



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022	Date to be published	19 July 2022

List of documents that have been proactively released

Date	Title	Author
2 June 2022	Cabinet paper: Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022	Office of the Minister of Workplace Relations and Safety
2 June 2022	Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022 LEG-22-MIN-0088 Minute	Cabinet Office
5 May 2022	Mining and quarrying regulations: confirming final policy decisions, and providing draft LEG	MBIE

Information redacted

No

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Office of the Minister for Workplace Relations and Safety
Cabinet Legislation Committee

Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022 (the **amendment regulations**).
- 2 It also seeks some additional decisions from Cabinet about the application of the offences and penalties regime, the timing of requirements coming into force, and updating the mechanism for setting competency requirements.

Executive Summary

- 3 In December 2019 Cabinet agreed to make changes to the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 (the **principal regulations**) [DEV-19-MIN-0322 refers] to:
 - 3.1 bring quarries and alluvial mines into the risk management framework used by mines, modified to be proportionate to the level of risk at quarries and alluvial mines; and
 - 3.2 make some technical changes to how the regulations apply to mines to restore the proportionality that was intended when the regulations were first introduced, and to fix some technical errors.
- 4 I have made a number of decisions on minor or technical matters consistent with the decisions in that paper. In addition, I am asking Cabinet to make three decisions that will enable the completion of the amendment regulations:
 - 4.1 to update the means by which competency requirements for mine workers are set to be via a safe work instrument, to enable consistency across the health and safety regime;
 - 4.2 to apply the existing framework for offences and penalties in the health and safety regulatory regime to the changes made to these regulations; and
 - 4.3 to the staged commencement approach outlined in this paper, which has been discussed with stakeholders, and which they support.

Policy

- 5 The Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 (the **principal regulations**) are made under the Health and Safety at Work Act 2015 (the **HSW Act**). The regulations were made following the Pike River Mine Tragedy and provide for the health and safety of workers in mines and tunnels.
- 6 In December 2019 Cabinet agreed to make changes to the principal regulations [DEV-19-MIN-0322 refers] to:
 - 6.1 bring quarries and alluvial mines into the risk management framework used by mines, modified to be proportionate to the level of risk at quarries and alluvial mines. Quarries and alluvial mines will need to develop and maintain a health and safety management system. Operations with more than four workers will also need to manage specified principal hazards (hazards with the potential to result in multiple fatalities); and
 - 6.2 make some technical changes to how the regulations apply to mines, to restore the proportionality that was intended when the regulations were first introduced and to fix some technical errors.
- 7 Cabinet also authorised me to make decisions on detail and make changes consistent with the policy intent, on any issues that arise during the drafting process. I have agreed to make some changes within this authorisation, however there are three matters that I would like to bring to the attention of Cabinet as I believe these decisions should be made by Cabinet.

Changing the mechanism by which competency requirements are set

- 8 I propose to update the regulatory mechanism by which competency requirements are set from the current system of being made by WorkSafe via notice in the Gazette to being made via a safe work instrument, approved by the Minister for Workplace Relations and Safety. I do not propose to change the regulatory requirements themselves as part of this amendment (though Cabinet has previously agreed to other changes as part of the overall regulation changes). Because this is a change to how a regulatory requirement is set, I consider it meets the threshold for Cabinet to make the decision.
- 9 Competency requirements are a key part of the principal regulations. They ensure that people performing safety-critical roles have the necessary skills to perform those roles. WorkSafe sets the competency requirements (usually a series of unit standards that the applicant must complete, or a requirement to hold a particular qualification), and the continuing professional development hours that the holder of a certificate of competence must complete in order to receive and retain the certificate. The regulations and Schedule 3 of the HSW Act delegate the role of examining applicants for competency to the New Zealand Mining Board of Examiners (MBoE). My proposal to change the mechanism for setting competency requirements would not change this.

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- 10 At the moment these competency requirements are set by WorkSafe via notice in the Gazette. WorkSafe has indicated that this process is cumbersome and confusing for certificate of competence holders, and it is hard for applicants to know what the most up to date requirements are. The process in its current form was set in 2013, prior to the enactment of the HSW Act.
- 11 A safe work instrument is a HSW Act-specific piece of secondary legislation with the purpose of (among other things) prescribing competency requirements. A safe work instrument is developed by the regulator (WorkSafe), approved by the Minister, and has the legal effect given to it by regulations. I consider it is the appropriate mechanism to use to prescribe the competency requirements for mine and quarry workers, and that making this change will build consistency across the HSW regulatory system.
- 12 This change will amend who sets the requirements. Safe work instruments are approved by the Minister for Workplace Relations and Safety (although the Minister can delegate this to the regulator WorkSafe), and the Minister must be satisfied that appropriate parties have been consulted. WorkSafe currently sets the requirements after consultation with the MBoE. This change will mean WorkSafe will consult with relevant parties (including, but not limited to, the MBoE), before providing the safe work instrument to the Minister for consideration.

Offences and penalties

- 13 Cabinet agreed to a framework for regulatory offences and associated penalty amounts under the HSW Act in 2015. The principal regulations apply this framework.
- 14 With the expansion of the requirements of the regulations to quarries and alluvial mines, those operations will now be required to comply with regulations that have offences attached. I propose to apply the existing offences and penalty levels in the regulations to quarries and alluvial mines.
- 15 I also propose to introduce new offences and penalties for quarries and alluvial mines. There are a few places where the framework of the principal regulations, as they apply to mines, does not quite fit with quarries and alluvial mines, so amendment regulations introduce a new regulation. For these, I have applied the existing framework to determine an appropriate penalty amount.
- 16 There are also a handful of adjustments made to the requirements for mines that require an adjustment to the offences and penalties.
- 17 A full list of these additional offences and penalties is in the table below:

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Requirement	Approach to offence/penalty
<p>New regulation 31A introduces a new requirement for the mine operator of a coal exploration operation to appoint a gas monitor.</p>	<p>Introduce an offence for not complying with this regulation, with the maximum fines set at \$10,000 (individual) and \$50,000 (corporation).</p> <p>This is the same amount as other similar regulations (the various requirements to appoint an individual to a specific role within the mining operation).</p>
<p>New regulations 118A and 118B introduce a requirement on the operators of specified quarries and alluvial mines to seek geotechnical advice for ‘high-risk working faces’, and to use that advice in the development of their health and safety management systems.</p>	<p>Introducing an offence for failing to seek geotechnical advice or failing to use this advice when developing the health and safety management system, with the maximum fines set at \$10,000 (individual) and \$50,000 (corporation).</p> <p>This is an offence relating to risk assessment and hazard identification (as per Cabinet’s 2015 decision), and this approach is consistent with other comparable requirements in the regulations that require the operator to identify hazards.</p>
<p>Regulation 138 sets the requirements for equipment for raising and lowering mine workers and the material they are mining.</p> <p>This change simplifies the drafting (it was previously very confusing for operators) but doesn’t change the policy intent.</p> <p>During drafting, it was identified that the offence currently only covered part of the regulation.</p>	<p>Expand the existing offence to cover the entire regulation. Retain the existing penalty amounts.</p> <p>The requirements in these regulations were originally introduced in 2013, and then ‘lifted and shifted’ in 2016 (with minor modifications) to be under the HSW Act. In 2013, the offence covered the entire regulation. The coverage was reduced in error in 2016, and I recommend that the offence coverage is restored.</p> <p>Having regulation 138(2) as an offence is consistent with the framework for regulatory offences, and with other requirements in these regulations.</p>
<p>New regulation 183A introduces an alternative compliance option to regulation 183. Regulation 183 requires that a seal installed in a mine meets the prescribed standard, based on the amount of overpressure expected. Regulation 183A will allow mines where overpressure is not a risk to install a different type of seal, more suited to the type of risks presenting.</p>	<p>Introduce an offence for installing an alternative seal without permission from the regulator, with the maximum fines set at \$10,000 (individual) and \$50,000 (corporation).</p> <p>This is an offence relating to a specific risk control in a high risk industry (as per Cabinet’s 2015 decision), and the approach and amounts are consistent with the amounts in regulation 183.</p>

Requirement	Approach to offence/penalty
<p>Regulation 221 requires mine operators to ensure that a written report is created by the interviewer or supervisor of each shift, and the information is communicated to the following shift.</p> <p>This requirement will now apply to quarries and alluvial mines.</p> <p>The offence provision currently only covers part of the regulation.</p>	<p>Expand the existing offence to cover the entire regulation. Retain the existing penalty amounts.</p> <p>The requirements in these regulations were originally introduced in 2013, and then 'lifted and shifted' in 2016 (with minor modifications) to be under the HSW Act.</p> <p>In 2013, the offence covered the entire regulation. The coverage was reduced in error in 2016 and I recommend that the offence coverage is restored to cover all types of operations.</p>

Approach to commencement and transitional arrangements

- 18 I asked MBIE and WorkSafe to consult with targeted stakeholders on a proposed approach to transition. I have tried to balance providing WorkSafe and regulated parties enough time to comply with the new requirements with bringing the changes into force as soon as possible. I have also tried to make the transition as straightforward as possible, so that it is clear to regulated parties when they have to comply with the updated requirements.
- 19 I have broken the changes into three categories:
 - 19.1 **Technical changes for mines** – these requirements will come into force on 18 July 2022. They are largely clarifications of existing requirements, and no physical changes and only minor administrative changes for operations will be required. The Cabinet policy paper indicated that some mining operations might need 2-3 years to comply if they had to drive new shafts at their operations. However, WorkSafe and stakeholders have now confirmed this will not be necessary, and that immediate commencement in accordance with the 28 day rule is sufficient.
 - 19.2 **Bringing quarries and alluvial mines into the risk management framework** – I propose to bring the majority of new requirements into force in one year (18 July 2023), with a small number coming into force immediately (18 July 2022). I consider this will give the industry sufficient time to develop health and safety management systems and principal hazard management plans. It also allows existing and new operations to undertake this process together and learn from each other (as was the experience when the requirements were brought in for mines). The requirements I propose to bring into force on 18 July 2022 are administrative; relate to worker engagement and participation (to ensure workers are involved in preparing the initial documentation); and relate to worker health monitoring.

19.3 **Changes as they relate to certificates of competence** – I propose to bring these changes into effect on 18 July 2023, which will give WorkSafe sufficient time to develop the proposed safe work instrument and consult on its content. Where holders of certificates of competence will need a new type of certificate of competence, I propose to allow these people two years to gain the new certifications, which will mean some requirements come into force in July 2024 and 2025. Stakeholders have advised me that this is a sufficient amount of time. As the mechanism for setting competency requirements is changing, I propose that the regulations state that all current holders of certificates of competence retain their existing certificates (any renewals will occur under the new regime).

20 This phased approach was discussed with stakeholders and they were supportive of it.

Amending provisions in statute

21 There are two instances where these regulations will amend a provision in statute.

22 Schedule 3 of the HSW Act defines ‘tunnelling operation’ and allows regulations to declare certain operations not to be tunnelling operations. Cabinet previously agreed to reword the existing declaration to better align with the policy intent behind the original decision. There will be no change in how the regulator enforces this regulation.

23 Section 24 of the HSW Act defines ‘notifiable incident’ (incidents that must be notified to the regulator) and allows regulations to declare an incident to be notifiable. The principal regulations already declare a range of incidents to be notifiable when they happen in a mine. I intend to introduce a new notifiable incident to this list, as well as make some minor amendments to existing notifiable events for clarity, and to expand the coverage of the existing list to quarries and alluvial mines.

Timing and 28-day rule

24 I propose that the amendment regulations will come into force in stages, as outlined in paragraph 19. The first set of changes will come into force on 18 July 2022, and then the majority of remaining changes one year after that in July 2023. This approach is supported by stakeholders, and balances giving regulated parties time to comply with the regulations, while bringing the changes into force as soon as possible.

25 To enable a two-year transition for holders of certificates of competence, a handful of associated changes will come into force in July 2024 and 2025, depending on the type of certificate..

26 This approach is compliant with the 28-day rule.

Compliance

- 27 I can confirm the amendment regulations comply with each of the following:
- 27.1 the principles of the Treaty of Waitangi;
 - 27.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 27.3 the principles and guidelines set out in the Privacy Act 2020;
 - 27.4 relevant international standards and obligations;
 - 27.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory prerequisites for the making for regulations

- 28 Section 217 of the HSW Act requires me to consult with persons and organisations I considers appropriate before recommending the Governor-General makes regulations. The policy decisions made in December 2019 were consulted with the mining and quarrying industry. The minor and technical decisions, additional decisions in this paper, and an exposure draft of the regulations were consulted with a targeted group of industry stakeholders in July and October 2021. I am satisfied that this statutory prerequisite has been met.
- 29 Before making a recommendation to declare in regulation incidents to be notifiable under section 24, section 219 of the HSW Act requires me to have regard to the purpose of the Act and to be satisfied that the change is not broader than reasonably necessary to address the matters that gave rise to the proposed regulation. I am satisfied this is the case.

Regulations Review Committee

- 30 There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 31 These Amendment Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 32 The Treasury Regulatory Quality Team has determined that:
- 32.1 The proposals to better target principal hazard management to catastrophic risk and to clarify definitions and the application of the principal regulations are exempt from the Regulatory Impact Analysis (RIA) requirements on the basis that they are minor and technical

changes to existing regulations to restore the original policy intent and ensure workability; and

- 32.2 The proposed changes to require more formality in managing risks in quarries and interpret 'escapeways' for underground metalliferous mines are exempt from the RIA requirements on the basis that they will have no or only minor impacts on businesses, individuals and not-for-profit entities.

Financial implications

- 33 There are no financial implications associated with the changes in this paper.

Publicity

- 34 The extractives industry is the only industry affected by these changes, and the sector is well defined. I have asked MBIE and WorkSafe to communicate these changes directly with affected stakeholders. WorkSafe is preparing guidance to support the industry to adjust to these new requirements. MinEx (the industry health and safety body), the relevant unions, and the industry training organisation have indicated their willingness to support MBIE and WorkSafe to communicate the changes to their members.

Proactive release

- 35 I intend to proactively release this paper, and the briefings I have received on the minor and technical changes within 30 business days.

Consultation

- 36 In developing the policy proposals the Ministry of Business, Innovation and Employment consulted with the mining and quarrying industry. My officials also undertook further targeted consultation with a group of industry stakeholders on an exposure draft of the amendment regulations.
- 37 The Ministry of Justice was consulted on the proposals to create and alter offences and penalties. It did not raise any concerns with the application of the existing framework.
- 38 Consultation was undertaken with agencies in the development of the policy approach. A draft of the amendment regulations was consulted with WorkSafe, the energy and resources markets branch of MBIE, Fire and Emergency New Zealand, and Te Kāhui Whakamana Rua Tekau mā Iwa — Pike River Recovery Agency.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 4 December 2019 the Cabinet Economic Development Committee agreed to:
 - 1.1 bring quarries and alluvial mines into the risk management framework used by mines, modified to be proportionate to the level of risk at quarries and alluvial mines; and
 - 1.2 make some technical changes to how the regulations apply to mines, to restore the proportionality that was intended when the regulations were first made and to fix some technical errors [DEV-19-MIN-0322];
- 2 agree to amend the means for setting competency requirements for workers performing key safety functions in the extractives industry to be via a safe work instrument;
- 3 agree to apply the offences and penalties framework for the health and safety at work regulatory regime, previously agreed by Cabinet, to the changes [CAB-15-MIN-0118];
- 4 agree to the phased approach to commencement and transition of the regulations, to allow the regulator and regulated parties time to comply with the new requirements;
- 5 note that the Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022 will give effect to the decisions referred to in paragraphs 1, 2, 3 and 4 above;
- 6 note that section 217 of the Health and Safety at Work Act 2015 requires the responsible Minister to consult with persons and organisations that the Minister considers appropriate before recommending the making of any regulations;
- 7 note that section 219 of the Health and Safety at Work Act 2015 requires the responsible Minister to, before making a recommendation to declare an incident to be notifiable in regulations, have regard to the purpose of the Act and to be satisfied that any additional notifiable incidents declared in regulation are not broader than reasonably necessary;
- 8 note the advice of the Minister for Workplace Relations and Safety that these requirements have been met;
- 9 authorise the submission to the Executive Council of the Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022;

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- 10 note that the Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022 come into force in stages, starting on 18 July 2022, with other requirements coming into force on 18 July 2023, 2024 and 2025.

Authorised for lodgement

Hon Michael Wood
Minister for Workplace Relations and Safety

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