



BRIEFING

Health and Safety at Work Amendment Bill – Authorisation for lodgement and agreement to seek further Cabinet decisions

Date:	28 January 2026	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0026451

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Agree to lodge final Cabinet paper and Bill for Cabinet Business Committee on 2 February 2026	28 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	✓
Fai Tongdethsri	Senior Policy Advisor, Health and Safety Systems Policy			

The following departments/agencies have been consulted
<p>Department of Internal Affairs (Local Government, and Community and Volunteers), Department of Conservation, Ministry of Transport, the New Zealand Transport Agency, Ministry for Primary Industries (Rural Communities), Ministry for Regulation, Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs, Building Performance and Resilience, and Small Business and Manufacturing), the Treasury, the Ministry of Foreign Affairs and Trade, the Ministry of Health, Ministry of Justice, WorkSafe New Zealand, the Civil Aviation Authority, and Maritime New Zealand.</p> <p>The Department of the Prime Minister and Cabinet was informed.</p>

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 Withdrawn |

Comments

BRIEFING

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Date:	28 January 2024	Priority:	High
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Purpose

This paper seeks your agreement to ask Cabinet to approve two further matters in the Bill, advises you of the consultation feedback from agencies and responses, and seeks your agreement to lodge the draft Cabinet paper 'Health and Safety at Work Amendment Bill: approval for introduction' and draft Health and Safety at Work Amendment Bill (the Bill) subject to any changes you require to the Cabinet paper.

The draft Cabinet paper and the Bill version 8.0 are attached, along with the Departmental disclosure statement, that must be lodged with the Bill, and draft talking points and Q&As for Cabinet Business Committee.

Recommended action

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

1. **Note** officials continued to work with PCO to resolve remaining drafting issues in parallel with Ministerial and agency consultation

Noted

2. **Agree** to seek Cabinet approval for two further decisions at CBC:

- a) to clarify and confirm that duties of small PCBUs be limited to critical risks only for the upstream duties in sections 39 to 43 of the HSW Act

Agree / Disagree

- b) that the Bill include a specific exception to the duty of a PCBU who manages or controls a workplace with regard to seismic risk to workplace buildings

Agree / Disagree

3. **Note** the feedback received from agencies and MBIE responses as set out in tables 1 and 2.

Noted

4. **Agree** that the issue raised by the New Zealand Transport Agency (NZTA) and the Ministry of Transport (MoT) regarding WorkSafe New Zealand (WorkSafe) failing to consult other regulators is best addressed through your Expectations to WorkSafe rather than NZTA and

MoT's proposed legislative requirement that WorkSafe consult relevant regulators as part of developing ACOPs.

Agree / Disagree

5. **Agree** to the changes to the draft cabinet paper as set out in table 2.

Agree / Disagree

6. **Agree** to lodge the attached Cabinet paper and Bill on Thursday 29 January 2026 for consideration by Cabinet Business Committee (CBC) on Monday 2 February 2026 to seek approval for introduction of the Bill.

Agree / Disagree

7. **Agree** to publicly release the final Cabinet paper and accompanying regulatory impact statement following their consideration at Cabinet on Monday 9 February 2026 within 30 working days.

Agree / Disagree

8. **Note** the departmental disclosure statement, that must be lodged with the Bill, in Annex 3.

Noted

9. **Note** the draft talking points and Q&A to support you during Cabinet Business Committee (CBC) in Annex 4.

Noted



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

Hon Brooke van Velden
Minister for Workplace Relations and Safety

28 / 01 / 2026

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Background

1. On Wednesday 21 January you agreed to commence Ministerial and agency consultation on the draft Cabinet paper and Bill. Consultation ended on Tuesday 27 January [BRIEFING-REQ-0020961 refers].
2. In parallel with Ministerial and agency consultation on the draft Cabinet paper and Bill, officials continued to work with PCO to address remaining drafting issues. These changes are reflected in the attached final version of the Bill (version 8.0) and the draft Cabinet paper. The attached draft Cabinet paper also incorporates changes made in response to feedback from your office today.

Further Cabinet decisions

3. We have redrafted the Cabinet paper to seek further decisions clarifying and confirming the limitations on the duties of small PCBUs and to clarify that the HSW Act does not require actions to manage seismic risk that are additional to the Building Act.

Seeking Cabinet's confirmation that the critical risk limitation on small PCBUs includes upstream duties

4. On Tuesday 27 January you directed us to ensure that the limit on small PCBU duties applies to the upstream duties on designers, manufacturers, importers, suppliers, installers, constructors, and commissioners of plant, substances, and structures in sections 39 to 43. This is reflected in draft version 8.0 of the Bill.
5. The attached draft Cabinet paper explains the reason for this decision at paragraphs 16 to 18 and seeks Cabinet approval at recommendation 8.

Seeking Cabinet's agreement to clarify duties relating to seismic risk in workplace buildings

6. We have continued to work closely with PCO and officials in the Building and Construction portfolio to address the relationship between the building seismic risk and work health and safety regulatory systems.
7. It has become clear that a specific provision is needed to give effect to the intent that the HSW Act not be used as a backstop to require additional actions to manage seismic risk particularly given forthcoming changes under the Building (Earthquake-prone Buildings) Amendment Bill, which is currently before the Transport and Infrastructure Select Committee. Building and Construction officials support this proposal to seek Cabinet approval.
8. The attached draft Cabinet paper explains the policy intent and the reason for this provision decision at paragraphs 19 to 21 and seeks Cabinet approval for this provision at recommendation 9.

Drafting issues on which you made decisions on 20 January 2026 have been addressed

9. Our briefing of 14 January 2026 sought your agreement to, or noting of, the following issues, which are addressed in the Bill in accordance with your decisions [BRIEFING-REQ-0020961 refers]:
 - a. Limitation on the Minister’s power to change the schedule of regulations that define critical risks (section 22B). The Cabinet paper discusses this at paragraphs 9 to 15 and seeks Cabinet agreement at recommendations 6 and 7.
 - b. The second Order in Council provision to amend the reference to the Health and Safety at Work (General Risk and Work Management) Regulations (GRWM Regulations) has been removed.
 - c. Schedule 1A: descriptions of the hazards associated with critical risk have been quality assured and updated.
 - d. All PCBUs to prioritise the management of critical risks over other risks (new sections 25A and 25B). This is noted as a decision made under your delegated authority in recommendation 11.3.
10. Our briefing of 14 January 2026 also advised you of other outstanding issues to be resolved.
 - a. Section 35 sharpening overlaps with other legislation has now been redrafted to achieve the policy intent that HSW Act does not require a higher standard of risk management where other legislative systems manage the specific risk. The addition to section 37 noted above addresses the specific issue of overlap with the seismic risk provisions of the Building Act.
 - b. The Bill now reflects your decision that one of the main functions of the regulators is to provide guidance, advice and information on “compliance” with relevant health and safety legislation (section 190 and section 10 (WorkSafe Act)).

Agency consultation feedback and our responses

Consultation feedback

11. The following agencies provided written feedback on the draft Cabinet paper and version 4.0 of the Bill: Department of Internal Affairs, New Zealand Transport Agency, Ministry of Transport, Ministry for Primary Industries, Ministry for Regulation, Ministry of Health, and Maritime New Zealand. WorkSafe New Zealand provided feedback on version 5.0 of the Bill which we shared separately with them. The agencies were generally supportive of the policy intent and the drafting.
12. As noted above, we have worked with officials in the Building and Construction portfolio to address the issues relating to the relationship of HSW Act and the Building Act.
13. We seek your decision on the proposal raised by NZTA and MoT that the consultation requirements for ACOPs should include a requirement for WorkSafe to consult relevant regulators. They cited a recent instance where WorkSafe had not consulted with NZTA and

had published incorrect guidance (not an ACOP) about Land Transport Act 1998 requirements relating to farm vehicles.

14. We advised that we would raise this with you for your decision. We are concerned to learn of instances when WorkSafe has not consulting with relevant regulators. We note, however, that the general consultation requirements in the HSW Act already require consultation with the right agencies and stakeholders. These existing requirements can be reinforced through the Expectations that you communicate to WorkSafe, and that this is something we constantly reinforce with WorkSafe. Further, as the example shows, this issue is wider than ACOPs.

Table 1: Agency feedback and MBIE comment

Agency	Key feedback	MBIE comment
Ministry for Regulation (MfR), Ministry of Health (MoH), WorkSafe	Suggested significant implications from raising the threshold for 'critical risk' from risks that <i>may result in</i> in serious harm to those <i>likely to result in</i> in serious harm.	The change fits within the scope of the Cabinet decision – to drive a proportional approach that targets risks likely to cause serious harm. <small>Legal professional privilege</small> we identified that 'may result in' would set the threshold at a level that meant very little change from the status quo. We also noted inconsistency within the Cabinet paper recommendation and the supporting text.
Department of Internal Affairs (DIA), Ministry for Primary Industries (MPI), MfR, WorkSafe	The need for strong guidance to support the changes, particularly around critical risk, small PCBUs, recreational access and overlaps with other legislation.	We agree and have indicated this to the other agencies. We will work alongside WorkSafe to achieve this.
WorkSafe	The reference to prioritisation of critical risk would allow other PCBUs to only put nominal proportion of resources into other risks.	Other PCBUs (non-small PCBUs) will need to manage <i>all</i> risks but prioritise critical risk. We consider it reasonable to assume that in most cases, this process will likely reinforce existing knowledge and practices. Prioritising resources to critical risks in this way is in line with the amended purpose of the HSW Act.
	The definition of "small business" to use an employee-based approach (to exclude volunteers and contractors).	This has been raised previously by WorkSafe and we have previously advised that the use of worker is in line with the HSW Act's application to workers no matter what their particular employment arrangements are. The use of 'workers' is consistent with the Cabinet decision on the definition of small PCBU.
Maritime New Zealand (MNZ)	Noted that the Bill does not seem clear enough on the process for existing ACOPs to acquire safe harbour status.	This will require redevelopment and resubmission of any existing codes for ministerial approval. We are working closely with the regulators to develop guidance on developing ACOPs by persons or organisations. This will include the process for ACOPs to

		acquire a “safe harbour” status over time through reviews.
	<p>There may still be confusion on the external requirement, particularly around determining ‘risk or type of risk’ in terms of the overlaps with other regimes.</p> <p>Some other regimes may have narrower duties on health and safety than HSW Act.</p>	<p>The intention of this change is to clarify the interaction between systems. The HSW Act is not meant to act as a backstop for gaps in other regimes, and this change will make that clear. If there are gaps, then these should be addressed by the relevant regulatory regime.</p>
MfR	<p>Asked about two of the decisions made under delegated authority:</p> <ul style="list-style-type: none"> adding an additional purpose to the HSW Act so that the purposes include providing PCBUs with certainty about the scope of their obligations; raising the critical risk catch all test from “may result in” to “likely to result in” serious harm. <p>They asked whether these fit within the scope of the Cabinet decisions and the intended scope of the delegation.</p>	<p>Legal professional privilege</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
	<p>They expressed concern at the potential for ACOPs to become outdated over time and suggested a sunset or renewal mechanism or a requirement for regulators to review ACOPs where significant new information emerges.</p>	<p>We do not recommend a sunset clause or other legislative requirement to review ACOPs after a certain period. Such mechanisms may mean that in future WorkSafe must divert resources to meeting legislative requirements to renew or review ACOPs regardless of the need for such reviews and regardless of other priorities.</p>
DIA	<p>The potential risk of confusion from frequent amendments to schedule 1A through an Order in Council (Henry VIII power).</p>	<p>The amendments would occur when regulations change. This would provide certainty for duty holders. Not making the amendments would create greater confusion.</p>
MPI	<p>The definition of small PCBU might not capture all businesses in the horticulture sector (ie, most RSE worker visas are for a maximum of 7 months out of 12 months of the financial year).</p>	<p>The definition of a small PCBU covers the number of workers within a PCBU, not the workers themselves.</p>
MoH	<p>The risk of defining critical risk for small PCBUs in relation to illness and injury could neglect other risks that should be managed (eg, accelerated silicosis).</p> <p>Additional clarity needed for defining critical risk in relation to illness and injury.</p>	<p>The catch-all test for critical risks includes whether the risk is likely to result in occupational diseases, which include accelerated silicosis. This means that working with engineered stone would be considered a critical risk. We are currently developing advice for you on possible regulations relating to this risk. If such regulations were made they would be added to the Schedule 1A list of regulations as part of the definition of critical risk.</p>
NZTA/MoT	<p>See paragraphs 13 and 14 above.</p>	

15. We seek your agreement to the changes to the Cabinet paper as outlined below. These changes are identified in the track changes version of the Cabinet paper attached.

Table 2: Changes to the draft Cabinet paper and reasons

Paragraphs and topic	Description of changes
2: overview of Cabinet decisions in the paper	Two new Cabinet decisions added on extending the limitations on duties for small PCBUs to s39–43 of the HSW Act (2.2), and a specific exception under s37 for risks related to seismic risk (2.3).
16–18: limiting s39–43 to critical risks	Context added for the Cabinet decision on the proposed limitation on duties for small PCBUs to s39–43.
19–21: seismic risk	Context added for the Cabinet decision on the proposed exception under s37 for seismic risk in workplace buildings.
32-33: clarification of duties	Removed references to prioritisation of critical risks for small PCBUs.
35: defining a small PCBU	Changed the reference to orchards to 'retail shops navigating Christmas peaks' in response to feedback from MPI that RSE workers in orchards typically have a 7-month work visa. We are not clear that the workers necessarily work at the same orchard for that period. However, if they do this would be more than a seasonal peak, as it exceeds the limit agreed by Cabinet that the seasonal peak is a maximum of 3 months.
42: overlaps with other regimes	Removed the reference to the Land Transport Rules in response to feedback to agency consultation from NZTA.

Next steps

16. Subject to your feedback, we will amend the draft Cabinet paper to prepare it for lodging.
17. The Cabinet paper and attached departmental disclosure statement must be lodged by 10am on Thursday 29 to be considered by the Cabinet Business Committee meeting on Monday 2 February. PCO will lodge the Bill by Friday 30 January and deliver printed copies to Cabinet Office and your office ahead of the CBC meeting.
18. We have attached draft talking points and Q&As to support your discussion at Cabinet Business Committee on Monday 9 February (see Annex 4).
19. We will provide your office with the House pack that includes supporting materials for the introduction and first reading of the Bill, next week.
20. The current expected timeline for the progression of the Bill is set out below:

Milestone	Estimated timeframe
Any final feedback and approval to lodge	Wednesday 28 January
Lodge Cabinet paper and Bill by 10am	Thursday 29 January
Consideration by Cabinet Business Committee	Monday 2 February
Cabinet approval	Monday 9 February
Bill introduced	Monday 9 February
First reading and referred to Select Committee	First possible date: Thursday 12 February

Annexes

Annex 1: Clean copy of the Bill version 8.0.

Annex 2: Draft Cabinet paper.

Annex 3: Departmental disclosure statement, that must be lodged with the Bill

Annex 4: Draft talking points and Q&A for Cabinet Business Committee

Annex 1: Clean copy of the Bill version 8.0

Annex 2: Draft Cabinet paper

Annex 3: Departmental disclosure statement

Annex 4: Draft talking points and Q&A for Cabinet Business Committee
