



BRIEFING

Confirming next steps on key policy issues from submissions to the Health and Safety at Work Amendment Bill

Date:	14 April 2026	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0030584

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Note the advice provided on issues raised in submissions. Confirm or update your directions on outstanding policy and drafting matters. Agree the recommended commencement approach and next steps for inclusion in the departmental report.	21 April 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	✓
Richard Davies	Policy Director, Workplace Relations and Safety Policy	04 901 2059	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



BRIEFING

Confirming next steps on key policy issues from submissions to the Health and Safety at Work Amendment Bill

Date:	14 April 2026	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0030584

Purpose

To provide follow-up advice requested relating to key policy issues from submissions to the Health and Safety at Work Amendment Bill, and seek your direction on these issues.

Executive summary

This briefing provides advice on the key issues you requested following discussion of submissions on the Health and Safety at Work Amendment Bill on 1 April 2026. It focuses on matters where clarification or further policy or drafting decisions are required and identifies where advice is still being finalised for inclusion in the departmental report to the select committee.

On the definition of critical risk, we recommend retaining the term 'likely' rather than 'reasonably foreseeable', as the latter would significantly broaden the scope of the catch-all test. We also recommend clarifying, in both the departmental report and the Bill, that the test concerns the likelihood of serious harm occurring if a risk arises.

We recommend no change to the definition of a small PCBU, noting that reliance on 'workers' is consistent with the Act and avoids perverse incentives. Guidance will be required to support businesses with fluctuating workforces. We also recommend no legislative change in relation to shared duties between small and larger PCBUs, as the Bill limits statutory duties only and does not prevent higher contractual health and safety standards.

We have considered submissions on recreational access, officers' duties, and WorkSafe's functions, and generally recommend no changes beyond clarifications already within scope of Cabinet decisions. We are continuing work with PCO on section 35 to ensure the provision clearly and narrowly gives effect to the policy intent of avoiding duplication where another enactment substantively manages the same risk.

Subject to your confirmation, we recommend a fixed commencement date of 1 November 2026, with separate commencement for ACOP safe-harbour provisions to apply immediately after Royal Assent. We also provide a proposed timeline for developing regulations to address the reach of the Act into volunteer-run recreational activities, noting key risks to delivery.

Recommended action

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

The definition of critical risk

- a **Note** that using "reasonable foreseeability" as an alternative to "likely" would broaden the range of risks considered critical.

Noted

- b **Agree** that no change be made to the use of likely in the critical risk definition.

Agree / Disagree

- c **Note** that the “so far as reasonably practicable” principle only applies to the risks that are required to be managed under the Act, so it cannot override or change the critical risk duty limitation for small PCBUs.

Noted

The definition of a small PCBU – workers vs employees

- d **Agree** that no change be made to the use “worker” in the small PCBU duty limitation.

Agree / Disagree

Shared duties between small PCBUs and other PCBUs

- e **Note** that the Bill does not prevent larger PCBUs from maintaining or requiring higher health and safety standards in multi-PCBU contracting environments.

Noted

Franks Ogilvie submission on recreational access

- f **Agree** to recommendations responding to the issues raised on recreational access and section 37 in the Franks Ogilvie submission by circling recommendations in **Annex One** and **Annex Two** of this briefing.

Agree / Disagree

Institute of Directors and Law Society submissions on officers’ duties

- g **Agree** to recommendations responding to the issues raised on officers’ duties in submissions by the Institute of Directors and the Law Society by circling recommendations in **Annex One** and **Annex Three** of this briefing.

Agree / Disagree

Ongoing work on section 35 – compliance with other enactments

- h **Note** we are working with our legal team and PCO on clarifying the application of section 35 and will provide recommendations on this in the departmental report.

Noted

Confirming indicative decisions from our 1 April meeting

- i **Confirm your agreement** to the indicative approach to the issues discussed at our meeting of 1 April, by circling recommendations in **Annex Four** of this briefing.

Agree / Disagree

Distinguishing between the Regulator's main functions and other functions

- j **Agree** to clarify how WorkSafe is expected to operate in a way that distinguishes its main functions and additional functions, based on equivalent provisions in the Fire and Emergency New Zealand Act 2017.

Agree / Disagree

Commencement date interaction with provisions for ACOPs

- k **Agree** to separate commencement of the safe harbour ACOP provisions and the remainder of the Bill, so that the safe harbour ACOP provisions commence the day after Royal Assent, and the remainder of the Bill on 1 November 2026.

Agree / Disagree

Recreational groups and volunteers

- l Confidential advice to Government

Noted



Richard Davies
Policy Director
Workplace Relations and Safety Policy, MBIE

Hon Brooke van Velden
Minister for Workplace Relations and Safety

14 / 04 / 2026

..... / /

Background

1. We provided you with a list of key policy issues identified from 70% of submissions on the Health and Safety at Work Amendment Bill (the Bill) [BRIEFING-REQ-0029076 refers]. We discussed these issues with you on 1 April 2026.
2. This briefing reports on the issues on which you requested advice.
3. **Annex One** responds to the specific list of issues as requested by your office.

Issues on which you requested further advice

The definition of critical risk

Use of 'likely' in the definition of critical risk

4. As requested, we have considered 'reasonably foreseeable' as an alternative to 'likely' for the critical risk catch-all test.
5. Legal professional privilege

6. On balance, we recommend that 'likely' be retained as 'reasonably foreseeable' would substantially broaden the range of risks defined as 'critical risks' by the catch-all test beyond what you have previously decided critical risks should capture through the use of 'likely'.
7. Submitters are confused about what is assessed as 'likely' in the definition of critical risk, the probability of the risk arising, or the likelihood of one of the serious outcomes occurring if that risk arises. We are currently exploring additional wording with our legal team to make it clear that the likelihood of one of the serious outcomes occurring if that risk arises is the correct interpretation.
8. We therefore recommend that we clarify the correct interpretation of the catch-all test in the departmental report and propose that the Bill also be amended to make this clearer.

Interaction between critical risk and as far as reasonably practicable

9. Some submitters have expressed concern that the HSW Act's 'so far as is reasonably practicable' standard could be interpreted as imposing an additional or higher obligation on PCBUs, over and above the limitations on duties for small PCBUs which means PCBUs are only required to manage critical risks.
10. The so far as reasonably practicable standard continues to apply to small PCBU's duties, however the duties will extend only to critical risks. The small PCBU duty limitation does not change the standard to which these risks are to be managed; that is, 'so far as reasonably practicable'. We will clarify the correct interpretation in the departmental report.

Addition of a risk-management process to the definition of critical risk

11. A range of submitters, including Brendan Mercer, BusinessNZ, Employers and Manufacturers Association (EMA), OceanaGold, and Simpson Grierson, questioned how the proposed definition of critical risk would operate alongside existing HSW A duties and regulations. These submitters were concerned that the Bill might create a parallel or

incomplete framework that could confuse duty holders or undermine well-understood obligations.

12. Submitters broadly suggested that the critical risk framework would be more effective if it was explicitly anchored to existing statutory and regulatory mechanisms. The common rationale was that critical risk should operate as a lens for prioritisation within the existing risk management system, rather than as a standalone classification exercise.
13. We note that this is how the critical risk test is intended to operate, and that **Legal professional privilege**

The definition of a small PCBU – workers vs employees

14. The Restaurant Association of New Zealand and EMA raised concerns that it is unclear how the worker threshold for determining a “small PCBU” would apply in practice, particularly for businesses with fluctuating and mixed workforces (i.e. casual workers, part-time workers, seasonal workers, contractors).
15. The small PCBU definition refers to number of ‘workers’, which is defined in the HSW Act and includes all of the categories of employment status referred to above. This is consistent with the rest of the HSW Act and is not a new concept for PCBUs. This avoids creating incentives for PCBUs to alter contractual arrangements to fall below the threshold, which could undermine both the integrity of the regime and worker protections.
16. Guidance will be needed to help PCBUs assess what they “reasonably expect” in relation to fluctuating worker numbers.

Shared duties between small PCBUs and other PCBUs

17. Several submitters queried whether the small PCBU duty limitation would override contractual obligations to manage risks agreed between parties. The Bill does not prevent larger PCBUs from maintaining or requiring higher health and safety standards in multi-PCBU contracting environments. Larger PCBUs may continue to require contractors, including small PCBUs, to meet site-specific standards, engage with site-wide health and safety systems, and comply with agreed risk-management practices where appropriate. The duty to consult, cooperate, and coordinate with other PCBUs with the same duty will still apply.
18. We acknowledge submitters’ concerns that the limits on small PCBUs’ duties could mean larger PCBUs take on greater responsibilities or influence whether larger PCBUs contract with small PCBUs. However, we do not consider further legislative amendment is necessary or appropriate, as this would cut across the principles-based HSWA framework, reduce flexibility, and risk creating new unintended consequences. We will make this clear in the departmental report.

Franks Ogilvie submission on recreational access

19. The Franks Ogilvie submission raised concerns that the current drafting leaves uncertainty about the scope of landowners’ duties to third parties, especially recreational users. The submission argues that this uncertainty may lead landowners to continue to deny recreational access, with the result that the provision will not achieve its intended impact.
20. We have analysed the submitter’s recommendations in **Annex Two**. In the departmental report, we will suggest amendments to ‘open space’ and linking the recreational use more clearly to a business or undertaking activity. In general, we recommend no other changes to

the Bill as either the Bill already clearly covers the situation raised or the requested change is outside the scope of existing Cabinet decisions.

Examples of recreational access and how the provision works

21. At our meeting of 1 April, we discussed the application of the amendment to a hypothetical Iwi entity owning forest land that includes mountain bike trails. This and other examples are outlined below.

Example 1: recreational business owned by the same Iwi

22. An Iwi entity owns forest land that includes mountain bike trails. The entity also owns a recreational business that hires bikes for use on the trails and provides guided mountain bike riding on the trails. We assume the work of the Iwi entity is to generate income from its assets and use this to provide services and support to Iwi members. The recreation business contributes to this income and provides work for Iwi members. The section 37 exclusion will not apply to the Iwi entity, because the recreational use of the land by the business is connected to the Iwi entity's work.
23. Following the High Court in *Whakaari Management Ltd v WorkSafe New Zealand*, the section 37 duty applies to the Iwi entity as landowner only if and to the extent the entity is able to actively manage or control the recreation business's use of the mountain bike trails.
24. Since the business is owned by the Iwi entity, it is likely that the Iwi entity is able to actively manage and control the mountain bike trails and therefore it will have a section 37 duty. The Iwi entity and the recreation business will likely have shared duties under section 36 and section 37. Section 34 requires them to consult, cooperate, and coordinate so far as reasonably practicable as to how they meet those duties.

Example 2: recreational business owned by another entity

25. Another example is where the Iwi entity permits a recreation business it does not own to operate on its land in return for a fee, and the fee contributes to the entity's work of generating income from its assets. The recreational use of the land by the recreation business would be connected to the entity's work so the section 37 exclusion would not apply.
26. Whether and to what extent the entity has a section 37 duty will depend on the degree to which the entity is able to exercise active management and control over the mountain bike trails. This will likely depend on the nature of the contract between the entity and the recreational business, including things like who maintains the trails, and who decides whether trails need to be closed or not. The recreation business will have a section 36 duty to its workers and others such as its customers, and will have a section 37 duty if it is able to actively manage and control the trails.

Example 3: no or nominal fee

27. The Bill's exclusion from the section 37 duty will apply to the Iwi entity if it either allows free access or charges a nominal fee which is incidental to the work of the entity, and provided it is not doing any work in the places where the mountain bikers are at the time they are there.

Submissions of the Institute of Directors and the Law Society on officers' duties

28. The Institute of Directors and the Law Society suggested several alternative options for clarifying officers' duties.
29. We have analysed the submitter's recommendations in **Annex Three**. In general, we recommend no changes to the Bill as the issues and options they raise were addressed in our advice to you when developing the Bill or the requested change is outside the scope of existing cabinet decisions.

Ongoing work on section 35 – compliance with other enactments

30. Legal professional privilege [REDACTED]
31. Submitters indicated confusion about how section 35 would operate in practice, particularly how compliance with another enactment would interact with or displace HSW Act duties, and who would determine whether regimes cover the same subject matter. Submitters also expressed concern that the amendment requires PCBU's to self-assess legal equivalence, creating uncertainty and enforcement risk, especially where older, narrower, or multiple regulatory regimes apply.
32. Legal professional privilege [REDACTED]
33. Legal professional privilege [REDACTED]

Distinguishing between the Regulator's main functions and other functions

34. The submission by the New Zealand Law Society queried how WorkSafe would be expected to operate in a way that distinguishes its main functions and additional functions. They drew parallels with the Fire and Emergency New Zealand Act 2017 (FENZ Act) which does this while including an explicit requirement to retain capacity to perform their main functions. They suggested a similar provision could be included in the Act.
35. Legal professional privilege [REDACTED]
36. We have raised these options with legal to seek drafting advice ahead of the departmental report.

Commencement date

37. At our discussion on 1 April, you indicated that the Bill should commence four months after Royal Assent. We recommend 1 November as the commencement date, approximately four months after expected date for Royal Assent, and before the election period. A fixed date will give more certainty.
38. This timing gives businesses and others time to understand the changes and adjust their systems and processes. WorkSafe will also likely be able to develop and test guidance on key issues, provide priority sectors with sector specific information on critical risks (at a high level), deliver inspector training on priority sectors, commence work on the revised work programme to review operational policies, respond to reactive enquiries, publish factsheets for duty holders and update web platform.

Interaction with provisions for ACOPs

39. At our 1 April meeting, you indicated concern for how a four-month commencement period would impact ACOPs that are currently being developed, and whether these would obtain 'safe harbour' status if they were approved prior to commencement. The current draft of the Bill means that any ACOPs approved prior to commencement would not have safe harbour status upon commencement.

40. The only feasible option we have identified is to split commencement so that the ACOP safe harbour provisions commence the day after Royal Assent, with the remainder of the Bill commencing on 1 November 2026. This has the added benefit of providing earlier certainty for duty holders through immediate access to safe harbour protections. This change is within your delegated authority and will be recommended in the departmental report.

Recreational groups and volunteers

41. You directed officials to provide a timeline for addressing the reach of the HSW Act into recreational activities run by volunteers, and uncertainty about the boundary between recreation and work. The option outlined below would use existing regulation-making powers to exclude certain types of organisations from being PCBUs. A tentative timeline for the potential creation of regulations is below:

Confidential advice to Government

Confidential advice to Government

42. Legal professional privilege

43. Confidential advice to Government

Next steps

44. We will provide you with a draft of the Departmental Report to the Select Committee on 23 April 2026, which will reflect your decisions.

Annexes

Annex One: Response to Office feedback **Withhold in full under free and frank opinions**

Annex Two: Recreational access and section 37 – Franks Ogilvie submission issues

Annex Three: Officers' duties – Institute of Directors and the Law Society submissions issues

Annex Four: Summary of agreed direction on issues from BRIEFING-REQ-0029076 parts A and B.

Legal professional privilege

Annex One: Response to Office feedback

Minister's Office suggestion	Submitter	MBIE response	Recommendation and Minister's decision
Replace 'likely to result in' with 'reasonably foreseeable'; should be prospective rather than outcome driven	Business NZ, Restaurant Association (guidance), Simpson Grierson (agreed with the problem but offered an alternative approach to drafting), EMA, Federated Farmers, Classic Builders, Business South	Recommendation: Clarify the application of likely in the catch-all test rather than change likely to reasonably foreseeable. This can be done through a recommendation in the departmental report. Refer page 4, paras 4–8.	Recommendation: Clarify the application of likely in the catch-all test rather than change likely to reasonably foreseeable. Agree / Disagree
Clarify what responsibilities larger PCBUs have for non-critical risks faced by small PCBUs that are performing work as contractors	Business NZ (guidance), EMA, Simpson Grierson, Federated Farmers, Master Plumbers, Classic Builders	Recommendation: Investigate drafting to clarify how the section 34 duty applies between small and other PCBUs. We will make a recommendation on this in the Departmental Report to the Select Committee. Guidance will also be necessary.	Recommendation: Investigate drafting to clarify how the section 34 duty applies between small and other PCBUs. Agree / Disagree
Preservation of contractual standards in order to provide greater clarity of big and small PCBU duties. (e.g. the carve-out does not limit the ability of other PCBUs to require higher health and safety standards by contract or integrate small PCBUs into site-wide safety systems)	Simpson Grierson	Refer page 5, paras 17–18.	Recommendation: No change Agree / Disagree

Minister's Office suggestion	Submitter	MBIE response	Recommendation and Minister's decision
Clarify WorkSafe's role in reviewing ACOPs so that it is clearly limited to technical robustness, worker safety and practical workability rather than broader policy preferences	Simpson Grierson	As discussed in the 1 April meeting, legislating limits on WorkSafe's role would add unnecessary complexity and reduce flexibility over time. Developing clear, published criteria and processes for third-party ACOP development will more effectively provide transparency and assurance that WorkSafe's role is focused on technical robustness, worker safety and practical workability. These criteria can be updated as needed and remain subject to Ministerial oversight and control. In the 1 April meeting, you indicated there was no further work to be done to address this in legislation.	Recommendation: Continue the current process to develop and publish clear criteria and processes for third-party ACOP development. Agree / Disagree
Unclear how the worker threshold works for contractors or for hospitality businesses which may use a mix of permanent staff, casual workers, contractors for maintenance, labour hire, seasonal workers	Restaurant Association	Refer page 5, paras 14–16.	Recommendation: No change Agree / Disagree
Unclear how the small business carve-out interacts with the general duty to ensure health and safety "so far as is reasonably practicable"/primary duty of care to workers	Restaurant Association, EMA	Refer page 4, paras 9–10.	Recommendation: No change Agree / Disagree
Law should explicitly discharge landowners from duties for risks arising from the natural condition of the land or the inherent risks of recreational activity for	Franks Ogilvie	Recommendation – no change. Refer Annex Two, item 1.	

Minister's Office suggestion	Submitter	MBIE response	Recommendation and Minister's decision
recreational users, other than for hazards the PCBU has recklessly created or permitted to subsist from work operations			
Explicitly limit third party liability for recreational users [if officials agree with the submission's assessment of the gap in the legislation]	Franks Ogilvie	Recommendation – no change. Refer Annex Two, item 8.	
Critical risks prioritisation should depend on cost/benefit criterion [need to test this with officials]	Franks Ogilvie	The submission recommends that the "critical risks" prioritisation should depend on a cost/benefit criterion. The purpose of identifying critical risks is to ensure that risks with the potential to cause the most serious harm are prioritised, based on the nature and consequences of the risk itself, not on cost considerations. Cost is already appropriately reflected in the existing "so far as is reasonably practicable" standard, which governs how risks are managed once identified. That standard expressly requires duty holders to consider the availability and suitability of controls and whether the cost of controls is grossly disproportionate to the level of risk. Introducing cost considerations into the identification of critical risks would risk undermining the policy intent by allowing economic factors to influence whether serious risks are prioritised at all, rather than how they are managed.	Recommendation: No change Agree / Disagree
Key terms need defining to avoid ambiguity: Recreational purposes Open space	Franks Ogilvie	Recreational purposes – Recommendation: No change. Refer Annex Two, item 2. Open space – Recommendation: Amend the drafting to include forest, scrub, and unclear land as well as water. Refer Annex Two, item 4.	

Minister's Office suggestion	Submitter	MBIE response	Recommendation and Minister's decision
Implied permission Connected to the PCBU's business		Implied permission – Recommendation: No change. Refer Annex Two, item 3. Connected to the PCBUs business – Recommendation: Amend the drafting to more clearly link to a business or undertaking activity. Refer Annex Two, item 5.	
Clarify concessionaire liability	Franks Ogilvie	Recommendation: No change Refer Annex Two, item 9.	
Clarify in departmental report/SC report whether changes to the scope of HSWA or clarifying the status quo or are a change	Law Society	All sections in the departmental report will state whether the relevant amendments are a clarification or a change.	
Clarify when duty to manage a specified risk applies, and address the overlap with the ERA 2000 duty of good faith	Law Society	There is ongoing work on clarifying the application on section 35. Refer page 7, paras 30–33, and recommendation h. Specifically relating to the duty of good faith: The New Zealand Law Society stated in their submission that section 35 could apply where there is overlap between the duty of good faith to employees and the worker engagement duties in the HSW Act. Legal professional privilege 	

Minister's Office suggestion	Submitter	MBIE response	Recommendation and Minister's decision
		Legal professional privilege [REDACTED]	
Meaning of small PCBU: more clarity around 'reasonably expect' a small PCBU to meet the threshold	Law Society	Guidance would be the appropriate tool to clarify this. Refer page 5, paras 14–16.	Recommendation: No legislative change Agree / Disagree
The directors duties change does not achieve its objective. Instead, best to amend the definition of 'officer'	Law Society, Institute of Directors also do not believe the problem is addressed	Recommendation: No change. This is outside the policy of the Bill and would require a Cabinet decision. Refer Annex Three, item 1.	
Distinguish between WorkSafe's main functions and other functions	Law Society	Refer page 7, paras 34–36.	Recommendation j: Agree to clarify how WorkSafe is expected to operate in a way that distinguishes its main functions and additional functions, based on equivalent provisions in the Fire and Emergency New Zealand Act 2017. Agree / Disagree
[Not a legislative change] Provide a list of overlapping legislative regimes where compliance with other Acts can satisfy HSWA duties	EMA	We have identified some possible areas of overlap, however given the very wide range of work situations covered by HSWA, any list of overlaps with other legislation, regulations, and rules would risk being incomplete and quickly outdated.	
[To consider] Do we need a later commencement date?	Classic Builders	Refer page 37, paras 37–40.	Recommendation k: Agree to separate commencement of the safe harbour ACOP provisions

Minister's Office suggestion	Submitter	MBIE response	Recommendation and Minister's decision
			and the remainder of the Bill, so that the safe harbour ACOP provisions commence the day after Royal Assent, and the remainder of the Bill on 1 November 2026. Agree / Disagree
[Need to check with MBIE why this proposal was rejected at an early stage when it appears to be an important way of achieving our objective and seems to be getting to the same point Minister Goldsmith was trying to make] Need to align personal penalties on individual directors with other legislative regimes like CCCFA	Institute of Directors	Recommendation: No change. This is outside the policy of the Bill and would require a Cabinet decision. Refer Annex Three, item 7.	

Annex Two: Recreational access and section 37 – Franks Ogilvie submission

Submission	Analysis	Recommended action
1. No health and safety duties for landowning PCBU's for risks from the natural condition of the land, and inherent risks of recreational activities (e.g. slips, falls, terrain). <i>Unless</i> the landowner has: • Recklessly created, or • Recklessly permitted a work-related hazard to persist.	The first two aspects of the recommendation are covered by the existing drafting as the landowner does not have a duty to recreationalists except where the landowner has work happening where and when the recreationalists are present or the recreational use of the land is connected with the landowner's business or undertaking. The proposed exceptions, where the landowner will have responsibility if they have recklessly created or recklessly permitted a work-related hazard to persist are not covered by the current drafting. These exceptions would extend a landowner's liability beyond what is in the current Bill, as they go beyond work happening at a particular time and place, and cover the consequences of work, as well as introducing a concept of recklessness on the part of the landowner. They extend beyond the policy intent and would require further policy work and Cabinet decisions.	No change to the Bill. Agree / Disagree
2. Define "Recreational purposes" as any activity that is voluntary, not related to the landowner's dominant remunerative activity or part of work.	The landowner's 'dominant remunerative activity' and the landowner's work are already addressed in the draft as they negate the exclusion. Requiring the activity to be "voluntary" and excluding any 'work' could cut out any commercial activity or even things such as school trips. The wide range of situations covered by recreational purposes are best illustrated through examples in guidance.	No change to the Bill. Agree / Disagree

3. Define “Implied permission” to clarify that it is not mere tolerance or failure to prosecute trespass.	This term is used in the draft to avoid the landowner having to give explicit permission every time. “Implied permission” would depend on the circumstances but would be negated by the landowner putting up signs or otherwise closing off access. What would and would not count as implied permission is best illustrated through examples in guidance.	No change to the Bill. Agree / Disagree
4. Define or remove “open space,” to include forest, scrub, and non-cleared land.	We agree that ‘open space’ does not capture the types of areas that are intended to be covered by this provision. This is an issue that has been raised in other submissions, including that from the 15 organisations represented by the Outdoor Recreation Sector submission. It has also been raised by the Department of Conservation.	Amend the drafting to include forest, scrub and unclear land as well as water. Agree / Disagree
5. Clarify that cost-recovery fees or incidental access charges do not, by themselves, make recreational access a business activity.	We agree that the current drafting, which uses ‘connected to the PCBU’s business’ is too broad. The Outdoor Recreation Sector submission has suggested using ‘part of the PCBU’s business or undertaking’ as an alternative. We will consider this further in preparing the Departmental Report.	Amend the drafting to more clearly link to a business or undertaking activity. Agree / Disagree
6. Extend the current farming PCBU exclusion in section 37(3) to also exclude forestry PCBUs	Forestry owners will be covered by the new recreational access exemption	No change to the Bill. Agree / Disagree
7. Extend the current farming PCBU exclusion in section 37(3) to also include an exemption under section 36, other than with respect to where work is taking place.	The section 36 duty flows from the work of the PCBU. This means that the section s36 duty does not apply where and when the farming exemption applies, because the exemption only applies where no work is taking place in the part of the farm at the time.	No change to the Bill. Agree / Disagree
8. Insert a defence in relation to injury to recreational users to reflect their voluntary assumption of risks.	A defence is not necessary as the existing drafting already provides that the landowner does not have a duty to recreationalists except where the recreational activity is connected to the landowner’s work or the landowner has work happening where and when the recreationalists are present.	No change to the Bill. Agree / Disagree
9. Amend section 34 to clarify overlapping duties so that where a	The Bill provides that the landowner does not owe a section 37 duty where they grant access for recreational purposes provided the access for	No change to the Bill.

landowner grants operational control of a specific recreational area or activity to a concessionaire the landowner's duty under the HSWA is discharged, provided the landowner has fulfilled their duty to provide all reasonably practicable information on non-obvious hazards related to their own operations	recreational purposes is not connected to their work, and they have no other work happening in the same place at the same time. Where this exclusion applies the landowner also does not have a section 36 duty as they have no work happening. This means there are no overlapping duties with the PCBU operating the recreational business or undertaking. Even if the section 37 exclusion does not apply because the recreational use of the land is connected to the landowner's work, following the High Court in <i>Whakaari Management Ltd v WorkSafe New Zealand</i> [2025] NZHC, the section 37 duty applies to the landowner only if and to the extent the landowner is able to actively manage or control the workplace. The High Court found that licensing access alone is not sufficient to establish management or control. The Court found that Whakaari Management Ltd did not have a duty under section 37 because it did not have the ability to direct or control what was happening on the ground on a day-to-day basis, nor did it have the ability to demand corrective action to ensure safety. In the circumstance cited in the submission, where the landowner has granted 'operational control' to the recreation provider it may be the case that the landowner does not have the ability to actively manage and control the activities of the recreational provider and so would not be found to have a section 37 duty. The recreation provider, if they are a PCBU, will have a section 36 duty and to the extent that they have active management and control of the land they use, they will have a section 37 duty. The question of whether the landowner has active management and control of the land will depend on the circumstances, and will be guided by the High Court's findings. The intent of the submitter's proposed amendment is that landowner's duties to a recreational provider are limited to providing basic information. If the recreational access is not connected to the landowner's work this amendment would extend the landowner's duties beyond the current drafting. If the recreational access is connected to the landowner's work this amendment could be a way of legislating the High Court's test of active	Agree / Disagree
---	--	-------------------------

	management and control, provided that granting 'operational management' to the recreation provider means the landowner doesn't have active management and control. This would not be within the current policy approvals and would require further policy work and Cabinet decisions.	
--	--	--

Annex Three: Officers' duties – Institute of Directors and the Law Society submissions

Submission	Analysis	Recommended action
1. Amend the definition of “officer” in section 18 so it better reflects the governance nature of officer duties and what is reasonable given the officer’s position (Law Society).	The submission does not specify how the definition would be amended, but we assume that they would advocate that those who occupy both worker and officer roles should be removed from the definition. Our previous advice on the officer duty included an option that would have the same effect as the Law Society’s submission, that is, to confine the officer duty to directors who do not also work for the PCBU. We did not recommend this option as: • It would result in most businesses not having anyone required to exercise the officer duty, or personally liable for health and safety governance, potentially enabling those responsible for health and safety failures to move on to other roles without consequences. • This could distort business’ decisions on their form and structure, i.e. whether to have directors who don’t work at the PCBU, and make people reluctant to become non-executive directors, given they will be among the relatively few individuals with significant individual liability for officer duties. The recommendation is outside the policy of the Bill and would require a Cabinet decision.	No change to the Bill. Agree / Disagree
2. Create a new provision for organisations with more than 20 employees and a board, committee or similar governing body where governance is separate from executive management. The provision would define the specific responsibilities of the board and executive management in relation to “officer duties”, including a	Our previous advice on the officer duty included a similar option, that is, an executive management duty separate from the officers’ governance duty. We did not recommend this option as: • It risks creating new incentives that could divert attention from health and safety decision-making. For example, a Chief Executive could use their greater access to information to steer boards towards decisions that lessen their exposure under the	No change to the Bill. Agree / Disagree

Submission	Analysis	Recommended action
collective duty for boards (IOD).	new duty at the expense of health and safety governance. - It would be challenging to define the executive management duty, who it would apply to, and set out expectations in ways that are general enough to cover the full range of businesses and executive leadership roles, and yet provide sufficient clarity for a duty with personal liability. - Clarifying the boundary between the PCBU duty and the executive management duty may be also challenging. This creates extra complexity without clear benefits. This recommendation is outside the policy of the Bill and would require a Cabinet decision.	
3. Add a new clause to section 44 to make clear that officer duties are owed both individually by members of the governing body and collectively by the governing body as a whole. It would clarify that collective responsibility cannot be discharged solely through the actions or omissions of one or more individual board members or equivalent (IOD).	We have not previously advised on collective responsibility for a board. This would introduce more complexity to the duty for unclear benefits, especially if it reduced incentives on individual officers to meet their duties. It would also likely introduce evidential difficulties. This recommendation is outside the policy of the Bill and would require a Cabinet decision.	No change to the Bill. Agree / Disagree
4. Amend the officer governance duties to align with core directors' duties under broader governance law, emphasizing due diligence, care, skill, and good-faith judgement (IOD).	It is not clear how this alignment would impact the incentives on officers. Broader governance law duties are less specific than those under HSWA. The due diligence steps for officers are based on the Australian Model Law, and therefore drafted for the particular context of work health and safety governance rather than general governance. With respect to penalties for officers we gave advice on this in May 2025, as discussed below.	No change to the Bill. Agree / Disagree

Submission	Analysis	Recommended action
	Changes to the duties and penalties are outside the policy of the Bill and would require Cabinet decisions.	
5. Establish more effective coordination including by amending section 195 to require the Minister to publish or refresh the Health and Safety at Work Strategy at least every three years (IOD).	Coordination is best achieved through administrative measures, and in particular through ministerial expectations. This is outside the policy of the Bill and would require a Cabinet decision.	No change to the Bill. Agree / Disagree
6. Introduce a provision allowing the regulator to publicise lessons learned from poor health and safety governance and to highlight sound governance practices arising from enforceable undertakings and settlements (IOD).	WorkSafe can already provide information of this type in its guidance and information. This is outside the policy of the Bill and would require a Cabinet decision.	No change to the Bill. Agree / Disagree
7. Align personal penalties on individual directors with other legislative regimes like CCCFA (IOD).	BRIEFING-REQ-0013325 provided advice on offences and penalties under HSWA, particularly with respect to the officer duty, and asked whether further advice on this issue was required. No further advice was requested. The advice referenced the 2024 submission of the Institute of Directors with respect to penalties. We concluded that penalty levels for officers are broadly appropriate and coherent within the HSW Act, and comparable with other business and governance regimes, such as the Companies Act. Information was provided on penalty levels in the HSW Act and these other regimes. We advised that the maximum penalties are justified given the potential consequences of health and safety failures, including death or serious harm. Further, the concerns raised in submissions were not primarily about the quantum of penalties, but about uncertainty over what officers must do to meet their duty, and WorkSafe's enforcement approach, which was perceived as punitive and unpredictable. These concerns are	No change to the Bill. Agree / Disagree

Submission	Analysis	Recommended action
	being addressed by the Bill's clarification of what due diligence requires, and also by your resetting of your expectations of WorkSafe regarding guidance and their enforcement approach. The advice noted that the officer duty responded to three of the 16 recommendations of the Royal Commission on the Pike River Coal Mine Tragedy, which commented on the failures of Pike River Coal Ltd's Board and executive management to ensure effective systems and resources to manage health and safety risks. This recommendation is outside the policy of the Bill and would require a Cabinet decision.	

Annex Four: Summary of next steps on issues from BRIEFING-REQ-0029076 parts A and B

Issues from BRIEFING-REQ-0029076 Part A (issues raised in submissions that fall within your delegated authority) not covered in Annex One

Provision and submitters	Issue raised in submissions	Agreed direction	Minister's decision
2. The Definition of Critical Risk	B. The use of Schedule 1A as part of the definition of critical risk Some submissions argued that Schedule 1A should be illustrative only, rather than determinative. Others argued that it should be in guidance only.	No change to the drafting of the definition of critical risk relating to Schedule 1A. Develop guidance to support use of the definition with illustrative examples	Confirm decision Yes / No If no, comment:
	C. Addition of a risk-management process to the definition of critical risk or determination of critical risk (s 22A / 25C) - Concern changes appear to prioritise lists over process, and to stop at identifying but not managing critical risks. - Concern it will drive tick-box compliance, not serious-harm prevention, unless it is clearly linked to identifying and managing critical controls.	Report back on submitters that raised this issue [refer to para 11–13 of this briefing]. Recommendations from BRIEFING-REQ-0029076: Do not add a risk management process to the Bill as the requirements for managing risks are already in the HSW Act and are unchanged. Discuss with PCO whether to point duty holders to section 30 (Management of Risks) as part of the new provisions that specify the duties of small PCBUs and other PCBUs.	Confirm decision Yes / No If no, comment:
	D. Inclusion of psychosocial risks in definition of critical risk Many submissions have assumed that psychosocial	Discuss with PCO whether it is possible to further clarify that a hazard in the catch-all test includes a	Confirm decision Yes / No

Provision and submitters	Issue raised in submissions	Agreed direction	Minister's decision
	hazards such as fatigue, trauma, threatening and bullying behaviour cannot ever be covered by the catch-all test.	psychosocial hazard if it is likely to result in one of the listed physical harms. We will make a recommendation on this in the Departmental Report to the Select Committee.	If no, comment:
3. Recreational access	A. Clarifying and defining terms used in the provision: - proximity and timing of work <i>Note the following are addressed in Annex One:</i> <i>position if someone charges a nominal fee</i> <i>'recreational purposes'</i> <i>'implied permission.'</i>	Discuss with drafter to test it goes as far as we can. We will make a recommendation on this in the Departmental Report to the Select Committee. Targeted guidance is likely the best approach to providing the clarity that the system and PCBUs need on this issue. This will also be dependent on WorkSafe's priorities.	Confirm decision Yes / No If no, comment:
	B. Requiring workers to be present for work to be occurring	No change.	Confirm decision Yes / No If no, comment:
4. Exception for seismic risk to workplace buildings (amended section 37)	A. Narrowing the duty narrows protections Potential uncertainty or gaps where HSW Act duties are narrowed or removed, for example whether the Building Act would provide sufficient protection to workers in high-seismic areas.	No change.	Confirm decision Yes / No If no, comment:

Provision and submitters	Issue raised in submissions	Agreed direction	Minister's decision
	B. Meaning of “Parts of the building” Beca Ltd questions whether ‘parts of the building’ in the drafting is intended to include or exclude hazards associated with a building, such as fixtures and fittings, that would fall or fail during seismic activity.	Amend section 37(3B) to resolve the ambiguity regarding ‘parts of the building’ to exclude fixtures and fittings. We will make a recommendation on this in the Departmental Report to the Select Committee.	Confirm decision Yes / No If no, comment:
9. Safe harbour status under s226 for ACOPs	A. Transition of existing ACOPs - Confirmed existing ACOPs (apart from the two most recent) would need updating before they could operate effectively within the amended framework. - Requested a clear transition arrangement, including time and sequencing to review, update, or replace ACOPs, to avoid uncertainty and inconsistent enforcement during the transition.	No change. Information can be added to the WorkSafe website to explain the status of existing ACOPs, and we expect WorkSafe will publish information on ACOPs it is working on.	Confirm decision Yes / No If no, comment:
	B. Provide a review clause in legislation - Legislation should include a formal review or sunset mechanism to ensure ACOPs remain current and aligned with the amended framework. - Concern safe-harbour status without mandatory review could entrench outdated practices, not reflecting evolving risks, technology, and good practice.	No change.	Confirm decision Yes / No If no, comment:
	C. ACOPs to focus on critical risks One submission recommends that ACOPs focus on critical risks rather than the wide range of risks, and that compliance with a critical risk ACOP provides a safe harbour.	No change.	Confirm decision Yes / No If no, comment:

Issues from BRIEFING-REQ-0029076 Part B (issues that would require new policy decisions) not covered in Annex One

Issue	Summary of issue raised in submissions	Agreed direction	Minister's decision
Including psychosocial harm in the definition of critical risk	Specifically include all psychosocial risks in the definition of critical risk.	No further work.	Confirm decision Yes / No If no, comment:
Including gradual process injuries in the definition of critical risk	Include more work-related gradual process injuries and illnesses, such as musculoskeletal disorders, cumulative strain, and fatigue-related harm, as critical risks.	No further work.	Confirm decision Yes / No If no, comment:
Funding to support development of ACOPs	Concern that ACOP development is resource-intensive and, if not appropriately funded, risks shifting costs from the Crown to industry, particularly disadvantaging smaller or less well-resourced sectors.	No further work, outside of role of legislation.	Confirm decision Yes / No If no, comment: