



BRIEFING

Health and Safety at Work Amendment Bill: decisions on drafting matters

Date:	27 November 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0024405

Action sought		
	Action sought	Deadline
Hon Brooke Van Velden Minister for Workplace Relations and Safety	Agree to include in the Bill, matters that have arisen during the drafting process	3 December 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Systems Policy	04 896 5479	Privacy of natural persons	✓
Adam McConchie	Policy Advisor, Health and Safety Systems Policy	04 901 2481		

The following departments/agencies have been consulted
N/A

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

To seek your decisions on matters that have arisen during the drafting of the Health and Safety at Work Amendment Bill (the Bill).

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that Cabinet has authorised you to make decisions consistent with the policy of your Health and Safety at Work Amendment Bill (the Bill) on any issues that may arise during the drafting [CBC-25-MIN-0004, EXP-25-MIN-0044 and ECO-25-MIN-0086 refer];
Noted
- b **Note** that **Legal professional privilege** officials suggested provisions, within your delegated decision-making authority, to increase clarity and workability for duty-holders;
Noted
- c **Agree** that the Bill adds a new 'additional' purpose to the Health and Safety at Work Act 2015 (the HSW Act) to give PCBUs certainty about the scope of their obligations in the HSW Act and regulations made under the HSW Act;
Agree / Disagree
- d **Agree** that, **Legal professional privilege** the threshold for the catch-all component of the definition of critical risk is based on a *likely* outcome rather than a *possible* one, to better target risks likely to cause the most serious harm;
Agree / Disagree
- e **Agree** that the Bill adds a schedule to the HSW Act, clearly listing the specific regulations made under the HSW Act and the critical risks they address, and includes a provision that this schedule can be updated by way of Order in Council;
Agree / Disagree

f **Agree** that the Bill defines businesses with fluctuating workforce numbers (e.g. seasonal operations) as small if they reasonably expect to have fewer than 20 workers for at least nine months of the *current* financial year, ensuring a clear, pragmatic assessment for these businesses;

Agree / Disagree

g **Agree** that the Bill defines newly established businesses as small if they can reasonably expect to have fewer than twenty workers for at least nine out of the twelve months of the *following* financial year, ensuring a clear, pragmatic assessment for these businesses;

Agree / Disagree

h **Note** that the Bill includes signposting provisions to provide clarity for PCBUs on the scope of their health and safety duties and the process for determining their critical risks under the new legislation.

Noted



Hayden Fenwick
Manager, Health and Safety Systems Policy
Labour, Science and Enterprise, MBIE
27 / 11 / 2025

Hon Brooke Van Velden
Minister for Workplace Relations and Safety
..... / /

We seek agreement on the parts of Bill drafted within the scope of your delegated decision-making authority

1. Cabinet authorised you to make decisions consistent with the policy, on any issues that may arise during the drafting of the proposed health and safety amendment Bill, including any transitional provisions [CBC-25-MIN-0004, EXP-25-MIN-0044 and ECO-25-MIN-0086 refer].
2. **Legal professional privilege** officials suggested new and amended provisions, within your delegated decision-making authority, to ensure the changes align with the intent to increase clarity, are workable for businesses in practice, and increase business confidence in how to meet their duties.
3. In each case the exact wording of the proposed changes is subject to drafting by the Parliamentary Counsel Office and may change.

Adding a new additional purpose to the HSW Act

4. The Bill sharpens the purpose of the HSW Act so that its 'main' purpose is to provide for a balanced framework to secure the health and safety of workers and workplaces that prioritises critical risks arising from work [CBC-25-MIN-0004 refers]. All other existing purposes in the HSW Act have been retained as 'additional'.
5. **Legal professional privilege**
6. Your reforms aim to increase business certainty about how far they have to go to meet their duties to protect workers and others from harm. This additional purpose makes this aim an

explicit purpose of the HSW Act. We therefore seek your agreement to include this new additional purpose in the Bill.

The definition of critical risk was drafted to ensure workability

7. A clear, practical definition of critical risk is central to the reforms. It ensures businesses can confidently identify their most significant risks and direct their efforts to where they will have the greatest impact.
8. Cabinet agreed that the definition of 'critical risks' be based on existing risks managed through regulations made under the HSW Act, with an added principle-based catch-all to account for non-regulated risks that **may result in** death, serious injury, or illness, based on the notification requirements in sections 23-25 of the HSW Act, and occupational diseases in Schedule 2 of the Accident Compensation Act [ECO-25-MIN-0086 refers].
9. **Legal professional privilege**, officials identified that the Cabinet wording of "may result in" would set the threshold for categorising critical risks too low, leaving little change from the status quo. **Legal professional privilege**
10. This approach is within scope of the Cabinet decision and better aligns with the policy intent: to drive a proportional approach that targets risks most likely to cause serious harm. We therefore seek your agreement that the threshold for the catch-all component of the critical risk definition is based on a likely outcome rather than a possible one.

The Bill includes an updatable schedule that supports PCBUs in identifying their critical risks

11. **Legal professional privilege**
12. This schedule is key to ensure the definition of critical risk is workable. Listing critical risks in the schedule will make it easier for PCBUs to identify their critical risks captured in existing health and safety regulations. This approach also reinforces that only businesses engaged in the types of activities covered by the regulations will need to pay attention to them.
13. We seek your agreement to include a schedule in the Bill, clearly listing specific regulations and the risks they address, and a related provision that allows the schedule to be updated by the Governor-General by way of Order in Council.

The definition of a small PCBU has been refined to account for new businesses

14. Cabinet agreed to define small PCBU as those that have fewer than twenty workers based on the maximum number of workers in the PCBU for nine out of the twelve months of **each** financial year [ECO-25-MIN-0086].
15. In practice, PCBUs will need to assess whether they are small. It is expected that PCBUs will know their worker numbers, typically using existing tax or payroll records. For most small PCBUs, it will be obvious that they have fewer than 20 workers, and as long as they can demonstrate this, they will meet the requirement.
16. During drafting, MBIE officials determined that the definition needed greater nuance to be sharp, clear, and workable across all business situations, summarized below:

- a. For businesses with fluctuating workforce numbers, such as those with seasonal operations, they qualify as small if they **reasonably expect** to have fewer than 20 workers for at least nine months of the **current** financial year.

Using the current financial year gives a more accurate picture of a business's situation and avoids unintended outcomes. For example, without this approach, a business could claim to be small this year because it had only 10 workers last year, even though it now has 30 workers.

- b. For newly established PCBUs with no existing records to rely on, they will be regarded as small if they **reasonably expect** to have fewer than 20 workers for at least nine months of the **following** financial year.

This will be a forward-looking assessment, likely informed by an evaluation of its current state and alignment with its business plan.

- 17. We seek your agreement to include the changes outlined in paragraphs 16a and 16b in the Bill, to ensure a practical definition of a small PCBU that is clear and workable for all business situations.

The Bill includes signposting provisions to provide clarity for PCBUs on the scope of their duties

- 18. **Legal professional privilege** [REDACTED]

- 19. These provisions serve as practical guidance focused on:

- a. Helping small PCBUs understand that their general duties are limited to managing critical risks, while still maintaining basic worker welfare and complying with applicable health and safety regulations.
- b. Confirming all other PCBUs must still manage all risks but prioritise critical ones. It also offers practical ways to prioritise critical risk management.
- c. Guiding PCBUs in determining critical risks, based on what they should reasonably know about their business, hazards, serious injury, illness, or an occupational disease.

- 20. **Legal professional privilege** [REDACTED] MBIE officials consider they are a valuable inclusion in the Bill and will help guide PCBUs understanding of their duties.

Next steps

- 21. To maintain momentum on the drafting of the Bill, we seek your decisions by Wednesday, 3 December. Officials are available to discuss any of the matters above should you require further clarification.
- 22. We will continue working with PCO and our legal colleagues to ensure the drafting of the Bill proceeds in alignment with your timeframes.