



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees	Date to be published	11 November 2022

List of documents that have been proactively released

Date	Title	Author
August 2022	Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees	Office of the Minister of Workplace Relations and Safety
4 August 2022	Regulatory Impact Statement - Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees	MBIE
10 August 2022	Health and Safety at Work: Restoring Worker Access to Health and Safety Representatives and Health and Safety Committees DEV-22-MIN-0186 Minute	Cabinet Office

Information redacted

NO

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Regulatory Impact Statement: Health and Safety at Work: Restoring worker access to Health and Safety Representatives and Health and Safety Committees

Coversheet

Purpose of Document	
Decision sought:	The analysis in this RIS is for the purpose of informing Cabinet policy decisions on proposed changes to the Health and Safety at Work Act 2015 regarding Health and Safety Representatives and Health and Safety Committees.
Advising agencies:	Ministry of Business, Innovation and Employment
Proposing Minister:	Workplace Relations and Safety
Date finalised:	01/08/2022

Problem Definition

1. There are inequities in, and limits on, worker access to Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs), because the *Health and Safety at Work Act 2015* (the Act) includes thresholds that allow small businesses that are not in a high-risk sector (lower-risk businesses) to decline requests from their workers for HSR elections, and to not decide whether or not to establish an HSC.¹ In comparison, larger businesses and those designated as high-risk must grant HSR election requests and must respond to requests to form an HSC.
2. The thresholds accentuate the impact of the underlying unequal power dynamics between workers and businesses, providing businesses in small, lower-risk sectors with mechanisms to block workers' expression of their preferences for formal worker engagement, participation and representation (WEPR). They constrain the freedom of workers in small, lower-risk businesses to exercise their WEPR preferences in ways that are at odds with the Act's focus on enabling workers to choose the participation and representation mechanisms that best suit their particular context and preferences.
3. This is a problem because HSRs and HSCs are designed to support workers and businesses to meet one of the purposes of the Act, which is: "providing for fair and effective workplace representation, consultation, co-operation and resolution of issues in relation to work health and safety" (s3(1)(b)). This purpose builds on international

¹ In this RIS we use the term 'business' as the equivalent of the formal term in the Act, which is Person Conducting a Business or Enterprise (PCBU).

evidence that shows worker engagement, participation and representation is a vital component of effective systems that manage health and safety risks to prevent work-related harm.

4. The thresholds rely on both business size and on setting high-risk sectors and reviewing these periodically, so that workers in high-risk sectors cannot be denied access to HSRs and HSCs if that is their preference.
5. Ensuring that the thresholds do not apply to high-risk sectors is problematic because of limits on available data, especially on health risks to workers. This means the designated high-risk sectors are likely to be more reflective of work-related injuries and fatalities than they are of health risks to workers.

Executive Summary

Proposal

6. The objective of the policy process outlined in this RIS is:

To contribute to improved health and safety outcomes in New Zealand workplaces and reduced work-related harm through enhanced worker access to formal worker engagement, participation, and representation mechanisms.
7. The limits on worker access to HSRs and HSCs are in the Act, so cannot be addressed without regulatory change. If the preferred option proceeds, consequential amendments will be needed to the *Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016* (WEPR Regulations) to remove the provisions that prescribe the high-risk industries or sectors for the purposes of the worker engagement, participation, representation provisions of the Act, as these will no longer be necessary.
8. A defining characteristic of both the Act and the preferred option, and which underpins the analysis, is that the legislation should enable and not predetermine which worker participation and representation mechanisms best suit workers or businesses.² The worker engagement and participation provisions place decision-making with the workers so they can choose the system they think best suits their needs.
9. The current thresholds for HSRs and HSCs run counter to this framework of worker choice by transferring decision-making on HSRs and HSCs away from the workers to the business, particularly in small lower-risk businesses.
10. Just as HSRs and HSCs are not currently mandatory, the proposed changes will not mandate the introduction of HSRs in small lower-risk businesses, nor will they require all businesses to establish HSRs. The preferred option will simply remove the limits on worker access to these worker participation mechanisms in these businesses, if workers request them.

² Worker representation mechanisms, such as HSRs and HSCs, are a subset of worker participation mechanisms.

Options considered

11. There are no feasible non-regulatory options, because the potential inequities and limits stem from the regulatory settings.
12. This RIS considers three options for regulatory change to address the problem and achieve the objective. These options either reduce the threshold so it applies to a smaller group of businesses and workers, or remove it completely so that workers in all businesses have the same rights of access and decision-making. The first two options retain the current right of any business to refuse a request to form an HSC, while the third removes this as well. The options are:
 - **Option one: The threshold applies only to businesses in designated high-risk industries or sectors with five or fewer workers.**

These businesses retain the ability to decline an election request for HSRs or to not respond to an HSC request. All businesses retain the ability to decline a request to form an HSC if the business is satisfied existing practices sufficiently meet requirements.
 - **Option two: The threshold applies only to businesses with five or fewer workers, with no differentiation between industries or sectors on the basis of risk.**

These businesses retain the ability to decline an election request for HSRs or to not respond to an HSC request. All businesses retain the ability to refuse a request to form an HSC if the business is satisfied existing practices sufficiently meet requirements. There is no designation of high-risk industries or sectors as this is no longer needed.
 - **Option three: All businesses must hold an HSR election if requested by a worker, and must establish an HSC if requested by an HSR or by five or more workers.**

Businesses with fewer than 20 workers which are not within a prescribed high-risk sector will no longer be able to decline an HSR election request from workers, nor decide not to respond to a request to establish an HSC. No business will be able to decline a request to establish an HSC where the business is satisfied that existing practices sufficiently meet requirements. There is no designation of high-risk industries or sectors as this is no longer needed.
13. An option that was identified but not analysed is to make HSRs and HSCs mandatory in all businesses. We did not consider this to be a feasible way to address the problem or achieve the objective because it would be a fundamental change to the WEPR framework of the Act as noted above at paragraph 8, which places decision making with the workers on the WEPR mechanisms that best suit their needs. Mandatory HSRs and HSCs would instead predetermine what is right for workers in every workplace.

Preferred option

14. Our analysis confirms that option three compares best against the counterfactual in addressing the problem and achieving the objective. This option matches the proposal in the Minister for Workplace Relations and Safety's paper to Cabinet Economic Development Committee.

Impact of the preferred option

15. As the provisions are enabling, not mandatory, the immediate impact of the preferred option is to widen workers' access to the type of worker participation system that they prefer for their particular workplace.
16. This may lead to more HSRs in small lower-risk businesses, and potentially more HSCs. As outlined below, both the enabling nature of the preferred option and data limits mean it is difficult to estimate the likely level of the increases.
17. Overseas experience suggests there may be relatively modest increases in numbers of HSRs and HSCs in very small businesses. Workers in these businesses tend to prefer to engage informally with the owners and managers whom they often work alongside. Anecdotally, Australian regulators report that HSRs are relatively rare in small businesses, reflecting that the more formal processes are not necessarily appropriate or effective in all businesses.
18. In the businesses where HSRs are elected, and/or HSCs established we expect greater attention to health and safety. It is also possible that the proposed changes will raise awareness of worker participation systems more generally, and businesses will proactively pay more attention to health and safety issues, including through informal worker participation methods such as having regular meetings where health and safety is discussed.
19. On the basis of international literature, our assumption is that this improved worker participation will contribute to better work-related health and safety outcomes. Improved health and safety outcomes should benefit businesses in the longer term with fewer lost hours through work-related harm, less risk of enforcement action, and better workplace relationships.
20. The primary costs come from the training required for an HSR once they are elected, and the time for an HSR or HSC to engage with the business to address issues. Businesses are responsible for meeting the costs of HSRs' training, which is set at two days per annum and estimated to cost around \$650 for each HSR each year.

What stakeholders and the general public think

21. The preferred option matches the provisions of the *Health and Safety Reform Bill* as introduced in 2014. Submissions made during the select committee process in 2014/15 indicate the nature of stakeholder interests in HSRs and HSCs.
22. Submissions from both business and worker groups supported stronger worker participation. Some noted that this is consistent with International Labour Organisation obligations, and a key premise on which effective worker participation is based.
23. Others were concerned that the ability of one worker to request an HSR election might lead to costs that outweigh benefits for some small lower-risk businesses. Many of these submissions wrongly assumed that HSRs would be mandatory, whereas the provisions were designed to be enabling.
24. In response to these concerns at potential costs for small lower-risk businesses, limits on worker access to HSRs and HSCs were introduced into the Bill and became part of the new Act.
25. As these submissions provide a relatively recent view of stakeholder perspectives on the issues, we have not done wider consultation. We have, however, sought feedback from government's tripartite partners in the workplace health and safety system:

Business New Zealand and the New Zealand Council of Trade Unions (NZCTU). Both indicated that the changes are reasonable. The NZCTU sees the changes as necessary, while Business New Zealand highlighted costs for small businesses in complying with the proposed rules.

Limitations and Constraints on Analysis

Constraints

26. The scope of this work is relatively narrow as it is focused on workers' access to HSRs and HSCs, as prompted by the Labour Party 2020 election manifesto commitment to 'ensure workers have the right to elect health and safety representatives.'³ To maintain parity in the availability of both formal representation mechanisms, the scope includes removing the equivalent limits on workers' ability to access an HSC on request.
27. It is not a wider or first principles review of the worker engagement, participation and representation provisions of the Act, and does not include making changes to the wider coverage of these provisions, for example for volunteers, members of the armed forces or prisoners working inside a prison, where alternative worker engagement mechanisms are in place.

Assumptions and data sources underpinning this impact analysis

28. The preferred option is the same as the original 2014 Bill provisions, which were based on the Australian Model Law. The Bill responded to the recommendations of the Independent Taskforce on Workplace Health and Safety (the Independent Taskforce) following their analysis of the international health and safety literature and widespread consultation.⁴
29. As outlined above in paragraphs 15 to 19, our assumption is that the preferred option will result in improved work health and safety outcomes, on the basis of international evidence, although it is difficult to determine the level of changes and impacts.
30. Another key assumption is that the Australian experience is a good proxy for what we can expect. The Australian Model Law is the basis for both our legislation and the laws in the Australian jurisdictions, and there are many similarities in our workplaces.

Limits on the quality of the data and evidence used in this analysis

31. To analyse the impacts of the options on numbers of HSRs and HSCs, and associated costs and benefits, we would need linked data that enables causal analysis of the impact of an HSR or HSC on the level of work-related harm, accounting for industry and business size and specific risk profiles. This data is not available.
32. Small businesses and workers within them will be particularly impacted by the options. A survey of small business owners, and the workers within small businesses, focused on sectors where the changes would apply (for instance, agriculture, hospitality and retail) would have helped inform analysis of the expected impact of the options. This

³ https://www.labour.org.nz/news-labour_2020_manifesto.

⁴ <http://hstaskforce.govt.nz/>.


could have provided insights into the scale of unexpressed desires of workers in these businesses where there is no HSR or HSC. We do not, however, have this information.

Limits on consultation, testing, and stakeholder engagement

33. As outlined above, there has been no specific consultation on the options analysed in this RIS, other than discussions with Business New Zealand and the New Zealand Council of Trade Unions.
34. However, the preferred option is the same as the original provisions of the *Health and Safety Reform Bill 2014*, and the submissions on that Bill provide a relatively recent picture of stakeholder views on the provisions. In addition, the Government clearly signalled its intention to expand the ability of workers to request HSRs through the Labour Party Manifesto before the 2020 election.
35. There will be opportunity for full public scrutiny and engagement at the select committee stage.

Qualifications on the analysis

36. In combination, the enabling nature of the options, and the limits on the data mean we are unsure of how the options will impact on the level of uptake of HSRs and HSCs, the scale and significance of the improvements in health and safety practices that will likely result, and the consequent costs and benefits.
37. Based on international evidence, we are, however, confident that the preferred option will lead to an increase in the level of HSRs and HSCs in small business, and a reduction in harm, although we cannot estimate the size and scale of these effects.

Responsible Manager	
<p>Lisa Collins Manager Health and Safety Policy Ministry of Business, Innovation and Employment</p>  1/08/2022	
Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry of Business, Innovation and Employment (MBIE)
Panel Assessment and Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The current state

38. The Act and the supporting regulations provide the overall framework for the Health and Safety at Work regulatory system. This Act implemented *Working Safer: A blueprint for health and safety*, which was the Government response to the recommendations of the Independent Taskforce.⁵ The Taskforce followed on from the Royal Commission on the Pike River Coal Mine Tragedy, and made its recommendations following extensive consultation and based on the international evidence.
39. The overall purpose of the Act is to 'secure the health and safety of workers and workplaces', and it establishes obligations on businesses and workers to do what is 'reasonably practicable' to protect workers from risks.
40. While health and safety outcomes have improved since the regulatory changes and establishment of WorkSafe New Zealand (WorkSafe) as the dedicated regulator, New Zealand still has high rates of work-related harm in comparison to other countries. Rates of fatalities per 100 000 workers are roughly double those in Australia and are four times the rate in the United Kingdom. As part of the health and safety reform process, government set targets of a 25 per cent reduction in three indicators by 2020. For two out of three indicators (serious injuries and injuries with more than a week away from work) the targets were not achieved.
41. WorkSafe is the main regulator for the work health and safety regulatory system. The Civil Aviation Authority of New Zealand (CAA) and Maritime New Zealand (MNZ) also hold designations as work health and safety regulators in specific sectors.

Worker engagement, participation and representation are key aspects of the health and safety system

42. The Independent Taskforce considered the existing body of literature on the value of worker involvement in health and safety at work,⁶ including work for the former Department of Labour that outlined that:

There is considerable literature... which suggests that worker participation in the identification, assessment and control of workplace hazards, is fundamental to reducing work related injury and disease. Workers have the most direct interest in OHS (Occupational Health and Safety) of any party; it is their lives and limbs that are at risk when things go wrong. Moreover, the hazards at work need to be identified and evaluated, and workers' experience and knowledge are crucially important in successfully completing both of these tasks. Worker participation also has a number of other benefits.⁷

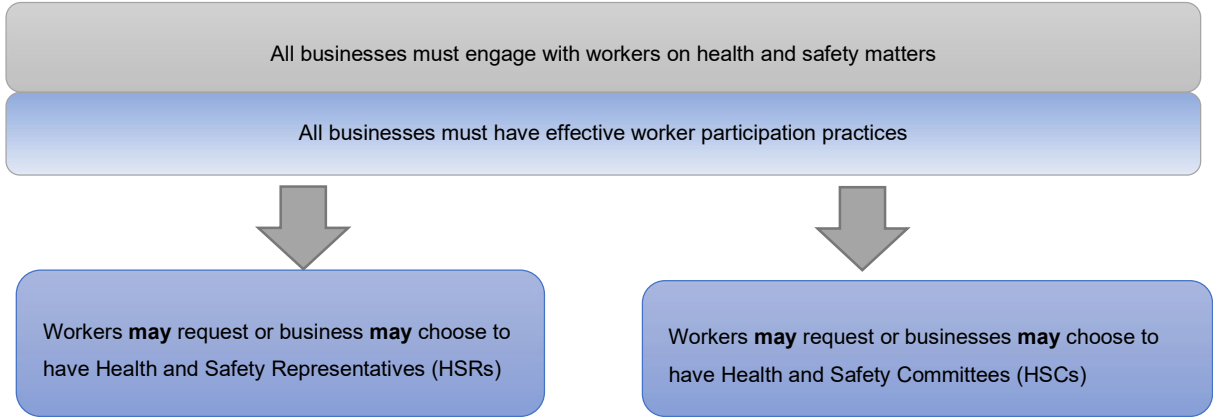
⁵ See footnote 4.

⁶ See, for example, Walters and Wadsworth. "Worker participation in the management of occupational safety and health: Qualitative evidence from ESENER 2." European Agency for Safety and Health at Work 3 (2017); and Walters et. al. "The role and effectiveness of safety representatives in influencing workplace health and safety." United Kingdom Health & Safety Executive Research Report 363, (2005).

⁷ Gunningham and Associates (2009). Underground Mining Information: Contextual advice on international standards and literature review (RFP 234) – Report for the Workplace Group of the Department of Labour.

- 43. The Taskforce recommended underlying principles for worker engagement in the new system, including that:
 - ... all workers have a right to participate through an independent range of representation mechanisms of their own choosing, including workplace health and safety representatives, committees and unions where they are present in a workplace....*
- 44. Consistent with this, one of the specified means to achieve the Act’s purpose is through ‘providing for fair and effective workplace representation, consultation, co-operation and resolution in relation to work health and safety’ (s3(1)(b)).
- 45. To support this purpose, all businesses have twin duties to engage with workers (s58) and to have worker participation practices (s61), as outlined in the diagram below. The objective is that workers have a reasonable opportunity to express their views, to raise health and safety issues and approaches to improving practice, and workers know how these views are taken into account.

Figure One: Overview of worker engagement, participation and representation in the Health and Safety at Work Act 2015



- 46. The Act provides for flexibility of worker engagement and participation practices to fit with the size and risk profile of a business, and also ensures that the minimum conditions for effective worker engagement and participation are in place. What is reasonable and practicable for each business will depend on workers’ views and needs, the size of the business and the nature of its risks. The Act enables flexibility and innovation: the focus is on effectiveness rather than whether any particular system is in place.
- 47. The ability for workers to request HSRs that are elected by workers, and who are trained and can carry out health and safety functions, is present in the key jurisdictions with which New Zealand compares itself, including in the Australian Model Work Health and Safety law on which our Act is based. This approach is also well established in international labour conventions.

Worker representation through HSRs and HSCs are forms of worker participation

- 48. An HSR is a worker who has been elected to represent their fellow workers in health and safety matters. Their functions include making recommendations, investigating complaints and risks, monitoring measures taken by the business, and giving feedback to the business.
- 49. An HSR has powers to request information from the business, enter and inspect a workplace, and attend interviews. Trained HSRs may issue a Provisional Improvement

Notice (PIN) to address a health or safety problem, or direct a worker to cease unsafe work. This supports the existing right for a worker to cease work in this situation.

50. Businesses have corresponding duties to support HSRs, including consulting with HSRs, and giving feedback on their recommendations. They must provide time and resources for the role, including two days of paid training leave each year, and paying the costs of training.
51. HSCs are forums where worker representatives and management work co-operatively to improve health and safety, for instance by developing and reviewing health and safety policies. The business and its workers must agree the HSC membership. At least one member must be able to make decisions on behalf of the business, and at least half must be workers representing the workers and must not be nominated by the business.
52. The business has obligations to consult with the HSC and provide information as necessary for the HSC's functions. The business must allow each member the necessary time to attend meetings or carry out HSC functions.
53. The Act does not mandate HSRs or HSCs unless workers request them (businesses may also choose to initiate them). There are, however, limits on access to HSRs and HSCs for workers in small lower-risk businesses.⁸ These limits were introduced during the select committee process for the *Health and Safety Reform Bill* after consideration of public submissions.⁹
54. The Act and the WEPR Regulations include regulatory and infringement offences for failures to meet WEPR duties or comply with requirements. WorkSafe and the other regulators can take compliance and enforcement actions as necessary, including issuing improvement notices or enforceable undertakings, use of infringement notices where available, and prosecutions where merited.¹⁰

Regulations

55. The threshold provisions require designation of high-risk sectors and industries, as provided for in the *Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016*.
56. The first review of the high-risk sector provisions was to begin as soon as possible after April 2018, with subsequent reviews every five years. The first review has now been subsumed into this policy work to remove the thresholds, as it would make review of those provisions redundant.
57. These high-risk sector designations are solely for the purposes of the HSR and HSC provisions in the Act, and do not otherwise affect duty holders' obligations or rights under the legislation.

⁸ See s62(4) and s66(3) of the Act.

⁹ Health and Safety Reform Bill: Officials Report to the Transport and Industrial Relations Committee: Part At, p31 Report template (www.parliament.nz).

¹⁰ The provisions relating to HSRs and HSCs can be found in the Health and Safety at Work Act 2015, Part 3 Worker engagement, participation, and representation; Schedule 2 Health and safety representatives and health and safety committees; and in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016. See <https://www.legislation.govt.nz/>.

Current statistics on worker participation and representation

58. The uptake of forms of worker participation between businesses of different sizes is shown below. The table does not, however, show whether the businesses are in high-risk sectors or not. Note also that more than one form of participation may be present in a business.

Table One: Uptake (per cent) of types of worker participation and representation 2018/19¹¹

Worker participation types	Total (All Businesses) %	Business Size (Number of employees)			
		1 – 5	6 – 19	20 - 49	50+
Elected HSRs	37	26	48	64	79
HSCs	19	7	25	60	85
Informal health and safety champions	29	23	36	41	44
Regular meetings where health and safety is discussed	59	49	71	82	91
Regular health and safety briefings, such as toolbox talks	48	43	53	61	71
A system for regular health and safety communications	48	39	57	70	84
None of the above	12	18	4	2	0

59. Formal participation through HSRs and HSCs is shown to be at much lower levels in businesses with less than 20 employees (highlighted) than it is in larger businesses. This is particularly so for businesses with fewer than six employees. While it is possible that there are less HSRs and HSCs in small lower-risk businesses compared to small designated high-risk businesses, the data above cannot be disaggregated by whether a business is in a designated high-risk sector or not.

60. We discussed the experience in Australia with regulators, who noted that, while they do not collect data, rates of HSRs in small businesses are very low. Workers appear to rely on informal methods to raise issues, especially where the owner works alongside them. This could be a result of workers being satisfied that the informal methods they have in

¹¹ 2018/19 National Survey of Employers, table 106 (Page 83) of the appendix.

<https://www.mbie.govt.nz/dmsdocument/7102-appendix-to-national-survey-of-employers-201819-summary-of-findings>.

their workplace are effective in giving them a chance to raise concerns. Again, this reflects the non-mandatory nature of HSCs and HSRs and the flexibility provided by the WEPR provisions of the legislation.

61. Case studies in Europe also indicate that formal systems of engagement are low in small businesses, with most small businesses directly engaging with workers.¹²

How is the status quo expected to develop if no action is taken?

62. Two key factors will likely change the status quo, establishing a counterfactual to the options. These factors are:
- the periodic reviews of the designated high-risk sectors required under the WEPR Regulations, and
 - WorkSafe's three-year programme to support and strengthen the role of HSRs and WEPR more generally.
63. As set out below, it is difficult to predict the impact of the reviews on the number of sectors designated as high-risk. It is likely, however, that the overall receptivity of businesses and workers to HSRs and HSCs will grow.

Periodic reviews of designated high-risk sectors

64. There are two components to setting the designation of high-risk sectors in the regulations. First is the ranking of sectors based on risk, which may include:
- severe injury and fatality statistics – these are the most available and reliable statistics
 - work-related health risks – this data is significantly less available than that for injury and fatalities
 - catastrophic events, or risk of catastrophic events – these are rarer and difficult to predict, and
 - incidents – based on reported incidents to the regulator.
65. Variability in the availability of good data means that risk setting has been more focused towards sectors with high severe injury and fatality rates. This limits the impact of work-related health risks on the designations, and the designated high-risk sectors do not necessarily capture all sectors that may actually be high-risk. Sectors that pose high health risks are especially likely to be under-represented.
66. The second component is setting the cut-off point for high-risk, which is a discretionary decision. The Regulatory Impact Statement for the WEPR Regulations considered four possible cut-off points relative to the national average fatality rate and the national average severe injury rate per 100,000 employed people: at or above, two times or

¹² Walters, D and Wadsworth, E (2017) "Worker participation in the management of occupational safety and health: Qualitative evidence from ESENER 2." European Agency for Safety and Health at Work 3 April. Available at <https://osha.europa.eu/en/tools-and-publications/publications/worker-participation-management-occupational-safety-health/view> , p9.

above, ten times or above, and 25 times or more above the national averages.¹³ The Regulations, as made, used a different set of cut-off points.¹⁴

67. While the data limitations can be expected to reduce over time, the combination of a discretionary threshold and limits on data mean it is difficult to predict what impact the five-yearly reviews of the high-risk sectors will have on which sectors are in or out of the designation, and the consequent number of workers whose access to HSRs and HSCs would be constrained.
68. Based on previous experience with identifying high-risk sectors, we expect further reviews to provoke considerable comment.

WorkSafe's WEPR support programme

69. WorkSafe's programme to support and strengthen the role of HSRs and WEPR includes engaging with businesses to inform and coach on worker participation and the value of HSRs, and two twelve-month pilots of 'HSR Development Lead' roles to coach and support HSRs and businesses, with assessment of whether and how they provide the basis for similar roles for regional support to HSRs.
70. Other aspects are exploring a worker participation vision and pledge that organisations can sign-up to, and a WEPR discovery project focused on small and medium enterprises (SMEs) and understanding te ao Māori approach to WEPR.
71. The programme is expected to result in improved awareness and acceptance of WEPR by workers and businesses. It should reinforce the proposed legislative changes and lead to greater willingness among workers to request HSRs and HSCs.
72. WorkSafe is also taking steps to build up its WEPR enforcement capability and capacity. This will increase incentives for businesses to meet their WEPR duties through enabling greater use of enforcement powers where merited.

Problem definition

73. There are inequities in, and limits on, worker access to HSRs and HSCs. The Act includes thresholds that allow small lower-risk businesses to decline requests from their workers for HSR elections, and to not decide on requests from their workers to establish an HSC. In comparison, larger businesses and those designated as high-risk must grant HSR election requests.
74. Worker access to HSCs is limited because small lower-risk businesses are not required to decide on a request to form an HSC. In addition, all businesses may decline a request for an HSC if satisfied existing practices sufficiently meet requirements.
75. These limits accentuate the impact of the underlying unequal power dynamics between workers and businesses, providing businesses in small lower-risk sectors with mechanisms to block workers' expression of their preferences for formal WEPR. They constrain the freedom of workers in small lower-risk businesses to exercise their WEPR

¹³ Further decisions to improve New Zealand's Workplace Health and Safety Regulatory Framework – 18 February 2016 - Regulatory Impact Statement - Ministry of Business, Innovation and Employment (treasury.govt.nz).

¹⁴ The Regulations defined high-risk sectors as those with: a fatality rate of greater than 25 employees per 100,000 employees per annum, or a severe injury rate of greater than 25 employees per 1,000 employees per annum, or a risk of a catastrophic event that could lead to multiple fatalities, or a risk of exposure to silica dust or asbestos.

preferences in ways that are at odds with the Act's focus on enabling workers to choose the participation and representation mechanisms that best suit their particular context and preferences.

76. This is a problem because HSCs and HSRs are designed to help meet one of the purposes of the Act, which is: 'providing for fair and effective workplace representation, consultation, co-operation and resolution of issues in relation to work health and safety' (s3(1)(b)).
77. This purpose builds on international evidence that shows worker engagement, participation, and representation is a vital component of effective systems that manage health and safety risks to prevent work-related harm. The evidence shows that better health and safety outcomes are achieved where workers take responsibility for health and safety and are enabled to actively participate and work with businesses in managing risks.¹⁵
78. As noted above in discussing the counterfactual, it is difficult to ensure that the current thresholds do not prevent workers in high-risk sectors from exercising their preferences for HSRs or HSCs. There are limits on the available data, especially on health risks to workers. This means the high-risk designations are more reflective of work-related injuries and fatalities than they are of health risks to workers. In addition, setting the level of harm that marks the high-risk cut-off point is a discretionary decision.

Size and scale of the problem

79. According to the New Zealand Business Demography statistics, in February 2021 there were around 2 300 000 employees in New Zealand enterprises.¹⁶ All of these employees, plus workers in other employment relationships, are impacted by the ability of a business to decline a request to form an HSC when the business considers suitable alternatives are in place.
80. Workers in small lower-risk businesses are impacted by the ability of a business to decline their request to hold an HSR election, or to not decide on their request to form an HSC. Based on Statistics New Zealand (Stats NZ) estimates from 2021-22, there was an average of 610 000 employees in businesses with one to 19 employees. Applying ANZSIC06 level 2 sector information¹⁷ to exclude the businesses in high-risk sectors as defined in the WEPR Regulations, the number of employees impacted by the thresholds for HSRs – that is, employees in small lower-risk businesses – is estimated at 505 000. This is likely to be an underestimate as it is a figure for employees rather than 'workers' as covered by the Act.
81. While we have an estimate of the potential size of the impacted worker population, we do not know how many of these workers have made HSR or HSC requests and been declined or not responded to. Nor do we know how many workers would have made such requests, were it not for these legislative limits. It is not possible to calculate how

¹⁵ Refer to the Independent Taskforce which cited [in paragraph 233] Walters, D, Nichols, T, Connor, J, Tasiran, A and Cam, S, (2005) The Role and Effectiveness of Safety Representatives in Influencing Workplace Health and Safety, a research report prepared by Cardiff University for the Health and Safety Executive, <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>.

¹⁶ <https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2021>.

¹⁷ Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006. Level 2 refers to businesses classified at the subdivision level. For example, A01 – Agriculture or A02 – Aquaculture. <https://catalogue.data.govt.nz/dataset/industrial-classification-anzsic06/resource/3e31f420-13f5-42b3-a3eb-7bd9506379f8>.

these limits have impacted health and safety outcomes, as we do not have information that correlates levels of work-related harm with the presence of HSRs and HSCs, while also taking account of business risk profiles.

Root cause of the problem

82. The thresholds in the legislation create the inequity and limit access to formal worker engagement, participation and representation.

The main stakeholders and how they are affected

83. Workers and businesses in small lower-risk businesses will be most affected by the options in relation to HSRs. All workers and businesses will be impacted by the options in relation to HSCs. Options two and three would remove the requirement to designate high-risk sectors with associated reviews. This will impact all businesses and workers.
84. Key stakeholders include unions and worker representatives, groups representing business and employer interests, health and safety professionals, and sector health and safety bodies.

Nature of the interest

85. Submissions made on the Health and Safety Reform Bill during the select committee process in 2014/15 indicate the nature of stakeholder interests.
86. Submissions from both business and worker groups supported stronger worker participation. Some submitted that the ability to have HSRs when requested by workers was a key recommendation of the Independent Taskforce, consistent with International Labour Organisation obligations, and a key premise on which effective worker participation was based.
87. Other submitters commented that the ability of just one worker to request an HSR election might be challenging for small lower-risk businesses as they considered that the costs associated with training and time required to carry out the functions of an HSR may outweigh the benefits. Many of these submissions assumed that HSRs would be mandatory, whereas the provisions were designed to be enabling, and would only be triggered if workers considered HSRs the most effective and appropriate mechanism in the circumstances.
88. We sought feedback from government's tripartite partners in the workplace health and safety system: Business New Zealand and the New Zealand Council of Trade Unions (NZCTU). The NZCTU indicated the changes are reasonable and necessary, and it supports the additional protection the changes would provide for workers in small businesses. Business New Zealand also indicated that the changes are reasonable, and highlighted that there will be costs for small businesses in complying with the proposed rules.
89. Wider consultation was not deemed necessary given the issues were so well traversed at the 2014/15 select committee. In addition, the Government clearly signalled its intention to expand the ability of workers to request HSRs through the Labour Party Manifesto before the 2020 election. There will be opportunity for full public scrutiny and engagement at the select committee stage.

Impacts on specific population groups

90. We have noted elsewhere that we do not have data on the numbers of HSRs and HSCs in businesses and where they are. We also do not know the scale of workers'

unexpressed desire for HSRs and HSCs in businesses that do not have them. This is true for specific population groups as it is for the workforce as a whole.

91. Workers in some population groups are at higher risk of work-related harm. Māori are at higher risk of work-related injuries than non-Māori (even when working in the same occupation). Migrant workers, the youngest and oldest in our workforce, people with pre-existing health conditions or disabilities, and those with poor literacy and numeracy and limited employment options are also particularly vulnerable to poor health and safety outcomes for reasons largely beyond the control of the individual.¹⁸ The ongoing impacts of health and safety incidents may also create a disproportionate risk of exclusion from the workforce for some groups such as disabled people.
92. Improving access to worker engagement and representation practices is vital to improving health and safety outcomes for these workers, particularly by ensuring that these groups of workers can engage in an accessible, safe, and culturally appropriate way of their choosing.
93. The options may impact rural communities where there are many small workplaces that have been subject to the threshold limits, because the agriculture sector is not currently designated by the WEPR Regulations as high-risk. The impact might not be evenly felt across rural communities because additional HSRs and HSCs will only result if workers believe this is the best way for them to participate in improvements to health and safety in their work. Access to in-person training may be more difficult in rural communities, although the WEPR Regulations provide flexibility by allowing up to three months for the HSR and the PCBU to agree the timing, location and costs of training.
94. Based on the international literature we assume that improving access to worker engagement and representation practices will improve health and safety outcomes for these workers.¹⁹

What objectives are sought in relation to this policy problem?

95. The objective of this policy process is:

To contribute to improved health and safety outcomes in New Zealand workplaces and reduced work-related harm through enhanced worker access to formal worker engagement, participation, and representation mechanisms.

96. We expect that this will lead to reduced rates of harm. This is on the basis of international evidence that generally finds that improved worker engagement, representation and participation is associated with lower rates of harm.²⁰

¹⁸ Hennecke, J., Meehan, L., & Pacheco, G. (2021). Workplace health and safety and the future of work in New Zealand - literature review. New Zealand Work Research Institute, Auckland.

¹⁹ See above footnotes 6 and 7.

²⁰ James Roughton and James Mercurio "Employee Participation" in *Developing an Effective Safety Culture: A Leadership Approach* (Butterworth-Heinemann, 2002) 116 at 121; and Michael O'Donnell "Health and Productivity Management: The Concept, Impact, and Opportunity – Commentary to Goetzel and Ozminkowski" (2000) 14(4) *AJHP* 215 at 215. See also Gunningham and Associates (2009) at footnote 6 and Walters and Wadsworth and Walters et. Al. at footnote 7.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the counterfactual?

97. Consistent with the objective outlined above, we will assess the options against the counterfactual using the following criteria. In the event of a trade-off, the hierarchy of the criteria is in descending order as listed. The assessment asks to what extent each option is likely to be better or worse than the counterfactual in terms of:
- a. effectiveness — how likely is the option to improve health and safety outcomes?
 - b. cost-effectiveness — how proportionate are the costs likely to be relative to the expected benefits?
 - c. feasibility — how complex will this be to implement and operate?

What scope will options be considered within?

98. The problem being addressed is narrow in scope, and the options are focused on removing the limits in the Act on workers' ability to access HSRs on request, to align more closely with the Australian Model Law on which the Act is modelled, and as outlined in the Labour Party 2020 election manifesto. That commitment states: 'ensure workers have the right to elect health and safety representatives'.²¹
99. The scope includes removing the equivalent limits on workers' ability to access an HSC on request. This will maintain parity in the availability of both these formal representation mechanisms.
100. It is not a wider or first principles review of the worker engagement, participation and representation provisions of the Act, and does not include making changes to the coverage of these provisions, for example for volunteers, members of the armed forces or prisoners working inside a prison, where alternative worker engagement mechanisms are in place.

What options were ruled out?

101. There were no feasible non-regulatory options because the potential inequities and limits stem from regulatory settings. In the section on the counterfactual above, we noted WorkSafe's programme to support and strengthen the role of HSRs and WEPR. These programmes are expected to improve acceptance of WEPR by workers and businesses. Small lower-risk businesses will, however, still be able to decline or not respond to worker requests for HSR elections and HSCs for as long as the legislative thresholds remain in place.
102. An option that was identified but not analysed is to make HSRs and HSCs mandatory in all businesses. We did not consider this to be a feasible way to address the problem or achieve the objective because it would be a fundamental change to the WEPR framework of the Act as noted above at paragraph 8, which places decision making with

²¹ See footnote 3.

the workers on the WEPR mechanisms that best suit their needs. Mandatory HSRs and HSCs would instead predetermine what is right for workers in every workplace.

What is the counterfactual?

103. As noted above at paragraphs 62-68, in the absence of further government action, the designation of high-risk sectors in the WEPR Regulations is due for review and must then be reviewed every five years. Whether such reviews will result in more or fewer high-risk sectors is difficult to determine, as it depends in part on a discretionary decision on where to set the cut-off for businesses defined as high-risk.
104. WorkSafe's three-year programme to support and strengthen WEPR, and their work to build WEPR enforcement capability and capacity, should grow the overall receptivity of businesses and workers to HSRs and HSCs. This may result in more requests from workers and more positive responses from businesses, even if they retain the ability to decline or not respond to the request.
105. The inequities in, and limits on, worker access to HSRs and HSCs, and the freedom of workers in small lower-risk businesses to exercise their WEPR preferences will, however, continue to be constrained by the legislative thresholds.

What options are being considered?

106. This RIS considers three options for regulatory change to address the problem and achieve the objective. These options either reduce the threshold so it applies to a smaller group of businesses and workers, or remove it completely, so that workers in all businesses have the same rights of access and decision-making. The first two options retain the current right of any business to refuse a request to form an HSC, while the third removes this as well.
107. Elections of HSRs will not be mandatory under any of the three options; they will still need to be initiated either by a worker or by the business on their own initiative. Establishment of an HSC will also not be mandatory under any of the options; this still needs to be initiated by the request of an HSR or at least five workers, or at the initiative of the business.
108. The options are:
 - **Option one: The threshold applies only to businesses in designated high-risk industries or sectors with five or fewer workers.**

These businesses retain the ability to decline an election request for HSRs or to not respond to an HSC request. All businesses retain the ability to decline a request to form an HSC if the business is satisfied existing practices sufficiently meet requirements.

Setting the threshold at five or fewer workers matches what case studies suggest is often the practice in European jurisdictions, where most small businesses appear to engage directly with workers rather than through formal mechanisms.

This also appears to be the Australian experience, and aligns with the New Zealand data in Table One on businesses with one to five workers.²²

- **Option two: The threshold applies only to businesses with five or fewer workers, with no differentiation between industries or sectors on the basis of risk.**

These businesses retain the ability to decline an election request for HSRs or to not respond to an HSC request. All businesses retain the ability to refuse a request to form an HSC if the business is satisfied existing practices sufficiently meet requirements. There is no designation of high-risk industries or sectors as this is no longer needed.

As with option one, the business-size threshold is aligned with what appears to be common practice.

- **Option three: All businesses must hold an HSR election if requested by a worker, and must establish an HSC if requested by an HSR or by five or more workers.**

Businesses with fewer than 20 workers which are not within a prescribed high-risk industry or sector will no longer be able to decline an HSR election request from workers, nor decide not to respond to a request to establish an HSC. No business will be able to decline a request to establish an HSC where the business is satisfied that existing practices sufficiently meet requirements. There is no designation of high-risk industries or sectors as this is no longer needed.

109. Option three matches the provisions of the Health and Safety Reform Bill as introduced. It is based on the Australian Model Law on which the Act is modelled, and on the recommendations of the Independent Taskforce, following their analysis of the international health and safety literature and widespread consultation, as outlined above.

²² See paragraphs 59 to 61 and footnotes 11 and 12.

How do the options compare to the counterfactual?

110. Table Two below summarises our assessment of the extent is each option is likely to be better or worse than the counterfactual in terms of:

- a. effectiveness — how likely is the option to improve health and safety outcomes?
- b. cost effectiveness — how proportionate are the costs likely to be relative to the expected benefits?
- c. feasibility — how complex will this be to implement and operate?

<p>Key for qualitative judgements against these criteria</p> <p>++ much better than the counterfactual</p> <p>+ better than the counterfactual</p> <p>0 about the same as the counterfactual</p> <p>- worse than the counterfactual</p> <p>-- much worse than the counterfactual</p>

Multi-criteria analysis of the counterfactual and the options

Table Two: Summary of the multi-criteria analysis

	Counterfactual	Option one: The threshold applies only to businesses in designated high-risk industries with five or fewer workers	Option two: The threshold applies only to businesses with five or fewer workers, with no differentiation between industries or sectors on the basis of risk	Option three: All businesses must hold an HSR election if requested by a worker, and must establish an HSC if requested by an HSR or by five or more workers
Effectiveness	<p>0</p> <p>The limits and inequities in worker access to formal WEPR through HSRs and HSCs will remain in place.</p> <p>WorkSafe’s WEPR support actions may lead to more worker requests for HSRs and HSCs and more positive responses from businesses even though they retain the ability to decline or not respond to a request.</p>	<p>+</p> <p>Based on international evidence that generally finds improved WEPR is associated with lower rates of harm, this option should lead to some improvement in health and safety outcomes, as it reduces current limits on workers’ ability to choose HSRs and HSCs if that is their preference.</p> <p>The lower threshold may not in practice limit worker access a great deal, because European and Australian experience suggests that workers in very small businesses often continue to engage directly with the business rather than through formal mechanisms.</p> <p>The option does, however, continue to place decision-making power on HSRs and HSCs with a significant number of businesses, rather than with workers, which will likely limit improvements to health and safety outcomes.</p>	<p>-</p> <p>This is expected to be less effective than the counterfactual. While this option lowers the threshold on numbers of workers, it also removes the protections afforded by the high-risk designations.</p> <p>Although the designations are problematic as discussed above, they do afford greater accessibility to HSRs and HSCs for many of the workers most likely to need them because of the risks in the sectors where they work.</p> <p>This is unlikely to lead to improvements in health and safety outcomes.</p>	<p>++</p> <p>Based on the international evidence, we expect this to lead to better health and safety outcomes, as it removes current limits on workers’ ability to choose formal WEPR mechanisms if that is their preference.</p> <p>While experience suggests that workers in very small businesses do not necessarily choose to have HSRs and HSCs, this option puts that decision into the hands of the workers in these small businesses, affording them equal access with all other workers.</p>

	Counterfactual	Option one: The threshold applies only to businesses in designated high-risk industries with five or fewer workers	Option two: The threshold applies only to businesses with five or fewer workers, with no differentiation between industries or sectors on the basis of risk	Option three: All businesses must hold an HSR election if requested by a worker, and must establish an HSC if requested by an HSR or by five or more workers
Cost effectiveness	<p>0</p> <p>The overall cost effectiveness of the status quo is impacted by limits on how well the high-risk sectors threshold can be targeted, as discussed above at paragraphs 62-67 and 77.</p> <p>The periodic reviews impose costs on businesses and government that may not be justified by the results.</p>	<p>+</p> <p>There will be additional costs for small businesses where HSRs and HSCs are established, although expected improvements to health and safety outcomes should help offset these costs.</p> <p>There will be continued costs for businesses and government from the periodic reviews of high-risk sectors.</p>	<p>0</p> <p>There will be both additional costs and expected benefits for small businesses where HSRs and HSCs are established.</p> <p>There will be no costs for businesses and government from the periodic reviews of high-risk sectors.</p>	<p>+</p> <p>Expected improvements to health and safety outcomes should outweigh additional costs for small businesses where HSRs and HSCs are established.</p> <p>There will be no business or government costs from the periodic reviews of high-risk sectors.</p>
Feasibility	<p>0</p> <p>Based on previous experience with identifying the high-risk sectors, the reviews may provoke considerable comment, and will be limited by data availability.</p>	<p>0</p> <p>The lower threshold will retain complexity in the system, with different rules for different-sized businesses and for those designated high-risk.</p> <p>The periodic high-risk sector reviews will continue to be problematic.</p>	<p>+</p> <p>Removing the high-risk designations will significantly reduce complexity, although the business size threshold retains some complexity.</p>	<p>++</p> <p>This will be easy to implement and operate, as the same rules will apply to all workers and businesses, and there will be no need to identify and review high risk sectors.</p>

	Counterfactual	Option one: The threshold applies only to businesses in designated high-risk industries with five or fewer workers	Option two: The threshold applies only to businesses with five or fewer workers, with no differentiation between industries or sectors on the basis of risk	Option three: All businesses must hold an HSR election if requested by a worker, and must establish an HSC if requested by an HSR or by five or more workers
Overall assessment	<p>0</p> <p>While WorkSafe’s WEPR programme is expected to improve understanding and uptake of HSRs and HSCs, the legislative limits on many workers’ ability to choose their preferred form of WEPR will remain.</p> <p>The periodic reviews of high-risk sectors will continue to be complex and limited in the effectiveness of their targeting to the sectors posing the highest risks.</p>	<p>+</p> <p>There should be some improvements to health and safety outcomes through the lower business-size threshold, but the continued limits on HSC access for all workers, and the issues with the high-risk designations limit the overall benefits of this option.</p>	<p>-</p> <p>This option would likely be worse than the counterfactual overall, because it reduces effectiveness in improving health and safety, which is the most important criteria.</p>	<p>++</p> <p>This option will improve workers’ access to formal WEPR in the form of HSRs and HSCs, which is expected to lead to better health and safety outcomes.</p> <p>It will be simple to implement and operate, as it removes complexity from the system.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

111. The comparison against the criteria shows that Option three is likely to deliver the greatest improvements relative to the counterfactual. This is MBIE's preferred option and also the option that is proposed in the accompanying paper to Cabinet Economic Development Committee from the Minister for Workplace Relations and Safety.
112. We assume the preferred option will lead to reduced work-related harm through three main mechanisms:
- a. More workers will be able to access formal health and safety representation if they wish it, meaning the worker participation system will better reflect workers' expressed preferences; workers will engage more fully in health and safety issues; and worker's awareness of health and safety issues will grow.
 - b. If there are more HSRs and/or HSCs, there will be more worker representatives with health and safety expertise who are able to engage with their business to address health and safety issues.
 - c. The proposed changes may prompt more businesses to proactively pay greater attention to health and safety issues, including through informal worker participation methods.
113. The impact of change on levels of harm is indirect, through workers expressing concerns more freely through mechanisms they are comfortable with, and possible causes of harm will be more likely to be addressed. Reduced harm will improve worker and business wellbeing, enhance productivity with fewer lost hours through workplace harm, reduce businesses' exposure to enforcement action, and lead to lower spending in both health care and accident compensation.²³

It is difficult to estimate how many extra HSRs and HSCs may result

114. While we are confident in the direction of increased overall benefit to society through improving health and safety performance, we are uncertain about the size and scale of this change because of the enabling nature of the proposed changes, and data limits.
115. We expect there will be more HSRs in small lower-risk businesses, and potentially more HSCs, but the availability of informal methods of worker engagement, participation and representation, and the wide variety of circumstances of businesses and workers mean it is difficult to estimate how many additional HSRs will be elected and how many additional HSCs formed. Elections of HSRs and establishing HSCs will not be mandatory; they will still require worker and/or HSR requests, or may be set up by a business of its own initiative.
116. Based on Australian and European experience, there may be relatively modest increases in HSRs in very small businesses. The preferred option matches the Australian settings, and while Australian jurisdictions do not have data on the number of HSRs, their regulators tell us that HSRs are relatively rare in small businesses. This matches the

²³ See Gunningham and Associates (2009). *Underground Mining Information: Contextual advice on international standards and literature review* (RFP 234) – Report for the Workplace Group of the Department of Labour; James Roughton and James Mercurio "Employee Participation" in *Developing an Effective Safety Culture: A Leadership Approach* (Butterworth-Heinemann, 2002) 116 at 121; and Michael O'Donnell "Health and Productivity Management: The Concept, Impact, and Opportunity – Commentary to Goetzl and Ozminkowski" (2000) 14(4) *AJHP* 215 at 215.

international literature, where experience in Europe suggests that uptake of these provisions will be limited in very small businesses.²⁴

What are the marginal costs and benefits of the preferred option?

117. Given the uncertainties outlined above, it is not possible to quantify the overall costs and benefits of the preferred option. This is due to the lack of evidence which allows us to establish direct causal links between changes in formal WEPR uptake and changes in health and safety outcomes.
118. We have, therefore, largely limited our cost benefit analysis to noting the types of costs and benefits that we expect to arise, and indicating the likely magnitude. The only quantifiable cost is approximately \$650 per year per additional HSR for two days of training. The costs of additional HSC are hard to estimate as the main cost would be time away from work doing the work of an HSC, and any costs associated with responding to HSC proposals to improve health and safety practices.

²⁴ See footnote 12.

Table Three: Cost benefit analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated parties, i.e. businesses or undertakings	<p>Businesses are required to pay for two days of training and meet the costs of two training days away from work for each additional HSR each year.</p> <p>Each additional HSR will have time away from work to perform the role. The Act requires businesses to allow HSRs to ‘spend as much time as reasonably necessary to perform’, the work of an HSR. This reflects the wide variety of workplaces and contexts covered by the Act.</p> <p>If an additional HSR issues a Provisional Improvement Notice (PIN) or a direction to cease work, the business may face the costs of remedial actions, and/or lost work. (Note that any worker may cease or refuse to work on health and safety grounds, so this could happen without HSRs).</p>	<p>Medium.</p> <p>Training costs estimated as \$650per HSR per year.</p> <p>Estimation of other costs not possible as too many variables and uncertainties.</p>	<p>Medium certainty for costs of training per year for each HSR as based on median training prices in 2021.²⁵</p> <p>Lack of information on, and number of variables involved in all other identified costs mean it is not feasible to estimate marginal costs.</p> <p>There is no data on numbers of PINs and notices to cease work issued by HSRs.</p>
Workers	<p>There are no additional monetary costs to workers from either having an HSR or HSC in their workplace, or from being an HSR or being a member of an HSC.</p> <p>Workers who take on these roles may face personal costs in terms of the time it takes, despite the requirements that they be allowed to spend the time ‘reasonably necessary’ to perform the role.</p>	Low.	Low certainty of personal costs to workers due to limited information.
Regulators: WorkSafe, CAA, MNZ	<p>Minor cost to WorkSafe for changing guidance, tools, training modules etc. about HSRs and HSCs.</p> <p>All the regulators already have roles in relation to businesses’ obligations for WEPR, including HSRs and HSCs. These will only change to the extent that they become simpler as all business will be subject to the same rules.</p>	Low.	High certainty based on minor and simplifying nature of change.
Others	There may be minor one-off costs to unions, business associations etc. in communicating the changes to their members.	Low.	High certainty based on minor and simplifying nature of change.
Total monetised costs	No total possible.	Low—medium.	Low overall certainty.
Non-monetised costs	Depends on the numbers of additional HSRs and HSCs that result.	Low—medium.	Low overall certainty.

²⁵ This is the median cost for an HSR to undertake initial training (Unit Standard 29315: Describe the role and functions of the Health and Safety Representative in a New Zealand workplace), based on the prices of available training providers in 2021.

Affected groups	Comment	Impact	Evidence Certainty
Additional benefits of the preferred option compared to taking no action			
Regulated parties	<p>If the change leads to improvement in health and safety outcomes as discussed above, businesses will have less time lost to work-related harm and benefit from associated worker productivity improvements. Assuming the change leads to more engaged workers, businesses should benefit in terms of productivity and lower staff turnover.²⁶</p> <p>WEPR rules become simpler so no need to clarify whether within threshold or not, and no costs from engaging in five-yearly reviews of designated high-risk industries or sectors.</p>	Medium—high.	<p>Low certainty. The assumptions about the direction of impact are well-founded in the international literature on the impacts of improved WEPR as noted elsewhere.</p> <p>However, we cannot link rates of workplace harm with WEPR maturity to establish causation.</p>
Workers	<p>Lower rates of harm through improved WEPR practices, including earlier intervention to address potential issues.</p> <p>Workers will be clearer on their rights of access to HSRs and HSCs as the system becomes simpler.</p>	Medium—high.	<p>Low certainty. Based on international literature, but lack of evidence for New Zealand workplaces.</p>
Regulators: WorkSafe, CAA, MNZ	<p>Reduced costs for WorkSafe (and MBIE) as no need for five-yearly reviews of designated high-risk industries or sectors.</p> <p>WEPR system is simplified so the same rules apply to all.</p>	Low.	High certainty.
Others (eg, wider government, consumers, etc.)	<p>Lower monetary, fiscal and social costs, if lower rates of injury, death and ill-health.</p> <p>This should lead to lower costs for the health system and for ACC.</p>	Medium.	<p>Low certainty for the reasons noted above regarding lack of local evidence and difficulty of establishing causation.</p>
Total monetised benefits	No total possible.	Medium.	Low overall certainty.
Non-monetised benefits	Depends on the numbers of additional HSRs and HSCs that result.	Medium.	Low overall certainty.

²⁶ See footnote 15.

Section 3: Delivering the preferred option

How will the new arrangements be implemented?

119. As noted above at paragraph 41, WorkSafe is the main regulator for the work health and safety regulatory system, and the CAA and MNZ hold designations as work health and safety regulators in specific areas.
120. These regulators already have functions to support worker engagement, participation and representation, including taking compliance and enforcement action where necessary. Those functions will not change, but they will become simpler as the same rules will apply across all businesses.
121. WorkSafe already provides guidance on the processes for electing an HSR and for forming and operating HSCs. As all businesses would be operating under the same requirements, there will be relatively small one-off costs for regulators in simplifying the relevant guidance, tools and training modules.
122. As noted at paragraphs 69-72, WorkSafe has a three-year programme underway to promote and support WEPR practices, including supporting HSRs. This work will support and complement the legislative changes.
123. The preferred option requires changes to the Act and the WEPR Regulations. The Minister for Workplace Relations and Safety proposes to seek Cabinet approval to introduce the amendment Bill in late 2022. The changes should be able to be brought into effect without substantial delay once the legislation is passed, as the processes are not new. A short time may be required to allow changes to the guidance and to provide information to assist workers, businesses, health and safety professionals, and worker and sector groups to familiarise themselves with the changes.

How will the new arrangements be monitored, evaluated, and reviewed?

124. MBIE will work alongside WorkSafe to develop ways to measure the impacts of the changes, using existing data sources and surveys as far as possible, and tapping into the information gathering opportunities arising from WorkSafe's three-year WEPR support programme.
125. We will look at ways to gather information on the impact of the changes through WorkSafe's regular surveys, including the Attitude and Behaviours, and Segmentation and Insight research surveys. These ask questions about levels of worker engagement with health and safety, segmented by sector, ethnicity, age and gender. Another useful source may be MBIE's regular National Survey of Employers, which shows levels of informal worker engagement, and is segmented by size, and sector of businesses.
126. WorkSafe's programme to foster better connections with HSRs will give a better picture of where HSRs are in the system and provide the basis for monitoring their impacts. The programme includes enabling newly-trained HSRs to opt-in to an eNewsletter so that they can receive post-training support, hear about networking opportunities with other HSRs, and be linked to resources on role clarity. The eNewsletter will make it possible to seek feedback from HSRs about WEPR issues and opportunities, as well as opportunities to gather information on practices such as issuing of PINs.
127. WorkSafe is also piloting two new HSR Development Lead roles in Auckland and Christchurch which will coach and support HSRs within their region. These roles offer a valuable connection and support to new HSRs, and will be another source of feedback on how the WEPR system is working.