



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

Yes

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Legal professional privilege.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.



BRIEFING

Mining and quarrying regulations: confirming final policy decisions, and providing draft LEG paper

Date:	5 May 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-2783

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Agree to the minor and technical changes to the mining and quarrying regulations listed in Annex One Consult with your colleagues on the attached draft LEG paper	23 May 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Alannah MacShane	Team Leader, 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
On this briefing and the draft LEG paper: WorkSafe New Zealand
On the draft regulations: the Ministry of Justice, Fire and Emergency New Zealand, and Te Kāhui Whakamana Rua Tekau mā Iwa — Pike River Recovery Agency

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Mining and quarrying regulations: confirming final policy decisions, and providing draft LEG paper

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Purpose

This paper seeks your final agreement to minor and technical decisions on the mining and quarrying regulations and provides you with a draft LEG paper for Ministerial consultation.

This briefing replaces briefing 2122-1485, provided to your office in November 2021, attaching an earlier iteration of the regulations.

Recommended action

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

- a **Note** the regulations and draft LEG paper are ready to begin consultation with your Ministerial colleagues

Noted

- b **Agree** to make the minor and technical changes outlined in **Annex One**, none of which require any further Cabinet policy approvals

Agree / Disagree

- c **Consult** with your colleagues on the LEG paper attached as **Annex Two** and draft amendment regulations attached at **Annex Three**

Consult / Discuss

Alannah MacShane
Team Leader, Health and Safety Policy
Labour, Science and Enterprise, MBIE

05 / 05 / 2022

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

1. In December 2019 Cabinet agreed to make changes to the mining and quarrying regulations [DEV-19-MIN-0322 refers] to:
 - a. 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 – by requiring quarries and alluvial mines to develop and maintain health and safety management systems, and sites with more than four workers to manage specified principal hazards, and
 - b. 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.
2. In June 2021 you agreed in-principle to several minor and technical changes including three additional decisions, which will need Cabinet confirmation [2021-3541 refers]. You also agreed to MBIE consulting with a targeted group of stakeholders on these changes, which we did in July. Stakeholders supported the proposals.
3. In September 2021, you authorised the release of an exposure draft of the regulations to the targeted group of industry stakeholders, with the purpose of checking that the drafting would meet Cabinet’s policy intent [2122-0825]. MBIE met with stakeholders to discuss in early October 2021, and we have worked with WorkSafe and Parliamentary Counsel Office (PCO) to adjust the regulations to reflect stakeholder feedback.

Consultation

Industry consultation on exposure draft and remaining issues

4. As previously advised, [refer to the weekly briefs of 7 October 2021 (2122-1232) and 14 October 2021 (2122-1315)], industry stakeholders supported the approach we had taken to the draft regulations and were keen to see the regulations completed soon. There were no major issues raised in consultation. Stakeholders did raise some minor points about the drafting, and most of their concerns were able to be addressed with drafting changes. There were three additional issues that will require a policy decision raised in meetings. These are summarised in the next section of this briefing.

Agency consultation

5. MBIE has been working closely with WorkSafe on the drafting of these regulations.
6. MBIE provided the exposure draft to the energy and resources markets branch of MBIE, the Department of Conservation, Fire and Emergency New Zealand, and Te Kāhui Whakamana Rua Tekau mā Iwa — Pike River Recovery Agency. These agencies raised no issues with the drafting.
7. MBIE also sought a vet of the offences and penalties from the Ministry of Justice. The Ministry of Justice raised no issues with the application of the existing offences and penalties framework.

Seeking confirmation of decisions made in-principle

8. Stakeholders supported the decisions made in-principle in July. This briefing asks you to now confirm those in-principle decisions. A full list of these changes is in **Annex One**.

9. Stakeholders identified three additional changes that will need your approval. These do not rise to the threshold where you need to seek Cabinet's agreement. They are listed below, and included at the start of the table in **Annex One**:
- a. Regulation 212 requires mining operations to give draft principal hazard management plans and draft principal control plans to WorkSafe 2 months before mining starts. We had planned to expand this to quarries and alluvial mines as-is, however stakeholders noted that some types of quarries, particularly mobile quarries and quarries that start up at short notice after natural disasters, would struggle to comply with this. We have drafted shorter time periods for these types of quarries.
 - b. Regulation 138 requires mine operators to meet the prescribed standards for equipment that is used to raise or lower mine workers and equipment, with the standards being set in Schedule 3. The drafting of regulation 138 was causing confusion as to what the requirements are, so we re-drafted to clarify, and sought to confirm our conclusion with stakeholders. When discussing this, stakeholders noted that Schedule 3, clause 27 was also causing confusion, as it was not clear what additional requirement it was adding over requirements in other regulations (specifically regulations 138, 170 and 172). We propose to delete clause 27, as its requirements are covered by other regulations. Deleting clause 27 is supported by stakeholders.
 - c. Clause 14 of Schedule 3 requires shafts where there is the potential for uncontrolled contact between the equipment in the shaft with either other equipment or the sides of the shaft, that the shaft must 'contain suitable guides' to prevent this contact from happening. Stakeholders noted that technology changes mean this drafting no longer covers all methods used for guidance (eg lasers that identify when a load is swinging and then slow or stop the equipment), and proposed an amendment to allow new technology to be used.

Decisions that need to be made by Cabinet

10. In June 2021 we identified three decisions that need Cabinet approval and asked for permission to consult with stakeholders on these. The decisions were:
- a. using a safe work instrument to set competency requirements (an update from the current systems of notices in the *Gazette*)
 - b. applying the existing framework for penalties and offences under the HSW Act to the new requirements
 - c. the proposal for phased implementation of the new requirements developed by MBIE and WorkSafe.
11. Stakeholders supported the proposed approach for these, and we have made only minor changes for workability to the proposals as outlined in the previous briefing. Most of the changes are in relation to the phased commencement, which have been identified as we have worked through these in more detail. A summary of the proposals is contained in LEG paper, which seeks Cabinet's agreement to the changes.

Ministerial consultation on LEG paper

12. This paper attaches a draft LEG paper (**Annex Two**) for you to consult with your ministerial colleagues, along with the draft amendment regulations (**Annex Three**).
13. The version of the regulations in **Annex Three** is still subject to ongoing drafting refinements, and final quality assurance checks from Parliamentary Counsel Office (PCO). As a result, there will be minor changes before LEG considers the draft amendment regulations. These

changes are not related to substantive policy issues, and we do not anticipate any issues from using this version for Ministerial consultation.

14. We propose the regulations come into force starting from 18 July 2022. This means we can use the LEG committee on 2 June, as outlined in the table below:

Date	Task
Monday 9 May – Monday 23 May	Ministerial consultation on LEG paper
Tuesday 24 May – Wednesday 25 May	MBIE and PCO make any changes from Ministerial consultation
Thursday 26 May	Lodge for consideration at LEG
Thursday 2 June	LEG considers
Tuesday 7 June	Cabinet considers, Executive Council
Week of 6 June	Regulations notified in the <i>Gazette</i> MBIE and WorkSafe contact stakeholders to inform them the regulations will come into force starting on 1 July
18 July 2022	Phased commencement begins

Communicating the changes

15. Your office has previously indicated its preference that MBIE and WorkSafe manage communications to the sector.
16. After the regulations are confirmed by Cabinet and notified in the *Gazette*, MBIE will email stakeholders consulted on the exposure draft of the regulations and those who submitted on the proposals, to inform them that the regulations are complete and how to view the changes online.
17. WorkSafe will manage the detailed communications of the changes with the sector, including providing an initial fact sheet when the regulation changes are made public in June, and more detailed good practice guidance later.
18. WorkSafe is planning **Confidentiality** for a year-long campaign on the changes for quarries and alluvial mines. This will include workshops, and how-to videos, and will provide additional guidance alongside the fact sheet and while the full guidance document is being completed.
19. WorkSafe advises major changes to the existing guidance for mining operations is not necessary.
20. Stakeholders such as unions, the industry training organisation and MinEx (the extractives industry health and safety council) have been consulted on the changes, and these channels are available for further updates about the status of the regulations and other related updates.

WorkSafe's implementation planning

21. In addition to the communication and guidance planning outlined above WorkSafe is also preparing the safe work instrument (SWI) that will set competency requirements.
22. WorkSafe is finalising the draft list of required unit standards for the new certificates of competence (CoC). WorkSafe's Regulatory Frameworks team will meet with Mining Board of Examiners in coming weeks to confirm the list remains up to date and appropriate. WorkSafe is proposing to base the competency requirements for existing certificates of competence (CoCs) on the existing requirements, which were set previously via *Gazette* notice.
23. Once the SWI is drafted, WorkSafe will consult on the proposals (as required by the HSW Act), and then provide to you for consideration.
24. Updates to the application form and examination requirements for CoC applicants are also underway.

Annexes

Annex One: Minor and technical changes for agreement

Annex Two: Draft LEG paper - Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022

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

Annex One: Minor and technical changes for agreement

Topic	Change proposed
Moderating reporting requirements for the unique situation of quarries	Regulation 212 requires mining operations to give draft principal hazard management plans and draft principal control plans to WorkSafe two months before mining starts. We had planned to expand this to quarries and alluvial mines as-is, however stakeholders raised that some types of quarries, particularly mobile quarries and quarries that start up at short notice after natural disasters, would struggle to comply with this. We have drafted shorter time periods for these types of quarries.
Clarifying escapeway requirements by deleting Schedule 3, clause 27	Regulation 138 requires mine operators to meet the prescribed standards for equipment that is used to raise or lower mine workers and equipment, with the standards being set in Schedule 3. The drafting of regulation 138 is causing confusion as to what the requirements are, so we re-drafted to clarify, and sought to confirm our conclusion with stakeholders. When discussing this, stakeholders noted that Schedule 3, clause 27 was also causing confusion, as it was not clear what additional requirement it was adding over requirements in other regulations (specifically regulations 138, 170 and 172). We propose to delete clause 27, as its requirements are covered by other regulations. Deleting clause 27 is supported by stakeholders.
Amending Schedule 3, clause 14 to take account of technology changes	Schedule 3 sets standards for equipment for raising and lowering mine workers, coal, minerals, and materials. Clause 14 of Schedule 3 requires shafts where there is the potential for uncontrolled contact between the equipment in the shaft with either other equipment or the sides of the shaft, that the shaft must 'contain suitable guides' to prevent this contact from happening. Stakeholders noted that technology changes mean this drafting no longer covers all methods used for guidance (eg lasers that identify when a load is swinging and then slow or stop the equipment), and proposed an amendment to allow new technology to be used.
Introducing A-grade and B-grade metalliferous mine manager certificates of competence	<p>At the moment A- and B-grade tunnel manager certificates of competence (CoC) are used for managers who manage both underground metalliferous mines and tunnels. A person who holds the CoC therefore must have knowledge of working in both kinds of operation, including 'in the workings' experience of both types of operation.</p> <p>WorkSafe and the New Zealand Mining Board of Examiners (MBoE) are of the view that these two types of operations are so different that it has become almost impossible for tunnel workers to gain the required 'in the workings' experience necessary for the CoC. WorkSafe recommends separating the CoC requirements for tunnels and metalliferous mines, by creating A- and B-grade metalliferous mine manager CoCs. This approach is supported by stakeholders.</p> <p>We have allowed two years for those people who will need to gain a A- or B-grade metalliferous mine CoC to do so.</p>

Topic	Change proposed
Mine sealing requirements are too prescriptive for some scenarios	<p>Seals are used both when an underground coal mine is abandoned or when a part of a mine is sealed off from the working area of the mine. Regulation 183 requires seals in underground coal mines to meet certain standards, which are set out in Schedule 4.</p> <p>Currently the minimum sealing requirement is too prescriptive in some scenarios, as it requires a level of sealing to protect from a specific hazard (an increase in naturally occurring methane with related explosion risk) that does not exist. For example, if the mine has filled with water, then there is no need to protect from methane explosion. For these scenarios it does not make sense to design the seal to withstand the specified amount of overpressure (pressure created at the seal if naturally occurring methane explodes). We propose that an alternative to regulation 183(1)(a) be provided in specified circumstances.</p> <p>A mine operator will be able to apply to WorkSafe to use an alternative seal. Where WorkSafe and the mine operator agree that the specified type of seal is unnecessary, an alternative seal can be used, provided the presenting risks are appropriately managed. WorkSafe and the mine operator will need to agree to the proposed alternative seal.</p>
Notification of change in mining method	<p>Regulation 69 sets out the requirements for review and revision of principal hazard management plans, including events that trigger a review (an accident, change in the management, change in plant, occurrence of any other event outlined in the Principal Hazard Management Plan (PHMP)). This does not include a change in the method of mining. We propose to add this in.</p>
Renewal of certificate of competence (allowing for CoCs to be renewed all at once)	<p>Many holders of a CoC hold more than one CoC, and some hold up to 6 different certificates. Each CoC has an expiry date 5 years after the date on which it is issued.</p> <p>This means that the holders of multiple certificates could be applying for renewals quite frequently (every year or two). This results in inefficiencies for the MBoE (for assessing and processing multiple renewals at different times relating to one person).</p> <p>We propose to provide CoC holders with the option to align the expiry dates of their certificates of competence, in order to simplify the renewal process. This will be voluntary and at the request of the CoC holder.</p> <p>The holder will still be required to meet the full continuing professional development (CPD) requirements specified in regulation 43. A CoC will never last more than 5 years.</p>
Mine plans	<p>Clarifying which of the requirements apply to which type of mine, and more clearly making the distinction between the type of plan that must be displayed for mine workers' use (one that contains the necessary information), compared to the one that must be provided to WorkSafe (using the geodetic and vertical datum).</p>
Add a notifiable incident to the list in Schedule 5	<p>Add 'loss of control of autonomous plant' as a notifiable incident. Australia is amending its regulations to add loss of control of an autonomous plant as a notifiable incident to reflect changes in technology, and WorkSafe recommends we do the same.</p>
Expanding the categories for notifiable events	<p>Schedule 6 outlines the particulars of notifiable events that the mine operator must record and provide to WorkSafe (as required in regulation 226) in relation to every mine worker. WorkSafe is finding that there is confusion when people are describing the nature, mechanism and agency of the notifiable injury, illness or incident, and that some are not reporting if they cannot find the exact description. We propose to add an 'other' option to the categories.</p>

Topic	Change proposed
Clarifying reporting requirements	<p>Regulation 230 requires that a mine operator must give WorkSafe the information that is set out in Schedule 8 of the regulations on a quarterly basis. This includes, for example, details of the mining operation, the commodity that is processed at the mining operation, notifiable events and injuries.</p> <p>Schedule 8 is particularly confusing for the operators, and different operations provide different information to WorkSafe for the same questions. We propose to simplify this schedule so that there is no confusion about what the reporting obligations are for the mine operators.</p> <p>There is no change to the information requested.</p>
Typos, syntax errors, terminology	<ul style="list-style-type: none"> - WorkSafe has proposed to replace the word 'goaf' with 'worked out areas', which is a more commonly understood industry terminology. - Regulation 141 requires that the mine operator ensures that the humidity of the air is maintained at such a level to minimise heat stress in an underground mining or tunnelling operation. Regulation 84 provides that both temperature and humidity of the air must be considered when developing the PHMP for air quality. We intend to add temperature to regulation 141 for consistency. - Delete a reference to coal from regulation 131(1)(b), which deals with metalliferous mines. - Replace the word 'control' with 'failure' in regulation 131(3), which sets the steps to be taken following ground or strata failure <i>If the investigation reveals that the cause of the ground or strata control failure is attributable, in part or in full, to a ground or strata support design fault, the mine operator must ensure that the design is reviewed by a competent person who...</i> - Clarify the current drafting of regulation 138, which is causing confusion about the application of schedule 3. The correct application was confirmed with stakeholders, and the re-draft based on their feedback. - Fix a cross-referencing error in regulation 226(1), which incorrectly refers to Schedule 6 instead of Schedule 5.
Fixing errors and deleting parts that are no longer necessary	<ul style="list-style-type: none"> - Updating references to the Hazardous Substances and New Organisms Act 1996 to be to the Health and Safety at Work (Hazardous Substances) Regulations 2017. The approval of handlers, storage and transportation of explosives was changed in 2017 to be under the 2017 regulations but this was missed as a consequential amendment. - Regulation 138 sets the requirements for equipment used to raise or lower mine workers. Currently the offence attached to the requirement only applies to part of the regulation. We propose to expand it to cover the full regulation [this decision is also in the LEG paper for Cabinet's agreement]. - Regulation 221 sets the requirements for mine operators to ensure that reports are written and passed on between each shift at the mining operation. Currently the offence attached to the requirement only applies to underground coal mining operations. We propose to expand it to include all operations (including quarries and alluvial mines) [this decision is also in the LEG paper for Cabinet's agreement]. - Regulation 227 covers disclosure of information about notifiable events. Regulation 227(2) was added as an avoidance of doubt clause to clarify what happens when workers are not employees of the mining operation. This was introduced to avoid confusion at how the change to the PCBU and worker definitions under the HSW Act would work in mining operations. This clause is now causing confusion, and is no longer necessary, so we propose to revoke it. - Part 11 covered consequential amendments when these regulations were first introduced in 2016. It has served its purpose and is no longer necessary. Parliamentary Counsel Office (PCO) intends to revoke it.

Annex Two: Draft LEG paper – Health and Safety at Work (Mining Operations and Quarrying Operations) Amendment Regulations 2022

Free and frank



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

Legal professional privilege

