



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill: Approval for Introduction	<b>Date to be published</b>	9 February 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
3 November 2022	Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill: Approval for Introduction	Office of the Minister of Workplace Relations and Safety
17 November 2022	Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill: Approval for Introduction  LEG-22-MIN-0202 Minute	Cabinet Office

### Information redacted

### YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld under confidential advice to Government.

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Office of the Minister for Workplace Relations and Safety

Cabinet Legislation Committee

## **Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill: Approval for Introduction**

### **Proposal**

- 1 I propose that the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill (the Bill) be approved for introduction to the House.

### **Policy**

- 2 The Bill gives effect to the 10 August 2022 Cabinet Economic Development Committee decision [DEV-22-MIN-0186] to restore stronger worker representation and participation rights for workers, contributing to improved health and safety outcomes in New Zealand workplaces and reduced work-related harm.
- 3 The Bill amends the Health and Safety at Work Act 2015 (the Act) to provide that all Persons Conducting a Business or Undertaking (PCBUs):
  - 3.1 must initiate a health and safety representative (HSR) election if requested by a worker, and
  - 3.2 must establish a health and safety committee (HSC) if requested by an HSR or by five or more workers.
- 4 The Act currently allows a PCBU with fewer than 20 workers and which is not within a prescribed high-risk sector to decline an HSR election request from its workers, and to not decide on a request to establish an HSC. Any PCBU can also refuse a request to establish an HSC where the PCBU is satisfied existing practices sufficiently meet the requirements.
- 5 The Bill also repeals the following provisions which will become redundant upon the changes above:
  - 5.1 a provision in the Act that enables regulations to be made designating high-risk sectors or industries, for the purpose of determining whether a PCBU must initiate an HSR election or decide on a request to form an HSC, and
  - 5.2 provisions in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 which designate high-risk sectors or industries and provide the time within which a

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PCBU must give written notice of its decision on whether to establish an HSC.

- 6 The Bill does not require *all* PCBUs to initiate HSR elections or establish an HSC. PCBUs will only be required to initiate an HSR election on the request of a worker, or establish an HSC on the request of five workers or an HSR.

### *Further policy decision on timeframe for establishing a health and safety committee*

- 7 During drafting it became clear that the Act does not specify a timeframe for establishing an HSC.
- 8 To address this gap, I propose that the Bill specifies that a PCBU must, “as soon as practicable” after receiving a request, establish an HSC. The use of “as soon as practicable” is consistent with the approach to timelines elsewhere in the Act and reflects the Act’s focus on flexibility according to the particular circumstances.

### **Impact analysis**

- 9 The impact analysis requirements apply to the proposals being given effect through the Bill, and a regulatory impact statement was submitted at the time that policy approval relating to the Bill was sought [DEV-22-MIN-0186].
- 10 MBIE’s Regulatory Impact Analysis Review Panel reviewed the regulatory impact statement prepared by MBIE. The panel considered that the information and analysis summarised in the statement met the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

### **Compliance**

- 11 I consider the Bill complies with:
- 11.1 the principles of the Treaty of Waitangi;
  - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
  - 11.3 the disclosure statement requirements (a Departmental Disclosure Statement has been prepared and is attached to the paper as **Annex One**);
  - 11.4 the principles and guidelines set out in the Privacy Act 2020;
  - 11.5 relevant international standards and obligations;
  - 11.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

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## Consultation

- 12 MBIE consulted with the following agencies on the policy proposals and on this paper and the draft Bill: Accident Compensation Corporation, Civil Aviation Authority of New Zealand, Department of the Prime Minister and Cabinet, Maritime New Zealand, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Ministry for Primary Industries, Ministry for Women, Ministry of Business, Innovation, and Employment (small business policy), Ministry of Māori Development—Te Puni Kōkiri, Ministry of Social Development, Ministry of Transport, New Zealand Transport Agency – Waka Kotahi, Office for Disability Issues within Whaikaha – Ministry of Disabled People, The Treasury, and WorkSafe New Zealand.
- 13 No agencies raised significant issues with the proposal.
- 14 Business New Zealand and the New Zealand Council of Trade Unions were consulted on the policy proposals. The Council of Trade Unions indicated the changes are reasonable and necessary, and support 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.

## Binding on the Crown

- 15 The proposal considered by Cabinet Economic Development Committee on 10 August 2022 specified that the Bill would be binding on the Crown [DEV-22-MIN-0186].

## Creating new agencies or amending law relating to existing agencies

- 16 The Bill does not seek to create a new agency or amend law relating to existing agencies.

## Allocation of decision-making powers

- 17 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

## Associated regulations

- 18 The Bill does not create any new regulation-making powers nor are new regulations required to give effect to this Bill.
- 19 As noted in paragraph 5, the Bill repeals provisions which will become redundant upon these changes. This includes provisions within the Act, which enable regulations to be made designating high-risk sectors or industries, and provisions within the regulations which designate high-risk sectors or industries.

### Other instruments

- 20 The Bill does not create any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

### Definition of Minister/department

- 21 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

### Commencement of legislation

- 22 The Bill will come into force on the day after the date of Royal assent.

### Parliamentary stages

- 23 I intend to introduce the Bill on 21 November 2022, and I propose that the Bill should be passed in June 2023.
- 24 I propose the Bill be referred to the Education and Workforce Committee for a period of four months. The Leader of the House has agreed to this timeframe.

### Proactive Release

- 25 This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of decisions being confirmed by Cabinet.

### Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 Confidential advice to Government
- 2 **note** that the Bill amends the Health and Safety at Work Act 2015 (the Act) to provide that all Persons Conducting a Business or Undertaking (PCBUs):
  - 2.1 must initiate a health and safety representative (HSR) election if requested by a worker; and
  - 2.2 must establish a health and safety committee (HSC) if requested by an HSR or by five or more workers;
- 3 **note** that the Bill repeals the following provisions which are now redundant due to the amendments in recommendation 2:
  - 3.1 the empowering provision in the Act that enables regulations to be made designating high-risk sectors or industries, for the purpose of

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determining whether a PCBU must initiate an HSR election or decide on a request to form an HSC; and

- 3.2 provisions in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 which designate high-risk sectors or industries and provide the time within which a PCBU must give written notice of its decision on whether to establish an HSC;
- 4 **agree** that the Bill provides that a PCBU must establish an HSC “as soon as practicable” after receiving a request to establish an HSC;
- 5 **approve** the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **authorise** the Parliamentary Counsel Office to make minor and technical amendments to the Bill that may arise before introduction;
- 7 **agree** that the Bill be introduced on 21 November 2022;
- 8 **agree** that the Government propose that the Bill be:
  - 8.1 referred to the Education and Workforce Committee for consideration for a period of four months; and
  - 8.2 enacted by 30 June 2023.

Authorised for lodgement

Hon Michael Wood  
Minister for Workplace Relations and Safety

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## Annex One: Departmental Disclosure Statement

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