



Regulatory Impact Statement: Work Health and Safety Reforms – Further Policy Decisions on the Reform Bill

Decision sought	Analysis produced for the purpose of informing final Cabinet decisions.
Agency responsible	Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers	Minister for Workplace Relations and Safety
Date finalised	20 May 2025

The Minister is proposing a package of reforms to work health and safety laws. This Regulatory Impact Statement (RIS) addresses the proposed changes to the duties for small, low-risk businesses, notification requirements, and to clarify officers' duties [REDACTED]
Constitutional conventions [REDACTED]

Summary: Problem definition and options

What is the policy problem?

In 2024, the Government publicly consulted on the purpose and performance of the work health and safety regulatory system since we are nearing the 10-year anniversary of the *Health and Safety at Work Act 2015* (the HSW Act). MBIE received nearly 500 written submissions and the Minister for Workplace Relations and Safety visited 11 towns and cities, attended 23 meetings, and undertook 15 site visits across the country.

Based on the issues identified through consultation, the Minister for Workplace Relations and Safety is bringing a suite of system-wide changes to reform work health and safety to Cabinet through a series of Cabinet papers. In March 2025, Cabinet agreed to the first tranche of changes, including changes to the HSW Act with the intention to address the lack of certainty and clarity that duty holders face in trying to meet their duties [CBC-25-MIN-0004 refers].

In addition to these broad issues, the consultation identified several specific issues. This RIS analyses four discrete policy issues which Cabinet has noted that the Minister for Workplace Relations and Safety will seek further policy decisions on:

- **Primary duty of care** – limiting health and safety at work duties for small, low-risk businesses.
- **Officer duties** – more clearly distinguishing between the governance activities required to meet the officers' duty, and management activities.

- **Notification requirements** – reducing notification requirements to WorkSafe New Zealand (WorkSafe) to only significant work events.
- **Constitutional conventions**

What is the policy objective?

The overarching objectives of the work health and safety regulatory system reforms are to:

- reduce unnecessary costs for businesses, and consumers and taxpayers so they are proportionate to risks,
- increase certainty about what to do (e.g. ensure a person conducting a business or undertaking (PCBU) can access high-quality HSW Act guidance and feel confident to implement it), and
- support the continued reduction in the incidence of workplace injuries and fatalities, thereby improving work health and safety outcomes for businesses, workers, and all New Zealanders.

What policy options have been considered, including any alternatives to regulation?

Policy options considered for the specific proposals are listed below.

Limiting work health and safety duties for small low-risk businesses to focus on critical risk:

- Options to define small.
- Options to define ‘low-risk’.
- Options to define ‘critical risk’.

Officer duties:

- Amend the HSW Act so the officer duty does not expose an officer to any liability for management actions.
- Amend the HSW Act to clarify that chief executives are not officers, if there is a board with most members not working in the PCBU.
- Amend the HSW Act to confine the officer duty to directors who do not also work for the PCBU.
- Amend the HSW Act to establish an executive management duty that is different from the officers’ governance duty.
- Amend the HSW Act to clarify the current six due diligence steps.
- Develop Approved Codes of Practice (ACOPs) and/or guidance clarifying who is an officer and their due diligence duties.

Notification requirements:

- Define key concepts in the HSW Act and add examples.
- Amend the HSW Act to introduce a period of incapacity.
- Amend the HSW Act to introduce a period and frequency of incapacity.

Constitutional conventions

What consultation has been undertaken?

In 2024, the Government publicly consulted on the purpose and performance of the work health and safety regulatory system. MBIE received nearly 500 written submissions and the Minister for Workplace Relations and Safety visited 11 towns and cities, attended 23 meetings, and undertook 15 site visits across the country.

More recently, the Minister for Workplace Relations and Safety's office directed MBIE to undertake targeted consultation with four sector bodies to discuss the proposals analysed in this RIS.

Feedback from all consultation relating to the specific issues captured by this RIS is summarised in the relevant chapters.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

For the proposals relating to small, low-risk businesses, officers' duties, and notification requirements, the preferred options are the same as in the RIS.

Constitutional conventions

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Time constraints have placed limitations on our cost-benefit analysis. The recommended options are estimated to have low to medium costs for regulated groups and regulators in the short-term. These costs are expected to result from large legislative changes, which will require regulated groups to familiarise themselves with new systems.

More detailed costs are explained in relevant chapters.

Benefits (Core information)

The benefits that will be realised by the proposed changes are expected to be of medium size for regulated groups. This results from reduced compliance costs, due to the shift in focus and action to critical risks, and clarification of the system boundaries.

More detailed benefits are explained in relevant chapters.

Balance of benefits and costs (Core information)

The benefits of the Minister's preferred option are likely to outweigh the costs, particularly as the benefit-cost ratio becomes more favourable over time. More time for policy analysis would have enabled more in-depth determination of costs and benefits.

More detail relating to the specific proposals is found in relevant chapters.

Implementation

The legislative proposals need to be implemented through amendments to the HSW Act.

MBIE is responsible for administering the HSW Act. WorkSafe provides information for businesses, unions and workers through its website, contact centre and other customer services on an ongoing basis. Information provision and updates to website content would be undertaken within WorkSafe's existing baseline funding.

More detailed specifics relating to implementation is found in relevant chapters.

Limitations and Constraints on Analysis

Previous Cabinet decisions on amendments to the HSW Act [CBC-25-MIN-0004 refers] have limited the options considered for proposals.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:



Hayden Fenwick
Manager, Health and Safety Policy
13 May 2025

Quality Assurance Statement

Reviewing Agency: Ministry for Business, Innovation and Employment and the Ministry for Regulation

QA rating: Partially meets

Panel Comment:

A quality assurance panel with members from the Ministry of Business, Innovation and Employment and Ministry for Regulation has reviewed the Regulatory Impact Statement (RIS): Work Health and Safety Reforms – Further Policy Decisions on the Reform Bill. The QA panel considers that it partially meets the Quality Assurance Criteria.

The Panel noted that the RIS has been constrained by prior Cabinet decisions which impact the problem definition, scope of options, and timeframe to prepare advice. Within that constraint the analysis is complete and convincing, supported by evidence from public and targeted consultation. However, length hinders the RIS from providing concise advice while the impact of preferred options is limited to qualitative estimates without any estimates of the costs or benefits of the regulatory changes to affected parties including businesses. Noting these limitations, the Panel considers the RIS provides sufficient information for Ministers to make a decision.

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Chapter 1: General overview

New Zealand's work health and safety regulatory is not achieving its intended outcomes

The Health and Safety at Work Act 2015 (the HSW Act) is 'all encompassing' and performance based. The duties in the HSW Act are intentionally broad to ensure full coverage of all types of risks, business structures, and working arrangements. The HSW Act places the primary duty of care on a person conducting a business or undertaking (PCBU), which judges what actions are 'reasonably practicable' to manage the risks arising from its work. The regulatory system relies on the regulator and regulations, safe work instruments, approved codes of practice, and guidance to provide PCBUs with more detail about how to meet their duties for specific risks or activities.

Nearly 10 years since the passage of the HSW Act, New Zealand's work health and safety regulatory system is not achieving its intended outcomes. Although the trends for injuries and deaths are improving, our rate of work-related deaths remains higher than the United Kingdom and Australia. There is also persistent harm in some sectors, such as agriculture and manufacturing.

The ACT–National Coalition Agreement committed to reforming New Zealand's health and safety laws and regulations. The proposals in this RIS (in combination with other accompanying RISs) represent the Minister for Workplace Relations and Safety's proposals to address this Coalition commitment.

Consultation revealed consistent themes

In 2024, the MBIE supported the Minister for Workplace Relations and Safety to carry out public consultation on the purpose and performance of the work health and safety regulatory system. MBIE received nearly 500 written submissions and the Minister visited 11 towns and cities, attended 23 meetings, and undertook 15 site visits across the country, attended by approximately 600 people.

MBIE analysed the feedback from consultation and the road shows and found that the major theme is that businesses do not know what they need to do to manage risks and meet their legal duties. This is because:

- there is a lack of guidance on what is considered 'reasonably practicable' and therefore what is needed to be deemed compliant,
- some regulations are overly complex and out of date and the pace of regulatory change has been slow, and
- there is a fear of WorkSafe New Zealand arising from difficult engagements or inconsistent treatment.

The high work-related death rates and public feedback of costly and frustrating over-compliance suggest an imbalance in New Zealand's work health and safety regulatory system. That is, resource is being wasted in some areas and not sufficiently applied in others.

A host of specific issues were also raised throughout consultation. A summary of submissions will soon be published that summarises what we've heard.¹

Cabinet has agreed to amend the *Health and Safety at Work Act 2015*

Based on what was heard during consultation, the Minister for Workplace Relations and Safety is bringing a suite of system-wide changes to reform work health and safety to Cabinet through a series of Cabinet papers. In March 2025, Cabinet agreed to the first tranche of changes, including changes to the HSW Act with the intention to address the lack of certainty and clarity that duty holders face in trying to meet their duties [CBC-25-MIN-0004 refers]. This includes amending the purpose and boundaries of the HSW Act, and strengthening the role of Approved Codes of Practice (ACOPs) (see Figure 1).

The Regulatory Impact Statement: Work Health and Safety Reforms (12 March 2025) supported the initial decisions for work health and safety reform relating to these issues. That regulatory analysis considered a limited suite of options due to constraints on the time available and a lack of quantitative data. The analysis was primarily based on qualitative information from a wide-ranging public consultation.

Overarching problem definition

The high work-related deaths and public feedback of costly and frustrating over-compliance suggest an imbalance in New Zealand's work health and safety regulatory system

Core issues

There is a lack of certainty and clarity regarding PCBU's actions or duties under the HSW Act

The HSW Act has been taken to apply more broadly than intended; practices have evolved that stretch beyond the boundaries of work health and safety laws

March Cabinet decisions:

Ending the proliferation of road cones

Sharpen the purpose of the HSW Act

Sharpen the coverage of the HSW Act

Improvements to ACOPs

Clarify recreational land use

Including decisions that require further policy decisions:

Limit work health and safety duties for small, low-risk businesses

Clarify officers' duties

Reduce notification requirements

Constitutional conventions

Options addressed in this RIS

Figure 1 Overview of earlier Cabinet decisions and what is addressed in the current RIS.

¹ Refer to [Seeking your feedback on the work health and safety regulatory system | Ministry of Business, Innovation & Employment](#)

Initial decisions on specific issues have already been agreed by Cabinet, but require further policy decisions

Cabinet has agreed to initial policy decisions on specific issues that are part of the suite of reforms, including to [CBC-25-MIN-0004 refers]:

- limit the health and safety duties for small businesses in low-risk sectors, by defining how small, low-risk businesses will be specified through legislation;
- clarify the application of the HSW Act to more clearly distinguish between officers' duties and management responsibilities to enable officers to focus on governance and not operational matters; and
- reduce notification requirements to the regulator to only significant workplace events.

Further policy decisions on these three topics are necessary to implement Cabinet's initial policy decisions. As directed by the Minister for Workplace Relations and Safety's office, MBIE held targeted engagement with BusinessNZ, Retail NZ, Federated Farmers, and the Employers Manufacturers Association (EMA) on these proposals, feedback to which is included in the relevant chapters. A summary of what we've heard during the consultation, and what further policy decisions are needed for each of these issues is outlined below.

Limiting duties for small businesses

During consultation we heard that small, low-risk businesses are uncertain about which risks to focus on and struggle to meet the costs of compliance. While larger businesses may be able to afford to hire dedicated health and safety professionals, small businesses in particular can struggle to get the information they need to ensure they are compliant, leading to reliance on external consultants, and risk averse behaviour.

Cabinet has agreed to the proposal to limit duties for small, low-risk businesses to focus on critical risk. The RIS that supported this decision analysed the decision in principle only, and recommended the proposal with details subject to further analysis. Further decisions are needed on how to define small, low-risk businesses, and how to define critical risk or what the limited duties are. The scope of options in the RIS has been limited to align with initial Cabinet decisions.

Clarifying officers' duties

We have heard there is uncertainty about who is an officer and the extent of the duty under the HSW Act. This is driving risk aversion and excessive compliance. The officer duty in the HSW Act is intended to be flexible to deal with different business arrangements, however, in practice, this flexibility creates ambiguity. This has been aggravated by the legislation being interpreted by courts in a way that is not fully aligned with the policy intention that the officer duty is limited to governance activities and does not include management activities, where an officer also has a 'day job' working for the PCBU.

Cabinet has agreed that the application of the HSW Act is clarified to more clearly distinguish between officers and management, enabling officers to focus on governance and not operational matters. The supporting RIS did not include this proposal. Further policy decisions are needed on how to give effect to this.


Notification requirements

Very limited anecdotal evidence collected during the consultation on the work health and safety system suggests that there is potential that some businesses are unclear on what

constitutes a notifiable event and may be over-reporting as a result. Key issues raised were that the boundary of what is and is not a notifiable event is unclear, the Regulator does not respond consistently and there may be inconsistent notification requirements between the HSW Act and Regulations. This may be contributing to a perception among some businesses that the notification requirements are burdensome and adding to the compliance costs associated with meeting their health and safety duties.

The previous RIS did not include this proposal. Further decisions are needed on what the reduced notification requirements are. MBIE considers that there is not enough evidence to suggest there is a problem with the requirements in the HSW Act, this view is shared by the Regulators who consider that notification requirements are set at the right level. The scope of options in the RIS has been limited to align with initial Cabinet decisions.

Constitutional conventions



Chapter 2: Limiting duties for small, low-risk businesses

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

As mentioned above, the RIS Work Health and Safety Reforms (12 March 2025) provided a detailed problem definition for the wider health and safety reform. It also analysed the option to limit the health and safety duties for small, low-risk businesses. The analysis concluded that MBIE agreed with this proposal in principal and noted the further policy work required to iron out the more granular details – which is the focus of this RIS. Please refer to this earlier RIS for context.

Based on a Robens model, the flexible, performance based HSW Act (described in more detail in the 12 March 2025 RIS) contrasts the previous *Health and Safety in Employment Act 1992*, which – while similarly based on a broad general duty – then directed PCBU's to identify significant hazards, thereby placing a focus on risks that could cause serious harm.

In consultation, we've heard that most submitters generally agree with the intent of the HSW Act. However, there was resounding feedback that indicates businesses struggle with the broad, performance-based nature of the HSW Act. This particularly impacts small businesses, which have less time and fewer resources to spend on work health and safety (WHS) matters. Many said they lack clarity on the appropriate actions to take and are uncertain that the actions they take are sufficient to comply with the HSW Act. This has led to a situation where PCBU's are uncertain where to place focus and therefore try to manage all. This in turn creates a culture in which work health and safety is not taken seriously; minor risks are treated similarly to major risks, and burdensome paperwork systems take up time and resource without leading to improvements in work health and safety outcomes.

In summary, the lack of clarity and certainty for PCBU's, particularly small PCBU's has helped create an overly expensive and risk averse system, in which serious harm remains stubbornly high compared to Australia or the UK. We expect this to continue under the status quo.

What is the policy problem or opportunity?

For small business, the root cause of the problem is that flexible, performance-based legislation that works well for big business, does not work as well for small business. In the case of many small businesses, the benefits of flexibility are outweighed by the uncertainty of not knowing what to do. This leads to a reliance on external consultants, and risk averse behaviour rather than people getting on with the job.

Many small businesses that made themselves heard in the consultation struggle with a lack of clarity regarding what actions are appropriate or 'reasonably practicable' for them to take, leading to the situation illustrated in Figure 2 below.

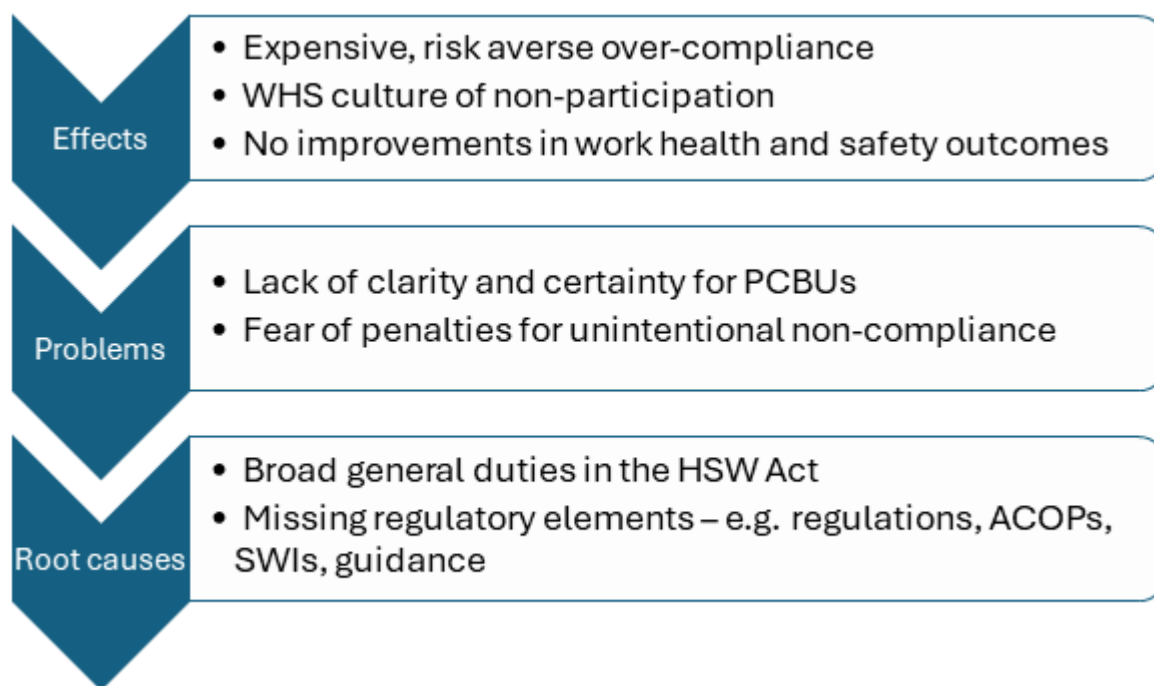


Figure 2 The problem and its root causes and effects.

What objectives are sought in relation to the policy problem?

The objectives of reform to the work health and safety regulatory system are to:

- reduce unnecessary costs for businesses, and consumers and taxpayers so they are proportionate to risks,
- increase certainty about what to do (e.g. ensure PCBU's can access high-quality HSW Act guidance and feel confident to implement it), and
- support continued reduction in the incidence of workplace injuries, fatalities, and occupational diseases, thereby improving work health and safety outcomes for businesses, workers, and all New Zealanders.

In relation to this specific policy proposal, an added objective is to design a clear carve-out for small, low-risk businesses that reduces the need for external advice.

What consultation has been undertaken?

Chapter 1 outlines the consultation done by the Minister and MBIE in 2024. Our preceding discussion of the status quo and the problem outlines the nature of the feedback received on issues faced by small businesses. This feedback came from both the response to the online consultation and from the Roadshows and site visits done by the Minister.

The targeted engagement with Federated Farmers, the Employers and Manufacturers Association, Retail NZ, and BusinessNZ indicated a general support for options that were simple and clear, including option size 3, a PCBU size threshold of 'fewer than 20 workers', and option low risk 3, not defining 'low risk' sectors. BusinessNZ stated that guidance on risk management tools, techniques, and assessments for small PCBU's would also help, and suggested the development of a self-assessment tool.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

The following criteria will be used to compare options to the status quo:

- **Transparency and certainty:** the duties, obligations and rights of employers and workers are clearly set out and complied with, and the responsibilities and accountabilities of regulatory agencies are clear and understood by both agencies and duty holders.
- **Cost effectiveness:** compliance and transitional costs for the duty holders and for the regulator are minimised, for the benefits they deliver.
- **Flexibility and durability:** the regulatory regime is flexible and adaptive so that it can readily accommodate change and operate effectively in a dynamic context; and incentives are in place to encourage compliance with regulatory requirements.
- **Proportionality:** the degree of regulation and regulator's actions are commensurate with risk and will target key risks.
- **Health and Safety:** will reduce harm arising from work.

What scope will options be considered within?

The scope of feasible options has been limited by prior Cabinet decisions on the policy, which mean only legislative changes are in scope of the options presented. Cabinet has agreed to the following [CAB-25-MIN-0080 refers]:

"Agree to limit health and safety at work duties for **small** business in **low-risk** sectors to:

- Managing **critical risks** that could cause death or serious injury or illness; and
- Providing worker training and personal protective equipment for those critical risks; and
- Providing first aid, emergency plans, and basic workplace facilities for worker welfare (for example, provision of drinking water)."

The options analysed in this RIS therefore relate to the following more granular definitions to implement Cabinet's policy approach. Additionally, the HSW Act uses the broader term "a person conducting a business or undertaking" (PCBU) instead of a 'business', therefore this Chapter is split up into the following definitions:

1. 'Small' – what is a small PCBU?
2. 'Low risk' – what is a low-risk PCBU?
3. 'Critical risk' – which risks are critical risks?

What options are being considered?

Status Quo

This is as described above in discussion of the policy problem at pages 12–13. It is up to businesses to self-assess risk, and their ability to address it (inherent to the Robens model).

Options for the definition of ‘small’

Setting a size threshold

The definition of ‘small’ determines the balance between how many businesses or PCBUs are captured by or excluded from the limitations on work health and safety duties, while representing a trade-off with health and safety considerations. If the threshold is set higher, more PCBUs will be captured and so will have more certainty and clarity on their duties. This is expected to result in better health and safety outcomes due to their focus on critical risks. However, more workers may be at risk of more minor injuries from non-critical risks, as these are no longer managed. This will come at a cost to the Crown through the ACC scheme.

We identified several options for setting the threshold of a ‘small PCBU’, including:

- Option size 1: sole traders only (73% of NZ businesses).
- Option size 2: a maximum of 5 workers (90% of NZ businesses).
- Option size 3: fewer than 10 workers (94% of NZ businesses).
- Option size 4: fewer than 20 workers (97% of NZ businesses).

Most of New Zealand’s businesses are made up of sole traders (approximately 450,000 businesses, or 73%), who have zero employees. Of businesses with employees (approximately 160,000), 62% have five employees or less, 77% have fewer than 10 employees, and 89% have fewer than 20 employees. The proportions of businesses and employees impacted by the different size options are presented in Figure 3. Most employees work for larger businesses, so the higher the threshold, the more employees are captured by the carve out.² However, the number of businesses and employees included in the carve out also depends on the interaction with the definition of low risk, which is discussed in the section on options to define low risk.

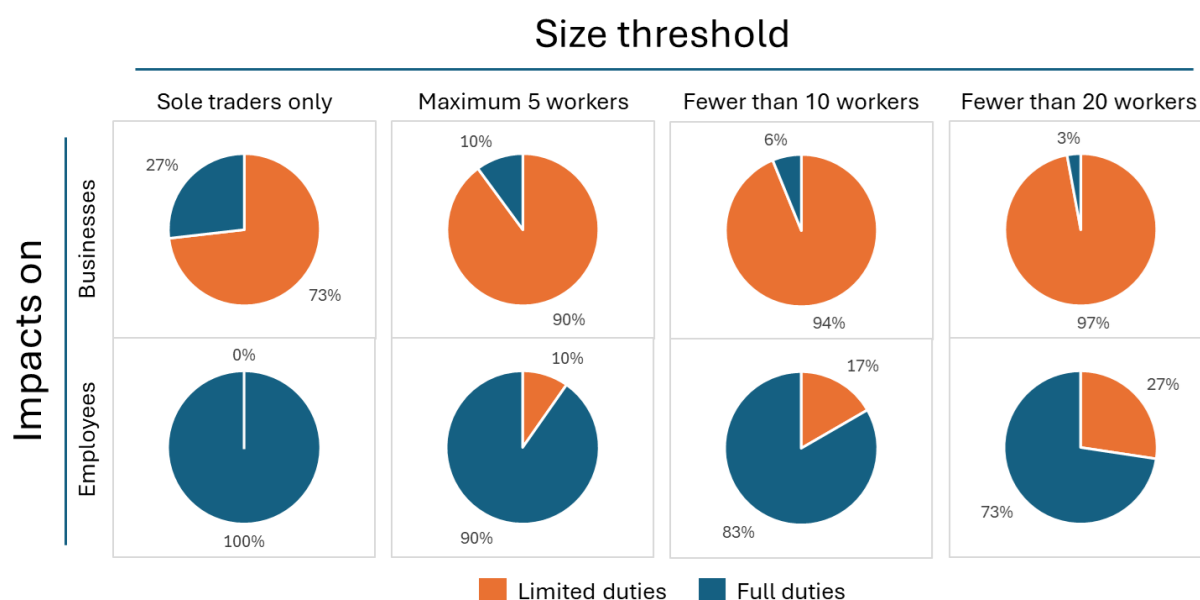


Figure 3 Proportions of businesses and employees impacted by the different size thresholds, based on New Zealand business demography statistics per February 2024.

² The HSW Act refers to ‘workers’, as it applies broadly. Statistical reporting only includes numbers on ‘employees’, therefore impact estimates will underestimate the number of workers.

Limitations to these options are similar for each option; any size threshold may provide challenges to PCBUs nearing that threshold. This may impact business growth or businesses with highly fluctuating numbers of workers (e.g. those of seasonal nature). Also, for all options the level of risk and ability to comply can be thought of as a curve, specific to each PCBU, which increases with the size and complexity of the PCBU, whereas a hard boundary operates as a step irrespective of PCBU.

How do the options compare to the status quo?

The size threshold is ultimately a design choice for giving effect to the carve out for small businesses. Certainty and transparency, cost effectiveness, and proportionality will be improved for more businesses with an increasing size threshold. The carve out is expected to improve health and safety outcomes, as it enables small PCBUs to focus on critical risk. Therefore, with a higher threshold we expect better health and safety outcomes for more businesses. However, it is important to note that there is a chance that more workers are at risk of injury from minor harm, as these no longer need to be managed by the PCBU.

Ultimately, the size threshold depends on the risk appetite for the trade-off between safety and size of the group that is carved out. There is no clear policy rationale to draw the boundary at any particular point. Sole trader is the easiest to self-identify. 20 has been used in other employment law context to delineate ‘small’ business.³

Determining PCBU size

The number of workers in a PCBU will likely fluctuate over time. Therefore, we need a clear mechanism to determine the number of workers at a given time, to provide clarity for PCBUs when they have limited duties or full duties under the HSW Act.

- Option calculation 1: a hard rule – while the PCBU has fewer than 20 workers, the PCBU has limited work health and safety duties. As soon as a PCBU takes on its 20th worker, it returns to having full duties.
- Option calculation 2: a soft rule – when PCBUs temporarily exceed the 20-worker threshold, they can use their own judgement to determine whether to scale up their risk management or whether to manage all risks year round.
- Option calculation 3: a yearly average – if the average number of workers over a year is 19 or less, the PCBU has limited work health and safety duties. The average number of workers over a year is calculated as the sum of the maximum number of workers in each month divided by the total number of months in the financial year.⁴ The limitation with this option is that it is retrospective, and a PCBU may inadvertently have exceeded the yearly average during the past year.
- Option calculation 4: maximum number of workers for part of the year – if the PCBU has a maximum of 19 workers for nine out of twelve months of the financial year, it has limited work health and safety duties. In the three further months it will not matter how

³ E.g. 90-day trials, and some worker representation provisions in the HSW Act (both since repealed).

⁴ For instance, a retail shop has 10 permanent workers. To cover the Christmas sale period, it takes on five more workers in November (a total of 15) and a further 14 workers in December (a total of 29). For its standard 12-month financial year, the average number of workers is therefore 12 (calculated as: $((10 \times 10) + 15 + 29)/12$) and the small PCBU limitation applies.

many extra workers the PCBU has, they will still be included in the small business exclusion. This allows for businesses that briefly have higher number of workers due to seasonal demands (e.g. Christmas or harvesting periods).

How do the options compare to the status quo?

The Health and Safety criterion is not applied to this decision, as MBIE has no conclusive evidence about the relationship between PCBU size and harm.

	Certainty and transparency	Cost effectiveness	Flexibility and durability	Proportionality	Overall assessment
Status quo	0	0	0	0	0
Option calculation 1 – A hard rule	0 A clear line in the sand around the number of employees creates certainty for employers and for the regulator. However, may not be as transparent as the status quo due to seasonal fluctuations.	0 Reduced compliance costs when under threshold, increase in transitional costs for businesses that may fluctuate around the threshold. Potential increase in costs for regulator to determine if business is over or under.	0 Increased flexibility in risk management for PCBUs under the threshold, but inflexible for PCBUs with naturally fluctuating numbers.	+ Under the threshold is more proportionate, however once a PCBU exceeds the threshold there may a disproportionate increase in WHS management.	+1 Easiest option to implement and understand for PCBUs, however not as flexible as other options regarding fluctuations in employment.
Option calculation 2 – A soft rule	-- Too many uncertainties created in allowing businesses and the courts to determine what ‘temporary’ means. This could be resolved with guidance.	+ Reduced compliance costs for small PCBUs with transitional costs mitigated. Potential increase in costs for regulator to determine if business is over or under.	+ Flexibility retained for PCBUs with naturally fluctuating numbers. Most likely the most flexible option.	++ Retains proportionality for small PCBUs, with the ability to allow for swings in staffing levels while accounting for a typical number of employees.	+2 Relatively easy for PCBUs to understand, provides a greater level of flexibility. However, may lead to additional confusion around ‘temporary’ and future cases for the courts to decide Parliament’s intent.

	Certainty and transparency	Cost effectiveness	Flexibility and durability	Proportionality	Overall assessment
Option calculation 3 – A yearly average	- Less clarity than the status quo. Due to the retrospective nature there are likely to be unintended consequences, or chances of inadvertent breach.	-- Increased compliance costs for having to calculate workers and base duties on this. May impact staffing choices.	+ Slightly more flexible for those who have fewer than 20 for most of the year. However, difficult to calculate, potentially making flexibility to employ more difficult.	+ Slightly better for PCBU's that are mostly small most of time.	-1 Least flexible, more confusing for PCBU's and retrospective, unlikely to achieve the purpose.
Option calculation 4 – Maximum number of workers for 9 out of 12 months <i>[Minister and MBIE's preferred option]</i>	0 Less clarity than the status quo. Allows for seasonal variation and may be more transparent for businesses.	++ Reduced compliance costs for small PCBU's, including those with temporarily increased staffing.	0 More flexible for PCBU's with naturally fluctuating numbers for part of the year. Likely to create frustration around inflexible approach to 3/9 split for businesses with more than one yearly fluctuation or greater than three months.	+ Slightly better for PCBU's that are mostly small most of the time.	+3 Relatively easy for PCBU's to understand, but arbitrary number of months removes the benefits of flexibility.

Options for defining low-risk sectors

Option low-risk 1: Using industry classifications

Option low-risk 1 uses Australia New Zealand Standardised Industry Classification (ANZSIC) codes to select deemed 'high risk' industries, and exclude these industries from the limitations on duties.

For statistical data collection and reporting, industries are grouped by ANZSIC codes. The codes are designed and used to standardise industry data to enable international comparisons of economy wide statistics, such as the economic activities of enterprises, business demography, enterprises by size, and other factors relevant to the economy.

Option low-risk 1 outlines a division between high and low-risk industries at one-digit ANZSIC codes to separate these into primary and goods industries versus service industries, as shown in Table 1. This is based on the assumption that primary and goods industries are higher risk than the service industry.

Table 1 High-risk and low-risk industries using one-digit ANZSIC codes to separate primary and service industries.

Primary and goods industries (high risk)	Service industries (low risk)
Agriculture, forestry, & fishing	Wholesale trade
Mining	Retail trade
Manufacturing	Accommodation & food services
Electricity, gas, water, & waste services	Transport, postal, & warehousing
Construction	Information media & telecommunications
	Financial & insurance services
	Rental, hiring, & real estate services
	Professional, scientific, & technical services
	Administrative & support services
	Public Administration & safety
	Education & training
	Health care & social assistance
	Arts & recreation services
	Other services

This division is reasonably aligned with the priority sectors set by WorkSafe as the focus for their efforts on the basis that they are the areas of highest risk. WorkSafe excluded 'Transport, postal, and warehousing' from their list as most incidents in this industry are related to road safety, which is regulated by the New Zealand Transport Agency Waka Kotahi (NZTA).

Using one-digit ANZSIC codes would enable reasonable self-identification for PCBUs. However, ANZSIC codes were not developed to be used for this purpose which may bring challenges and biases in their application to work health and safety duties. Additionally, one-digit ANZSIC codes capture broad industries (e.g. 'retail trade'), with many potential 'pockets' of high-risk sub-industries within low-risk industries, and vice versa. For example, branch-based banking versus online/telephone financial services, or retail involving hazardous substances versus retail involving consumer goods like clothing. This could lead to high-risk PCBUs having limited duties, which is against the policy intent. However, all PCBUs would still be required to manage

critical risks, and typically higher risk activities or sectors would continue to have duties through existing regulations, such as work with asbestos or hazardous substances.

Table 2 illustrates the estimated number of New Zealand businesses impacted by this option depending on the size threshold decision outlined under the above.

Table 2 Estimated impacts of defining ‘low-risk’ using one-digit ANZSIC codes to separate primary and goods industries from service industries.

Size threshold	Proportion of businesses with limited duties	Proportion of employees with limited duties
Maximum 5 workers	39 %	6 %
Fewer than 10 workers	49 %	11 %
Fewer than 20 workers	57 %	18 %

Additionally, 75% of sole traders would have limited work health and safety duties, as these are in the low-risk sectors.

Option low-risk 2: Using ACC harm data

Option low-risk 2 uses a combination of PCBU size threshold and historical trends of harm based on ACC claims data to determine which PCBUs have limited duties. Historical data on injury trends is the most likely predictor of injuries likely to occur in the future. However, there may be different claims rates for different industries – e.g. construction workers may be less likely to report less severe injuries than office workers, even though these injuries may occur at higher rates in construction.

We assessed the proportion of severe and fatal injuries from total injuries by industry per two-digit ANZSIC codes, for businesses with 1–19 employees. We used data for injuries that resulted in an ACC claim over the time period 2019–2020, but we could not repeat this with more up-to-date data due to time constraints on the analysis.

Thresholds could be set at a certain fatal and severe injury rate to designate ‘low’ vs ‘high’ risk sectors. For instance, these could be set at fatal and severe injuries as a proportion of total injuries at <10%, <15% or <20%. Figure 4 shows which sectors would be included as low or high risk at these thresholds.

Figure 4 also shows that certain sectors, typically considered high risk, could be included in a low-risk designation based on low injury rates. This could be due to low numbers of PCBUs with 1–19 employees in this sector, or due to the fact that they are highly regulated industries (e.g. coal mining). Additionally, the timing of this data may skew certain sectors due to the time range of this data including the COVID-19 pandemic (e.g. ‘hospitals’). It is therefore challenging to draw a sensible line to separate high-risk from low-risk industries.

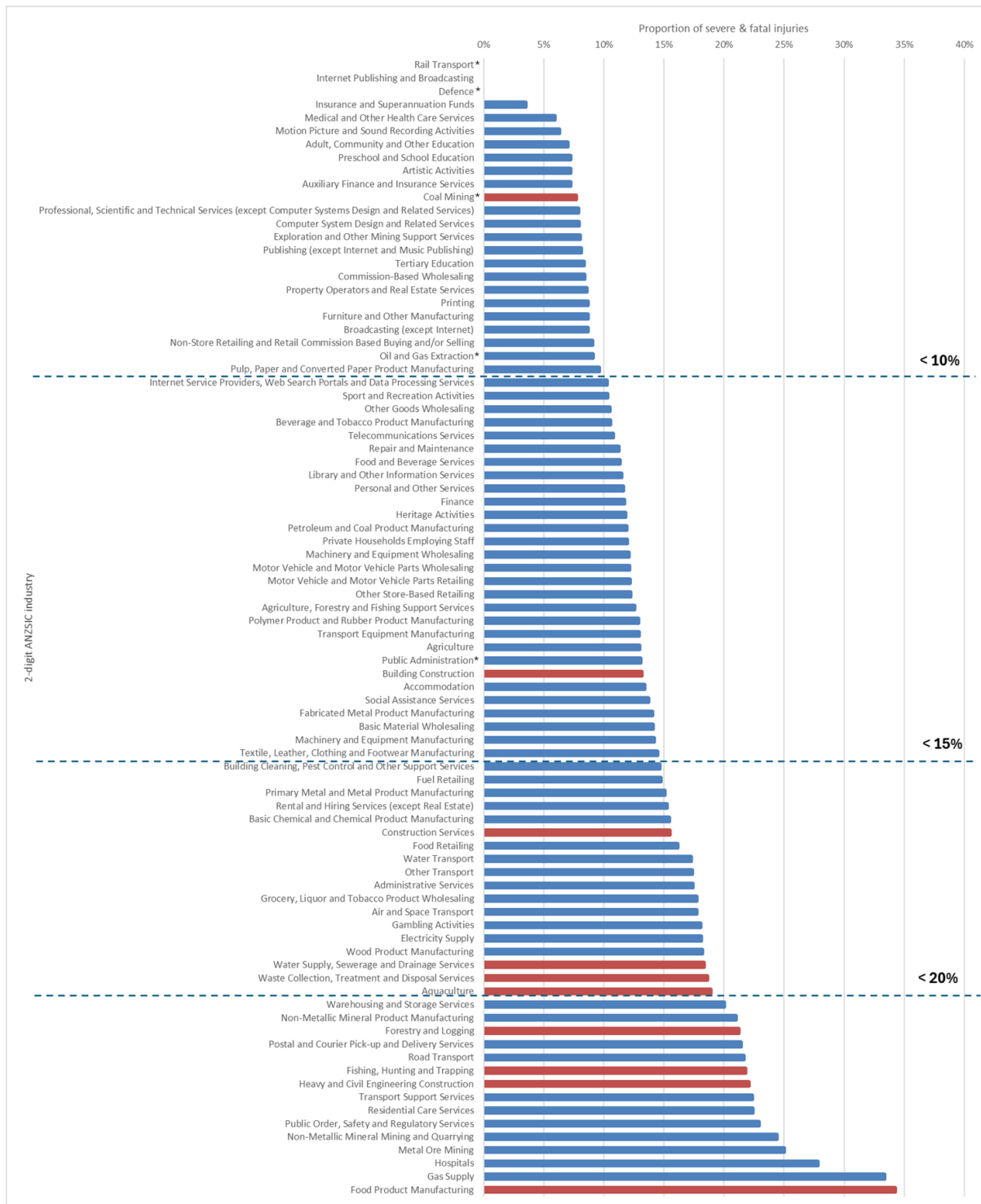


Figure 4 Proportion of fatal and severe injuries of the total injuries that resulted in an ACC claim for businesses at two-digit ANZSIC code with 1–19 employees (i.e., excluding sole traders) during 2019 and 2020. Red bars indicate typically high-risk sectors.

*Low numbers of PCBUs (≤ 6) with 1–19 employees may not accurately reflect the risk of the industry (this includes ‘rail transport’, ‘defence’, ‘coal mining’, ‘oil and gas extraction’, and ‘public administration’).

Using two-digit ANZSIC codes would possibly provide more of a challenge in self-identification for PCBUs, particularly for edge cases or PCBU who offer a range of services. Additionally, as noted before, ANZSIC codes were not developed to be used for this purpose, which may bring challenges and biases in their application to work health and safety duties.

Table 3 shows the proportions of businesses (excluding sole traders) and employees that would have limited work health and safety duties under the size thresholds options above.

Table 3 Estimated proportions of businesses and employees that would have limited duties based on PCBU size and risk threshold using ACC harm data.

Size threshold	Risk threshold		
	< 10 % fatal and severe injuries	< 15 % fatal and severe injuries	< 20 % fatal and severe injuries
Maximum 5 workers	15% of businesses 2% of employees	43% of businesses 7% of employees	47% of businesses 7% of employees
Fewer than 10 workers	18% of businesses 4% of employees	53% of businesses 12% of employees	58% of businesses 13% of employees
Fewer than 20 workers	21% of businesses 6% of employees	62% of businesses 20% of employees	68% of businesses 21% of employees

Of sole traders, 47% would have limited duties under the 10% fatal and severe injuries threshold, compared to 84% or 96% under the <15% and <20% fatal and severe injuries.

Option low-risk 3: Not defining low risk

Option low risk 3 does not attempt to define the risk level of PCBU using statistics, and places limitations on duties solely based on the risks the duties are attempting to manage and the size of the PCBU. This enables a greater level of self-identification for PCBU, as no determination of industry or sector is required. This option therefore draws upon the definition of ‘critical risk’ (see next section) to define small PCBU’s duties.

Table 4 shows the estimated number of businesses and employees that would have limited duties based on the size threshold options (excluding sole traders). This option would also limit duties for all sole traders, making up 73% of all New Zealand businesses.

Table 4 Estimated proportions of businesses and employees that would have limited duties based on PCBU size only.

Size threshold	Proportion of businesses	Proportion of employees
Maximum 5 workers	62%	10%
Fewer than 10 workers	77%	17%
Fewer than 20 workers	89%	27%

How do the options compare to the status quo/counterfactual?

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Safety	Overall assessment
Status Quo	0	0	0	0	0	0
Option low risk 1 – Industry classification into primary and service	+ Offers more certainty to PCBUs covered by the carve out. May pose challenges for PCBUs to self-identify with industry classification, and it re-uses this classification for a purpose it was not designed for.	+ Relatively easy self-identification for PCBUs, but large groupings may lead to unintended consequences.	- Locks industries into 'high' vs. 'low' risk in legislation, which is less flexible and may be less durable based on industry trends in work-related harm. Cannot accommodate new industries.	+ Enables greater proportionality for small PCBUs in defined low-risk industries. May not capture all low-risk 'sub-industries' within higher risk industries, and vice versa.	0 Between and within sectors there are counter-intuitive results of classification of 'high' vs. 'low' risk, which will cause some high-risk industries to have limited duties.	+2 While this option may lead to more proportionate outcomes for small PCBUs in selected industries, some harm may be missed and this approach may not reduce the need for external advice.
Option low risk 2 – Industry classification on level of fatal and severe harm	+ Offers more certainty to PCBUs covered by the carve out. May pose challenges for PCBUs to self-identify with industry or sector.	- More difficult to legislate, may create unintended consequences, and may not reduce the need for external advice due to self-identification issues.	0 Uses past trends in work-related harm, which is the best predictor of future harm occurring so may therefore be durable, but data series included Covid-19 years so may not be representative. Provides less flexibility by being defined in	+ Enables greater proportionality for small PCBUs in defined low-harm sectors. Recent high-fatality events may skew industries included (e.g. Whakaari eruption, pandemic data).	+ Harm data is a proxy for risk, some sectors could be deemed 'low risk' based on recent data while these are actually highly regulated high-risk industries with very few small PCBUs (e.g. coal mining).	+2 While this option may lead to more proportionate outcomes for small PCBUs in selected low-harm sectors, some harm may be missed and this approach may not reduce the need for external advice.

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Safety	Overall assessment
			legislation, and difficult to adjust for changes over time in harm rates.			
Option low risk 3 – No definition of low risk, threshold based on worker numbers only <i>[Minister and MBIE's preferred option]</i>	++ Provides an easier form of self-identification for PCBUs and therefore provides most transparency and certainty. May still pose challenges for edge cases, PCBU growth or PCBUs of seasonal nature.	+ Easiest to legislate and provides most benefit to most businesses, reduces the need for external advice with PCBU self-identification.	+ By not including a definition of low-risk sectors or industry, it is more flexible and durable. High risk activities or sectors can be regulated through development of or updates to regulations, rather than being included in a fixed definition of 'low risk' in legislation.	0 Assumes that high risk sectors and activities are appropriately regulated through secondary legislation, but we are aware that certain regulations are outdated or misaligned with industry best practice. This is not different from the status quo.	0 By not defining 'low risk', some harm may be missed which may result in higher occurrences of less than serious/critical harm.	+4 Option four seems most suitable to achieve the intended objectives. It impacts most small PCBUs and leaves flexibility and durability through future changes to regulations.

Options for defining critical risk

The definition of critical risk is at the centre of the health and safety reforms. It is intended to drive a more proportional response to workplace health and safety with more focus on the most significant risks, and a reduction in over-compliance.

The intent of the overall work health and safety reforms is to refocus the system on critical risks from work. Most of the proposals are designed to achieve this key shift, including previous decisions on sharpening the purpose of the HSW Act so that the principal purpose is managing the critical risks from work (see the 12 March 2025 RIS). This will be supported by ensuring that WorkSafe's main regulatory objective, and hence their guidance, support and compliance and enforcement action are focused on critical risk.

The limiting of duties for small PCBUs is also intended to make clear that they only need to focus on critical risks. The distinction between small and large PCBUs arises as there will be non-critical risks that still cause harm and add costs to society, ACC, and individuals, that larger PCBUs should have to manage. Larger PCBUs can manage these because of their increased scale.

The general duties specified in sections 36, 37, and 38 will be focused on critical risk only for small, low-risk PCBUs, with the exception of section 36(3)(e) – the requirement to provide adequate facilities for worker welfare – as it is not risk-based.

Section	Duty – limited to critical risk
36	Primary duty of care – requires the PCBU to ensure, as far as reasonably practicable, the health and safety of its workers and other people affected by its work
37	Duty of PCBU who manages or controls workplace - these PCBUs must ensure, so far as is reasonably practicable, that the workplace is without risks to the health and safety of any person
38	Duty of PCBU who manages or controls fixtures, fittings, or plant at workplaces - these PCBUs must, so far as is reasonably practicable, ensure that the fixtures, fittings, or plant at a workplace are without risks to the health and safety of any person

The general duties in sections 39 to 43 would continue to apply in full (to relevant PCBUs), as these are more specialist provisions, that do not tend to apply to low-risk businesses.

Section	Duty – to apply in full
39	Duty of PCBU who designs plant, substances, or structures – these PCBUs must, so far as is reasonably practicable, ensure that the plant, substance, or structure is designed to be without risks to the health and safety of any person
40	Duty of PCBU who manufactures plant, substances, or structures – these PCBUs must, so far as is reasonably practicable, ensure that the plant, substance, or structure is manufactured to be without risks to the health and safety of any person
41	Duty of PCBU who imports plant, substances, or structures – these PCBUs must, so far as is reasonably practicable, ensure that the plant, substance, or structure imported is to be without risks to the health and safety of any person
42	Duty of PCBU who supplies plant, substances, or structures – these PCBUs must, so far as is reasonably practicable, ensure that the plant, substance, or structure supplied is to be without risks to the health and safety of any person

43	Duty of PCBU who installs, constructs, or commissions plant or structures – these PCBUs must, so far as is reasonably practicable, ensure that the plant, substance, or structure installed is to be without risks to the health and safety of any person
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Option critical risk 1: Prescriptive – using activity as a proxy for risk

Option critical risk 1 proposes to define critical risks as those that are referenced in the existing work health and safety regulations. This would mean that the primary duty of care applies to small PCBUs when they engage in the types of activities covered by these regulations.

Currently, there are 18 sets of health and safety regulations, with risk-focused regulations typically covering higher risk activities, hazards, and sectors such as work with asbestos or hazardous substances (see Annex One). This approach is the simplest to ensure PCBUs understand the types of risks they should be focused on. This approach leverages the existing regulations that cover activities with known risks. It also provides a broad coverage as the regulations manage risks across a wide range of activities, hazards and sectors.

The key limitation associated with option critical risk 1 is that it will inevitably result in gaps in coverage. There will be some activities or sectors that have critical risks but are not currently covered by regulations. A practical example of this is that quad bikes are not specifically regulated under the HSW Act but there are clearly critical risks associated with their use; 67% of fatal agriculture incidents are the result of vehicle incidents.

The second limitation is that it puts the onus on government to use regulation if the system is perceived to be not working, for instance if an unregulated activity causes a number of fatalities. This comes with an opportunity cost for government but also means that lobbying activity within and between sectors may arise. This is because different PCBUs have different attitudes to whether regulations are required, as some prefer flexibility and some prefer certainty. Regulation may not have been the best option to address a particular issue, but this option may encourage greater use of it.

The third limitation is that some of the existing regulatory stock is out of date, and the rate of improvement has been slow. While the reforms intend to improve this, by only using regulations for targeted critical risks, where there is only one way of doing things, a transition period will be needed.

Option critical risk 2: Judgement based – the possible outcome defines risk

Option critical risk 2 proposes to define “critical risks” as those that are likely to cause death, or serious injury or illness:

- Injuries or illness set out in section 23 of the HSW Act as notifiable to the regulator – such as amputations, serious burns or lacerations, serious head, brain, spinal or eye injuries, or serious illnesses requiring hospital admission.
- Incidents that could expose a worker or any other person to a serious risk to their health and safety as set out in section 24 of the HSW Act as notifiable to the regulator – such as explosions, escape of gas, steam, or pressurised substances, fall from heights, or the collapse of a structure, plant, or excavation.
- The occupational diseases set out in Schedule 2 of the Accident Compensation Act 2001 (the AC Act) – such as cancers that are caused by work.

Option critical risk 2 proposes to leverage the notification requirements (s23–25 in the HSW Act) which are intended to capture the types of events that cause the most serious harm. These are the events that require the regulator to respond urgently/immediately. Notification requirements support the regulator to put out safety alerts to prevent wider harm from occurring, or near misses that could result in catastrophic failure. This approach is more aligned with industry practice for identifying critical risk associated with their business.

The key limitation associated with option critical risk 2 is that it would require PCBU's to use their judgment to assess the potential likelihood of their risks resulting in any of the notifiable events listed in the HSW Act or occupational diseases listed in the AC Act. As an example, they would need to assess whether the task is likely to cause 'serious' burns as opposed to 'minor' burns. Therefore, this approach may not provide the level of clarity that small PCBU's are seeking regarding their work health and safety duties. Additionally, a judgment-based approach provides less certainty for the regulator.

The main consideration in this option is risk rather than the activity or hazard, so while there is less certainty, this option is more likely to accurately identify risks, but it may leave some small PCBU's seeking more clarity.

Option critical risk 3: A hybrid approach – based on activities identified in the regulations but with a provision to require PCBU's to also exercise judgment.

Option critical risk 3 is a hybrid approach of options one and two. To give effect to this, PCBU's should be primarily focused on activities that are most likely to cause serious harm, as defined by activities in specific regulations. In addition, PCBU's would be required to consider whether they have any other risks that may result in serious harm in the workplace, where serious harm is as defined by s23-25 of the HSW Act and Schedule 2 of the AC Act (specifying occupational diseases). This risk-assessment should be linked to a concept of reasonableness.

This option would provide certainty to small PCBU's by creating a list of identified risk activities to guide their focus, while managing the risk that some critical risks may not be covered by the regulations through the added judgment-based test.

Option critical risk 4: Not defining critical risk

The final option is to not define critical risk in legislation, and leave it up to the PCBU to interpret what critical risk means. While this is an option, effectively it would not be a change from the status quo, as it offers no better certainty or clarity for small PCBU's on which risks to focus on. This approach would lead to inconsistent implementation of the carve out, and is likely to miss harm.

How do the options compare to the status quo/counterfactual?

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Safety	Overall assessment
Status Quo	0	0	0	0	0	0
Option critical risk 1 – Prescriptive	++ Greatest clarity for duty holders through a specified list of activities defined in regulations.	+ Low administrative burden for duty holders. More straightforward enforcement by the regulator.	- Relies on keeping regulations up to date.	0 Assumes that high risk sectors and activities are appropriately regulated through secondary legislation, but we are aware that certain regulations are outdated or misaligned with industry best practice. This is not different from the status quo.	0 Only known and already regulated risks are captured, likely leading to gaps in coverage.	+2 While providing greater clarity, some harm may be missed. Also heavily reliant on regulations being comprehensive and up-to-date for newly emerging risks or to resolve gaps in coverage.
Option critical risk 2 – Judgment based	- Broad definition may be harder to interpret for duty holders. No certainty. Having to make these judgements may lead to more need for external advice.	- Potentially higher administrative burden for duty holders due to requiring interpretation. Enforcement based on harm outcomes may be difficult for the regulator.	+ Broad definition will be able to capture newly emerging risks. Will rely on ongoing risk assessments by duty holders.	+ More proportionate option for businesses through enabling them to narrow the scope of risks to manage. However, interpretations will differ between businesses, likely leading to inconsistency.	0 May be better than option critical risk 1 due to the focus on harm severity, as long as judgement is well exercised – otherwise, may result in more harm.	0 While better able to capture risks that lead to serious harm, there may be challenges in interpretation and enforcement.

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Safety	Overall assessment
Option critical risk 3 – Hybrid approach <i>[Minister and MBIE's preferred option]</i>	+ Clear focus on activities listed, with a catch-all for when a PCBU recognises a critical risk that is not specifically regulated.	+ Still requires an interpretation of serious harm, but regulatory list gives clarity. Clearer enforcement based on existing regulations and harm outcomes.	+ May rely on regulatory updates to capture risks but the broad definition should capture unforeseen changes in risks.	+ More proportionate as based mainly on already identified risks (in regulations), and also allows for judgement to cover gaps.	+ Combination of regulations and judgement should provide good coverage of the critical risks that need managing, and promote better outcomes through appropriate focus.	+5 This option guides focus of PCBUs on defined activities while enabling judgment-based assessment of other risks. While it may pose challenges in interpretation and enforcement, it enables better coverage of critical risks.
Option critical risk 4 – No definition	- Least clear option for duty holders – requires them to exercise a judgment relating to a fundamental change (focus only on critical risk) without any legislative guidance on what this means.	- Requires each PCBU to interpret 'critical risk', causing highest administrative burden and least consistency, thereby complicating enforcement.	0 No change from the status quo.	0 No change from the status quo.	0 No change from the status quo.	-2 This is effectively no change from the status quo due to the lack of certainty and clarity for PCBUs resulting from not defining critical risk, except it is worse as it gives them no help in how to limit their duties.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

MBIE recommends the following set of options to best achieve the policy objectives:

1. Option size 3: Defining 'small' as 'fewer than 20 workers',
2. Option calculation 4: Determining PCBU size through the maximum number of workers for nine out of twelve months of the calendar year,
3. Option low risk 3: Not defining 'low risk' in the HSW Act, and
4. Option critical risk 3: Defining 'critical risk' using a hybrid approach of specifying a list of high-risk activities based on existing regulations, with a judgment-based catch-all to cover other unlisted but risky activities that may cause serious harm.

This set of options is our recommended approach to achieve a limitation on duties for some PCBUs. It prioritises breadth of coverage, and proportionality over certainty. Compared to the status quo it will be more difficult for the regulator.

How this set of options could work in practice is explained below. For example, the work health and safety duties of an orchard or a clothing retailer depending on the number of workers they have is shown in Table 5.

Table 5 Example of work health and safety duties under the preferred set of options to define small, low-risk, and critical risk.

PCBU	Orchard	Clothing retailer
<20 workers	Has a duty to manage critical risks, e.g.: <ul style="list-style-type: none"> • machinery and vehicle use - rollovers, entanglement, crushing injuries, struck-by hazards • working at heights - falls • chemical use (pesticides, fertilisers) - poisoning, respiratory issues, skin burns, long-term illness • electrical hazards - electrocution • heat stress / sun exposure - heat stroke, dehydration, skin cancer • noise exposure - hearing loss from tractors, chainsaws, sprayers 	Has a duty to manage critical risks, e.g.: <ul style="list-style-type: none"> • Fire hazards - fires from electrical faults, stock combustibility • Electrical hazards - electrocution, fire from faulty cords or overloaded outlets • Security and lone working • Emergency procedures for safe entry and exit
20+ workers	Has a duty to manage critical risks as listed above, as well as non-critical risks, e.g.:	Has a duty to manage critical risks as listed above, as well as non-critical risks, e.g.:

	<ul style="list-style-type: none">• manual handling and repetitive tasks - sprains, strains, musculoskeletal injuries*• slips, trips, falls - bruises, sprains, minor fractures*• fatigue and mental health - impaired judgment, increased injury risk*	<ul style="list-style-type: none">• Armed robbery or aggressive customers - physical harm, psychological trauma*• Manual handling - back injuries or strains from lifting boxes of stock*• Slips, trips and falls - slippery floors, stock in walkways, uneven surfaces*• Fatigue and stress - poor decision making, mental health strain, burnout*• Ergonomic issues - RSI, posture-related pain*• Cuts and lacerations - box cutters, broken glass*
* A small PCBU may decide to continue managing these risks, but would not have the duty to manage these risks under the HSW Act.		
Enforcement – a fatality		
<20 workers	A worker is crushed to death. There would be a factual enquiry about the nature of the risk that led to the death, AND about the size of the PCBU to determine whether a specific duty was breached.	
20+ workers	A worker is crushed to death. There would be a factual enquiry about the nature of the risk that led to the death, AND about the size of the PCBU. However a general duty could have been breached as well as a specific one.	
Compliance – proactive		
<20 workers	May not be worthwhile to have proactive compliance activity as not efficient for the regulator to sort through different duties.	
20+ workers	Status quo.	

Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?

Yes. The Minister’s preferred option is the same as MBIE’s recommended option.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	One-off costs in understanding new requirements, potential for increased work-related harm of low-impact injuries opposed to high-impact injuries	Low-medium	Low
Regulators	<p>Training for inspectors and other staff on changes</p> <p>Changes to business processes (e.g. incident notification processes which would need to identify employee numbers upfront, incident investigation processes etc)</p> <p>IT system changes to support the above</p> <p>Changes to existing guidance material for duty holders</p> <p>Development of new guidance for duty holders to support changes to comms material etc</p> <p>Reviewing Legal and operational policy positions based on the current law</p>	Medium	Low
Others (e.g., wider govt, consumers, etc.)	Cost of policy work on legislative change		
Total monetised costs			
Non-monetised costs		Low-medium	Low

Additional benefits of the preferred option compared to taking no action			
Regulated groups	Reduces unnecessary compliance costs by shifting focus and action to critical risks	Medium	Low
Regulators			
Others (e.g., wider govt, consumers, etc.)			
Total monetised benefits			
Non-monetised benefits		Medium	Low

Chapter 3: Clarifying officer duties

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

As described in Chapter 1, the HSW Act establishes broad-based general duties that apply to all types of work and workplaces. The officer duty is one of these general duties, the others being the PCBU primary duty of care, the worker's duty and the duty of other persons at the workplace.

Background to the officer duty

The officer duty in the HSW Act was designed to be fairer, more effective and more consistent with other governance roles than was the case under the previous Health and Safety in Employment Act 1992 (the HSE Act). This was a response to the failures of Pike River Coal Ltd.'s Board and executive management to ensure there were effective systems and resources to manage health and safety risks.

The HSW Act's officer duty was designed to be consistent with governance roles in the wider business sense, as it broadened the familiar concept of due diligence to include health and safety. It was also designed to create the right incentives for directors to be proactive and to focus on the things they can do to make a difference. Under the HSE Act there were incentives on officers to avoid inquiring into health and safety matters as their risk of liability was reduced if they were not involved.

The HSW Act officer duty is drawn from the Australian Model Health and Safety law, but the scope of who is an officer was narrowed to ensure that the application to management roles is limited to the most senior managers, such as the chief executive.

The HSW Act provisions relating to officers

Definition

Section 18 defines an officer as:

- a director of a company or someone in an analogous position
- a partner of a partnership
- a general partner in a limited partnership
- any person in a position comparable to a director for a body corporate or an unincorporated body, and
- any other person occupying a position in the PCBU that allows them to exercise "*significant influence*" over the management of the PCBU, with a chief executive as the specific example.⁵

⁵ In theory, in a very large PCBU the officer duty could extend to other senior managers, depending on the circumstances, although this is untested. In addition, as noted above, the New Zealand law specifically narrowed the application to the most senior managers, which is a departure from the Australian model law.

A Minister of the Crown acting in that capacity and anyone who merely advises an officer are specifically excluded from the definition.

The officer duty

The officer duty is a governance duty and is defined in section 44. It is a duty on an individual to exercise due diligence and is separate from the PCBU duties which focus on preventing harm.

An officer is required to “exercise due diligence to ensure that the PCBU complies with [any]...duty or obligation” that the PCBU has under the HSW Act (s44(1)).

Section 44(2) addresses the wide range of circumstances and business structures in which officers may exercise this duty by requiring an officer to “exercise the care, diligence, and skill that a reasonable officer would exercise in the same circumstances”, and linking this to the nature of the PCBU and the position of the officer and their responsibilities.

Section 44(4) provides an indicative list of the reasonable steps that constitute due diligence:

- a) *to acquire, and keep up to date, knowledge of work health and safety matters; and*
- b) *to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and*
- c) *to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and*
- d) *to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and*
- e) *to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and*
- f) *to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).*

Offences and penalties

An officer who is found to have breached their duty would be subject to the maximum penalties available for individuals. The most serious offence, reckless conduct (section 47), has a maximum penalty of five years imprisonment, either as an alternative to a fine of up to \$600,000, or in addition to a fine.

The most commonly prosecuted offence is where breach of the duty has the potential to cause death or serious injury or serious illness (section 48). For an individual officer the penalty is a fine not exceeding \$300,000.

An officer may also have other roles in a PCBU

As outlined above, there is a range of positions that fall within the definition of an officer, and some of the people who have an officer duty will also work in other capacities in the PCBU. One example is a chief executive, as a person occupying this role is specially cited as an example of someone in a position that allows them to exercise “*significant influence*” over the management of the PCBU. Others who may both fall within the definition of officer and work in some other capacity in the PCBU include owner operators, partners or sole traders, as illustrated in Figure 6 below.

While people in these various roles are all considered officers, the “care, diligence and skill” they must exercise to meet their officer duty is partly determined by the position they occupy in the PCBU. For instance, a board member and the chief executive are both officers, but what is reasonable is unlikely to be the same for these two people in quite different positions in the PCBU.

In many other instances, the PCBU will not have a separate board, so the officer(s) will most likely work in the PCBU in various roles and will also have a worker duty, as does the chief executive in the example above.

For instance, in the case of an owner-operator, the owner provides both governance and management of the PCBU and will hold the officer duty as well.⁶

The following figures illustrate who holds the officer duty and the worker duty in PCBUs governed by directors who do not work for the PCBU (Figure 5) and PCBUs that are governed by the senior management of the PCBU (Figure 6). The governance arrangement in Figure 6 is more common in New Zealand, however some large PCBUs with many employees will use the governance arrangement in Figure 5.

E.g. Company, body corporate or unincorporated body

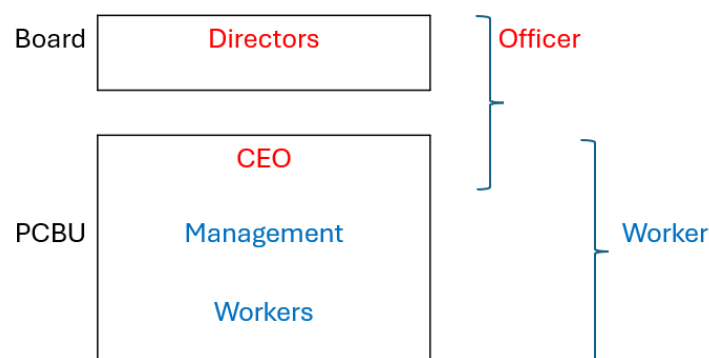


Figure 5 Officer duty in an organisation governed by directors who do not work for the PCBU.

⁶ The owner will not have an individual duty as the PCBU unless the business is personally held.

E.g. A sole trader, company, partnership, limited partnership, body corporate or unincorporated body

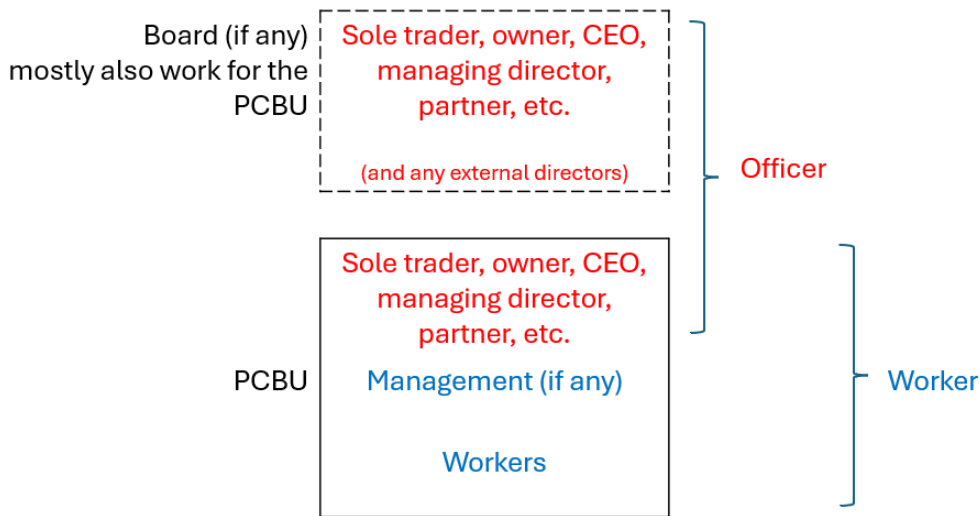


Figure 6 Officer duty in an organisation governed by senior management.

What is the policy problem or opportunity?

As noted above, the officer duty is broadly defined and flexible to deal with different business arrangements. However, in practice, this flexibility creates ambiguity about who is an officer and the extent of the duty in specific situations. Although officers include chief executives (as persons who exercise a “significant influence” on the management of the PCBU) the duty is specifically intended as a governance duty, to be delivered through due diligence.

Courts have interpreted the legislation in a way that is not fully aligned with the policy intent that the officer duty is limited to governance activities (e.g., setting policies and procedures, and monitoring practices) and excludes management or operational activities where an officer also has a ‘day job’ working for the PCBU. For example, in *Sarginson*,⁷ the High Court rejected the argument that the duties imposed on officers by the HSW Act are limited to obligations of governance. Instead, it held that due diligence depends on the nature of the PCBU and the role the officer occupies in it. *Sarginson* was a partner in an earthmoving business who piloted an overloaded helicopter attempting to land in cloudy conditions, killing his business partner who was a passenger. *Sarginson*’s operational decisions in loading and flying the helicopter were considered by the court as part of his officer duty.

The apparent ambiguity in the HSW Act provisions relating to officers and the officer duty, means some officers are unclear about the extent of their duties. Many officers likely wear multiple ‘hats’ in the PCBU as both an officer and a worker in the PCBU (e.g. a chief executive, partner, or owner-operator). Data is not available about the proportion of officers with multiple roles, however, we consider this is likely to be the case for most officers given that the majority

⁷ *Sarginson v Civil Aviation Authority* [2020] NZHC 3199.

of New Zealand's businesses are small and do not have a board of directors, or, even if there are directors or partners, these people also work for the PCBU (Figure 6).⁸

We also heard in consultation that those who hold only a director role are also unclear as to the extent to which they must delve into operational matters to fulfil their duty. This is exacerbated by the personal liability of officers under the HSW Act, by overly cautious advice, and by court interpretations of the officer duty. The general lack of guidance for duty-holders is also an issue here. The available guidance was produced by the Institute of Directors (IoD) in 2024 and is focussed on PCBUs with more formal governance arrangements, i.e. a board of directors who do not also work for the PCBU (Figure 5 above). There is little advice tailored to the more common scenario of officers who also work in the PCBU.

These factors combined are leading to officers focusing on risk aversion and putting energy into unproductive tasks that assist neither the general governance of the PCBU nor health and safety outcomes.

Without intervention, these issues are expected to continue, driving risk aversion and excessive compliance, through activities like paperwork. In recognition of this, Cabinet agreed on 24 March 2025 "to clarify the application of the HSW Act to more clearly distinguish between officers' duties and management responsibilities to enable officers to focus on governance and not operational matters" [CBC-25-MIN-0004 refers].

What objectives are sought in relation to the policy problem?

In line with the Cabinet decision referenced above, the objectives of this analysis are those of the wider health and safety reforms, particularly the need to increase business certainty, in particular by:

- strengthening the separation between the duties of officers and the PCBU so officers focus on strategic oversight, while management are responsible for the operational implementation of health and safety systems, and
- providing greater clarity for officers who work for the PCBU about how this affects their officer duty.

What consultation has been undertaken?

MBIE held a wide-ranging public consultation in 2024 on the work health and safety regulatory system. Stakeholder feedback largely focused on lack of certainty, rather than problems with the intent of the Act. There were nearly 500 submissions responding to the public consultation documents and online survey, and feedback from around 600 attendees at the roadshows and site visits.

Of the written submissions, less than 20 (about 4%) mentioned "directors". Comments from these submitters included:

- One employer said "*Knowing the CEO or directors are culpable is good and I think it does encourage those officers to be attentive to safety*".

⁸ Most businesses in New Zealand are small businesses, with 97% having less than 20 employees (575,700 businesses), from <https://www.mbie.govt.nz/dmsdocument/27313-small-business-factsheet-2022-pdf>

- Someone submitting on behalf of an organisation said that the “*broad scope of the HSW Act presents significant challenges, particularly for businesses in low-risk sectors. One size fits all, directors duties, prequals etc all bring compliance focus.*”
- The Law Society shared its view that the meaning of ‘officer’ is unclear “*the broad ‘catch-all’ in section 18(b) of the HSW Act causes uncertainty – for example, it is unclear whether or not senior managers who are not the CEO of a business are considered ‘officers’.*”
- It was indicated that not all directors are sufficiently knowledgeable about health and safety. “*This knowledge gap undermines compliance and leads to inadequate safety practices*”
- The Law Society noted that “*Clear, accessible, and current guidance about key aspects of the HSWA would benefit all duty-holders*”
- The threat of director prosecution was noted by one worker as leading to efforts to shift liability to workers. “*This excess of paperwork is not what improves safety outcomes on sites, it is the attitudes/culture and leadership from the top down*”.

The Institute of Directors (IoD) submission stressed the role of governance in health and safety. It considered the line between governance and operational responsibilities is blurred “*creating uncertainty and confusion for boards/directors*” and recommended making a clearer distinction in the legislation “*between governance and executive management*”.

The IoD supported retaining the duties of officers “*with any amendments focused on clarifying existing responsibilities rather than fundamentally altering them*” and “*better focused approved codes of practice, which provide ‘safe harbours’*”.

The IoD also said the “*any legislative amendments should focus on improving the implementation and regulatory guidance, rather than introducing extensive changes that could undermine stability or create uncertainty*”.

Some small and medium-sized enterprises (SMEs) that responded to the 2024 consultation and roadshows cited a need for better clarity and guidelines about their duties. Although they did not distinguish between their PCBU and Officer duties, we assume this uncertainty extends to both types of duties.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

The following criteria will be used to compare options to the status quo. They are the same as those used in the other chapters of this RIS:

- **Transparency and certainty:** the duties, obligations and rights of employers and workers are clearly set out and complied with, and the responsibilities and accountabilities of regulatory agencies are clear and understood by both agencies and duty holders.
- **Cost effectiveness:** compliance and transitional costs for the duty holders and for the regulator are minimised, for the benefits they deliver.

- **Flexibility and durability:** the regulatory regime is flexible and adaptive so that it can readily accommodate change and operate effectively in a dynamic context; and incentives are in place to encourage compliance with regulatory requirements.
- **Proportionality:** the degree of regulation and regulator's actions are commensurate with risk and will target key risks.
- **Health and safety:** will reduce harm arising from work.

What scope will options be considered within?

The scope of feasible options has been limited by the March 2025 Cabinet decision as referenced above at page 39. This has focussed our policy development on options that would clarify the officer duty as it applies to management activities.

Both regulatory (i.e. legislative) and non-regulatory (e.g. the provision of ACOPs and/or guidance) options have been considered and a mix is included in the recommended options.

In setting the scope of the options, consideration was given to the system in Australia (the New Zealand system is derived from Australia), and to a lesser extent the UK.

What options are being considered?

Status quo option

Option One – Status Quo

This is outlined above in the discussion of the policy problem at pages 38–39.

Options to clarify the officers' duty excludes management

Option Two – Amend the HSW Act so the officer duty does not expose an officer to any liability for management actions

This will address the precedent effect of court decisions that have broadened the officer duty to include the management activities of officers who also work in the business, for instance chief executives and partners.

Option Two involves changes to:

- limit the officer's duty 'due diligence' to the six reasonable steps currently identified in the Act; and
- clarify that where an officer works in a PCBU, the HSW Act is not to be read to include what they do in their operational role, for instance as a chief executive, within the scope of their officer duty.

This option would give effect to the original policy intent of the HSW Act that officer duties are governance rather than management activities, and it will do this for officers in the full range of business types and structures, from large businesses with formal governance structures down to owner-operators. Option Two will contribute to the objective of the wider reform to reduce costs for business by helping officers to understand their duties, which will reduce risk aversion and may help reduce a culture of excessive reliance on paperwork throughout the PCBU.

Clarifying that the officer duty does not include any work the person does as management in the PCBU means the officer duty of a person like a chief executive who works in the PCBU is similar to that of directors who do not work at the PCBU.

Option Three – Amend the HSW Act to clarify that CEOs are not officers if there is a board with most members not working in the PCBU

This option could be implemented alone or as a complement to Option Two.

If implemented alone it would clarify the 'double hat' issue for the small group of chief executives that report to a board that is separate from management. Although benefitting a small proportion of PCBUs, it is likely that these would include a number of large businesses employing many people. This option would rely on Option Two to clarify the officer duty for officers who are not chief executives.

If implemented alongside Option Two the scope of the officer duty would be clarified for all situations. This is, however, a more complex way of achieving essentially the same as Option Two alone, i.e. clarifying the scope of the officer duty for all situations.

More work would be needed to clearly define 'chief executive', and to decide whether it is appropriate to require a majority of board members to not work at the PCBU. This option introduces potential tension between the incentives for directors who retain the officer duty, and the chief executive whose personal liability for health and safety (as a worker) would be considerably less than the personal liability of the directors. In addition, if Option Two is successfully implemented it would clarify the officer role of chief executives, without the complexity of treating them differently to other officers.

Option Four – Amend the HSW Act to confine the officer duty to directors who do not also work for the PCBU

This Option replaces Options Two and Three. Under Option Four, the vast majority of businesses would not have anyone required to exercise the officer duty, nor anyone who is personally liable for health and safety governance. Owner-operators, management teams and chief executives would not be required to wear more than one hat – they could just focus on their day job.

If this option is selected, we will consider the definition of director who does not work for the PCBU, and whether, for example, partners should still have officer duties.

The effect of this Option on health and safety outcomes is unclear. While it would remove from executive managers the officer duty to take time to understand and plan for health and safety, the same people would be working in and running the PCBU, so they arguably still have to make equivalent decisions when considering the PCBU's primary duty of care and take follow-up actions.

This change risks making officers who work for the PCBU less accountable for their health and safety performance. Following a serious health and safety event that leads to a conviction and fine for breach of duties the PCBU may be wound up, but the owners and those responsible for decisions leading to the breach haven't faced any prosecutions as individuals and so can move on to establish a new business.

Option Four could have unintended effects on business' decisions on their form and structure, i.e. whether to have directors who don't work at the PCBU. This Option could also increase

reluctance among people who do not work at the PCBU to take up director positions, given they will be among the relatively few individuals with significant individual liability for HSW Act officer duties.

Option Five – Amend the HSW Act to establish an executive management duty that is different from the officers’ governance duty

Under Option Five, the new executive management duty could be either an additional duty for the chief executive, alongside their officer duty, or a duty that replaces their officer duty, i.e. the chief executive would no longer be an officer. If the executive management duty replaces the officer duty, this Option would effectively replace Option Six.

The executive management duty could cover such responsibilities as:

- providing information to help officers understand risks and ways to respond to them,
- giving effect to governance decisions (putting in place resources and processes to address health and safety risks and systems to consider and respond to incidents and risks), and
- providing information to enable officers to verify their decisions are being implemented.

Option Five risks creating new incentives for the behaviours and relationships of chief executives and boards that could divert attention from health and safety decision-making. For example, a chief executive could use their greater access to information to steer boards towards decisions that lessen the chief executive’s exposure under the new duty at the expense of robust health and safety governance.

This option would add complexity and a new area where clear guidance would be needed, as the law would take time to develop. It would be challenging to define this executive management duty, who it would apply to, and to set out expectations in ways that are general enough to cover the full range of businesses and executive leadership roles and yet provide sufficient clarity for a duty with personal liability. Clarifying the boundary between the PCBU duty and the executive management duty may be also challenging.

Supporting option to clarify due diligence

Option Six – Amend the HSW Act to clarify the current six due diligence steps

This is a supplementary option to support other legislative change options. It is expected to be a relatively straightforward legislative change.

Option Six amends the HSW Act to clarify that the due diligence duty “(a) to acquire, and keep up to date, knowledge of work health and safety matters” is limited to the acquisition of knowledge focussed on risks relevant to the PCBU, rather than all health and safety. The current scope of the duty is arguably unreasonably wide, so this narrowing would make sense. The other five steps in the current list are considered reasonable.

Option Six also makes the six due diligence steps in section 44(4) clearer by organising the steps in categories of health and safety governance activity to aid understanding. Subject to PCO’s drafting decisions, these categories could be:

understand and keep up to date on the general health and safety risks of their PCBU:

- (a) to acquire, and keep up to date, knowledge of work health and safety matters relevant to the PCBU
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations

ensure that their PCBU has the resources, processes and information to manage the risks:

- (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking
- (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information
- (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act

verify that their PCBU is using those resources, process and information as intended:

- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Supporting non-regulatory option, that could also be a substitute for regulatory change

Option Seven – ACOPs and/or guidance clarifying who is an officer and their due diligence duties

This Option would increase certainty for businesses through the production of ACOPs and/or guidance to address identified issues. This is a supplementary Option to support legislative change options. In some cases, existing guidance or ACOPs could be updated to give effect to this. This option could also be an alternative to regulatory intervention.

ACOPs and guidance would need to be developed over time, perhaps starting with the many businesses without separate boards, which are often smaller businesses and owner-operated businesses. Use would be made of examples of different types of business models and duty-holders who wear multiple hats.⁹ Subject to other policy changes in the current reform package, ACOPs would provide a safe harbour where conditions are met [CBC-25-MIN-0004 refers].

Option Seven includes clarifying:

- who is an officer in different business structures
- the “*reasonable steps*” required to meet the officers’ due diligence duty, including the boundary with management responsibilities
- how “*the nature of the business or undertaking*” and “*the position of the officer and the nature of the responsibilities undertaken by the officer*” affect officer duties, including who has the officer duty and the scope and nature of that duty, and

⁹ For example, small and large company, partnership, sole trader, and different officer situations such as, director not working at PCBU, officer who also works in the PCBU, partner, CEO, owner and manager.

- how the requirement “*to acquire, and keep up to date, knowledge of work health and safety matters*” is proportionate to the circumstances and risk profile of smaller PCBU.

Option Seven addresses requests from submitters for guidance on officer duties, to help people understand practical ways to meet their officer duties. While ACOPs and guidance do not change the law, they can clarify important aspects of it. This includes the policy intention that officers’ duties are a governance duty. This Option would also contribute to increasing business certainty about what to do. This in turn can help reduce unnecessary costs for business.

Feedback on this option from WorkSafe indicates that it may not be possible for ACOPs or guidance to say who is an officer in all business arrangements. Nevertheless, MBIE considers it would be feasible to produce guidance with examples of who holds the officer role in the more commonly used business arrangements.

Option Seven is recommended regardless of preferred legislative option, as it is desirable that guidance is given on how the applicable legislative framework applies to real world situations.¹⁰ In the event that a non-regulatory approach is preferred, this option could be used to help clarify the status quo. However, it is unlikely that ACOPs and guidance alone could fully address the ambiguity in the current legislation, or fully achieve the policy objectives.

What stakeholders told us about the options in targeted consultation

Targeted consultation was undertaken in April 2025. This occurred as one-hour video calls, and enabled the initial reactions of those consulted to be collected. All those consulted noted that this area was complex and risked unintended consequences.

The Employers and Manufacturers Association (EMA) was not in favour of changes that would introduce extra complexity that they would need to explain to their members. They were also concerned that extra complexity might inadvertently create loopholes. The EMA supports Options Two and Six, in part because those options are focussed on clarifying rules rather than creating new rules. Retail NZ expressed support for Options Six and Seven as “sensible” options. BusinessNZ supported Options Two, Six and Seven.

Federated Farmers recognised there are inherent risks in agriculture. The majority of farmers are owner-operators. They expressed concern that if a worker does not do what they are told and someone is hurt, this can lead to penalties for officers.¹¹ They felt that there is some confusion among farmers about their duties as PCBU and as an officer and said that any clarification would be helpful. Federated Farmers supported the production of more ACOPs (Option Seven) and the clarification of the officer duty in Option Six. They felt that Option Three (chief executive not being an officer if most board members do not work for the PCBU) would probably create more confusion, rather than less. Their initial reaction was that Options Two, Six and Seven would work for agriculture, although they wanted more time to consider the options.

¹⁰ We note that the Business Leaders Health and Safety Forum is working with the IOD to develop more guidance on officers’ duties.

¹¹ Although this may be a concern currently held by some officers, the risk of officers being held accountable is low. Any risk more likely sits with the PCBU.

How do the options compare to the status quo/counterfactual?

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Health and Safety	Overall assessment
Option One – Status Quo	0	0	0	0	0	0
Option Two – Amend the HSW Act so the officer duty does not expose an officer to any liability for management actions	++ Clarifies officer duty is governance in the Act.	++ Significant benefits for duty holders and low cost to regulator.	0 Legislative change, so inflexible. There is a track record of courts not interpreting the Act as intended.	++ Degree of regulation similar, but better targeted.	0 Small reduction in accountability for officers working for PCBU is not expected to impact health and safety.	+6
Option Three – Amend the HSW Act to clarify that CEOs are not officers, if there is a board with most members not working in the PCBU	+ Increased clarity for a small number of PCBUs, but extra complexity in system.	+ Benefits a small number of PCBUs, likely including some big employers. All CEOs would need to decide if they are still officers.	0 Legislative change, so inflexible.	+ Reduces regulation of CEOs with a board, some of which may not be low risk.	0 Small reduction in accountability for officers who are CEOs is not expected to impact health and safety.	+3
Option Four – Amend the HSW Act to confine the officer duty to directors who do not also work for the PCBU	++ Increased clarity for most PCBUs, and extra complexity in system.	-- Transitional costs for most PCBUs. May reduce focus on safety.	0 Legislative change, so inflexible.	- Reduces regulation of officers, but most PCBUs would have no one individually	- Significant reduction in accountability for officers working for PCBU risks impact	-2

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Health and Safety	Overall assessment
				accountable for health and safety.	to health and safety.	
Option Five – Amend the HSW Act to establish an executive management duty that is different from the officers’ governance duty	- Uncertain impact on certainty and extra complexity in system.	-- Transitional costs and complexity for most PCBU and regulator. Unclear what benefits would accrue.	0 Legislative change, so inflexible.	-- Increases regulation of officers who also work in the PCBU (i.e. most officers).	0 Change is not expected to impact health and safety.	-5
Option Six – Amend the HSW Act to clarify the current six due diligence steps	+ Clarifies due diligence steps in the Act.	+ Benefits for duty holders and low cost to regulator.	0 Legislative change, so inflexible.	+ Degree of regulation similar, but better targeted.	+ Increased clarity may have a small positive impact on health and safety.	+4
Option Seven – ACOPs and/or guidance clarifying who is an officer and their due diligence duties	+ Does not change rules but makes them clearer. ACOPs take time to implement. (Could be ++ if safe harbour implemented [CBC-25-MIN-0004 refers]).	+ Significant benefits for duty holders. Slow & relatively costly for regulator and industry to produce ACOPs.	+ Flexible, though slow to produce.	++ Focuses regulator’s efforts on light touch regulation /prevention.	++ Increased clarity expected to benefit health and safety.	+7

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

We recommend Option Two supported by Options Six and Seven. This package of options scores more highly than Option One (status quo). It will target the underlying problem (that courts have not interpreted the officer's duty as a governance duty), clarify the steps to meet the statutory due diligence requirements, and provide the guidance sought by submitters.

The alternative Options Three, Four and Five are more complex and may increase confusion, as they change who holds the officer duty, or create a situation where some chief executives would be officers and some would not, or create a new duty.

The recommended package of Options Two, Six, and Seven are relatively light touch interventions that address submitters' desire to clarify the status quo without substantively changing the system. These options are relatively low cost to implement for both regulated parties and the regulator.

It is not possible to quantify the benefits of the proposed options. However, it is expected that the benefits would be positive, as indicated. Data about the proportion of officers who also work for the PCBU (most), and the proportion of PCBUs with a board comprising officers who don't work for the PCBU (few) is not available and has been estimated for our assessment, based on the proportion of SMEs in New Zealand.

Targeted consultation on the options was undertaken with a small number of employer umbrella groups. Proposals were discussed at a relatively high level and did not enable the risk of unintended consequences in specific industries or sectors to be assessed in detail.

Nevertheless, the risk of unintended consequences appears low and is expected to relate more to a risk of less benefits being realised, than the status quo being made worse. For example, if courts continue to interpret the amended legislation differently to that intended, or if there is an extended period before ACOPs are produced and/or officers do not find the guidance as clear as had been hoped.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

Yes. The Minister of Workplace Relations and Safety prefers the package of Options Two, Six and Seven that MBIE recommends.

What are the marginal costs and benefits of the preferred option package in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option package compared to taking no action			
Regulated groups	Transitional costs associated with learning amended rules and guidance; Medium-term costs of developing ACOPs; Targeted stakeholders indicated support	Low	Low
Regulators	Transitional costs e.g. staff training, changes to business systems and processes, updating guidance, etc; Medium-term costs of developing ACOPs, including legal resource	Medium	Medium
Others (e.g. wider govt, consumers, etc.)	Costs to consumers are unlikely to change in the short term	Low	Low
Total monetised costs			
Non-monetised costs		<i>(High, medium or low)</i>	<i>Medium</i>
Additional benefits of the preferred option package compared to taking no action			
Regulated groups	Increased clarity of duties and certainty. Less anxiety and risk aversion among officers.	Low	Low
Regulators	Clarifying duties helps regulator to focus where most needed.	Low	Medium
Others (e.g., wider govt, consumers, etc.)	People may be more likely to make	Low	Low

	themselves available to serve as officers.		
Total monetised benefits			
Non-monetised benefits		<i>(High, medium or low)</i>	<i>Low</i>

Chapter 4: Notification requirements

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The HSW Act requires PCBUs to notify the regulator of any notifiable events – these are deaths and serious illness, injury and incidents (defined in sections 23–25 of the HSW Act).

The purpose of notification requirements is to capture only serious events arising from work that cause the most serious kinds of harm; these are the events that the regulator must respond to. The purpose of notification is to provide information to the regulator, so that it can investigate or follow up on an incident immediately where the severity of the incident dictates such action.

Following a notification, the regulator could choose to investigate the incident and may issue a ‘safety alert’ after the investigation to prevent similar harm occurring. If no action is required, the regulator should confirm this.

Operational guidance supports PCBUs to identify the types of events that require them to notify the regulator, e.g. what is (and what is not) a serious head injury. A notifiable event requires the PCBU to:

- not disturb the site until released by an inspector (s55 Duty to preserve sites),
- notify the regulator of the event (s56 Duty to Notify Notifiable Event), and
- keep records of the event (s57 Requirement to Keep Records).

Notification requirements in the HSW Act are supplemented by additional requirements in regulations for specific high-risk sectors or activities (e.g. major hazard facilities).

What is the policy problem or opportunity?

Very limited anecdotal evidence collected during the consultation on the work health and safety system suggests that there is potential that some businesses are unclear on what constitutes a notifiable event and may be over-reporting as a result.

This may be contributing to a perception among some businesses that the notification requirements are burdensome and adding to the compliance costs associated with meeting their health and safety duties.

There were a few key issues raised by submitters:

Submitters noted the boundary of what is a notifiable event vs a non-notifiable event is currently confusing

- For example, one submitter stated: “The areas of Notifiable Events and Incidents is open to interpretation and enables significant potential and actual harm and injury events to fall through the gaps. The previous definition of “Serious Harm” contained in the previous legislation was clearer and should be reinstated in place of the current wording”.

The Regulator does not respond consistently

- On the roadshow, a scenario was raised where a business was unsure of whether they needed to notify WorkSafe of a particular incident, so sought advice from a health and safety advisor who advised they should notify, the business followed this advice but never received a response from WorkSafe. This was not the only scenario where WorkSafe didn't respond.
- One submitter stated: "Our Employment Law Committee has noted it is difficult to know whether a particular notifiable event will or will not result in more detailed investigation by WorkSafe. As a result, some serious events are not subject to further WorkSafe investigation while more minor events are investigated further."
- When consulting with the EMA, they acknowledged that while most PCBUs are aware of the notification requirements, there are times when they don't receive a response from the regulator.

There may be inconsistent notification requirements between the HSW Act and Regulations

- Submitters also noted that the definition is currently confusing to inspectors, with some noting that an event was notifiable while others said it was not notifiable. For example, one submitter stated: "relating to notifiable incidents under the Petroleum Exploration and Extraction regulations, we had one past inspector who had confirmed that a muster due to a false detection was not reportable. Now we have a new one who says it is reportable".
- A submission from Contact Energy stated: "Geothermal Regulation 1961 requires us to notify WorkSafe where first aid was required, and this includes minor events. This is contradicted by the HSW Act which provides a criterion to meet before an event is deemed notifiable. The geothermal industry is under constant change and can for one month be under the geothermal regulation and the next month be deemed as a construction site which adds to the complexity of deciding under which regulations it is operating."

On balance, MBIE considers that there is not enough evidence to suggest there is a problem with the requirements in the HSW Act that requires a regulatory or legislative solution.

However, the notification requirements in the *Geothermal Energy Regulations 1961* may not align with the requirements in the HSW Act. This could be considered as part of the 'regulatory relief' package (to be progressed later this year) but is out of scope of this RIS.

What objectives are sought in relation to the policy problem?

Within the wider context of the objectives of the work health and safety reforms, MBIE has identified the following two objectives related to notification requirements:

- Reduce unnecessary compliance costs for businesses who are over-reporting, and
- Increase business certainty about notification requirements.

What consultation has been undertaken?

Given the limited time available, we only had time to consult with the three regulators on the Minister's proposal to reduce the notification requirements: WorkSafe, Maritime New Zealand (MNZ) and the Civil Aviation Authority (CAA).

The regulators expressed a shared view that there was no issue with the current notification requirements.

In particular, MNZ mentioned that they had invested in an automated system that was working well for them. Both MNZ and CAA found the requirements useful for data gathering purposes despite this not being the policy intent. This was because it allowed the organisations to track trends over time by capturing all kinds of incidents, including near misses which can be representative of serious events in their respective sectors.

Following instruction from the Minister's office, we also carried out targeted consultation with the following agencies about the Minister's proposal to reduce the notification requirements:

- **The Employers and Manufacturers Association:** questioned the value of the option to codify the operational guidance in the law. Their view was that this approach would make the legislation more prescriptive and difficult to keep updated. They considered options to introduce a period of incapacity would add unnecessary complexity for businesses. They considered the ten-day threshold to be relatively high and expressed a preference of either a five-day or seven-day threshold (to align with the ACC system).
- **Retail NZ:** pointed out that businesses' capability of interpreting health and safety legislation is variable, so it needs to be kept as simple as possible. They therefore considered that option one may add clarity for some businesses but not for others.
- **Federated Farmers of New Zealand:** noted that this was not an issue in their sector.
- **Business NZ:** noted their preference for option 3 (outlined below) based on the rationale that if an incident is serious enough for an ACC claim of that duration, then it should be notified to the regulator.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

The following criteria will be used to compare options to the status quo:

- **Transparency and certainty:** the duties, obligations and rights of employers, volunteers, and workers are clearly set out and complied with.
- **Cost effectiveness:** compliance and transitional costs for the duty holders and for the regulator are minimised, for the benefits they deliver.
- **Proportionality:** the degree of regulation is commensurate with risk and will target key risks.
- **Health and Safety:** will reduce harm arising from work.

What scope will options be considered within?

MBIE's position is that there is not enough evidence to suggest a problem with the current notification requirements that requires a solution. However, the scope of feasible options has been limited by the following Cabinet decision on the policy: "to reduce the notification requirements to the regulator to only significant workplace events (deaths, serious injury, illness and incidents)" [CAB-25-MIN-0080 refers]. Legislative and operational options are therefore in scope. It is MBIE's understanding that the Minister's preference is for legislative change.

What options are being considered?

Option One – Status Quo

This is as described above in discussion of the policy problem at pages 51–52.

Option Two – Define key concepts in the HSW Act and add examples

Option Two proposes to legislate WorkSafe's operational guidance in the HSW Act to increase certainty for duty-holders about what constitutes a 'serious' event.

The HSW Act does not define the concepts of 'immediate treatment', 'medical treatment' or 'serious'. WorkSafe's operational guidance provides clarity by defining these concepts and providing examples of what is (and is not) a notifiable event. Using the example of a serious eye injury, WorkSafe's guidance explains:

A serious eye injury that requires immediate treatment (other than first aid):

- a. Injury that results in, or is likely to result in, the loss of an eye or vision (total or partial),
- b. Injury caused by an object entering the eye for example, metal fragment, wood chip,
- c. Contact with any substance that could cause serious eye damage.

Does not include:

- d. Exposure to a substance or object that only causes discomfort to the eye.

'Medical treatment' is considered to be treatment by a registered medical practitioner such as a doctor.

'Immediate treatment' is urgent treatment, and includes treatment by a registered medical practitioner, registered nurse or paramedic.

Option Three - Amend the HSW Act to introduce a period of incapacity

Option Three proposes to amend the HSW Act to introduce a period of incapacity to clarify 'serious' harm. For example, if an injury, illness, or incident results in the person being unable to perform their normal duties for a period of *ten or more calendar days*, then the duty-holder would be required to notify the regulator.

Option Four - Amend the HSW Act to introduce a period *and* frequency of incapacity

Option Four proposes to amend the HSW Act to introduce a period and frequency of incapacity to clarify 'serious' harm. For example, if an injury, illness, or incident results in the person being unable to perform their normal duties for a period of *ten calendar days*, and that same incident occurs *twice in a calendar year*, then the duty-holder would be required to notify the regulator.

How do the options compare to the status quo/counterfactual?

	Transparency and certainty	Cost effectiveness	Proportionality	Health and Safety	Overall assessment
Option One – Status Quo	0	0	0	0	0
Option Two – Define key concepts in the HSW Act and add examples	+ Will increase certainty for duty holders as clarity is added through prescriptive legislation.	0 Unlikely to add any additional costs as the amendment is essentially clarifying the status quo.	- Additional prescription in legislation is not commensurate with the risk, while little evidence exists to suggest a problem that could not be expected to be fixed through the status quo.	0 Unlikely to have any impact on the reduction of harm arising from work.	0 While option two may add more clarity for duty holders, it is unlikely to have any impact on safety and greater prescription in legislation is not proportionate to the risk associated with the problem.
Option Three - Amend the HSW Act to introduce a period of incapacity	- Likely to reduce certainty and transparency due to the new requirements, clarity sought by duty holders may be required requiring greater resource from the regulator to produce associated guidance.	- Likely to add additional costs to the regulator to operationalise the change, potential transitional costs for duty holders to adapt to new requirements.	- Additional prescription in legislation is not commensurate with the risk, while little evidence exists to suggest a problem that could not be expected to be fixed through the status quo.	0 Unlikely to have any impact on the reduction of harm arising from work.	-3 Option three is likely to add additional costs, is not commensurate with the risks and reduces transparency.
Option Four Amend the HSW Act to introduce a period and frequency of incapacity	-- Likely to reduce certainty and transparency due to the new requirements, clarity sought by duty holders may be required	-- Likely to add additional costs to the regulator to operationalise the change, potential transitional costs for	-- Additional prescription in legislation is not commensurate with the risk, while little evidence exists to suggest a	0 Unlikely to have any impact on the reduction of harm arising from work.	-6 Option four is likely to add additional costs, is not commensurate with the risks and reduces transparency.

	Transparency and certainty	Cost effectiveness	Proportionality	Health and Safety	Overall assessment
	requiring greater resource from the regulator to produce associated guidance.	duty holders to adapt to new requirements. Potential legal costs as workers and duty holders use the courts to determine meaning and function of definitions.	problem that could not be expected to be fixed through the status quo.		

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

MBIE's position is that there is not enough evidence to suggest a fundamental problem with the current notification requirements. However, given the feedback during consultation on risk aversion and lack of clarity about notification requirements driving unnecessary notifications and hence compliance costs, MBIE recommends option two is likely to best address the problem. MBIE considers that this option does not impact (negatively or positively) on duty-holders' compliance costs, but may help provide some clarity and certainty about the types of notifiable events.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	One-off cost in understanding changes to the legislation	Low	Low
Regulators	Minor costs in supporting legislative change	Low	Medium
Others (e.g., wider govt, consumers, etc.)	One-off cost in understanding changes to the legislation	Low	Low
Total monetised costs			
Non-monetised costs	Low	Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Reduced compliance costs due to increased clarity on what constitutes a notifiable event	Low	Low
Regulators	Reduced transaction costs as duty-holders have greater clarity on	Low	Low

	what constitutes a notifiable event		
Others (e.g., wider govt, consumers, etc.)		Low	Low
Total monetised benefits			
Non-monetised benefits	Low	Low	Low

Constitutional conventions

Constitutional conventions

Constitutional conventions

Chapter 6: Delivering the options

How will the proposals be implemented?

MBIE is responsible for administering the HSW Act. The options requiring legislative change will be implemented through a Health and Safety at Work Reform Bill, which is scheduled for introduction in October 2025.

WorkSafe is responsible for implementing work health and safety legislation through engagement with duty holders and enforcement action if necessary. WorkSafe provides information for businesses, unions and workers through its inspectorate, website, contact centre and other channels on an ongoing basis. In general, to implement the preferred options within its baseline funding, WorkSafe will need to:

- train inspectors and other staff on changes
- change business processes, such as incident notification processes (e.g. identifying employee numbers upfront and applying the definition of critical risk)
- changes information technology systems
- change to existing guidance material and develop new guidance for duty holders
- actively engage with stakeholders, including to prepare duty holders for incoming changes, and
- review operational policies and legal positions.

The full reforms are a significant change, and careful planning and prioritising will be required to inform the transition and commencement of the new system.

These proposals affect the other work health and safety regulators, Maritime New Zealand (MNZ) and the Civil Aviation Authority (CAA), both of whom regulate sectors that will be affected by the proposals (see below for further information). MBIE has been engaging with both on the proposals in this impact statement and neither has raised any significant implementation issues. No consideration has been given to whether MNZ or CAA will require additional funding.

The remainder of this section covers the specific implementation of the individual policy areas.

Limiting duties for small PCBUs

Any option to implement a 'carve out' will require careful guidance and communication material. The guidance will be needed to enable PCBUs to work out what system they are part of, and what they need to do under each system. It will also need to be clear about what other regulations will continue to exist.

Health and safety consultants and advisors will continue to play a role in advising PCBUs on how to meet their duties under the HSW Act. While the preferred option will provide greater clarity for PCBUs, we assume that some will continue to seek advice from health and safety professionals who will provide their own interpretation of requirements. This means government is not in control of all the messages that will be delivered to the market, and it is not possible to fully predict how these reforms will be implemented by PCBUs.

It will also affect WorkSafe's compliance and enforcement activity as there will be an additional layer of enquiry about the size of the PCBU and therefore the duties it faces.

The 'carve out' will affect seasonal fishing (regulated by MNZ) and businesses in the aviation sector (regulated by CAA). MBIE will continue to engage with both regulators through the legislative process and during implementation and operationalisation.

Officers' duties

There are other elements of the Government's work health and safety reforms that are relevant and could influence implementation of the preferred options. For example, proposals to enable industry to participate in the development of ACOPs and the proposal that ACOPs would enable a safe harbour.

As the recommended changes are focussed on clarification of the status quo and do not introduce extensive change for officers or PCBU's, it is not expected that regulated parties will require significant time to adapt. It is also expected that over time businesses may adapt their practices to take advantage of the additional certainty (i.e. that the officers' duty is a governance duty and regarding the nature of that duty). However, whether delayed commencement is desirable to allow time for implementation would be considered as a drafting detail following Cabinet decisions. WorkSafe also anticipates the need for a coordinated programme of engagement with stakeholders to educate them on the changes to the law.

Constitutional conventions

How will the proposal be monitored, evaluated, and reviewed?

The full package of reforms is a substantial change from the status quo. Feedback from the current review has highlighted that both operational choices, policy choices and private decision making have led to the 2015 reforms being implemented in unexpected ways. This means that care will need to be taken in monitoring and evaluating the impacts of these reforms in order to understand what is driving any changes.

MBIE will monitor trends in the rate of work-related injuries and fatalities. Stats NZ publishes statistics annually on work-related injuries and fatalities. WorkSafe has previously collated and published data on work-related fatalities and injuries, but is intending to hand this over to ACC.

MBIE is WorkSafe's monitoring agency and will regularly report to the Minister on WorkSafe's performance. At a minimum this will be through quarterly reporting. MBIE will continue to work to amend and improve the regulatory system as per its usual regulatory stewardship role.

No specific reviews are planned. Because these reforms will rely on a change of culture in society/the business community, it will take time for the benefits to be fully realised. There would be benefit in scheduling both a process evaluation for WorkSafe and an initial outcomes evaluation in about three years.

Constitutional conventions

Annex One: Regulations under the HSW Act (including regulations carried over from the Health and Safety in Employment Act 1992)

Activity/hazard-focused regulation

1. The *Health and Safety at Work (General Risk and Workplace Management) Regulations 2016*, sets out specified risk management processes for risks generally, and specifically regulates risks from:
 - remote/isolated work
 - atmospheres with potential for fire or explosion
 - raised and falling objects
 - containers of liquids
 - loose but enclosed materials
 - substances hazardous to health.
 - It also sets out duties towards young persons, additional duties of PCBUs operating limited childcare centres.
 - These regulations also contain the general workplace facilities requirements to provide adequate lighting, ventilation, first aid and emergency procedures etc that all businesses still need to provide, as well as information, training, supervision, personal protective equipment as necessary for critical risks.
2. The *Health and Safety at Work (Asbestos) Regulations 2016*, regulates activities related to asbestos to minimise worker exposure.
3. The *Health and Safety at Work (Hazardous Substances) Regulations 2017*, regulates the management of hazardous substances in the workplace, such as flammable or explosive substances, including proper handling, storage, use, and disposal of hazardous substances, and development of emergency response plans for workplaces dealing with such substances.
4. The *Health and Safety in Employment Regulations 1995*, regulates risks from:
 - machinery (including cleaning, maintenance and repair)
 - woodworking and abrasive grinding machinery
 - self-propelled mechanical plant
 - construction excavations
 - scaffolding
 - working at heights
 - high risk work, including requiring certificates of competence for scaffolders, occupational divers, powder actuated tool operators
 - noise
 - requiring notification of hazardous work – scaffolding, excavations, various others.

5. The *Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999*, regulates their design, manufacture, use, and maintenance.
6. The *Amusement Device Regulations 1978* (made under the Machinery Act), regulates the safety and operation of various amusement devices like fairground rides, bungee jumping (with mobile cranes), and mechanically-powered units for rider entertainment.

Sector-focused regulation

7. The *Health and Safety at Work (Adventure Activities) Regulations 2016*, regulates the provision of adventure activities, ensuring safety for participants and operators. Specifically, it covers aspects like defining what constitutes an adventure activity, the process for operators to register, their duties, and the offences associated with non-compliance.
8. The *Health and Safety at Work (Major Hazard Facilities) Regulations 2016*, regulates the health and safety of people involved in the operation of, and local communities near, major hazard facilities, a place where large quantities of hazardous substances are stored or processed, posing a significant risk of catastrophic harm to people, the environment, and the economy. These regulations specify the duties related to process safety for both existing and potential Major Hazard Facilities. They also outline requirements for facilities that handle hazardous substances above a certain threshold.
- 9.&10. The *Mining Regulations 1981* (created under the *Mining Act 1971*) and the *Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016* regulate a wide range of aspects, from risk management and management systems to competency requirements and emergency preparedness. These regulations also ensure that operators comply with minimum standards and have clear notification and reporting obligations.
11. The *Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016*, regulates the health and safety of people involved in petroleum exploration and extraction activities, covering both onshore and offshore operations.
12. The *Health and Safety in Employment (Pipelines) Regulations 1999*, regulates the design, construction, operation, maintenance, suspension, and abandonment of pipelines that carry significantly hazardous substances (i.e. gas).
13. The *Geothermal Energy Regulations 1961* (made under the *Geothermal Energy Act*) regulates the safe and responsible extraction and use of geothermal resources in New Zealand. This includes provisions for drilling, safety equipment, hazardous gas precautions, explosive use, and more.

These regulations are due to be revoked as part of the wider work health and safety reforms:

14. The *Spray Coating Regulations 1962* (made under the *Health Act*) regulates the use of spray booths, drying of articles with inflammable substances, storage of inflammable substances, and related safety aspects like ventilation, amenities, and medical examinations.
15. The *Lead Process Regulations 1950* (made under the *Health Act*) regulates work with lead or any material containing lead.

These regulations do not relate to risk:

16. *Health and Safety at Work (Infringement Offences and Fees) Regulations 2016*
17. *Health and Safety at Work (Rates of Funding Levy) Regulations 2016*
18. *Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.*