



May 2026



HEADS OF H&S FORUM

MARITIME v GIBSON

INSIGHTS & APPLICATION





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Gibson v Maritime NZ appeal, and HSW Amendment Bill

Government Health and Safety Lead – 28 May
2026

Grow | Protect | Operate | Finance

Agenda

- High Court decision in *Gibson v Maritime New Zealand*
- Health and Safety at Work Amendment Bill 2026

A close-up photograph of green leaves with prominent veins, overlaid with a purple shape that contains the text. The purple shape is a rounded rectangle with a pointed right side.

Gibson v Maritime New Zealand

Background

- CEO of POAL at the time of the incident
- Two charges alleging failure to comply with duty to exercise due diligence to ensure POAL complied with its duties under the HSW Act
- Found guilty, fined \$130,000 and ordered to pay \$60,000 in costs to Maritime New Zealand.

High Court appeal

On appeal, Mr Gibson argued, among other things, that the District Court:

- wrongly treated him as effectively responsible for Ports of Auckland's failures, rather than assessing his conduct independently as an officer;
- set the due diligence standard too high by referring to concepts such as "systems leadership" and best practice, which are not expressly found in section 44 of the HSWA;
- placed insufficient weight on the extensive health and safety systems and specialist personnel in place at the port; and
- handed down a "manifestly excessive" sentence.

High Court findings

- Mr Gibson took many positive steps. However:
 - “the positive steps Mr Gibson took are relevant ... but do not materially assist him in relation to whether he should have taken further reasonable steps.”
- The High Court upheld the District Court findings. These included:
 - A regular theme of non-compliance, particularly on the nightshift
 - Lack of progress in clarifying management responsibilities
 - Hard controls vs behavioural controls
- The sentence imposed was not “manifestly excessive”.

Key points for directors

- Principles outlined by the DC still stand (see para 80 of judgment)
- Key points from HC:
 - The test is objective – what would the reasonable officer do?
 - The standard is the same for all officers – hands on or not
 - No brightline distinction between governance and management
- The District Court judge’s words still apply: “A good leader and a conscientious officer may have the best intentions in the world but may still breach that duty”.

A close-up photograph of a blue flower, possibly a lily, with a purple overlay on the left side. The text is positioned on the purple overlay.

Health and Safety at Work Amendment Bill 2026

Key changes

- A “Critical Risk”
- A “Small PCBU”
- Changes to the scope of officer’s duties
- Do-it-yourself approved codes of practice
- Overlaps with other legislation

“Critical Risk”

- The Bill states that “critical risks” should be prioritised over other risks. A “critical risk” is:
 - Specific high-hazard activities in new Schedule 1A, and
 - “Any hazard likely to result in death, a notifiable injury or illness, a notifiable incident, or an occupational disease.”

“Small PCBU”

A Small PCBU’s duties under ss 36-43 will only apply to Critical Risks.

As currently drafted, a “Small PCBU” is:

- a PCBU in whose business or undertaking fewer than 20 workers carry out work in any capacity.

If a PCBU’s workforce varies, a PCBU is a “Small PCBU” if:

- “the PCBU reasonably expects the number of workers carrying out work in any capacity to be fewer than 20 in at least 9 months of the current financial year.”

Change to the scope of officer's duties

- An officer's duties will only be engaged under the HSWA for their role as an officer, not a worker
- The current open-ended (inclusive) list of due diligence steps is replaced with an exhaustive list, which may narrow the scope of what can be expected of officers.
- The obligation to understand work health and safety matters is now confined to matters 'as they relate to the business or undertaking', rather than requiring a broader understanding of health and safety generally.

Themes from submissions to Select Committee

- Legislation does not explain how to practically distinguish between officer and non-officer work
- Submitters divided about whether officer definition should be amended, guidance provided, or it should be left to the courts to define the scope of officer duties

Practical considerations

- Difficulties applying due diligence duties to public service agencies with no board
- Role of governance committees
- Is it really possible to keep governance and management separate?

Approved Codes of Practice

- New s 222A allows “a worker representative, an employer representative, or a representative of a particular industry or sector” to draft a code of practice for the regulator’s and Minister’s approval.
- Compliance with a COP will be deemed compliance with the Act

Other changes in the Bill

- Overlapping legislation
- Use of recreational land
- Identifying WorkSafe's main functions
- Clarifying notification requirements

Questions?

DENTONS

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Thank you



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