MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Brooke Van Velden	**Portfolio**	Workplace Relations and Safety
Title of Cabinet paper	Health and Safety Reform: System-Wide changes	**Date to be published**	9 June 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
24 March 2025	Health and Safety Reform: System-Wide changes	Office of the Minister for Workplace Relations and Safety
17 March 2025	Minute of Decision CBC-25-MIN-0004	Cabinet Office
12 March 2025	Regulatory Impact Statement – Work Health and Safety Reforms	MBIE

Information redacted **YES/NO**

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MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Regulatory Impact Statement: Work Health and Safety Reforms

Decision sought	Analysis produced for the purpose of informing final Cabinet decisions
Agency responsible	Ministry for Business, Innovation and Employment
Proposing Ministers	Minister for Workplace Relations and Safety
Date finalised	12 March 2025

The Minister is proposing a package of reforms to work health and safety laws, comprising a combination of legislative changes to make targeted amendments to the Health and Safety at Work Act 2015 (the HSW Act), modernising sector-specific regulations, and using existing levers to improve the availability of guidance and Approved Codes of Practice (ACOPs) and regulator focus.

Summary: Problem definition and options

Policy problem

Through our ongoing regulatory stewardship, and more recent consultation feedback, we have identified four key issues with New Zealand's work health and safety regulatory system:

- Businesses experience a lack of clarity and certainty regarding how to meet their obligations under the HSW Act.
- The HSW Act has been taken to apply more broadly than was intended.
- The Regulator has at times lacked a clear strategy and is focused on enforcement rather than providing advice and guidance.
- Regulator strategy and practice is not supporting least cost compliance across the system, nor a focus on critical risks.

This paper focuses on the first two key issues. The two latter key issues will be addressed in future briefing(s).

Policy objective

The objectives of reform to the work health and safety regulatory system are to:

- reduce unnecessary costs for businesses, and consumers and taxpayers so they are proportionate to risks
- increase certainty about what to do (e.g. ensure PCBUs can access high-quality HSW Act guidance and feel confident to implement it), and

- support the continued reduction in the incidence of workplace injuries and fatalities, thereby improving work health and safety outcomes for businesses, workers, and all New Zealanders.

If we can reduce over-compliance, and focus real action on critical risks we can both reduce some of the costs of health and safety while improving outcomes.

Success and failure will be measured through ongoing monitoring of work-injury and -fatality rates and stakeholder feedback about the implementation.

Options

We have not considered total repeal of the HSW Act. This is because stakeholder feedback largely focused on lack of certainty rather than problems with the intent of the Act.

To improve certainty for business, the following options are being considered:

- Option one: status quo / do nothing.
- Option two: using existing levers to provide more guidance and Approved Codes Of Practice (ACOPs).
- Option three: targeted amendments to the HSW Act.
- Option four: modernising regulations for high-risk sectors.
- Option five: everything included in options two, three and four.

To address the application and boundaries of the HSW Act, the following options are being considered:

- Option one: status quo / do nothing.
- Option six: targeted amendments to the HSW Act, consisting of discrete sub-options:
    - six A: sharpening the purpose of the HSW Act
    - six B: clarifying the boundaries of the HSW Act
    - six C: limiting health and safety duties for small, low-risk businesses
    - six D: freeing up recreational land use on private and public land
- Option seven: targeted guidance to clarify boundaries
- Option eight: everything included in options six and seven.

Consultation

The Ministry of Business, Innovation and Employment (MBIE) held a wide-ranging public consultation on the work health and safety regulatory system. This consultation revealed that businesses struggle with a lack of clarity and certainty in the system. This consultation has informed the problem definition rather than any options considered to address identified issues.

Preferred option

MBIE's agrees that improving guidance and ACOPs as well as addressing the confusion around the application and boundaries of the HSW Act would improve work health and safety outcomes. There are several options that were assessed as better than the status quo, and options five and eight were deemed most effective at achieving the policy objectives, for improving certainty for businesses and to address the application and boundaries of the HSW Act, respectively. This is the Government's proposal.

As part of this proposal, sub-option six C, which proposes to sharpen the work health and safety duties of small, low-risk businesses, has been analysed in principle only in this RIS, to inform a Cabinet decision on the proposal in principle. A future Cabinet paper will seek decisions on how to give effect to this proposal, which will be informed by a RIS that analyses the implementation of the proposal in more detail. In this RIS, MBIE has noted challenges for its implementation as well as considerations for further policy analysis.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Time constraints have placed limitations on our cost-benefit analysis. The recommended options are estimated to have low to medium costs for regulated groups and regulators in the short-term. These costs are expected to result from large legislative changes, which will require regulated groups to familiarise themselves with new systems. These costs are expected to dissipate over time and across the economy, and result in ultimately lower costs to regulated groups.

Benefits (Core information)

The benefits that will be realised by the proposed changes are expected to be of medium size for regulated groups. This results from reduced compliance costs, due to the shift in focus and action to critical risks, and clarification of the system boundaries. This will ultimately lead to better work health and safety outcomes, such as lower work-related injury and fatality rates.

Balance of benefits and costs (Core information)

The Minister's preferred option is likely to outweigh the costs, particularly as the benefit-cost ratio becomes more favourable over time. More time for policy analysis would have enabled more in-depth determination of costs and benefits.

Implementation

The legislative proposals need to be implemented through amendments to the HSW Act. MBIE is responsible for administering the HSW Act. WorkSafe provides information for businesses, unions and workers through its website, contact centre and other customer services on an ongoing basis. Information provision and updates to website content would be undertaken within WorkSafe's existing baseline funding.

The non-regulatory options such as setting new expectations for WorkSafe will be implemented via the usual yearly cycle of monitoring undertaken by MBIE and the Minister, e.g. through the yearly letter of expectations.

Implementation can be achieved through a more focused use of existing resources, rather than an increase of resources. However, MBIE notes that implementation of the 2015 Act has not followed the path expected by officials due to the wide range of decision makers involved, including individual PCBUs. In the time available, we have not yet been able to undertake more analysis that would help shape the implementation and manage risks of unintended consequences.

Limitations and Constraints on Analysis

In the time available, we have not been able to consider whether there are other options that could address the problems regarding the availability of guidance and ACOPs and application and boundaries of the HSW Act. As an example, different Australian States have dealt with ACOPs in different ways. We have also not been able to consider more detailed changes to the proposals.

The analysis was further constrained by a lack of quantitative data to support the analysis. The analysis is primarily based on qualitative information from a wide-ranging public consultation that included feedback from over 1,000 people across roadshows, site visits, and detailed written submissions.

Comparisons on injury and fatality rates are made between New Zealand, Australia and the UK, but time constraints have limited more in-depth comparisons, e.g., regarding compliance costs or factors such as industry structure, availability of regulations or guidance in these other countries compared to New Zealand.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:



Nita Zodgekar
Acting Manager Health and Safety Policy
12 March 2025

Quality Assurance Statement

Reviewing Agency: Ministry for Business, Innovation and Employment and Ministry for Regulation	**QA rating:** Partially meets

Panel Comment:
A panel comprising officials from the Ministry of Business, Innovation, and Employment, and the Ministry for Regulation has reviewed this Regulatory Impact Statement (RIS) and found that it partially meets quality requirements. The RIS makes a compelling case for improving the guidance provided under the Health and Safety at Work Act to lower rates of workplace injuries and fatalities further and presents compelling options for enhancing that guidance. The arguments in the RIS that the 2015 workplace health and safety reforms have led to excessive compliance costs and insufficient focus on critical risks, and that enhanced guidance will address this, are less well-developed, and this is the key reason for the partially meets rating.

Section 1: Diagnosing the policy problem

The current Work Health and Safety system was developed more than 10 years ago following the 2010 Pike River tragedy

The key reforms were the creation of a new work health and safety regulator – WorkSafe New Zealand – in 2013, and passage of the Health and Safety at Work Act 2015 (the HSW Act) and supporting regulations.

Based off the Robens system in the United Kingdom and Australia's model Health and Safety law, the HSW Act is 'all encompassing' and performance based. The duties in the Act are intentionally broad to ensure full coverage of all types of risks, business structures, and working arrangements. The system provides flexibility for businesses to comply in the most cost-effective way. Where necessary, clarification about what the Act means in practice for any particular industry or business, or for particular circumstances or risks, can be provided through regulations, approved codes of practice (ACOPs), and guidance.

The system is operationalised through three regulators – WorkSafe New Zealand (WorkSafe, as the primary system lead), Maritime NZ, and the Civil Aviation Authority (CAA). Alongside the regulators there are people or organisations authorised by the regulator or regulations to certify or licence businesses or activities.

The system is reliant on duty holders understanding their obligations and the regulator's ability to provide guidance and enforcement where necessary

The theory is that the people creating the risk are best placed to manage the risk. The all-encompassing, performance-based approach was meant to empower businesses, as opposed to a model that left businesses uncertain about whether they were covered or not. In addition, the regulator is able to use enforcement action where duties have either been misunderstood or flagrantly ignored. However, there is widespread concern that 'least cost' compliance has not been achieved for businesses, consumers and taxpayers. This arises from visible costs of safety actions relative to the cost of the work (e.g., traffic management, scaffolding, etc). Further, there is evidence that some non-market services are no longer being provided (e.g., land access for recreational climbing or volunteer work).

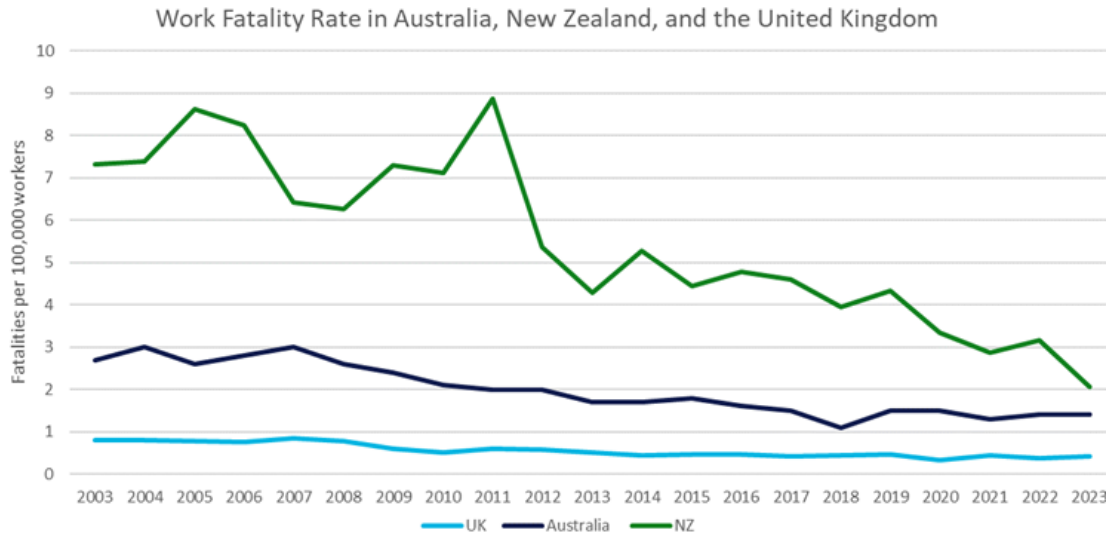
Successive reviews have also highlighted that WorkSafe has struggled in their role. Since its inception, WorkSafe's role evolved from a focus on addressing acute workplace fatalities and serious injuries into other areas. This approach to broaden the organisation's reach was well-intentioned, but meant WorkSafe arguably drifted beyond its core functions.

Data shows that New Zealand stills lags behind other comparable countries when it comes to workplace injury and fatalities

New Zealand's work health and safety record has been improving; as shown in Figure 1, both work-related deaths and work-related injuries are at their lowest level since the start of the data series in 2002. In 2022, 88 per 1,000 employees made injury claims, and there was a total of 81 work-related deaths. This compares to an injury claims rate of 105 claims per 1,000 employees, and a total of 105 work-related deaths in 2016. This data suggests that the Act has had some success. However, when compared to countries like Australia and United Kingdom (UK), our health and safety record is still poor. New Zealand's rate of work-related deaths is much higher (see Figure 2). There is persistent high harm in some sectors.



Figure 1 New Zealand's workplace injury rate (per 1,000 FTE) and number of work-related deaths (fatal claims) per year from 2002 to 2023. (P) Data from 2023 is provisional.



Source: StatsNZ injury statistics 2022, SafeWork Australia, Health and Safety Executive (United Kingdom)
Note: The data is by financial year for NZ and UK, and by calendar year for Australia. The data for 2022/23 is provisional for NZ and revised for UK.

Figure 2 Work fatality rates (per 100,000 workers) in Australia, New Zealand, and the United Kingdom from 2003 to 2023.

In addition to immediate workplace injuries and deaths, WorkSafe estimates that long-term exposure to health risks at work causes hundreds of deaths and thousands of hospitalisations each year.

WorkSafe estimates that:

- there are 750-900 work-related health deaths per year
- there are 5,000-6,000 hospitalisations each year due to work-related ill-health
- a worker is 15 times more likely to die from a work-related disease than from a workplace incident.

Poor work health and safety is costly for New Zealand's workers, businesses, communities, and economy. One estimate is that work-related harm cost us $4.4 billion in 2022.[1]

The Ministry of Business, Innovation and Employment undertook a wide-ranging public consultation on the work health and safety regulatory system, which revealed a range of issues

In May 2024, Cabinet agreed to release a consultation document, *Have Your Say on Work Health and Safety*, supported by a series of roadshows, to ask New Zealanders what's working well and what needs to change in the work health and safety regulatory system.

The scope of the public consultation focussed on the purpose and performance of the work health and safety regulatory system, via a comprehensive series of questions across the following focus areas:

- Focus area 1: businesses are best placed to understand and manage their risks.
- Focus area 2: the law is designed to balance flexibility and certainty.
- Focus area 3: worker engagement and participation.
- Focus area 4: an effective work health and safety system needs effective regulators.
- Focus area 5: the objective of the health and safety system.

The public consultation ran from June to October 2024 and was extensive. MBIE received over 500 submissions and the Minister for Workplace Relations and Safety visited 11 towns and cities, attended 23 meetings, and undertook 15 site visits across the country as part of the roadshow. Over 600 people provided feedback on this roadshow. MBIE is finalising a summary of submissions, which will be published in due course.

Submitters were generally divided about whether the work health and safety regulatory system's settings are correctly balanced, with relatively even proportions of negative and positive views on whether settings are over or under-cautious, clear, effective, flexible and durable, proportionate to the risk or balancing costs with risks. This indicates that as well as positive views, equally there are also a significant proportion of negative views about whether the current balance is desirable.

Importantly, there was little feedback suggesting that Health and Safety isn't important, and nor was their feedback that people could do it better without regulation. Rather, feedback from the Roadshows and submissions included that:

[1] Business Leaders' Health and Safety Forum, *State of a Thriving Nation: Health, Safety and Wellbeing in New Zealand*, August 2023, https://www.forum.org.nz/assets/Uploads/State-of-a-Thriving-Nation-Aug-2023.pdf.

- the broad and subjective definition of ‘reasonably practicable’ can make interventions difficult to balance with cost and practicality, leading to overly detailed assessments that may be hard to justify or implement.
- We believe the current health and safety laws aim to provide both flexibility and certainty. However, businesses often perceive these laws as rigid, leading to a focus on compliance over risk management.
- A desire for a more flexible, balanced approach and appropriately evidenced based approach to managing risks, which take into account the severity of the risk and the consequences of the proposed controls.
- A desire for a stronger emphasis on education and guidance, enabling businesses to improve safety through increased awareness and knowledge rather than a reliance on ever-changing regulations. This could include consideration of the development of safe-harbour materials to support industry to understand the minimum level of controls required to meet the relevant compliance outcome and help to achieve faster improvements in critical high risk safety issues.
- There is a focus on unnecessary and ineffective paper-based compliance and reliance on consultants and ineffective risk management tick box systems.

The major theme of the feedback is that businesses do not know what they need to do to manage risks and meet their legal duties. This is because:

- there is a lack of guidance on what is considered ‘reasonably practicable’ and therefore what is needed to be deemed compliant.
- some regulations are overly complex and out of date and the pace of change has been slow.
- there is a fear of WorkSafe arising from difficult engagements or inconsistent treatment.

The consultation showed that business owners and managers are not certain about the actions they should take to manage risks, and do not have confidence that the actions they take are the right ones or sufficient to meet their legal duties. Larger organisations/sectors with good knowledge commented that WorkSafe finds it difficult to express a clear, consistent view on the adequacy of their actions, or is perceived as sometimes requiring “gold plated” actions. Smaller organisations/sectors with less knowledge commented that WorkSafe does not provide guidance that is clear on what is reasonably practicable or sufficient or when to be concerned about a risk.

This lack of clarity is seen as leading to over-compliance in the face of uncertainty, resulting in paperwork systems or overfocusing on minor risks, which come at a cost and don’t improve safety outcomes, or it can lead to undercompliance when businesses fail to follow best practice because they don’t know what best practice is, or focus on paperwork over actually addressing risks. It can also be viewed as a ‘hidden action’ problem, where in the event of something going wrong it can be difficult to show the steps that were taken.

Submitters described their costs of compliance in different ways, making it difficult to calculate precise costs across different submitters. For example, some provided general descriptions such as ‘part of doing business’ or vague or partial descriptions of costs that were impossible to accurately quantify.

Of the respondents that provided specific per annum estimates, the most common costs were within the $200K - $1m and $1m+ ranges, or less than $5K. This generally reflects the proportions of large and small employers that made submissions.

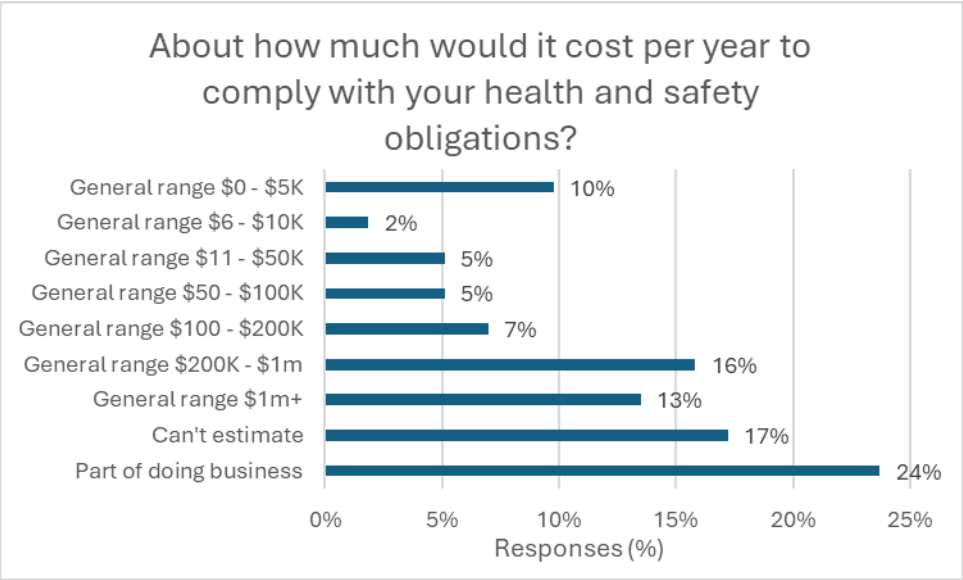


Figure 3 Proportion of submitters who responded to the consultation question: About how much would it cost per year to comply with your health and safety obligations?

Submitters frequently raised concerns about WorkSafe's regulatory stance – a lack of help provided via guidance or inspectors, inconsistent approaches across inspectors, and a combative approach to businesses under investigation. We note that this feedback will likely reflect WorkSafe's past approach, more than the steps WorkSafe is taking under its new strategy, which will take time to filter through.

The outdated, overly complex, and incomplete regulations administered by MBIE are also contributing to the problem, and have continually proven hard to keep up to date. The boundaries and overlaps of the regulatory system with others are unclear.

Overall, feedback suggested that the legislation is fundamentally sound but still requires some changes to achieve the expected outcomes, including:

- PCBUs are unsure about how to comply with the law, noting this is due to a lack of guidance and approved codes of practice (ACOPs), and
- The HSW Act appears to apply too broadly; over time practices have formed that have stretched the boundaries of the work health and safety laws.
- WorkSafe has struggled to keep up with the demand for updated information, in part due to the widening focus of the system overtime.

If the status quo is to persist, MBIE would expect:

- The same trend in injury and fatality rates to continue;
- Regulations getting replaced at a slow rate, leading to better/cheaper compliance once they do, but at a far slower rate than innovations in technology and business models;
- Under-prioritisation of the production of guidance and ACOPs, leading to a larger number of these becoming outdated over time.

We would also expect over-compliance to continue, which will come at a cost to businesses and be passed through to consumers and taxpayers.

What is the policy problem or opportunity?

The passage of the HSW Act has led to some improvements in New Zealand's work health and safety performance. We think that this is a reflection that the flexible nature of the HSW Act is better than its predecessor, i.e., a more prescriptive, 'one size fits all' Act. It may also have been effective at addressing the biggest risks, such as mining or high hazards.

However, New Zealand still has a high work-related death rate compared to other countries, which, combined with public feedback highlighting concerns about the costs of compliance, suggest that the current work health and safety system may not be striking the right balance. The Robens model gives duty holders the flexibility to determine how to meet their obligations under the HSW Act. This system relies on regulations, ACOPs, or guidance, to provide more prescriptive requirements to clarify these broad general duties where more certainty is needed. The consultation has indicated that this is where issues arise, as many businesses struggle with a lack of clarity regarding what actions are proportionate or 'reasonably practicable' for them to take, leading to inconsistent implementation, unnecessary administrative burdens, and fear of penalties for unintentional non-compliance.

In brief, critical risks are still being missed because PCBUs are focused on doing everything, with little to no prioritisation, which means harm is still occurring. We are not addressing enough critical risks, and are spending too much resource addressing lower-level risks. Regulatory creep[2] (through practice rather than through deliberate change) of the HSW Act beyond 'work' is having a chilling effect on some non-market activities such as recreational access and volunteer service. Ultimately, the system is too broad and too deep, and we need to narrow it down to core functions.

Through consultation feedback, we have identified four key issues:

- There is a lack of certainty and clarity regarding PCBU's actions or duties under the HSW Act.
- The HSW Act has been taken to apply more broadly than was intended (i.e. extending to non-work activities).
- The Regulator has at times lacked a clear strategy and is focused on enforcement rather than providing advice and guidance.
- Regulator strategy and practice is not supporting least cost compliance across the system, nor a focus on critical risks.

This paper focuses on the first two key issues. A separate paper (or papers) will address the two latter key issues.

Key issues, effects and root causes of these issues are summarised in the table below:

[2] E.g., recreational access to land has been restricted by landowners due to fears of being responsible or liable under the HSW Act for the health and safety of people accessing their land, whereas the HSW Act should only apply if 'work' occurs.

Overall problem statement	**High work-related death rates and public feedback of costly and frustrating over-compliance suggest an imbalance in New Zealand's work health and safety regulatory system**	
Key issues	There is a lack of certainty and clarity regarding PCBU's actions or duties under the HSW Act.	The HSW Act has been taken to apply more broadly than intended
Effects	This lack of certainty leads to under-compliance, leaving workers at risk, or over-compliance, unnecessarily increasing businesses' and consumer costs without reducing harm	The lack of clarity around the application of HSW Act leads to inadvertent expansion to non-work-related activities, over-the-top risk averse over-compliance where multiple pieces of legislation are involved (e.g. HSW Act and Building Act or Land Transport Act), and some non-market activities not being provided.
Primary root cause	The lack of guidance available under the design of a Robens work health and safety system. Ultimately, there is a lack of information and understanding of the status quo: • Guidance and ACOPs are lacking or outdated • The role of ACOPs could be strengthened • Regulations are incomplete and/or outdated	Lack of information and understanding of the status quo • Duty holders going over and above other legislative requirements due to a fear of undercompliance with HSW Act (e.g. the overuse of road cones above the temporary traffic management requirements)

The flexibility of the Act and the inherent hidden action problem, combined with regulator behaviour has led to the creation of a Health and Safety industry, which has had a major effect on Health and Safety culture. In particular, it has placed a focus on systems and paperwork. This is a market/societal response to the Act, rather than prescribed by the Act.

Many of the effects resulting from these key issues in the system can be solved by increasing the amount and quality of guidance, and refining the regulatory regime to clarify boundaries and improve certainty among PCBUs. In practice, existing guidance has failed to change the current culture within New Zealand's workplaces, and we do not expect some of these under- and over-compliance issues to change without further regulatory intervention.

If both individual businesses and WorkSafe are able to more tightly focus on critical risks, and there are clear actions to manage these, we would expect at a minimum to protect the current downward trends in workplace harm, while ensuring PCBU compliance costs are proportionate and well-directed to risks. This will benefit both consumers and taxpayers.

These issues impact all New Zealand businesses and workers, and in particular small businesses, who may have less capacity, skills or knowledge to allocate to work health and safety. There remains an equity issue between the ability of small businesses and larger firms to meet their obligations. It also impacts all interactions with the regulator.

What objectives are sought in relation to the policy problem?

The objectives of reform to the work health and safety regulatory system are to:

- reduce unnecessary costs for businesses, and consumers and taxpayers so they are proportionate to risks
- increase certainty about what to do (e.g. ensure PCBUs can access high-quality HSW Act guidance and feel confident to implement it), and
- Support the continued reduction in the incidence of workplace injuries and fatalities, thereby improving work health and safety outcomes for businesses, workers, and all New Zealanders.

Section 2: Assessing options to address the policy problem

The elements of the workplace health and safety system are interconnected. Consequently, the policy response in one part of the system has implications for other aspects of the system. The policy proposals therefore need to make targeted changes to address specific problems, but must also work together as a package to achieve the Government's objective.

The tables in this section identify and analyse options for each element of the problem definition against the criteria identified below. Each table analyses three or four options.

The first option is the status quo, which envisages a continuation of improvements over the base line that are underway, including improvements in the regulator WorkSafe NZ. The other two options reflect legislative amendments and targeted updated guidance.

A preferred option is identified in each case, which together make up a package of proposals. The tables identify the option preferred by the Minister where that differs from MBIEs preferred option.

The subsequent sections discuss the risks and system-wide impacts that are expected to flow from the preferred package of proposals.

Criteria to assess the proposed changes against the status quo

The following criteria will be used to compare options to the status quo:

- **Transparency and certainty**: the duties, obligations and rights of employers and workers are clearly set out and complied with, and the responsibilities and accountabilities of regulatory agencies are clear and understood by both agencies and duty holders.
- **Cost effectiveness:** compliance and transitional costs for the duty holders and for the regulator are minimised, for the benefits they deliver.
- **Flexibility and durability:** the regulatory regime is flexible and adaptive so that it can readily accommodate change and operate effectively in a dynamic context; and incentives are in place to encourage compliance with regulatory requirements.
- **Proportionality:** the degree of regulation and regulator's actions are commensurate with risk and will target key risks.
- **Safety:** will reduce harm arising from work.

While flexibility within the system is an important aspect of the Robens model, with the people responsible for the work also responsible for identifying and managing the risks as they see fit, we note that the current level of flexibility has in part led to the problems identified with the status quo. Therefore, while we consider it important, for this analysis the remaining criteria are given greater weight.

What scope will options be considered within?

Everything is in scope; legislative change, de-regulation, operational improvements, communications.

What options are being considered?

Options to improve the availability of guidance and ACOPs

From consultation responses, we heard that:

- 71 to 78% of submitters use ACOPs or guidance as a source of information or advice, predominantly to obtain clarity on roles, responsibilities, and actions necessary to keep people in the workplace healthy and safe.
- 67% of submitters agreed that simpler and clearer guidelines would help them to understand their health and safety obligations under the HSW Act.
- 27% of submitters agreed that ACOPs or guidance do not have enough detail or too much ambiguity to help them comply.
- 16% of submitters agreed that approved codes of practice or guidance have requirements that are actually causing them problems.
- 8% of submitters agreed that ACOPs or guidance were working well.

Organisations take their Health and Safety responsibilities seriously and understand the need to have effective measures in place to address risks. While most generally understand their health and safety obligations well, those that do not frequently cited need for better clarity and guidelines – particularly small and medium-sized enterprises (SMEs).
Many noted that the Act works well in general, though the most commonly-identified areas of concern included the general complexity of the system and ACOPs.

Many submitters noted that the Act works well in general, though commonly-identified areas of concern were the general complexity of the system, Hazardous Substances Regulations, sections of Part 2 of the Act (such as clarity around Directors' duties and landowner liabilities for recreational use), and Approved Codes of Practice. Many also thought sections of Part 2 were working well, indicating that there are variable experiences relating to different sections under that part of the Act.

Of the 252 submitters that responded to the question about 'Where there is not enough detail or too much ambiguity in law or regulations to help you comply?', the highest proportion identified ACOPs and Guidance.

The following options to improve the availability of guidance and ACOPs are being evaluated in the next section:

Option	Description
One	Status quo

Two	More guidance and ACOPs through existing levers
Three	Targeted amendments to the HSW Act
Four	Modernising existing regulations for high-risk sectors
Five	Everything included in options two, three and four

Option One – Status Quo

The Status quo would mean maintaining the rate at which guidance and ACOPs are produced, which led to the current situation of outdated and/or insufficient guidance and ACOPs. This would perpetuate the uncertainty businesses experience regarding whether their actions are deemed sufficient to comply with their duties under the HSW Act. It would also continue the trends of under- or over-compliance, with the associated risks to worker safety and costs for unnecessary actions that do not reduce harm.

Option Two – More guidance and ACOPS

Under this option we could increase the rate of guidance and ACOP production under the current regulatory settings (e.g., through WorkSafe reprioritising).

This option would use existing levers to improve WorkSafe's focus on priority areas, such as those listed in the following table:

Existing levers
Detailing the Minister's expectations in quarterly letters rather than annual letters of expectations and publishing these letters.
Instruct MBIE to monitor and report on WorkSafe's progress against the Minister's expectations.
More frequent meetings between the Minister and WorkSafe Board Chair to discuss ministerial expectations.
Expect WorkSafe to implement changes to its accountability documents where necessary.
Expect WorkSafe to: • strengthen its enforcement approach to worker breaches of duties • develop approved codes of practice for priority sectors • revise its approach to setting Workplace Exposure Standards (WESs) to ensure they are practical, measurable, and can be met, and include cost benefit analysis.

Constitutional conventions

Constitutional conventions

While option two would provide a greater body of advice, MBIE considers that it is unlikely to substantially shift the behaviour of the market. This is because, among duty holders, there would still be a fear that they hadn't done enough. We therefore see this option as an extension of the status quo, as, while it may have some positive impact, many of the issues around uncertainty and transparency would continue to exist.

Option Three – Amending the HSW Act to improve guidance and provide certainty

Approved Codes of Practice (ACOPs) are a set of practical guidelines to help people engaged in work in specific sectors and industries to comply with their work health and safety standards and requirements. Currently, ACOPs are developed by WorkSafe (in consultation with the relevant sector or industry) and approved by the Minister for Workplace Relations and Safety. While ACOPs can currently be developed by industry representatives, this is not always the case and is dependent on WorkSafe's resourcing.

We heard directly from businesses that some ACOPs are outdated, no longer reflect industry best practice and are therefore no longer addressing current risks. We also heard that the process of developing new ACOPs can be slow and arduous. Some businesses have stated that there are scenarios where businesses are following the relevant ACOP but are still required to complete paperwork to justify their actions, leading to unnecessary costs. This was a pain point shared by specific sectors such as forestry.

To address these concerns, we propose the following improvements to the status of, and development process for ACOPs, via amendments to the *Health and Safety at Work Act 2015*:

Option Three: Specific amendments to the HSW Act
Introduce deemed compliance so that if duty holders comply with approved codes of practice, they have done what is reasonably practicable to manage the risks covered by the code.
Introduce the possibility for persons and groups, including business, workers, and other representative organisations, can submit approved codes of practice to the regulator, for the Minister for Workplace Relations and Safety to approve.

To ensure that ACOPs are of sufficient quality, we propose that WorkSafe develop a set of operational guidelines on how best to design and develop an ACOP. We also intend to develop a set of minimum standards applying to the approval process, including a cost benefit analysis and clear industry support to support. These requirements will clarify that a Minister can choose not to approve the ACOP if they consider it does not meet these standards.

The impact of these amendments would be to create certainty for businesses, that if they have complied with an ACOP, they have done what is 'reasonably practicable' to manage the risks covered by the ACOP. That is, in following an ACOP, they have met their duties under the HSW Act. However, these amendments still allow for flexibility in work health and safety risk management. An ACOP does not mandate the approach to be taken, so businesses that are comfortable facing some uncertainty are free to innovate and find other ways to comply with their duties under the HSW Act.

In order to get the full benefit of this option, WorkSafe will need to accelerate its production/approval of ACOPs, and industry groups will need to prioritise their input. In some instances, there will also be an option for WorkSafe and industry to draw from comparative international guidance where similar risks exist, this may also allow for a more streamlined approach. This option could therefore work well in combination with option two (see also option five, which incorporates options two, three and four).

Option Four – Targeted changes to Regulations in high-risk sectors

Option four prescribes targeted changes to regulations for high-risk sectors, such as working at height or hazardous substances regulations. Regulations get a higher degree of scrutiny compared to ACOPs, as Cabinet is involved in the development of regulations. The cost is that they are slower and more expensive to develop, and they need to be well-designed to be durable and avoid unintended consequences.

Unlike ACOPs, regulations are generally mandatory to the sector or activity to which they apply. In general, regulations are not recommended except in rare cases, such as high-risk sectors.

We have heard directly from the public that some work health and safety regulations are outdated, no longer current with industry practice, not proportionate to the risk, or too long and overly complex to be able to easily be understood and implemented. In these cases, business experience extreme regulatory burdens to comply with the regulations while not gaining better returns in health and safety outcomes. Submissions focused particularly on the Hazardous Substances regulations and the Health and Safety in Employment Regulations (which includes areas of focus such as scaffolding and work at height). While there was a much wider pool of feedback regarding regulations, option four is targeted specifically to issues raised during consultation and/or where there have been prior policy decisions already agreed. This creates a package of regulatory reform which directly addresses many of the pain points for submitters.

Constitutional conventions

Constitutional conventions

These amendments will address specific pain points within the system, but do not address the broader problems with the work health and safety system.

Option Five – A combination of legislative changes, greater focus on guidance and ACOPs, and targeted changes to Regulations in high-risk sectors

This option combines options two, three, and four.

Options for the application of the HSW Act

The following options are being explored in the next section:

Option	Description
One	Status quo
Six	Targeted amendments to the HSW Act, made up of discrete sub-options
Seven	Targeted guidance to clarify boundaries
Eight	Everything included in options six and seven

Option Six – targeted amendments to legislation to clarify boundaries

Targeted amendments can be used to address specific problems within the current application of the HSW Act. This option is split into several sub-options that could address specific issues that were mentioned in the consultation.

Option	Description
Six A	Sharpen the purpose of the Health and Safety at Work Act (the Act) so that its principal purpose is to prevent work-related harm by managing the critical risks arising from work.

Six B	Sharpen the coverage of the Act so that if duty holders comply with relevant requirements under other legislation (for example, the Building Act 2004 or Land Transport Act 1998) to manage a health and safety risk, the Act does not require a higher standard for the same risk.
Six C	Sharpen the focus of health and safety at work duties for small businesses in low-risk sectors.
Six D	Clarify that the duty to manage or control a workplace does not apply to recreational access and activities on the land unless there is work happening in that part of the land at the time.

Option Six A – Sharpening the purpose of the HSW Act

Currently, the purpose of the HSW Act is long-winded and focuses on providing a balanced framework to secure the health and safety of workers and protect them against harm.

In response to the consultation, submitters were generally divided about whether the work health and safety regulatory system's settings are correctly balanced, with relatively even proportions of negative and positive views on whether settings are over or under-cautious, clear, effective, flexible and durable, proportionate to the risk or balancing costs with risks. This indicates that as well as positive views, equally there are also a significant proportion of negative views about whether the current balance is desirable.

Feedback from the Roadshows and submissions included that:

- The word 'practicable' causes issues because the possibilities of what could be done to improve H&S are endless in their scope (and cost).
- We believe the current health and safety laws aim to provide both flexibility and certainty. However, businesses often perceive these laws as rigid, leading to a focus on compliance over risk management.
- The broad and subjective definition of "reasonably practicable" can make interventions difficult to balance with cost and practicality, leading to overly detailed assessments that may be hard to justify or implement.
- A more flexible, balanced approach and appropriately evidenced based approach to managing risks, which take into account the severity of the risk and the consequences of the proposed controls.
- A stronger emphasis on education and guidance, enabling businesses to improve safety through increased awareness and knowledge rather than a reliance on ever-changing regulations. This could include consideration of the development of safe-harbour materials to support industry to understand the minimum level of controls required to meet the relevant compliance outcome and help to achieve faster improvements in critical high risk safety issues.

Option six A looks at sharpening this so that the *principal* purpose of the Act is managing the critical risks from work. This will signal the overall intent of this reform – to ensure the system is focused on critical risks from work. It is expected that over time, this will contribute to a shift in mindset about the main purpose of the HSW Act and wider regulatory system. Other aspects of the purpose of the Act will be secondary to this principal purpose.

Option Six B – Clarifying the boundaries of the HSW Act

The overlap between health and safety law and other regulatory systems causes confusion, fear and excessive costs, and can have a chilling effect on volunteer activity. Prominent examples include evacuating earthquake-prone buildings that are meeting Building Act requirements, and implying Santa parades have to have seat belts on floats. Currently, in deciding how to meet a work health and safety duty, the business may have regard to requirements imposed under other law that can affect health and safety, but this is not preventing over-compliance under the HSW Act when people think more is required, even where the other legislation sufficiently manages the risk.

In the consultation we heard from submitters that responded to issues around overlapping legislation. While some noted that were no issues with overlapping legislation, some also specified undesirable overlaps. These included the Hazardous Substances and New Organisms Act 1996, the Building Act 2004, the Land Transport Act 1998, legislation governing the Primary Industries, Biosecurity and Environmental legislation, Energy (electricity and gas) safety, employment relations and employment standards legislation and systems, and Maritime and Civil Aviation rules.

With this in mind, and further to amending the principal purpose of the Act, where another regulatory system addresses health and safety risks, compliance with that system will be treated as compliance with the HSW Act. For example, if a school building meets the requirements of the Building Act to manage seismic risk, this is deemed sufficient and the HSW Act does not require a higher standard. This means schools would not need to evacuate a building for seismic risk if the Building Act does not require it.

Option Six C – Sharpening health and safety duties for small, low-risk businesses

The consultation drew many responses from small businesses. Of the 374 submitters that responded to the specific question, 93 (approximately one quarter of responses) were from organisations with 20 or less employees (one working definition of a 'small business'). We heard that, in the absence of clear guidance from WorkSafe, small, low-risk businesses are uncertain about which risks to focus on and lack confidence about whether they are compliant. In trying to do the right thing, some small businesses are using costly 'off the shelf' health and safety systems or turning to health and safety middlemen which can lead to over or under-compliance and attempting to manage all risks at the expense of prioritising critical risks. On the roadshows, MBIE heard directly from small business owners about their fear of being prosecuted by WorkSafe even when they have tried to do the right thing.

Option six C looks to amend the HSW Act so that the work health and safety duties for New Zealand's small, low-risk businesses are sharpened to critical risks, and will therefore be more proportionate to the risk. Alongside the critical risks, PCBUs are also proposed to be required to provide worker supervision, training and instruction, and PPE.

We would expect this proposal to reduce compliance costs for small businesses, by supporting them to focus on critical risks and not on minor risks that do not cause harm, e.g. for a small shop owner, instead of looking at every possible risk in the shop, they would be expected to focus on critical risks like falls at height for the use of a ladder. A small retail clothing shop would only need to meet minimum duties of first aid, emergency plans and basic workplace

facilities, but have no further duties where the shop has no critical risks. A retail shop that sells dangerous chemicals or stores heavy things at height, both of which could cause serious illness or injury, would need to manage those critical risks and provide worker training and personal protective equipment for those risks.

MBIE agrees in principle with option six C, i.e. sharpening the WHS duties of small, low-risk businesses. A future RIS will provide more detailed analysis to inform Cabinet decisions on how best to give effect to this proposal. Based on current available data we note that there could be challenges in the proposal's implementation. For instance, there is a lack of clear, understandable data as to how to define small, low risk businesses. MBIE also notes the need to define 'critical risks' in a manner that will be easily understand by business owners.

Other considerations include:

- inaccurately including or excluding sectors for which duties are limited, thereby reducing the legitimacy of the option.
- imposing downstream impacts, such as inhibiting businesses' opportunities for growth, e.g., a lift in compliance costs at certain growth stages.
- The ability of firms to win contracts with larger/higher risk firms.

This RIS is therefore limited to considering this proposal in principle only.

Option Six D – Freeing up recreational land use on private and public land

We heard from recreational groups and landowners that there is a reluctance to allow recreational activities such as tramping and rock climbing on private land due to a lack of clarity around the landowner's health and safety responsibilities. This lack of clarity is also an issue for public land managed by the Department of Conservation, local councils, and for school grounds. This uncertainty and risk aversion may be having a chilling effect on recreational activities, especially in rural communities.

Feedback heard by officials from the attendees at the roadshows, or via submissions, included that the HSW Act has created a perceived or actual risk of liability for landowners and land managers that permit recreational access, prompting them to respond conservatively by restricting or closing public access to their land. The WorkSafe prosecutions in response to the 2019 Whaakari/White Island eruption has likely added to these fears.

To free up recreational land use and reassure private and public landowners and land managers of their responsibilities, we propose to amend the HSW Act to clarify that the duty of a business or undertaking that manages or controls a workplace does not apply to recreational access and activities on the land unless there is work happening in that immediate part of the land at the time.

Alongside the above changes there are further secondary amendments to the Act which will clarify the boundaries of the HSW system, including:

- Limiting directors' duties to leave operational detail to management

Constitutional conventions

These further amendments will form part of a second tranche of policy advice before the outline of a proposed Bill is finalised, and are therefore out of scope for this paper.

Option Seven – Targeted guidance and regulations to clarify boundaries

Option seven looks to clarify boundaries of the work health and safety system via targeted guidance and regulations rather than legislative change.

Option seven would look to expand on the work already undertaken by WorkSafe to educate the public on the current boundaries of the Act.[3] It would build on policy statements such as the one provided for safe access on land for recreational activities.

Guidance on what low risk businesses actually need to focus on could also be provided, likely in the form of an ACOP, which alongside the safe harbour in option discussed above would provide for certainty for small and low risk businesses.

Similar to improving guidance and ACOPs under option two, while this option would provide a greater body of advice, MBIE considers that it is unlikely to substantially shift the behaviour of the market. This is because, among duty holders, there would still be a fear that they hadn't done enough. We therefore see this option as an extension of the status quo as while it may have some positive impact, many of the issues concerning uncertainty and transparency would continue to exist.

Option Eight – Amending the HSW Act and targeted guidance and education

Option eight looks to combine options six and seven as a more effective means to achieving the outcomes sought.

[3] Policy clarification: Recreational access and the Health and Safety at Work Act (2015) | WorkSafe

How do the options compare to the status quo/counterfactual?

Improving availability of guidance and ACOPs

	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Safety	Overall assessment
Option One – Status Quo Continue with existing regulatory framework while WorkSafe NZ works to deliver system improvements	**0** Some duty holders are unclear what their obligations are and what is required to comply. Some duty holders continue to over- or under-comply and miss critical risks.	**0** Not cost effective due to the over-compliance creating ineffective spending for businesses above and beyond what is expected Therefore, this is not the best value from current business and regulator spend given continuing system inefficiency.	**0** Flexibility is a key principle of the current regulatory system, but this had led to misunderstandings and uncertainty. Failure to keep regulatory system updated has affected durability.	**0** Proportionality is a key principle of the current regulatory system, but paradoxically the high degree of flexibility has led to disproportionality in the system as people find it hard to judge when enough is enough.	**0** Slow progress in work health and safety outcomes - improvements have been made, but not at the level expected when the system was designed and implemented	**0** Continuing the status quo will make slow improvements to work health and safety outcomes, but these come at a high cost. Public confidence in the system is lacking, and uncertainty about obligations and actions are adding to this.
Option Two – more guidance and ACOPs Using existing levers to develop and update guidance and ACOPs	+ Modernised guidance and ACOPs will increase clarity for duty holders on the actions required. If this is combined with use of existing levers to improve WorkSafe's focus, then WorkSafe is clear on its priorities, and this flows through to increased certainty for PCBUs.	+ Likely some transitional and opportunity costs for WorkSafe as it works to prioritise and develop guidance and ACOPs. Costs to business may reduce or increase due to increased clarity.	+ Non-regulatory approach provides flexibility and durability to respond to changing circumstances.	+ Could address some of the current lack of proportionality in existing guidance and ACOPs.	+ Guidance and ACOPs would enable businesses to target and address activity and risks that can lead to workplace harm, although there is a risk in that non-regulatory interventions are not binding.	+ Could meet objectives for the system, but it is not very different to the status quo. It carries implementation costs for the regulator and there are risks in WorkSafe's ability to actively engage with participants in the sector, which has proven difficult and therefore may exacerbate the status quo. This option will only achieve the outcomes desired if WorkSafe is able to reprioritise efficiently.
Option Three – Targeted amendments to the HSW Act Enabling industry-involvement in ACOP-development and establishing Safe Harbours	+ Changes to deemed compliance can address some current uncertainties. However, there is a risk in the uncertainty and costs connected with availability and quality of ACOPs, which continue to need to be addressed.	+ For businesses for whom the uncertainty is a cost, the provision of safe harbours will provide certainty. Whether this costs more or less will depend on how much change is required in their equipment and processes. If industry wishes to accelerate the provision of ACOPs this will come at a cost, but is not mandatory.	+ This option retains flexibility compared to the status quo. ACOPs will provide more certainty, but following ACOPs is not mandatory. The durability is dependent on downstream changes in guidance and ACOPs, it might impact innovation negatively. There is an incentive for industry to collaborate on ACOPs.	**0** Changes could address some of the current lack of proportionality in the Act, but there is a risk in creating guidance that benefits larger businesses and while maybe placing disproportionate recommendations on small businesses. Over time could become less proportionate as work practices and sectors evolve, as already the case with existing outdated guidance and ACOPs.	+ Safety outcomes could be improved by enabling industry involvement in ACOP development to align with industry best practice.	+ Could meet some objectives for the system by providing certainty through a Safe Harbour. However, as a standalone option it carries short-term risks in deemed compliance with prevalence of outdated ACOPs, which is mitigated in option four. Over time, industry-involvement in ACOP development could also mitigate this risk.
Option Four – Targeted updates to existing regulations	+ Modernised regulations will increase clarity for businesses and workers, depending on sector.	+ Development of regulations will incur some additional cost to government and business through development and possibly learning new regime. Regulations	- Less flexible than the status quo, as must be adhered to by everyone. Sector-specific regulations have limited durability – they become	**0** Could be more proportionate than the status quo – regulations will be developed in consistent way reflecting nature of risk in different sectors. There	+ System likely to be generally effective, updates should match current best practice, leading to better work health and safety outcomes. However, this is	+ Could effectively meet some of the objectives for the system but only for sector-specific regulations. Effectiveness is dependent on the focus and resourcing of MBIE and

Modernising existing regulations for high-risk sectors		will likely cost more to produce than ACOPs. Compliance costs for businesses will reduce once modernised regulations in place that are aligned with industry best practice.	outdated as work practices change and may need to be expanded as new sectors develop.	is a risk in the 'one size fits all' approach of regulations. Over time this could become less proportionate as work practices and sectors evolve.	dependent on the updates going through in a timely manner.	the regulator to be active with participants in the sector. Long-term effectiveness will require continued investment in the development and evolution of sector-based regulations.
Option Five – amending the HSW Act <u>and</u> regulations, guidance and ACOPs Option Two + Option Three + Option Four [*MBIE and Minister recommended*]	+ + Duty holders will get clarity on actions through updated regulations and ACOPs. Legislative changes regarding deemed compliance provide certainty that these actions deem their obligations under the HSW Act met.	+ Likely some transitional and opportunity costs for WorkSafe as it works to prioritise and develop guidance and ACOPs. Understanding clearly which actions to take and having the certainty these comply should lower compliance costs for businesses.	**0** This option retains flexibility compared to the status quo. Regulations have limited durability while the non-regulatory approach could respond to changes in work practices and development of new sectors.	+ + Would be more proportionate than the status quo – regulations, guidance and ACOPs will be developed in consistent way reflecting the nature of risk in different sectors. There is a risk in creating guidance that benefits larger businesses and might place disproportionate recommendations for small businesses.	+ + Changes would make regulatory system more effective at targeting and addressing activity and risks that can lead to workplace harm, thereby improving WHS outcomes.	+ + Likely to result in highest positive net impact. Meets objectives of the system in most effective and proportionate way. Costs will be higher than under the other options, but the long-run costs will be lower. Resource constraints on policy development will pose a challenge on bringing all parts of the option into effect. There is also a risk of creating unintended consequences in drafting.

Application of the HSW Act

	Transparency and certainty	Cost-effectiveness	Flexibility and durability	Proportionality	Safety	Overall assessment
Option One – Status quo Continue with existing regulatory framework while WorkSafe NZ works to deliver system improvements	**0** Some duty holders unclear of what their obligations are and what is required to comply. Some duty holders continue to over- or under-comply and miss critical risks.	**0** Not cost effective due to the over-compliance creating additional costs for businesses above and beyond what is expected. Therefore, this is not the best value from current business and regulator spend given continuing system inefficiency.	**0** Flexibility is a key principle of the current regulatory system, but this had led to misunderstandings and uncertainty. Failure to keep regulatory system updated has affected durability.	**0** Proportionality is a key principle of the current regulatory system, but previous mechanism of implementation has led to disproportionality in the system.	**0** Slow progress is made in work health and safety outcomes - Improvements have been made, but not at the level expected when the system was designed and implemented	**0** Continuing the status quo will make slow improvements to work health and safety outcomes, but these come at a very high cost. Public confidence in the system is lacking, and uncertainty about obligations and actions are adding to this.
Option Six – Amending the HSW Act Make targeted revisions to the HSW Act in response to specific issues. This draws on lessons learnt through recent public consultation.						
Option Six A Sharpening the purpose of the HSW Act	**+** Duty holders and the regulator will be clear on priority focus.	**0** Should sharpen and clarify where costs should be split within the regulator. There will be some transition and opportunity costs to the regulator. Uncertain how this will flow through to costs for businesses.	**0** No change in flexibility or durability compared to the status quo.	**0** There is existing guidance reflecting the majority of the changes, however, has proven necessary through a continued lack of misinterpretation.	**+** Changes would make regulatory system more effective at targeting and addressing activity and risk that can lead to workplace harm.	**+** Could meet objectives for the system, but ultimately links indirectly to safety and might not achieve much on its own [it is not clear how much regulated parties rely on the Purpose of the Act vs other parts of the Act].
Option Six B Clarifying the boundaries of the HSW Act	**+** Boundaries of the system will be easily understood by duty holders and where the duty does not apply. However, there is a large legal risk that the drafting of the legislation leads to unintended consequences or the creation of gaps. MBIE recommends this requires more thorough consideration.	**+** Understanding clearly the boundaries of the system should lead to lower compliance costs for businesses under the HSW Act, but may cause unexpected transition costs for other regulatory systems that have previously been overlapping with the HSW Act. There may also be some expected transition costs for the regulators. In order to realise these benefits, MBIE recommends that this requires further consideration.	**0** Given it is trying to restore the original focus of the HSW Act, there is no change in flexibility or durability.	**+** While there is existing guidance reflecting the majority of the changes, the legislative amendment has proven necessary through a continued misinterpretation.	**0** The risk in unintended consequences that could result from drafting means there is a large uncertainty of the impact of this option on work health and safety outcomes. MBIE recommends more thorough analysis.	**+** The intent of this option could have positive outcomes but there are implementation and legal risks that require further policy analysis to realise these benefits.
Option Six C Sharpening duties for small, low-risk businesses [*MBIE recommends in principle, details are subject to further analysis*]	**+** In principle, reducing work health and safety duties for small, low-risk businesses would add transparency and certainty for this group. There could be confusion relating to the definitions of 'small' businesses and 'low-risk' sectors around the new	**-** In comparison to other issues regarding risks, the cost associated with the regulator and use of government resource is not cost-effective when there are other options available. Cost to business in principle reduced by fewer duties, however uncertainty may impact	**0** Much less flexibility when in legislation, but this is desirable for small businesses who struggle with flexibility. Unclear how flexible and durable it can be in practice – for example, how businesses would move between categories.	**+** In principle, this option would reduce over-compliance and therefore increase proportionality.	**0** In principle this option should not create worse health and safety outcomes. A future RIS will address considerations such as: • any uncertainty in its design to define small businesses and low-risk sectors.	**+** In principle, this option would resolve some of the current problems experienced with the WHS system. Further policy analysis will assess the impact of how this option would be given effect to, i.e. through the boundaries of who this would apply to and what their

	boundaries and duties for duty holders. Pairing this with education or guidance such as in option seven may resolve some of this confusion. However, given there is no commonly understood definition of 'small business' there is a risk that it can never be as clear as people would expect.	this. May not have taken appropriate consideration of seasonal impacts on business size or business growth. E.g., agriculture and tourism firms are highly seasonal which means they may move across boundaries throughout the year.			• if the option creates unintended gaps in safety outcomes, such as reduced safety awareness and culture, or inconsistencies in safety standards for workers working across different businesses, and therefore has the potential to lead to higher incidence rates in these sectors.	remaining duties would be; any possible consequences for business growth, where WHS duties become inhibitory to expansion, or for small businesses being deemed 'unsafe' when contracted by large businesses.
Option Six D Clarifying application of the HSW Act in relation to recreational access	+ Application of the HSW Act to recreational access will be more easily understood by duty holders and where the duty does not apply.	**0** In principle there is no effect on costs to businesses, but some recreational access may be restored.	**0** No change in flexibility and durability as this just clarifies the status quo.	+ Reduces unintended application of the HSW Act to non-work activities therefore increases proportionality.	**0** Change essentially reflects the status quo, therefore should not impact on work safety.	+ This option largely leads to an increase in recreational activities through supporting the original intent of the HSW Act.
Option Seven – Enhanced guidance and education to clarify the boundaries and application of the HSW Act	**0** May improve duty holders understanding of their obligations, focus, and where their duties end. However current guidance exists in most of the proposed instances and has proven ineffective.	- The regulator would be expected to prioritise and work within baseline funding to achieve updated guidance and shift resources to appropriate education. MBIE recommends this can be better achieved through legislative change.	**0** Non-regulatory approach provides flexibility to respond to changing circumstances.	**0** Not proportionate to the risks, without changes to the HSW Act will not achieve intent.	**0** Likely to achieve the same result as the status quo without some form of additional intervention.	**0** Potentially repeating the same issues with the status quo, as there may continue to be misperceptions without targeted intervention in the system.
Option Eight – Amending the HSW Act <u>and</u> targeted guidance and education Option Six (all sub-options) + Option Seven [*Minister recommended, MBIE recommends but notes further analysis on option six C*]	+ Duty holders will be clear on priority focus. Boundaries of the system will be more easily understood by duty holders and where the duty does not apply. However, there is legal risk that the drafting of the legislation leads to unintended consequences.	+ Understanding clearly the boundaries of the system should lead to lower compliance costs for businesses. There may be some expected transition costs for the regulators.	+ The combination of legislative change and enhanced guidance should help duty holders focus on critical risks and where their duty ends. There is less flexibility with legislative change, but this can be partially rectified by thorough supporting guidance.	**0** No change in proportionality, not changing the original policy intent of the HSW Act, just clarifying application.	+ The combined use of legislative change and enhanced guidance would support making the regulatory system more effective at targeting and addressing activity and risk that can lead to workplace harm. Updated guidance and education should help solve some of the current misunderstanding.	+ Provides the clarity that amending legislation gives alongside targeted guidance to ensure the correct interpretation of any amendments is well understood by duty holders and the regulator.

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

Improving the availability of guidance and ACOPs

The preferred option is to improve the availability and role of guidance and ACOPs, (option four) which proposes a combination of amendments to the HSW Act, using existing levers to promote the development and updating of guidance and ACOPs, and targeted updates to existing regulations that are in need of modernisation.

MBIE does not consider that the status quo will see improvements in the availability of guidance and ACOPs, nor will it increase certainty for businesses or improve health and safety outcomes beyond the current trajectory. Option four gives an opportunity for industry-involvement in the development of ACOPs, which will enable these to be produced at faster rates and of higher quality, thereby enhancing flexibility and durability. Combined with the certainty that legislative change offers in deemed compliance for following an ACOP, this will provide most clarity and certainty to duty holders, increasing the effectiveness of this option. Increased certainty among PCBUs is expected to reduce unnecessary costs and allow businesses to focus in on key risks, thereby improving the likelihood of businesses ability to focus on key risks. MBIE would expect this to improve health and safety outcomes for businesses, workers, and all New Zealanders as focus shifts to the areas most likely to cause harm and fatalities.

This option also acknowledges that regulations for high-risk sectors are desired but are in need of modernisation. These will need to be prioritised and phased and require (targeted) consultation with the relevant sectors to be designed and implemented effectively and proportionally.

Application of the HSW Act

The preferred option to improve the application of the HSW Act is option eight, which proposes a combination of targeted amendments to the HSW Act, and increasing the availability of guidance and regulations regarding the boundaries of the HSW Act. The status quo has proven inefficient over time and doing nothing is unlikely to lead to better health and safety outcomes within the system. This has come through clearly in the submissions through consultation. With that in mind, option seven would likely be ineffective on its own, as it is simply an enhanced status quo.

MBIE agrees in principle with option six C, i.e. sharpening the WHS duties of small, low-risk businesses. Further policy analysis will investigate how to best give effect to this. Currently, a lack of clear, understandable data as to how to define small, low-risk businesses poses risks to its implementation. If we do not get the boundaries right on these definitions, we risk inaccurately including or excluding sectors in the definitions, thereby risking the legitimacy of the proposal. Further policy work will also analyse downstream impacts, such as any impacts on work health and safety culture and awareness, and whether it would inhibit businesses' opportunities for growth. I.e., would work health and safety obligations become restrictive for businesses to out-grow the definitions we set. Further policy work and consultation would be recommended to understand if and how this would impact small, low-risk businesses when they are contracted to a larger/high risk business.

MBIE recommends more policy work to realise benefits of option six C. Including option six C 'as is' will pose a risk to achieving legislative amendments on the desired timeline. In

comparison options six A, B, and D all are likely to lead to better outcomes, at least with the current assumptions used. Due to the nature of the problem, and the lack of clear understanding within the public, the objectives sought through option six are more likely to achieve a better outcome if in combination with improved guidance and education.

MBIE expects that option eight is the most likely to increase certainty for businesses, and with further policy work, especially small businesses. As with option two and three, an increased focus on high-risk activities should improve work health and safety outcomes for businesses and workers.

Delivering to both key issues

As discussed before, the elements of the workplace health and safety system are interconnected, and policy changes in each aspect of the system will impact and interact with other aspects of the system. Together, an ambitious package of options can effectively resolve the two identified issues within the system. How these recommended interventions interact to create the desired outcomes, is presented in the diagram below (Figure 3).

To be able to bring all of these aspects to fruition, work programmes will need to be prioritised, and time is needed for rigorous policy analysis, particularly for options that are deemed high risk (e.g., Option six C – sharpening duties for small, low-risk businesses).

We also note that the current HSW Act was not implemented by the market the way we expected. How the market reacts to these reforms will be a key determinant of whether they are successful or not.

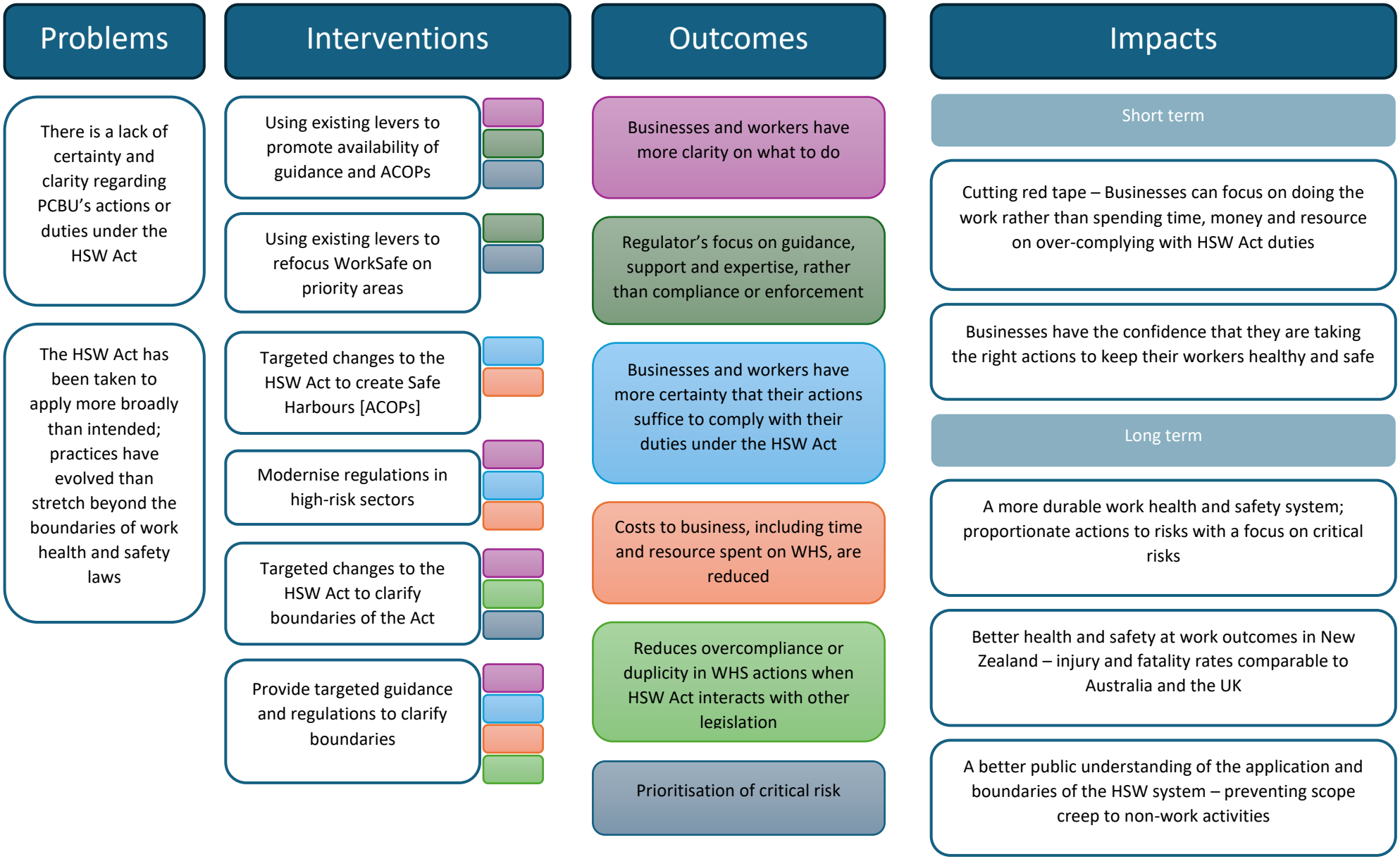


Figure 4 The two in-scope key issues identified from the first principles review of the work health and safety system, and how the recommended interventions interact and work synergistically to achieve the intended outcomes and impacts.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

The Minister's preferred option is all of the available options (summarised in options five and eight), while MBIE considers option six C needs more analysis as to how it will be implemented.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Improving availability of guidance and ACOPs through Option five: Amending the HSW Act and regulations, guidance and ACOPs
Minister and MBIE's preferred option

Affected groups *(identify)*	**Comment** *nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups	One-off cost of understanding changes, including to guidance, regulations, and ACOPs. On-going costs of contributing to, or developing, industry ACOPs.	Low	Low
Regulators	Opportunity cost of using resources to embed changes and prioritise and develop or revise ACOPs.	Low	Medium
Others (e.g., wider govt, consumers, etc.) *For fiscal costs, both increased costs and loss of revenue could be relevant*	Costs to government of policy work to update existing regulations and for legislative change.	Medium	Low
Total monetised costs			
Non-monetised costs		Medium	*Low*
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Reduced costs from greater certainty about requirements	Medium	Low

	(e.g. deemed compliance). Reduced work-related harm from greater targeting of critical risks.		
Regulators	Reduced transaction costs as businesses have greater certainty about requirements	Medium	Low
Others (e.g., wider govt, consumers, etc.)			
Total monetised benefits			
Non-monetised benefits		Medium	Low

Application of the HSW Act – Option eight: Amending the HSW Act and targeted guidance and education

Minister and MBIE's preferred option

Affected groups *(identify)*	**Comment** *nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups	Transition costs in understanding new requirements. Potential for increased work-related harm of low-impact injuries opposed to high-impact injuries if requirements for small, low-risk businesses are not implemented correctly.	Low-medium	Low
Regulators	Opportunity cost from directing resources to implement changes and to focus areas (e.g., issuing new or updated guidance).	Low	Low

Others (e.g., wider govt, consumers, etc.) *For fiscal costs, both increased costs and loss of revenue could be relevant*	Cost of policy work on legislative change.		
Total monetised costs			
Non-monetised costs		Low-medium	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Reduces unnecessary compliance costs by shifting focus and action to critical risks and by clarifying system boundaries.	Medium	Low
Regulators	Reduces transaction costs by focusing activity on critical risks (i.e., regulator devotes less time clarifying requirements for low-risk businesses)	Low	Low
Others (e.g., wider govt, consumers, etc.)	Recreational groups and rural communities have better access to private and public land for recreational activities. Reduced compliance costs for community events (e.g., Santa parades).	Medium	Low
Total monetised benefits			
Non-monetised benefits		Medium	Low

Section 3: Delivering an option

How will the proposal be implemented?

The legislative proposals need to be implemented through amendments to the HSW Act.

MBIE is responsible for administering the HSW Act. WorkSafe provides information for businesses, unions and workers through its website, contact centre and other customer services on an ongoing basis. Information provision and updates to website content would be undertaken within WorkSafe's existing baseline funding.

The non-regulatory options such as setting new expectations for WorkSafe will be implemented via the usual yearly cycle of monitoring undertaken by MBIE and the Minister, e.g., through the yearly letter of expectations. Implementation is a matter of being more focused with existing resource rather than requiring an expansion of resource. As previously mentioned, there is already ongoing work regarding the improvement of WorkSafe's performance.

Since its inception, WorkSafe's role evolved from a focus on addressing acute workplace fatalities and serious injuries into other areas. This approach to broaden the organisation's reach was well-intentioned, but meant WorkSafe arguably drifted beyond its core functions. There has been a substantial focus on the performance of WorkSafe over the last several years, driven by:

- The recognition that progress in reducing work-related fatalities and injuries had stalled. While a whole-of-system issue, this nonetheless, raised questions about regulator effectiveness.
- A number of concerns with the organisation's ability to effectively account for and articulate the value of its existing activities in building its case to expand its operational capacity.[4]
- Wider emerging concerns around financial management of the organisation in 2023.

In 2021, MBIE commissioned a Strategic Baseline Review of WorkSafe to provide assurance about WorkSafe's management of resources, inform WorkSafe's planning, and support MBIE in its advice to Ministers on WorkSafe's funding needs. The review, which was completed in 2022, found that WorkSafe's understanding of its current funding base and ability to articulate the value of its activities and link them to a wider strategy was limited. The reviewers made 23 wide-ranging findings and 20 recommendations to address these issues.

Additionally, in 2023, concerns about WorkSafe's financial performance were highlighted when WorkSafe reported that its operating budget for the 2023/24 financial year would exceed its appropriated funding by $17.8m. To address this, WorkSafe committed to an organisational restructure to bring spending in line with its funding, while the Government of the day set expectations about future financial management, and MBIE moved WorkSafe to intensive monitoring.

Over the last three years, WorkSafe has undergone significant changes to refocus on core functions and ensure it operates within its fiscal envelope. This includes organisational

[4] These concerns were also identified in three independent reviews of WorkSafe: *Value for Money Review WorkSafe New Zealand* (Martin Jenkins, 31 August 2016), *WorkSafe New Zealand Prioritisation and resource allocation review* (PwC, 2019), and *WorkSafe New Zealand Strategic Baseline Review* (SageBush, 12 May 2022).

changes (one finalised in October 2023 and another one finalised in December 2024) to align the organisational structure with its new regulatory strategy and operating model with the focus on frontline activities. The entity is also working on refreshing its guidance to PCBUs.

MBIE acknowledges that WorkSafe has made significant progress in addressing the recommendations of the Strategic Baseline Review and strengthening its financial management. However, a follow-up 2024 review commissioned by MBIE found that substantial work remained to fully implement the Review's recommendations. Additionally, while there are clear improvements in the 'health' of the organisation, it is not yet clear whether these changes have significantly improved the regulator's contribution to improving system outcomes. The consultation further identified concerns with WorkSafe's performance, and a future RIS will focus on other considerations regarding WorkSafe's performance (i.e., the latter two key issues mentioned under the policy problem).

PCBUs will also be key players in implementation, as due to the amendments they can play a crucial role in the development of ACOPs. We expect these legislative changes to motivate PCBUs to actively contribute to ACOP development, to ensure that these are up to date and of quality, and consequently choose to comply with these ACOPs once available, as the legislative amendments will provide the certainty that in following the ACOP they are fulfilling their duties under the HSW Act. Quality and development rate of new ACOPs may be impacted if PCBUs do not engage with the regulator on ACOP development as expected.

It is also important to note the existence of a Health and Safety industry that is unlikely to disappear overnight. While these reforms provide a clearer means of compliance the hidden action problems will remain, and some businesses will choose to outsource risk management. This means government is not in control of all the messages that will be delivered to the market, and it is not possible to fully predict how these reforms will be implemented by PCBUs.

How will the proposal be monitored, evaluated, and reviewed?

Trends in fatalities and serious harms are measured by WorkSafe, drawing on incident notifications and ACC data, and are reported publicly on WorkSafe's website and via stats NZ each year.

MBIE is WorkSafe's monitoring agency and will regularly report to the Minister on WorkSafe's performance. At a minimum this will be through quarterly reporting. Additionally, in order to ensure that ACOPs and guidance are working, there will need to be a need for surveying and stakeholder engagement from WorkSafe.

MBIE will continue to work to amend and improve the regulatory system as per its usual regulatory stewardship role.

Because these reforms will rely on a change of culture in society/the business community, it will take time for the benefits to be fully realised. There would be benefit in scheduling both a process evaluation for WorkSafe and an initial outcomes evaluation in about three years.