



COVERSHEET

Minister	Hon Brooke Van Velden	Portfolio	Workplace Relations and Safety
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List of documents that have been proactively released

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YES / NO

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Policy Committee

Health and safety reform: shifting WorkSafe expectations and operational focus

Proposal

- 1 The proposals in this paper seek to refocus WorkSafe New Zealand (WorkSafe) on critical risk and shift it from an enforcement agency to one that engages early and well to support businesses and individuals to manage their risks.

Relation to government priorities

- 2 The proposals in this paper represent the second tranche of changes to address the ACT – National Coalition Agreement to reform health and safety law and regulations.

Executive Summary

- 3 During my public consultation on health and safety reform, I heard concerns from a wide range of Kiwi businesses and workers about WorkSafe's consistency, culture and guidance in the work health and safety system.
- 4 The work health and safety system must be focussed on the critical risks faced by workers and how to manage those risks effectively and efficiently. Cabinet has agreed to refocus the Health and Safety at Work Act (HSW Act) to achieve this [CBC-25-MIN-0004].
- 5 WorkSafe, as the primary regulator in the work health and safety system, must be focussed on critical risks and must clearly and collaboratively engage with businesses to address those risks. A culture where the regulator is feared for its punitive actions rather than appreciated for its ability to provide clear and consistent guidance is not conducive to positive outcomes in the workplace, or the system as a whole.
- 6 To address these issues and ensure WorkSafe is well placed to contribute to my wider reform package.
- 7 The key set of changes I propose mirror the changes agreed to by Cabinet to refocus the HSW Act [CBC-25-MIN-0004]:
 - Ensure that WorkSafe's main regulatory objective is to focus on critical risk, and
 - Prioritise WorkSafe's principal functions towards supporting duty-holders with guidance.
- 8 These changes will be supported by:

- Ensuring WorkSafe directs its funding to these priorities by establishing four categories within the current WorkSafe appropriation, also improving its financial transparency
- Using my existing Ministerial levers to set expectations both about the culture and focus of WorkSafe, and for specific areas of regulator activity.

I have heard stakeholder concerns about WorkSafe consistency, culture, and guidance in the work health and safety system

- 9 In May 2024, Cabinet agreed to release a consultation document, *Have Your Say on Work Health and Safety*, supported by a series of roadshows to ask New Zealanders about what's working well and what needs to change [ECO-24-MIN-0094].
- 10 Consultation was open from June to October 2024. Over 1,000 people provided feedback through submissions and the supporting roadshow meetings and site visits that I undertook in 11 towns and cities across the country. I have heard that:
- Businesses need more support from WorkSafe to understand what they need to do to comply with the law.
 - WorkSafe's application of regulations and identification of risk is both inconsistent and inflexible.
 - WorkSafe's engagements with businesses can be seen as punitive and non-collaborative and can instil fear. WorkSafe needs greater frontline expertise to build confidence amongst businesses and workers.
- 11 Further detail of this feedback is provided in **Appendix One**.
- 12 The roadshows in particular highlighted a range of issues, making it evident that many of WorkSafe's regular areas of interaction with Persons Conducting a Business or Undertaking (PCBUs) and workers were negative. This gives cause for reconsideration of WorkSafe's approach.
- 13 Underlying the negative experiences was a fundamental concern that WorkSafe can be heavy-handed in applying punishment when something goes wrong, but not always sufficiently supportive in providing advice to PCBUs on how to manage their risks.
- 14 Additionally, it has become evident that many industries see gaps in the guidance available to them – with a perception that WorkSafe has focussed reactively, leading to extremely detailed guidance in some areas and a comparative lack in others.
- 15 The common themes around the culture and approach of WorkSafe's inspectorate and the consistency and practicality of its advice on risk and enforcement of regulations are of concern. It is evident that this has created an atmosphere of fear and uncertainty among many PCBUs that is not conducive to either efficient operation of a business or effective work health and safety practices.

I am sharpening the focus of WorkSafe by refining its legislated objective and specifying its principal functions

- 16 For the reforms to work, both the HSW Act and the regulator need to be fit for purpose and focussed on the right things. If the regulator is not required to reflect the new focus of the HSW Act in its approach, or there are grey areas, the lack of clarity and certainty, and resultant cost, that has characterised the system will continue.

Making WorkSafe focus on critical risk and providing guidance and support to duty-holders

- 17 Currently, Section 9(1) of the Act states WorkSafe's main objective is to "promote and contribute to a balanced framework for securing the health and safety of workers and workplaces". This open-ended objective has not focused the regulator on what should be its main objective of addressing critical risks in the workplace.
- 18 To address this, I seek Cabinet agreement that Section 9 of the Act be amended so that WorkSafe's main objective is aligned with the amended main purpose of the HSW Act to move from managing risk to managing 'critical' risks from work – those with the potential to cause death, serious injury, illness or catastrophic failure.
- 19 This change is essential to support changes already agreed to the HSW Act [CBC-25-MIN-0004], focusing the system on management of critical risk and providing clarity and certainty for duty-holders. It will mean changes to the way WorkSafe undertakes its key guidance, advice, permitting, and enforcement activities.
- 20 Specifically, it will require the organisation to move from an approach where duty-holders feel they are expected to address every possible risk towards one in which WorkSafe provides clarity on the critical risks a workplace must address so that it can be certain it is meeting its obligations under the Act.
- 21 This change will support the intent of my reforms – that businesses have the certainty they need to prioritise their valuable time and effort on taking action to manage critical risks rather than on low value compliance, while also enabling WorkSafe to direct its resource to where it matters most.

Clarifying WorkSafe's principal functions

- 22 WorkSafe's founding legislation ascribes 16 functions of the agency, which are detailed in **Appendix Two**. While this reflects the necessarily broad scope of the regulator, it is my view, borne out by the consultation and roadshows, that this has contributed to the challenges WorkSafe has had in appropriately balancing its assistance and enforcement activities and enabling it to prioritise its resources and deliver on Government priorities.
- 23 To address this, I seek Cabinet's agreement that Section 10 of the Act be amended to clarify that WorkSafe should balance assistance with enforcement and focus on critical risks. This will be achieved by identifying WorkSafe's principal functions (providing guidance, information, codes of practice, safe work instruments, and monitoring and enforcing compliance, including through authorisations of third parties).

- 24 Making guidance a principal function clearly signals that WorkSafe should prioritise proactive assistance and support to duty-holders so they know what they need to do. It will require WorkSafe to provide duty-holders with clear advice on what is reasonably practicable in their circumstances. At the same time, WorkSafe will continue to hold duty-holders to account where these reasonable expectations are not met
- 25 All other functions currently in the Act will be retained as secondary functions – intended to contribute to better performance of the principal functions.

I will restructure WorkSafe's appropriation to increase fiscal transparency and support delivery of Ministerial expectations

- 26 WorkSafe's appropriation structure gives it a lot of flexibility to decide where it allocates its resources, exacerbating problems with WorkSafe's focus and performance.
- 27 For some time, WorkSafe has struggled to effectively articulate the cost and effectiveness of its activities, making it difficult to monitor and assess the value of activities or the merit of requests for further funding. To address this, a Strategic Baseline Review was commissioned in 2021, to assess whether WorkSafe was managing its resources efficiently and effectively, and provide advice on the rationale, quantum and targeting of any additional funding which may be required.
- 28 The Strategic Baseline Review found that WorkSafe did not have a clear framework or the tools to assess the value of its activities or effectively describe its mix of activities and how these contributed to achieving its outcomes.
- 29 In August 2024, a follow up review to assess WorkSafe's progress in addressing the overarching findings of the WorkSafe Strategic Baseline Review found that none of the six key recommendations covering the Review's overarching findings had been fully implemented, with partial progress on four and two yet to be addressed at that point.
- 30 To further support both the changes discussed in this paper and my wider package of reforms, I also propose splitting WorkSafe's appropriation into four new categories:
- *Supporting work health and safety practice* – through guidance, advice, codes of practice and inspections.
 - *Enforcing work health and safety compliance* – through investigations and enforcement.
 - *Authorising and monitoring work health and safety activities* – through issuing licences, authorisations and exemptions, and monitoring these.
 - *Energy safety* – While WorkSafe's energy safety function is not a focus of the reforms or consultation, I note that it receives approximately \$4.4 million per annum from energy safety levies for this function, which focus on both work-related and public safety. For transparency and simplicity, I propose that this also be established as a category for all WorkSafe's energy safety activities.

- 31 Establishing these categories within the appropriation will make it easier to use funding as a lever to set expectations on where WorkSafe should focus to deliver on Government priorities. It will also help address concerns heard during the consultation that WorkSafe may be underfunded, by improving the use of levy revenue and providing clarity on the scale of resourcing being placed where it is most needed, for example, to address stakeholder concerns about the need for more guidance.
- 32 The change will also increase the transparency of WorkSafe's financial management, due to the processes required to reprioritise funding within a Multi-Category Appropriation (MCA) providing both MBIE, as monitor, and myself with opportunities to discuss the rationale for shifting any resourcing away from its originally agreed area of focus.
- 33 An MCA of this sort is not unduly complex for an organisation in receipt of approximately \$140 million per annum and still provides flexibility should priorities change across the course of a financial year.
- 34 Analysis on the exact coverage of these categories, the quantum of funding required for each category (within existing baselines), and non-financial performance measures to be applied to each category will be undertaken in the coming months. I seek Cabinet authorisation for myself and the Minister of Finance to finalise these details and make the necessary changes as part of the October Baseline Update.

I will set clear expectations to the WorkSafe board around culture change, regulatory focus, and priority activities

- 35 As well as the proposed legislative changes, I will use the existing levers available to me as Minister for Workplace Relations and Safety. Specifically, I will communicate clearly to the WorkSafe board my expectations for the role the organisation will play in a reformed work health and safety system and the changes in culture, frontline capability, and practice that will need to be delivered to achieve this.

Confidential advice to Government

- 37 There are three key shifts I am seeking from WorkSafe: that is to be proportionate; practical; and consistent and clear in its advice. Each of the shifts I am directing will be supported by clear expectations. I expect WorkSafe to fully re-assess how it organises itself to deliver on my priorities.

Confidential advice to Government

I expect WorkSafe's actions and activities to be proportionate

- 39 I want to see a shift from a regulator that has a safety at all cost mentality, to a regulator that focusses on helping duty-holders do what is proportionate to the risks, including rooting out over-compliance.
- 40 I expect to see changes to WorkSafe's enforcement approach. I heard concerns on the roadshows that WorkSafe were taking action against duty-holders in situations where they are not directly, or even indirectly, responsible for the risk or incident. For instance, in the Whakaari prosecutions, WorkSafe's charges against the Institute of Geological and Nuclear Sciences (GNS), of failing to communicate volcanic risk to the public, were dismissed. The charge against the National Emergency Management Agency (NEMA) was also dismissed, with a clear ruling that NEMA did not have a duty under the regime in relation to volcanic hazards on Whakaari. NEMA was awarded \$40,000 in costs.
- 41 I will be setting an expectation that WorkSafe review its Enforcement Decision-making Model (EDM). This model provides a framework that guides WorkSafe's inspectors through the process to decide on an enforcement response appropriate to the circumstances. I will expect WorkSafe to reconsider its approach to prosecutions, and how to ensure it is focused on cases of clear breaches and causation rather than pursuing novel prosecutions in order to develop case law.
- 42 I heard many complaints on the roadshows of workers repeatedly ignoring specific instructions (i.e. by not wearing a harness when working at heights or driving quad bikes on specific farm areas that owners had warned against). To date, I am not aware of WorkSafe prosecuting a worker under the HSW Act. Under the Health and Safety in Employment Act 1992, the Department of Labour took action against workers for breaches of their duties under that Act. I will set an expectation that WorkSafe strengthen its approach to worker breaches of duty.
- 43 I do not expect these changes will impact the need for WorkSafe to exercise its prosecutorial discretion independently and within the framework of the Solicitor-General's Prosecution Guidelines.

I expect WorkSafe's actions and activities to be practical

- 44 I want to see a shift from a regulator that provides generic and high level "gold plated" guidance to one that provides advice and guidance that addresses the "on the ground" realities of work in a practical way that businesses and workers understand.
- 45 Approved Codes of Practice (ACOPs) provide health and safety guidance on what is reasonably practicable in specific circumstances. Consistent feedback on the roadshows and through consultation was that WorkSafe has not produced enough ACOPs, that the development process is protracted and at times adversarial, and that simple updates to existing ACOPs languish. For instance, the existing 2012 ACOP for load-lifting rigging contains a reference to a disestablished Industry Body.
- 46 I am making changes to strengthen these so that compliance with the ACOP can be considered deemed compliance, and for industry and other groups to develop and submit ACOPs for approval [CBC-25-MIN-0004].

- 47 To support this, I will set an expectation that WorkSafe foster greater use of ACOPs to guide sectors with significant critical risks, and provide industry with advice and guidance on how to develop and submit ACOPs for Ministerial approval. This will help ensure ACOPs are developed with appropriate expertise, and free up WorkSafe resource.
- 48 Though I expect most future ACOPs will be industry-led, I do still expect WorkSafe to continue to develop ACOPs. I will confirm a work plan with WorkSafe to ensure there is appropriate prioritisation. The plan may include ACOPs already underway, such as forestry, or where there is no clear representative body, or for risks that are pan-sector and difficult for one industry to coordinate the development of an ACOP.
- 49 It is also my expectation that WorkSafe have a robust oversight system in place to ensure third parties are fulfilling their regulatory role effectively. This will address concerns about inconsistent interpretation of complex regulations by third parties who permit others to undertake licenced work or who certify high risk activities. This has recently been a concern in the management of hazardous substances, for example.

I expect WorkSafe to give consistent and clear advice

- 50 I want to see a shift from a regulator that does not provide certainty and consistency to duty-holders, to a regulator that provides clear guidance and support to duty-holders about how to manage their risks, and certainty about what is reasonably practicable.
- 51 I will set expectations about a fundamental strengthening of WorkSafe's delivery of guidance. A common complaint on the roadshows and through consultation was that WorkSafe's guidance was out of date, did not cover common risks, was impractical, or merely restated requirements in the regulations. For instance guidance on best practice for the safe use of timber preservatives dates back to the predecessor Health and Safety in Employment Act 1992.
- 52 Clear guidance will help PCBU's and will also help ensure consistency in frontline delivery by inspectors. I will identify areas where I expect guidance to be prioritised; for example, clear guidance how to manage health and safety duties where multiple duty-holders are involved. This prioritisation will be guided by existing feedback from the roadshows and consultation and further targeted consultation with sectors as appropriate. I expect WorkSafe to have a quarterly delivery plan against which progress will be monitored.
- 53 A common, and concerning, theme in the consultation that informed these proposals was around the expertise and outward facing culture of the WorkSafe inspectorate. Specifically, stakeholders raised concerns about unhelpful engagements with inspectors who were not always experts in the industries they were inspecting. While this is not true of all inspectors, I will be making it clear to WorkSafe that this adversarial culture is not appropriate. I expect WorkSafe to focus on addressing these concerns as part of its shift towards being a more consistent, and supportive regulator.
- 54 Finally, I will also be setting firm expectations around WorkSafe's monitoring of its operational delivery. During the roadshow I heard many complaints that feedback to WorkSafe does not receive a response, and that complaints are not addressed in substance. For instance, a manufacturer complained about inconsistent treatment of

the same piece of manufacturing equipment between WorkSafe inspectors in Christchurch and Auckland, with no explanation or action from WorkSafe.

- 55 I want feedback loops established with those that interact with WorkSafe to provide assurance that there is consistency between guidance provided and inspectorate activities, that resources provide value, and that engagements are timely and effective.

Implementation

- 56 I have already starting using my Ministerial levers to set expectations on WorkSafe to address issues raised in consultation and align the organisation's work programme and culture with Government priorities. I expect WorkSafe to begin giving effect to these priorities prior to legislation being enacted, to ensure the public can begin experiencing change concurrent with the legislative changes.
- 57 The proposed appropriation changes will be made as part of the 2025 October Baseline Update.

Cost-of-living Implications

- 58 There are no direct cost-of-living implications associated with the proposals in this paper. It is expected that the cumulative impact of all the reform proposals will be to reduce the cost to business of protecting worker health and safety.

Financial Implications

- 59 The proposals in this paper are fiscally neutral. While the proposed organisational refocussing and appropriation restructure will change the focus of WorkSafe's expenditure, the total quantum will not change, nor will the current policy of recovering WorkSafe funding from the Health and Safety at Work Levy.

Legislative Implications

- 60 Legislative changes will be made through a Health and Safety at Work Reform Bill, which has sought a category five priority in the 2025 Legislative Programme. This omnibus Bill will amend the Health and Safety at Work Act 2015 and the WorkSafe New Zealand Act 2013.

Impact Analysis

Regulatory Impact Statement

- 61 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by existing impact analysis [CBC-25-SUB-0004 and CBC-25-MIN-0004].

Climate Implications of Policy Assessment

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

Population Implications

- 63 It is expected that refocusing the system on actions to manage critical risks rather than on paperwork and unnecessary compliance will improve health and safety outcomes for all workers.

Human Rights

- 64 I do not consider that these proposals engage the New Zealand Bill of Rights Act 1990 (NZBORA). The Health and Safety at Work Reform Bill will be assessed by the Ministry of Justice for consistency with NZBORA before introduction.
- 65 I consider that these proposals are unlikely to raise Treaty of Waitangi interests.

Use of external Resources

- 66 No external resources were used in the development of these policy proposals, however, some of these proposals have been informed by a contracted Strategic Baseline Review of WorkSafe New Zealand undertaken in 2021/22, and its follow-up undertaken in 2024.

Consultation

- 67 The following departments were consulted: WorkSafe New Zealand, the Treasury, Ministry for Regulation, Ministry of Transport, New Zealand Transport Agency, and the Energy portfolio within MBIE. The Department of the Prime Minister and Cabinet was informed.

Communications

- 68 The Government has publicly committed to reform work health and safety law and regulation as part of the ACT – National Coalition Agreement. I intend to make an announcement confirming Cabinet decisions on the changes outlined in this paper.

Proactive Release

- 69 This paper will be proactively released (subject to redactions in line with the *Official Information Act 1982*) within 30 business days of final Cabinet decisions.

Recommendations

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

Sharpening the focus of the WorkSafe New Zealand Act 2013

1. **Agree** that WorkSafe New Zealand's main objective should be aligned with the amended main purpose of the HSW Act to move from 'providing a balanced framework to secure

the health and safety of workers’ to ‘managing critical risks from work’ [CBC-25-MIN-0004 refers]

2. **Agree** to legislate WorkSafe’s principal functions as: providing guidance, information, codes of practice, safe work instruments, and monitoring and enforcing compliance, including through authorisations of third parties, with all other functions secondary
3. **Note** that the changes in recommendations 1 and 2 be given effect through the Health and Safety at Work Reform Bill, which sought a category five priority in the 2025 Legislative Programme
4. **Invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 1 and 2
5. **Authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the policy in this paper, on any issues that may arise during the drafting, including any transitional provisions

Aligning WorkSafe’s appropriation more closely with Ministerial expectations

6. **Note** that to support increased transparency and leverage over WorkSafe’s spending and financial management I will be seeking the Minister of Finance’s agreement to split WorkSafe’s appropriation into the following categories as part of the October Baseline Update:
 - 6.1. Supporting work health and safety practice – through guidance, advice, codes of practice and inspections,
 - 6.2. Enforcing work health and safety compliance – through investigations and enforcement,
 - 6.3. Authorising and monitoring third parties in the work health and safety system – through issuing licences, authorisations and exemptions for third parties and monitoring these, and
 - 6.4. Delivery of WorkSafe’s energy safety function
7. **Authorise** the Minister of Finance and the Minister for Workplace Relations and Safety jointly to agree to the appropriation changes necessary to give effect to the proposals in this paper

Focusing WorkSafe through Ministerial direction

8. **Note** that I will continue and strengthen the utilisation of my existing levers as Minister to set a series expectations on WorkSafe to align its work with the new focus of the health and safety system and my priorities and ensure it is focussed on addressing issues that have arisen through consultation.

IN C O N F I D E N C E

Hon Brooke van Velden

Minister for Workplace Relations and Safety

IN C O N F I D E N C E

Appendix One: Key Messages from Consultation roadshows

<u>Issue</u>	<u>Key Stakeholder Messages from the roadshows</u>
Businesses need more support to get it right	WorkSafe is not always focused on what is important. There is often a lack of good engagement, and not enough focus on guidance and supporting businesses to do better.
	WorkSafe needs to engage earlier and work with businesses on how to meet their obligations.
	Some WorkSafe inspectors will not give an opinion as they do not want to be constrained from prosecuting if something “goes wrong”, leaving it to businesses to manage risk without support.
Application of regulations and identification of risk is both inconsistent and inflexible	There can be inconsistency in assessments of the same risks by different inspectors – evidenced by examples such as identical plant in different parts of the country being treated differently.
	WorkSafe is sometimes seen as taking a “gold standard” approach to compliance, requiring the fullest extent of available controls where more tailored options are enabled in the regulations.
WorkSafe’s engagements with businesses can be seen as punitive and non-collaborative and can instil fear	When an incident or accident occurs, WorkSafe is seen as too reactive in looking for fault, with hindsight bias and unrealistic expectations of what was reasonably practicable through an ex-post assessment.
	Some inspector and investigation practice has been described as disrespectful, demeaning, non-collaborative, and inquisitorial, with a perception that inspectors are encouraged to focus on issuing notices and being punitive. This uncertainty and lack of help leads to fear of engagement with WorkSafe.
WorkSafe needs greater frontline expertise to build confidence amongst businesses and Workers	There was a general perception that engagement with the regulator was better ten years ago, with one reason being that the move to generalist inspectors means there is not sufficient industry expertise in the field to support businesses.

Appendix Two: WorkSafe Functions

Section 10 of the WorkSafe New Zealand Act 2013 – Proposed Principal Functions in **bold**

WorkSafe New Zealand's functions are to—

(a) advise on the operation of the work health and safety system, including co-ordination across the different components of the system:

(b) make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes:

(c) monitor and enforce compliance with relevant health and safety legislation:

(ca) publish information about—

- (i) its approach to enforcing compliance with relevant health and safety legislation (including where a provision of relevant health and safety legislation overlaps with a provision in another enactment); and
- (ii) its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation:

(d) make recommendations about the level of any funding (including fees or levies) that WorkSafe New Zealand requires to effectively carry out its functions:

(e) develop codes of practice:

(ea) develop safe work instruments:

(f) provide guidance, advice, and information on work health and safety to—

(i) persons who have duties under the relevant health and safety legislation; and

(ii) the public:

(g) promote and support research, education, and training in work health and safety:

(h) collect, analyse, and publish statistics and other information relating to work health and safety:

(i) engage in, promote, and co-ordinate the sharing of information with other agencies and interested persons that contribute to work health and safety:

(j) foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety:

(ja) foster a co-operative and consultative relationship with the EPA when carrying out its functions, duties, and powers in respect of hazardous substances:

(k) promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way:

(l) perform or exercise any other functions or powers conferred on WorkSafe New Zealand by or under any other enactment:

(m) perform any additional function that the Minister directs under [section 112](#) of the Crown Entities Act 2004