MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Update on Health and Safety at Work Amendment Bill submissions and key policy issues

Date:	31 March 2026	**Priority:**	Urgent
Security classification:	In Confidence	**Tracking number:**	BRIEFING-REQ-0029076

Action sought		
	Action sought	**Deadline**
Hon Brooke van Velden **Minister for Workplace Relations and Safety**	**Indicate** which proposals, if any, you would like to proceed with.	1 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	✓

The following departments/agencies have been consulted
WorkSafe 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☐ See Minister's Notes ☐ Withdrawn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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Date:	31 March 2026	**Priority:**	Urgent
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Purpose

To update you on key policy issues identified so far from submissions and provide initial advice on whether and/or how these issues could be progressed.

Executive summary

Submissions on the Health and Safety at Work Amendment Bill closed on 18 March 2026 with 343 submissions received. MBIE has processed around 70% of submissions to date. Out of those submissions issues can be categories into three key themes:

(A) drafting and implementation matters that could be addressed within existing policy decisions and your delegated authority;

(B) matters that would require new policy and Cabinet decisions; and

(C) matters where there is significant opposition to core proposals in the Bill.

A consistent theme coming through these submissions is the need for greater clarity and implementation support (particularly guidance and insufficient resourcing of the regulator), including concern that an immediate commencement date would not allow sufficient time for duty holders to understand the new framework or for WorkSafe to develop and test guidance.

Submissions also highlight areas where drafting could be clarified to better reflect the policy intent and reduce uncertainty, including aspects of the critical risk definition, section 35, and parts of the recreational access and seismic provisions.

Given the tight timeframes this advice has been provided at pace with limited detailed policy analysis on some of the issues.

Recommended action

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

a **Discuss** the content of this Briefing at your 1 April meeting with officials and:

b **Indicate** which proposals you would like to pursue drafting changes for through recommendations in the departmental report (Category A Issues, Table 1);

c **Indicate** whether there are any matters that would require new policy and Cabinet decisions that you would like to direct officials to investigate (Category B Issues);

d **Note** matters where there is significant opposition to core proposals in the Bill (Category C issues);

Noted

Hayden Fenwick
Manager
Health and Safety Systems Policy, MBIE

31 / 3 / 2026

Hon Brooke van Velden
Minister for Workplace Relations and Safety

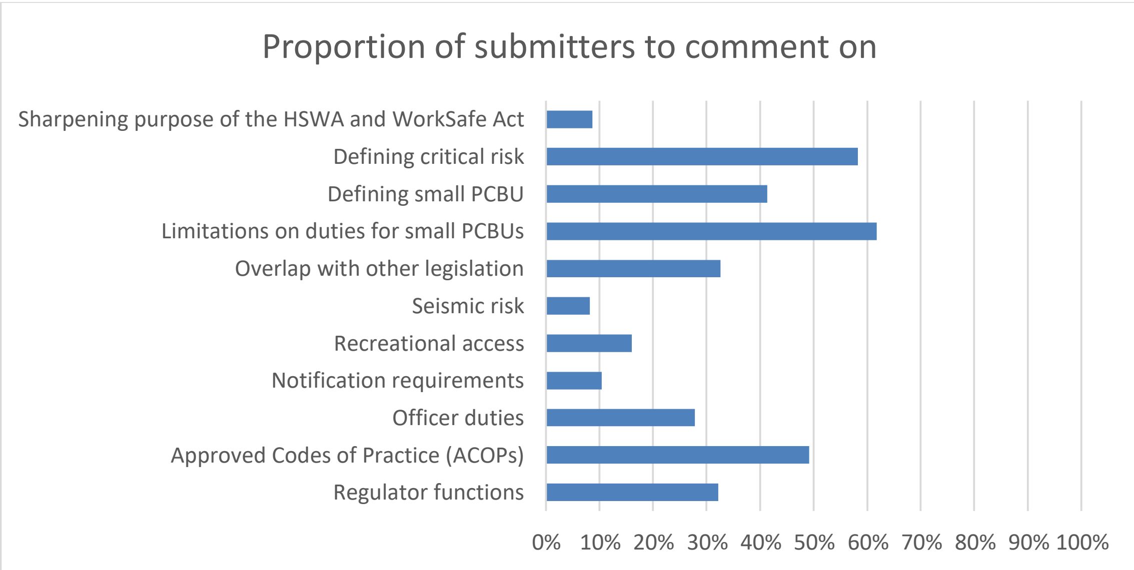
___ / ___ / 2026

Background

1. Submissions on the Health and Safety at Work Amendment Bill (the Bill) closed on 18 March 2026. The committee received 343 submissions. 95 submitters requested to provide oral submissions, with hearings on Wednesday 25 March, and Monday 30 March. Additional hearings are scheduled for Wednesday 1 April.

2. We have processed approximately 70% of submissions, prioritising submissions from key representative organisations, businesses and unions, with fewer submissions from individuals processed. This briefing indicates key themes from this subset of the submissions and key policy issues, to seek your direction and any key decisions. We will discuss this with you at a meeting on Wednesday 1 April.

3. The graph below shows the most commented on proposals in the Bill from processed submissions:



4. Officials have used AI to aid in summarising submissions and in preparing the contents of this briefing.

5. The issues raised by submitters and addressed in this briefing fall into three categories:

   a) Issues raised in submissions that fall within your delegated authority,

   b) Changes that would require new policy decisions, and

   c) Policy where you've made clear decisions but many submitters oppose.

6. Your decisions on these issues will form the basis of our approach to drafting the departmental report to the select committee.

A. Issues raised in submissions that fall within your delegated authority

7. We consider that the following issues could be addressed within your delegated authority, and would not require further Cabinet decisions. They mainly involve clarifying the drafting to address confusion that is obvious in the submissions, and to better reflect the policy intent. We have listed the issues in **Table 1** below and provided recommended actions and alternative options for you to consider.

8. For some issues we have recommended that the best solution is guidance. There are, however, practical constraints on the speed and volume at which guidance can be produced and these will need to be addressed. In particular:

   a) WorkSafe has a significant current guidance work programme, so the prioritisation of this existing work would need to be reconsidered.

   b) MBIE will need to be involved alongside WorkSafe to ensure that the policy intent is accurately conveyed and explained. This may also require reprioritisation of existing MBIE work.

   c) To ensure workable, practical guidance and a clear flow from policy intent to operational policy to practical application, it would be preferable to have industry and other representatives involved in developing and testing the guidance.

9. There is, therefore, a question about how quickly useful guidance can be developed. Directly related to this, for **issue 1, commencement date**, we seek your decision on whether to change from commencement on the day after the Bill receives Royal Assent to instead provide a period of time during which guidance can be tested with stakeholders and published ahead of the new provisions taking effect. Submissions have suggested commencement periods of 6 to 12 months. Amending the commencement date could assist with the issues raised regarding guidance, although strong prioritisation would still be required.

10. On issues where we recommend drafting amendments, we seek your agreement to engage with PCO on whether there are materially better drafting options.

Table 1: Issues raised in submissions that fall within your delegated authority

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
1. Commencement date AsureQuality, Business Canterbury, Civil Contractors NZ, Energy Resources Aotearoa, GasNZ Inc, GM Safety Forum, Greater Wellington Regional Council, HASANZ Miller Foundation, HASANZ, PSA, NZCTU, NZISM, NZ Nurses Organisation, VUW, Master Builders, Pact Packaging NZ, the NZ Safety Council Trust	• Submitters requested a longer period before commencement, usually either **6 months or 12 months**. • Time needed to understand the new framework, determine whether they are small PCBUs, determine their critical risks and duties, and update their systems and processes. • Many noted the importance of guidance to help, and the need for the regulators to have time to co-develop and publish guidance.	**Consider extending the commencement date to four to six months after Royal Assent** Allows: • businesses and others time to understand and prepare by adjusting systems and processes. Free and frank opinions [redacted] **Timing:** this change could be made immediately, no further analysis is needed to support this decision.	**Maintain the current immediate commencement date.** WorkSafe have informed us they are on track to: • Publish the legislative changes on the WorkSafe website. • Deliver proactive communications on the general concepts of the changes. • Deliver initial inspector training on the general concepts.
2. The Definition of Critical Risk	**A. The use of 'likely' in the critical risk catch-all test**	**Work with PCO on alternative wording to clarify the test**	**No change to the drafting of the catch-all test.**

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
This is raised in numerous submissions across all industry categories and by groups and individuals, so we have not listed individual submissions.	• The use of "likely" creates uncertainty, risks excluding serious but low-likelihood hazards, and will be interpreted inconsistently. • Some recommended replacing it with established tests such as "reasonably foreseeable" or consequence-based thresholds. • Others recommended a principles-based test. • This has been one of the most common themes through submissions, cutting across both small and large PCBUs, professional health and safety groups and legal groups.	**Develop guidance to clarify the definition and the applications of the catch-all test** Many submissions assume 'likely' relates to the probability of the event happening but not to the likelihood of the listed serious consequences occurring. This is a misunderstanding of the Bill as drafted. **'Likely' is tied to the consequences**, ie "a critical risk means a risk associated with ... a hazard of any kind that is likely to result in 1 or more of death, serious injury etc." Given the widespread misunderstandings, we propose working with PCO on alternative wording to alleviate this confusion. Guidance on this definition and how the catch-all test should be applied will also be very important. **Timing:** We can raise immediately with PCO and seek drafting advice ahead of the departmental report.	Clarify with guidance; however any guidance will still be limited to what WorkSafe is able to provide within the boundary of the legislative drafting. Guidance cannot cover all the critical risks a PCBU may have.
	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.** **Develop guidance to support use of the definition with illustrative examples** The definition of critical risk using a combination of Schedule 1A and the catch-all test matches the policy intent and the Cabinet decisions. The listing of hazards and regulations in Schedule 1A is designed to provide certainty for PCBUs for what is likely to be a large proportion of critical risks. Without	.

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
		this list they would have to go through a process like the catch-all test for every risk. An illustrative list or the list as guidance only would not create unnecessary uncertainty.	
	C. Addition of a risk-management process to the definition of critical risk or determination of critical risk (s 22A / 25C) • At least nine submitters said the definition misses the point of critical risk management by appearing to prioritise lists over process, and to stop at identifying but not managing critical risks. • They warned it will drive tick-box compliance, not serious-harm prevention, unless it is clearly linked to identifying and managing critical controls.	**Do not add a risk management process to the Bill as the requirements for managing risks are already in the 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.** The submissions may be based on a misunderstanding since the Bill does not specifically mention managing the critical risks that the PCBU identifies. However, the risk management provisions in the HSW Act remain unchanged and will continue to apply to the management of these risks.	
	D. Inclusion of psychosocial risks in definition of critical risk Many submissions have assumed that psychosocial hazards such as fatigue, trauma, threatening and bullying behaviour cannot ever be covered by the catch-all test.	**Use guidance to illustrate how psychosocial hazards can be considered as part of the critical risks catch-all test.** **Discuss with PCO further clarifying that a hazard in the catch-all test includes a psychosocial hazard if it is likely to result in one of the listed physical harms.** Psychosocial hazards may be critical risks if they are likely to result in the serious physical harms. This test is always fact specific. For example, fatigue leading to a plane crash.	

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
		Psychosocial hazards would not meet the critical risk catch-all test if they are likely to result in mental harm but not physical harm. If you wish to change this a Cabinet decision would be required. We discuss options below at paras 13 to 19. **Timing:** guidance will take time and resources to develop and will be subject to prioritisation across the range of guidance needed. This should be among the higher priority. We can seek drafting advice from PCO on whether it is possible to clarify how psychosocial hazards are included in the catch-all test ahead of the departmental report.	
3. Recreational access Franks Ogilvie, Federated Farmers, The Outdoor Access Commission, Manawatu District Council.	**A. Use of 'open space' in the Bill does not capture the types of areas intended to be covered** • "Open space" is an unclear and inadequate term that risks expanding uncertainty. • Forested areas and water unlikely to be covered, even though they are intended to be covered by the provision.	**Investigate alternative drafting with PCO** to better capture the policy intent. **Timing:** We can raise immediately with PCO and seek drafting advice ahead of the departmental report.	**No change to the drafting of the 'open space'.** Can attempt to clarify with guidance but confusion and possible gaps will persist as guidance is bound by the drafting and cannot fix where legislation is not accurately reflecting the policy intent.
	B. Clarifying and defining terms used in the provision: • proximity and timing of work • position if someone charges a nominal fee • 'recreational purposes' • 'implied permission.'	**Targeted guidance** is the best approach to providing the clarity that the system and PCBUs need on this issue. As noted above guidance will also be dependent on WorkSafe's priorities.	**Legislative clarification** Not recommended because of the complexity of drafting, the time it would take and the likelihood of unintentionally creating other problems.

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
	Franks Ogilvie has noted in their submission that each of the terms used above may give rise to interpretive issues, that could limit the effective operation of the recreational access provision.		Whether a fee for access counts as the PCBU's work will be fact specific and will depend on the degree to which this is integral or not to the PCBU's work.
	C. Requiring workers to be present for work to be occurring The Outdoor Access Commission and Manawatu District Council recommend amending so work is occurring only when workers are present.	**No change** Work and risks arising from work may persist beyond the time workers are onsite; for instance ground conditions (e.g. spraying a field with pesticides), or operation of remotely controlled machinery.	
	D. Risks from recreation or natural condition of the land One submission recommends that PCBUs who allow recreational access should be explicitly exempted from any duty to recreationalists for risks arising from the natural condition of the land or the inherent risks of the recreational activity, other than those the PCBU has recklessly created or permitted to subsist from work operations.	**Discuss with PCO whether the current drafting adequately covers this or whether changes are necessary.**	**No change.**
4. Exception for seismic risk to workplace buildings (amended section 37)	**A. Narrowing the duty narrows protections** At least eight submitters noted potential uncertainty or gaps where HSW Act duties are narrowed or removed, for example whether the Building Act would provide	**No change** The proposed narrowing of seismic duties aligns with the policy intent to clarify regulatory boundaries and avoid duplication between the HSW Act and the Building Act.	

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
Beca Limited, Department of Public Health – Dunedin, Engineering New Zealand, Fonterra, Greater Wellington Regional Council, Milford Sound Tourism, Property Council New Zealand, Manawatu District Council	sufficient protection to workers in high-seismic areas.		
	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 have received advice from officials responsible for the Building Act, and this could be resolved through a minor drafting change. **Timing:** We can raise immediately with PCO and seek drafting advice ahead of the departmental report.	**No other viable option identified.** Without a drafting change the confusion will remain.
5. Regulator functions (WorkSafe Act section 10, HSW Act s190) Business Leaders' Health and Safety Forum, Foodstuffs (N.Z) Ltd, Engineering NZ, Counties Energy, Greater Wellington regional Council, EMA, HASANZ, GM Safety Forum	• Expressed concern that the Bill's description of regulators' main functions could be read as ranked/prioritised.	**This is best addressed through guidance, and we can also investigate whether clarification through drafting is possible.** This is a misunderstanding of the Bill. The main functions are not listed in order of priority. Normal legislative interpretation does not attribute priority according to ordering of lists in statute. **Timing:** We can raise immediately with PCO and seek drafting advice ahead of the departmental report. As noted above guidance will also be dependent on WorkSafe's priorities.	**No other viable option identified.**
6. Clarification of section 35 (overlap with other legislation) Rail and Maritime Transport Union, Engineering New Zealand,	• Confusion about how section 35 would operate in practice, particularly how compliance with another enactment would interact with or displace HSWA duties, and who would determine whether regimes cover the same subject matter.	**Continue to work with PCO to clarify the policy intent of section 35** As indicated to the Select Committee.	**No other viable option identified.**

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
EMA, Greater Wellington regional Council, AssureQuality, GasNZ Inc, Downer New Zealand Ltd, Auckland International Airport, Business Leaders' Health and Safety forum, HASANZ	• Concern it requires PCBUs to self-assess legal equivalence, creating uncertainty and enforcement risk, especially where older, narrower, or multiple regulatory regimes apply.		
8. Shared duties and Consult, Co-operate, and Co-ordinate (CCC) At least 23 submissions raising this issue spanned multiple industries including: Construction, Engineering, Transport, Energy, Forestry, Retail, local Government, Cross-sector business and safety organisations, Ports.	• Concerns about the operation of existing shared duties and the requirement to consult, cooperate and coordinate where multiple PCBUs work together. • Concerns limiting duties for small PCBUs could fragment accountability and create gaps in risk management on multi-PCBU worksites or shift responsibility (and costs) on to large PCBUs on worksites. • Emphasised the need for clear legislative assurance that overlapping duties and consultation, cooperation, and coordination requirements remain intact regardless of PCBU size, supported by clear WorkSafe guidance for shared and contracting environments.	**Investigate drafting to clarify how the section 34 duty applies between small and other PCBUs** **Guidance will also be necessary** While the existing section 34 duty to consult and collaborate would remain, overlapping duties would not apply, as the PCBUs' duties will not be in relation to the same matter: the focus on critical risk for small PCBUs means that PCBU duties will be different. Given the questions raised in submissions, we will explore ways to clarify this in the Bill.	**No other viable option identified.** Guidance at least is needed to explain the obligations.

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
9. Safe harbour status under s226 for ACOPs Industries that raised this or similar issues include: Construction, Engineering, Energy, high-hazard industries, Transport, Forestry, Retail, Agriculture, Horticulture, Local Government, Cross-sector business and health & safety organisations	**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. • Need for clear transition arrangements, including time and sequencing to review, update, or replace ACOPs, to avoid uncertainty and inconsistent enforcement during the transition.	**Information can be added to the WorkSafe website to explain the status of existing ACOPs and we expect WorkSafe will publish its ACOPs work programme.** The Bill provides that existing ACOPs (except for the forestry and the ports ACOPs) will not have safe harbour status. ACOPs that are approved after commencement will have the new status. WorkSafe will need to consider the timeframe, priorities and resources for revoking or redrafting any existing ACOPs as part of its wider ACOPs work programme, which includes making new ACOPs and responding to draft codes developed by others.	**No other viable option identified.** This is an administrative and resourcing matter which is not suitable for inclusion in legislation.
	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 to Bill.** This is an administrative and resourcing issue which is best addressed through work planning and prioritisation and funding decisions, taking account of changing contexts and requirements that impact the durability of existing ACOPs and the need for new ACOPs. The annual Ministerial Letter of Expectations is an important tool to communicate priorities.	**Explore options for providing a review clause in legislation.** This is not recommended. HSWA doesn't have review dates for regulations generally, so would be out of legislative proportion to enact a date for ACOPs. It also legislatively allocates future regulator resource (across all regulators, not just WorkSafe) to a specific regulator function removing the ability to prioritise within those functions depending on system need.

Provision and submitters	Issue raised in submissions	Recommendation and rationale	Alternative option
			In effect it also legislatively allocates private sector resource to contribute to those reviews.
	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.** The changes to the purpose of the HSW Act and the main objective of WorkSafe in the WorkSafe Act both prioritise to critical risks. We expect that WorkSafe will respond by focusing its resourcing on ACOPs that address critical risks. The Bill already provides a safe harbour in relation to a duty to manage a particular risk for those who follow an ACOP to manage that particular risk.	
10. ACOPs developed by others – consistency and criteria (new section 222A) Industries that raised this or similar issues including: Construction, Engineering, Energy, High-hazard industries, Forestry, Retail, supply chains, Local Government, Cross-sector business and health & safety organisations	• Concerns about allowing ACOPs to be developed by parties other than WorkSafe in the absence of clear and consistent criteria. • Concerns about variable quality, uneven standards, and fragmentation across sectors. • Emphasised the need for robust WorkSafe oversight, clear approval criteria and governance, and meaningful worker and expert input.	**Continue the current process to develop and publish clear criteria and processes for third-party ACOP development.** WorkSafe, MBIE and the other regulators are currently developing guidance setting out the legislative and quality criteria against which draft codes will be assessed and the process expectations. The guidance encourages early engagement with the regulators to help third parties make informed decisions about where and how to target their efforts and to ensure quality. WorkSafe will provide you with the draft guidance during May.	**No viable alternative**. This is an administrative matter which is not suitable for inclusion in legislation.

11. Officers Around 24 submissions from: Construction, Engineering, Energy, high-hazard industries, Transport, Health and Social services, Retail, Local Government, Cross-sector business and health & safety organisations	**A. Distinction between governance and operational roles** • Concerns were expressed about how amended section 44 would operate in practice, focusing on clarity rather than opposition to policy intent. • Many questioned impacts for owner-operators, managing directors, and officers in smaller or flatter organisations who routinely perform both governance and operational roles, creating uncertainty about when officer duties are engaged or when information is obtained from one role and is applied in the other.	**No change to the drafting** **Provide detailed guidance on the governance–operations boundary** The range of contexts is very broad and fact specific and attempting further clarification through drafting risks creating unintended gaps or expansions. The advice we received from business representatives was to keep the drafting as simple as possible.	An ACOPs could be developed for officers on separate boards, and another could be developed for officers in owner/operator or working partner situations.
	B. Risk of perceived dilution of officer accountability Submitters expressed concern that the amendments could be interpreted as narrowing or diluting officer accountability, particularly by lowering expectations of active leadership and oversight, and emphasised that officer due diligence is central to safety culture, warning that any perceived reduction in accountability could undermine outcomes or complicate enforcement unless expectations remain clearly substantive.	**No change** The Bill deliberately clarifies the scope of the officer duty so that it does not include the other roles that may be performed by an officer who is also a worker. This is in line with the policy intent. The exhaustive list of the due diligence steps required of an officer provides the certainty sought by the policy change.	

B. Issues that are likely to need changes that would require new policy decisions

11. The following issues would require further policy and Cabinet decisions in order to be included in the Bill. If you wish to address these issues, you have choices as to whether you proceed with consideration of each decision via this Amendment Bill or whether these issues are explored further through future work programmes. Paragraphs 39–50 and **Annex Two** provide information on timing considerations relating to amendments to the Bill. If you did want to address any of these issues, we generally recommend further work following the passage of the Bill.

Including psychosocial harm and cumulative process injuries in the definition of critical risk, and requiring these to still be managed by small PCBUs

Psychosocial risk

12. As noted above, psychosocial hazards (**Table 1, Issue 1 C**) may be covered by the critical risk catch-all test if likely to result in the serious physical harms included in that test. Some submissions may have misunderstood this and have assumed that all psychosocial hazards are completely excluded – psychosocial hazards are only excluded if they are likely to result in mental harm but not serious physical harm.

13. A significant number of submitters (at least 41) raised concerns about the exclusion of psychosocial hazards. Primarily they focused on the fact that the definition of critical risk is unlikely to include psychosocial risks such as work-related stress, fatigue, bullying, violence and other forms of mental harm. Submitters consistently emphasised that these risks are among the most prevalent causes of workplace harm, often acute in small businesses, contribute materially to ACC and health system costs, and can be cumulative and life-changing.

14. Many submitters sought explicit reassurance, either in legislation or supporting guidance, that psychosocial risks remain within scope of HSWA duties and must continue to be managed proportionately.

15. **If you wish to expand the types of psychosocial hazards that would fall into the critical risk category, (i.e. whether they are likely to result in serious physical harm or not)**, there are two options:

    a) *An amendment to the Bill:* (**not recommended**) you could explicitly include psychosocial hazards within the statutory definition of critical risk, including when they are likely to result in psychosocial harms only, as well as when they are likely to result in serious physical harms. You could achieve this by potentially adding cross reference to work-related mental injury claims covered under the Accident Compensation Act.

       This would be outside the previous Cabinet decision on the definition of critical risk and outside the scope of your delegated decision-making authority. It would require a policy process, Cabinet policy decisions, drafting, and LEG approval for an Amendment Paper to be tabled at Second Reading or Committee of the Whole.

    b) Address via an amendment to the Bill and via regulations (**recommended**): You could amend the limitations on the order in council provision required to add regulations into schedule 1A so that psychosocial harm regulations do not need to meet the catch all test but would need to meet the mental injury test required in the Accident Compensation Act instead (section 21B of the AC Act). You could then explore targeted regulations for psychosocial hazards following enactment of the Bill. This would enable more time for policy and consultation on this complex issue, as it is especially difficult and important to be able to distinguish the extent to which psychosocial hazards arise from work and not from other life factors. Any regulations could then be added to Schedule 1A through an Order in Council.

16. If you decide to address these concerns about the coverage of psychosocial hazards we will note this in the departmental report to the select committee.

Work-related gradual process injuries

17. Drafting of the definition of critical risk means that hazards that are likely to result in a gradual process illness or injury outside of those listed in schedule 2 of the Accident Compensation Act would likely not be counted as a critical risk, because most gradual process injuries or illnesses are due to longer term exposures, many of which occur both in and out of work. Schedule 2 of the Accident Compensation Act lists specific illnesses that can be explicitly said to have been caused by work. For example, mesothelioma is caused by exposure to asbestos. Other gradual process injuries or illnesses can obtain ACC cover if a claimant proves that they suffered the injury or illness because of work, by showing their work or workplace involved a risk of the injury or illness significantly greater than their non-work environment (section 30 of the Accident Compensation Act).

18. At least 30 submitters highlighted work-related gradual process injuries and illnesses not included in schedule 2 of the Accident Compensation Act, such as musculoskeletal disorders, cumulative strain, and fatigue-related harm, as the most common types of workplace injury and long-term harm. Submitters consistently noted that these injuries account for a large proportion of ACC claims and productivity loss, despite often not meeting thresholds associated with acute or catastrophic events.

19. **If you wish to address work-related gradual process injuries**, there are two options:

    a) *An amendment to the Bill*: (**not recommended**) You could explicitly include work-related gradual process injuries or illnesses covered by section 30 of the Accident Compensation Act in the catch-all test for critical risks. This would be outside the previous Cabinet decision on the definition of critical risk and outside the scope of your delegated decision-making authority. It would require a policy process, Cabinet policy decisions, drafting, and LEG approval for an Amendment Paper. The policy process would require careful consideration of the interactions with the ACC Scheme; it is also worth noting that section 30 of the AC Act is retrospective in comparison to the prospective nature of HSWA. It is unlikely that this work can be done ahead of the Bill progressing through the House.

    b) *Consider as part of a policy process following the Bill's passage*: (**recommended**) This would involve assessing the problem and options to address it. This would include whether regulations are feasible to manage the risks of gradual process injuries, however this would likely face similar issues to the concept of regulations for psychosocial risks where they may not meet the requirements to be added to schedule 1A. This process would include working closely with the AC system, but potentially risks having taken something away only to have it put back again later.

20. If you decide to address these concerns about the coverage of gradual process injuries and illnesses we will note this in the departmental report to the select committee.

Definition of critical risk

21. One submission recommends the definition focus around implicit or explicit cost/benefit assessment, both when identifying critical risks and for use as a defence in the event of enforcement. This is outside the scope of the Cabinet policy decision.

22. If you wish to advance these proposals, a policy process and Cabinet decisions will be required. We do not believe these can be achieved within the current timing of the Bill.

Recreational groups

23. At least 4 submitters raised concerns about the application of health and safety duties to volunteer-run recreational groups. These submitters highlighted that volunteer-led clubs, often small, non-commercial, and reliant on unpaid governance and activity leaders, can face uncertainty and a disproportionate compliance burden under the current framework. There was concern among this group that unclear boundaries between "work" and voluntary recreational activity may discourage participation and reduce willingness to volunteer. Submitters noted that this uncertainty risks a "chilling effect" on community recreation and volunteering more broadly, and sought clearer statutory boundaries or exclusions to provide certainty that volunteer-run recreational activity is not subject to the same expectations as commercial operations.

24. Submitters who raised issues relating to volunteering for recreational groups recommended clearer and more proportionate treatment of volunteer-led recreational organisations within the health and safety framework.

25. MBIE has provided separate advice to you on options to address the treatment of volunteering for recreational groups under the health and safety framework (BRIEFING-REQ-0030073 refers).

Recreational access: further recommendations

26. One submission argued that the section 37 exclusion for recreational access should be supplemented by a matching exclusion for the PCBU from the section 36(2) duty to others.

27. This exclusion would be outside the scope of the Cabinet policy decision which specifically linked the recreational user exclusion to the section 37 duty of a PCBU who manages or controls a workplace.

28. The submission also recommended amending section 34 (overlapping duties) to exclude the landowner from the any duty to the clients of a recreational business that a landowner allows to operate on their property. 'This exclusion is also outside the scope of the Cabinet policy decision.

29. If you wish to advance these proposals, a policy process and Cabinet decisions will be required. We do not believe these can be achieved within the current timing of the Bill.

Funding to support development of ACOPs

30. At least 6 submitters raised concerns about funding arrangements to support the development of draft codes of practice by third parties. These submitters cautioned 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. Concerns include uneven coverage, variable quality, and difficulties maintaining and updating ACOPs over time, especially where ACOPs are intended to provide compliance certainty. These submitters generally characterised ACOPs as a core tool within the system that should be properly resourced.

31. Our initial reading of the HSW Act section 201 casts doubt on whether levy funding could be used to fund third parties to develop draft codes without amendment. Section 201 limits use of the levy to covering 'certain Crown costs', specifically those of the regulators in carrying out their functions and the Crown in administering the legislation.

32. **If you wish to address this issue:** there are two options:

    a) *An amendment to the Bill:* (**not recommended**) We would need to seek legal advice on use of the levy. If the current Act does not allow for funding to third parties, a legislative amendment would be required. It would not be possible to achieve this within the Bill's current timeframes.

b) A separate *policy process following the Bill's passage:* (**recommended**) We would consider whether legislative changes to address the uses of the levy are required and if so what they would be. This would involve assessing the problem and options to address it, leading to Cabinet decisions and possible legislative changes.

Officers' duty

33. Some submissions argued that the Bill does not adequately address larger organisations with separated governance and management. Other recommendations were to explicitly recognise collective board accountability alongside individual officer duties, to address penalty levels for officers, and to better align HSW Act officer duties with core directors' duties under wider governance legislation.

34. Other submissions raised concerns about the application of officer duties to non-executive or elected governance roles with limited operational influence. Submitters argued that unclear alignment between duties and actual influence over risk may expose individuals to disproportionate liability and deter participation in governance roles and sought clearer calibration of duties to reflect real decision-making power.

35. Some of these recommendations were considered in our earlier advice on changes to the officer duty [BRIEFING-REQ-0012039 refers]. This included options to create separate categories of officer depending on whether there is an executive board or not, excluding CEOs from the officer duty in some instances, confining the duty to directors who do not otherwise work in the business, and establishing an executive management duty distinct from the officer duty.

36. At the time we consulted with the EMA, Federated Farmers, and Retail New Zealand on the different options. Their strong feedback was to avoid extra complexity, especially through not creating new roles and focusing instead on clarifying the existing provisions. The resulting proposals to Cabinet reflected this advice and are given effect in the Bill.

37. We provided advice on penalty levels for offences in the HSW Act [BRIEFING-REQ-0013325] refers. You did not direct any further work on these issues.

Timing considerations for issues requiring further decisions

38. The Bill is on a shortened select committee timeframe from 12 February to 13 June (four months and one day).

Milestone	Timeframe
Submissions	Wed 18 February to 18 March
Hearings	Wed 25 March, Mon 30 March, Wed 1 April
Departmental report	Wed 22 April (due Fri 17 April)
Revision-tracked Bill	Wed 13 May (due Fri 8 May)
Report back	Mon 15 June (due Sat 13 June)

39. There are limited options if you wish to address matters that are consistent with your policy aims for the Bill, but are outside of existing Cabinet decisions, these issues are addressed in Part B of this briefing.

40. The four month select committee timeframe limits the ability to fully consider complex or late-emerging issues, seek Cabinet decisions on substantive policy changes, and incorporate agreed changes into the Bill before key milestones such as the departmental report.

41. The Leader of the House has also previously indicated that the Business Committee generally will not support requests to extend select committee report-back deadlines that have previously been shortened. Also note the letter you received yesterday from the Leader of the House confirming the Bill as a priority for progression through the House in Q2; this is dependent on the Bill having all necessary approvals and being ready for the relevant stages.

42. The current select committee timeframe on the Bill provides approximately a one-week buffer prior to report back (2–5 June).

43. We have identified three process and timing options you could consider taking for any amendments to the Bill where further Cabinet decisions are required. Any policy change that requires Cabinet approval could require a request to the Business Committee to extend the select committee report back date. The proposed timeframes assume a minor policy change requiring minimal drafting and no substantial Bill rework. More complex changes would require longer timeframes. See **Annex Two** for timeframes across all options. The options assume compressed or minimum timeframes for standard processes, including:

    a. One week minimum agency and ministerial consultation.

    b. Cabinet paper going directly to Cabinet, rather than via a Cabinet committee.

    c. Two weeks for drafting the revision-tracked bill, which PCO indicates is the bare minimum.

44. Timing may also be affected by other Bills and parliamentary activity progressing in parallel, including:

    a. Scrutiny week (15–18 June) when the House is not sitting.

    b. The Employment Leave Bill, which is also before EWC under a shortened timeframe (12 March–13 July).

Summary of options and Officials' preferred approach to the timing options

45. We consider that the best option, if any proposed policy change is more than minor, is releasing an Amendment Paper (AP) at the Committee of the Whole (**Option 2**), given the risks the compressed select committee timing entail. A further risk to MBIE resourcing, Cabinet time and House time is the Government response to the Fuel crisis, which could require rapid reprioritisation. The timeframe is feasible, subject to amendments being tightly scoped and that the process for developing an AP started early. Legal professional privilege Legal professional privilege

46. We have considered but ruled out recommending amendments through the current Departmental Report due date or extending the Departmental Report due date by one week (within buffer). We do not consider the timeframes feasible, as a draft Cabinet paper would need to have already been drafted.

47. The further options of providing a Supplementary Departmental Report (SDR) 3 weeks after the Departmental Report (**Option 1**) or seeking an extension to the select committee report back (**Option 3**), also entail timeframes that we consider are not feasible.

48. Preparing an SDR would place significant pressure on resourcing and risk errors. The Business Committee's willingness to allow an extension to the EWC's report back date is likely low and would mean overlap with EWC's consideration of the Employment Leave Bill, likely exacerbating select committee capacity constraints.

49. For all options, the proposed timeframes assume minor policy change. For substantial policy change, timeframes will likely need to be extended based on the complexity and size of drafting along with MBIE and PCO capacity.

C: Policy where you made clear decisions that submitters oppose

50. Many submitters opposed aspects of the Bill that implement key policy decisions of your reform. These include the proposals to limit duties for small PCBUs, the definition of critical risk, and the overlap with other legislation. Submitters' comments on these proposals are summarised below, with more detail found in **Annex One**.

51. This section is included to note that there is opposition to the policy rather than the implementation of it. An operational response may help with some parts of the concerns.

52. If you were to consider any amendments as a response to any of these concerns, this would require a Cabinet decision as these are fundamental decisions that would impact on the policy of the Bill.

Limitations on duties for small PCBUs

53. A clear majority of submissions processed (approx. 70%) opposed the proposal to limit duties for small PCBU on the basis of business-size. A smaller group (approx. 20%) supported the proposal, mainly on the grounds of proportionality and reducing compliance burden for small businesses. While a number of supportive submitters supported proportionality in principle, they did not support a size-based carve-out as drafted. Themes of submitter comments are summarised in **Annex One**.

54. Amongst opponents the dominant view is that the proposed approach risks weakening worker protections, increasing complexity in practice, and generating unintended system-wide consequences. This group also noted that a proportionality test is already present in HSWA in that "so far as is reasonably practicable" limits what many small PCBUs are expected to do.

55. A near-universal alternative proposed by opponents is to retain universal duties for all PCBUs while reducing compliance burden through clearer guidance, updated and accessible ACOPs, sector-specific tools, and stronger education and implementation support for small businesses.

A minority supports the proposal to limit duties for small PCBUs

56. Submissions supporting the proposal generally argued that:

a) Current health and safety duties are disproportionately burdensome for small businesses, particularly low-risk operations.

b) A critical-risk focus would reduce paperwork and compliance activity, allowing small PCBUs to concentrate on managing the most serious hazards.

c) The proposal would improve clarity and proportionality, provided strong guidance and safeguards are in place.

57. However, even among supportive submissions, many emphasised the need for clear guidance for mixed-size worksites and contracting arrangements, transition arrangements as businesses grow, and assurance that baseline protections for workers are not lost.

Specific concerns were raised relating to the small PCBU carve out from the upstream duties

58. Many submissions opposed limiting the upstream PCBU duties in sections 39 to 43 of the HSW Act to only critical risks for small PCBUs. Reasons for this include an inappropriate displacement of duties to downstream PCBUs. For example, Federated Farmers warns that farmers rely heavily on upstream PCBU expertise, and cannot independently assess plant safety.

59. Submitters also warned of other risks of including sections 39 to 43 in the carve-out, such as:

a) Increased contractual and administrative burdens: downstream PCBUs are likely to respond by imposing stronger contractual controls, additional monitoring, audits, and induction requirements on small contractors.

b) Undermining the shared-duty model of the HSW Act: the proposal is seen as weakening the HSWA shared-duty model by creating uncertainty about who is responsible for managing non-critical risks.

c) Practical risk of disengagement: some submitters warned that downstream PCBUs may reduce engagement with small PCBUs, or raise barriers to entry to manage liability risk.

d) Restructuring of entities to avoid HSWA duties.

Amendments to section 35 – overlap with other legislation

60. Overall, submitters largely support the objective of reducing unnecessary duplication, particularly in heavily regulated sectors (at least 35 submissions). However, most support is qualified (at least 23 submissions), with submitters emphasising the need for safeguards to ensure worker protections are not weakened.

61. Submitters note that the amendments risk subordinating the HSW Act to other legislative regimes that may be outdated, not worker-focused, or set a lower standard of protection. The change could lower health and safety standards, fragment the regulatory framework, and create gaps in coverage, particularly where other regimes were not designed to manage workplace health and safety risks or apply the “reasonably practicable” test.

62. Around half of submitters support the intent only with conditions or safeguards, particularly the inclusion of an explicit equivalence or higher-standard test. These submitters emphasise that deemed compliance should apply only where another enactment provides an equivalent or higher level of worker protection, that the HSW Act should continue to apply to residual or workplace-specific risks, and that any overlap should be narrowly defined with clear tests for what constitutes the “same subject matter”.

63. Sector-specific concerns are frequently raised in relation to transport (rail, maritime, aviation, and road safety), construction (particularly interaction with the Building Act), emergency management and natural hazards, and sectors governed by legislation focused on public or environmental outcomes rather than worker safety.

Next steps

64. Officials are available to discuss this paper with you on Wednesday, 1 April.

Annexes

Annex One: Specific concerns raised relating to the coverage of high-risk industries in the small PCBU carve-out

Annex Two: Timing options for any amendments to the Health and Safety at Work Amendment Bill

Annex One: Submitters' comments on the limitations on duties for small PCBUs

General opposition to the small PCBU carve-out

65. Key themes of submitters who are opposed to the small PCBU carve-out are outlined in the table below:

Equity and fairness	Submitters strongly oppose the creation of a size-based or two-tier duty system. They argue that worker protection should not depend on business size, particularly given that many small PCBUs operate in high-risk sectors. Concerns are also raised about disproportionate impacts on vulnerable workers, including young people, migrants, Māori, Pasifika, and women.
Increased risk of harm	Submitters note that most workplace harm arises from non-critical risks, such as musculoskeletal injuries, slips and falls, fatigue, stress, violence, and occupational disease. Limiting duties to critical risks is seen as allowing these common harms to go unmanaged, with submitters warning this would increase injury rates and system costs.
Weakened prevention	Many submissions emphasise that the HSWA framework is designed around early and layered prevention. A focus solely on catastrophic risks is seen as undermining proactive risk management and shifting the system toward a reactive, post-harm approach.
Problems in shared and contracting workplaces	Submitters raise concerns that differing legal duties for small and large PCBUs operating on the same worksite would create confusion over responsibilities, fragment risk management, shift costs onto larger PCBUs, and undermine cooperation. Some large organisations indicate this may discourage engagement with small contractors.
Perverse incentives	Several submissions warn of incentives for businesses to restructure to remain below the threshold, misclassify workers, or reduce investment in training, supervision, and PPE. Submitters also note existing misconceptions that small PCBUs are already exempt, which the proposal may reinforce.
Existing proportionality in the law	Many submitters argue that the current "so far as is reasonably practicable" test already provides proportionality by accounting for risk, capability, cost, and context. On this basis, they consider an explicit carve-out for small PCBUs unnecessary and harmful.

Specific concerns were also raised relating to the coverage of the carve-out of high-risk industries

66. Key concerns from submitters relating to the inclusion of high-risk industries are outlined in the table below:

Risk is activity-driven, not size-driven	Submitters consistently argued that workforce size does not correlate with risk exposure in high-hazard environments.
Small PCBUs are prevalent in high-risk sectors	Many high-risk industries rely heavily on small contractors, meaning the carve-out would apply precisely where risks are greatest.
Inconsistent duties on the same worksite	Allowing different legal duties based on PCBU size was seen as creating confusion, complicating supervision and enforcement, and weakening safety culture.
Upstream PCBUs would be forced to compensate	In practice, larger PCBUs were expected to re-impose full risk-management requirements through contracts, increasing cost and complexity without improving clarity.
Risk of reduced baseline safety	Submissions warned that reduced duties could lead to less training, supervision, PPE, and management of precursor risks, increasing cumulative harm and the likelihood of serious incidents.

67. Submitters commonly recommended that the small PCBU carve-out should not apply to high-risk sectors or settings, or should be removed entirely. Additionally, universal duties should be retained, with proportionality delivered through guidance, ACOPs, and regulator support.

Cabinet policy decisions on the small PCBU carve out (June 2025 decisions)

68. In April 2025 we advised on the options for defining 'low risk' [BRIEFING-REQ-0012036 and BRIEFING-REQ-0012039 refer], and you agreed that we should not define "low risk" in the HSW Act. As noted in BRIEFING-REQ-0012036, we considered using a set of sectors, industry classifications, or activities to classify high versus low risk, but none of the options provided a consistent or coherent way to identify low risk sectors.

69. In June Cabinet agreed that its intent of separating 'low risk' PCBUs from others could be fulfilled by the way that the duties are limited for small PCBUs. For small PCBUs, Cabinet agreed to limit the general duties in section 36, 37, and 38 to critical risks, and require that specific duties under existing health and safety regulations continue to apply to all firms regardless of size.

Annex Two: Timing options for any amendments to the Health and Safety at Work Amendment Bill

Detailed options for progressing changes through cabinet

Option	Timing	Process	Risks
Option 1 Provide a Supplementary Departmental Report 3 weeks after the Departmental Report	A SDR may be provided after the main departmental report but before select committee report back, likely by 15 May. Cabinet decisions would need to be considered by 11 May. The revision-tracked bill (RT) would be pushed out by 29 May/5 June with select committee deliberation 17 June or later.	Officials may request to provide a SDR to the committee (via the committee clerk). The committee may agree and receive it, ask for it to be limited in scope, or decline and prefer oral advice. We would need to consult with Parliamentary Counsel Office (PCO) to change the date on the revision-tracked bill as an extension would likely be needed.	With an already shortened select committee timeframe, producing both a departmental report and a supplementary departmental report risks fragmenting advice, and may constrain the development of robust amendments. Constrained time for consultation, legal reviews and PCO drafting may reduce advice quality and add pressure to already limited resourcing. There may be insufficient time to prepare a regulatory impact assessment (RIS), if needed, prior to seeking Cabinet approval.

Option 2 Release an Amendment Paper at Committee of the Whole **(preferred)**	An AP could be presented to the Committee of the Whole in late June (next sitting day after Second Reading). Cabinet decisions on the policy would need to be considered by 4 May and on the AP by 22 June. Timing may be slightly limited by King's Birthday on 1 June. The Bill may change during select committee beyond the RT due date – this would require PCO to potentially rework the AP if they have already started drafting it.	AP is lodged with the House Office. The AP should be released before the Committee of the Whole begins.	When a bill has already gone through a shortened select committee process, subsequent amendments through an AP—particularly where they are substantive—may be perceived as making additional policy changes without the benefit of select committee scrutiny. This increases the risk of unintended legal or operational consequences, scope or drafting challenges during the Committee of the Whole.
Option 3 Seek to extend the Select Committee report back by one month	Extending the already shortened select committee timeframe by one month would allow for amendments to the Bill to be included in the departmental report, which would be extended to 15 May. Cabinet decisions would need to be considered by 11 May.	You seek the select committee chair's permission to an extension and they would seek approval from the Business Committee. The Leader of the House has previously indicated that the Business Committee generally will not support requests to extend select committee report-back deadlines that have already been shortened, signalling that the Business Committee is unlikely to grant the extension.	Requesting an extension to an already shortened select committee process carries reputational and procedural risk. An extension would also place the Bill in the same timeframe as the Employment Leave Bill, increasing the risk of reduced committee engagement, limited Member availability, and constrained departmental and PCO capacity.

Timing options for any amendments to the Health and Safety at Work Amendment Bill

	March	April	May	June	July
Option 1: Provide a Supplementary Departmental Report 3 weeks after the Departmental Report	**18 Mar** Submissions closed	**7 Apr to 28 Apr** Develop CAB paper seeking policy changes for SDR **1 Apr** Advice to Minister **7 Apr** Minister's decision **15 Apr** Draft CAB paper to Minister **29 Apr** Final CAB paper to Minister	**4 May** Cabinet **8 May** SDR due **15 to 29 May** Draft RT Bill **29 May / 5 Jun** RT Bill due	**17 Jun to 6 Jul** SC deliberation	**Mid Jul** Second Reading, COWH, Third Reading **6 Jul** SC reportback
Option 2: Release an Amendment Paper at Committee of the Whole **(preferred)**	**25 Mar to 1 Apr** Policy work on AP issues **18 Mar** Submissions closed	**7 to 28 Apr** Develop CAB paper seeking policy decisions for AP + RIS **1 Apr** Advice to Minister **7 Apr** Minister's decision **15 Apr** Draft CAB paper to Minister + Draft RIS to QA panel **29 Apr** Final CAB paper + RIS to Minister	**23 Apr to 8 May** Draft RT Bill **4 May** Cabinet **8 May** RT Bill due **11 May to 10 Jun** Drafting AP + LEG paper **27 May** Draft LEG paper + draft AP for Ministerial consultation	**27 May to 12 Jun** SC deliberation **10 Jun** Final LEG paper + AP to Minister **13 Jun** SC reportback **Late June** Second Reading, COWH, Third Reading **18 Jun** LEG for AP **22 Jun** Cabinet for AP	
Option 3: Seek to extend the Select Committee report back by one month	**18 Mar** Submissions closed	**13 to 21 Apr** Develop CAB paper seeking policy changes for DR **8 Apr** Advice to Minister **13 Apr** Minister's decision **22 Apr** Draft CAB paper to Minister	**6 May** Final CAB paper to Minister **11 May** Cabinet **8 May** Draft DR to Minister **15 May** DR due **15 May to 5 Jun** Draft RT Bill	**5 Jun** RT Bill due **24 Jun to 10 Jul** SC deliberation	**11 Jul** SC reportback **Late July** Second Reading, COWH, Third Reading

Note: Any policy change that requires Cabinet approval could require a request to the Business Committee to extend the select committee report back date. The proposed timeframes assume a minor policy change requiring minimal drafting and no substantial Bill rework. More complex changes would require longer timeframes.