



BRIEFING

Draft Cabinet paper for Ministerial consultation: Health and Safety at Work Amendment Bill: approval for introduction

Date:	14 January 2026	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0020961

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, and Agree to circulate the draft Cabinet paper for Ministerial consultation, subject to your feedback.	20 January 2026

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	✓
Elizabeth Thomas	Principal Advisor, Health and Safety Systems Policy	04 831 9670		
Bobby Lust	Senior Policy Advisor, Health and Safety Systems Policy	04 978 3386		

The following departments/agencies have been consulted
Agency consultation will occur simultaneously to Ministerial consultation.

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 Withdrawn |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 provide you with the draft Cabinet paper *Health and Safety at Work Amendment Bill: approval for introduction* for your review, along with the draft *Health and Safety at Work Amendment Bill*.

This briefing also seeks your agreement to seek an additional Cabinet decision as part of the Cabinet paper, and agreement to further address issues identified during Parliamentary Counsel Office (PCO) drafting under your delegated authority.

Executive summary

This briefing provides a draft Cabinet paper to introduce the Health and Safety at Work Amendment Bill (the Bill) to the House and seeks two policy decisions. The Cabinet paper has been drafted as though these decisions have been made.

The briefing also seeks your feedback on the attached draft Cabinet paper, and approval to commence Ministerial and departmental consultation for the period of 21–27 January.

The Cabinet paper and Bill are scheduled to be considered by the Cabinet Business Committee on 2 February 2026, with consideration by Cabinet on 9 February 2026.

The policy decisions are:

1. We seek your agreement to a further limit on the Henry VIII power in the Bill, and to seek Cabinet agreement to both the Order in Council provision and the limit on the power through the Cabinet paper.
 - **Section 22B:** This section gives the power to update, by Order in Council, the list of regulations that are part of the definition of critical risks when regulations are made, revoked or amended. **Legal professional privilege** [REDACTED]
 - We note that the current draft of the Bill includes a second Order in Council mechanism that will be removed: Section 25D. This section allows changes to cross-references to regulations in the GRWM Regulations, should numbering in the regulations change. We now consider it unlikely that the numbering of the GRWM Regulations would change so that the cross-references are outdated. As this mechanism had not yet been approved by you formally under your delegated authority there is no need for an agreement to remove it from the draft Bill.
2. Additionally, we seek your agreement to clarify the requirement for all PCBUs to prioritise critical risks. This can be made under your delegated authority. This is in addition to the limitation on the general duties to critical risks only for small PCBUs.

- **Sections 25A and 25B:** Cabinet agreed that the principal objective of the Bill is to prevent work-related harm by managing the critical risks arising from work. This is reflected in the amended purpose of the Act. To operationalise this, the Bill now adds to two provisions (sections 25A and 25B) requiring PCBUs to prioritise critical risks over other risks. This change clarifies and ensures the legislative framework reflects the core intent of the reforms.

Several other components of the Bill remain under active development, including additional work on Schedule 1A (subject to your agreement), further refinement to section 35 to clarify as much as possible overlaps with other legislation, and minor wording changes to regulators' statutory functions. These items will be completed ready for lodging the Bill, as well as any further amendments directed by you following ministerial consultation, and final PCO proofreading.

Recommended action

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

- a **Note** that we have previously sought and received your agreement to enable Schedule 1A to be accompanied by a provision allowing the Governor-General to update the schedule by way of Order in Council [BRIEFING-REQ-0024405 refers].
Noted
- b **Agree** that the Order in Council provision to amend Schedule 1A (section 22B) may only be made if the Minister is satisfied that the proposed amendments are consistent with the definition of a critical risk in new section 22A(1)(b), that is whether a hazard is likely to result in any one or more of a death, a notifiable injury or illness, a notifiable incident or an occupational disease listed in Schedule 2 of the Accident Compensation Act 2001;
Agree / Disagree
- c **Agree** that the Cabinet paper seeks Cabinet agreement to the inclusion of the Order in Council provision to amend Schedule 1A and the limit on the responsible Minister's power to recommend amendments (per recommendation a);
Agree / Disagree
- d **Note** that we have not previously sought your agreement to a second Order in Council provision that is included in the Bill (section 25D), to amend the reference to duties in the GRWM Regulations that are limited to critical risks only for small PCBUs;
Noted
- e **Note** that we have reconsidered the need for this second Order in Council provision (per recommendation d), **Legal professional privilege**
Noted
- f **Note** that Cabinet has authorised you to make decisions consistent with the policy of 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
- g **Agree** that the Bill adds to new sections 25A and 25B a requirement for all PCBUs to prioritise the management of critical risks over other risks, which adds to the limitation on the general duties for small PCBUs to only critical risks;
Agree / Disagree
- h **Agree** that Schedule 1A in the Bill will describe hazards managed by regulations under the HSW Act;
Agree / Disagree

- i **Note** that the draft Cabinet paper is attached for your review as **Annex One**; *Noted*

- j **Note** that the draft Bill included in **Annex Two** has several outstanding issues that will be resolved prior to introduction of the Bill, but not prior to Ministerial consultation; *Noted*

- k **Agree**, subject to any amendments you direct, to circulate the draft Cabinet paper and Bill for Ministerial consultation between 21–27 January 2026; *Agree / Disagree*

- l **Note** that MBIE will carry out simultaneous agency consultation between 21–27 January 2026; *Noted*



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

14 / 01 / 2026

Hon Brooke Van Velden
Minister for Workplace Relations and Safety

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The Cabinet paper seeks agreement to introduce the Health and Safety at Work Amendment Bill 2026 into the House

1. The Bill is an omnibus Bill amending the *Health and Safety at Work Act 2015* (HSW Act), the *WorkSafe New Zealand Act 2013* (WorkSafe Act) and the *Health and Safety at Work (General Risk and Workplace Management) Regulations 2016* (GRWM Regulations). Cabinet agreed to your suite of proposals to reform the health and safety system in 2025 [CBC-25-MIN-0004, EXP-25-MIN-0044, and ECO-25-MIN-0086 refer].
2. We consulted the Office of the Clerk of the House of Representatives prior to drafting of the Bill. At that stage, they agreed in principle that the proposed amendments comply with standing order 267(1)(a), which requires that an omnibus bill deal with an interrelated topic that can be regarded as implementing a single broad policy.
3. You recently made decisions regarding the commencement date of the Bill, provisions to clarify the treatment of existing ACOPs, and seeking Cabinet agreement to amend section 190 of the HSW Act in the Bill [BRIEFING-REQ-0022593 refers]. This additional Cabinet decision is reflected in paragraphs 53–56 and recommendation 9 of the Cabinet paper.
4. Additionally, throughout drafting, you have made decisions within your delegated decision-making powers to make clarifying and workability-focused adjustments to the Bill [BRIEFING-REQ-0024405 refers]. Specifically, you agreed to include an additional purpose of providing certainty about PCBUs' obligations; to refine the definition of critical risk by raising the threshold to 'likely' outcomes; to add an updatable schedule listing regulated critical risks; to refine the definition of a small PCBU for seasonal and newly established businesses; and to update the wording of consultation requirements for draft codes of practice from consultation 'between' the listed parties to consultation 'with' these parties. These decisions are all noted in the draft Cabinet paper.

We recommend narrowing the Order in Council provision to amend Schedule 1A (critical risks) to appropriately constrain the Henry VIII power

5. 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].
6. We proposed that the existing risks managed through regulations made under the HSW Act are included in the Bill as a schedule (Schedule 1A). You previously agreed to enable Schedule 1A to be accompanied by a provision allowing the Governor-General to update the schedule by way of Order in Council [BRIEFING-REQ-0024405 refers], to ensure that the definition of critical risk can be kept current as regulations change. This is important particularly with regards to the ongoing work on your sectoral work health and safety reforms package.
7. This Order in Council provision is a Henry VIII power, as it allows delegated legislation to amend primary legislation. We have included this in the draft Cabinet paper as the provision may draw comment from the Regulations Review Committee (RRC) at select committee, particularly given that the scope of the power as drafted in the current version of the Bill (clause 9, section 22B) gives the Executive wide powers to amend primary legislation.
8. We have given further consideration to this provision. The Legislation Design and Advisory Committee (LDAC) guidelines note that Henry VIII clauses are permissible, but that they

come in various types, and each must be considered carefully in terms of the extent to which they raise issues concerning the separation of powers.

9. One reason for a Henry VIII provision cited by LDAC is a benefit to the public in providing readily accessible information in an Act that can be easily adjusted over time.¹ The provision to update Schedule 1A is merited on this basis as the list of regulations and hazards is essential to enable people to understand what a critical risk is, and therefore the scope of core aspects of the HSW Act, and it is equally important that the list remains up to date in response to changes in relevant regulations, as provided for in the Order in Council provision.
10. As drafted, Schedule 1A may only be amended by amending, deleting or adding a matter in response to regulations under the HSW Act being amended or revoked, or new regulations being made (new section 22B(2)).
11. We recommend the power to amend Schedule 1A by Order in Council be further limited to ensure that the definition of critical risks as provided in in new section 22A(1) to ensure that Schedule 1A evolves over time in a way that remains consistent with Parliament's intended definition of critical risk. We propose an addition to new section 22B so that the responsible Minister may recommend an amendment to Schedule 1A only if satisfied the amendment is consistent with the definition of a critical risk in new section 22A(1)(b), that is, that is, the addition or amendment must concern a hazard that is likely to result in any one or more of the following: a death, a notifiable injury or illness, a notifiable incident, or an occupational disease listed in Schedule 2 of the Accident Compensation Act 2001 (or removing a hazard no longer considered likely to have such a result). We seek your agreement to this amendment to section 22B.
12. The Cabinet paper has been drafted to seek Cabinet agreement to the use of the Henry VIII power with this limitation as outlined above in section 22B. The draft Cabinet paper discusses this in paragraphs 9–17 and recommendations 6 and 7. We seek your agreement to including this recommendation in the Cabinet paper, so that Cabinet is making an active decision in relation to including a Henry VIII power in the Bill.

Confidential advice to Government

¹ <https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/issues-particularly-relevant-to-empowering-secondary-legislation-2/chapter-15/>

15. We would also note the HSW Act includes other powers to amend the Act by Order in Council:
 - a. Under s17(1)(b)(v) regulations may declare a person or class of persons not to be a PCBU; s23(2) enables a regulation to declare an injury or illness not to be notifiable despite the Act's definition of notifiable injury or illness, and s24(2) provides the same for notifiable incidents. Prescribed persons may be excluded from the s37 duty of a PCBU who manages or controls a workplace, and the same applies to the s38 duty of a PCBU who manages fixtures, fittings, or plant at workplace.
 - b. Section 219 sets extra requirements for these regulations: the Minister must have regard to the purpose of the HSW Act and be satisfied that any modifications to definitions etc are not broader than is reasonably necessary to address the matters giving rise to the proposed regulations.

The Bill currently includes another Henry VIII power that we consider unnecessary

16. Cabinet agreed to apply the limitation on duties for small PCBUs to critical risks to the general duties in section 36–38 in the HSW Act, as well as to the duties in the GRWM Regulations to provide worker supervision, training and instruction, and personal protective equipment (PPE) [ECO-25-MIN-0086 refers]. These GRWM Regulations are referred to in section 25A(1)(a)(ii) of the Bill (clause 11).
17. The current draft of the Bill adds a second Order in Council mechanism in clause 11, section 25D, to amend this reference to the duties in regulations that are narrowed to critical risks for small PCBUs. This was drafted to make sure the references to the GRWM Regulations do not become out of date in case of any future changes to these regulations. We have not previously sought your agreement to the inclusion of this provision.
18. **Legal professional privilege** we have reconsidered whether it is necessary. If substantive changes happened to the GRWM Regulations, specifically to the regulations related to providing supervision, training, instruction and PPE, it might mean that the HSW Act becomes out of date. However, we consider there is a low likelihood of future change to the GRWM Regulations that would change the cross references in the HSW Act. Given this, we do not think the proposed Order in Council mechanism is necessary. **Legal professional privilege**
Legal professional privilege
19. This change means that there is no longer a need for new section 25D which provides for new section 25A(1)(a)(ii) to be updated by Order in Council in response to changes to relevant regulations. There is no need for an active decision on your part to remove this power, **Legal professional privilege** we were to seek your approval to it in this Briefing.

We seek your agreement include a requirement for PCBUs to prioritise critical risks in the Bill

20. **Legal professional privilege**
Legal professional privilege
Legal professional privilege
These signposting provisions (sections 25A–C) provide clarity and certainty for PCBUs and will help guide PCBUs understanding of their duties.

21. Cabinet previously agreed to sharpen the main purpose of the HSW Act so that its principal objective is to prevent work-related harm by managing the critical risks arising from work [CBC-25-MIN-0004]. Legal professional privilege we identified that to give full effect to this decision, the emphasis on critical risk management needs to be signalled explicitly in the duties of PCBUs.
22. This is reflected in the Bill in provisions 25A and 25B, which embed the requirement for PCBUs to prioritise the management of critical risks over other risks. New section 25A applies to small PCBUs, and limits their general duties and obligations in specified regulations to critical risks only. When complying with all other provisions, critical risks are to be prioritised over other risks. New section 25B applies to all other (i.e. non-small) PCBUs, and requires critical risks to be prioritised over other risks under all PCBU duties. The Bill does not, however, create an offence for failure to prioritise critical risks and specifies this is not an offence.
23. This change is consistent with the intent of the reforms and falls within your delegated authority. Therefore, we seek your agreement under your delegated authority to include the requirements that all PCBUs prioritise the management of critical risks over other risks are included in the Bill.

Work is progressing on several other outstanding items in the Bill

24. A number of outstanding issues will remain under active development during Ministerial consultation on the Bill and the Cabinet paper. The Bill is also still to be peer reviewed and proofread by the Parliamentary Counsel Office (PCO).
25. To ensure that the Bill can be properly finalised, we recommend you include the following recommendations in the Cabinet paper:
26. To authorise you to approve minor and technical changes to the Bill, prior to its introduction (recommendation 11 in the Cabinet paper); and
27. To authorise the Parliamentary Counsel Office to make minor proofreading and editorial changes to the Bill, prior to its introduction (recommendation 12 in the Cabinet paper).
28. The following sections outline the key areas where additional work is underway.

Schedule 1A, part of the regulations-based definition of critical risk, is being further developed and checked for quality

29. In the officials meeting of 16 December 2025, we indicated that we had asked the drafter to remove the detailed lists of risks out of Schedule 1A, and refer exclusively to the list of regulations under the HSW Act. The current draft of the Bill presents Schedule 1A as a focused list of hazards based on the existing work health and safety regulations.
30. Legal professional privilege
Where a risk is associated with one or more of those hazards, the risk is a critical risk. We believe that this focused list strikes a balance between transparency and accessibility, that offers certainty and clarity for PCBUs. Subject to your agreement, we propose to retain Schedule 1A in this format.
31. Additionally, Schedule 1A is still undergoing further quality assurance by both MBIE and PCO to ensure that it is focused on the hazards in the existing regulations under the HSW Act.

Further amendments are expected to section 35, sharpening overlaps with other legislation

32. Throughout drafted versions of the Bill, section 35 has undergone a lot of revisions. The current draft of section 35 is much improved, but may need further refinement with the drafter, regulators, and impacted agencies, to ensure that it achieves the policy intent that Cabinet has agreed on. We will continue to work with regulators and impacted agencies, in particular MBIE Building Performance and Resilience (Building and Construction) in relation to their forthcoming changes to earthquake prone buildings, to refine draft section 35 to address any remaining issues. We recommend that you indicate this to impacted portfolios (i.e., Building and Construction, Transport) during Ministerial consultation.
33. It will be important that there is very clear guidance provided on this new provision when it is enacted to make clear its application in particular circumstances, such as the Building example above.

Time constraints have prevented a small update to the wording of the regulators' function to provide guidance, advice, and information

34. In the officials meeting of 16 December 2025, you indicated that you would like the wording relating to the regulators' main function to 'provide guidance, advice, and information on work health and safety' (as drafted in the Bill, section 190(2)(a) in the HSW Act and section 10(1)(a) in the WorkSafe Act), to be updated to 'provide guidance, advice, and information on compliance with work health and safety legislation'.
35. Time constraints prevented this from being included in the current draft of the Bill but this wording will be included in the introduction version of the Bill.

In summary, nine clauses in the Bill will be resolved prior to introduction of the Bill, but not prior to Ministerial consultation

36. As noted throughout the briefing, the following items in the Bill are still to change:
 - a. Section 22B: limiting of the Henry VIII power, subject your agreement (recommendations a, b, and c, and paras 5–12 above refer).
 - b. Section 25D: removal of the Henry VIII power, with minor wording changes to s25A(1)(a)(ii), (recommendations d and e, and paras 16–18 above refer).
 - c. Section 35: wording may still change while we work with agencies to ensure that the Bill appropriately captures the policy intent (paras 32–32 above refer).
 - d. Section 190 in the HSW Act and section 10 in the WorkSafe Act: a minor wording change to one of the regulator's main functions (paras 34–35 above refer).
 - e. Schedule 1A: the Schedule may change to capture the hazards in the existing regulations under the HSW Act, subject to your agreement (recommendation h), and with further changes possible based on quality assurance (paras 29–31 above refer).
37. Additionally, we expect minor changes to the following items in the Bill:
 - a. Section 37: reordering of (3) and (3A).
 - b. Section 226: possible minor wording change for use of the word 'comply' – dependent on drafter consideration.
 - c. New part 3: the correct name of the 2024 Ports ACOP published by Maritime NZ will be inserted.

The Bill has been shared with the Ministry of Justice and the regulators ahead of Ministerial and Agency consultation

38. The Bill has been shared with the Ministry of Justice on 19 December 2025 to advise on the consistency of the Bill with the *New Zealand Bill of Rights Act 1990* (the BORA vetting). We have requested this to be completed by 16 January 2026.
39. The Bill was shared with WorkSafe New Zealand, the Civil Aviation Authority, and Maritime New Zealand on 23 December 2025, ahead of agency consultation. We sought their feedback on two specific questions relating to the drafting of the ACOP provisions by 14 January 2026. At the time of finalising this briefing, we have received minor comments from Maritime New Zealand and WorkSafe New Zealand.

Next steps

40. Subject to your agreement, we will provide updated drafting instructions to PCO early next week.
41. We seek your review of the draft Cabinet paper. Subject to your feedback, we seek your agreement to circulate these papers for Ministerial consultation between 21–27 January.
42. Note that simultaneously, MBIE will be carrying out agency consultation.
43. Throughout the drafting, we have worked with regulators and agencies to resolve any drafting issues. We recommend these portfolios and agencies to be included in consultation on the Bill and Cabinet paper:

Portfolio	Agencies
Building and Construction	Ministry of Business, Innovation and Employment (Building Performance and Resilience)
Commerce and Consumer Affairs	Ministry of Business, Innovation and Employment (Corporate Governance)
Community and Voluntary Sector	Department of Internal Affairs
Conservation	Department of Conservation
Finance	The Treasury
Foreign Affairs	Ministry of Foreign Affairs and Trade
Health	Ministry of Health
Local Government	Department of Internal Affairs
Regulation	Ministry for Regulation
Rural Communities	Ministry for Primary Industries
Small Business and Manufacturing	Ministry of Business, Innovation and Employment (Small Business and Manufacturing)

Transport	Ministry of Transport New Zealand Transport Agency Civil Aviation Authority Maritime New Zealand
Workplace Relations and Safety	WorkSafe New Zealand

44. We are working to the following timeframes:

Steps	Timeframe
Ministerial consultation (subject to edits)	21 – 27 January 2026
Agency consultation (in parallel with Ministerial consultation)	21 – 27 January 2026
Lodgement of Cabinet Paper	By 10am on 29 January 2026
Consideration by the Cabinet Business Committee	2 February 2026
Consideration by Cabinet	9 February 2026
Introduction of the Bill	9 February 2026

45. Officials will provide your office with talking points for the Cabinet Business Committee meeting closer to the time.

Annexes

Annex One: Draft Cabinet paper – Health and Safety at Work Amendment Bill: approval for introduction

Annex Two: Draft Health and Safety at Work Amendment Bill 2026

**Annex One: Draft Cabinet paper – Health and Safety at Work
Amendment Bill: approval for introduction**

Annex Two: Draft Health and Safety at Work Amendment Bill 2026
