



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Areas for Work Health and Safety Reform: Approval to Consult	Date to be published	5 July 2024

List of documents that have been proactively released

Date	Title	Author
May 2024	Areas for Work Health and Safety Reform: Approval to Consult	Office of Workplace Relations and Safety Minister
29 May 2024	Areas for Work Health and Safety Reform: Approval to Consult Minute of decision ECO-24-MIN-0094	Cabinet Office

Information redacted

YES

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 the *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 for the reasons of confidentiality of advice tendered by Ministers of the Crown and officials.

The Annex to the Cabinet paper is publicly available at [Seeking your feedback on the work health and safety regulatory system | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](#)

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Policy Committee

Consulting on areas for work health and safety reform

Proposal

- 1 I seek agreement to release a consultation document and hold a series of roadshows seeking feedback on business, worker and wider experiences with New Zealand's work health and safety regulatory system. The feedback will inform next steps to shape the Government's reform of work health and safety law and regulations.

Relation to Government Priorities

- 2 The National-ACT coalition agreement includes the reform of health and safety law and regulations. One of my priorities for the Workplace Relations and Safety Portfolio is a first principles review of health and safety law. I intend to start this review via a public consultation and a series of roadshows across New Zealand.

Executive Summary

- 3 The *Health and Safety at Work Act 2015* (the HSW Act) is almost ten years old. Businesses, sector groups, nonprofit organisations and successive governments have invested significantly in the work health and safety regulatory system to support duty holders to understand the law and meet its requirements.
- 4 The HSW Act was adapted from Australia's work health and safety legislation, but New Zealand's work-related deaths are twice as high as in Australia. Poor work health and safety is estimated to cost New Zealand \$4.4 billion annually. I have been hearing from businesses, organisations and workers who find it difficult to understand or comply with their obligations under the Act.
- 5 I consider it is timely to assess whether New Zealand's work health and safety system is fit for purpose. To ensure I am focused on the highest areas of impact for reform, I want to hear from workers, businesses, and others with an interest in keeping workers healthy and safe.
- 6 I seek approval to release a consultation document, *Have Your Say on Work Health and Safety*, supported by a series of roadshows that will ask New Zealanders about what's working well and what needs to change. I intend to consult widely from June to October 2024 across New Zealand, with a special effort to reach small businesses and those with health and safety obligations who do not usually participate in consultations.
- 7 This consultation is the first step to inform the first principles review of health and safety law. Through this work I intend to ensure that our work health and safety system is clear, sensible, and effective, so that it supports businesses to focus on preventing harm to workers, rather than on actions that have little real benefit.

- 8 Based on the consultation feedback, the Ministry of Business, Innovation and Employment (MBIE) will advise me on the most meaningful and viable options for work health and safety reform. Confidential advice to Government

The work health and safety system’s performance is poor and costly

- 9 The HSW Act is almost ten years old. The recommendations from the Royal Commission on the Pike River Coal Mine Tragedy and the Independent Taskforce on Workplace Health and Safety resulted in significant reform of the regulatory system, establishing the HSW Act and WorkSafe New Zealand as the primary regulator.
- 10 The HSW Act strengthened the previous law by simplifying the duties framework and more clearly requiring duty holders to work together. Key changes were:
- Placing the primary duty of care on a “person conducting a business or undertaking” (a PCBU), to more clearly cover contracting and franchising in addition to the employer-employee focus of the previous legislation.
 - Introducing a positive due diligence duty on officers and directors to ensure that the business they govern has the resources, systems and processes to meet its health and safety obligations.
 - Strengthening the duty on workers by requiring them to comply and cooperate with the instructions and policies of the business they work for.
 - Placing clearer duties on those who commission, design, import, manufacture, supply or install machinery, equipment or structures in workplaces.
 - Strengthening the duties on businesses to engage with their workers and provide avenues for them to participate in health and safety matters in their workplace.
- 11 Successive governments have invested significant resource in the regulatory system and in the work health and safety regulators – WorkSafe New Zealand, and Maritime New Zealand and the Civil Aviation Authority for the maritime and civil aviation sectors respectively. Businesses, sector groups and nonprofit organisations have all invested significant time and effort in supporting duty holders to comply.
- 12 A report by the Business Leaders’ Health and Safety Forum (BLHSF) estimates the cost of New Zealand’s work-related harm – from work-related fatalities, injuries, and ill-health (both physical and mental) – at \$4.4 billion in 2022.¹ Poor work health and safety is costly for New Zealand’s workers, communities, businesses and economy, and affects the government through impacts on the health, welfare, rehabilitation and compensation systems, and as an employer.
- 13 New Zealanders are therefore currently experiencing the worst of both worlds: facing high costs to maintain and comply with the regulatory system, and still experiencing poor health and safety outcomes that the regulatory system was supposed to minimise.
- 14 I consider it is timely to assess whether New Zealand’s work health and safety system is fit for purpose. It is not clear that the system is working as it should, either in its design or in implementation.

¹ Business Leaders’ Health and Safety Forum, *State of a Thriving Nation: Health, Safety and Wellbeing in New Zealand*, August 2023; [State of a Thriving Nation: Health, Safety and Wellbeing in New Zealand \(forum.org.nz\)](https://www.forum.org.nz)

Previous efforts to improve the work health and safety regulatory system

- 15 After the HSW Act was passed in 2015, government focus shifted to modernising the underpinning regulations. Ten sets of regulations made in 2016 and 2017 focused on managing general workplace risks, and high hazard sectors or risks such as mining, major hazard facilities, offshore petroleum, asbestos and hazardous substances.
- 16 Since 2018, some targeted improvements have been made to sector- and risk-specific regulations such as mining, adventure activities, and hazardous substances. While MBIE undertook public consultation in 2019 on modernising the majority of the remaining older regulations from the 1990s and earlier, no further significant reform has been completed for regulations with broad application across many businesses. Further efforts to implement the *Health and Safety at Work Strategy 2018-2028* have proved difficult despite stakeholder support and attempts to coordinate activity.
- 17 WorkSafe NZ has received substantial investment since 2013, with funding and staffing increasing further over the last few years, partly to cover Covid-19-related activities and the Whakaari/White Island response. In 2023 it became clear that WorkSafe had taken on too much over time and funded this growth in an unsustainable manner. WorkSafe has since carried out organisational change and is now focused on resetting its strategy and on delivering its core functions within its available funding.
- 18 Addressing the effectiveness and efficiency of WorkSafe's frontline activities is also one of my Workplace Relations and Safety portfolio priorities. In the coming months I will make decisions on performance measures to demonstrate the regulator's focus on the things that contribute the most to reducing workplace harm.

Consulting widely on the problems faced to help shape the review

- 19 While continuing to develop the underpinning regulations may provide some sectors with greater certainty regarding how to comply with their health and safety obligations, I am concerned that there are some competing objectives in the health and safety system and the balance may not currently be right. There are many options for where to focus our work health and safety reform efforts, depending on what problems are most pressing, for example:
 - If regulators are not striking the right balance for low-risk situations, a response could be changes to regulator focus and activities.
 - If there are complex intersections with other systems and regulators, a response could be improving clarity at the boundary with other regulatory regimes.
 - If there is a lack of certainty in the legislative framework and guidance, a response could be improving the regulators' focus on guidance or providing more robust safe harbours in legislation.
 - If the balance of responsibilities isn't right (between PCBU, officer, worker), or there are other pressures that overwhelm health and safety incentives, responses could include reform of the existing regulatory system such as the balance of roles and responsibilities and risk allocation.

- If the problem is that the threshold for managing risks isn't set at a proportionate level, then a response could be reform of the fundamental health and safety legislative principles and settings.
- 20 The work health and safety system also needs to address a wide variety of different kinds of risks, different kinds of work and workers, and stakeholders with varying levels of information and resource.
- 21 To ensure we are focused on the areas that will bring meaningful change, I want to hear directly from businesses, workers and others on the work health and safety system, what's working well, what problems they face in meeting their health and safety obligations, and what they think needs to change.
- 22 I want to meet with and hear from people from a wide range of backgrounds, in particular small businesses and those with health and safety obligations who do not usually participate in health and safety consultations, as outlined in **Table 1**. To achieve this, I plan to hold roadshow meetings centred in five regional locations around New Zealand alongside the main centres. The roadshows will be both location-based, and sector-based where there are prominent industry sectors in a particular region. My officials will work with local business associations, council economic development agencies, industry, sector and other groups located in the regions to arrange invitations to the meetings, with RSVPs to manage numbers and help focus the meetings on work health and safety.

Table 1: Engaging with a broad range of people and groups

Businesses	Workers	Non-business organisations
<ul style="list-style-type: none"> • Small-medium and self-employed • Large • High-risk • Low-risk • Business representative organisations 	<ul style="list-style-type: none"> • Individuals • Health and safety representatives • Unions • Migrants 	<ul style="list-style-type: none"> • Councils • Organisations that make use of volunteers (eg charities) • Schools, tertiary education providers, and early childhood centres • Organisations that hold public events
Upstream businesses	Iwi and communities	Health and safety experts
<ul style="list-style-type: none"> • Infrastructure funders • People / organisations that commission large projects • Importers, designers, manufacturers, suppliers etc 	<ul style="list-style-type: none"> • Pou Tangata Iwi Leaders Groups • Community groups representing Pacific Peoples, Indian and other communities. 	<ul style="list-style-type: none"> • Health and safety academics, professionals, and advisors

Ensuring structured and informed feedback on the problems faced

- 23 I seek approval to publicly release a short consultation document to support both the roadshows and the consultation process. The consultation document *Have Your Say*

on Work Health and Safety is attached as **Appendix One**. MBIE will release this document online on 14 June 2024 inviting written submissions, so that people who are not invited to attend a roadshow meeting can have their views considered, allowing for a wider range of feedback.

- 24 The consultation document seeks people’s views on five focus areas of the work health and safety system, to ensure structured feedback on their experiences with the system. **Table 2** outlines these focus areas and what I will be testing for each area. The roadshows will use these same five areas as a basis for discussion. I expect feedback to be wide-ranging given the breadth of the work health and safety regulatory system.

Table 2: Focus areas of the work health and safety system for consultation

Focus area	What I will be testing
Businesses are best placed to understand and manage their health and safety risks	<ul style="list-style-type: none"> • What actions businesses take to manage their health and safety risks and why. • Whether they think these actions are effective. • What they estimate their compliance costs are.
The law is designed to balance flexibility and certainty	<ul style="list-style-type: none"> • What are the specific health and safety requirements that people think are not working. • The information sources people use to help them comply and what they think about these sources.
Worker engagement and participation	<ul style="list-style-type: none"> • How businesses engage with workers, how workers participate in health and safety, and the impact this has on health and safety outcomes.
An effective work health and safety system needs effective regulators	<ul style="list-style-type: none"> • People’s experiences with the regulators – WorkSafe New Zealand (the primary regulator), Maritime New Zealand, and the Civil Aviation Authority. • People’s experiences with the other parties they need to interact with, such as licencing bodies and auditors.
The objectives of the work health and safety regulatory system	<ul style="list-style-type: none"> • Whether people think the system is clear, effective, flexible and durable, proportionate to the risks, and balances risks with cost.

Scope of the consultation

- 25 The scope of the consultation and first principles review is the work health and safety regulatory system. This system intersects with a wide range of other regulatory systems in many portfolios (for example accident compensation, public health, transport safety, energy safety) and impacts on all sectors of the economy and society.
- 26 While changes to other regulatory systems will be outside the scope of this consultation, as part of this work I want to ensure that these intersections between regulatory systems work well, are as seamless as possible with little confusion at the boundaries, and do not add unnecessary compliance cost on businesses. Where

stakeholders raise any concerns they have at the boundaries between the work health and safety system and other regulatory systems, my officials will work closely with the relevant agencies on whether these matters need to be further considered in the first principles review, what priority they may have, and how best to address them.

Next Steps

- 27 Based on the consultation feedback, MBIE will provide me with advice on options for meaningful and viable work health and safety reform. **Confidential advice to Government**

[Redacted]

Table 3: Next steps

Milestone	Timeframe
Consultation launch at Fieldays	14 June 2024
Consultation open and roadshows held across NZ	14 June to 31 October 2024

Confidential advice to Government

Cost-of-Living Implications

- 28 The public consultation process has no cost-of-living implications.

Financial Implications

- 29 The public consultation process has no financial implications. It will be funded within MBIE and WorkSafe baselines.

Legislative Implications

- 30 The public consultation process has no legislative implications. The first principles review of health and safety law and regulations may result in legislative change.

Impact Analysis

Regulatory Impact Statement

- 31 The Treasury’s Regulatory Impact Analysis Team has determined that the discussion document does not contain regulatory proposals, and therefore Cabinet’s impact analysis requirements do not apply to its release.

Climate Implications of Policy Assessment

- 32 A Climate Implications of Policy Assessment (CIPA) is not required as there is no direct impact on greenhouse gas emissions.

Population Implications

- 33 There is evidence that some groups, including Māori, Pacific Peoples, workers of lower socioeconomic status, migrant workers, older workers and young workers

experience higher rates of work-related harm or exposure to risk at work. While the public consultation process itself has no population impacts, I am intending to consult with a wide range of people. The feedback may provide a better understanding of the population impacts and inform improvements through the first principles review of health and safety law.

Human Rights

34 The public consultation process has no human rights implications.

Use of External Resources

35 No external resources were used in the policy development for this paper. The review of health and safety law may require external resources to provide further evidence to inform policy development and support future decisions. Confidential advice to Government

Consultation

36 The following agencies have been consulted: the Departments of Conservation, Corrections, and Internal Affairs, the Ministries of Education, Ethnic Communities, Health, Primary Industries, Transport, Social Development, Women, and Business, Innovation and Employment (for Building and Construction, Energy, and Resources), the Accident Compensation Corporation, Civil Aviation Authority, Fire and Emergency New Zealand, Maritime New Zealand, New Zealand Customs Service, National Emergency Management Agency, New Zealand Defence Force, New Zealand Transport Agency, New Zealand Police, and WorkSafe New Zealand. The Department of the Prime Minister and Cabinet was informed.

37 As outlined in this paper, I seek approval to release a public consultation document and hold a series of roadshows across New Zealand seeking feedback on business, worker and wider experiences with the work health and safety regulatory system. As part of finalising the consultation paper for publication and release, I may need to make further minor and technical editorial or design changes, consistent with the approach outlined in this Cabinet paper and consultation document.

Communications

38 I will launch the public consultation at Fieldays on 14 June 2024 with a speech followed by a media stand-up. I will also address the Safeguard National Health and Safety Conference 2024 in Auckland on 18 June. MBIE will release the consultation document online on 14 June, seeking written submissions from the public.

Proactive Release

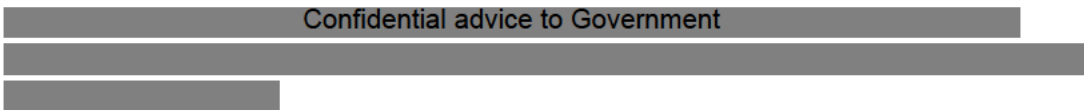
39 I intend to release this Cabinet paper proactively, subject to redaction as appropriate under the *Official Information Act 1982*.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

IN CONFIDENCE

- 1 note that the National-ACT coalition agreement includes the reform of health and safety law and regulations, which is best informed by business, worker and wider experiences with New Zealand's work health and safety regulatory system;
- 2 approve the release of the document *Have Your Say on Work Health and Safety* for public consultation with feedback to be sought through a series of roadshows and through written submissions;
- 3 authorise the Minister for Workplace Relations and Safety to make minor and technical editorial changes to the consultation paper before release;

- 4  Confidential advice to Government

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety

Appendix One: Public consultation document

Have your say on work health and safety