



BRIEFING

Advice on options to limit the health and safety duties for small, low-risk businesses

Date:	3 April 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0012036

Action sought		
Minister	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Discuss the material in this paper with officials	8 April 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Policy	04 896 5479	Privacy of natural persons	✓
Richard Davies	Policy Director			

The following departments/agencies have been consulted

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 Withdrawn |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 get your direction on the nature and scale of the limitation of duties for small business (the 'carve out').

Executive summary

In March, Cabinet agreed to your proposal to limit health and safety at work duties for small, low-risk businesses under the Health and Safety at Work Act 2015 (the Act) [CBC-25-MIN-0004 refers].

The overall intent of the reforms is to narrow and sharpen the focus of the regulatory system so that both PCBUs and the regulators put more focus on taking action on critical risks.

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.

Given this, in order for this reform to limit duties to be effective, it needs to give small business the confidence to make judgments without relying on external consultants.

In order to achieve this you will need to decide who is covered, and how to limit the duties. There are policy and legal trade-offs that come from using the Act to give effect to this change, and this paper seeks your direction as to these. The decisions you will need to make are:

- What is a 'low risk' sector? A range of approaches can be used, but broadly the data we can use is either incidents, or the cost of incidents (eg ACC Levy Risk Groups).
- What is 'small'? There is no standard definition of small business in New Zealand law. Businesses also change size seasonally and with business cycles.
- What duties to limit, and how to limit them?

You will need to agree where, and how to set these boundaries, noting that there will be trade-offs between flexibility and certainty of obligations and clarity and coverage of who is included.

International relations

The annexes contain the data that we can draw on to support these decisions, and are intended to support a workshop session.

Wherever the final decisions land, there will be the need for guidance and regulator behaviour to back-up the intent of what is agreed.

Recommended action

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

- a **Discuss** this papers and annexes at a workshop with officials on 8 April

- b **Note** that in order to set this policy, you will need to define 'low risk', 'small' and what duties these businesses should face. *Noted*

- c **Note** that at the margin there will be a trade-off between costs of compliance and costs of harm. *Noted*

- d **Note** that in the time available, MBIE has focused on viable options to achieve these reforms quickly, rather than more fundamental options. *Noted*

- e **Indicate** whether you would like advice on more fundamental options, noting that this will have resource and timing implications. Yes / No



Hayden Fenwick
Manager, Health and Safety Policy
Labour, Science and Enterprise, MBIE

03 / 04 / 2025

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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Background

1. During the roadshows and consultation, we heard about issues with the work health and safety system. One of these issues is that businesses struggle with the broad, flexible nature of the HSW Act.
2. Small businesses, which have less time and resource to spend on work health and safety matters, have stated that they lack clarity on the appropriate actions for them to take, and lack certainty that the actions they take are deemed sufficient to comply with their duties under the HSW Act.
3. As you know, this is resulting in both under- and over-compliance which are both inefficient. In some cases, businesses are worried about generic risks they are poorly placed to try to manage, and yet our injury and fatality rate remains high.
4. You took a proposal to Cabinet to address these issues for small businesses. In March, Cabinet agreed to your proposal to limit health and safety at work duties for small, low-risk businesses to:
 - a. managing critical risks that could cause death or serious injury or illness;
 - b. providing worker training and personal protective equipment for those critical risks; and
 - c. providing first aid, emergency plans, and basic workplace facilities for worker welfare (for example, provision of drinking water).
5. This will sit alongside the other reforms which are aiming for a general shift across all businesses to prioritise critical risk.
6. This paper provides advice on the options you have to decide on to give effect to this proposal, as well as risks and impacts to consider in these decisions.

You will need to decide who is covered, and how to limit those duties

7. The intent of your proposal is to make it clear that small, low-risk businesses should focus on managing critical risks. In order to be successful the changes must reduce the need for small businesses to seek external advice, and make duties clearer to PCBU's.
8. There is no standard definition of what constitutes small or low risk, and even once this reform defines 'small' and 'low risk', in order for this reform to be successful a business needs to be able to self-identify where they fit. Otherwise it creates another form of uncertainty in the Act.
9. This gives us some objectives for the reform of:
 - i. Increased certainty for Small Business
 - ii. A sharper focus on critical risks for small business
 - iii. Reduced costs for small business
 - iv. Without substantially worsening the impact on larger business and workers/the public.

What is low risk – Annex One

High-level issues to discuss:

- There is no completely reliable measure of risk of harm.
- There is a trade-off between coverage, precision (fairness) and ease of self-identification.
- Based on the data we have, there are difficult examples at the boundaries and any option will likely require a political judgment.
- At the margin there is a trade-off between the costs of compliance the costs of harm.

10. The overall intent of the reforms to the health and safety system is to achieve a sharper focus on critical risks across all PCBUs irrespective of size.
11. Given the limited resource that small business has available, this proposal aims to go further and send an even clearer signal that low risk small businesses should only focus on critical risks. This recognises limited capacity in small businesses relative to larger ones.
12. It is important to note that the literature is inconclusive on whether small business is inherently more or less risky than big business (both in New Zealand and internationally); this is why the carve out includes both categories – small and low-risk.
13. As you will see in the documents in Annex One, it is also apparent that even between and within sectors there are counter-intuitive results. This suggests that it will be difficult to set solely objective criteria in legislation and some other process will be required to ensure reasonableness and fairness.
14. It is also important to note that even within sectors – and businesses – there will be some activities that are very high risk. Some of these already have additional regulatory requirements. At the moment, these include:
 - Amusement devices
 - Geothermal Energy
 - Adventure Activities
 - Asbestos
 - Hazardous Substances
 - Major Hazard facilities
 - Mining and quarrying
 - Petroleum exploration and extraction
 - Pipelines
 - Pressure equipment, cranes and passenger ropeways
15. This proposal will not affect these, and small businesses engaged in these activities will still need to follow these regulations.
16. MBIE will need to work through whether these regulations exclude a business from having their duties limited, or whether these regulations help to focus their new limited duties. Our

initial sense is that it will be a mixture. Mining is unlikely to be a low-risk small business, but many otherwise low risk small businesses may deal with hazardous substances and it will be their main critical risk.

17. Government collects data on harm (and the cost of harm in the case of ACC). This is only a proxy for risk. The limitations of this proxy become apparent when you see that a sector such as coal mining has had relatively low levels of harm in recent data. This is likely a function of a small level of activity, and considerable attention by the businesses and regulator including particular regulations - Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016.
18. All sector level data has problems of aggregation, and there will be higher risk firms in lower risk sectors and vice versa. Differences become more pronounced as the data becomes more detailed, and it is harder for businesses to self-identify.
19. Broadly your options are:
 - Disregard harm as a criterion and just focus on business size. MBIE doesn't recommend this option and it would require the previous Minute to be rescinded. Some small businesses will be dealing with such hazardous activities that it is appropriate that they face higher compliance requirements than others.
 - Pick a set of sectors or activities that are commonly held to be low risk, and are able to be self-identified (eg retail, office based work). While this would likely be regarded as "commonsense" there may still be drafting challenges to work through.
 - Annex 1D - Pick a high level industry classification (eg limit duties for 'the service sector'). This would have broad coverage but some high risk sectors (transport and some recreation roles) would have their duties limited.
 - Annex 1C - Pick high level sectors, as was done for the 2016 requirement for health and safety representatives in high-risk industries. There will likely be some high risk businesses in low risk sectors and vice versa.
 - Annex 1A and 1B Attempt to use detailed data to set thresholds. This would need to be combined with some process to manage the unfair results which appear at the boundaries.
20. While there are a range of different administrative methods we could use, the key question is where to set that threshold, and the trade-off between risks and under- and over-compliance.

Example: The different options have materially different outcomes for firms

Sarah and Helen are neighbours. Sarah owns a small trucking company and Helen owns a small childcare centre. Under a high level breakdown (eg Annex 1D) they are both in the service sector and would face the same duties. Using more detailed data (eg Annex 1A and 1B), they are at the opposite end of the harm spectrum with transport having far more harm than childcare.

Tony and Alan are both on the Chamber of Commerce Board. They both run small science consultancies. Tony's firm analyses geospatial data and Alan's firm runs a laboratory. On a sector basis (eg Annex 1A and 1B) they would both face the same duties but if the Hazardous Substances regulations excluded a firm from limited duties Alan's lab would face different duties.

What is small – Annex Two

High-level issues to discuss:

- There is a trade-off between ease of self-identification (eg limiting it to sole traders) and coverage.
- Whatever figure you choose will create a boundary, and create the possibility of a step-change in compliance for businesses as they grow beyond the boundary.
- Mitigating this will likely rely on guidance from the regulator.

21. For context, the last available data (from February 2024) shows there were 612,420 businesses¹ in New Zealand.
22. Most of New Zealand's businesses are made up of sole traders (73%), who have zero employees. Of businesses with employees, 62% have five employees or less, 77% have fewer than 10 employees, and 89% have fewer than 20 employees. The table at annex 2B shows the number of businesses by employee count per industry:
23. The United Kingdom has taken the approach of making their health and safety law not apply to sole traders (with some exceptions for specified high risk activities², OR if their work could harm others).
24. Sole traders has the benefit of being easy to self-identify, and there is a clear change in organisational structure once a worker is hired.
25. If you wish to extend it beyond sole traders, you will need to choose a threshold. We will also need to provide clarity over how that threshold is reached (eg seasonal workers, casual contractors etc). Wherever that threshold is set is somewhat arbitrary.

¹ For ease of communication this briefing refers to 'businesses', but the data includes not for profits and the public sector.

² Construction, Agriculture, working on a Railway, working with gas, working with asbestos, working with Genetically Modified Organisms

26. If you wish to pursue a threshold beyond sole traders, MBIE will explore with legal advice how to best balance clarity and flexibility.

Example: Firms are constantly changing size – a rigid number maybe difficult to manage

Wayne runs a collection of Tourism businesses in a small town. In winter he has one employee and a contract cleaner who help run his accommodation. In summer he offers shuttle rides to the Mountain Bike Park and uses Working Holiday Makers to expand his operation and has 10 casual staff and 4 contractors.

The policy intent is that Wayne would manage critical risks irrespective of the number of staff, but with depending on where and how thresholds are set there is a risk Wayne needs external advice on the difference between his winter and summer operation.

What duties will be limited and how – Annex Three

High-level issues to discuss:

- The key problem is an overly broad general duty in section 36.
- If we limit this to critical risks, this maintains flexibility for firms to identify and address the critical risks.
- An alternative approach is to provide more prescription but this shifts the burden away from businesses to the state.
- Some small businesses have a large impact on the safety of others, even if their job is safe for them (eg engineers, some manufacturers etc).

27. The plain words of the Act were intended to cause business to take a proportionate response to managing risk. As you know, this flexible, performance-based approach hasn't worked for small business and has led to overcompliance and unhelpful red tape.
28. The challenge this presents is that there isn't a range of redundant/unwanted provisions to be limited. Rather, we are seeking to clarify a narrower reading of the Act.
29. MBIE proposes limiting the General Duty in section 36 so that small businesses only apply this to critical risks. We will carefully need to work this through to ensure that it doesn't inadvertently suggest an increase in duties for larger firms.
30. We will need to engage with business to understand how the market will respond, when a small business sub-contracts to a larger business. This could result in more use of pre-qualifications or a refusal to contract with smaller businesses as the larger business attempts to manage their (perceived or actual) risks.
31. One part of the Act that you could consider removing for eligible businesses would be certain worker participation provisions (relating to the requirement to hold elections for health and

safety representatives and to set up health and safety committees). This would reinstate the law as it was from 2016-2023.

- 32. Otherwise, our recommendation is that for eligible businesses the duties still apply but **only to critical risks**. This will still require business to assess what is a critical risk. This can and will be supported by guidance, and options to address it will exist in ACOPs.
- 33. This proposal is intended to be fast to implement. If you were interested we could provide advice on more fundamental options, but this will come with resource and timing implications.

Example: Different duties in similar firms

Steve and Mary-Anne’s children are friends. Steve works for himself as owner operator of a small gallery and Mary-Anne works for herself as an engineer. Both of them only have to manage the critical risks in their businesses, but Mary-Anne has some additional duties relating to the structures she designs.

Manesh and Johan both run restaurants. Manesh has 25 staff and Johan has 6 staff. If the worker participation provisions are limited, then Manesh will still need to provide for elections for Health and Safety reps, and a Health and Safety committee whereas for Johan it would become optional.

Risks

- 34. In the time available we have not yet been able to engage with some key stakeholders. This means there are some risks we have not yet been able to manage. We propose to address these as part of our ongoing work.

Workability

- 35. We do need to talk to business representatives to understand whether these proposals are workable from a business perspective.
- 36. We note that in general business has asked for more certainty in Health and Safety obligations but this proposal brings inherent boundary issues which are difficult to overcome.

International obligations

International relations

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Data quality

41. MBIE has used the data it has available, which in some cases means it is older data. The more precise data (eg detailed sub-sectors) relies on Statistics New Zealand to compile multiple data-sets. We can have this done with up to date data by the time of Select Committee but not in time for the May Cabinet paper. We don't expect that this will change our broad conclusion that there is no clear boundary on what is high risk and what is low risk.

Non-regulatory options and the interaction with broader reforms

42. We note that the range of changes to the Act and WorkSafe mean that it is difficult to analyse the impact of this proposal (as an example, the system will change for everyone, but will change for small business differently).
43. In relation to the duties, our proposal maintains the broad schema of the Act, in that the responsibility is still on business to identify what is a critical risk and to make a judgment as to how to manage it. MBIE considers that this is still appropriate, and reflects that government is not well placed to manage risk in individual businesses. We also note that this may be criticised by people hoping for greater certainty. This will rely on more and better ACOPs and guidance to provide that certainty, and updating them over time as necessary.

Next steps

44. We will workshop these choices with you on 8 April. Following this discussion we will submit a paper seeking your agreement to the policy decisions that you will be seeking in the May Cabinet paper.
45. We propose to engage with MFAT and business representatives on the workability and international implications raised above.

Annexes

Annex One: Options for defining low risk

1A Using small business incidence data to define small and low-risk at two-digit ANZSIC codes

1B Replicating the approach for the (now-repealed) requirement for health and safety representatives¹ in high-risk industries based on one-digit ANZSIC codes.

1C Using a high level industry breakdown

1D Snippet of ACC Levy Risk Groups

Annex Two: Defining 'small'

2A – Defining small

2B – NZ Industry structure

Annex Three: Limiting duties

Annex One (A): Using small business harm incidence data to define small and low-risk at two-digit ANZSIC codes

46. This approach uses small business (1–19 employees) incidence data from the period 2019 to 2020. Severe and fatal injuries as proportion of the total injuries reported in this period are used as indicator of ‘risk’ of the sector (Error! Reference source not found.). By drawing boundaries at different employee counts (1–5, <10, or <20 employees) and risk levels (<10%, <15%, or <20% severe or fatal injuries), different numbers of businesses and employees are impacted (Figure 1).

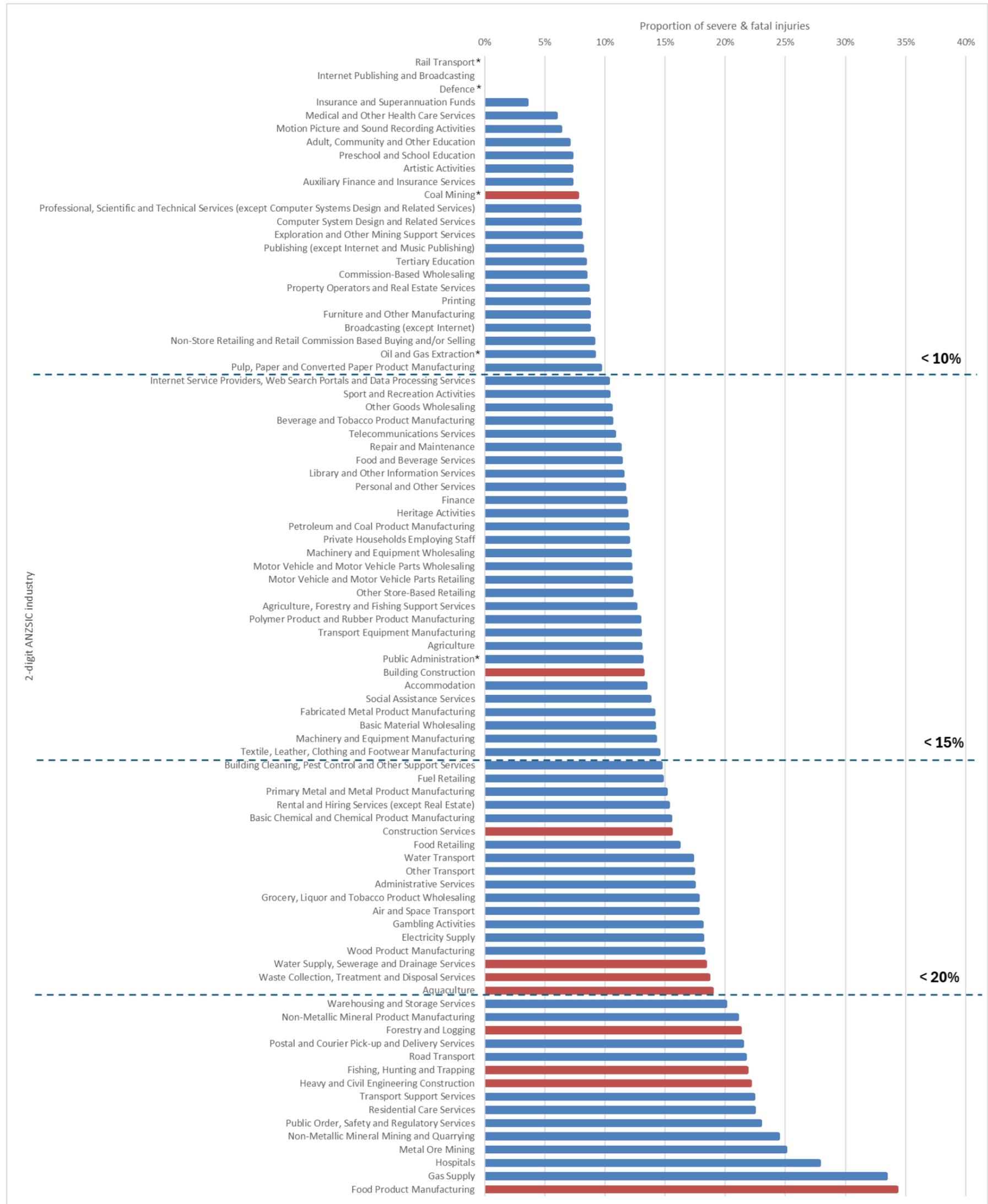


Figure 1 Proportion of fatal and severe injuries of the total injuries that resulted in an ACC claim for businesses at 2-digit ANZSIC code with 1–19 employees (i.e., excluding sole traders) during 2019 and 2020 (note – this includes pandemic data, which may skew certain industries, e.g. ‘hospitals’). *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’).

Small is defined as:

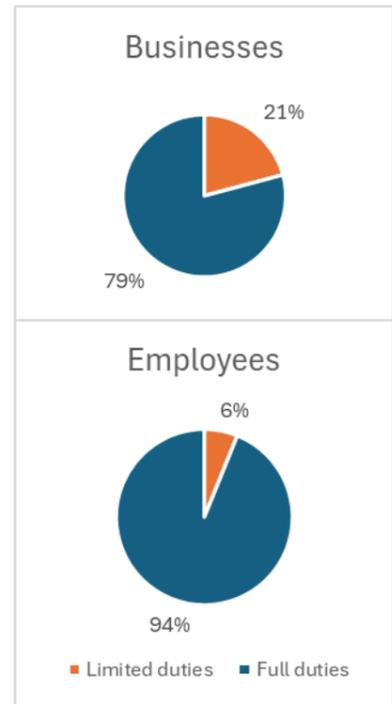
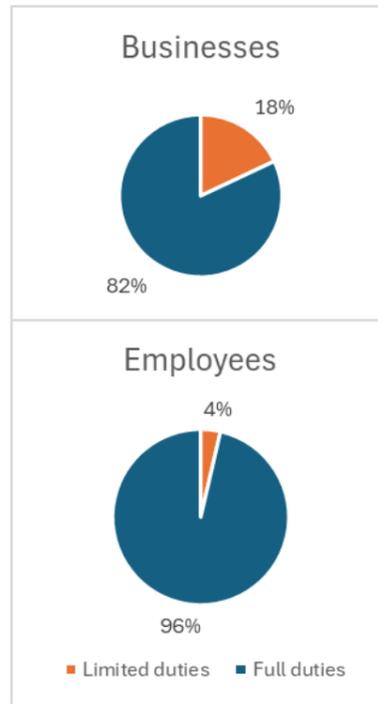
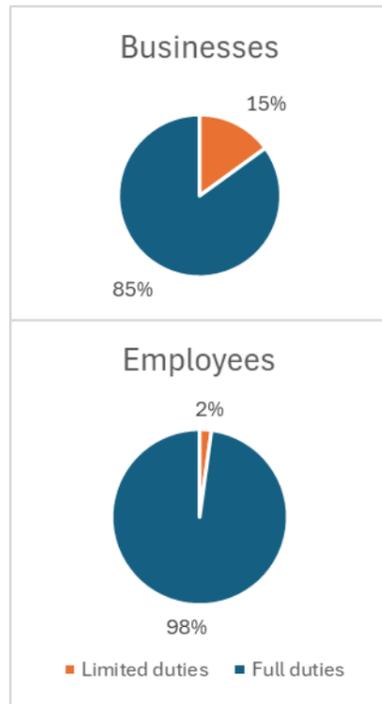
1–5 employees

<10 employees

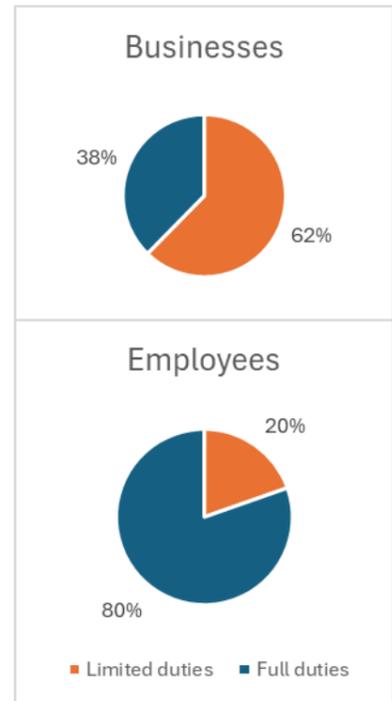
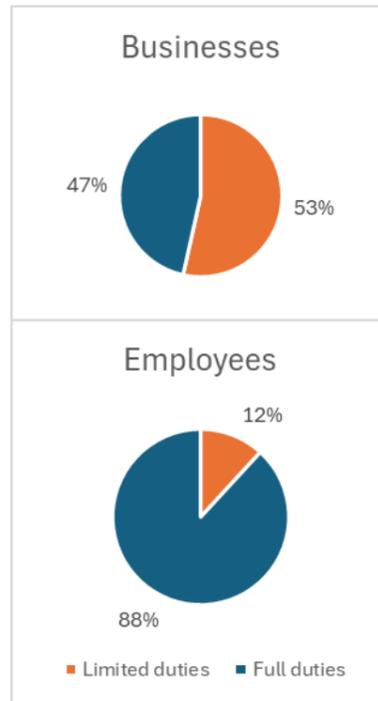
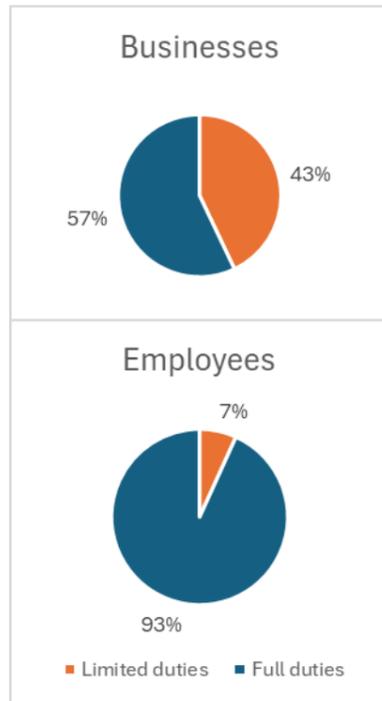
< 20 employees

Low risk is defined as 2-digit ANZSIC industries in which:

< 10% of injuries are severe or fatal, excluding high risk industries



< 15% of injuries are severe or fatal, excluding high risk industries



< 20% of injuries are severe or fatal, excluding high risk industries

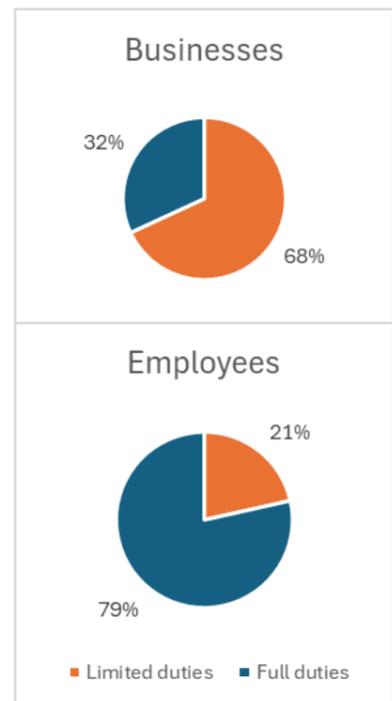
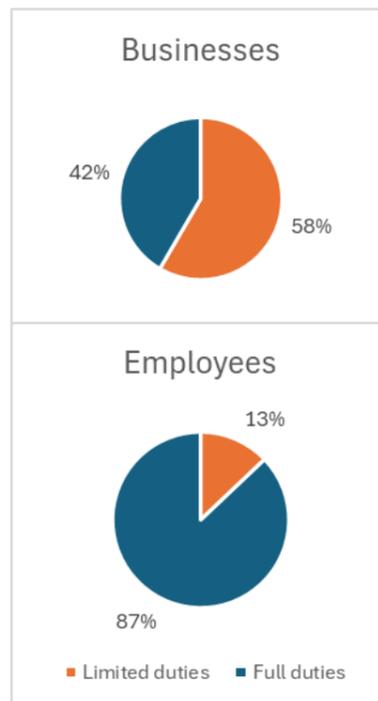
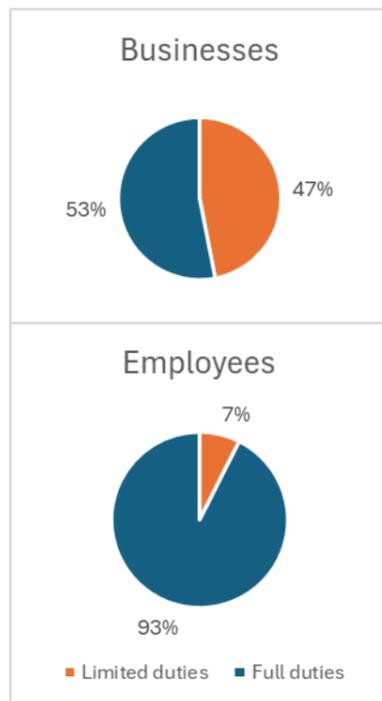


Figure 2 Proportions of businesses and employees impacted by defining 'small' based on different numbers of employees, and low-risk at different settings of proportion of severe and fatal injuries (see Figure 1). Total numbers of businesses and employees are approximately 164,000 (excluding sole traders) and 2,500,000, respectively. High-risk industries are industries of which bars are coloured red in Figure 1.

Annex One (B): Replicating (now-repealed) designations of high and low risk sectors relating to limits on health and safety representatives and committees at one-digit ANZSIC codes

47. This approach is similar to the approach taken in the now-repealed regulations identifying high-risk industries in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016). High-risk sectors were deemed as: (A) Agriculture, forestry, & fishing; (B) Mining; (C) Manufacturing; (D) Electricity, gas, water, & waste services; (E) Construction; and (I) Transport, postal, & warehousing.
48. Note: the industry designations have changed over time and differ with the regulations – particularly for the inclusion of agriculture in ‘Agriculture, forestry, & fishing’. The limits on requirements relating to health and safety representatives and committees in deemed low risk sectors was repealed in 2023.
49. By drawing boundaries at different employee counts (1–5, <10, or <20 employees), different numbers of businesses and employees are impacted (Figures 3 and 4). Published incidence rates are displayed in Annex One (C).

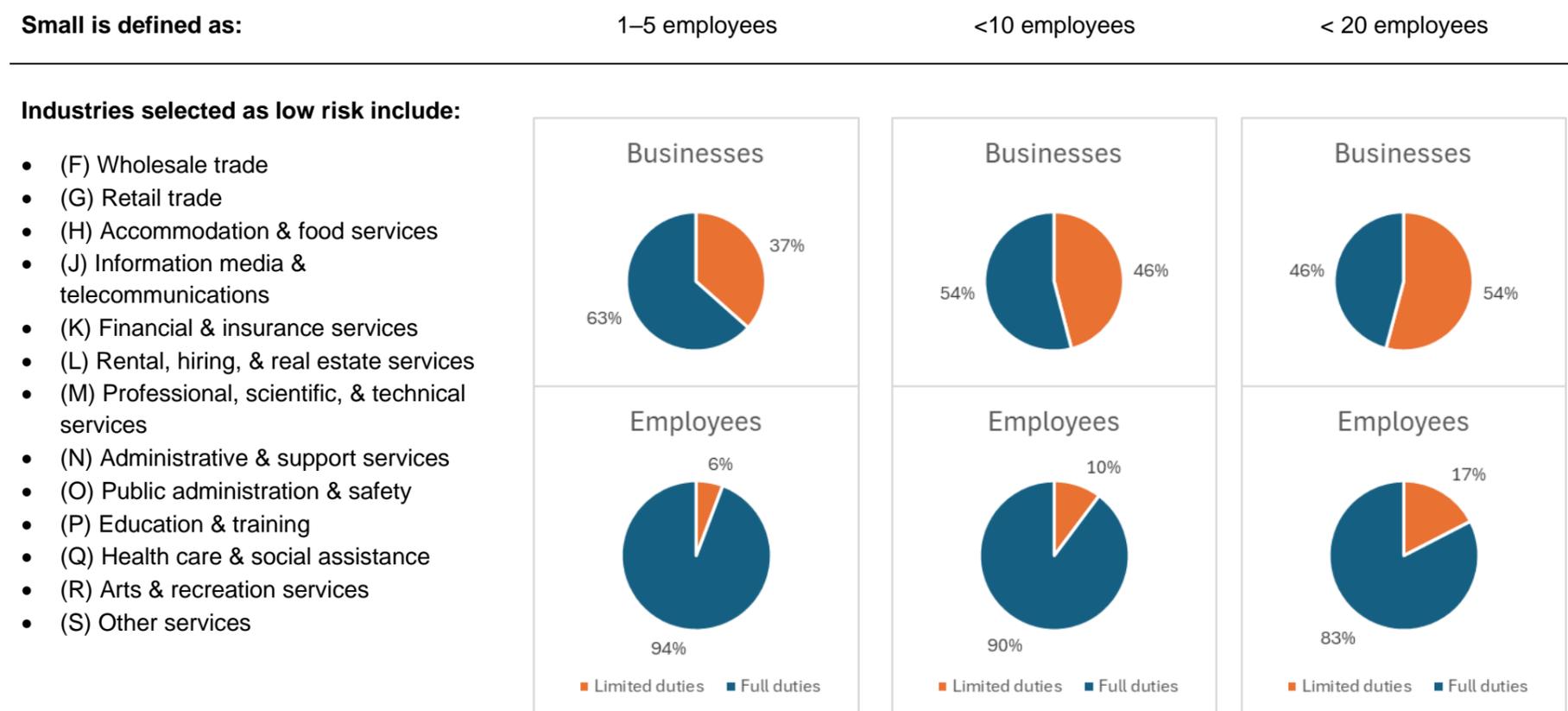


Figure 3 Proportions of businesses and employees impacted by defining ‘small’ on different numbers of employees, and ‘low risk’ as selected one-digit ANZSIC codes. Total number of businesses and employees are 164,000 and 2,500,000, respectively.

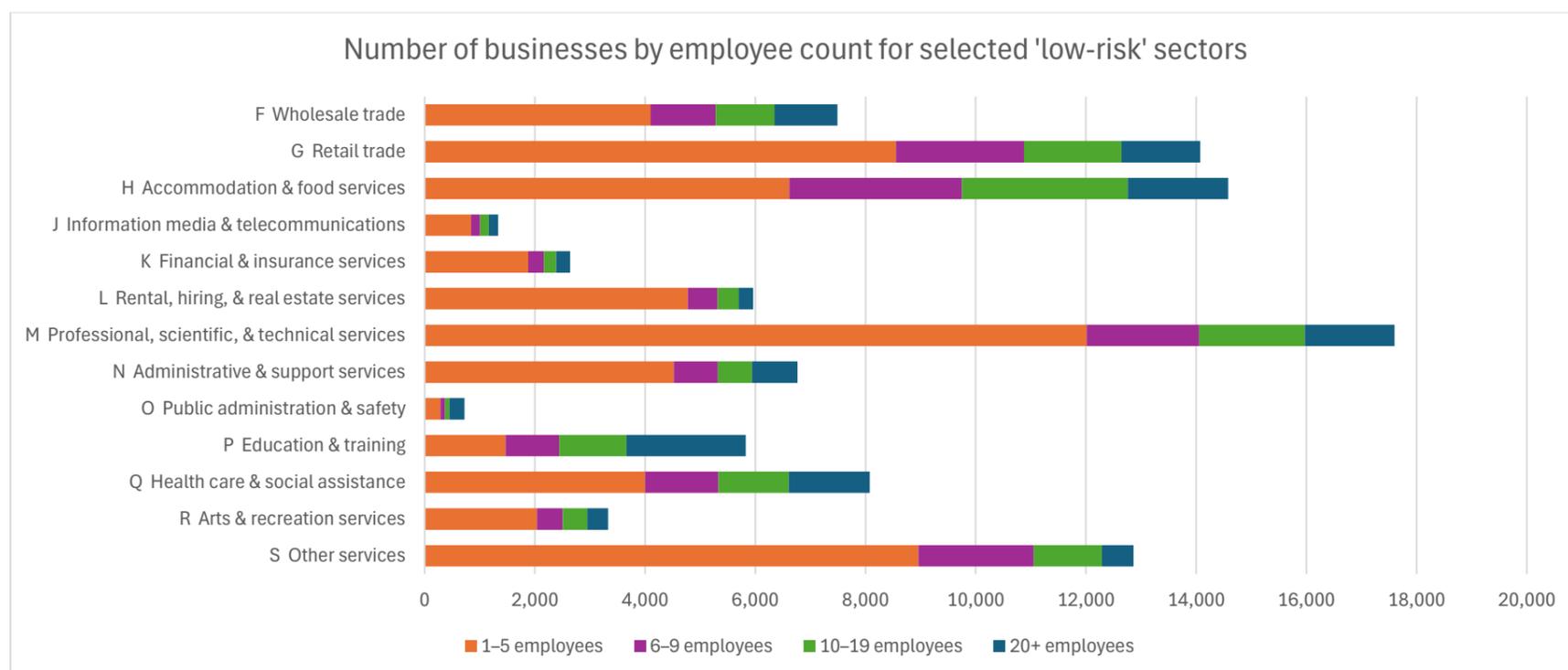


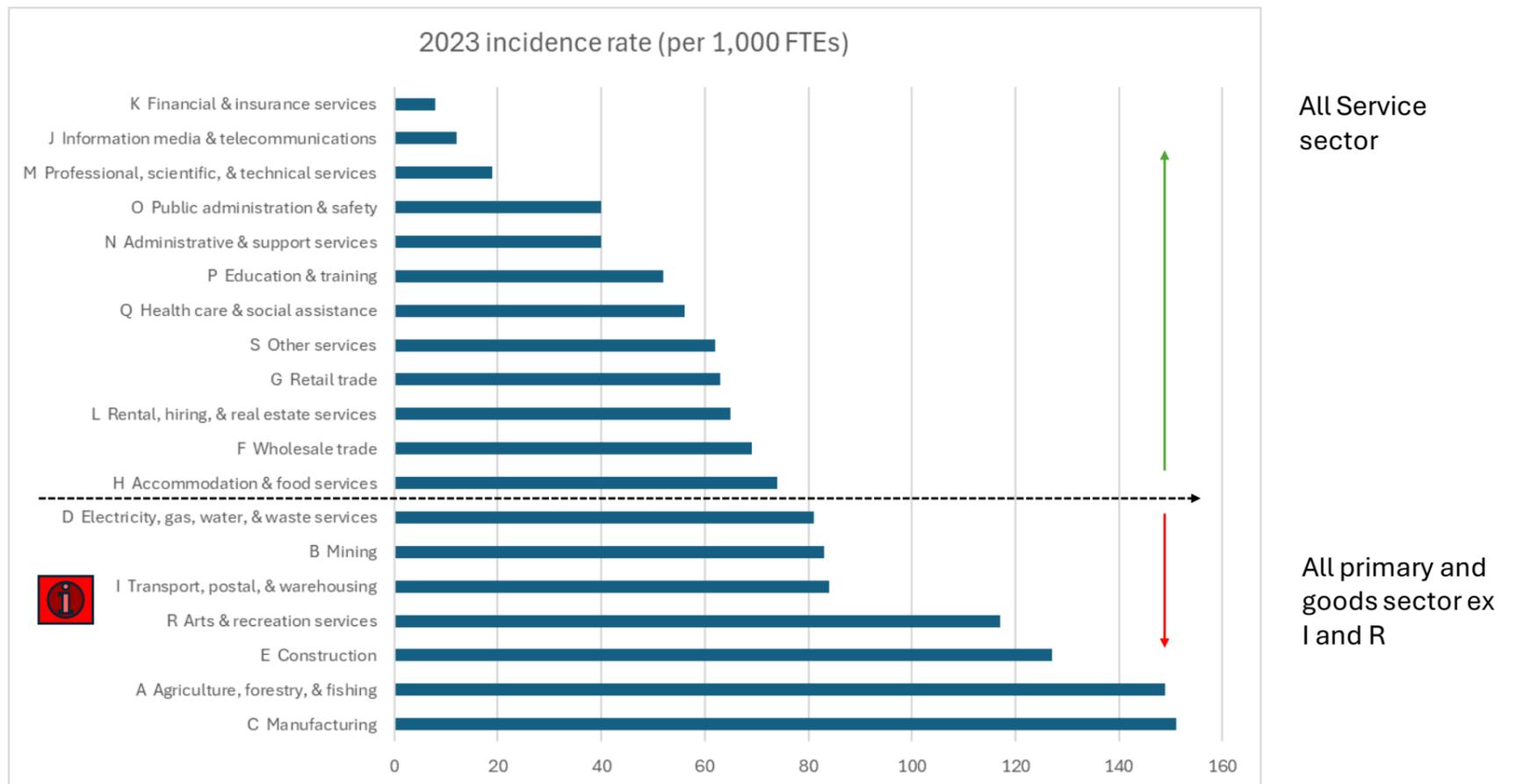
Figure 4 Number of businesses by employee count for selected ‘low risk’ sectors (by one-digit ANZSIC code).

Annex One (C): Higher level industry Breakdowns

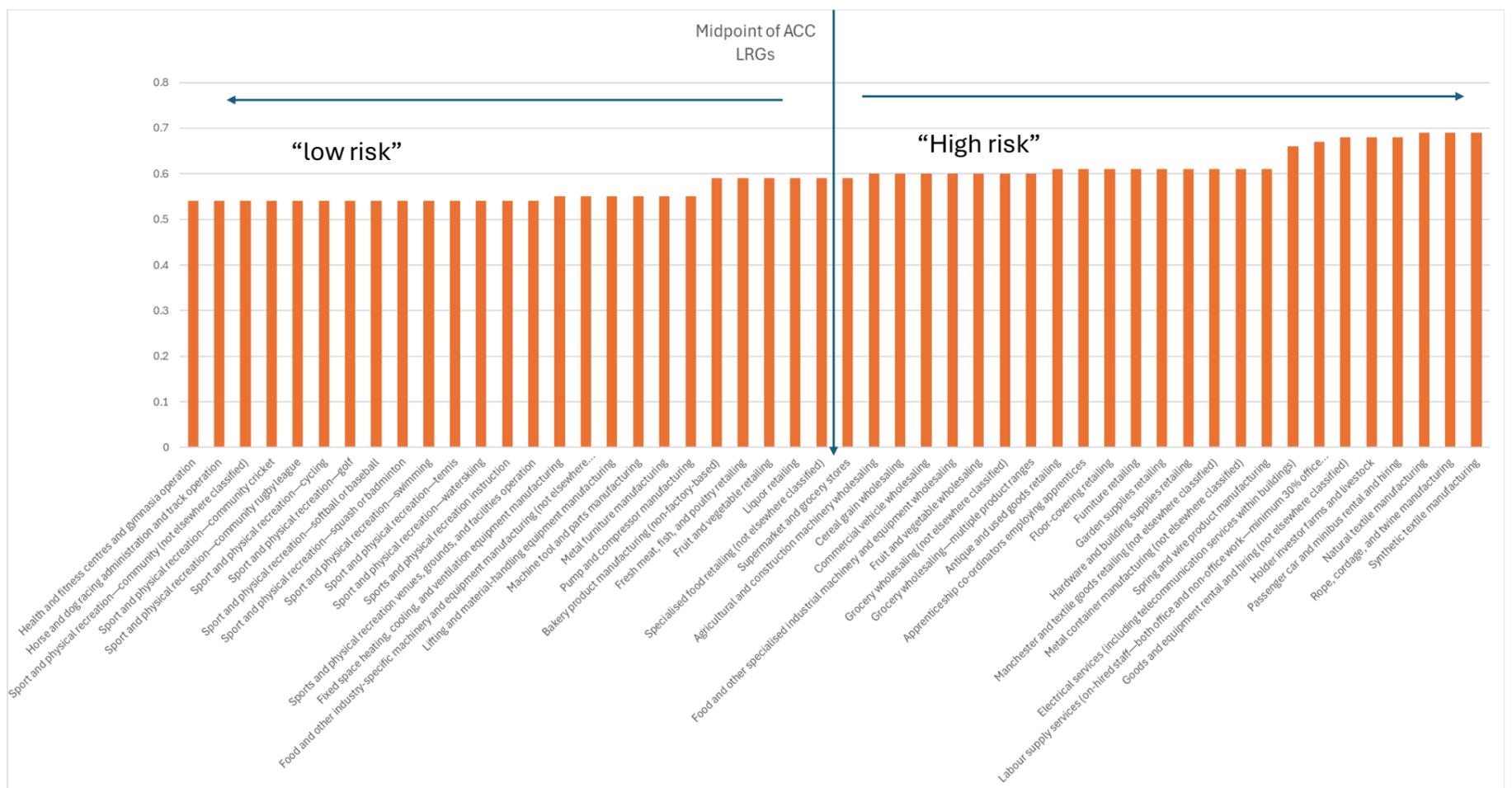
At a higher level, the Service sector is lower harm than the goods producing and primary sectors.

Transport, postal and warehousing and arts and recreation services are the service sectors that have higher harm.

At this level there will be individual firms that end up in the 'wrong' category.

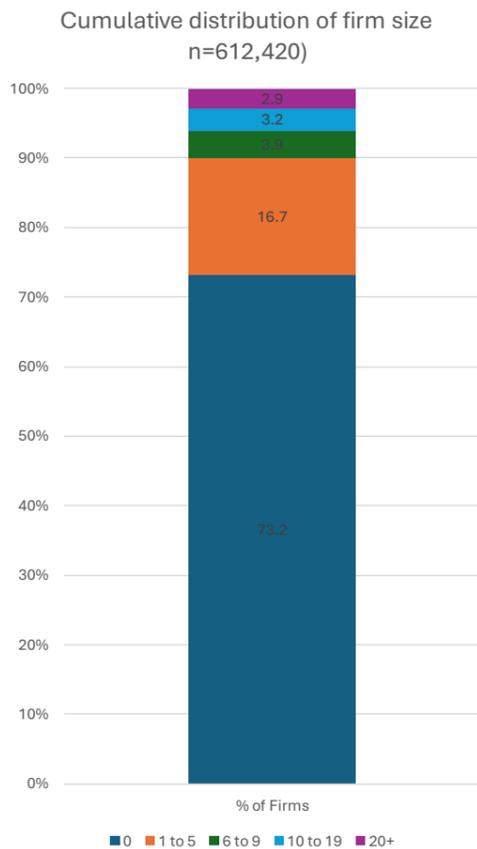


Annex One (D): Snippet of ACC Levy Risk Groups (illustrative example only)



Annex Two: Defining Small

- The trade-off is between coverage and ease of self-identification
- 73% of firms are captured if you limit it to sole traders – and this is easy to self-identify
- Trying to get beyond 73% creates an arbitrary boundary somewhere



UK – Sole Traders

Sole traders excluded from Health and Safety law, with the exception of 6 high risk sectors (easy to self-identify).

The law also applies if your activities can harm others (in practice hard to self-identify)

NZ – no one definition of small business in law. It is context specific

Whichever number you choose will create an arbitrary boundary. As an example, at 5 employees you have 90% of businesses covered, and at 20 employees you have 97% of businesses covered.

Business size fluctuates seasonally and with business cycles meaning owners duties will change from time to time (and possibly annually)

Government measures firm size by employees, but the HSWA focuses on workers (to avoid gaming of contractors)

The more fundamental the change in duties, the harder the boundary becomes (and the more resource will be spent gaming it).

Annex Two (B): New Zealand business structure

Table 1 Number of businesses by number of employees per industry. Industries are represented by their one-digit Australia New Zealand Standard Industrial Classification (ANZSIC) code. From Stats NZ, February 2024.

Industry (ANZSIC code)	Sole traders	1–5 employees	6–9 employees	10–19 employees	20+ employees
(A) Agriculture, forestry, & fishing	44,580	13,254	2,217	1,311	915
(B) Mining	456	123	45	36	51
(C) Manufacturing	11,628	5,523	1,839	1,815	2,055
(D) Electricity, gas, water, & waste services	714	315	69	78	93
(E) Construction	54,144	19,593	3,708	2,757	1,695
(F) Wholesale trade	9,150	4,098	1,182	1,068	1,143
(G) Retail trade	15,813	8,553	2,322	1,767	1,434
(H) Accommodation & food services	10,623	6,615	3,132	3,012	1,824
(I) Transport, postal, & warehousing	11,820	3,543	675	579	636
(J) Information media & telecommunications	6,258	840	165	159	171
(K) Financial & insurance services	43,581	1,878	282	225	252
(L) Rental, hiring, & real estate services	122,112	4,773	540	384	264
(M) Professional, scientific, & technical services	55,020	12,015	2,040	1,914	1,632
(N) Administrative & support services	15,255	4,521	798	624	822
(O) Public administration & safety	702	285	87	75	273
(P) Education & training	4,833	1,467	975	1,221	2,166
(Q) Health care & social assistance	16,878	3,999	1,332	1,275	1,470
(R) Arts & recreation services	8,709	2,040	465	447	375
(S) Other services	15,957	8,961	2,091	1,236	573
Total	448,233	102,396	23,964	19,983	17,844

Annex Three: What the limitation on duties looks like

Small Business	All duties apply but only to critical risks (Business needs to assess what a critical risk is, and what is reasonably practicable to address it)	Worker participation (but limited to Critical Risks) OR Reinstate no elections for H&S reps, and H&S committees	Any specific duties (eg engineers etc)
Other Business	All duties apply to all risks (Business Still needs to assess what a risk is, and what is practicable to address it – which is still meant to be proportionate)	Worker participation	Any specific duties

