



AIDE MEMOIRE

Lodging Cabinet paper 3: Health and Safety Reform: further legislative changes

Date:	26 May 2025	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0013841

Information for Minister

Hon Brooke van Velden
Minister for Workplace Relations and Safety

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Hayden Fenwick	Manager, Health and Safety Policy	04 901 3889	<input checked="" type="checkbox"/>
Rachael Fleming	Principal Policy Advisor, Health and Safety Policy	04 897 6592	<input type="checkbox"/>

The following departments/agencies have been consulted

DPMC, CAA, MNZ, WorkSafe, MoT, MfR, NZTA, TSY, IRD, MFAT, MBIE Small Business and Manufacturing policy, MBIE Accident Compensation Policy.

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 Withdrawn |



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Purpose

To advise you of how the key feedback from agency consultation has been addressed in the Cabinet paper. The paper also reflects changes requested by your Office.

To provide you with a revised Cabinet paper: *Health and Safety Reform: further legislative changes* for review and final comment before lodging on 29 May for Cabinet Economic Policy Committee on Wednesday 4 June 2025.

Hayden Fenwick
Manager, Health and Safety Policy
Workplace Relations and Safety, MBIE

26 / 5 / 2025

Changes have been made to the Cabinet paper based on your recent feedback and decisions

We worked with your office and agreed on a formula to support PCBUs to calculate whether they meet the “fewer than 20 workers” threshold

1. The Ministry of Business, Innovation and Employment’s (MBIE) advice on the proposal to limit the health and safety duties for small businesses recommended that small PCBUs be defined as those who have “fewer than 20 workers”. The advice noted that no matter how small PCBUs are defined, it would create boundary issues for the few PCBUs that fluctuate over 20 workers throughout the year due to seasonal demands (eg seasonal fruit picking for agriculture, or retail during the Christmas period) [REQ-BRIEFING-0012039 refers].
2. You agreed to our recommended definition of a small PCBU and upon receiving a draft Cabinet paper, we worked with your office to consider options to address this boundary issue.
3. After considering several options we agreed that the simplest formula to aid PCBU’s in their assessment was for ‘fewer than 20 workers’ to be determined based on the maximum number of workers in the PCBU for *nine out of the twelve months of each financial year*. This is reflected in paragraphs 12 and 13.

We sought your agreement to amend a recommendation relating to the directors’ duties proposal

4. On 16 April, we provided you with detailed advice on the proposal to clarify officers’ duties in the HSW Act and you agreed to our recommendations [REQ-BRIEFING-0012039 refers].
5. In the Workplace Relations and Safety Weekly Report dated 8 May, we sought your agreement to amend one of the recommendations in the draft Cabinet paper, so that the officers’ due diligence duty is limited to the reasonable steps currently identified in the HSW Act (as opposed to excluding management of the PCBU from the list of officers’ diligence reasonable steps) [REQ-BRIEFING-0013550 refers].
6. This updated recommendation is reflected in the in paragraph 35 and recommendation 7.1.

Key feedback from agency consultation

7. We completed agency consultation on the draft Cabinet paper on Tuesday 20 May (this timing reflects the originally scheduled CBC date of 26 May).
8. Most agencies are broadly comfortable with the content of the paper. Concerns expressed by agencies mostly related to the proposal to limit the health and safety duties for small businesses. We draw your attention to the following key comments and the changes that were made as a result:
 - The **Department of Prime Minister and Cabinet** suggested the paper more clearly describe the proposal to limit the health and safety duties for small businesses, including outlining the key risks and trade-offs. This is reflected in paragraphs 27 to 29.
 - The **Ministry for Regulation, the Treasury and MBIE’s Accident Compensation policy team** raised a risk that the focus on critical risk could result in an increase in less severe injuries which could increase ACC work injury costs, of which 50 percent are from less-severe injuries and suggested the Cabinet paper more clearly state this. We have noted this risk at paragraph 28.
 - **WorkSafe, Maritime NZ, and the Ministry for Regulation** pointed out that the small business proposal continues to rely on PCBUs interpreting and understanding their duties and identifying risks, so may not reduce confusion and compliance costs for

small businesses or their reliance on advice from external consultants. We have prepared a Q&A relating to this feedback.

- Legal professional privilege

[REDACTED]

Cabinet Economic Policy Committee consideration is on 4 June

9. We will work with your office to lodge the final Cabinet paper and associated regulatory impact statement on Thursday 29 May.
10. For this Cabinet paper, we are working toward the following timeframes:

Steps	Timeframe
Updated Cabinet paper and finalised regulatory impact statement provided for lodging	26 May
Lodge Cabinet paper	29 May
Cabinet Economic Policy Committee	4 June
Cabinet	9 June
Announcement	TBC

11. We are working with your office to provide you with talking points and Q&As for the Cabinet Economic Policy Committee meeting.

Next steps

12. This paper is the third in a package of Cabinet policy papers to reform health and safety, two have already been considered and the remaining are scheduled for Cabinet consideration as follows:
 - a. **October 2025** – Cabinet Legislation Committee – seeking agreement to introduce an omnibus Bill (to give effect to the changes in this Cabinet paper and your previous two Cabinet papers).

Constitutional conventions

[REDACTED]