



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



## Targeted Consultation Document

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# A Licensing Regime for Refrigeration, Heating and Air Conditioning Technicians

### Specific Matters of Detail

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6 December 2019 – 17 January 2020



## How to have your say

### Making a submission

The Ministry of Business, Innovation and Employment (MBIE) is seeking comments on this targeted consultation paper by **17 January 2020**. We have included a consolidated set of questions at the beginning of this document to help you consider your response.

When making a submission, please include your name, the name of your organisation, and your contact details.

Send your submission as a Microsoft Word document or PDF to [HSWRegs@mbie.govt.nz](mailto:HSWRegs@mbie.govt.nz)

Alternatively you can post your submission to:

MBIE – Health and Safety Policy  
PO Box 1473  
Wellington 6140  
New Zealand

### Use of information

Your submission may be made public, or the content included in a summary or other report about this consultation process. By making a submission, we consider you have consented to this use, unless you clearly specify otherwise in your submission.

### Release of information

Release of submissions is subject to the *Official Information Act 1982*. Please tell us as part of your submission if you have any objection to the release of any information in the submission, which parts you consider should be withheld, and include your reasons for withholding the information (for example, commercially sensitive material). We will consider any objections you note and consult with you when responding to requests under the *Official Information Act 1982*.

Please indicate on the front of your submission if it contains confidential information and mark the text accordingly. If you wish to make a submission which includes confidential information, please send us a separate version excluding the relevant information for publication on our website.

### Private information

Any personal information you supply to us as part of your submission will only be used to help inform the development of policy advice. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that we may publish.



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## Questions for your feedback

Here are the questions we seeking feedback on with the page number for further detail. You do not have to answer all of the questions, only those relevant to you.

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## Why we are consulting

### The Government agreed to a licensing regime for refrigeration technicians

In November 2018, we consulted on options to manage health and safety risks associated with work on commercial and industrial heat pumps, air conditioning and refrigeration systems.

The Government has decided to implement the option that had overwhelming support from submitters, which is to introduce a licensing regime under *the Health and Safety at Work Act 2015* (HSW Act) for individual technicians who work on commercial and industrial heat pumps, air conditioning and refrigeration systems that use flammable, toxic, or high operating pressure refrigerants.

### Remaining matters for feedback

We need your feedback on some additional matters to implement this licensing regime, such as fees, exclusions from the requirement to be licensed, and some definitions we did not consult on last year.

### Who do we want feedback from?

This consultation is targeted at heating, ventilation, air conditioning and refrigeration technicians and engineers, their employers, and industry bodies. If you do not fall within one of these categories, but still want to provide feedback, please do so.

### Decisions already made

The Government has already made the primary decisions on the licensing regime. To implement these decisions, new regulations are needed under the HSW Act to establish the licensing regime.

The regulations will place a duty on technicians to only carry out a class of work on a commercial or industrial refrigeration, heat pump, or air conditioning system – which uses a flammable, toxic or very high operating pressure refrigerant – if that person holds a licence for that type of work.

Individual technicians must obtain a licence from WorkSafe before being permitted to work on such systems.

The licence will be valid for five years from the day of issue.

### The licencing classes are:

- The **heating and air conditioning licence**, which enables the holder to work on any commercial or industrial heat pump or air conditioning system;



- The **refrigeration, heating and air conditioning licence (excluding ammonia)**, which enables the holder to work on any commercial or industrial refrigeration, heat pump, or air conditioning system, including transport refrigeration systems but excluding systems using ammonia refrigerant; and
- The **refrigeration, heating, and air conditioning licence (including ammonia)**, which enables the holder to work on any commercial or industrial refrigeration, heat pump or air conditioning system, including transport refrigeration systems and including systems using ammonia refrigerant.

The requirement to be licensed will not apply to:

- Trainees or apprentices working towards a trade certification in order to be licensed, and who are under the supervision of a technician with a current licence;
- Plant operators responsible for the day-to-day operation of a commercial or industrial refrigeration system;
- Work on domestic or light commercial refrigeration, heat pump or air conditioning systems, because of the low levels of risk presented by the low levels of refrigerant in these systems;
- Work on automotive air conditioning systems, because of the low levels of risk presented by the low levels of refrigerant in these systems;
- Work on commercial or industrial refrigeration, heat pump or air conditioning systems that use non-hazardous refrigerant gases<sup>1</sup>;
- Work on refrigeration, heat pump and air conditioning systems within/intrinsic to ships or aircraft, because the individuals carrying out this work are already subject to licensing regimes under the Maritime Rules and the Civil Aviation Rules.

There will be a three-year transitional period to provide technicians with sufficient time to complete any training required. On completion of the three-year period, technicians can apply to WorkSafe for their licence. The requirement to have a licence will not start until the end of the fourth year.

Applicants must meet general competency requirements, which are:

- Have knowledge of the installation, commissioning, servicing, and maintenance of refrigeration and/or heat pump, and/or air conditioning plant and equipment relevant to the class of work for which the applicant seeks a licence;
- Have knowledge of the hazardous properties for the classes of refrigerants that they are likely to use; and

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<sup>1</sup> In this context, 'non-hazardous refrigerant gases' means gases that are non-flammable, non-toxic, and do not have a very high operating pressure. For example, CO<sub>2</sub> has a very high operating pressure, so would be included in this licensing regime, even though it is non-flammable and non-toxic.



- Have had suitable training and experience.

## Decisions to be made

We are seeking feedback on exclusions, definitions, processes, fees and offences.

We are also seeking feedback on a transitional timeframe for ammonia systems to comply with signage requirements in *Health and Safety at Work (Hazardous Substances) Regulations 2017*. This is a separate matter to the licensing regime.

For the purposes of this document **'work'** means the installation, commissioning, servicing, maintenance, repair, decommissioning and dismantling of refrigeration, and/or heat pump, and/or air conditioning systems that use flammable, toxic or high pressure refrigerant.

This excludes any 'prescribed electrical work' under Schedule 1 of the *Electricity (Safety) Regulations 2010*, as this work falls outside of the scope of this licensing regime.





## Should a transport refrigeration class be included in the licensing regime?

### Existing licencing classes

The Government has decided that the classes of work for the licensing regime are:

- The **heating and air conditioning licence**, which enables the holder to work on any commercial or industrial heat pump or air conditioning system;
- The **refrigeration, heating and air conditioning licence (excluding ammonia)**, which enables the holder to work on any commercial or industrial refrigeration, heat pump, or air conditioning system, including transport refrigeration systems but excluding systems using ammonia refrigerant; and
- The **refrigeration, heating, and air conditioning licence (including ammonia)**, which enables the holder to work on any commercial or industrial refrigeration, heat pump or air conditioning system, including transport refrigeration systems and including systems using ammonia refrigerant.

### A specific licence class for transport refrigeration systems mounted in trucks or trailers and shipping containers

In consultation in 2018, some submitters indicated that in practice there are technicians that work exclusively on transport refrigeration systems, and it would be disproportionate for them to have to obtain a licence that includes other systems.

While these technicians usually hold qualifications (e.g. diesel mechanics or air conditioning technicians), these qualifications do not necessarily focus on transport refrigeration competencies. An employer or manufacturer may provide training, but there is no licence or formal recognition.

### Scope of the proposed class

The class would be specific to those technicians who work exclusively on transport refrigeration systems mounted in trucks or trailers and shipping containers. People who work on other systems would hold one of the wider licence classes as appropriate. The other classes would continue to include transport refrigeration systems, so people who work on transport systems and other systems should only need one licence.

### Refrigerated shipping containers

We propose that the transport class would extend to shipping containers.



Consultation with industry indicates that each shipping line has different processes and procedures for how their containers are managed. The shipping lines own the containers, and therefore specify how often they are serviced, how they are serviced, and what type of maintenance is carried out on the containers.

The work that is carried out in New Zealand ranges from full servicing and repair to visual checks of the container for external damage. The licence requirement would only apply to work on the refrigeration system in the container, and only if it uses a flammable, toxic, or very high operating pressure refrigerant. For example, you would not need to be licensed to do a visual check of the container.

### Refrigerated trucks and trailers

There are two distinct primary components in a transport refrigeration system, which are the motive power to drive the refrigeration unit and the actual refrigeration unit. Distinct skillsets are required to service and repair each of these main components, and we have been advised that in practice, these separate components are being serviced by different technicians. Diesel mechanics work on the motive power components and refrigeration technicians work on the refrigeration components (or diesel mechanics that have also been trained to service the refrigeration components).

The licence class that is proposed would only cover the servicing and repair of the refrigeration unit. We propose that the licensing class would not apply to the servicing and repair of the diesel engine that powers the refrigeration unit. We propose that the licence class would not apply to the servicing and repair of any off-engine powered refrigeration units used on small trucks and vans given the smaller refrigerant charge in these systems.

1. Should a separate licence class for transport refrigeration systems be included in the licensing regime? And what would be the effect?



## Should work on on-farm milk vat refrigeration systems be carried out by licensed refrigeration technicians?

### Submitters have suggested an exclusion for on-farm milk vat systems

In consultation in 2018, submitters suggested that work involving on-farm milk vat refrigeration systems be excluded from the licensing regime. Submitters commented that on-farm milk vats were too different in nature from those that this licensing regime is aimed to capture.

### Risks associated with on-farm milk vat refrigeration systems

On-farm milk vat refrigeration systems are generally built to standardised designs and are typically located on the side of the milking shed, and are open to the air, perhaps with a structure to keep the rain off them.

These systems may contain up to 15 kg of refrigerant gas (current HFC systems). When these systems are retrofitted or replaced with new hazardous alternative refrigerants, there may be an increased risk of an explosion. If there is a loss of containment, refrigerant may pool in low-lying areas, or escape into nearby buildings, and risk meeting an ignition source. In some instances, they will discharge in to the open air, but this is not assured.

Although systems are often located outdoors, they may not be in the future, and may require a machinery room with required controls and be subject to charge limits.

We have not been able to confirm what the charge size is likely to be for systems that use alternative refrigerant gas. It is our understanding that alternative (non-HFC) refrigerants with hazardous properties are not compatible with the refrigeration pad inside the vat, and so these alternatives will most likely be used as a primary refrigerant to cool a separate non-flammable secondary refrigerant (such as water or glycol) which will be pumped through the refrigeration pad in the vat.

Refrigeration technicians working on a system containing an alternative hazardous refrigerant will need to be aware of the risks and consequences of leaks when maintaining or servicing these systems.

### Impacts of excluding on-farm milk vats from the regulations

Excluding on-farm milk vats could be more costly for technicians. If these systems are **excluded**, the impact will be that technicians who work on both on-farm milk vats and other systems in other licence categories will need both a licence and an approved filler certificate to work on on-farm milk vats. If a technician works solely on on-farm milk vats, they will only need an approved filler certificate.



If these systems are **included**, technicians who need a licence under these regulations and will no longer need an approved filler certificate, in order to avoid duplication.

2.

Should work on on-farm milk vat refrigeration systems be excluded from the licensing regime? What would be the impact of exclusion? Your feedback can be based on the information provided above and/or your industry experience.

3.

Do any technicians work exclusively on milk vats? Or do most or all technicians work on other systems as well?



## What will be excluded under ‘domestic and light commercial’ systems?

Cabinet has decided that systems that are ‘domestic and light commercial’ are excluded from the licensing regime, because they are lower risk and do not warrant the costs of a regulatory licensing regime to mitigate the risks. We now want your feedback on how we best describe what is covered by the domestic and light commercial exclusion so that the threshold is practical and workable for industry and WorkSafe.

We consider it helpful to describe the threshold differently for refrigeration systems and for heat pump and air conditioning, and we seek your feedback on the following proposals. **NB:** we are seeking your feedback on what a technical definition of ‘domestic and light commercial’ could be, not whether these systems should be included in the licensing regime.

### Proposed exclusion for domestic and light commercial **refrigeration** systems

We propose that an excluded domestic or light commercial refrigeration system would be one:

- with a refrigerant charge of 3 kg or less;
- that is designed not to be permanently connected to the power supply of the premises where it is installed; and
- that does not require the installation of pipework to enable the movement of refrigerant.

### Proposed exclusion for domestic and light commercial **heat pump and air conditioning** systems

We propose that domestic or light commercial heat pump systems (these include hot water heat pumps and swimming pool heat pumps) with refrigerant charges of 3 kg or less are excluded.

4. Are these proposed definitions of domestic and light commercial appropriate for the regulations? Why/why not?
5. If you do not think they are appropriate, what do you think would be better definitions?
6. What examples would help show what systems fall within or outside the exclusion? Or, are there examples that illustrate any problems with the proposed boundaries?
7. In practice, would technicians ever solely work on these ‘domestic and light commercial’ systems, or is this unlikely?



## How do we ensure CO<sub>2</sub> and similarly hazardous refrigerants are appropriately captured?

We have used the term ‘very high operating pressure’ to determine what refrigerants are covered

We want to ensure that refrigerants such as CO<sub>2</sub> with very high operating pressure are included in the licensing regime. However, we have been advised that this is not terminology that is common to the industry, and therefore it may create confusion, or be interpreted incorrectly or differently.

For example, our investigations have identified that some systems use hybrids or will be retrofitted to use hybrids (e.g. HFC and HFO, HFC and CO<sub>2</sub>). If the regulations specify only CO<sub>2</sub> refrigerant, we may see other refrigerants being used with similar hazardous properties that are not captured by the regulations.

We propose using the term ‘very high operating pressure’, as it includes CO<sub>2</sub> and allows for other refrigerants with similar hazardous properties to be captured.

8. Are there any other refrigerants that you work with that have a very high operating pressure, while being non-flammable and non-toxic?
9. If ‘very high operating pressure’ was changed to ‘CO<sub>2</sub>’ in the regulations, do you foresee this creating any issues? Would this exempt any refrigerants that need to be captured by the regulations?



## Corresponding duties to strengthen the licensing regime

The HSW Act places a general duty on businesses not to allow work without a licence

Section 206 of the HSW Act contains a general duty that a person conducting a business or undertaking (PCBU – most usually a business or organisation) must not direct or allow a worker to carry out work if regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with regulations.

We propose two further duties in the regulations on PCBUs that correspond to those on the individual technicians.

### Two further duties on a PCBU: direct supervision and evidence of a licence

Trainees or apprentices working towards a trade certification in order to be licensed are exempted from having to hold a licence, but they must be under the supervision of a technician with a current licence. We propose that a corresponding duty be placed on a PCBU to ensure that a licence holder provides direct supervision to a trainee or apprentice, unless the nature of the task makes it impractical or unnecessary, or the reduced level of supervision will not place the supervised person or any other person at risk.

We also propose that a PCBU may not direct or allow a worker to carry out (or supervise) a class of work unless the PCBU sees written evidence that the worker has the relevant licence for that class of work.

### Impact of new duties

There are no cost implications for PCBUs as these duties simply strengthen the existing general duty in HSW Act. A duty on both a PCBU and a technician to adhere to these requirements provides greater assurance for both parties involved.

10.

Do you agree that these corresponding duties strengthen the existing duties that will be in the regulations?

11.

Would there be any effects of these proposed corresponding duties in practice?



## Feedback on details of the licensing regime processes

The Government has decided that the processes for the issue, renewal, suspension, and cancellation of licences will be based on those in the high-risk work licensing provisions of the Australian Model Work Health and Safety Regulations, and processes for the review and appeal would be based on those in the *Health and Safety at Work (Asbestos) Regulations 2016*.

An overview of main provisions is included here, with a full table of all provisions in Annex One.

| Provision                           | Detail  |
|-------------------------------------|---|
| Application for licence             | In applying for a licence, an applicant must provide: <ul style="list-style-type: none"><li>• Relevant information to WorkSafe, such as identifying details</li><li>• Evidence of competency and qualifications</li><li>• Evidence that they are a fit and proper person</li><li>• Payment of the fee</li></ul> |
| WorkSafe decision on application    | WorkSafe must grant a licence if satisfied that the applicant meets the relevant criteria and if the application has been made in accordance with the regulations.  |
| WorkSafe refusal to grant a licence | WorkSafe must inform the applicant if it proposes to refuse the application.  |
| The licence document                | If a licence is granted, WorkSafe must issue a licence document with the relevant information.<br><br>The licence holder must keep the document available for inspection.   |
| Reassessment of competency          | WorkSafe may reassess the competency of the licence holder if it reasonably believes them not to be competent.  |
| Amendment of licence document       | The licence document may be amended, replaced or surrendered where appropriate and/or necessary.  |
| Licence renewal processes           | The licence holder may apply to WorkSafe to renew the licence; with the relevant information and payment of fee.  |
| Suspension/cancellation of licence  | WorkSafe may cancel or suspend a licence if the licence holder has failed to meet the relevant obligations.   |
| Immediate suspension                | WorkSafe may suspend a licence without notice if the work of the licence holder poses an imminent serious risk to the health and safety of any person.  |





| Provision                                     | Detail  |
|---|---|
| Applying for a review of WorkSafe's decisions | Applicants may apply to WorkSafe for a review of its decision and may appeal to the District Court against a review decision. |

**12.**

Your feedback is welcome on whether the technical details of the processes for this licensing regime are appropriate. If not, please tell us why.



## What licensing fees are proposed?

The Government needs to set the appropriate fees to recover the costs incurred by WorkSafe for the new licensing regime. Fees need to be consistent with the standard principles for public sector fees, set by the Treasury and the Auditor-General, and with other similar regimes administered by WorkSafe.

### Principles for fee setting

The Treasury and Auditor-General have developed guidelines on public sector charging to help identify which charging mechanisms are suitable for different types of activities, and what things to take in to account in assessing which options are most feasible.

The analysis of charging options looks at who should pay and what amount they should pay on the basis of who benefits and who is adversely affected by the service or activity. It is common practice to charge a fee for a service where those who pay the fee receive a direct benefit (in this case, a licence to do work). These fees have been designed to recover the full costs of WorkSafe's service in operating the regime, as otherwise the cost would be subsidised by other businesses who pay the Health and Safety at Work Levy, even though they receive no direct benefit from this licensing regime.

In identifying options for cost-recovery, we have assessed them against the criteria of fairness, effectiveness, efficiency, justifiability, and transparency. Further consideration of these principles and how they were applied can be found in Annex Two.

### Proposed licensing fees

The proposed new licensing fees are outlined below. These options are inclusive of GST, as this will be the amount payable by the technician when applying.<sup>2</sup>

The fees cover applications for licences, renewal of licences, and replacement of licences. Fees are costed based on time required by the most appropriate staff member, with hours quantified based on WorkSafe's experience of similar processes, and using average pay rates. The costings incorporate the appropriate allowance for managers' time, and standard overheads.

The proposed fees cover the ongoing competency assurance of refrigeration and air conditioning technicians. The provision of competency assurance is a key element of all licensing and registration regimes. For asbestos removalists, adventure activity registration, and amusement device registration, quality assurance is provided by independent third parties who are accredited to provide assurance (such as JASANZ or Engineers New Zealand). There is currently no party external to WorkSafe accredited to provide competency assurance for refrigeration technicians, so competency assurance will need to be provided for by WorkSafe.

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<sup>2</sup> The amount specified in the regulations will exclude GST. This is common practice, as GST is subject to change.



| Item                                | Proposed five yearly fee (including GST) |
|-------------------------------------|--|
| Application for licence             | \$680                                    |
| Application for renewal of licence  | \$680                                    |
| Application for replacement licence | \$120                                    |

### Comparison with other fees

The proposed fees are similar to or lower than the licensing fees paid by electrical workers and lower than the fees paid by plumbers. An electrical worker pays \$350 for registration (one-off cost) and then \$250 every two years for a practising licence; which equates to \$625 over five years. A plumber pays \$375 for registration (one off cost) and then \$375 each year for a practising licence; which equates to \$1,875 over five years.

The proposed fees are higher than the fees for asbestos removal licences (\$490), as ongoing competency assurance activities are not included in those fees.

If the cost of the fee is spread over the five year licensing period the impact of licensing and renewal is \$136 annually.

Further specific detail on costing can be found in Annex Two.

### Impact

The fees are expected to impact those technicians that are likely to be subject to the licensing regime or their employers, and their clients. It is common practice that any increase in costs would be passed through to the clients of these services, i.e. the owners and operators of commercial or industrial refrigeration, heat pump, or air conditioning systems.

The licensing fees will be additional ongoing costs (once every five years), to the one-off costs for technicians to complete any additional training that may be required to gain a licence. We anticipate that these training costs may be between \$500 and \$2,000 depending on the current qualifications and experience of the individual. For those who already hold a trade certificate in refrigeration and air conditioning, or who have equivalent qualifications or experience, the amount of additional training required and associated costs are expected to be small.

We anticipate that the licensing regime will apply to approximately 4,000 technicians in the heating, ventilation, air conditioning, and refrigeration industry.



### An alternative fee was considered, but not proposed

An option of \$908 was considered. This option is less preferred because it does not adequately meet the principle of fairness.

- 13.** Are the proposed fees set at the right level for licensing refrigeration and air conditioning technicians under the new regulations?
- 14.** Do you have any feedback on any aspect of the fees proposal?



## What regulatory offences and penalties are proposed?

Offences and penalties for this licensing regime have been identified in accordance with the framework for offences and penalties in regulations made under the HSW Act, which was set under the previous Government in September 2015. Offences and penalties for the *Health and Safety at Work (Asbestos) Regulations 2016* were created with this framework; we have used the comparable provisions to create appropriate penalty proposals.

We are looking for your feedback on the **maximum** penalty that may be imposed by a New Zealand court if found liable to have committed the offence on conviction, in the event of a prosecution.

The proposed offences and penalties for provisions in the new regulations are set out in the table below.

| Provision   | Proposed maximum penalty if found liable to have contravened requirement on conviction | Asbestos Regulations comparison |
|---|--|---------------------------------|
| An individual must have a licence to carry out work on the systems captured in the regime   | \$10,000   | Regulation 54(1)                |
| A PCBU must ensure a licence holder supervises a trainee or apprentice  | For a self-employed individual, \$10,000; and for a business/organisation; \$50,000    | Regulation 28                   |
| A PCBU must see written evidence that a worker has the relevant licence for the work  | For a self-employed individual, \$10,000; and for a business/organisation; \$50,000    | Regulation 54(2)                |
| A licence holder must keep the licence document available for inspection  | \$2,000  | Regulation 72                   |
| A licence holder must give notice of change of address  | \$2,000  | Regulation 73                   |
| If a licence has been amended by WorkSafe, the licence holder must return the old licence document to WorkSafe                      | \$2,000  | Regulation 79                   |
| A licence holder must give written notice to WorkSafe as soon as practicable if the licence document is lost, stolen, or destroyed. | \$2,000  | Regulation 80(1)                |



| Provision  | Proposed maximum penalty if found liable to have contravened requirement on conviction | Asbestos Regulations comparison |
|--|--|---------------------------------|
| A licence holder must return the licence document to WorkSafe if decision to suspend or cancel a licence is made | \$2,000  | Regulation 91                   |

**15.**

Your feedback is welcome on whether the offences and maximum penalties (to be imposed by a Court in the event of a prosecution) identified for this licensing regime are appropriate.



## What infringement offences and fees are proposed?

Infringement offences and fees for the licensing regime have been identified in accordance with the approach agreed by the previous Government in September 2015, and the infringement fee framework agreed to by the former Minister for Workplace Relations and Safety and the former Minister of Justice under the previous Government in February 2016.

Infringements are effectively 'on-the-spot' fines issued via notice by a WorkSafe inspector to deal with minor breaches of the law as an alternative to prosecution. Set fees apply to certain regulations identified as an infringement offence; meaning that inspectors do not have any discretion about the dollar amount charged. These offences will be established under the *Health and Safety at Work (Infringement Offences and Fees) Regulations*.

The proposed infringement offences and fees for provisions in the new regulations are set out in the table below.

| <b>Provision for which a breach is an infringement offence</b>  | <b>Penalty</b> | <b>Similar infringement offence in Asbestos regulations</b> |
|---|----------------|---|
| A licence holder must keep the licence document available for inspection  | \$300          | Regulation 72(1) - \$300                                    |
| A licence holder must give WorkSafe notice of change of address   | \$300          | Regulation 73(1) - \$300                                    |
| If a licence has been amended by WorkSafe, the licence holder must return the old licence document to WorkSafe                      | \$300          | Regulation 79(2) - \$300                                    |
| A licence holder must give written notice to WorkSafe as soon as practicable if the licence document is lost, stolen, or destroyed. | \$300          | Regulation 80(1) - \$300                                    |

16.

Your feedback is welcome on whether the infringement offences and fees identified for this licensing regime are appropriate.



## What transitional timeframe should be provided for ammonia systems to comply with signage requirements?

The signage requirements in *Health and Safety at Work (Hazardous Substances) Regulations 2017* explicitly exclude systems in which anhydrous ammonia is the refrigerant. The Government has decided to remove the exclusion, which was an historical carryover from the previous dangerous goods legislation.

A short transitional period will be provided to allow time for compliance. The signage requirement will be engaged when 100 kg or more of anhydrous ammonia contained in a system is used as a refrigerant. The 100 kg threshold is consistent with the emergency management provisions in the Hazardous Substances Regulations.

We are proposing a three-month transitional timeframe for ammonia systems to be in compliance with signage requirements

This three-month timeframe will start when the amendments to the regulations come in to force. The amendments will be notified in the *New Zealand Gazette* once they are made.

17. Your feedback is welcome on whether the three-month transitional phase that is proposed is sufficient to meet the signage requirements set out in the Hazardous Substances Regulations.





## Annex One: Overview of licensing regime

### Requirement to be licensed

| Provision  | Description   |
|--|---|
| <p>Licence required to carry out work on a commercial or industrial refrigeration, heat pump, or air conditioning system that uses a flammable, toxic, or very high operating pressure refrigerant</p> | <p>On 13 May 2019, Cabinet agreed that the refrigeration and air conditioning technician licensing regulations (the licensing regulations) should specify that a person must not carry out a class of work on a commercial or industrial refrigeration, heat pump, or air conditioning system — which use a flammable, toxic, or very high operating pressure refrigerant — unless the person holds a licence for that work.</p> <p>We propose that an individual who contravenes this requirement would commit an offence and be liable on conviction to a fine not exceeding \$10,000. This offence and level of penalty is consistent with a similar duty under regulation 54(1) of the Health and Safety at Work (Asbestos) Regulations.</p> <p>Section 206 of the HSW Act places a general duty that:</p> <ol style="list-style-type: none"> <li>a. a person must not carry out work if regulations require the work, or class of work to be carried out by, or on behalf of a person who is authorised; and the person, or the person on whose behalf the work is carried out, is not authorised in accordance with regulations;</li> <li>b. a PCBU must not direct or allow a worker to carry out work if regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with regulations.</li> </ol> |
| <p>Exceptions</p>  | <p>On 13 May 2019, Cabinet agreed that the following types of work or workers would not be required to be licensed:</p> <ul style="list-style-type: none"> <li>• trainees or apprentices who are working towards trade certification in order to be licensed, and are under supervisions of a technician who holds a current licence;</li> <li>• plant operators responsible for the day-to-day operation of a commercial or industrial refrigeration system;</li> <li>• work on domestic or light commercial refrigeration, heat pump, or air conditioning appliances;</li> <li>• work on automotive air conditioning systems;</li> <li>• work on commercial or industrial refrigeration, heat pump, or air conditioning systems that use non-hazardous refrigerant gases;</li> <li>• work on refrigeration, heat pump, and air conditioning systems</li> </ul>  |



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| <p>Duty of PCBU to ensure direct supervision</p> | <p>on ships or aircraft.</p> <p>On 13 May 2019, Cabinet agreed that the licensing regulations should exempt trainees or apprentices who are working towards trade certification, and are under the supervision of a technician who holds a current licence, from the requirement to be licensed.</p> <p>We propose that a corresponding duty should be placed on a PCBU to ensure that a licence holder supervising the work of a trainee or apprentice carrying out a class of work on a commercial or industrial refrigeration, heat pump, or air conditioning system — which uses a flammable, toxic, or very high operating pressure refrigerant — should provide direct supervision of the trainee or apprentice unless:</p> <ul style="list-style-type: none"> <li>• the nature or circumstances of a particular task make direct supervision impracticable or unnecessary; and</li> <li>• the reduced level of supervision will not place the health or safety of the supervised person or any other person at risk.</li> </ul> <p>Direct supervision of a trainee or apprentice would mean the oversight by the supervising person of the work of that trainee or apprentice for the purposes of: directing, demonstrating, monitoring, and checking the work in a way that is appropriate to the trainee’s or apprentice’s level of competency; and ensuring a capacity to respond in an emergency situation.</p> <p>A person who contravenes this requirement would commit an offence and be liable on conviction: for an individual, to a fine not exceeding \$10,000; and for a business, to a fine not exceeding \$50,000. This offence and level of penalty is consistent with a similar duty under regulation 28 of the Health and Safety at Work (Asbestos) Regulations.</p> |
| <p>Evidence of licence requirements</p>          | <p>On 13 May 2019, Cabinet agreed that the licensing regulations should specify that a person must not carry out a class of work on a commercial or industrial refrigeration, heat pump, or air conditioning system — which uses a flammable, toxic, or very high operating pressure refrigerant — unless the person holds a licence for that class of work.</p> <p>We propose that a corresponding duty should be placed on a PCBU at a workplace to not direct or allow a worker to carry out (or supervise) a class of work on a commercial or industrial refrigeration, heat pump, or air conditioning system — which uses a flammable, toxic, or very high operating pressure refrigerant — unless the PCBU sees written evidence provided by the worker that the worker has the relevant licence for that class of work.</p> <p>This would be consistent with the approach taken in the high-risk work licensing provisions of the Australian Model Work Health and Safety Regulations.</p>  |



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|  | <p>A person who contravenes this requirement would commit an offence and be liable on conviction: for an individual, to a fine not exceeding \$10,000; and for a business, to a fine not exceeding \$50,000. This offence and level of penalty is consistent with a similar duty under 54(2) of the Health and Safety at Work (Asbestos) Regulations.</p> |
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## Licensing processes

The regulations will specify licensing process based on those in Chapter 4, Part 4.5, Division 1, Subdivision 2 of the Australian Model Work Health and Safety Regulations, as follows:

| Provision                   | Description   |
|-----------------------------|---|
| Who may apply for a licence | Only a person who meets the competency requirements, and who holds a relevant qualification, if any, as set out in a Safe Work Instrument, may apply for a licence.   |
| Competency Requirements     | <p>On 13 May 2019, Cabinet agreed that applicants should meet the following competency requirements:</p> <ul style="list-style-type: none"><li>• an applicant must have knowledge of the installation, commissioning, servicing, and maintenance of refrigeration, and/or heat pump, and/or air conditioning plant and equipment relevant to the class of work for which the applicant seeks a licence;</li><li>• an applicant must have knowledge of the hazardous properties for the classes of refrigerants they are likely to use; and</li><li>• an applicant must have had suitable training and experience.</li></ul> <p>An applicant will be required to demonstrate that they meet these requirements by providing a copy of a certificate for a relevant qualification in relation to the class of licence applied for.<sup>3</sup></p> <p>It is intended that a Safe Work Instrument will specify the details of any qualifications that must be completed in order to demonstrate competence for each class of licence. A Safe Work Instrument is a disallowable instrument that is made by the Minister for Workplace Relations and Safety and notified in the <i>Gazette</i>. It will be developed by WorkSafe in consultation with the heating, ventilation, air conditioning and refrigeration (HVAC&amp;R) industry and relevant industry training organisations.</p> <p>On 13 May 2019, Cabinet agreed to the following licence classes:</p> <ul style="list-style-type: none"><li>• a <b>heating and air conditioning licence</b> would enable the licence holder to work on any commercial or industrial heat pump or air conditioning system that uses a flammable, toxic, or very high operating pressure refrigerant;</li></ul> |

<sup>3</sup> Where an individual has relevant work experience, but does not hold a relevant trade qualification, they would first need to approach the relevant industry training organisation to develop an individual recognition of prior learning programme and get their trade skills formally recognised before applying to WorkSafe for a licence. Where an individual has a relevant trade qualification from overseas (other than Australia) they would first need to contact the NZQA to assess their qualification and determine whether it can be recognised in New Zealand before applying to WorkSafe for a licence. Australian qualifications should be automatically recognised by WorkSafe in accordance with the Trans-Tasman Mutual Recognition Act.



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|                         | <ul style="list-style-type: none"><li>• a <b>refrigeration, heating, and air conditioning licence (excluding ammonia)</b> would enable the licence holder to work on commercial or industrial refrigeration, heat pump, or air conditioning system that uses a flammable, toxic, or very high operating pressure refrigerant, including transport refrigeration systems, but excluding systems using ammonia refrigerant;</li><li>• a <b>refrigeration, heating, and air conditioning licence (including ammonia)</b> would enable the licence holder to work on commercial or industrial refrigeration, heat pump, or air conditioning system that uses a flammable, toxic, or very high operating pressure refrigerant, including transport refrigeration systems and systems using ammonia refrigerant.</li></ul> <p>A licence class for transport refrigeration systems may also be needed and is being tested further through this discussion document.</p>   |
| Application for licence | <p>An application for a licence must be made in the manner and form required by WorkSafe and be accompanied by the relevant fee.</p> <p>An application must include the following information:</p> <ul style="list-style-type: none"><li>• the name and address of the applicant;</li><li>• a recent photograph of the applicant;</li><li>• any other evidence of the applicant's identify required by WorkSafe;</li><li>• the class of licence to which the application relates;</li><li>• evidence that the applicant:<ul style="list-style-type: none"><li>○ has acquired knowledge of the installation, commissioning, servicing, and maintenance of refrigeration, and/or heat pump, and/or air conditioning plant and equipment relevant to the class of work for which the applicant seeks a licence;</li><li>○ has acquired knowledge of the hazardous properties for the classes of refrigerants they are likely to use; and</li><li>○ has had suitable training and experience;</li></ul></li><li>• evidence that the applicant holds a relevant qualification in relation to the class of licence applied for;<sup>4</sup></li><li>• a declaration as to whether the applicant has ever been convicted or found guilty of any offence under the HSW Act or regulations, or under the former Health and Safety in Employment Act (the HSE Act);</li><li>• details of any conviction or finding of guilt declared above;</li><li>• a declaration as to whether the applicant has ever entered into an enforceable undertaking under the HSW Act;</li><li>• details of any enforceable undertaking declared above.</li></ul> |

<sup>4</sup>A Safe Work Instrument will specify the details of any qualifications that must be completed in order to demonstrate competence for each class of licence



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| <p>WorkSafe may request additional information</p> | <p>WorkSafe may, if it regards an application for a licence as incomplete, ask the applicant to provide additional information.</p> <p>A request for additional information must specify the date by which the additional information is to be provided (which must not be less than 28 days after the request was made) and it must be in writing.</p> <p>If an applicant does not provide the additional information by the specified date, the application is to be taken to have been withdrawn.</p> <p>WorkSafe may make more than one request for additional information.</p>   |
| <p>Decision on application</p>                     | <p>WorkSafe must grant a licence if satisfied about the following:</p> <ul style="list-style-type: none"><li>• the application has been made in accordance with these regulations;</li><li>• the applicant either resides in New Zealand or resides outside New Zealand and circumstances exist that justify the grant of the licence;</li><li>• the applicant has provided evidence that they:<ul style="list-style-type: none"><li>○ have acquired knowledge of the installation, commissioning, servicing, and maintenance of refrigeration, and/or heat pump, and/or air conditioning plant and equipment relevant to the class of work for which the applicant seeks a licence;</li><li>○ have acquired knowledge of the hazardous properties for the classes of refrigerants they are likely to use; and</li><li>○ have had suitable training and experience;</li></ul></li><li>• the applicant holds a relevant qualification in relation to the class of licence applied for;</li><li>• the applicant is able to carry out the work to which the licence relates safely and competently.</li></ul> <p>WorkSafe must refuse to grant a licence if satisfied that the applicant, in making the application, has:</p> <ul style="list-style-type: none"><li>• given information that is false or misleading in a material particular; or</li><li>• failed to give any material information that should have been given.</li></ul> <p>If WorkSafe decides to grant the licence, it must notify the applicant within 14 days after making the decision.</p> <p>If WorkSafe does not make a decision within 120 days after receiving the application or any additional information requested, WorkSafe is taken to have refused to grant the licence.</p> |
| <p>Matters to be taken</p>                         | <p>For the purposes of being satisfied that the applicant is able to carry out the work to which the licence relates safely and competently, WorkSafe</p>   |



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| into account                       | <p>must have regard to all relevant matters, including the following:</p> <ul style="list-style-type: none"><li>• any offence under the HSW Act or regulations, or under the former HSE Act of which the applicant has been convicted or found guilty;</li><li>• any enforceable undertaking the applicant has entered into under the HSW Act;</li><li>• the record of the applicant in relation to any matters arising under the HSW Act or these regulations.</li></ul>   |
| Refusal to grant licence – process | <p>If WorkSafe proposes to refuse to grant a licence, WorkSafe must give the applicant a written notice:</p> <ul style="list-style-type: none"><li>• informing the applicant of the reasons for the proposed refusal; and</li><li>• advising the applicant that the applicant may, by a specified date (being no less than 28 days after WorkSafe gives the notice), make a submission to WorkSafe in relation to the proposed refusal.</li></ul> <p>After the date specified in the written notice, WorkSafe must:</p> <ul style="list-style-type: none"><li>• if the applicant has made a submission in relation to the proposed refusal to grant the licence, consider that submission; and</li><li>• whether or not the applicant has made a submission, decide whether to grant or refuse to grant the licence; and</li><li>• within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.</li></ul> |
| Duration of licence                | <p>On 13 May 2019, Cabinet agreed that a licence will take effect on the day it is issued by WorkSafe and, unless cancelled earlier, will expire 5 years after that day.</p>  |
| Licence document                   | <p>If WorkSafe grants a licence, WorkSafe must issue to the applicant a licence document in the form determined by WorkSafe.</p> <p>The licence document must include the following:</p> <ul style="list-style-type: none"><li>• the name of the licence holder;</li><li>• a recent photograph of the licence holder;</li><li>• the class of the licence and a description of the work within the scope of the licence;</li><li>• the date on which the licence was granted;</li><li>• the expiry date of the licence.</li></ul>  |
| Licence document to be available   | <p>A licence holder must keep the licence document available for inspection under the Act.</p> <p>This requirement would not apply if the licence document is not in the</p>  |



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|  | <p>licence holder's possession because: it has been returned to WorkSafe; or the licence holder has applied for, but has not received, a replacement licence document.</p> <p>An individual who contravenes this requirement would commit an offence and be liable on conviction to a fine not exceeding \$2,000. This offence and level of penalty is consistent with a similar duty under regulation 72 of the Health and Safety at Work (Asbestos) Regulations.</p> <p>Failing to keep licence document available for inspection would also be an infringement offence.<sup>5</sup> The fee for this infringement offence would be \$300. This infringement offence and fee is consistent with a similar infringement offence that applies to regulation 72(1) of the Health and Safety at Work (Asbestos) Regulations.</p> |
| Reassessment of competency of licence holder | <p>WorkSafe may direct a licence holder to obtain a reassessment of the competency of the licence holder to carry out the class of work covered by the licence if WorkSafe reasonably believes that the licence holder may not be competent to carry out that work. For example, if WorkSafe receives information that the licence holder has carried out work incompetently.</p>  |

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<sup>5</sup> Infringements are effectively 'on-the-spot' fines issued via notice by a WorkSafe inspector to deal with minor breaches of the law. Set fees apply in respect of each regulation identified as an infringement offence; meaning that inspectors do not have any discretion about the dollar amount charged.





## Amendment of licence document processes

The regulations will specify amendment of licence document processes based on those in Chapter 4, Part 4.5, Division 1, Subdivision 3 of the Australian Model Work Health and Safety Regulations, as follows:

| Provision   | Description  |
|---|--|
| Notice of change of address                         | <p>The holder of a licence must give written notice to WorkSafe of a change of address within 14 days of the change occurring.</p> <p>An individual who contravenes this requirement would commit an offence and be liable on conviction to a fine not exceeding \$2,000. This offence and level of penalty is consistent with a similar duty under regulation 73 of the Health and Safety at Work (Asbestos) Regulations.</p> <p>Failing to give written notice to WorkSafe of a change of address would also be an infringement offence. The fee for this infringement offence would be \$300. This infringement offence and fee is consistent with a similar infringement offence that applies to regulation 73(1) of the Health and Safety at Work (Asbestos) Regulations.</p> |
| WorkSafe to give amended licence document to holder | <p>If WorkSafe amends a licence and considers that the licence document requires amendment, WorkSafe must give the licence holder an amended licence document within 14 days after making the decision to amend the licence.</p>   |
| Licence holder to return licence                    | <p>If a licence has been amended by WorkSafe, then the licence holder must return the old licence document to WorkSafe.</p> <p>An individual who contravenes this requirement would commit an offence and be liable on conviction to a fine not exceeding \$2,000. This offence and level of penalty is consistent with a similar duty under regulation 79 of the Health and Safety at Work (Asbestos) Regulations.</p> <p>Failing to return licence document to WorkSafe would also be an infringement offence. The fee for this infringement offence would be \$300. This infringement offence and fee is consistent with a similar infringement offence that applies to regulation 79(2) of the Health and Safety at Work (Asbestos) Regulations.</p>                           |
| Replacement licence document                        | <p>A licence holder must give written notice to WorkSafe as soon as practicable if the licence document is lost, stolen, or destroyed.</p> <p>An individual who contravenes this requirement would commit an offence and be liable on conviction to a fine not exceeding \$2,000. This offence and level of penalty is consistent with a similar duty under regulation 80(1) of the Health and Safety at Work (Asbestos) Regulations.</p>  |



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|                                | <p>Failing to notify WorkSafe of loss, theft, or destruction of licence would also be an infringement offence. The fee for this infringement offence would be \$300. This infringement offence and fee is consistent with a similar infringement offence that applies to regulation 80(1) of the Health and Safety at Work (Asbestos) Regulations.</p> <p>If a licence document is lost, stolen, or destroyed, the licence holder may apply to WorkSafe for a replacement document.</p> <p>An application for a replacement licence document must be made in the manner and form required by WorkSafe.</p> <p>The application must include a declaration describing the circumstances in which the original document was lost, stolen, or destroyed; and be accompanied by the relevant fee.</p> <p>WorkSafe must issue a replacement licence document if satisfied that the original document was lost, stolen, or destroyed.</p> <p>If WorkSafe refuses to issue a replacement licence document, it must give the licence holder written notice of that decision, including the reasons for the decision, within 14 days after making the decision.</p> |
| Voluntary surrender of licence | <p>A licence holder may voluntarily surrender the licence document to WorkSafe.</p> <p>The licence expires on the surrender of the licence document.</p>  |



## Licence renewal processes

The regulations will specify amendment of licence renewal processes based on those in Chapter 4, Part 4.5, Division 1, Subdivision 4 of the Australian Model Work Health and Safety Regulations, as follows:

| Provision   | Description   |
|---|---|
| WorkSafe may renew licence                              | WorkSafe may renew a licence on application by the licence holder.  |
| Application for renewal                                 | <p>The holder of a licence may apply to WorkSafe for the licence to be renewed.</p> <p>The application must:</p> <ul style="list-style-type: none"><li>• be made before the expiry of the licence holder's current licence; and</li><li>• be made in the manner and form required by WorkSafe; and</li><li>• be accompanied by the relevant fee; and</li><li>• include, or be accompanied by, the following information:<ul style="list-style-type: none"><li>○ the name and address of the applicant;</li><li>○ a recent photograph of the applicant;</li><li>○ any other evidence of the applicant's identity required by WorkSafe;</li><li>○ a declaration by the applicant that he or she has maintained the competency required to carry out the work covered by the licence (including by obtaining any reassessment directed by WorkSafe).</li></ul></li></ul> |
| Licence continues in force until application is decided | If a licence holder applies for renewal of a licence, the licence is taken to continue in force from the day it would have expired until the licence holder is given notice of the decision on the application.   |
| Provisions relating to renewal of licence               | <p>The proposed application process for a licence would also apply to an application for the renewal of a licence.</p> <p>The proposed decision making processes that apply to the grant of a licence would also apply to the renewal of a licence.</p> <p>The proposed process for the refusal to grant a licence would also apply to a refusal to renew a licence.</p>  |
| Status of licence during review                         | <p>It is proposed that the following would apply if WorkSafe gives a licence holder written notice of its decision to refuse to renew the licence.</p> <p>If the licence holder does not apply for a review of the WorkSafe</p>   |



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|  | <p>decision, the licence continues to have effect until the last of the following events: the expiry of the licence; or the end of the time for applying for a review.</p> <p>If the licence holder applies for a review of the WorkSafe decision, the licence continues to have effect until the earlier of the following events: the licence holder withdraws the application for review; or WorkSafe makes a decision on the review.</p> <p>If the licence holder does not lodge an appeal against the decision on the review, the licence continues to have effect until the end of the time for lodging an appeal.</p> <p>If the licence holder lodges an appeal, the licence continues to have effect until the earlier of the following events: the licence holder withdraws the appeal; or the District Court makes a decision on the appeal.</p> <p>The licence would continue to have effect even if its expiry date passes.</p> <p>Refer to the 'review of decisions' section of this document for further information on the proposed processes for the review of decisions and appeals.</p> |
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## Licence suspension and cancellation processes

The regulations will specify amendment of licence suspension and cancellation processes based on those in Chapter 4, Part 4.5, Division 1, Subdivision 5 of the Australian Model Work Health and Safety Regulations, as follows:

| Provision                             | Description  |
|---------------------------------------|--|
| Suspension or cancellation of licence | <p>WorkSafe may suspend or cancel a licence if satisfied about 1 or more of the following:</p> <ul style="list-style-type: none"><li>• the licence holder has failed to ensure that the work authorised by the licence is carried out safely and competently;</li><li>• the licence holder has failed to obtain a reassessment of competency directed by WorkSafe;</li><li>• the licence holder, in the application for the grant or renewal of the licence or on request by WorkSafe for additional information,—<ul style="list-style-type: none"><li>○ gave information that was false or misleading in a material particular; or</li><li>○ failed to give any material information that should have been given in that application or on that request;</li></ul></li><li>• the licence was granted or renewed on the basis of a certificate that was obtained on the basis of the giving of false or misleading information by any person or body.</li></ul> <p>If WorkSafe suspends or cancels a licence, WorkSafe may disqualify the licence holder from applying for: a further licence of the same type; or another licence under these regulations to carry out work which requires skills that are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.</p> |
| Matters taken into account            | <p>In making a decision to suspend or cancel a licence, WorkSafe must have regard to any submissions made by the licence holder.</p> <p>If the licence holder has failed to ensure that the work authorised by the licence is carried out safely and competently, WorkSafe must have regard to all relevant matters, including the following:</p> <ul style="list-style-type: none"><li>• any offence of which the licence holder has been convicted or found guilty under the HSW Act or regulations, or under the former HSE Act;</li><li>• any enforceable undertaking that the licence holder has entered into under the HSW Act;</li><li>• in relation to any equivalent licence applied for or held by the licence holder under the HSW Act or regulations, or the former HSE Act,—</li></ul>  |



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|   | <ul style="list-style-type: none"><li>○ any refusal to grant or renew the licence; and</li><li>○ any condition imposed on the licence, if granted; and</li><li>○ any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;</li><li>● the record of the licence holder in relation to any matters arising under the HSW Act or these regulations.</li></ul>   |
| Notice to and submissions by licence holder | <p>Before suspending or cancelling a licence, WorkSafe must give the licence holder a written notice of the proposed suspension or cancellation and any proposed disqualification that:</p> <ul style="list-style-type: none"><li>● outlines all relevant allegations, facts, and circumstances known to WorkSafe; and</li><li>● advises the licence holder that the licence holder may, by a specified date (being not less than 28 days after WorkSafe gives the notice), make a submission in relation to the proposed suspension or cancellation and any proposed disqualification.</li></ul>   |
| Notice of decision                          | <p>WorkSafe must give the licence holder written notice of a decision to suspend or cancel the licence within 14 days after making the decision.</p> <p>The notice must:</p> <ul style="list-style-type: none"><li>● state that the licence is to be suspended or cancelled (as applicable); and</li><li>● if the licence is to be suspended, state—<ul style="list-style-type: none"><li>○ when the suspension begins and ends; and</li><li>○ the reasons for the suspension; and</li><li>○ whether the licence holder is required to undergo training, retraining, or reassessment or take any other action before the suspension ends; and</li><li>○ whether the licence holder is disqualified from applying for a further licence during the suspension; and</li></ul></li><li>● if the licence is to be cancelled, state—<ul style="list-style-type: none"><li>○ when the cancellation takes effect; and</li><li>○ the reasons for the cancellation; and</li><li>○ whether the licence holder is disqualified from applying for a further licence; and</li></ul></li><li>● if the licence holder is disqualified from applying for a further licence, state—<ul style="list-style-type: none"><li>○ when the disqualification begins and ends; and</li><li>○ the reasons for the disqualification; and</li><li>○ whether the licence holder is required to undergo training, retraining, or reassessment or take any other action before the disqualification ends; and</li><li>○ any other class of licence under these regulations that the licence holder is disqualified from applying for; and</li></ul></li><li>● state when the licence document must be returned to WorkSafe.</li></ul> |



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| Immediate suspension                      | <p>WorkSafe may suspend a licence without giving notice if satisfied that work carried out under the licence should cease because the work may pose an imminent serious risk to the health or safety of any person.</p> <p>If WorkSafe decides to suspend a licence under this regulation:</p> <ul style="list-style-type: none"><li>• WorkSafe must give the licence holder written notice of the suspension and the reasons for the suspension; and</li><li>• the suspension of the licence takes effect on the giving of the notice.</li></ul> <p>WorkSafe must then:</p> <ul style="list-style-type: none"><li>• within 14 days give the licence holder a written notice of the proposed suspension or cancellation and any proposed disqualification that:<ul style="list-style-type: none"><li>○ outlines all relevant allegations, facts, and circumstances known to WorkSafe; and</li><li>○ advises the licence holder that the licence holder may, by a specified date (being not less than 28 days after WorkSafe gives the notice), make a submission in relation to the proposed suspension or cancellation and any proposed disqualification; and</li></ul></li><li>• make its decision to suspend or cancel the licence and any disqualification.</li></ul> <p>If WorkSafe does not give written notice within 14 days, then the suspension ends at the end of the 14-day period.</p> <p>If WorkSafe does give written notice within 14 days, then the licence remains suspended until the decision is made to suspend or cancel the licence and any disqualification.</p> |
| Licence holder to return licence document | <p>A licence holder, on receiving a notice of a decision to suspend or cancel a licence, must return the licence document to WorkSafe in accordance with the notice.</p> <p>An individual who contravenes this requirement would commit an offence and be liable on conviction to a fine not exceeding \$2,000. This offence and level of penalty is consistent with a similar duty under regulation 91 of the Health and Safety at Work (Asbestos) Regulations.</p> <p>Failing to return licence when requested would also be an infringement offence. The fee for this infringement offence would be \$300. This infringement offence and fee is consistent with a similar infringement offence that applies to regulation 91(1) of the Health and Safety at Work (Asbestos) Regulations.</p>  |
| WorkSafe to return licence document       | <p>WorkSafe must return the licence document to the licence holder within 14 days after the licence suspension ends.</p>   |



## Review and appeal processes

The regulations will specify review and appeal processes based on those in Subpart 6 of the Health and Safety at Work (Asbestos) Regulations, as follows:

| Provision   | Description  |
|---|--|
| Which decisions are reviewable                          | <p>The applicant may apply for a review of any of the following decisions:</p> <ul style="list-style-type: none"><li>• refusal to grant a licence;</li><li>• refusal to renew a licence;</li></ul> <p>The licence holder may apply for a review of any of the following decisions:</p> <ul style="list-style-type: none"><li>• amendment of a licence, on WorkSafe’s initiative;</li><li>• refusal to issue replacement licence document;</li><li>• suspension of licence;</li><li>• cancellation of licence;</li><li>• disqualification of licence holder from applying for another licence.</li></ul>  |
| How to apply for review                                 | <p>A review application is made by giving an application to WorkSafe. The application must:</p> <ul style="list-style-type: none"><li>• be in writing;</li><li>• whenever practicable, be made on the form made available by WorkSafe for the purpose;</li><li>• identify the decision or decisions in respect of which it is made;</li><li>• state the grounds on which it is made;</li><li>• be made within 28 days after—<ul style="list-style-type: none"><li>○ the date on which WorkSafe gave written notice of the decision in respect of which the application is made; or</li><li>○ in a case where no notice of decision has been given in respect of an application for renewal of a licence, the date that is 120 days after the date on which an application for renewal of a licence was made.</li></ul></li></ul> |
| WorkSafe must acknowledge receipt of review application | <p>When WorkSafe receives a review application, it must send the applicant an acknowledgement stating when the review application was received.</p>  |
| Review decisions  | <p>WorkSafe must make a review decision as soon as is reasonably practicable after receiving the review application.</p> <p>In making a decision on the review, WorkSafe must have regard to:</p>  |





|                          |  |
|--------------------------|--|
|                          | <ul style="list-style-type: none"><li>• any written submissions made by the applicant; and</li><li>• any action taken by the applicant to address a matter, or to prevent the recurrence of a matter, that was a ground for WorkSafe’s original decision.</li></ul> <p>In making a review decision, WorkSafe must:</p> <ul style="list-style-type: none"><li>• dismiss the application and confirm the decision; or</li><li>• vary the decision; or</li><li>• withdraw the decision.</li></ul> <p>A review decision must be in writing and contain the reasons for the decision.</p>   |
| Appeal to District Court | <p>An applicant may appeal to a District Court against a review decision.</p> <p>The appeal must be brought within 28 days after the date on which the appellant was given notice of the decision, or within any longer period as the court may allow.</p> <p>The appeal must be brought by filing a notice of appeal in the registry:</p> <ul style="list-style-type: none"><li>• nearest to the residence, registered office, or principal place of business of the appellant; or</li><li>• nearest to the office of WorkSafe at which the decision subject to appeal was made.</li></ul> <p>On an appeal, the court must inquire into the decision and may:</p> <ul style="list-style-type: none"><li>• confirm, vary, or set aside the decision; or</li><li>• refer the matter back to WorkSafe with directions for WorkSafe to reconsider the whole or any specified part of the matter.</li></ul> <p>Subject to any order of the court, every decision of WorkSafe against which an appeal is brought continues in force and has effect pending the determination of the appeal.</p> |



## Annex Two: Specific details on costing

| Service                           | How it was costed   |
|-----------------------------------|---|
| Licence applications and renewals | Administrative and support staff time processing licence applications, checking completion of appropriate trade qualifications, ongoing competency assurance, checking health and safety enforcement action, responding to application queries and allowing manager sign-off, all amounting to approximately five hours per application on average over time. The cost also includes WorkSafe overhead and finance to cover the additional resources required to processes the invoicing and receipting of fees.<br><br>Cost of licence document. |
| Replacement licences              | Administrative and support staff time processing replacement licence applications approximately one hour plus overheads.<br><br>Cost of licence document.   |

### Overall assessment based on fee principles

The following table provides an assessment of the proposed fees against key criteria relevant to setting fees for government services:

| Principle               | Rationale   | Fees  |
|-------------------------|---|---|
| Appropriateness of fees | Fees are appropriate for government services provided directly to specific individuals or organisations who derive a benefit from those services.                       | It is standard for government to charge fees for licensing, as licensed persons receive the benefit of providing a chargeable service.  |
| Full cost recovery      | The fees should reflect the full efficient unit costs of a specific good or service, unless there is some specific reason for the costs to be funded by another source. | The services have been identified and costed based on experience-based estimates of staff time, taking care to match the tasks appropriately to the skill and pay scale of the administrative service involved, and there is no basis for recovery from the Working Safer Levy paid by all businesses which recovers the Crown's health and safety costs. |



|                                   |  |   |
|-----------------------------------|--|---|
| Proportionality                   | The fees should be proportionate to the service provided.  | The fees proposed are reasonable and moderate. They are within general fee levels for licensing. They are comparable to the fees for asbestos removal licences and are similar to or lower than the licensing fees paid by electrical workers and lower than the fees paid by plumbers. |
| Equitable treatment of fee payers | The fees should be equitable as between levy payers, reflecting the service provided to individual applicants (or groups of similar class of applicant). | The fees reflect the estimated time and cost involved in individual applications.   |
| Efficient implementation          | The cost recovery charges should be minimised by ensuring they are: efficient and effective (to administer); transparent; and consulted.                 | The fees are straightforward to recover. The basis for the costings is clear and included in the consultation process.  |