



BRIEFING

Updated Cabinet Paper on Plant and Structures Regulatory Reform

Date:	11 March 2021	Priority:	Medium
Security classification:		Tracking number:	2021-1999

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	<p>Note the information and changes made in response to your questions on the draft Cabinet paper</p> <p>Consult your Ministerial colleagues on the updated Cabinet paper</p>	15 March 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Lisa Collins	Manager, Health and Safety Policy	04 897 6436	Privacy of natural persons	✓
Alannah MacShane	Principal policy advisor, Health and Safety Policy	Privacy of natural persons		
Charlotte Woolhouse	Senior policy advisor, Health and Safety Policy	Privacy of natural persons		

The following departments/agencies have been consulted
<p>Cover briefing: WorkSafe New Zealand</p> <p>Cabinet paper: Ministries of Education, Social Development, Defence, Transport, Justice and Health; Ministries for Women, Culture and Heritage, Primary Industries, Housing and Urban Development, Environment, Pacific Peoples; Departments of Prime Minister and Cabinet, Internal Affairs, and Corrections; Treasury, Te Puni Kōkiri, Office of Ethnic Communities; New Zealand Police, New Zealand Customs Service; WorkSafe New Zealand, Civil Aviation Authority, Maritime New Zealand, Accident Compensation Corporation; Tertiary Education Commission; Fire and Emergency New Zealand; Waka Kotahi/New Zealand Transport Agency, Environmental Protection Authority, and Kāinga Ora – Homes and Communities.</p>

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Updated Cabinet Paper on Plant and Structures Regulatory Reform

Date:	11 March 2021	Priority:	Medium
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Purpose

This paper responds to the questions you raised on the draft Plant and Structures Cabinet paper and informs you of the outcome of agency consultation. It provides an updated Cabinet paper and regulatory impact analysis (RIA) for consultation with your Ministerial colleagues in preparation for submission to Cabinet Economic Development Committee.

Executive summary

MBIE is progressing its review of Plant and Structures regulations in response to the significant harm that plant and structures involves (79 per cent of work-related deaths from injury overall, which is 54 deaths annually) and to the outstanding improvements recommended by the Pike River Commission and Independent Taskforce.

Our work to complete the review has been a multi-year process, which has included extensive consultation, in recognition of the large numbers of stakeholders affected by the reforms proposed. Generally there is support for the changes proposed from public consultation. Feedback from agencies has been mostly minor, and has required minimal adjustments to the Cabinet paper attached for your approval.

In response to the specific questions you have raised, this briefing also provides you with further information clarifying:

- That the \$50,000 maximum allowable penalty for regulatory offences will interface with the higher penalties of the *Health and Safety at Work Act 2015* (HSW Act) – up to \$3 million for reckless conduct by a corporate entity
- That existing HSW Act provisions supporting co-ordination across the supply chain will be improved by the new requirements proposed
- The phased implementation approach – running up to 3 years – that is proposed, and how businesses will be supported through guidance
- New Zealand's progress in meeting system targets and MBIE's proposals for design and operational requirements to be introduced for forklifts
- Free and frank opinions, Confidential advice to Government

This paper also outlines changes made as a result of consultation on the draft Cabinet paper with government agencies, including

- Amendments made to the application of requirements to the plant and structures of the New Zealand Defence Force
- Clarifying the approach to avoid unnecessary duplication with Land Transport Rules.

With your approval of the updated Cabinet paper, we recommend that Cabinet considers it in March/April. This will allow phased implementation to begin from mid-2022. MBIE's view is that

there will be significant benefits from the changes – indicatively \$43 million annually, in lives saved alone.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** MBIE has made changes to the draft Cabinet paper responding to your feedback and to feedback from government agencies (Noted)
- b **Note** that government agencies had mostly minor feedback, with the main adjustments clarifying the coverage of road and railway vehicles, and military aircraft, ships and plant (Noted)
- c **Consult** on the draft Cabinet paper and regulatory impact analysis with your colleagues (Consult / Discuss)
- d **Note** that you are required under section 213 of the *Health and Safety at Work Act 2015* to consult with the Minister of Defence on any regulations relating to exemptions for the Armed Forces (Noted)
- e **Sign** the letter to the Minister of Defence attached at Annex ⁴Five (Sign / Discuss)
~~Not attached.~~

L Collins

Lisa Collins
Manager, Health and Safety Policy
Labour, Science and Enterprise, MBIE

11, 03, 21

M Wood

Hon Michael Wood
Minister for Workplace Relations and Safety

14, 3, 21

Background

1. In December 2020 MBIE provided you with a draft Cabinet paper for review [briefing 2021 1680 refers]. MBIE has updated the draft Cabinet paper to respond to your comments and to feedback provided through agency consultation. This briefing paper provides the additional information you have requested and outlines the changes made to the Cabinet paper.
2. The updated Cabinet paper for Ministerial consultation is attached as **Annex One**.
3. The updated Regulatory Impact Analysis (RIA) is attached as **Annex Two**. The RIA has been reviewed by a joint MBIE-Treasury Panel which has confirmed that it meets the required standard. The Panel did not raise any specific points of concern about the quality of MBIE's analysis. On the Panel's recommendation, MBIE has made some minor adjustments to the RIA to improve its accessibility. These include 'key conclusions' summaries for each category of proposals and a further table providing an overview of estimated costs and benefits, in the conclusions section of the document.

Additional information addressing your comments and questions

Providing a summary of potentially contentious issues

4. **Annex Three** sets out the issues we think are likely to be the most contentious, and gives MBIE's views on each of the matters raised. Consultation has shown a high level of support for the changes proposed and MBIE has made a number of adjustments to its proposals to address particular concerns that stakeholders have raised. As a result, there are only a small number of remaining areas that stakeholders are divided on – the discontinuation of current exclusions from required mobile plant protections, for instance. For completeness, **Annex Three** discusses these and other more marginal areas of concern, ie those held by a small minority of submitters, or from misapprehensions regarding the proposals.
5. At your request, MBIE has included further detail about the concerns of specific stakeholders in the updated Cabinet paper.

What status will model train operators have under the new regulations?

6. Amusement devices are currently covered by the *Amusement Devices Regulations 1978*, which were made under the former *Machinery Act 1950* and are saved under the *Health and Safety at Work Act 2015* (the HSW Act). The regulations contain specific provisions for the inspection and registration of model engineering railways operated by clubs affiliated to the Model Engineering Association of New Zealand (MEANZ), but fully apply to other model engineering railways.
7. We are proposing this coverage will be retained, but with two changes that will affect MEANZ affiliated model engineering clubs:
 - Requiring MEANZ to be audited by IANZ and recognised as an inspection body under the regulations, so that consistency of inspection standards can be improved
 - No longer requiring territorial authority permitting for lower risk operations, such as model engineering clubs, to operate (although RMA and Building Act consenting requirements will continue to apply).
8. Our public consultation process led to some acceptance that there is variability in inspection standards to be addressed and support from MEANZ to the changes involving territorial permitting. We have not had any further interaction with MEANZ or its affiliated clubs since the close of public consultation.

Maximum penalties for regulatory offences sit within a broader penalty regime

9. You queried whether the \$50,000 maximum fine for regulatory offences for corporate entities is suitably high, and asked whether there were any alternatives.
10. \$50,000 for a regulatory offence is the maximum penalty allowed by section 211(s) of the HSW Act. This amount was already adjusted upwards to \$50,000 during the Select Committee process on the Health and Safety Reform Bill, to align it with comparable regimes. Revising it further upwards would require legislative change to the HSW Act.
11. This amount is not necessarily the maximum amount a Person Conducting a Business or Undertaking (PCBU) may be charged with by the Court if it has breached a regulation.
12. Section 36 of the HSW Act places the primary duty of care on the PCBU to ensure, so far as is reasonably practicable, the health and safety of workers and others at the workplace. Regulations expand on the primary duty by setting risk or industry-specific requirements. All regulations should be read in this context, and a failure to comply with a regulation is also a failure to comply with the section 36 primary duty of care.
13. Sections 47-49 of the HSW Act set the offences for failing to comply with the section 36 primary duty of care. The level of penalty depends on the nature of the non-compliance:
 - reckless conduct – maximum penalty of \$3 million for a corporate entity
 - failing to comply that exposes individual to risk of death, serious injury or serious illness – maximum penalty of \$1.5 million for a corporate entity
 - failing to comply with a duty – maximum penalty of \$500,000 for a corporate entity.
14. When the regulator lays charges for an alleged breach of a duty identified in regulation, it can do so as a breach of the regulation, or a breach of section 36 and of one of sections 47-49. The existence of a regulation that further defines the responsibilities of a PCBU is evidence that not complying with the regulation is a breach of the section 36 duty.
15. The HSW Act also includes an offence to use plant without authorisation, or allow a worker to use plant without authorisation. This is a penalty in the HSW Act of up to \$20,000 for an individual, or \$100,000 for a corporate entity. This will be applicable to the high risk plant proposals.

Addressing long supply chain issues

16. The Cabinet paper notes that changing working arrangements, including long contracting chains in sub-contracting or labour hire, reduce clarity for PCBUs on who has the obligation to manage risks from plant and structures. You asked about options for addressing this.
17. The HSW Act provides that more than one person may have the same duty, and requires a PCBU to consult with other PCBUs who have a duty in relation to the same matter. This has the effect of requiring PCBUs in a contracting chain to work together on health and safety.
18. We think the Act's provisions sufficiently require PCBUs to work together, although, as implied by the Cabinet paper, this could be better in practice. WorkSafe has guidance on overlapping duties, including how PCBUs can work together when contracting.
19. The more detailed regulatory duties proposed for plant and structures that will directly address this issue are:
 - the duties requiring that general plant and mobile plant used in a workplace is safe, eg guarding, maintenance, operator protections etc, which apply to all workers, including labour hire workers

- placing duties specifically on the PCBU who manages or controls plant – which more clearly identifies the PCBU with the obligation
 - upstream duties (for designers, manufacturers, importers, suppliers, installers, constructors and commissioners of plant and structures) that will clarify for those PCBUs how they can work together to ensure health and safety for workplace plant and structures
 - the excavations duty to check for underground services, with the PCBU who manages or controls the workplace having clear responsibility to identify services.
20. The construction industry has contributed to the excavations good practice guide, on which the underground services regulatory proposals are based. Best practice includes co-operating between contractors, and our discussions throughout raised that this is most commonly, though not universally, managed by the principal contractor taking charge of identifying services.
21. Other work across the Workplace Relations and Safety Policy branch at MBIE is also looking at how a similar responsibility for ensuring minimum employment standards can be introduced in a contracting chain. This work will complement the existing HSW Act requirements. You will receive separate advice on this as part of the migrant exploitation work. Further work looking at dependent contractors is currently on hold, expected to resume once policy resource currently committed to the sick leave extension bill is freed up.

Further information on implementation of the new regulations

22. You asked for further information on different aspects of the implementation of the regulations including the potential for completing implementation sooner than was indicated in the draft Cabinet paper.
23. We have sought further clarification from WorkSafe on the different aspects of implementation, which is outlined below. Note that the detail is still subject to some aspects of the regulations that are yet to be developed, ie after consultation on an exposure draft and subject to further Cabinet decisions on transitional provisions, fees, offences, etc.

WorkSafe campaigns, educational tools and guidance – paragraph 55 of the Cabinet paper

24. WorkSafe will develop initial information products and awareness raising materials and, where possible, make these available to affected businesses, professional groups and other agencies at the time of passing the regulations.
25. Where administrative processes are required, or training standards and processes need to be developed with the engineering profession, or guidance materials developed for plant and structures owners and operators, work can start as soon as the exposure draft is released.

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26. Where information products are reliant on new competencies or standards being developed, there will be initial information provided to those affected to explain processes for moving to the new regulations and encouraging involvement. WorkSafe will work with engineering bodies and sector groups to develop new guidance and competencies. This will occur from the passing of regulations, or before as possible.
27. This is the approach normally taken with complex or large sets of regulations, and there is usually good industry acceptance where processes are made clear to those affected at the start of implementation.

Process/timing for completing registers for existing plant – from paragraph 75 of the Cabinet paper

28. The registers of high risk plant will require the most complex implementation processes, and WorkSafe estimates that registers will not be fully functional before late 2023, [REDACTED]
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[REDACTED]
29. The aspects of the design registers that need to be developed, and suggested timing for the transition could be as follows:
- Design registers available for new designs of all types of plant from late 2023.
 - Plant currently covered by the *Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999* (PECPR regulations) or *Amusement Devices Regulations 1978* will be able to transition to the new registers gradually from late 2023, potentially as their annual inspection certificates require renewal. We will work further with WorkSafe and stakeholders to determine the best progression for this when we develop transitional provisions. Once each plant item is registered, WorkSafe will require third-party inspection bodies to supply the Register with the details of future plant inspections. The collection of plant inspection records and the resulting history accumulation will form an integral part in monitoring the safety of high risk plant by WorkSafe. **Free and frank opinions, Confidential advice to Government**
 - For new types of equipment, new competencies, inspection processes, and guidance will be needed. Our expectation is that these aspects will be developed concurrently with the registers and registration processes. Registration starting dates for different plant types will be decided as transitional provisions, with a view to avoiding future spikes in the volumes of renewals WorkSafe will have to process.
30. Large scale operators of pressure equipment will be able to apply for authorisations to maintain their own records after the regulations are passed.
31. Other aspects of the regulations will be implemented within shorter timeframes but after discussions with WorkSafe our view is that the longer timeframes are required for effective implementation of the high risk plant registers.

Examples for each phase of implementation – paragraph 118 of the Cabinet paper

32. We have added relevant examples for the implementation phases to Figure 7.

Performance against the system targets

33. We have amended the Cabinet paper to more clearly differentiate between how progress in reducing acute deaths compares to progress for reducing serious injury – to clarify that the fatality target is expected to be met, though not the injury target, and that performance against both metrics appears to be worsening. By international standards these rates remain high, with New Zealand's fatality rate roughly twice that of Australia and four times that of the United Kingdom.

Recommendations for forklifts

34. The Cabinet paper proposes that certain design and operational protections for forklifts are introduced, adapted from Australian Model Regulations. We are proposing this approach given the specific risks and harm arising from forklifts. However, we will further consider forklift operator licensing arrangements in our pending 'hazardous work' regulatory reform programme. This topic sits better in this upcoming work programme as it will cover licensing arrangements for a wider range of hazardous work.
35. Officials are available to discuss this approach further, should you require more information.

Residual adjustments to the Cabinet paper

36. At your request we have added to the front section of the Cabinet paper further discussion of:

- Anticipated benefits – which MBIE has indicatively assessed to involve an estimated 20 percent reduction in acute deaths and serious injury.
- How the changes will further progress recommendations from the Royal Commission on the Pike River Coal Mine Tragedy and the Independent Taskforce on Workplace Health and Safety.

37. The updated draft also:

- Clarifies how the 'competent person' threshold will operate for general plant – that is, it will be determined based on a person's knowledge and skills, whether gained through training, qualification or experience (see page 14).
- Clarifies types of forestry equipment expected to be classified as high-risk plant (see amended Figure 1 on page 2).
- Includes a diagram outlining the differences between the existing rules and the proposed new rules for managing risks from working at height in construction (see amended Figure 6 on page 21).

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48. Officials are available to discuss this approach should you require.

Government agency feedback on the draft Cabinet paper

49. MBIE consulted agencies on the draft Cabinet paper and RIA in late January 2021. The feedback provided was helpful while mostly minor, with a number of agencies specifically indicating support for the changes.
50. MBIE has made various revisions to the Cabinet paper and supporting RIA to address particular points raised, specifically to:
- Clarify MBIE's intended approach for avoiding unnecessary duplication with Land Transport Rules – to specify more clearly the circumstances where Land Transport Rules will provide an acceptable pathway to compliance, for example clarifying that the proposed regulations will not supersede the protections already provided by the Transport Rules for passengers in vehicles on public roads
 - Incorporate certain additional material from MBIE's RIA, eg clarifying that MBIE assesses costs to be modest overall, and benefits to be substantially higher (indicatively \$43 million p.a. from avoided deaths from injury alone)

- Provide more detail on the impact on minority population groups and the rural sector
 - Clarify Maritime New Zealand's position as supportive in principle of the partial application of the proposed plant regulations to selected plant on board vessels
 - Clarify how the regulations are anticipated to apply for the New Zealand Defence Force, as discussed in further detail below.
51. The responses we received included feedback from PCO, which has informed the revised recommendations section of the Cabinet paper. Our changes clarify that 'appropriate PCBUs' will mostly be responsible for meeting the requirements, which could be the PCBU who manages or controls plant, the PCBU who controls the workplace (eg with responsibilities for ensuring mobile plant is safely managed through traffic control) or a combination of the two. We have also provided additional details of the types of plant expected to be regulated as high-risk plant under the modernised regulations.
52. There were also some specific constructive suggestions made to inform implementation, which MBIE will liaise with WorkSafe on. A number of agencies have fed back a keen interest in engaging on transition timeframes and specific drafting, at the exposure draft stage.

We propose some exclusions for the Armed Forces

53. The requirements of the HSW Act and its associated regulations apply to the Armed Forces, with the exception of operational activities such as war and other emergencies, and overseas peacekeeping. Section 213 of the HSW Act allows for regulations to provide for exemptions for the Armed Forces. In proposing any regulations exempting the Armed Forces, you must consult with the Minister of Defence.
54. After discussions with the New Zealand Defence Force (NZDF), we propose:
- to retain existing exemptions for equipment on ships or aircraft that would otherwise be considered high-risk plant
 - an alternative compliance pathway for general plant, mobile plant and upstream duties requirements for naval ships and military aircraft of the Armed Forces.

Retaining the existing high risk plant exemptions for equipment on all ships and aircraft

55. Equipment on ships and aircraft, including those operated by the NZDF, and military equipment, are currently exempted from the requirements of the PECPR Regulations. This exemption will continue for all classes of high-risk plant under the new regulations.

Further exemptions for Naval ships, military aircraft and other military plant

56. NZDF has advised that, because of the special nature of Naval ships, military aircraft and other military plant, and the role of the NZDF, it would not be appropriate to apply the general plant, mobile plant or upstream duties requirements to these items of plant.
57. NZDF has proposed and MBIE supports an exemption where there is alternative compliance pathway for naval ships and military aircraft, via a Defence Force Order issued by the Chief of Defence Force under section 27 of the *Defence Act 1990*.
58. For convenience we suggest that you consult with the Minister of Defence on these proposed exemptions at the same time as the wider Ministerial consultation on the draft Cabinet paper. A draft letter to the Minister of Defence is attached as **Annex Four**.

Working closely with Waka Kotahi when drafting Amusement Device regulations

59. Waka Kotahi noted there could be unintended consequences from the proposals concerning amusement devices, which could lead to confusion over the coverage of the *Railways Act 2005* more generally. We have reviewed in more detail how the proposals for amusement devices will stand in relation to the Railways Act.
60. Our proposals are to repeal the Amusement Devices regulations and include amusement devices as a category of high-risk plant covered by the new plant and structures regulations. To do this, “amusement devices” will be defined as including model engineering, while excluding railways and other vehicles that are used as a form of transport and are regulated by other legislation, such as the Railways Act.
61. The Railways Act already excludes most model engineering because it operates on a rail gauge of less than 550mm, although regulations can be made to include any particular narrower gauge operation as a “rail participant”.
62. Our view is that the two pieces of legislation would sit well together and not preclude regulations being made under the Railways Act to include some narrower gauge railway amusement devices that operate more as a mode of transport than an amusement, if this was considered desirable.
63. We will work with Waka Kotahi to ensure the drafting of the new regulations does not have any such unintended consequences and achieves the agreed policy objectives.

Next steps

64. Officials are available to discuss with you any of the changes to the Cabinet paper or further information provided in this briefing, should you wish.
65. The next step is to consult with your Ministerial colleagues on the draft Cabinet paper and RIA (attached as **Annex Two**). We will discuss with your office if any additional material for this consultation is required.
66. Once consultation has been completed and any final changes made, the Cabinet paper can be lodged for consideration at Cabinet Economic Development Committee.

Annex Three: Overview of contentious issues

Subject matter	Points raised	MBIE response	Supplementary details
Adoption of mandatory requirements	A minority of submitters (eg Oji Fibre Solutions, and the Forestry Safety Council (FISC)) were opposed to the introduction of mandatory controls, instead of reliance on approved codes of practice and guidance.	<p>MBIE's view is that non-regulatory interventions alone will be ineffectual in lowering work-related harm. Existing regulations are also not fit for purpose and need replacing, as they have significant gaps and are inconsistent in parts with accepted industry practices, and what the HSW Act requires.</p> <p>The reforms respond to the requests for increased clarity from duty holders and wider stakeholders. They reinforce the HSW Act requirements, with many of the reforms implementing only incremental change.</p> <p>Indicatively, MBIE anticipates resulting benefits of approximately \$43 million annually, from an estimated 9.5 lives saved each year. MBIE has assessed associated costs as modest overall, with resulting costs much less for those duty holders who are already meeting the HSW Act primary duties of care.</p>	<p>Plant and structures are a major cause of harm, resulting in 79 percent of the 822 work-related deaths between 2008 and 2019. This harm has persisted in spite of a range of WorkSafe interventions (from guidance through to industry collaborations and partnerships).</p> <p>Without regulatory change, harm is anticipated to remain at broadly similar levels. Improved protections – as recommended by the Pike River Royal Commission and Independent Taskforce – are required to address the weaknesses of existing requirements, which remain out of step with:</p> <ul style="list-style-type: none"> • Past protections (eg the now-repealed <i>Machinery Act 1950</i>) • Modern workplace practices and equipment • Accepted industry practices (eg the divergence from levels of scaffolding competencies set by the qualification framework) • HSW Act duties of care (eg the extensive exclusions for mobile plant from current operator protection requirements) • The more comprehensive regulations of Australia and the UK, as countries with much lower rates of harm (NZ's fatality rates are approximately twice the rates of Australia and four times higher than the UK).

Subject matter	Points raised	MBIE response	Supplementary details
Innovation may be unduly hampered	A number of submitters commented on the importance of avoiding undue barriers to innovation.	<p>MBIE's view is that the requirements proposed for introduction support innovation rather than discourage it.</p> <p>These requirements involve minimal prescription, like the Australian Model Regulations (AMR) they are based on. This approach gives duty holders a level of flexibility in meeting the requirements. Following the AMR also gives us confidence that the changes are well-tested, and compatible with similar work place environments and risks.</p> <p>MBIE has discounted introducing specific required protections for robotics at this time, as an area of rapid, continuing innovation.</p>	
Lead time for implementation	A number of submitters support a phased implementation to moderate impacts for businesses.	<p>MBIE will be further consulting on transition timeframes, to allow more detailed assessment of the way changes can be appropriately phased, given the transition costs they will involve.</p> <p>WorkSafe guidance will be made available to assist businesses with implementing the changes.</p>	<p>Tentatively, we anticipate a three year implementation process with:</p> <ul style="list-style-type: none"> • the majority of the changes expected to be in place within 18 months of the regulations being passed (likely much sooner for newer forms of plant, relative to older forms of plant requiring capital upgrades) • a more extended period, of approximately three years, applying for a small number of requirements only (where needed to implement extensive, large-scale supporting infrastructure, for instance). <p>In finalising the implementation phasing, MBIE will balance the demands of implementation with the needs of workers and others exposed to the risks of plant and structures in the workplace.</p>

Subject matter	Points raised	MBIE response	Supplementary details
<p>Discontinuing current exemptions from operator protective devices for mobile plant</p>	<p>Some of the agricultural community (such as Federated Farmers) objected to the removal of current exclusions from required operator protections.</p> <p>Federated Farmers and others are concerned about the costs of the new regulations (a general concern, not based on any specific cost estimates), and the capacity of small to medium businesses in particular to meet the costs involved. Federated Farmers considers removing exemptions to be unnecessary, on the basis that duty holders are not precluded from opting for greater protections, regardless of the exclusions that currently apply.</p> <p>These objections were broadly matched by support from other groups such as the Agricultural Leaders' Health and Safety Action Group (ALHSAG) and Horticulture New Zealand.</p>	<p>MBIE supports the removal of exemptions, as these are unnecessary, harmful, and damaging to the integrity of the reforms.</p> <p>The new requirements incorporate flexibility – requiring what is suitable, as determined from robust risk assessment. This invalidates the need for continuing exclusions.</p> <p>MBIE is also recommending current exclusions are removed because of:</p> <ul style="list-style-type: none"> • The inequities they involve for workers, that have grown significantly over time as existing regulatory exclusions (eg voiding quad bikes and side-by-sides from required roll over controls currently) have become increasingly outdated and out of step with new technology. • Incompatibility with the modernised HSW Act primary duties, which existing regulatory exclusions from operator protection requirements can contradict. • The risks to integrity and durability of the reforms from continued exclusions. • The significant harm caused by mobile plant (38 work-related deaths annually and 92 percent of all plant-related work fatalities, on average). 	<p>Mobile plant is a leading cause of harm and the most common type of machine involved in work-related fatal injuries. Harm involving mobile plant occurs across a variety of sectors, but is particularly prevalent in:</p> <ul style="list-style-type: none"> • Agriculture, with 73 percent of work-related fatal injuries involving mobile plant, on average • Construction – leading to 41 percent of work-related fatal injuries • Manufacturing – leading to 28 percent of work-related fatal injuries. <p>In spite of the significant levels of harm caused, health and safety protections for mobile plant have been sparsely regulated traditionally and remain so. Mobile plant was not subject to long-standing <i>Machinery Act 1950</i> protections and currently there are a number of exclusions from operator roll-over protection and seat belt <i>Health and Safety in Employment Regulations 1995</i> (HSE) requirements, including those applying to quad bikes and other plant under 700 kg. These exclusions are a product of a different time – originating from 1967 tractor safety frame regulations (ie exclusions which were made without quad bikes, side-by-sides and other more recent types of vehicles in mind).</p> <p>The exclusions are at odds with the primary duty of care under the HSW Act requiring businesses to do what is reasonably practicable in the circumstances to prevent harm – ie that often will involve roll-over protection and/or seat belts.</p> <p>Crush protection on quad bikes remains rare (indicatively, an estimated 10 percent of vehicles have this).</p>

Subject matter	Points raised	MBIE response	Supplementary details
<p>Processing and other ancillary machinery on vessels will be subject to general machinery requirements, unless covered by more specific Maritime rules</p>	<p>Affiliates of the commercial fisheries sector are opposed to the more extensive protections recommended for certain ancillary equipment (eg processing machinery), favouring instead continued reliance on Maritime rules.</p> <p>These groups consider the proposed requirements to be ill-suited to the maritime operating environment – whether offshore or otherwise (ie for shore-based fish processing). They consider dual sets of rules will be unduly complex, and risk unintended consequences and confusion.</p> <p>Submissions against the proposal were broadly matched by submissions in support. A recurrent view amongst those in favour was that equal risks warrant equal treatment (ie there is equity for workers where the risks of harm are comparable).</p>	<p>MBIE supports the inclusion of ancillary machinery on vessels (ie processing machinery, and material-handling equipment, such as augers and winches) in requirements for guarding and related requirements, to maintain equity by ensuring seagoing workers have the same protections as those on shore.</p> <p>We recognise there is a degree of overlap with Maritime Rules in the protections proposed. We are recommending these additional protections to address areas of relative weakness in the Maritime Rules, which currently do not set a specific compliance pathway for ensuring dangerous machinery is safely guarded. We do not support differential rules because of the risks and scale of harm involved, and the inequities in worker protections this will create.</p>	<p>Unlike most other types of plant, machinery on board ships was excluded from the Machinery Act. Types of plant excluded from these past protections ranges from machinery that is integral to the operation of vessels themselves (such as engines) to more modern forms of ancillary machinery (eg processing plant). Although these types of machinery were excluded from the Machinery Act, the general duties under the former Part 2 of the <i>Maritime Transport Act</i> and, subsequently, the HSE Act and HSW Act have applied to such machinery. There have been (and continue to be) numerous breaches of these Acts involving processing or material-handling equipment on board vessels and harm.</p> <p>For all intents and purposes, the plant that MBIE proposed to apply the new requirements to (eg fish processing machinery) cannot be differentiated from other dangerous machinery on shore.</p> <p>The Ministry of Transport, Maritime NZ, and Ministry for Primary Industries agree with MBIE’s proposals in principle.</p> <p>For the years 2015-2019, there were 6 work-related fatalities involving plant in fishing, hunting and trapping. In that time, there were a further 558 work-related injuries resulting in more than a week away from work in these sectors, a number of which involving machinery as a key cause.¹ Rates of injury are high relative to other sectors, with these sectors ranked sixth highest for 2019-2020, with a rate of 21.34 (assessed per 1,000 FTEs), ahead of forestry and logging (7th ranked, at 21.20).</p>

¹ Indicatively 15 per cent or more, adopting the SWIFT data classifications of injuries involving “hitting stationary or moving objects”, “being hit by moving objects”, “being trapped between moving and stationary objects”, and “being trapped in moving machinery or equipment”.

Subject matter	Points raised	MBIE response	Supplementary details
<p>Making operators of high risk large-scale plant subject to central registration</p>	<p>Some large scale manufacturers objected to central registration of their pressure equipment, which can involve hundreds or thousands of items in complex systems.</p> <p>They said documentation for older plant was often unavailable or that information was commercially sensitive or involved intellectual property rights, and that costs of registration would be high and not justified.</p>	<p>MBIE accepted the thrust of submissions from the larger operators.</p> <p>MBIE supports exemptions from central registration subject to an audit requirement, as an alternative, more proportionate response.</p>	<p>Objectors included Oji Paper Company, Todd Energy, Contact Energy, Methanex, Genesis Energy, Meat Industry Association (ammonia refrigeration plants)</p> <p>There are about 15 such installations, a majority of which are recognised by WorkSafe to operate non-standard procedures under the current PECPR Regulations.</p> <p>The larger operators are very supportive of the current PECPR Regulations and want to retain existing inspection and accreditation processes. They have been supportive of the proposed exemption to date.</p>
<p>Model railway engineering clubs</p>	<p>Model Engineering Association of New Zealand (MEANZ) and affiliated clubs oppose tightening of their current ability to appoint inspectors to inspect club model railways as amusement devices and certify them as safe and able to be registered as amusement devices.</p> <p>MEANZ did not submit that they wanted to be excluded from registration under the regulations.</p>	<p>MBIE does not propose removing the current MEANZ inspection regime, but that MEANZ is audited by IANZ as are other inspection bodies.</p> <p>WorkSafe and local authorities commented on varying standards of inspection and operation for different MEANZ clubs and there are regular incidents and complaints.</p> <p>Because children are involved and community interest in incidents is high, standards should be maintained through a more independent audit process.</p>	<p>There are 30 model engineering clubs affiliated with MEANZ</p> <p>Because most clubs are voluntary associations (having no employees) they do not usually have the duties of a PCBU and HSWA has limited application other than through the amusement device regulations.</p> <p>However, section 12 of HSWA applies the Act to operators of high-risk plant even if they are not a PCBU.</p> <p>Preliminary discussions with IANZ have indicated that MEANZ being audited as an inspection body is feasible and desirable.</p>

Subject matter	Points raised	MBIE response	Supplementary details
<p>Including steep-slope harvesting equipment as high risk plant that requires registration and inspection under the regulations</p>	<p>Forestry peak bodies objected to being subject to regulation.</p> <p>The sector (through the Forest Industry Safety Council - FISC) has acknowledged the need to improve standards with equipment, but says that guidance will be adequate and regulations are not required.</p> <p>The Forest Owners Association and contractors have submitted that the risks to workers are lower because equipment is used away from people, and the “two tree-length rule” applies in all situations.</p> <p>Forestry equipment has not been included in regulations to date and the sector has a strong tradition and preference for using approved codes and guidance alone.</p>	<p>MBIE supports the inclusion of these types of equipment in the regulations because it will provide the required consistency in technical practices and inspection practices.</p> <p>WorkSafe and independent forestry engineering specialists have advised that the equipment concerned is often not well maintained and inspected and there are very regular incidents involving cable logging equipment failure. There are comparable risks with new steep slope harvesting equipment.</p> <p>Steep slope harvesting equipment increasingly sees machinery operators and plant lowered down slopes of between 30 and 60 degrees with potential long steep falls. There are risks to operators and others even if the two tree-length rule is followed in all cases.</p> <p>Manufacturers have indicated support in principle for the proposal to require design verification. <small>Confidential</small></p> <p>Confidentiality</p> <p>While the industry is strengthening inspection processes and qualifications for the equipment through FISC, MBIE’s view is that without regulatory underpinning, priorities and practices for the sector may change and standards not be maintained. What is proposed by the sector is similar to what is proposed in regulations, but without inspection body auditing and the formality of regulations.</p> <p>There are equity issues for forestry workers, who should have the same protections as workers in other industries. NZCTU submitted very firmly on this point.</p>	<p>Use of winch assisted devices is increasing steadily. There are about 120 in use currently, and about 180 cable logging yarders</p> <p>WorkSafe report 12 yarder tower failures in one year.</p> <p>Industry records show 7 of the 19 work-related deaths in the forestry sector between 2008 and 2017 were associated with cable extraction. Of those, five were the result of being struck by an object on the extraction face (wire rope, shackle or stem), one was the result of a fall into a root plate hole created when a corner block stump failed, and another was a fall on a yarder deck.</p>

Subject matter	Points raised	MBIE response	Supplementary details
<p>Adoption of lifting plant protections for older forestry equipment distanced from workers and others</p>	<p>The Forestry Industry Safety Council (FISC) does not support the application of proposed lifting plant requirements in forestry, where older excavators and other kinds of plant that is not specifically designed for lifting or carrying suspending loads, are often operated at a distance from workers.</p> <p>Plant used for lifting purposes was widely recognised as involving more extensive risks, and to therefore warrant further specific requirements. Overall there was support for the proposals, including from the agriculture sector.</p>	<p>MBIE supports the controls recommended. MBIE's view is that these are proportionate for the risks involved. We do not support exclusions for forestry plant, as this will risk undermining the durability and effectiveness of the regulations.</p> <p>We consider that WorkSafe guidance will ensure sufficient clarity for the sector on the use of separation distances, work phasing, or other administrative controls, as alternative means of compliance for older equipment distanced from workers.</p>	<p>For plant used for lifting or lowering or suspending plant, these provisions would require PCBUs to ensure:</p> <ul style="list-style-type: none"> • the use of plant specifically designed for the purposes of lifting or suspending • if using specifically designed plant is not reasonably practicable: <ul style="list-style-type: none"> ○ the plant used instead does not pose increased risks to health or safety (relative to the risks of specifically designed plant) ○ if workers are being lifted or suspended, the use of an attached workbox featuring a safety harness and exit, with certain exclusions for tree lopping (see below for fuller details). <p>Where plant is not being used to lift, lower or suspend loads, these provisions will not apply. In forestry, this can include feller bunchers or yarders which are dragging or directing the fall of loads only (with no lifting above workers).</p> <p>Each year, there are approximately 400 serious harm incidents involving lifting plant.</p>

Subject matter	Points raised	MBIE response	Supplementary details
<p>There is a concern that ‘as is’ sales of poor quality secondhand plant will escalate.</p> <p>The proposed provision will require those supplying secondhand plant to identify faults in the plant and provide that information to the person purchasing the plant, however this provision will not apply to secondhand plant sold ‘as is’</p>	<p>While this proposal was supported by a majority of submitters, some submitters were concerned that this would push more suppliers to sell secondhand plant ‘as is’, rather than going through the process of identifying faults.</p> <p>The duties on suppliers in section 42 of the HSW Act do not apply to suppliers of secondhand plant sold ‘as is’, meaning this type of plant will not be addressed directly by this provision.</p>	<p>On balance we consider that this provision allows New Zealand’s tradition of purchasing secondhand plant to continue to occur, but more safely than currently.</p> <p>This proposal requires suppliers to identify faults and provide that information in writing to the person they are supplying it to. This will give the purchaser information about the condition of the second-hand plant so they can make informed decisions and manage risks appropriately.</p> <p>In practice, this provision will ensure that a PCBU purchasing secondhand plant for use in a workplace either:</p> <ul style="list-style-type: none"> • knows what the faults in the plant are because they have received that information from the supplier, or • knows that they must determine any faults (and manage any risks appropriately) before using the plant at a workplace, because the plant has been sold ‘as is’ and they have not received any information. <p>Guidance by WorkSafe will support PCBUs to understand their responsibilities in relation to second hand plant.</p>	<p>We are somewhat constrained in how we deal with secondhand plant because of the inclusion of a provision in the HSW Act that provides that the supplier duty does not apply to the sale of secondhand plant ‘as is’ – section 42(6). This means we cannot apply this proposal to these suppliers.</p> <p>As some stakeholders commented, placing an information requirement in the regulations on PCBUs supplying secondhand plant may incentivise suppliers to sell more secondhand plant ‘as is’. This may especially be the case if the requirement has a financial penalty for breaching it (which is expected and will be consulted on as part of the next steps).</p> <p>When secondhand plant is sold ‘as is’, the requirement and the cost of identifying faults in the plant is transferred from the supplier to the purchaser, who, in order to meet their HSW Act duties, will be required to find out necessary information before using the plant in their workplace. This may in turn incentivise the purchaser to consider purchasing higher quality plant.</p>

Annex Four: Draft letter to the Minister of Defence

Hon Peeni Henare
Minister of Defence
Parliament Buildings
Wellington

Tēnā koe Peeni,

Consultation as required by section 213 of the Health and Safety at Work Act 2015

I am preparing a Cabinet paper on proposed regulations for plant, structures, working at height and on excavations.

The proposed regulations will affect the plant and structures of the New Zealand Defence Force including Naval ships and military aircraft. I understand that it is not always appropriate for some of the requirements to apply to the NZDF, due to the specialised nature of its plant and structures and the unique role of NZDF.

Section 213 of the Health and Safety at Work Act 2015 allows me to recommend that regulations do not apply (or apply with modifications) to the Armed Forces. I must consult with you in forming this recommendation, and I must also be satisfied that the exemption is not broader than reasonably necessary.

I propose that the NZDF is given an alternative compliance pathway for the general plant, mobile plant and upstream duties requirements outlined in the regulations, via a Defence Force Order. Where a Defence Force Order is issued by the Chief of the Defence Force under section 27 of the Defence Act 1990 that complies with the regulations to the extent practicable, this will be considered sufficient compliance with the requirements.

I also intend to retain the existing exemptions for high-risk plant on Naval ships and military aircraft.

The attached Cabinet paper and regulatory impact analysis outlines this proposed exemption. I intend that my officials will work with yours at the drafting stage to ensure that the parameters are right.

I look forward to your feedback on this proposal.

Nāku noa, nā



Hon Michael Wood
Minister for Workplace Relations and Safety