Health & Safety Newsletter

Updates from our national team

2026

Health and safety obligations continue to evolve, making it more important than ever for organisations to understand not only what the law requires, but how it applies in day-to-day decision-making. This publication brings together insights from our specialists on the latest developments and their practical implications.

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Contents

Changes to health and safety law – 1 April 2027

The Health and Safety at Work Amendment Bill passed its third reading on 30 June 2026 and received Royal Assent in July 2026 as the Health and Safety at Work Amendment Act 2026. From 1 April 2027, it will amend the Health and Safety at Work Act 2015 (HSWA), the WorkSafe New Zealand Act 2013, and the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

The Amendment Act makes what we consider to be the most significant changes to New Zealand's work health and safety regime since HSWA came into force in 2016.

Until 1 April 2027, PCBUs (Person Conducting a Business or Undertaking) must continue to comply fully with HSWA as it currently stands.

The key changes

A system built around "critical risk"

The HSWA's main purpose will be to provide a balanced framework that prioritises the management of critical risks to secure the health and safety of workers and workplaces. WorkSafe's main objective is aligned with that focus, and HSWA will also expressly seek to give PCBUs certainty about the scope of their obligations. HSWA's guiding principle remains unchanged: workers and other persons should be given the highest level of protection against harm that is reasonably practicable.

A "critical risk" is a risk associated with a hazard described in the new Schedule 1A of HSWA, or with any other hazard likely to result in death, a notifiable injury or illness, a notifiable incident, or an occupational disease listed in Schedule 2 of the Accident Compensation Act 2001. WorkSafe describes these as risks likely to cause death, serious injury, serious illness or long-term harm.

One important clarification made during the Bill's passage concerns the phrase "likely to result". The inquiry is directed at the consequences if an incident or accident occurs, rather than the likelihood of the event itself occurring. A psychosocial hazard may therefore constitute a critical risk where it meets the statutory consequences test, including where it is likely to result in a notifiable mental-health injury or illness.

Two tiers of duty: small PCBUs and other PCBUs

The Amendment Act introduces a statutory category of "small PCBU": a PCBU with fewer than 20 workers for at least nine months of a financial year.

- For the risk-management duties whose scope is altered by the Amendment Act, small PCBUs will generally be required to manage critical risks rather than all risks. They must also prioritise critical risk when complying with other applicable HSWA and regulatory obligations.
- Small PCBUs are not exempt from HSWA. Other obligations remain; after including applicable worker welfare, engagement, notification and workplace requirements. WorkSafe has specifically noted the continuing need to provide welfare facilities such as first aid, washing facilities and adequate lighting.
- PCBUs that are not small PCBUs must continue to manage all risks and must prioritise critical risks when complying with their duties. WorkSafe explains that this includes giving critical risks priority when allocating time, money and resources.

The interaction duty in section 34 is also amended. Section 34 will continue to regulate how PCBUs with duties in relation to the same matter interact, but the statutory wording changes and expressly requires

co-operation between them. The Amendment Act does not remove the practical allocation and coordination issues that arise in multi-PCBU workplaces.

A large PCBU may contractually require a small PCBU to meet broader health and safety standards or to provide information and assistance concerning non-critical risks. That contractual allocation does not alter the scope of either party's statutory duties or permit a PCBU to transfer its legal responsibilities.

Officers' duties clarified

Section 44 is amended to clarify how due diligence applies where a person is both an officer and a worker of the same PCBU. The amended provision distinguishes between conduct undertaken in the person's capacity as an officer and conduct undertaken in their capacity as a worker. The officer duty is directed to governance, leadership and oversight, rather than day-to-day operational work undertaken in the worker capacity.

Officers must continue to understand the PCBU's operations and associated hazards and risks, ensure that appropriate resources and processes are available and used, and verify compliance. In our view, although the amendment clarifies and may narrow the capacity in which the officer duty applies, it does not lower the reasonable-officer standard within that scope.

The High Court's decision in Gibson v Maritime New Zealand [2026] NZHC 813 is an important reminder that an officer's duty is measured against the reasonable steps required in the circumstances. The Court dismissed the former chief executive's conviction and sentence appeals in a case concerning failures to ensure and verify adequate controls around crane exclusion zones. The decision reinforces the importance of testing whether critical controls work in practice, rather than relying only on policies, systems or good intentions. The distinction between strategic oversight and operational activity will remain fact-sensitive.

Overlapping statutory regimes

Amended section 35 provides for deemed compliance where a PCBU complies with a requirement in another enactment that manages the same risk, subject to the terms and limits of the provision. Potentially relevant regimes include the Building Act 2004, Maritime Transport Act 1994 and Land Transport Act 1998. PCBUs should check that the other enactment addresses the same risk and that its requirements have in fact been met before relying on section 35.

Approved Codes of Practice become a statutory safe harbour

At present, an approved code of practice (ACOP) may be used as evidence in proceedings. Under the amended regime, a PCBU that follows the actions in an applicable ACOP that are relevant to its role and circumstances will be treated as having complied with the corresponding legal duty or requirement.

The new deemed-compliance provision applies to ACOPs approved under the amended regime and to existing ACOPs expressly specified by the Amendment Act. Other existing ACOPs remain available as evidence of compliance but do not attract the new statutory safe harbour. Because the exact title and status of an ACOP matter, PCBUs should verify the approved version and commencement position before relying on it.

The new process also allows persons and organisations outside the regulator, including industry, worker and employer organisations, to develop and submit draft ACOPs for regulatory assessment and potential ministerial approval.

Other changes

The workplace management duties are narrowed in relation to recreational users of land, subject to statutory exceptions where the recreational activity forms part of the business or undertaking, or relevant work is being carried out at the same time and place. Notification requirements are clarified, and regulators' functions are reprioritised towards guidance, the development and review of ACOPs and Safe Work Instruments, and monitoring and enforcement.

Our view

Narrowing a duty does not narrow the underlying risk

A reduced statutory obligation does not reduce what can go wrong. Nor does it remove contractual, insurance, common law, employment or ACC consequences. A small PCBU that scales its systems back to the statutory floor may still fall short of contractual commitments, industry expectations or prudent risk management.

The small-PCBU threshold requires careful assessment

The Act retains HSWA's broad definition of "worker". Depending on the working arrangements, the count may extend beyond employees on payroll to contractors, subcontractors and people working through them. Businesses should apply the statutory definition carefully rather than relying solely on employee headcount. The nine-month test also means that fluctuating or seasonal workforces require attention. PCBUs should assess their status well before 1 April 2027 and repeat that assessment at least annually and after material workforce changes.

Classification is itself a compliance exercise

Every PCBU will need to identify which hazards meet the critical risk test based on what it knows, or reasonably ought to know, about its work. That front end classification exercise may be demanding, particularly for smaller organisations without specialist capability. The classification should be reasoned, recorded and revisited when the work, available knowledge or applicable Schedule 1A requirements change.

ACOPs may be a game changer, but only where one applies

The statutory safe harbour is potentially the most practically valuable reform. Its usefulness will depend on whether an applicable ACOP exists and whether the PCBU has followed the relevant actions for its role and circumstances. It is not a blanket answer to every issue addressed by a code.

The industry led pathway creates an opportunity to put operational knowledge into recognised standards. Developing an ACOP takes substantial effort. However, codes must be maintained as work practices, risks and technology change. Sector bodies seeking greater certainty should consider starting development work now and building in a formal review cycle.

Overlapping PCBU duties remain a practical issue

The reforms clarify the boundary between HSWA and other enactments, but they do not eliminate practical complexity where several PCBUs have duties in relation to the same matter. Principals are likely to continue carrying a significant coordination burden and may set contractual standards above the statutory minimum. Small PCBUs should not assume that the minimum scope of their HSWA risk-management duties will define every contractual or commercial expectation placed on them.

Industry criticism

The reforms attracted sustained opposition from parts of the health and safety profession. In its March 2026 submission, the New Zealand Institute of Safety Management (NZISM) said the Bill should not proceed without major changes. Its concerns included the small-PCBU carve-out, the definition and prioritisation of critical risk, the interaction with other enactments, and the legal status of ACOPs.

Other business, worker and professional bodies also raised concerns during the legislative process, particularly about whether reducing the scope of duties for small PCBUs would create unequal protection and whether the critical risk framework would simplify compliance in practice. Those views should be read alongside the Government's stated objectives of reducing unnecessary compliance costs, increasing certainty and maintaining progress in reducing workplace harm.

What happens next

The commencement date shifted during the legislative process: from immediately after Royal Assent in the Bill as introduced, to 1 November 2026 as recommended by the select committee, and finally to 1 April 2027 in the enacted Act. As a general election is scheduled before then, the reforms may remain politically contested. Businesses should monitor further legislative and policy announcements.

> **There is an obvious temptation to wait and see. We would caution against it.**

There is an obvious temptation to wait and see. We would caution against it. WorkSafe guidance is still being developed, and the preparatory work the Act calls for identifying your critical risks, confirming whether you meet the small PCBU definition, reviewing officer governance processes and checking which ACOPs apply to your sector improves your position under the current Act whatever happens in November.

Recommended actions before 1 April 2027

1. Identify the organisation's hazards and determine which meet the amended critical risk test.
2. Confirm whether the organisation qualifies as a small PCBU, applying the statutory worker definition and 9 of 12 month test.
3. Review officer due diligence processes, with particular attention to assurance and verification of critical controls.
4. Map overlapping statutory regimes and identify where amended section 35 may apply.
5. Review contracts between PCBUs to ensure responsibilities, information sharing and expected safety standards are clear.
6. Identify applicable ACOPs and verify whether they will attract the new deemed-compliance protection.
7. Monitor WorkSafe guidance, Schedule 1A and any further legislative or policy developments.

WorkSafe's enforcement reset: new tools, new priorities, and what it means for your organisation

WorkSafe New Zealand's approach to enforcement is changing significantly. A combination of ministerial direction, updated enforcement policies, and the passage of the Health and Safety at Work Amendment Act 2026 means that by 1 April 2027, the enforcement landscape will look materially different from what organisations have experienced under the Health and Safety at Work Act 2015 (HSWA).

WorkSafe's new direction

Minister for Workplace Relations and Safety, Hon Brooke van Velden, has driven much of this change. In May 2025, the Minister issued a Letter of Expectations to WorkSafe, which set out the Government's reform priorities and reset expectations. In this letter, the Minister outlined three key shifts she was seeking from WorkSafe: that it is **proportionate, practical, and consistent and clear** in its enforcement decisions, actions, and advice.

These changes were informed by feedback the Minister received from her health and safety roadshow, where concerns were raised that WorkSafe could be "heavy-handed in punishment when something does go wrong, but not always sufficiently supportive in providing advice on how to manage risks in the first place."

Since May 2025, many more changes and announcements have been introduced by the Minister, this includes marked changes to the ACOP model and changes to the management of WorkSafe's funding. In February 2026, the Minister announced that WorkSafe had updated its enforcement policies and processes to give organisations more clarity about how it makes enforcement decisions. The policies (outlined further below) demonstrate a clear expectation that WorkSafe will actively consider other enforcement options before recommending prosecution.

WorkSafe's refreshed strategy, published in late 2024, acknowledged that the regulator "cannot be everywhere" and signalled a preference for early engagement over reactive enforcement. Its Statement of Performance Expectations 2025/26 emphasised that WorkSafe had undertaken a strategic reset to support the Minister's priorities, with a key focus on reshaping its enforcement function so that it "engages early and well to proactively assist and support businesses and individuals".

Updated enforcement approach:

As part of this enforcement reset, WorkSafe introduced three key policies which together set out the framework for how WorkSafe will intervene, enforce and make decisions.

WorkSafe's Our Regulatory Approach policy sets out when WorkSafe will intervene and how it will choose between engagement and enforcement. The policy includes 'intervention decision-making criteria'. WorkSafe will only intervene in response to health and safety concerns when all criteria are met;

1. **The risk or harm sits within WorkSafe's responsibilities:** Other government agencies can be designated to carry out health and safety regulatory functions for certain work, including Maritime New Zealand and the Civil Aviation Authority. In some instances, a risk or harm may sit outside WorkSafe's mandate, as set out in HSWA.

2. **WorkSafe is best placed to intervene if there's an overlap with another agency's responsibilities:** Where there is an overlap with another agency that also has health and safety responsibilities, WorkSafe will consider which agency is best placed to intervene. Matters that may be considered include the severity of the risk or harm, whether the underlying issues are likely to involve work activities and which agency has the most effective regulatory tools to ensure health and safety is improved.
3. **The significance of the risk or harm means WorkSafe should consider intervening:** WorkSafe will assess the significance of the risk or harm when determining whether to intervene. Factors that will be considered include whether the risk or harm is one of WorkSafe's priorities, involves death, severe or catastrophic harm, involves poorly managed extreme or substantial risk, or presents an immediate risk of severe harm. Even where there is a lower level of harm or risk, WorkSafe may consider intervening due to other factors, such as the duty holder's attitude to compliance and compliance history.
4. **Intervention is an effective use of WorkSafe's resources:** WorkSafe is likely to intervene when doing so will allow WorkSafe to make the biggest difference to heath and safety outcomes, help ensure regulatory risk is managed and is considered the best use of WorkSafe's resources.

Where WorkSafe has decided to intervene, it will select the engagement or enforcement response, or combination of responses, it considers most appropriate. WorkSafe's response will be guided by the "risk gap" being the difference between how work is being carried out and how it should be carried out.

These changes were informed by feedback the Minister received from her health and safety roadshow...

WorkSafe's How We Make Prosecution Decisions policy sets out WorkSafe's approach to prosecutions and alternatives to prosecution. In deciding whether to prosecute a duty holder, WorkSafe will prioritise;

- Specific high-risk sectors and high-risk work, as listed on WorkSafe's website, including; agriculture, construction, forestry and manufacturing.
- Offending that results in death, severe injury or illness, or catastrophic harm, as well as poorly managed extreme or substantial risk.

The policy follows the Solicitor-General Prosecution Guidelines, which include a **two-part test** for prosecution, the **evidential test** and the **public interest** test.

1. **The Evidential Test:** Is there enough evidence to prove the proposed charges beyond reasonable doubt?
2. **The Public Interest Test:** Does the public interest require a prosecution to be brought?

The guidelines emphasise that the public interest assessment is fact-specific and that no single factor is determinative. However, four key categories of public interest factors that may be considered are the circumstances of the offending, the duty holders' circumstances and conduct, the effect on victims, and whether an alternative to prosecution is appropriate.

WorkSafe's enforcement-decision making model (EDM) is a framework that assists WorkSafe inspectors in deciding what action should be taken once a breach has been identified. The purpose of this framework is that inspectors will reach enforcement decisions that are proportionate and consistent. When applying the model, inspectors will first identify and prioritise any potential legislative failures, consider whether these failures directly expose people to health and safety risks or whether the failures relate to administrative breaches.

Inspectors will then consider the **'risk gap'** between the level of risk created by the organisation's current practices and the level of risk that would remain if the organisation were complying with the required standard. Benchmark standards organisations' practices will be compared to may include legislation, regulations, approved codes of practice or WorkSafe guidance. An enforcement response will be determined based on the size of the risk gap and other factors such as an organisation's compliance history, the level of harm actually caused, and the overall quality of the organisation's health and safety system.

New enforcement tools

WorkSafe's updated framework places greater emphasis on a range of enforcement tools that sit between the existing notice regime and prosecution. In practice, there has been a significant increase in WorkSafe's use of these tools, reflecting a shift towards proportionate enforcement measures as genuine alternatives to prosecution. Examples of enforcement tools WorkSafe will consider before prosecution are set out below.

Verbal directions – A verbal direction is an onsite direction given by an inspector. They generally will be used for lower-level compliance failures, provided the inspector has confidence that the duty holder will comply.

Formal Warnings – WorkSafe may formally record conduct it considers likely to constitute an offence without progressing to prosecution, where the circumstances warrant it. A formal warning is a deliberate enforcement response that takes the form of a written document.

Directive letters – An inspector may provide a duty holder with a directive letter that sets out the steps the recipient must follow to comply with HSWA or its regulations. A directive letter is a non-statutory measure that may be used when an inspector determines that the non-compliance does not warrant a statutory notice.

Sustained compliance letters – A sustained compliance letter records that a duty holder was non-compliant when inspected but rectified the issue before formal enforcement action was taken. It may be used where the breach is corrected before an improvement notice is issued or where a serious risk is removed before the inspector leaves the site, meaning that a prohibition notice is no longer required.

Infringement notices – The prosecution policy expressly identifies infringement notices as an alternative to prosecution. WorkSafe may issue an infringement notice where an assessment, investigation, or audit indicates serious non-compliance, or where there is a history of non-compliance. Infringement notes will be accompanied by an infringement fee which can be an instant fine from $500 for an individual to $3,000 for a body corporate.

Pre-charge enforceable undertakings — WorkSafe's updated practice guide, establishes a clear pathway for pre-charge enforceable undertakings (EUs). These allow a duty holder to enter into a legally binding agreement with WorkSafe to address health and safety issues and make improvements without charges being filed. A pre-charge EU is available where WorkSafe is satisfied that a prima facie case exists, but the breach does not amount to an offence under section 47 of HSWA (reckless conduct).

These alternatives are available where an organisation accepts responsibility and commits to tangible improvements. Importantly, WorkSafe may still prosecute and prosecutions remain for cases involving significant or negligent disregard of health and safety law, repeated non-compliance, or serious harm where deterrence is necessary.

The Health and Safety at Work Amendment Act 2026, which received Royal Assent on 9 July 2026, reinforces this enforcement direction. It refocuses WorkSafe's statutory functions to prioritise "critical risks" and reorganises the regulator's mandate to emphasise guidance, engagement, and enforcement - in that order.

What the prosecution data shows

WorkSafe's prosecution data reflects this change in approach. Total charges fell from 94 in 2022 to 30 in 2025, while the number of unique defendants prosecuted declined from 81 to 23. Although prosecution volumes fluctuate from year to year, the overall reduction is consistent with WorkSafe's shift towards earlier engagement and proportionate enforcement, with prosecution increasingly reserved for cases where it is the only appropriate response. This does not necessarily mean less regulatory scrutiny, but rather a more targeted approach that uses a wider range of tools to secure compliance and prioritises the most serious risks.

What this means for organisations

The key takeaways for duty holders are:

1. **Critical risks will be the enforcement priority.** From 1 April 2027, WorkSafe's attention will be squarely focused on risks that can cause death or serious harm. Organisations should identify and prioritise their critical risks now.
2. **Expect a more targeted approach.** WorkSafe will consider the significance of the risk or harm, whether it is the right agency to respond and whether intervention is an effective use of its resources. Lower-level risks may still attract attention, particularly where an organisation has a poor compliance history or is unwilling to address identified concerns.
3. **WorkSafe's enforcement approach will depend on the risk gap and the organisation's conduct.** Before taking enforcement action, WorkSafe will consider the gap between an organisation's current practices and the applicable standard. The response will also be influenced by any actual harm, the organisation's compliance history, the quality of its health and safety systems, and its willingness to put things right.
4. **Engage early and take concerns seriously.** If WorkSafe raises an issue, organisations should respond promptly, provide accurate information, and take practical steps to address any non-compliance. Acting quickly may influence the enforcement response and in some cases avoid the need for a statutory notice or prosecution.
5. **More engagement does not mean less enforcement.** The decline in prosecutions does not mean that WorkSafe is stepping back. Instead, WorkSafe has a wider range of responses available and may use engagement and enforcement together. Prosecution remains available for serious harm, reckless or negligent conduct, repeated non-compliance, or where deterrence is required.
6. **Watch for further guidance.** WorkSafe will publish further policies, guidance, and approved codes of practice ahead of 1 April 2027. Organisations should keep an eye on WorkSafe's website for updates as the commencement date approaches.

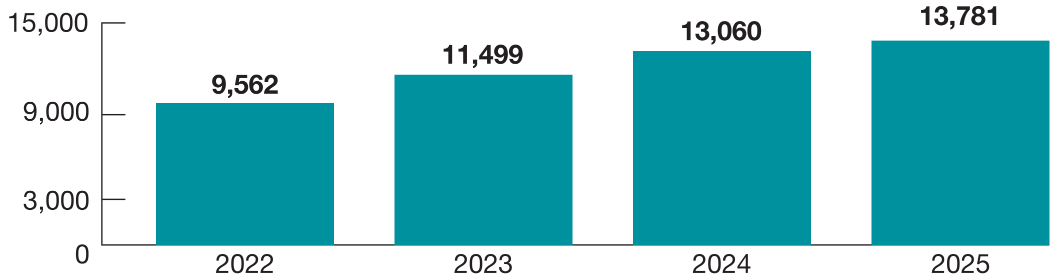
WorkSafe NZ: 5 year enforcement snapshot

Key statistics 2022 - 2026

FATALITIES	ASSESSMENTS	ENFORCEMENT ACTIVITIES	ENFORCEMENT UNDERTAKNGS
70	13,781	8,624	5
January 2024 – December 2024	In 2025 (steady increase 2022 – 2025)	Aug 2025 – July 2026	In 2026 (to 10 Aug 2026)

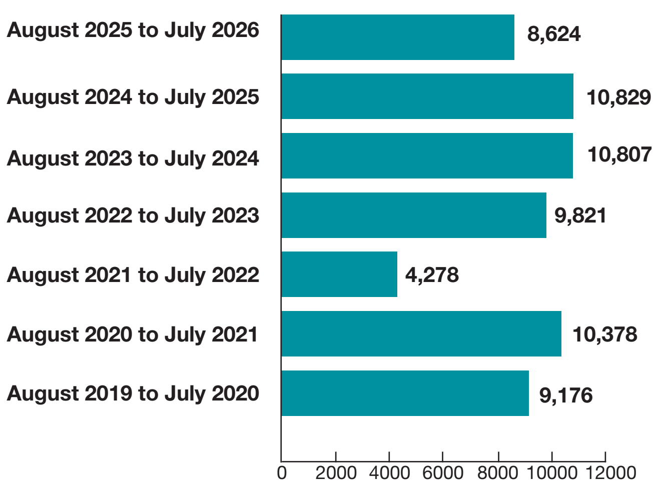
WorkSafe assessments – steady increase between 2022 and 2025

Assessments involve staff visiting workplaces around New Zealand. Inspections of high-hazard facilities are included.

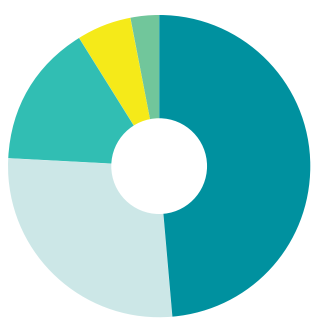


Enforcement activities

Enforcement activities are those that result from our assessments and investigations, excluding prosecutions.



Industries with the highest numbers of enforcement activities

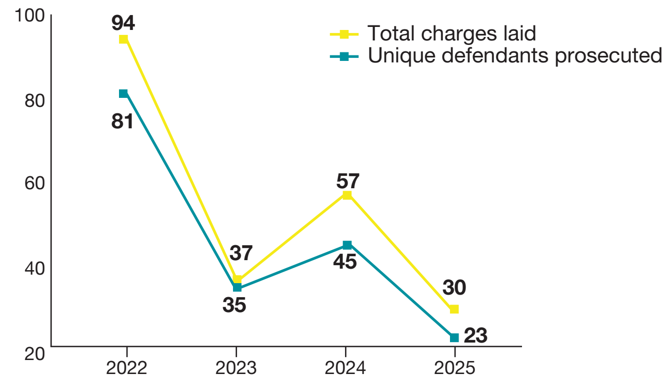


For August 2025 to July 2026:

- Construction: 3,661
- Manufacturing: 2,045
- Agriculture: 1,157
- Mining: 435
- Unknown: 226

Prosecutions – charges laid and unique defendants

Prosecutions volumes have fallen since 2022.



WorkSafe investigations

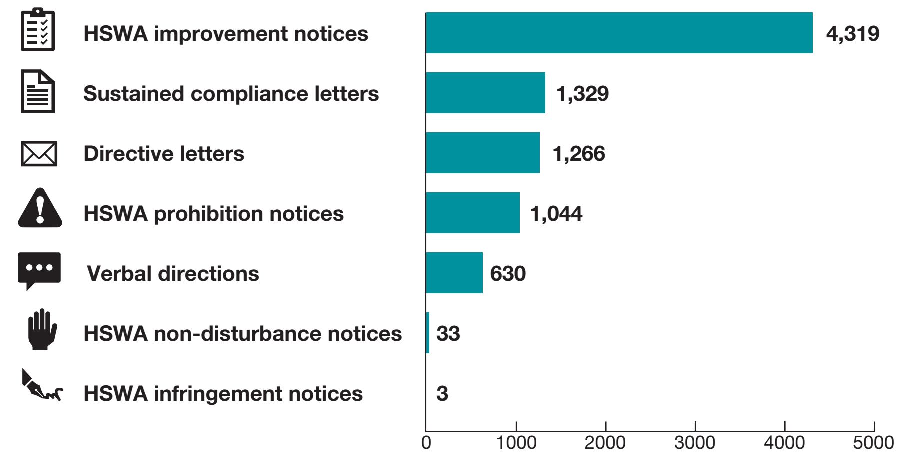
WorkSafe investigates potential breaches of the Health and Safety at Work Act 2015.

The most recent published figures are:

2021	2022	2023
226	158	100

Most common enforcement tools used

August 2025 – July 2026 – total 8,624



Enforcement undertaking accepted by WorkSafe

Number accepted per calendar year

2022	2023	2024	2025	2026 to 10 Aug
5	2	8	6	5

RH & JY Trust, Brown and Perpetual Trust v WorkSafe

Trust structures are common across New Zealand businesses, particularly in sectors such as agriculture, construction, property and family-owned enterprises. Yet a fundamental question has remained unresolved under the Health and Safety at Work Act 2015 (HSWA): when a trust operates a business and a serious incident occurs, who can WorkSafe prosecute?

The answer carries significant consequences. It affects who may be held accountable for health and safety failures, whether trustees face personal exposure to penalties, and the maximum fines available to the courts. It also raises a broader tension between traditional principles of trust law and the policy objectives underpinning New Zealand's health and safety regime.

The issue came into focus following a tragic workplace fatality on a farm owned and operated by the RH & JY Trust. What followed was a series of decisions in the District Court, High Court and Court of Appeal, each taking a different approach to the question of whether a trust can itself be prosecuted as a PCBU. The matter is now before the Supreme Court, which provides an opportunity to provide much-needed clarity on how trusts fit within New Zealand's workplace health and safety framework.

What happened?

The boy, who was a grandchild of an employee of a sharemilker working on the farm, unfortunately became caught on a piece of machinery and was pulled in, sustaining fatal injuries as a result. The farm on which the incident occurred was owned and operated by a trust, the RH & JY Trust (the Trust).

WorkSafe brought criminal charges under HSWA against the sharemilker, the Trust itself, and in an alternative to the Trust, against the trustees personally.

District Court ruling

The trustees challenged the validity of the prosecution against the Trust itself.

They argued that a trust is not a legal person. Rather, it is a legal relationship involving obligations held and administered by trustees. As trusts do not have separate legal personality, the trustees submitted that only individuals could be prosecuted.

The District Court accepted this argument. It held that a trust is not a "person" and therefore could not be held liable for the acts or omissions of its trustees.

Appeal to the High Court

WorkSafe then successfully challenged this decision to the High Court, which found that while the Trust could be charged under HSWA, the correct approach was to name the trustees of the Trust as the defendants.

The High Court came to this conclusion on the basis that section 17(1)(b) of HSWA sets out a range of express exceptions to the definition of PCBU, such as a volunteer association. However, trusts are not included in this exception. The High Court considered that given the widespread and well-known use of trusts in business in New Zealand, it could be expected that if Parliament had intended to exclude trusts from the definition of a PCBU, this would be expressly stated in HSWA.

Appeal to the Court of Appeal

In the Court of Appeal, the Trust and trustees argued that a trust is not a legal person, but rather a set of obligations held by the trustees. Given that the trust is not a legally recognised person, the trustees and Trust argued that criminal liability was essentially irreconcilable with the way that trusts operate, as criminal liability attaches to an individual person.

The Court of Appeal disagreed with the Trust and trustees, finding that when a trust exists to make decisions on a collective basis, it is more appropriate for the trust to be the defendant, not each individual trustee.

Penalty considerations

One of the key reasons for this was the difference in maximum penalties available to the court when prosecuting a natural person versus a body corporate under HSWA. Under HSWA, bodies corporate are subject to a significantly higher maximum penalty than natural persons, where a breach of duty is established. The Court found that it is contrary to Parliament's intent to conclude that the maximum penalty under section 48(2)(c) of the Act ($1.5 million for a breach of primary duty) is not available when the collective decision-making body is a trust rather than a company, partnership or similar body.

Indemnity issues

The Court of Appeal also examined the interaction between trust law and section 29 of HSWA. Section 29 of HSWA prohibits insurance or indemnification for fines imposed under HSWA.

Ordinarily, trustees are entitled to be indemnified from trust assets for liabilities properly incurred while performing their duties. The Court considered, however, that this traditional trust law right would conflict with section 29 where a HSWA fine is involved.

As a result, if trustees were prosecuted in their individual capacity as trustees and fined, they could not rely on trust assets to meet those penalties.

The Court viewed this outcome as inconsistent with established trust law principles and as supporting the conclusion that the trust itself should be treated as the defendant.

> **The Court of Appeal disagreed with the Trust and trustees, finding that when a trust exists to make decisions on a collective basis, it is more appropriate for the trust to be the defendant, not each individual trustee.**

Enforcement – against who?

Another argument raised by the Trust and trustees was practical enforceability. If a trust is not recognised as a separate legal person, how can a fine against the trust be enforced? Similarly, who receives a conviction for the offence?

The Court was not persuaded by this concern. It held that enforcement could occur through the trustees acting as representatives of the trust. In other words, it found that the law of enforcement could operate in the ordinary way notwithstanding the Trust's legal status.

Who should be the defendant then?

The final point for the Court of Appeal to consider was whether the Trust, or alternatively, the trustees collectively, were the correct defendant in the proceedings.

The Court considered that once it is recognised that it is the body of persons acting collectively is the person (or the PCBU under the HSWA), the trustees could be named in their capacity as trustees of the trust acting collectively, or the trust itself could be named. However, importantly, if trustees are named to identify the trust, the trustees are not defendants in their individual capacity.

Justice Whata's dissenting judgment

A dissenting judgment was delivered by Justice Whata, who took the distinct view that a trust cannot be a person; it is an equitable obligation undertaken by the trustees. His Honour also reiterated that trustees are entitled to be indemnified for expenses paid or liability incurred while discharging, reasonably, trustee responsibilities.

His Honour highlighted that "trusts" do not carry out business as a person or body of persons; rather, individual trustees, and only individual trustees "conduct" business using trust assets. Further, as a trust or the body of persons cannot include liabilities as separate entities, they cannot and do not conduct business.

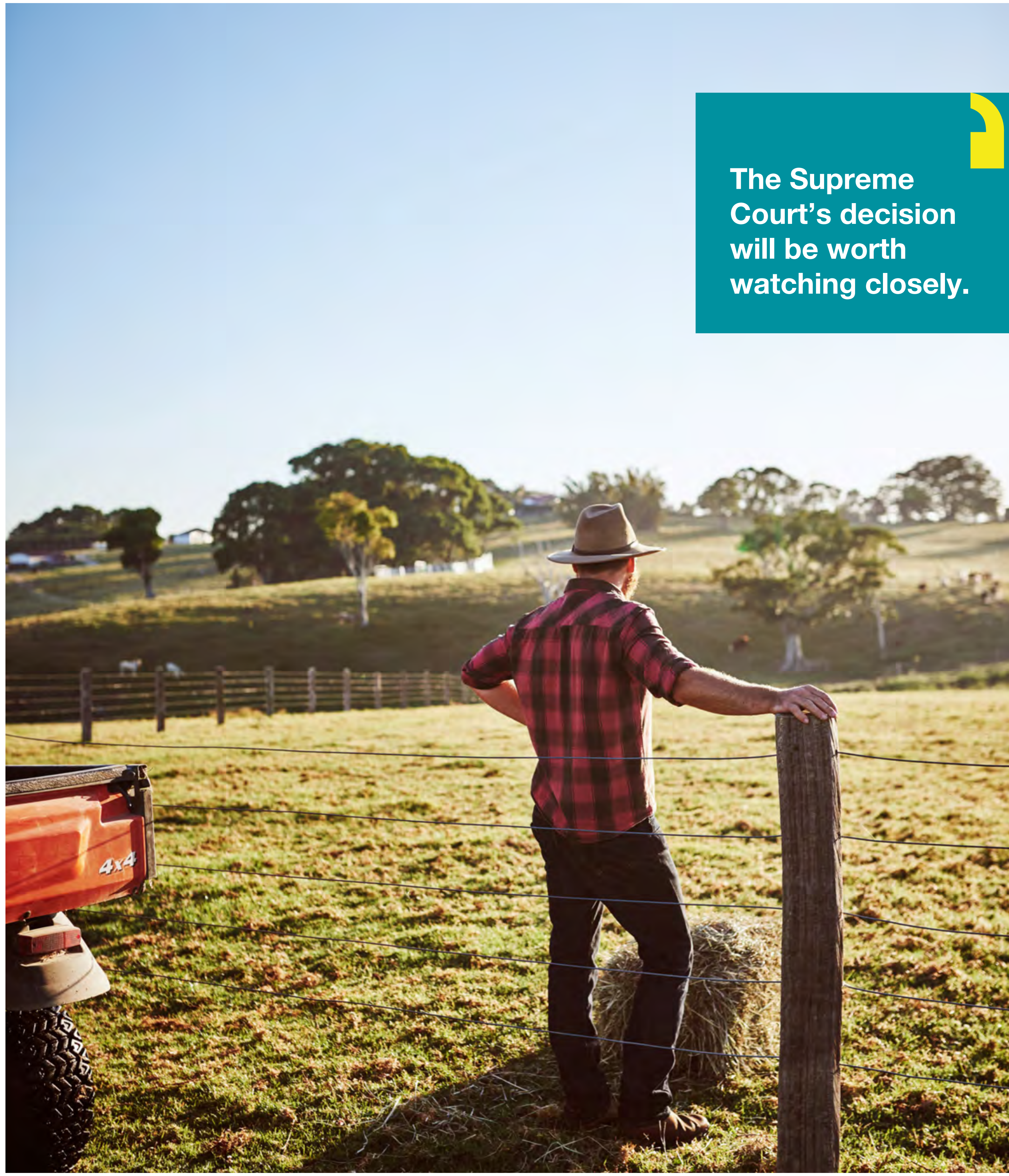
Justice Whata also acknowledged the issue of indemnity, highlighting the established principle of trust law that a trustee is indemnified by trust assets for liabilities incurred while acting as a trustee. His Honour did not consider that this principle conflicted with section 29 of the Act – highlighting that section 29 only prevents indemnification of the fine "by another person". Indemnification of a fine out of trust assets is not the same as this: a trust is not a person.

Justice Whata's overall position was that WorkSafe may prosecute the defendant as "trustee" with payment of the fine out of the assets of the trust. His Honour considered that this approach fit better with the fundamental principles of criminal and sentencing law, attaching to individual responsibility and individual culpability. This approach also allows fines to be imposed proportionately, depending on the level of culpability for each of the trustees.

Supreme Court decision

The Trust and trustees have appealed the matter to the Supreme Court. With the District and appellate courts all having reached somewhat different conclusions on the issue, it remains to be seen whether the Supreme Court will favour an approach that fits the regime of criminal procedure in New Zealand, or an approach that treats trusts as PCBUs and affords the regulator the benefit of a significantly higher penalty.

The Supreme Court's decision will be worth watching closely. It will provide important, definitive guidance on who WorkSafe can prosecute when a trust operates a business, whether trustees face personal exposure to health and safety fines, the availability of trust assets to cover penalties, and how the HSWA penalty framework applies to trust-operated businesses.



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Officer Due Diligence: Gibson v Maritime New Zealand

What health and safety leaders should be telling CEOs, executive teams and boards right now while we await the Court of Appeal decision

The High Court in Gibson v Maritime New Zealand [2026] NZHC 8131 recently upheld the District Court's conviction and sentence of Mr Gibson.

While the appeal is currently before the Court of Appeal, this article summarises some key findings and offers structured, practical guidance for health and safety practitioners advising CEOs, executive teams, and boards in the meantime.

Recap: What Happened

In 2020, a stevedore working a night shift at Ports of Auckland (POAL) was killed when a container dropped due to a failed interlocking mechanism.

Mr Gibson was the Chief Executive of POAL at that time, and held overall executive-level responsibility for health and safety at POAL, including as a member of the Health and Safety Committee responsible for monitoring and approving health and safety procedures.

He was charged in 2021 with breaching his officer duty under the Health and Safety at Work Act 2015 (HSWA) and pleaded not guilty in mid-2022. To date, this remains the only HSWA prosecution brought against a chief executive (i.e. non-director) for an alleged breach of the officer due diligence duty.

Key Findings from the District Court and High Court

Following a trial in April and May 2024, the District Court found Mr Gibson guilty of breaching his officer duty, convicted him, and imposed a fine of $130,000. Together with costs, the total penalty amounted to $190,000.

The High Court subsequently upheld both the conviction and the fine, endorsing the District Court's reasoning. The key points from the judgments include:

- The District Court found that, particularly on the night shift, there was a culture of stevedores engaging in unsafe practices and cutting corners, including non-compliance with the three-container width rule. The High Court accepted that Mr Gibson did not have actual knowledge of that culture. However, it found that, following the 2018 straddle carrier fatality, he was on notice that POAL had ongoing difficulties adequately monitoring "work as done". The Court considered that, as CEO, Mr Gibson should have ensured that appropriate systems and processes were in place to address the shortcomings identified by POAL's previous failures.
- The District Court found that Mr Gibson was a "hands-on" CEO who exercised considerable influence over the business and its health and safety systems. The High Court agreed with that characterisation but clarified that being a hands-on CEO does not, by itself, increase the standard expected of an officer. Rather, it provides important context when assessing what reasonable steps could be expected in the circumstances. The Court emphasised that what is reasonable will depend on the officer's position, level of influence, and responsibilities within the business.

> Good leadership intentions and positive health and safety initiatives were not enough to address the cultural and systemic shortcomings identified by the courts.

- The District Court found that POAL's bow-tie assessments for critical risks, including overhead loads, were inadequate and were not progressed in a timely way. The High Court agreed and found that Mr Gibson had responsibility for overseeing and ensuring progress on that work.
- The High Court upheld the District Court's finding that Mr Gibson was aware the executive team had not progressed external audit recommendations, including those arising from a 2018 KPMG audit, in a timely way. The Court acknowledged that POAL had prioritised contractor management at the Board's direction and faced competing demands, including a health and safety manager vacancy and the impacts of COVID-19. However, it found that these factors did not fully explain the lack of progress, and that work on other recommendations should still have continued. The Court also noted that there were no funding constraints preventing health and safety gaps from being addressed.
- Good leadership intentions and positive health and safety initiatives were not enough to address the cultural and systemic shortcomings identified by the courts. As the District Court observed, "A good leader and a conscientious officer may have the best intentions in the world but may still breach that duty".[1] The High Court agreed, emphasising that compliance with the officer due diligence duty is assessed by reference to the actions a reasonable officer would have taken in the same circumstances, rather than by the presence of positive initiatives alone.

[1] At [200].

The Upcoming HSWA Amendments: What Do They Mean for Officers?

The Health and Safety at Work Amendment Act 2026 aims to clarify how the officer due diligence duty applies where a person holds both a leadership role and a worker role within the same organisation.

Where a person is both an officer and a worker, for example, a CEO, the amendment makes clear that the due diligence duty applies to their leadership, oversight, and governance responsibilities. Their day-to-day operational tasks and worker responsibilities are considered separately.

While the High Court recognised that an executive's responsibilities may span both governance and operations, the amendment would make it explicit that an officer's due diligence duty relates to their governance role rather than their day-to-day worker tasks.

For CEOs and other leaders who wear both governance and operational hats, the amendment may provide greater clarity by distinguishing oversight and assurance responsibilities from hands on operational work. Some grey areas will remain, particularly where decisions involve both strategic and operational elements, but the amendment provides a clearer starting point than the current position.

Practical Takeaways for Officers, CEOs and Boards

While the decision is highly context specific and arose against the backdrop of four previous fatalities, there are nevertheless broader lessons that may be relevant to other businesses and organisations. The following points highlight some key areas for consideration in practice for CEOs and senior leadership teams that support them, and boards.

What CEOs should do

- Know the critical risks and controls. **Verify whether controls are actually effective** - not just at a high level, but enough to ask probing questions whether the controls are functioning.
- **Monitor "work as done,"** not just "work as planned." Require evidence-based reporting reflecting actual workplace reality. Conduct meaningful site visits outside normal hours and during night shift operations.
- **Challenge information.** Ask probing questions, during site visits, upon receipt of reports, seek independent advice, verification, and follow up on reported gaps or slow progress.
- **Act on red flags promptly and question green flags too.** If a prior incident, audit, or report puts you on notice that monitoring is inadequate, take concrete steps to address it. Do not wait for a perfect solution and require interim measures.
- When operational managers propose additional resources to improve compliance monitoring, **ensure those proposals are properly considered and not blocked without your knowledge.**
- **Ensure audit recommendations are implemented promptly.**

What Senior Leadership Teams supporting the CEO should do

- **Escalate honestly.** Provide the CEO with accurate, timely information about whether health and safety systems are actually working on the ground. Tell them what they need to hear, not what they want to hear. Do not filter out bad news.
- **Do not block safety improvements without escalating to the CEO.** If you decline a proposal from an operational manager that would enhance safety monitoring, ensure the CEO is informed so they can exercise their own judgment.
- **Own verification in your area of responsibility.** Track, report on, take responsibility for verifying that critical risk controls are implemented, and effectively working in practice.
- **Progress audit recommendations promptly.** Assign actions to individuals with due dates and report barriers to the CEO and Board. Actions should not become overdue.

What Boards should do

- Set **clear expectations** for CEO reporting on critical risk management - require specific updates on how risks are controlled and verified.
- Consider whether **health and safety resourcing** is adequate for the size and risk profile of the organisation. Do you have the right number of people in the right roles? How do you know?
- Probe **whether health and safety reports reflect "work as done"** or merely planned systems.
- **Prioritise without creating blind spots.** If directing the executive to focus resources on one health and safety issue (e.g., contractor management), confirm that other identified critical risks are not being overlooked in the meantime.

For CEOs and other leaders who wear both governance and operational hats, the amendment may provide greater clarity by distinguishing oversight and assurance responsibilities from hands on operational work.

Proactive Health and Safety Advisory Team

Health and safety law changes on 1 April 2027. Is your organisation ready?

The new law refocuses duties on critical risks. We can help you identify what must change and implement it before 1 April 2027.

Specialist team

Our specialist health and safety advisory team is led by Partner Olivia Lund, who has a Postgraduate Diploma in Workplace Health and Safety and Sanja Marin, Senior Associate, who are nationally recognised health and safety lawyers. Our wider team bring in-house regulator experience and have acted in hundreds of health and safety investigations and prosecutions.

We understand how regulators think, what good systems look like, and how organisations can best protect their people, leaders and reputation.

Choose targeted support or combine services into a practical advisory programme:

1. **Reform readiness review –** We assess how the 2027 reforms affect your PCBU status, critical risks and control verification. You receive a prioritised action plan for implementation before 1 April 2027.
2. **Officer due diligence training and health check –** Choose a board briefing, practical workshop or scenario session, supported by a rated findings report and action plan.
3. **Health and safety system reviews –** We review your policies, procedures and safety management system against the 2027 duties.
4. **Investigations and culture reviews –** We can provide independent investigation reports and culture reviews that are subject to legal privilege.
5. **Contractor and supply chain assurance –** We map responsibilities across across your supply chain to ensure compliance with your 3Cs obligations.
6. **Legal registers –** We build and maintain legal registers to support compliance and ISO 45001 certification.
7. **Incident readiness –** We prepare your first 72-hours response plan before an incident occurs. It covers notification, evidence, privilege, regulator engagement and communications to act quickly and confidently.
8. **Mock regulatory interviews –** We prepare leaders and key personnel for regulatory scrutiny through realistic mock prosecutions or inquiries.

Choose a fixed-fee package, annual programme or priority on-call support. You know the scope, service and cost before work begins.

Start with a focused conversation about your risks, priorities and next steps.

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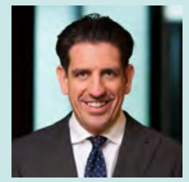

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