

Departmental Disclosure Statement

Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

16 November 2022

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Part One: General Policy Statement

This Bill seeks to improve workplace health and safety outcomes

The objective of this Bill is to contribute to improved health and safety outcomes in New Zealand workplaces and reduced work-related harm.

The Bill seeks to enhance worker access to formal worker engagement, participation, and representation mechanisms by removing current thresholds that limit worker access to health and safety representatives (HSRs) and health and safety committees (HSCs). This follows international evidence that shows that improved worker engagement, participation and representation is associated with lower rates of work-related harm.

HSRs and HSCs are forms of worker engagement, participation, and representation

Under the Health and Safety at Work Act 2015 (the Act), 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 Person Conducting a Business or Undertaking (PCBU), and giving feedback to the PCBU about how it is meeting its duties on health and safety matters. 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 to address a health or safety problem or direct a worker to cease unsafe work.

HSCs bring together worker representatives and management to work co-operatively to improve work health and safety through actions such as developing and reviewing health and safety policies and procedures.

The Act currently limits worker access to HSRs and HSCs

A PCBU that is not in a designated high-risk sector or industry and has fewer than 20 workers may:

- decline an HSR election request from its workers;
- not decide on a request to establish an HSC.

In comparison, larger PCBUs and those in sectors or industries designated as high-risk must grant HSR election requests and must respond to requests to establish an HSC.

Additionally, any PCBU can refuse a request to establish an HSC if the PCBU is satisfied that existing worker participation practices sufficiently meet the requirements to provide reasonable opportunities for workers to participate effectively in improving work health and safety.

As these limits on worker access to HSRs and HSCs are in the Act, they cannot be addressed without changes to primary legislation.

The Bill removes these limits on worker access to HSRs and HSCs, but does not make HSRs and HSCs mandatory

Workers in small businesses that are not in sectors or industries designated as high-risk will be able to choose the participation mechanisms that best suit their context and preferences.

Whether an HSC is set up in a workplace will also depend on choices expressed by the workers in that workplace.

PCBUs will only have to take steps to set up HSR elections or HSCs if their workers request them, or at the PCBU's own initiative: the Bill does not make HSRs and HSCs mandatory unless they are requested by workers.

This aligns with the Act's flexible approach to worker engagement, participation, and representation practices where the focus is on effectiveness rather than specifying processes.

The Bill provides a timeframe for the PCBU to establish an HSC

The Act did not specify a timeframe for a PCBU to establish an HSC. To address this gap, 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 how the Act refers to timeframes for other provisions and reflects the Act's focus on flexibility according to particular circumstances.

Designating high-risk sectors and industries is no longer necessary

The provisions in the Act that enable regulations to prescribe high-risk sectors and industries and the provisions in the associated regulations that prescribe high-risk sectors and industries are no longer necessary when the limits to HSRs and HSCs are removed. The Bill removes:

- the regulation-making power that enables regulations to be made designating high-risk sectors or industries;
- provisions within the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 that define those designations.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The Report of the Independent Taskforce on Workplace Health and Safety, <i>Independent Taskforce on Workplace Health and Safety</i> , April 2013, at 254(c): http://hstaskforce.govt.nz/documents/report-of-the-independent-taskforce-on-workplace-health-safety.pdf The Government response, <i>Working Safer: A blueprint for health and safety</i> , https://www.mbie.govt.nz/assets/f02d850266/working-safer-blueprint-for-health-and-safety.pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: Health and Safety at Work: Restoring worker access to Health and Safety Representatives and Health and Safety Committees, the Ministry of Business, Innovation and Employment, 1 August 2022. You can access this Regulatory Impact Statement at https://www.mbie.govt.nz/assets/25abc3e204/regulatory-impact-statement-health-and-safety-at-work-restoring-worker-access-to-health-and-safety-representatives-and-health-and-safety-committees.pdf and can also be found here: https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-health-safety-work-restoring-worker-access-representatives-and-committees .	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Regulatory Impact Statement identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. MBIE's Regulatory Impact Analysis Review Panel reviewed the RIS prepared by MBIE (link above, 1 August 2022) seeking Cabinet's agreement to draft legislation. The Panel considered that the information and analysis summarised in the RIS met the criteria necessary for Ministers to make informed decisions on the proposals.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>a) Analysis of the potential costs and benefits can be found in the Regulatory Impact Statement in Table Two (page 21), paragraphs 111-113 (page 23) and pages 24-26 (link above, 1 August 2022).</p> <p>b) Analysis of the potential for groups of persons to suffer substantial unavoidable loss of income or wealth can be found in the Regulatory Impact Statement in Table Three (pages 25-26) (link above, 1 August 2022).</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>a) If PCBUs do not comply with the new provisions then workers will miss out on being able to choose how they want to engage, participate and be represented on health and safety matters. In turn this may impact on improving worker engagement, participation and representation which is associated with lower rates of work-related harm. PCBUs that do not comply with these requirements will be subject to the offences listed in the Act. However, effectiveness is more dependent on whether workers choose to request HSRs and HSCs or not.</p> <p>b) The benefits of worker engagement will depend upon regulators' efforts to encourage or secure compliance. The regulators will need to ensure that workers and PCBUs are aware of the changes and respond to PCBU non-compliance. Information about how the regulators will encourage compliance with this Bill can be accessed at page 27 of the Regulatory Impact Statement (link above, 1 August 2022).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

New Zealand's international obligations were considered during the policy development phase of the Bill. MBIE identified, from MFAT's list of treaties that New Zealand is party to, that the International Labour Organisation's Occupational Safety and Health Convention 1981 was relevant to this Bill. In particular, this Bill will give fuller effect to Article 19(b) and (c) of this Convention whereby there shall be arrangements at the level of the undertaking under which representatives of workers in the undertaking co-operate with the employer in the field of occupational safety and health, and that such representatives of workers are given adequate information on measures taken by the employer to secure occupational safety and health. The Occupational Safety and Health Convention 1981 can be found here: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312300:NO

We discussed this with MBIE's legal team who did not identify that this Bill would be inconsistent with this, or any other, international obligation, decisions of international bodies or judicial decisions of the courts of other countries.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MBIE engaged with Te Puni Kōkiri as part of the policy process for this Bill.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice or reports, will be accessible on the Ministry's website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

a) The Bill does not amend the offences listed in section 62(7) and 66(9) of the Health and Safety at Work Act 2015, but these existing offences will have a wider application as a result of the Bill, as they will apply to PCBUs with fewer than 20 workers that are not in high-risk sectors or industries.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
MBIE sought feedback on the policy from the government's tripartite partners in the workplace health and safety system: Business New Zealand and the New Zealand Council of Trade Unions. For further information, see paragraphs 21-25, and 83-89 of the Regulatory Impact Statement (link above, 1 August 2022).	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
A draft version of the Bill was tested with WorkSafe New Zealand as the primary regulator for the work health and safety regulatory system which will be responsible for implementing the changes. WorkSafe did not have any comments on the draft Bill.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
(a) As referred to above at 3.4, the Bill does not amend the strict liability offences listed in section 62(7) and 66(9) of the Health and Safety at Work Act 2015, but these existing offences will have a wider application as a result of the Bill, as they will apply to PCBUs with fewer than 20 workers that are not in high-risk sectors or industries.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
This Bill consequentially amends section 214 to repeal sub-paragraph (1)(b)(v) of the Act, which authorises the making of regulations relating to worker engagement, participation, and representation, specifically regulations prescribing high-risk sectors for the purposes of the exemptions in current sections 62 and 66. As the Bill removes these exemptions, this regulation-making power is no longer necessary.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO