



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Minister for Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Health and Safety at Work regulatory reform - Protecting people working with plant, structures and doing hazardous work	<b>Date to be published</b>	24 September 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
17 May 2021	Health and Safety at Work regulatory reform - Protecting people working with plant, structures and doing hazardous work and supporting documents	Office of the Minister of Workplace Relations and Safety
12 May 2021	DEV-21-MIN-0092 Minute	Cabinet Office
17 May 2021	CAB-21-MIN-0166 Minute	Cabinet Office

### Information redacted

**YES**

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

Some information has been withheld for reasons for Confidential advice to Government, Free and frank opinions and commercial information.



# Cabinet

## Minute of Decision

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### Health and Safety at Work Regulatory Reform: Protecting People Working with Plant and Structures and Doing Hazardous Work

**Portfolio**                      **Workplace Relations and Safety**

On 17 May 2021, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

#### Proposed new regulations

- 1        **noted** that risks from working with plant and structures and doing hazardous work at height and on excavations cause a significant proportion of New Zealand's work-related harm;
- 2        **agreed** to new regulations under the Health and Safety at Work Act 2015 (the HSW Act) to give effect to paragraphs 4 to 40 below, that:
  - 2.1      modernise and fill gaps in the existing regulatory obligations for risks arising from working with plant and structures, and doing hazardous work at height and on excavations;
  - 2.2      are placed on the appropriate Person Conducting a Business or Undertaking (PCBU), and provide a means to meet their primary duties of care in the HSW Act;
  - 2.3      are based on Chapters 4, 5 and 6 of the Australian Model Regulations, adapted for New Zealand's circumstances, and adjusted to take account of stakeholder feedback from public consultation;
  - 2.4      replace outdated and prescriptive requirements saved under the HSW Act;
- 3        **agreed** to revoke the following regulations saved under the HSW Act:
  - 3.1      the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999;
  - 3.2      the Amusement Devices Regulations 1978;
  - 3.3      the provisions in Parts 2, 3, and 4 of the Health and Safety in Employment Regulations 1995 relating to plant, and work at height and on excavations;
- 4        **agreed** to apply the Prescribed Risk Management Process in regulations 5 to 8 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 to health and safety risks associated with plant, mobile plant, all work at height, and all work on excavations;

## Plant

- 5 **agreed** to regulatory requirements for general plant that modernise and replace outdated and prescriptive requirements in the Health and Safety Employment Regulations 1995;
- 6 **agreed** that PCBUs must ensure that plant has appropriate guarding, safe maintenance and cleaning, and safe operational controls, emergency stops and warning devices;
- 7 **agreed** that PCBUs must ensure that the health and safety risks of plant are managed throughout the life of the plant through:
- 7.1 inspection whenever plant is altered, to ensure risks are monitored;
  - 7.2 using a competent person whenever plant is altered, maintained, inspected or tested;
  - 7.3 preventing unauthorised alterations or unintended use that is not contemplated by the plant's design and that compromises health and safety as a result;
- 8 **agreed** that PCBUs must meet additional controls that ensure the specific risks from plant used for lifting or suspending loads and from laser equipment are managed;

## Mobile plant

- 9 **agreed** to regulatory requirements for mobile plant that modernise and replace requirements in the Health and Safety Employment Regulations 1995 for roll-over protection and seatbelts, while removing exemptions for quad bikes and agricultural use of tractors;
- 10 **agreed** that PCBUs must manage the specific risks from mobile plant by:
- 10.1 ensuring a suitable combination of devices to protect the operator;
  - 10.2 ensuring no passengers unless they have protections at least as high as that provided to the operator;
  - 10.3 managing risks of collision;
- 11 **agreed** that PCBUs must meet additional controls that ensure the specific risks from forklifts are managed;

## Upstream duties on designers, manufacturers, importers, suppliers, installers

- 12 **noted** that PCBUs who design, manufacture, import, supply, install, construct or commission plant and structures to be used at a workplace (upstream PCBUs) have a significant influence on ensuring safe plant and structures in workplaces, and require further clarity on how to best meet their primary duties of care;
- 13 **agreed** that upstream PCBUs must:
- 13.1 provide or take reasonable steps to obtain specified information about a plant's design, to support the safe use of the plant in a workplace;
  - 13.2 use that information when manufacturing, inspecting or testing, or installing, constructing or commissioning the plant;
- 14 **agreed** that PCBUs must provide designers with information about reasonably foreseeable risks and hazards at the workplace when they are ordering new designs of plant;

- 15 **agreed** that designers, manufacturers and importers of plant must, where hazards are identified:
- 15.1 take action to manage risks and hazards;
  - 15.2 consult with the appropriate upstream PCBU where possible;
- 16 **agreed** that suppliers of secondhand plant to be used at a workplace, unless supplied ‘as is’, must, so far as is reasonably practicable, identify faults in the plant and give that information in writing to the person being supplied the plant;
- 17 **agreed** that designers of plant to be used at a workplace must meet equivalent requirements for guarding and safety features as those placed on PCBUs for plant;
- 18 **agreed** that manufacturers of plant to be used at a workplace must ensure that the plant is manufactured and inspected having regard to the information the designer of the plant is required to provide;
- 19 **agreed** that installers, constructors, and commissioners of structures to be used at a workplace, which are not covered by the Building Act 2004, must have regard to information provided by upstream PCBUs or the instructions provided by a competent person;
- 20 **agreed** that PCBUs must provide designers with information about reasonably foreseeable risks and hazards at the workplace when they are ordering new designs of structures not covered by the Building Act 2004;

### High-risk plant

- 21 **agreed** that the provisions of the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999 and the Amusement Devices Regulations 1978 be revised and consolidated into a new single set of regulatory obligations for high-risk plant, incorporating components of the Australian Model Regulations;
- 22 **noted** that the new regulations for high-risk plant will revise and retain the existing inspection and accreditation processes, while:
- 22.1 including relevant new types of plant;
  - 22.2 improving the consistency of verification of design and inspection practices;
- 23 **agreed** to introduce new duties for high-risk plant, as prescribed under section 12 of the HSW Act, requiring:
- 23.1 PCBUs to ensure they only use or supply high-risk plant that has its design verified and registered;
  - 23.2 the registration of verified designs of high-risk plant with WorkSafe New Zealand (WorkSafe), which will include all plant currently covered by the regulations referred to in paragraph 21 above, and:
    - 23.2.1 steep-slope mechanical forestry harvesting equipment;
    - 23.2.2 elevating work platforms and other mechanical access equipment;
    - 23.2.3 certain categories of portable cranes, and other large scale lifting equipment;

- 23.2.4 concrete pumping/placing booms and hydraulic arms;
- 23.2.5 hydraulic vehicle hoists;
- 23.2.6 scaffolding, edge protection, and proprietary construction support systems;
- 23.3 the registration of specified items of high-risk plant with WorkSafe, with authorised inspection bodies maintaining inspection records on the register, and that this will include all plant currently covered by the regulations referred to in paragraph 21 and:
  - 23.3.1 steep-slope mechanical forestry harvesting equipment;
  - 23.3.2 elevating work platforms and other mechanical access equipment;
  - 23.3.3 certain categories of portable cranes, and other large scale lifting equipment;
  - 23.3.4 concrete pumping/placing booms and hydraulic arms;
- 24 **agreed** that WorkSafe may authorise operators of large-scale bespoke pressure equipment systems to maintain their own registers of such plant as an alternative to the requirements in paragraph 23 above;
- 25 **agreed** that territorial authority permits be required for higher-risk portable amusement devices only, instead of for all types of amusement devices;

## Work at height

- 26 **agreed** to regulatory requirements that modernise and replace the requirements in the Health and Safety in Employment Regulations 1995 for work at height, and that remove the exemptions for work at height below three metres and for agricultural work;
- 27 **agreed** to modernise the definition of construction work based on the Australian Model Regulations to clarify where greater protections apply;
- 28 **agreed** that PCBUs must follow a hierarchy of risk controls for work at height in construction work, with specified circumstances where work from a ladder is permitted;
- 29 **agreed** that scaffolds with a work surface that is over five metres in height must be erected by a licensed scaffolder and notified to WorkSafe;
- 30 **noted** that on 8 May 2019, DEV agreed to apply the high risk work licence and licensing process based on the Australian Model Regulations to new refrigeration, heating and air conditioning licences under the HSW Act [DEV-19-MIN-0105];
- 31 **agreed** to:
  - 31.1 introduce the Australian Model Regulations high risk work licence for scaffolding construction and inspection, to replace the outdated certificate of competence in the Health and Safety in Employment Regulations 1995;
  - 31.2 allow WorkSafe to recognise a third party to issue high risk work licences;
  - 31.3 move to four classes of scaffolding licences to reflect current industry practice, and to add an inspection-only licence;

## Work on excavations

- 32 **agreed** to regulatory requirements that modernise and replace the requirements in the Health and Safety in Employment Regulations 1995 for excavations;
- 33 **agreed** to retain and revise existing requirements for excavations in construction work at a depth of 1.5 metres for shoring, fencing and notification to WorkSafe;
- 34 **agreed** that PCBUs undertaking excavations in construction work must have a competent person determine that the ground is stable, or have a suitable combination of benching, battering or shoring to prevent ground collapse;
- 35 **agreed** to require the PCBU with site control to do what is reasonably practicable to identify underground services information;

## Approach where other regimes provide protections

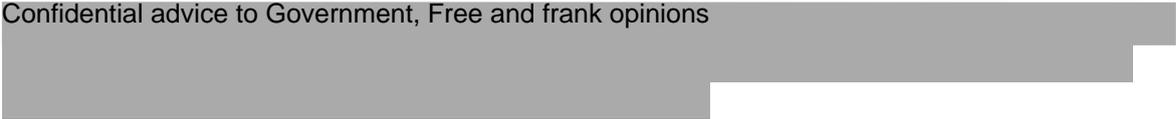
- 36 **noted** that:
- 36.1 where Transport Rules for aircraft, vessels, and road and rail vehicles already provide sufficient protection against work health and safety risks, the intent is that those Rules will be considered as meeting the proposed requirements;
- 36.2 vehicles used off road or on private land will be required to fully comply as they are not covered by Transport Rules;
- 37 **agreed** to the following exclusions from general plant requirements and upstream requirements to modify plant to address identified hazards and for guarding and safety features, as comparable Rules under transport legislation already provide a level of protection:
- 37.1 vessels and plant on board vessels regulated by Maritime Rules, except for processing machinery and material handling equipment, to minimise duplication while avoiding disparities with protections for work onshore;
- 37.2 aircraft and plant on board aircraft;
- 38 **noted** that the proposed regulatory requirements are not always appropriate for plant and structures of the Armed Forces because of its specialised nature and the unique role of the New Zealand Defence Force;
- 39 **agreed** that the proposed regulatory requirements will not apply to plant and structures of the Armed Forces where a Defence Force Order, issued under section 27(2) of the Defence Act 1990, provides an alternative compliance pathway;
- 40 **noted** that current exemptions for high-risk plant on ships and aircraft, including military aircraft and naval ships, will continue to apply;

## Regulatory and infringement offences and penalties

- 41 **noted** that the framework for regulatory offences and penalties made under the HSW Act was agreed in September 2015 [CAB-15-MIN-0118];
- 42 **noted** that the approach to identifying infringement offences under the HSW Act was agreed in September 2015 [CAB-15-MIN-0118];

- 43 **noted** that the framework for applying infringement fines for regulations made under the HSW Act was agreed in February 2016 [LEG-16-MIN-0012];
- 44 **noted** that the Ministry of Business, Innovation and Employment will develop appropriate offences and penalties based on these frameworks, in line with Ministry of Justice guidance, for further public consultation;

### **Public consultation on exposure drafts of regulations and on remaining matters**

- 45 **authorised** the Minister for Workplace Relations and Safety to undertake public consultation with affected parties on appropriate regulatory and infringement offences and penalties, transitional arrangements, details of the high risk work licensing process for scaffolders, and administrative fees, that give further effect to the proposals in paragraphs 5 to 40 above;
- 46 **invited** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 47 **noted** that where appropriate, detailed or technical matters will be included in Safe Work Instruments, a secondary legislative instrument developed and consulted on by WorkSafe and approved by the Minister for Workplace Relations and Safety;
- 48 **authorised** the Minister for Workplace Relations and Safety to make decisions, consistent with the above proposals, on any issues that arise during the drafting process;
- 49 **authorised** the Minister for Workplace Relations and Safety to approve and release an exposure draft of the regulations and related commentary for public consultation, **subject to** an appropriate communications plan developed in consultation with the Prime Minister's office and other Ministers as appropriate;
- 50 **noted** that any remaining policy decisions, including implementation decisions, will be sought from Cabinet in early 2022 following the public consultation process;
- 51 Confidential advice to Government, Free and frank opinions 

Michael Webster  
Secretary of the Cabinet