



## COVERSHEET

<b>Minister</b>	Hon Brooke van Velden	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025 and the Health and Safety in Employment (Scaffolding) Amendment Regulations 2025	<b>Date to be published</b>	13 October 2025

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
September 2025	Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025 and the Health and Safety in Employment (Scaffolding) Amendment Regulations 2025	Office of the Minister for Workplace Relations and Safety
11 September 2025	Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025 and the Health and Safety in Employment (Scaffolding) Amendment Regulations 2025 LEG-25-MIN-0178 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 the reason of Confidential advice to Government.

**Commercial: In Confidence**

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

**Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025 and the Health and Safety in Employment (Scaffolding) Amendment Regulations 2025**

**Proposal**

- 1 This paper seeks authorisation to submit two regulatory amendments to the Executive Council, on the storage of flammable products (*Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025*) and on scaffolding certificates of competence (*Health and Safety in Employment (Scaffolding) Amendment Regulations 2025*).

**Policy**

*The proposed Hazardous Substances Amendment Regulations resolve compliance issues for large retail shops selling flammable products*

- 2 The *Health and Safety at Work (Hazardous Substances) Regulations 2017* (Hazardous Substances Regulations) set requirements for the work-related use, storage, and handling of explosive, flammable, oxidising, toxic, and corrosive substances. A compliance certifier assesses a business's controls that manage the risk from hazardous substances and issues a compliance certificate if the business is compliant.<sup>1</sup>
- 3 The Hazardous Substances Regulations set requirements for retail shops that sell flammable liquids such as paint and solvents to the public. The requirements typically apply to large retail hardware shops, but also retailers of agrichemicals. The requirements allow these retail shops to store and display flammable liquids without the usual separation distances or fire-resistant walls between the flammable liquids and the places in the shop where the public is present.
- 4 There are different interpretations of how the Hazardous Substances Regulations apply to retail shop buildings that have external retail areas such as garden centres, timber yards, or sales yards. Confidential advice to Government  
[Redacted]  
[Redacted]  
[Redacted]
- 5 Confidential advice to Government  
[Redacted] This means that an amendment to the Hazardous Substances Regulations is urgently

<sup>1</sup> Compliance certifiers are authorised and regularly audited by WorkSafe New Zealand. A compliance certificate is like a warrant of fitness for a motor vehicle; without a compliance certificate, businesses cannot lawfully store and use the substances that are most hazardous. A compliance certificate must be renewed at regular intervals.

needed to provide certainty to retailers. This issue was first raised with me by Retail NZ at the beginning of my term and is one of the first amendments to regulations I am proposing as a part of the wider health and safety at work reforms.

- 6 In December 2024, Cabinet agreed to amend the Hazardous Substances Regulations to clarify that no separation is required between a building that is a retail shop that is storing class 3.1B and 3.1C flammable liquids and a place (e.g. a garden centre) external to that building if the place is:
  - 6.1 on the same retail site as the building, and
  - 6.2 an integral part of the retail shop [CBC-24-MIN-0114 refers].
- 7 Cabinet also agreed that no separation is required between the retail shop building and the external place even if they are under the management or control of different persons conducting a business or undertaking (e.g. a cafe) and provided the conditions in paragraph 6 are met.
- 8 Cabinet also agreed to amend the Hazardous Substances Regulations to allow small retail shops to briefly open paint containers for tinting, as was always intended [CBC-24-MIN-0114 refers]. This will ensure that smaller retail shops are treated the same as large retail shops.

*Stakeholders have been consulted on the draft regulations and support the amendments*

- 9 The Ministry of Business, Innovation and Employment (MBIE) released draft Hazardous Substances Amendment Regulations to key stakeholders, including Retail NZ, affected retailers, and compliance certifiers. Stakeholders generally support the Hazardous Substances Amendment Regulations and no changes were needed as a result of consultation.

*The proposed HSE Amendment Regulations address an issue related to the definitions of the scaffolding certificates of competence*

- 10 The *Health and Safety in Employment Regulations 1995* (HSE Regulations) set requirements for high-risk work, such as work at heights, and provide for certificates of competence where it is required to undertake certain high-risk work.
- 11 Under the HSE Regulations, scaffolders are required to hold a certificate of competence to erect, maintain, repair, and dismantle basic, advanced, and suspended scaffolding over five metres. These certificates are issued by Scaffolding, Access, and Rigging New Zealand (SARNZ) under delegated authority from WorkSafe, and are intended to reflect scaffolding industry practice.

Confidential advice to Government



- 13 During the public consultation in 2024 this issue was brought to my attention by SARNZ and I have prioritised it alongside the urgent amendments to the Hazardous Substances Regulations as there is a clear issue that can be resolved quickly. This allows certainty for the construction sector that there will be no compliance issues with their current certificates of competence.
- 14 The HSE Amendment Regulations update the classes and definitions of scaffolding certificate to reflect current industry practice: four classes of certificate, for elementary, intermediate, advanced, and suspended scaffolding.

*Stakeholders support the amendments*

- 15 These changes were consulted widely on in 2019, agreed to by the previous Government as part of a wider suite of regulatory amendments in 2021 [DEV-21-MIN-0092], and the updated provisions drafted by the Parliamentary Counsel Office (PCO). However, this work was halted by the previous Government prior to the election.
- 16 To ensure the proposed changes are up to date, MBIE consulted with SARNZ and WorkSafe on the draft definitions and they are supportive of them. SARNZ's submission as a part of the earlier consultation in 2019 noted that a survey of members was generally supportive of updating the definitions for the scaffolding certificates of competence.
- 17 During my public consultation on reforming work health and safety law, submitters raised ongoing concerns about the outdated HSE requirements for scaffolding. Based on these concerns, I have also instructed officials to continue reviewing the remaining scaffolding rules as a part of my wider sectoral relief package.

**Timing and 28-day rule**

- 18 The regulations will come into force on 20 October 2025.

**Compliance**

- 19 The Amendment Regulations comply with each of the following:
  - 19.1 the principles of the Treaty of Waitangi;
  - 19.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*;
  - 19.3 the principles and guidelines set out in the *Privacy Act 2020*;
  - 19.4 relevant international standards and obligations;
  - 19.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 20 Section 217 of the *Health and Safety at Work Act 2015* (the Act) requires me to consult with all persons and organisations that I consider appropriate, having regard to the subject matter of the proposed regulations. The Act also requires me to consult

with the Environmental Protection Authority when the proposed regulations relate to hazardous substances.

- 21 To meet these requirements, MBIE, on my behalf, undertook targeted consultation with Retail NZ, the New Zealand Paint Manufacturers Association, large retail hardware shops, rural retailers, compliance certifiers, and the Environmental Protection Authority on the policy proposals and draft Hazardous Substances Amendment Regulations.
- 22 MBIE also undertook targeted consultation with Scaffolding, Access, and Rigging New Zealand, and WorkSafe on the proposed definitions contained in the HSE Amendment Regulations. Earlier public consultation in 2019 showed support for updating these regulations.

### **Regulations Review Committee**

- 23 I do not consider that there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House.

### **Certification by Parliamentary Counsel**

- 24 Parliamentary Counsel Office has certified the draft Amendment Regulations as being in order for submission to Cabinet.

### **Impact Analysis**

- 25 The Ministry for Regulation determined that these proposals are exempt from the requirement to provide a Regulatory Impact Statement on the grounds they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

### **Publicity**

- 26 I intend to issue a press release once the Amendment Regulations are published in the *New Zealand Gazette*, aligning these changes with my wider work programme on sector specific health and safety relief. MBIE will also inform key stakeholders.

### **Proactive release**

- 27 I intend to proactively release this paper, subject to redactions as appropriate under the *Official Information Act 1982*.

### **Consultation**

- 28 The following departments and Crown entities have also been consulted during the development of the policy proposals and draft Amendment Regulations: the Department of Internal Affairs, the Environmental Protection Authority, Fire and Emergency New Zealand, the Ministry for the Environment, the Ministry for Primary Industries, the Ministry for Regulation, Parliamentary Counsel Office, the Treasury, and WorkSafe New Zealand. The Department of the Prime and Cabinet has been informed.
- 29 MBIE, on my behalf, undertook targeted consultation with key stakeholders as noted in paragraphs 19 and 20 above.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 25 November 2024 the Cabinet Business Committee agreed:
  - 1.1 to amend the *Health and Safety at Work (Hazardous Substances) Regulations 2017* to clarify that no separation is required between a building that is a retail shop that is storing class 3.1B and 3.1C flammable liquids (e.g. paint) and a place (e.g. a garden centre) external to that building if:
    - 1.1.1 the place is on the same retail site as the building; and
    - 1.1.2 the place is an integral part of the retail shop.
  - 1.2 that the decision in paragraph 1.1 above would also apply if the building that is a retail shop and the external place are under the management or control of different persons conducting a business or undertaking;
  - 1.3 to amend regulation 11.32 of the *Health and Safety at Work (Hazardous Substances) Regulations 2017* to allow containers of paint to be opened briefly for tinting [CBC-24-MIN-0114 refers].
- 2 note that the *Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025* will give effect to the decisions referred to in paragraph 1 above;
- 3 authorise the submission to the Executive Council of the *Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025*;
- 4 note that the *Health and Safety at Work (Hazardous Substances) Amendment Regulations 2025* come into force on 20 October 2025;
- 5 note that I agreed to amend regulation 2 of the *Health and Safety in Employment Regulations 1995* to update the definitions of the scaffolding certificates of competence to reflect current industry practice based on prior policy decisions that had not been implemented by the previous government [DEV-21-MIN-0092 refers];
- 6 note that the *Health and Safety in Employment (Scaffolding) Amendment Regulations 2025* will give effect to the decisions referred to in paragraph 5 above;
- 7 authorise the submission to the Executive Council of the *Health and Safety in Employment (Scaffolding) Amendment Regulations 2025*;
- 8 note that the *Health and Safety in Employment (Scaffolding) Amendment Regulations 2025* come into force on 20 October 2025.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety