duty and how the three C's will be carried out in practice
- Verifying that the three Cs are being carried out in practice
- Clear allocation of risk ownership across the transport chain
- Oversight of how technology and AI insights are used in decision-making
- Regular reporting on contractor safety performance and high-risk activities

Bottom line

In transport and logistics, compliance with overlapping duties relies on strong leadership and active coordination across multiple moving parts.

While technology and AI are not substitutes for leadership, when used effectively and appropriately, can improve visibility of risks, accountability and ownership of each risk, and support stronger health and safety performance.

Using AI for contract review: where it helps and where it falls short

Artificial intelligence (AI) is on the rise in almost every industry – the freight sector is no exception. Although AI has been revolutionary in streamlining operations and increasing efficiency, there are some tasks that need to be considered cautiously. Contract review is tedious, but it requires legal judgment, critical thinking and commercial background –things that AI cannot reliably provide.

Benefits of AI in contract review

1. **Time efficient:** It is undeniable that AI reduces the time required to complete certain tasks. Where reviewing a contract may have taken hours or days, AI can now churn through a document and provide a short summary in a matter of seconds. When reviewing contracts is not part of your day job, the efficiency of using an AI platform allows users to easily orient themselves within a document and, where necessary, determine if more specialised advice is required.
2. **Simplifies Legal Jargon:** Time aside, contracts can also be both wordy and hard to understand. AI platforms can break down concepts into plain language and highlight red flags that users may otherwise not have been aware of. This can be incredibly helpful in framing risks under the contract, and to provide users with useful questions to raise with their lawyer.

Risks of AI in contract review

Failing to properly review a contract means you could end up being legally bound by an agreement that is not in your best interests.

1. **It's hard to give AI the 'full picture':** Interpreting a contract is more than reading the document itself. AI does not know your business goals and cannot therefore balance short term and long-term goals. While AI may be able to 'read' a contract, simplify concepts into summaries, and even provide suggestions on what should be included in an agreement, there are questions it will not know to ask. A contract should accurately reflect the commercial understanding of the parties, distribute risk and obligation fairly, and give the parties a path forward in the face of disagreement. What exactly that commercial understanding is however, may not be something AI is equipped to find out or understand.
2. **It cannot be a partner going forward:** Significantly, you may struggle to have AI take you from that initial 'snapshot' onto the next step – discussing or suggesting amendments to your contract, negotiating changes or compromises with the other side, incorporating commercial considerations and processes and taking into account external factors that may impact risk. Contract negotiations are complex, and AI is not equipped to navigate the continuously changing facts, such that you may find without sufficient oversight or guidance, it will quickly lead you astray without your realising.
3. **AI gets things wrong:** While AI technology continues to improve, for the time being it will still frequently misinterpret or omit important information, which is problematic when users are unable to identify legal inconsistencies. AI can "hallucinate" by making up legislation, cases or principles, meaning users rely on information that does not exist.
4. **AI likes to be agreeable:** Lawyers are not known for their agreeable natures, but AI will often align with you if challenged instead of holding its ground, failing to test

commercial decisions or drafting in detail. Certain AI may also look at existing inputs for assistance (e.g. your own emails or previous conversations), such that it becomes an echo-chamber, telling you what you want to hear or simply feeding you back information from preexisting resources, when this information may not be realistic, accurate or reflective of what is commercially or legally standard in the context.

5. **Confidentiality is key:** most public AI platforms are not bound by confidentiality rules. Sharing confidential, sensitive or privileged information from a contract risks breaching confidentiality obligations and permitting third parties to benefit from your commercial information.

When you need to consult a lawyer

AI can be a useful tool for contract review, but there are some circumstances where failing to consult a lawyer would likely do more harm than good. Below are some common examples:

- High-value contracts;
- Contracts with an unbalanced risk allocation or inadequate liability clauses, such that your risk and liability outweigh the benefit of the contract;
- Contracts with long terms or complex obligations (e.g. 10 year contracts requiring you to provide services which are reliant on third party machinery you do not control);
- Contracts that need to govern unique commercial arrangements, or one-off projects with important business partners (e.g. a sponsorship agreement of a sports team or new collaborative project);
- Arrangements where there are an abundance of external factors, commercial processes or underlying relationship history to consider (e.g. where you have worked with them previously and had conflict);
- Contracts that are unsigned, or where changes have been made informally;
- Contracts spanning multiple jurisdictions (i.e. where law from different countries apply);
- Contracts with complex amendments or proposed suggestions;
- Confidential or commercially sensitive matters;
- Agreements involving regulatory compliance (e.g. contracts that involve transporting regulated or complex goods);
- Contracts with supporting documents, including schedules or statements of work.

Where you have worked with a lawyer on other areas of your business, the insights gained from that work are often instrumental in shaping robust and well informed contracts.

Tips for using AI responsibly for contract review

Before turning to AI for contract review, it's important to keep the following principles in mind:

- Be specific when asking questions in order to get the most accurate, well-rounded output.
- Do not enter any confidential or privileged information. This includes names, values, or other commercial conditions.
- Understand that AI platforms have limits. Some are better than others at legal questions – but this can be hard to differentiate for a non-lawyer.
- Be mindful that the risk associated with using AI ultimately sits with you. AI tools are not regulated or bound by any professional code of conduct, and do not owe you duties of care in the way professional advisers do. If the AI misinterprets drafting, misunderstands the commercial or legal context, or recommends changes that you choose to adopt, you and your business will bear the risk of any resulting consequences. Make sure you are confident in any comments or amendments before you share them with the other party.
- Unlike lawyers, AI tools are not supported by professional indemnity insurance. There is no financial protection if you rely on AI-generated advice or drafting which turns out to be incorrect. By contrast, registered lawyers are bound by a professional code of conduct and typically insured with professional indemnity insurance (which means that if sued, you will still be paid by insurance even if we have no funds ourselves).
- Always refer back to the contract – do not rely on AI to give the correct party names, dates, obligations or conditions. We recommend that you always read the contract yourself to ensure the AI has not misinterpreted wording, or hallucinated drafting or facts.
- Most importantly, know when to seek legal advice. AI should not be used as a substitute for qualified advice. Our lawyers deal with contracts every day and can not only walk you through the ins and outs of your document but also guide you through any required amendments or negotiations to progress the contract with confidence.

AI is a powerful tool that is already transforming how many companies operate. We hope you will find opportunities to use this technology to streamline or enhance your business but recommend assessing the risks and benefits of use in each specific context. AI can do a lot, but whether it can reliably meet all your business needs remains up for debate.

Telematics in fleet operations: legal foundations for scalable value

Telematics technology is transforming fleet operations. Real-time GPS tracking, driver behaviour monitoring, and predictive analytics are delivering measurable gains in safety, efficiency, and cost control.

But as fleets scale, telematics data quickly stops being "operational telemetry" and becomes regulated personal information. That shift brings legal obligations that are often underestimated—until something goes wrong.

The organisations that extract the most value from telematics are not those with the most data, but those with the strongest legal foundations.

From vehicle data to personal information

Modern telematics systems capture a wide range of data, including location, driving behaviour, routes, idle patterns, and in some cases video, audio, or biometric indicators.

Once that data can identify a driver—directly or indirectly—it is "personal information" under the Privacy Act 2020. At that point, the full set of privacy obligations applies.

A simple rule of thumb is this: if your system can tell who drove, when, and where, privacy law is already engaged.

Start with purpose, not capability

A common mistake is to deploy telematics based on what the technology can do, rather than why the organisation needs it.

Under the Privacy Act, personal information must be collected for a lawful purpose and only where necessary. In practice, that means fleets should clearly define their purposes—such as safety, route optimisation, asset protection, or regulatory compliance—and map each category of data to those purposes.

Problems often arise later, when organisations attempt to expand use cases (for example, using safety data for performance management) without reassessing whether that use is justified and transparent. This "purpose drift" is a frequent source of disputes.

Transparency is not a one-off exercise

Transparency obligations require more than a line in an employment handbook.

Drivers must be clearly informed about what data is collected, why it is collected, who receives it, whether it is disclosed overseas, and their rights of access and correction.

Just as importantly, those notices must evolve with the technology. If systems change post-rollout—new analytics, new integrations, new data uses—organisations need to revisit and update their communications. Static disclosures in a dynamic environment create legal risk.

Telematics as workplace surveillance

Many of the most challenging issues arise at the intersection of privacy law and employment law.

Monitoring employees is lawful, but only if it is proportionate and aligned with the purposes communicated to staff. Risks arise where monitoring becomes excessive, where data collected for safety is later used for disciplinary purposes without warning, or where off-duty vehicle use is tracked without clear justification.

Best practice is to separate safety and compliance use from HR performance management, and to be explicit if data may be used in investigations. If employees are surprised by how data is used, the organisation is already on the back foot.

Security, breaches, and real-world consequences

Telematics data is highly sensitive. A breach can expose detailed location histories, create asset security vulnerabilities, and even raise personal safety risks for drivers.

The Privacy Act requires organisations to implement reasonable safeguards, including access controls, encryption, and audit logging. Mandatory breach notification obligations apply where serious harm is likely. Critically, many organisations do not test their breach response procedures until a real incident occurs. That is a mistake. Tabletop exercises and scenario testing should be part of implementation, not an afterthought.

Retention: Just because you can, doesn't mean you should

Storage is cheap, but indefinite retention is not compliant. Personal information must not be kept longer than necessary. Yet many fleets prefer to retain full GPS histories indefinitely "just in case." This increases both regulatory exposure and the impact of any future breach.

Retention policies should be deliberate, documented, and aligned to purpose. A robust data retention policy needs to weigh business needs against a range of laws that specify minimums or maximums to the length of time that data should be held.

Ownership vs control: A critical distinction

A persistent misconception is that organisations "own" telematics data. They don't – at least not by default.

New Zealand law does not recognise ownership of personal information. Instead, rights and obligations arise from statute (primarily the Privacy Act) and "ownership" or control of data tends to rely on the underlying contracts. This distinction becomes critical in vendor relationships. Tensions often arise around vendor analytics, platform improvements, and data sharing with third parties such as insurers or OEMs.

Fleets should focus on control, not ownership. That means ensuring contracts address issues such as post-termination data access, vendor reuse of aggregated data, and restrictions on secondary commercialisation. If these points are not expressly covered, the default position may favour the vendor.

Procurement is a legal exercise

Telematics procurement is often treated as a hardware purchase. In reality, it is a technology contracting exercise with significant legal implications.

Key risk areas include unclear allocation of data controller and processor roles, the use of undisclosed sub-processors, and security commitments that are not backed by meaningful liability.

Fleets should be asking for privacy-by-design commitments, clear breach notification timeframes, robust data deletion obligations on exit, and audit rights.

These are not "nice to have" terms. They are fundamental to maintaining control over data and managing risk.

Cross-border data flows

Many telematics platforms involve offshore data storage or processing. Where personal information is disclosed to an overseas recipient, additional obligations arise under New Zealand law, along with potential exposure to foreign legal regimes.

New Zealand's privacy laws recognise that businesses may outsource certain aspects of their personal information processing to a service provider overseas. In some cases, the overseas recipient is treated as the New Zealand business's "agent" – and if the agent is only processing that personal information for the New Zealand business's purposes (and not for its own purposes), the arrangement falls into an exception so that the extra notifications and consents required under our Information Privacy Principle 12 are not needed.

The short point is that understanding where data goes — for what purposes and under what protections — is essential. Cross-border flows can introduce both compliance complexity and enforcement risk if mismanaged.

Governance, resilience, and scale

Ultimately, telematics risk is not just a privacy issue. It is a governance issue.

Failures in data handling can disrupt operations, damage trust with employees and customers, and expose organisations to regulatory scrutiny and reputational harm. Boards are increasingly expected to understand and oversee these risks.The key message is simple: telematics delivers real value, but only when supported by clear purposes, transparent practices, robust contracts, and tested systems.

Organisations that get these foundations right are not just compliant — they are better positioned to scale, innovate, and compete.

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