



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023	<b>Date to be published</b>	20 June 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
May 2023	Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023	Office of the Minister of Workplace Relations and Safety
4 May 2023	LEG-23-MIN-0039 Minute	Cabinet Office

### Information redacted

### YES / NO

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.

## In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

## Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023

### Proposal

- 1 This paper seeks authorisation for the submission of the *Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023* to the Executive Council.

### Policy

- 2 *The Health and Safety at Work (Major Hazard Facilities) Regulations 2016* (the **principal regulations**) are made under the *Health and Safety at Work Act 2015* (the HSW Act).
- 3 The fee and levy rates for major hazard facilities were first set in 2016 with a requirement to review these after five years, and for WorkSafe New Zealand (WorkSafe) to record revenue against expenditure in memorandum accounts [EGI-16-MIN-0137].
- 4 The Ministry of Business, Innovation and Employment (MBIE) and WorkSafe have carried out the legislatively required review of major hazard facilities fee and levy rates. The review of fee and levy rates found that they are no longer set at the right level to fully recover the expected future costs of regulatory oversight.

*Cabinet approved a policy change to adjust fee and levy rates*

- 5 On 20 February 2023, Cabinet agreed to amend the principal regulations to adjust the fee and levy rates [CAB-23-MIN-0025] to:
  - 5.1 return the current surpluses to fee and levy payers through applying a discounted fee or levy for a period of time;
  - 5.2 match the rates to the expected costs of WorkSafe's regulatory activity, ensuring that the memorandum account balances track to zero over time, without requiring significant changes to fee or levy rates at the next review;
  - 5.3 minimise cross subsidisation amongst fee and levy payers.
- 6 The major hazard facilities fees and levies are currently expressed as GST exclusive in the principal regulations.
- 7 The current, and new fee and levy rates (excluding GST) agreed by Cabinet [CAB-23-MIN-0025] are set out below.

**IN CONFIDENCE**

7.1 The new levy rates return the levy surplus to levy payers through a discounted rate in years 1-2 (2023, 2024), and are then adjusted to match the expected regulatory costs from year 3 (2025):

	Facility Type	Current levy rates (\$)	Levy rate with a discount in years 1-2 (2023, 2024) (\$)	Percentage change (current levy rates to discounted levy rate in years 1-2)	Adjusted levy rate from year 3 (2025) (\$)	Percentage change (current levy rates to adjusted levy rate from year 3)
Lower Tier	Type 1	\$12,500	\$7,800	-37.6%	\$14,600	16.8%
	Type 2	\$15,000	\$9,000	-40.0%	\$17,600	17.3%
	Type 3	\$18,000	\$10,200	-43.3%	\$19,900	10.6%
Upper Tier	Type 1	\$23,000	\$14,700	-36.1%	\$28,800	25.2%
	Type 2	\$28,000	\$17,900	-36.1%	\$35,000	25.0%
	Type 3	\$34,000	\$20,400	-40.0%	\$39,900	17.4%

7.2 The new **revised** safety case assessment fees return the fee surplus to fee payers over the next five-year cycle through a discounted fee for revised safety cases, and are then adjusted to match expected regulatory costs from year 6 (2028):

Type of upper Tier major hazard facility	Current Fee (\$)	Fee before 1 July 2028 (\$)	Percentage change (current fee to fee before 1 July 2028)	Fee on and after 1 July 2028 (\$)	Percentage change (current fee to fee on and after 1 July 2028)	Current reduced fee for additional facility (\$)	Fee on and after 1 July 2028 for each additional facility (\$)	Percentage change (current reduced fee to fee on and after 1 July 2028 for each additional facility)
Type 1	\$20,000	\$8,000	-60.0%	\$28,100	40.5%	\$16,000	\$22,500	40.6%
Type 2	\$25,000	\$8,000	-68.0%	\$28,100	12.4%	\$20,000	\$22,500	12.5%
Type 3	\$30,000	\$8,000	-73.3%	\$28,100	-6.3%	\$24,000	\$22,500	-6.3%

7.3 The proposed **new** safety case assessment fees adjust the fee for a new safety case to match the expected regulatory costs from year 1 (2023):

Type of upper Tier major hazard facility	Current fee (\$)	Adjusted fee (\$)	Percentage change (current fee to adjusted fee)	Current reduced fee for additional facility (\$)	Adjusted fee for additional facility* (\$)	Percentage change (current reduced fee to adjusted fee for additional facility)
Type 1	\$45,000	\$31,000	-31.1%	\$36,000	\$31,000	-13.9%
Type 2	\$56,000	\$31,000	-44.6%	\$44,800	\$31,000	-30.8%
Type 3	\$67,000	\$31,000	-53.7%	\$54,000	\$31,000	-42.6%

\* The current 20 per cent reduction in the fee for additional sites is removed for **new** safety case assessments, as the adjusted fee of \$31,000 for additional new sites is substantially reduced from the current rates paid by operators.

## IN CONFIDENCE

- 8 The current major hazard facilities fees and levies were set on 15 February 2016 and have not been changed since.

### Timing and 28-day rule

- 9 Pending Cabinet agreement, I propose the amendments be notified in the *New Zealand Gazette* on 11 May 2023 and that the Major Hazard Facilities Amendment Regulations come into force 8 June 2023. This approach is compliant with the 28-day rule and no waiver is required.
- 10 This timing will allow for WorkSafe to incorporate the changes into its annual invoicing of levy payers on 1 July 2023. Invoicing of safety case fees depends on when the operators submit the safety case assessment to WorkSafe and these services are provided.

### Compliance

- 11 I can confirm the amendment regulations comply with each of the following:
- 11.1 the principles of the *Treaty of Waitangi*;
  - 11.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993*;
  - 11.3 the principles and guidelines set out in the *Privacy Act 2020*;
  - 11.4 relevant international standards and obligations;
  - 11.5 the Legislation Guidelines (2021 edition).
- 12 I confirm that the following statutory requirements have been met for the making of the regulations:
- 12.1 as required by section 217(1) of the *Health and Safety at Work Act 2015*, all persons and organisations I consider appropriate have been consulted. The Ministry of Business, Innovation and Employment (MBIE) and WorkSafe carried out targeted consultation with major hazard facilities operators and interested parties on resetting fee and levy rates over a six-week period, between January and March 2022;
  - 12.2 as required by section 217(2) of the *Health and Safety at Work Act 2015* before recommending the making of regulations relating to hazardous substances, the Environmental Protection Authority has been consulted;
  - 12.3 as required by section 215(4)(a) of the *Health and Safety at Work Act 2015*, I have received advice from WorkSafe New Zealand on the proposed levy rates.

### Regulations Review Committee

- 13 I do not anticipate that the Committee may draw the adjustment of major hazard facilities fees and levies to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 14 The draft *Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023* has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

### **Impact Analysis**

- 15 A Cost Recovery Impact Statement (CRIS) was prepared in accordance with the necessary requirements and was submitted to Cabinet when policy decisions were sought. MBIE's Regulatory Impact Analysis Review Panel assessed the CRIS and considered that the information and analysis summarised met the criteria necessary for decisions by Ministers to be made on the fee proposals [CAB-23-MIN-0025].

### **Publicity**

- 16 As well as the public release of the Cabinet paper as outlined below and the standard Gazetting processes, WorkSafe will alert interested parties, including major hazard facilities operators, to the changes.

### **Proactive release**

- 17 I propose to release this Cabinet paper and relevant Minute proactively within 30 business days, subject to redactions as appropriate under the *Official Information Act 1982*.

### **Consultation**

- 18 I have consulted with all persons and organisations that I consider appropriate, given the subject matter of the regulations, as required by Section 217(1) of the HSW Act. MBIE and WorkSafe carried out targeted consultation with major hazard facilities operators and interested parties. Overall, the majority of submitters supported the changes.
- 19 The Environmental Protection Authority has been consulted on the proposed changes and amendment regulations, as required by Section 217 of the HSW Act. WorkSafe has provided advice on the proposed levy rates, as required by section 215 of the HSW Act.
- 20 The following agencies have been consulted on this paper and Cost Recovery Impact Statement: Civil Aviation Authority, Department of Conservation, Department of Internal Affairs, the Environmental Protection Authority, Fire and Emergency New Zealand, Maritime New Zealand, Ministry for the Environment, Ministry of Health, Ministry for Primary Industries, Ministry of Transport, The Treasury, WorkSafe New Zealand. The Department of the Prime Minister and Cabinet were informed.
- 21 The Treasury was consulted as the *Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023* will change fees.
- 22 The Audit Office's Guidelines to Costing and Charging for Public Sector Goods and Services were consulted as cost recovery is involved.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 15 February 2023 the Cabinet Economic Development Committee agreed to adjust the fee and levy rates charged to major hazard facilities operators, to recover the costs of WorkSafe New Zealand's regulatory activity in overseeing the major hazard facilities regulatory regime [DEV-23-MIN-0005; CAB-23-MIN-0025];
- 2 note that the *Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023* will give effect to the decision referred to in paragraph 1 above;
- 3 note that sections 215 and 217 of the *Health and Safety at Work Act 2015* require the Minister for Workplace Relations and Safety to:
  - 3.1 consult with all persons and organisations that the Minister considers appropriate, given the subject matter of the regulations;
  - 3.2 consult with the Environmental Protection Authority, if the regulations relate to hazardous substances;
  - 3.3 receive advice from WorkSafe New Zealand on the proposed levy.
- 4 note the advice of the Minister for Workplace Relations and Safety that the requirements in recommendation 3 have been met;
- 5 note that the *Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023* will come into force on 8 June 2023;
- 6 authorise the submission to the Executive Council of the *Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2023*.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety