



BRIEFING

Health and Safety at Work Amendment Bill: advice on commencement date and provisions for ACOPs

Date:	29 October 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0022593

Action sought		
	Action sought	Deadline
Hon Brooke Van Velden Minister for Workplace Relations and Safety	Agree to a commencement date for the Bill, a provision relating to existing ACOPs, a transitional provision similar to current clause 3 of schedule 1 of the HSW Act, and for the section 190 decision to be included in the Cabinet Legislation paper.	4 November 2025

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	✓
Rachael Fleming	Principal Policy Advisor, Health and Safety Systems Policy	04 897 6592		

The following departments/agencies have been consulted
WorkSafe New Zealand, Maritime New Zealand.

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



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Purpose

To seek your decisions on:

- whether to change the timing of commencement the Health and Safety at Work Amendment Bill (the Bill); and
- the inclusion of a provision in the Bill to clarify the treatment of existing Approved Codes of Practice; and
- a further proposal that requires Cabinet approval to be sought via the Cabinet Legislation paper which introduces the Bill into the House.

Recommended action

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

Commencement date:

a **Agree** that the Health and Safety at Work Amendment Bill commence;

EITHER;

- i. **Option A:** the day after Royal Assent – as currently drafted (July 2026);

Agree / Disagree

OR;

- ii. **Option B:** one month after Royal Assent (August 2026);

Agree / Disagree

OR;

- iii. **Option C:** two months after Royal Assent (September 2026) (recommended by MBIE, WorkSafe and MaritimeNZ);

Agree / Disagree

Default provisions of the Legislation Act 2019:

- b **Note** that the treatment of existing exemptions and offences prior to the commencement of the new legislation are adequately covered by the default provisions in the Legislation Act 2019, so no transitional provisions are needed;

Noted

- c **Note** that MBIE will work with the Parliamentary Counsel Office to ensure the Health and Safety at Work Amendment Bill captures the requirement for exemptions granted after the new legislation comes into force to align with the revised purpose of the Act;

Noted

- d **Agree** that the Health and Safety at Work Amendment Bill includes a transitional provision to allow pre-commencement consultation relation to regulations, codes of practice and safe work instruments to meet the consultation requirements in the Health and Safety at Work Act;

Agree/disagree

Clarifying the treatment of Approved Codes of Practice:

- e **Note** that the Health and Safety at Work Amendment Bill includes a provision clarifying that Approved Codes of Practice approved after the new legislation comes into effect are afforded safe harbour status;

Noted

- f **Note** that Schedule 1, clause 4 of the Health and Safety at Work Act 2015 provides that Approved Codes of Practice issued under the Health and Safety in Employment Act 1992 continue in force as if they had been made under the Health and Safety at Work Act 2015, so a provision to deal with these Approved Codes of Practice is not required in the Health and Safety at Work Amendment Bill;

Noted

- g **Agree** to include an additional provision in the Health and Safety at Work Amendment Bill clarifying that;

EITHER;

- i. **Option 1:** all existing Approved Codes of Practice are afforded safe harbour status from commencement; (not recommended)

Agree / Disagree

OR;

- ii. **Option 2:** the more recent 2024 Ports and 2025 Forestry Approved Codes of Practice are afforded safe harbour status from commencement and all remaining existing Approved Codes of Practice are either revoked as no longer relevant, or retain their current status, and are only afforded safe harbour status once they have been reviewed, updated and reapproved by the Minister; (recommended jointly by MBIE and WorkSafe)

Agree / Disagree

OR;

- iii. **Option 3:** existing Approved Codes of Practice (approved after 5 September 2015 under the current HSW Act) are afforded safe harbour status from commencement and all remaining Approved Codes of Practice are either revoked as no longer relevant, or retain their current status and are only afforded safe harbour status once they have been reviewed, updated and reapproved by the Minister; (Maritime New Zealand's preferred option)

Agree / Disagree

OR;

- iv. **Option 4:** all existing ACOPs are either revoked as no longer relevant, or retain their current status, and are only afforded full safe harbour status once they have been reviewed, updated and reapproved by the Minister; (WorkSafe's preferred option)

Agree / Disagree

- h **Note** that WorkSafe places greater emphasis on the risks associated with Option 2 and 3 and therefore prefers to proceed with Option 4, while MBIE considers these risks to be less significant and supports progressing with Option 2 as well as considering Option 3 as also feasible;

Noted

Further Cabinet decision required

- i **Agree** to seek Cabinet's decision to align the functions and powers of the designated regulators with the changes to WorkSafe's functions and powers to ensure consistency via the Cabinet Legislation paper that introduces the Bill.

Agree / Disagree



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

29 / 10 / 2025

Hon Brooke Van Velden
Minister for Workplace Relations and Safety

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Background

1. As noted in recent Workplace Relations and Safety weekly reports, we have been considering the commencement date for Health and Safety at Work Amendment Bill (the Bill) and any necessary provisions to clarify the treatment of existing ACOPs. We instructed PCO that the Bill could commence the day after Royal Assent. Regulators have since raised concerns about their ability to prepare for immediate commencement, so we have worked closely with them to identify options to provide sufficient time to support the successful implementation of the reform.
2. The reforms do not impose any new requirements on duty-holders. Instead, the changes provide clarification, sharpen the scope and purpose of the HSW Act, and reduce health and safety duties, in particular, for small PCBUs. This aligns with the core objectives of the reform: to reduce regulatory burden and compliance costs.
3. The small-PCBU carve out, will require PCBUs to assess whether they qualify as a small PCBU, and understand what their limited health and safety duties are. This will require them to identify any critical risks relevant to their work, in consultation with their workers (as required under the HSW Act). MBIE considers that it is reasonable to assume that in most cases, this process will reinforce existing knowledge and practices, rather than reveal new risks.
4. For the changes to be implemented effectively, from the outset PCBUs would require the clarity, confidence, and guidance needed to understand and meet their obligations under the new legislative framework. If a realistic implementation timeframe is not provided to ensure guidance is available, PCBUs wanting to take advantage of the compliance relief will be left to interpret the changes on their own and may feel uncertain about how the changes apply to them.
5. This paper outlines options for a commencement date and a provision to clarify the treatment of ACOPs and seeks your decisions by 4 November. Provisions may end up being drafted as transitional or savings provisions which are within your delegated authority [ECO-25-MIN-0086 refers].

Options for commencement

6. Commencement clauses should provide certainty about when the legislation is in force so that people can undertake any preparatory action that may be required to implement the changes and ensure compliance. Currently, the Bill will commence the day after Royal Assent. However, you have a choice about when the Bill should commence, to support the successful implementation of the reform.
7. Delayed commencement is a well-established legislative practice in New Zealand and is commonly used to promote legal certainty and facilitate smooth transitions to new regulatory frameworks. Allowing a period between the enactment of legislation and its commencement, can ensure that stakeholders have sufficient time to understand the new requirements, undertake public education campaigns, and establish the necessary administrative systems or infrastructure.
8. WorkSafe has indicated that each of the options outlined below would constrain their ability to deliver the current priority guidance programme and likely require further reprioritisation.

Option A: Commencement the day after Royal Assent (July 2026)

9. This option is the status quo: the legislation comes into force immediately following Royal Assent. As the changes do not impose any new obligations, this approach ensures swift implementation and allows PCBUs to benefit from the reduced health and safety obligations

and potential cost savings early. PCBU's that are currently compliant with the HSW Act will remain so under the new legislative framework. While some PCBU's may initially exceed the revised requirements, maintaining current practice until adjustments are made, this overcompliance will not be penalised, consistent with current enforcement practices.

10. The key trade-off associated with this option is the reputational risk around how the implementation of the reform is viewed. For example, the changes are designed to address concerns around a lack of clarity and therefore certainty about how to comply. If the regulators are unable to prepare sufficient materials to support duty-holders to interpret and apply the changes, this risks attracting criticism about implementation inefficiencies. These risks could be partially mitigated by our intended approach for MBIE to work with regulators to develop information that clarifies the intent of the changes to reassure PCBU's.
11. WorkSafe has advised that under this option, they could provide high-level information on their website from the outset, outlining key new concepts introduced in the Bill, such as the definition of critical risk and a small PCBU. This initial guidance would be available from the outset, with more detailed and comprehensive guidance to be developed and released progressively from commencement onwards.

Option B: Commencement one-month after Royal Assent (August 2026)

12. A commencement date one-month after Royal Assent would provide a short window for WorkSafe to finalise information about the changes once the Bill has passed. This approach ensures a swift implementation and reduces the reputational risk of attracting criticism about implementation inefficiencies.
13. WorkSafe has advised that under this option, they could:
 - a. deliver sector specific information on the new concepts in the Bill for priority sectors,
 - b. start developing inspector training materials,
 - c. respond to reactive enquiries about the changes, and
 - d. publish factsheets with information for duty-holders on the WorkSafe website.

Option C: Commencement two-months after Royal Assent (September 2026)

14. A commencement date two-months after Royal Assent would provide a slightly longer window for WorkSafe to finalise information about the changes once the Bill has passed. We consider this approach still ensures a relatively swift implementation and provides the highest possibility of reducing the risks mentioned above.
15. WorkSafe has advised that under this option, they could:
 - a. deliver more comprehensive operational guidance to support PCBU's to apply the changes in practice,
 - b. deliver training for WorkSafe inspectors focused on the new concepts in the Bill,
 - c. respond to reactive enquiries about the changes,
 - d. provide information on critical risks to non-priority sectors, and
16. start work to review and update existing operational policies, standard operating procedures, inspector guidance, and guidance products.
17. **MBIE, WorkSafe and Maritime New Zealand recommend that you progress with Option C.** Option C best achieves the reform objective of providing compliance relief by giving PCBU's greater upfront certainty. This approach allows WorkSafe to deliver a more

comprehensive suite of information from the outset and would reduce the risk of criticism about implementation inefficiencies. Maritime New Zealand also supports this option.

Default provisions in the Legislation Act 2019 will apply to the Bill

18. WorkSafe has provided feedback that it is critical that the law relating to the following is clear:
 - a. their power to grant exemptions from compliance with health and safety regulations in specific circumstances¹, and
 - b. the treatment of offences and breaches of duties under the HSW Act that occur prior to commencement.
19. MBIE considers that existing exemptions and offences prior to the commencement of the new legislation are adequately covered by the default provisions in the Legislation Act 2019. Section 35 ensures exemptions continue to have effect, while sections 33 and 34 preserve ongoing proceedings and allow enforcement of prior offences as if the legislation had not changed. Therefore, no transitional provisions are needed. WorkSafe has confirmed it is comfortable with this approach.
20. However, exemptions granted after the new legislation comes into force must align with the revised purpose with the HSW Act. As the reform proposes to refocus the Act's purpose on managing critical risks, WorkSafe will need to consider how it exercises its exemption powers under the new framework. We intend to work with PCO to ensure this requirement is clearly reflected in the legislation so that exemptions may still be granted on a case-by-case basis despite the refocus on critical risk.

A new transitional provision is required to ensure consultation underway on regulations, ACOPs and Safe Work Instruments before the new legislation comes into force, continues to have effect

21. Schedule 1, clause 7 of the HSW Act currently provides that consultation in relation to regulations, ACOPs, and safe work instruments undertaken prior to the commencement of the relevant provisions in the Act is treated as meeting the Act's consultation requirements. Both MBIE and WorkSafe have undertaken, or are in the process of undertaking, consultation on a range of regulatory products, including regulations, ACOPs, and safe work instruments. To ensure that this pre-commencement consultation continues to be recognised as meeting the statutory consultation requirements under the HSW Act, we recommend including a transitional provision, similar to the current clause 7 of Schedule 1, in the Bill. We therefore seek your agreement to include such a provision.

Options to ensure clarity around the treatment of existing ACOPs

22. ACOPs currently provide guidance on what regulators consider to be a 'reasonably practicable' standard of safety. While not mandatory, following an ACOP can now be used as evidence in court of compliance with the HSW Act. WorkSafe has identified 25 existing ACOPs, of these, 19 were published prior to 2016 (meaning they pre-date the HSW Act).
23. The Bill includes a change to strengthen the effect of ACOPs and provide a safe harbour from prosecution. Compliance with an ACOP will be considered to be doing what is reasonably practicable to manage the risks addressed by the ACOP. In practice, the intent is not for ACOPs to become mandatory, but to continue to allow flexibility for PCBUs to do more than what is included in the ACOP, or, to meet their duty in a different way. MBIE

¹ Under section 220 of the HSW Act, WorkSafe may exempt any person from compliance with any provision of regulations, only if it is satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the proposed exemption and the exemption is not inconsistent with the purpose of the Act. A list of exemption can be found on the WorkSafe website: [List of exemptions | WorkSafe](#)

considers that the change, while important, represents a shift in the status of ACOPs at the margins.

24. The Bill includes a provision clarifying that ACOPs approved after the new legislation comes into effect are afforded safe harbour status from commencement. However, we recommend the Bill also include a provision to clarify the status of existing ACOPs.

We recommend you include a provision in the Bill to clarify the status of existing ACOPs

25. A decision is required on how to treat ACOPs that were approved prior to the commencement of the new legislation. The available options are outlined below.
26. On balance, MBIE and WorkSafe jointly recommend Option 2. However, it is important to note that WorkSafe places greater emphasis on the risks associated with Options 2 and 3 and therefore prefers to proceed with Option 4. In contrast, MBIE considers these risks to be less significant and supports progressing with Option 2 as well as considering Option 3 as also feasible. Option 3 is Maritime New Zealand's preferred option.

Option 1: all existing ACOPs are afforded safe harbour status from commencement

27. In WorkSafe's view, existing ACOPs lack clear, testable requirements that PCBUs can readily use to demonstrate compliance. As a result, they do not reflect current good practice. Under this option, a PCBU that relies on an existing, outdated ACOP, would be deemed to be compliant with the requirements of the new legislation, when in fact, WorkSafe would not consider this the case. WorkSafe's view is that this option could lead to worse health and safety outcomes due to PCBUs relying on outdated ACOPs.
28. MBIE agrees that the majority of WorkSafe's ACOPs are likely not suitable as safe harbours but note that PCBUs are already relying on existing outdated ACOPs. These outdated ACOPs can currently be used in court to demonstrate compliance. MBIE therefore considers that designating them as safe harbours does not introduce any *new* risk, but that it increases the potential impact of an existing risk from the stock of outdated ACOPs.
29. Despite this, MBIE, WorkSafe and Maritime New Zealand do not recommend this approach.

Option 2: the more recent 2024 Ports and 2025 Forestry ACOPs are afforded safe harbour status from commencement. All remaining existing ACOPs are either revoked as no longer relevant, or retain their current status and are only afforded safe harbour status once they have been reviewed, updated, and reapproved by the Minister;

30. Maritime New Zealand has confirmed that its 2024 ACOP for loading and unloading cargo at ports and on ships is suitable for safe harbour status. This is Maritime New Zealand's only ACOP.
31. MBIE considers that WorkSafe's most recent ACOP for the safe practice for forestry and harvesting operations is also suitable for safe harbour status, given its publication this year and the extensive industry consultation undertaken over the past three years. However, WorkSafe has advised that a targeted review of the forestry ACOP is still required to ensure the language is sufficiently prescriptive to provide PCBUs with the clarity and confidence needed to rely on it as a safe harbour. MBIE, WorkSafe and Maritime New Zealand agree that this approach would provide certainty for PCBUs who follow the more up-to-date ACOPs. We note that ACOPs developed under your Sector Relief Package (i.e. safe use of machinery in Agriculture and overlapping duties in Construction and Agriculture) will be developed as safe harbours, so that once the new legislation commences, they will automatically be afforded safe harbour status.
32. Any amendments to, or revocations of, the remaining existing ACOPs, would require WorkSafe to consult with relevant industry representatives. While this process can be time-consuming, it helps ensure the resulting guidance is robust and aligned with best practice.

Without a set timeframe for review, there's a risk that outdated ACOPs remain in place and never gain safe harbour status.

33. In theory many of the outdated ACOPs should be revoked, or revoked and turned into guidance, but WorkSafe advise that it is difficult to know without a review of each ACOP, and discussions with stakeholders to assess the extent to which parts of the ACOPs are still valued and used by PCBU's. Therefore, we do not recommend you revoke any of these older ACOPs without a WorkSafe review. Given WorkSafe's view that existing ACOPs are outdated and no longer represent good practice, they are supportive of a bulk review and likely revocation. However, they note that this would be a resource intensive and time-consuming process. Officials can consider whether there are any options to speed up this process as a part of current work to design process and decision-making rules for sector-led ACOPs. This option does not impose a timeframe for reviewing or revoking existing ACOPs, which creates a risk of inaction and preventing existing ACOPs from gaining safe harbour status.
34. **On balance, MBIE, WorkSafe and Maritime New Zealand jointly recommend this option.** WorkSafe places greater emphasis on the risks associated with Options 2 and 3 and therefore prefers to proceed with Option 4. In contrast, MBIE considers these risks to be less significant and supports progressing with Option 2 or Option 3.

Option 3: existing ACOPs (approved after 5 September 2015 under the current HSW Act) are afforded safe harbour status from commencement and all remaining ACOPs are either revoked as no longer relevant, or retain their current status and are only afforded safe harbour status once they have been reviewed, updated and reapproved by the Minister

35. The same considerations outlined in option1(b) above equally apply to this option.
36. This option would result in six of WorkSafe's existing ACOPs becoming safe harbours from commencement². MBIE and WorkSafe consider that the ACOPs approved under the current HSW Act are still ten years old and have not been sufficiently reviewed and updated over time, meaning they have not kept up with current good practice. As with option 1(b), WorkSafe has advised that targeted reviews of these ACOPs are still required to ensure the language is sufficiently prescriptive to provide PCBU's with the clarity and confidence needed to rely on it as a safe harbour. WorkSafe is not supportive of this approach.
37. WorkSafe places greater emphasis on the risks associated with this option and therefore prefers to proceed with Option 4. In contrast, MBIE considers these risks to be less significant and on balance, considers this option is also feasible.

Option 4: all existing ACOPs are either revoked as no longer relevant, or retain their current status and are only afforded full safe harbour status once they have been reviewed, updated, and reapproved by the Minister

38. Under this option, none of the existing ACOPs would be afforded safe harbour status from commencement. WorkSafe has indicated a clear preference for this approach, based on their assessment that the current ACOPs are outdated and no longer reflect good practice. Under this option, WorkSafe advises that they could undertake a targeted review to determine which existing ACOPs may be more appropriately reclassified as guidance material. This would help mitigate the risk that PCBU's continue to rely on obsolete ACOPs.

² *Ground or strata instability in underground mines and tunnels* (published 2016), *Air quality in extractives industry* (published 2016), *Emergency preparedness in mining and tunnelling operations* (published in 2016), *Management and removal of asbestos* (published in 2016), *Flammable liquids and tank wagons* (published in 2019), and *Safe practise for forestry and harvesting operations* (published in 2025).

A Cabinet decision is required to ensure the functions and powers of a designated regulator align with the amended functions and powers of WorkSafe

39. While WorkSafe is the primary regulator, others can be designated (section 191 HSW Act) as a regulator within a defined scope. Maritime NZ has been designated for work on board ships, where ships are places of work, and at major ports. The Civil Aviation Authority (CAA) has a designation covering work done to prepare an aircraft for flight, or work carried out on board during flight.
40. The functions and powers of these designated organisations (section 190 HSW Act) mirror those of WorkSafe in section 10 of the WorkSafe Act, but WorkSafe has several additional functions as the primary regulator.
41. The Bill implements Cabinet's decision to split WorkSafe's functions between principal and secondary functions. The functions and powers of the designated regulators should be realigned in the same way to ensure consistency. This will require a Cabinet decision.
42. We therefore seek your agreement to amend section 190 of the HSW Act to provide that:
 - a. the primary functions and powers of a designated regulator are:
 - i. provide guidance, advice and information
 - ii. develop, issue and approve codes of practice
 - iii. develop safe work instruments
 - iv. monitor and enforce compliance, and
 - b. all other existing functions and powers are retained as secondary.
43. If you agree, we will include this decision in the Cabinet Legislation paper that seeks approval for the introduction of the Bill.

Next steps

44. We have prepared a draft Cabinet Legislation Committee paper (which will need to be refined once the draft Bill is finalised). In early October, we received a further version of the draft Bill from PCO. We are working through the drafting questions arising from this version. PCO's capacity to complete the Bill's drafting remains subject to the prioritisation of their resourcing.
45. Given the uncertainty around the timing of the Bill, we seek your decisions by 4 November, to maintain momentum, and allow enough time for PCO to include any provisions in the next version of the draft Bill.