



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees	<b>Date to be published</b>	25 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
4 August 2022	Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees	Office of the Minister of Workplace Relations and Safety
4 August 2022	Regulatory Impact Statement - Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees	MBIE
10 August 2022	Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees DEV-22-MIN-0186 Minute	Cabinet Office

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld under confidential advice to Government.

## In Confidence

Office of the Minister for Workplace Relations and Safety  
Cabinet Economic Development Committee

## Health and Safety at Work: Restoring worker access to Health and Safety Representatives and Health and Safety Committees

### Proposal

- 1 This paper seeks agreement to restore stronger worker representation and participation rights for workers, contributing to improved health and safety outcomes in New Zealand workplaces and reduced work-related harm, by amending the Health and Safety at Work Act 2015 (the Act) to provide that all Persons Conducting a Business or Undertaking (PCBUs):
  - 1.1 must hold a health and safety representative (HSR) election if requested by a worker, and
  - 1.2 must establish a health and safety committee (HSC) if requested by an HSR or by five or more workers.

### Relation to government priorities

- 2 These proposals give effect to the Labour Party 2020 election manifesto commitment to “ensure workers have the right to elect health and safety representatives”.
- 3 The proposals also support the Government’s objective to lay the foundations for a better future as outlined in the Speech from the Throne. Enhancing worker access to formal health and safety representation and participation mechanisms helps build better work health and safety practices, contributes to reduced work-related harm and is an identified priority in the *Health and Safety at Work Strategy 2018—2028*.

### Executive Summary

- 4 The international evidence shows worker engagement, participation and representation is a vital component of effective systems that manage health and safety risks to prevent work-related harm.
- 5 Reflecting this, the Act includes a purpose of “providing for fair and effective workplace representation, consultation, co-operation and resolution of [health and safety] issues”. The Act places duties on all PCBUs, which are usually business entities, to engage with workers and have effective worker participation practices.
- 6 The Act provides for flexibility of worker engagement and participation, with the focus on effectiveness rather than specifying processes. HSRs and HSCs are forms of worker representation provided in the Act, but they are not mandatory unless requested by workers, or actioned at the PCBU’s own initiative.

**IN CONFIDENCE**

- 7 There are inequities in, and limits on, worker access to HSRs and HSCs. The Act allows small (fewer than 20 workers) lower risk (defined as those that are not in a high-risk sector) PCBUs to decline workers' requests to hold HSR elections. Larger PCBUs and those in a designated high-risk sector must, however, grant such requests.
- 8 Worker access to HSCs is limited because small lower risk PCBUs are not required to decide on a request to establish an HSC. In addition, all PCBUs may decline a request for an HSC if satisfied existing practices sufficiently meet requirements. These limits accentuate the impact of the underlying unequal power dynamics between workers and PCBUs.
- 9 The limits were added at the 2014/2015 select committee stage of the Health and Safety Reform Bill in response to some submitters' concerns that the provisions as introduced would be too costly for small businesses. Many of these submissions assumed that HSRs and HSCs would be mandatory, whereas the provisions were designed to be enabling.
- 10 Ensuring that the limits on worker access to HSRs and HSCs do not apply to workers engaged in higher-risk sectors is problematic. The available data is less reflective of health risks to workers than it is of injuries and fatalities, so the designated high-risk sectors do not necessarily capture all the sectors that may actually be high-risk. Sectors that pose high health risks are especially likely to be under-represented.
- 11 In accordance with the 2020 Labour Party manifesto commitment noted above, this paper seeks agreement to remove these limits on worker access to HSRs by restoring the provisions to match those in the Reform Bill as introduced to the House. The proposal also covers HSCs, as to do otherwise would bias against this form of worker representation relative to HSRs.
- 12 The proposals would mean all PCBUs must hold an HSR election if requested by a worker and must establish an HSC if requested by an HSR or by five or more workers. These changes would be given effect through an amendment to the Act.
- 13 The changes would make it unnecessary to designate high-risk sectors, making the regulation making power, enabling regulations to be made that designate high-risk sectors, and the relevant provisions in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (the WEPR Regulations) redundant. These provisions will need to be revoked.
- 14 As the proposals are enabling — widening access to HSRs and HSCs rather than mandating change — it is difficult to determine the exact impacts. The international evidence suggests the proposals will lead to reduced work-related harm. This is expected as a result of increased worker access to HSRs or HSCs, and higher levels of awareness and expertise in health and safety among workers who are HSRs or engage with HSCs. PCBUs may proactively pay more attention to health and safety issues through both formal and informal worker participation methods as a result of the changes.
- 15 My officials sought feedback on the proposals from the Government's tripartite partners in the work health and safety system: Business New Zealand and the New Zealand Council of Trade Unions. The Council of Trade Unions indicated the changes

are reasonable and necessary, and support the additional protection the changes would provide for workers in small businesses. Business New Zealand also indicated that the changes are reasonable, and highlighted that there will be costs for small businesses in complying with the proposed rules.

- 16 As noted above, the enabling nature of the change means it is difficult to estimate how many small businesses will face costs for establishing HSRs and/or HSCs. Further, there will be no change to the requirements for small businesses currently designated as high-risk. The Australian experience of small businesses rarely having HSRs suggests these workers often do not see an HSR as the most effective and appropriate mechanism to address health and safety matters in their workplace.
- 17 I expect that the proposals will once again draw both supporting and opposing submissions at select committee. It will be important to clearly communicate that the Bill will not require all PCBUs to hold HSR elections or establish an HSC. Rather, PCBUs will only be required to hold an HSR election on the request of a worker or establish an HSC upon the request of five workers or an HSR. This should be easier now that there is six years' experience with the Act's flexible worker engagement and participation provisions.
- 18 The changes can be readily implemented; they make the existing rules simpler as they will be the same for all PCBUs. WorkSafe New Zealand (WorkSafe) as the primary regulator will adjust any relevant guidance, tools and training, and provide information to assist workers, PCBUs, health and safety professionals, and worker and sector groups to familiarise themselves with the changes.

## Background

### **Flexible approaches to effective worker engagement and participation are key aspects of the health and safety system**

- 19 The Act and the supporting regulations provide the overall framework for the Health and Safety at Work regulatory system. The regulatory framework is based on the 2013 Government policy response to the Independent Taskforce on Workplace Health and Safety (the Independent Taskforce).<sup>1</sup> The Government response, *Working Safer: A blueprint for health and safety*, included strengthening the role of worker representation in the new Act.<sup>2</sup>
- 20 This policy is based on the international evidence that shows worker engagement, participation and representation is a vital component of effective health and safety systems to manage health and safety risks to prevent work-related harm.<sup>3</sup>
- 21 The overall scheme of the worker engagement and participation provisions places decision-making with the workers, so they can choose the system that they think best suits their needs. Workers exercise this choice by deciding whether to request an HSR or HSC.

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<sup>1</sup> <http://hstaskforce.govt.nz/>.

<sup>2</sup> <https://www.mbie.govt.nz/assets/f02d850266/working-safer-blueprint-for-health-and-safety.pdf>, p34.

<sup>3</sup> <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>.

- 22 The current thresholds for HSRs and HSCs run counter to the framework of worker choice, by transferring decision-making on HSRs and HSCs to the PCBU, particularly in small lower risk businesses in respect of HSRs.

**Health and Safety Representatives and Committees are forms of worker participation that are not mandatory unless requested by workers**

- 23 **A Health and Safety Representative (HSR)** is a worker who has been elected to represent their fellow workers in health and safety matters. Their functions include making recommendations, investigating complaints and risks, monitoring measures taken by the PCBU, and giving feedback to the PCBU about how it is meeting its duties to health and safety matters.
- 24 An HSR has powers including the ability to request relevant information from the PCBU, enter and inspect a workplace, and attend interviews. Trained HSRs may issue a Provisional Improvement Notice (PIN) to address a health or safety problem, or direct a worker to cease unsafe work. This supports the right for a worker to cease unsafe work.
- 25 PCBU must support HSRs by facilitating elections, consulting with HSRs, providing information, and giving feedback on HSRs' recommendations. The PCBU must provide time and resources for the role, provide paid leave to attend training for two days each year, and pay training fees and attendance costs.
- 26 **Health and Safety Committees (HSCs)** bring together worker representatives and management to work cooperatively to improve work health and safety through actions such as developing and reviewing health and safety policies and procedures. The PCBU and its workers must agree the HSC membership, which must include at least one person who can make decisions on behalf of the PCBU, and at least half must be workers representing the workers at the workplace and must not be nominated by the PCBU.
- 27 Where there is an HSC, the PCBU must consult with the HSC about health and safety matters, allow each member time as necessary to attend meetings or carry out HSC functions, and provide information to the HSC as necessary to perform its functions.
- 28 HSCs can be particularly effective in workplaces with multiple PCBUs, such as a construction site, with committee members drawn from each PCBU. This helps PCBUs – who share responsibility for work health and safety with other PCBUs – to meet the Act's requirement to consult, cooperate with, and coordinate activities with other PCBUs.

**Analysis**

**The Act limits worker access to HSRs and HSCs**

- 29 There are inequities in, and limits on, worker access to HSRs and HSCs, because the Act includes thresholds that allow PCBUs with fewer than 20 workers that are not in a designated high-risk sector to:
- 29.1 decline requests from their workers for HSR elections, and

- 29.2 to not decide whether to establish an HSC when requested to do so by an HSR or five or more workers.
- 30 In comparison, larger PCBUs and those designated as high-risk must grant HSR election requests and must respond to requests to form an HSC. However, any PCBU can refuse a request to form an HSC if the PCBU is satisfied existing practices sufficiently meet requirements.
- 31 The thresholds accentuate the impact of the underlying unequal power dynamics between workers and PCBUs, by transferring decision-making on HSRs and HSCs from workers to PCBUs. This is particularly the case for workers in small lower risk PCBUs. These thresholds limit the extent to which the Act can meet its purpose of providing for “fair and effective” worker engagement, participation and representation as noted at paragraph 5.

### **The size and scale of the problem**

- 32 As of February 2021, there were around 2 300 000 employees in New Zealand enterprises.<sup>4</sup> All of these employees, plus workers in other employment relationships, are impacted by the ability of a PCBU to decline a request to form an HSC if satisfied existing practices sufficiently meet requirements.
- 33 Workers in small lower risk businesses are impacted by the ability of a PCBU to decline their request to hold an HSR election, or to not decide on their request to form an HSC. Based on Statistics New Zealand (Stats NZ) estimates from 2021-22, there was an average of approximately 610 000 employees in businesses with one to 19 employees, with around 505 000 of these in the small lower risk sectors impacted by the threshold.<sup>5</sup>
- 34 While we have an estimate of the potential size of the impacted worker population, we do not know how many of these workers have made requests for HSRs and HSCs and been declined, nor do we know how many PCBUs exercised the option to not make a decision on an HSC request. We do not know how many workers would have made such requests were it not for these legislative limits.

### **The limits of high-risk sector designations**

- 35 The thresholds rely not only on PCBU size, but also on categorising and periodically reviewing high-risk sectors, so that workers in designated high-risk sectors cannot be denied access to HSRs and HSCs if that is their preference.
- 36 Ensuring that the current thresholds do not prevent workers engaged in higher-risk sectors from exercising their preferences for HSRs or HSCs is difficult. There are limits on the available data, especially on health risks to workers. This means the high-risk designations are more reflective of work-related injuries and fatalities than they are of health risks to workers.

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<sup>4</sup> <https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2021>.

<sup>5</sup> <https://catalogue.data.govt.nz/dataset/industrial-classification-anzsic06/resource/3e31f420-13f5-42b3-a3eb-7bd9506379f8>. This figure is for employees rather than the larger category of ‘workers’ as covered by the Act.

**The thresholds were introduced at the 2014/2015 select committee stage of the Health and Safety Reform Bill**

- 37 The Pike River coal mine tragedy led to a major reform of the health and safety at work regulatory system, including creating a new principal Act through the Health and Safety Reform Bill.
- 38 The Bill as introduced provided that all PCBUs must hold an HSR election if requested by a worker, and that all PCBUs must establish an HSC if requested by an HSR or five or more workers.
- 39 In 2014/15, submissions from both business and worker groups supported stronger worker participation. Some submitted that the ability to have HSRs when requested by workers was a key recommendation of the Independent Taskforce, consistent with International Labour Organisation obligations, and a key premise on which effective worker participation was based.
- 40 Other submitters commented that the ability of just one worker to request an HSR election might be challenging for small lower risk businesses as they considered that the costs associated with training and time required to carry out the functions of an HSR may outweigh the benefits. Many of these submissions assumed that HSRs would be mandatory. However, the provisions were designed to be enabling, and are only triggered if workers consider HSRs the most effective and appropriate mechanism in the circumstances.
- 41 In response to these concerns, the thresholds and limits on worker access to HSRs and HSCs described above were added to Bill and became part of the Act. As a result, the worker participation provisions in the Act are more limited than the provisions in the Australian Model Work Health and Safety law, on which the Act is based.
- 42 The Act supports the HSR and HSC thresholds by providing for a regulation making power, enabling regulations to be made that designate high-risk sectors. The WEPR Regulations support the HSR and HSC thresholds by providing for designation of high-risk sectors or industries. These designations are to be reviewed every five years, with the first review subsumed into this proposal to remove the thresholds. The proposal would make this provision of the Act and these parts of the regulations redundant, as the high-risk designations are solely for these threshold purposes.

**Statistics on worker participation and representation**

- 43 Consistent with the Act's focus on flexibility, worker participation methods are varied, and may be formal (HSRs and HSCs), or informal (meetings, 'champions', 'toolbox talks'). The following table shows forms of worker participation across businesses of different sizes (more than one form of participation may be present in a business).

**Table 1: Uptake (per cent) of types of worker participation: National Survey of Employers, 2018/19<sup>6</sup>**

Worker participation types	Total (All Businesses) %	Business Size (Number of employees)			
		1 – 5	6 – 19	20 - 49	50+
Elected HSRs	37	26	48	64	79
HSCs	19	7	25	60	85
Informal health and safety champions	29	23	36	41	44
Regular meetings where health and safety are discussed	59	49	71	82	91
Regular health and safety briefings, such as toolbox talks	48	43	53	61	71
A system for regular health and safety communications	48	39	57	70	84
None of the above	12	18	4	2	0

- 44 Formal participation through HSRs and HSCs is shown to be at much lower levels in businesses with fewer than 20 employees (highlighted) than it is in larger businesses. This is particularly so for businesses with fewer than six employees. While it is possible that there are fewer HSRs and HSCs in small businesses not designated as high-risk than in small designated high-risk businesses, the data above cannot be disaggregated by whether a business is in a designated high-risk sector or not.
- 45 It is not clear how much these differences are due to the legislative thresholds applying to HSRs and HSCs, or whether they reflect worker preferences for what is most effective and appropriate in small PCBUs. Factors that may influence worker preferences could include relationships with the business owner, and who they work alongside in a small PCBU. Other factors could be workers’ awareness of HSRs and HSCs, and the extent to which they feel their needs are met or not met through informal worker participation methods.

**Proposals to remove the inequities in, and limits on, worker access to HSRs and HSCs**

- 46 To address the problem of limits on worker access, and consistent with the Labour Party 2020 election manifesto commitment, I propose legislative changes to require

<sup>6</sup> 2018/19 National Survey of Employers, table 106 (Page 83) of the appendix.  
<https://www.mbie.govt.nz/dmsdocument/7102-appendix-to-national-survey-of-employers-201819-summary-of-findings>.



all PCBUs to hold an HSR election if requested by a worker, and to establish an HSC if requested by an HSR or by five or more workers.

- 47 These changes will be achieved by:
- 47.1 removing the ability of a PCBU to refuse an HSR election request by its workers if the PCBU has fewer than 20 workers and is not within a prescribed high-risk sector, and
  - 47.2 removing the ability of a PCBU to not decide whether to establish an HSC if the PCBU has fewer than 20 workers and is not within a prescribed high-risk sector, and
  - 47.3 removing the ability of any PCBU to refuse a request to establish an HSC if satisfied existing practices sufficiently meet requirements.
- 48 Consequential amendments will be necessary to revoke the provision in the Act which provides a regulation making power (enabling regulations to be made that designate high-risk sectors) and provisions that prescribe the designated high-risk sectors or industries in the WEPR Regulations, as these will no longer be necessary.

**These proposals are enabling and not mandatory, so the size and scale of the likely impacts are difficult to quantify**

- 49 The Act's provisions for HSRs and HSCs are enabling only, and the proposed changes retain and strengthen that feature. They will not mandate introduction of HSRs in small, low-risk PCBUs, nor HSCs in any PCBU as the Act is premised on workers determining the appropriate style of worker participation. Instead, they widen worker access to these types of worker representation and participation systems should workers request them.
- 50 The proposals may lead to more HSRs in small lower risk PCBUs, and some increase in HSCs overall (since the HSC proposal applies to all PCBUs). It is, however, difficult to estimate the scale of such increases as they will depend on the extent to which workers see these mechanisms as best for their particular workplaces. Irrespective of the extent of resulting change, the proposals will restore worker access to these mechanisms if they are in fact their preference.
- 51 Based on the Australian experience, where their HSR settings match this proposal, the increase in HSRs may not be large. While Australian jurisdictions do not have specific data on the number of HSRs, Australian regulators have advised MBIE that HSRs are relatively rare in small PCBUs, reflecting that the more formal mechanisms are not necessarily appropriate or effective in small PCBUs.

**Based on international evidence, some increase in HSRs and HSCs should lead to reduced work harm**

- 52 The primary benefit of the proposal is an expansion of worker access to a wider range of worker participation systems, and greater attention to health and safety in the PCBUs where HSRs are elected, and/or HSCs established.

- 53 It is also possible that with increased awareness of worker participation systems through this amendment, PCBUs will proactively pay more attention to health and safety issues through informal worker participation methods.
- 54 Considerable international literature suggests that worker participation is fundamental to reducing work related injury and disease as workers' experience and knowledge are important in identifying and evaluating workplace hazards.<sup>7</sup> Improving worker participation should benefit both workers and PCBUs with higher engagement of workers leading to reduced absenteeism and turnover and resulting cost savings for PCBUs.<sup>8</sup> Increased worker participation can lead to improvements in employee wellbeing resulting in higher levels of productivity, which in turn can lead to higher profits.<sup>9</sup>
- 55 The primary costs come from the training required for an HSR once they are elected, and the time for an HSR or HSC to engage with the PCBU to address issues. PCBUs are responsible for meeting the costs of HSRs' training, which is set at two days per annum, and estimated to cost up to approximately \$650 for initial training for each HSR. Subsequent training may take many forms, so it is difficult to estimate the likely costs, although they may be similar.

## Implementation

- 56 WorkSafe is the primary regulator for the work health and safety regulatory system, and will be responsible for implementing the changes, alongside the Civil Aviation Authority of New Zealand and Maritime New Zealand, which hold designations as work health and safety regulators for their respective sectors.
- 57 These regulators already have functions and powers to support worker engagement, participation and representation, including taking compliance and enforcement action where necessary. These functions and powers will not change, but they will become simpler as the same rules will apply across the board. WorkSafe will adjust any relevant guidance, tools and training, and provide information to assist workers, PCBUs, health and safety professionals, and worker and sector groups to familiarise themselves with the changes. WorkSafe will also work alongside the other regulators to support implementation of the changes.
- 58 WorkSafe is developing operational initiatives to support enhanced worker engagement and participation, including specific measures relating to HSRs. This work will complement and enhance the effectiveness of the proposed legislative changes.

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<sup>7</sup> Gunningham and Associates (2009). Underground Mining Information: Contextual advice on international standards and literature review (RFP 234) – Report for the Workplace Group of the Department of Labour.

<sup>8</sup> James Roughton and James Mercurio "Employee Participation" in Developing an Effective Safety Culture: A Leadership Approach (Butterworth-Heinemann, 2002) 116 at 121.

<sup>9</sup> Michael O'Donnell "Health and Productivity Management: The Concept, Impact, and Opportunity – Commentary to Goetzl and Ozminowski" (2000) 14(4) AJHP 215 at 215.

## Financial Implications

- 59 There are no financial implications for the Crown from this proposal. WorkSafe can implement the changes within baseline.

## Legislative Implications

- 60 Implementing the proposals in this paper will require amendments to the Health and Safety at Work Act 2015, and minor consequential amendments to the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

- 61 Confidential advice to Government

- 62 The proposed amendments will bind the Crown, as does the existing Act.

## Impact Analysis

### Regulatory Impact Statement

- 63 The impact analysis requirements apply, and a Regulatory Impact Statement (RIS) has been prepared and is attached to the Cabinet paper.
- 64 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

### Climate Implications of Policy Assessment

- 65 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### Population Implications

- 66 Workers in some population groups are at higher risk of work-related harm. Māori are at higher risk of work-related injuries than non-Māori (even when working in the same profession). Migrant workers, the youngest and oldest in our workforce, people with pre-existing health conditions or disabilities, and those with poor literacy and numeracy and limited employment options are also particularly vulnerable to poor health and safety outcomes for reasons largely beyond the control of the individual. The ongoing impacts of health and safety incidents may also create a disproportionate risk of exclusion from the workforce for some groups, such as disabled people.
- 67 Improving access to worker engagement and representation practices is vital to improving health and safety outcomes for these workers, particularly by ensuring that these groups of workers can engage in an accessible, safe, and culturally appropriate way of their choosing.

- 68 The proposal may impact rural communities where there are many small workplaces that have been subject to the threshold limits, because the agriculture sector is not currently designated by the WEPR Regulations as high-risk. The impact might not be evenly felt across rural communities because additional HSRs and HSCs will only result if workers believe this is the best way for them to participate in improvements to health and safety in their work. Access to training (both in-person and on-line) may be more difficult in rural communities, although the WEPR Regulations provide flexibility by allowing up to three months for the HSR and the PCBU to agree the timing, location and costs of training. WorkSafe will consider access to training in the regions as part of its wider programme to better support HSRs.

## Human Rights

- 69 The proposals are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 70 MBIE consulted with the following departments/agencies on the draft Cabinet paper and associated Regulatory Impact Statement: Accident Compensation Corporation, Civil Aviation Authority of New Zealand, Department of the Prime Minister and Cabinet, Maritime New Zealand, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Ministry for Primary Industries, Ministry for Women, Ministry of Business, Innovation, and Employment (small business policy), Ministry of Māori Development—Te Puni Kōkiri, Ministry of Social Development, Ministry of Transport, New Zealand Transport Agency – Waka Kotahi, Office for Disability Issues, The Treasury, and WorkSafe New Zealand.
- 71 No agencies raised significant issues with the proposal. Feedback has helped to more fully address the population implications of this proposal.
- 72 MBIE consulted with the Government’s tripartite partners in the work health and safety system: Business New Zealand and the New Zealand Council of Trade Unions (NZCTU). NZCTU indicated the changes are reasonable and necessary and supports the additional protection the changes would provide for workers in small businesses. Business New Zealand also indicated that the changes are reasonable, and highlighted that there will be costs for small businesses in complying with the proposed rules.
- 73 Wider consultation was not deemed necessary at this stage given that the proposals are the same as the original provisions of the Health and Safety Reform Bill as introduced in 2014, and the submissions on that Bill provide a relatively recent picture of stakeholder views on the provisions.
- 74 In addition, the Government clearly signalled its intention to expand the ability of workers to request HSRs though the Labour Party manifesto before the 2020 election, and there will be opportunity for full public scrutiny and engagement at the select committee stage.
- 75 I expect that the proposals will once again draw both supporting and opposing submissions. It will be important to clearly communicate the enabling rather than mandatory nature of these changes, which may be easier now that there is six years’

experience with the flexible worker engagement and participation provisions in the Act. Reference to the Australian experience with the same access to HSRs, as noted at paragraph 51, may also support understanding of the likely impacts.

## Communications

- 76 I intend to announce the proposal via a press release at the time of the Bill's first reading.

## Proactive Release

- 77 I intend to release this paper proactively subject to redactions as appropriate under the Official Information Act 1982 within 30 business days of decisions being confirmed by Cabinet.

## Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **note** that the Health and Safety at Work Act 2015 allows a Person Conducting a Business or Undertaking (PCBU) to:
  - 1.1 decline a Health and Safety Representative (HSR) election request from its workers if the PCBU has fewer than 20 workers and is not within a prescribed high-risk sector;
  - 1.2 not decide on a request to establish a Health and Safety Committee (HSC) if the PCBU has fewer than 20 workers and is not within a prescribed high-risk sector; and
  - 1.3 refuse a request to establish an HSC, where the PCBU is satisfied existing practices sufficiently meet requirements;
- 2 **note** that these limits to establishing HSRs and HSCs were added at the 2014/2015 select committee stage of the Health and Safety Reform Bill in response to some submitters' concerns on potential costs for small businesses;
- 3 **note** that removing these limits would realign the provisions for HSRs and HSCs with the Health and Safety Reform Bill as introduced in 2014 and with the provisions of the Australian Model Work Health and Safety law, on which the Act is based;
- 4 **note** that:
  - 4.1 as these proposals are enabling and not mandatory, the size and scale of the likely impacts are difficult to quantify, but they will likely lead to more HSRs in small lower-risk PCBUs and some increase in HSCs overall; and
  - 4.2 based on international evidence, this broader worker participation, and associated increases in worker and business awareness of, and attention to, work health and safety will contribute to improved work-related health and safety outcomes;

- 5 **agree** to amend the Health and Safety at Work Act 2015 to provide that all PCBUs:
- 5.1 must hold an HSR election if requested by a worker; and
  - 5.2 must establish an HSC if requested by an HSR or by five or more workers;
- 6 **note** that the empowering provision in the Health and Safety at Work Act 2015 that enables regulations to be made designating high-risk sector or industries, for the purpose of whether PCBU must hold an HSR election or decide on a request to form an HSC, will become redundant, and consequently will need to be repealed;
- 7 **note** that certain provisions in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 will become redundant with the proposed legislative changes in recommendation 6, and will need to be revoked as there will be no need to designate high-risk sectors or industries;
- 8 **Confidential advice to Government**
- 9 **invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to amend the Health and Safety at Work Act 2015 to give effect to the decisions in recommendations 5, 6 and 7 above;
- 10 **authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the proposals in these recommendations, on detail and any issues that arise during the drafting process;
- 11 **direct** the Minister for Workplace Relations and Safety to report to the Cabinet Legislation Committee by 24 November 2022 with a draft Bill to amend the Health and Safety at Work Act 2015.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety