

# Briefing

## Cabinet Approval of the Radiation Safety Amendment Regulations 2023

<b>Date due to MO:</b>	30 March 2023	<b>Action required by:</b>	13 April 2023
<b>Security level:</b>	IN CONFIDENCE	<b>Health Report number:</b>	H2023019036
<b>To:</b>	Hon Dr Ayesha Verrall, Minister of Health		
<b>Consulted:</b>	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

### Contact for telephone discussion

Name	Position	Telephone
<b>Clare Perry</b>	Deputy Director-General, Regulatory Services – Te Pou Whakariterite Ratonga	§ 9(2)(a)
<b>Keith Gardner</b>	Principal Advisor, Office of Radiation Safety, Quality Assurance and Safety, Regulatory Services	§ 9(2)(a)

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <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 Withdrawn |  |

Comment:

# Cabinet Approval of the Radiation Safety Amendment Regulations 2023

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**Security level:** IN CONFIDENCE                      **Date:** 30 March 2023

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**To:** Hon Dr Ayesha Verrall, Minister of Health

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## Purpose of report

1. This briefing provides you with the Cabinet Legislation Committee (LEG) paper (Appendix 1) and draft Radiation Safety Amendment Regulations 2023 (Amendment Regulations – Appendix 2) for your use in Ministerial consultation ahead of lodgement with the Cabinet Office.
2. This report discloses all relevant information and implications.

## Summary

3. The LEG paper and draft Amendment Regulations give effect to Cabinet's 21 November 2022 policy agreement to amend the Radiation Safety Regulations 2016 [SWC-22-MIN-0207, CAB-22-MIN-0513].
4. The draft Amendment Regulations incorporate 2 minor and technical adjustments to Cabinet's policy decisions. With Cabinet's authority, you approved the adjustments in March 2023 [H2023020059]. The adjustments are disclosed in the LEG paper and form part of Cabinet's 21 November 2022 decisions.
5. The LEG paper has been prepared for the LEG meeting scheduled for Thursday 4 May 2023. The final lodgement time for this meeting is 10.00am, Thursday 27 April 2023.
6. The suggested Cabinet timeframe allows for the fact that no waiver to the 28-day rule has been sought and the Amendment Regulations are scheduled to commence on 28 June 2023. This means that the Amendment Regulations would need to be made in time for notification in the *New Zealand Gazette* by 30 May 2023.
7. The Amendment Regulations are needed, principally, to increase the application fees payable to Manatū Hauora – the Ministry of Health (the Ministry) for radiation safety authorisations (licences and consents). The fee increases would ensure full recovery of the costs of administering the radiation safety legislation and correct the deficit that has built up since 2016.
8. The LEG paper provides Cabinet with your required statutory recommendation for any amendment to the fees. The Ministry advises that all the statutory requirements to support your recommendation have been met.
9. The Parliamentary Counsel Office will independently provide the certified version of the Amendment Regulations for lodgement.
10. Talking points for your use at LEG are attached to this briefing (Appendix 3).

## Recommendations

We recommend you:

- a) **Note** that the Cabinet Legislation Committee (LEG) paper and draft Radiation Safety Amendment Regulations 2023 (Amendment Regulations) are attached to this briefing and would give effect to Cabinet's 21 November 2022 agreement to amend the Radiation Safety Regulations 2016. **Noted**
- b) **Note** that with Cabinet's authorisation, you have approved 2 minor and technical adjustments to Cabinet's decisions and that these adjustments are incorporated into the Amendment Regulations and disclosed in the LEG paper. **Noted**
- c) **Note** that the LEG paper provides Cabinet with the statutory recommendation required by the Minister of Health to amend the fees and that Manatū Hauora – the Ministry of Health advises that the statutory requirements that support your recommendation have been met. **Noted**
- d) **Note** that the Amendment Regulations would need to be made in time for notification in the *New Zealand Gazette* by 30 May 2023 in order to comply with the 28-day rule and commence on 28 June 2023. **Noted**
- e) **Agree** to consult your Ministerial colleagues prior to lodging the LEG paper with the Cabinet Office before 10.00am, Thursday 27 April 2023. **Yes/No**



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**  
Date: 27 Mar 2023

Hon Dr Ayesha Verrall  
**Minister of Health**  
Date:



Clare Perry  
Deputy Director-General  
**Regulatory Services | Te Pou Whakariterite Ratonga**  
Date: 27 March 2023

# Cabinet Approval of the Radiation Safety Amendment Regulations 2023

## Cabinet process

1. The Cabinet Legislation Committee (LEG) paper (Appendix 1) and draft Radiation Safety Amendment Regulations (Amendment Regulations – Appendix 2) give effect to Cabinet’s 21 November 2022 policy agreement to amend the Radiation Safety Regulations 2016 [SWC-22-MIN-0207, CAB-22-MIN-0513].
2. The Amendment Regulations would be made by Order in Council under sections 91 to 93 of the Radiation Safety Act 2016 (the Act). You are the Minister responsible for the Act and Manatū Hauora – Ministry of Health (the Ministry) administers the Act.
3. The LEG paper and Amendment Regulations are suitable for Ministerial consultation to begin. The Parliamentary Counsel Office (PCO) will provide a certified copy of the draft Amendment Regulations in time for lodgement with the Cabinet Office.
4. Talking points for your use at LEG are attached to this briefing (Appendix 3).

## What the Amendment Regulations will do

5. The Amendment Regulations would ensure that full recovery of the costs of administering the radiation safety legislation is achieved by raising the application fees payable to the Ministry for the authorisations (licences and consents) required by the Act. The amended fees are required as soon as possible to address the increasing deficit in recovering the costs of administering the radiation safety legislation.
6. The Amendment Regulations would also enable more proportional inspection frequencies and methods to verify compliance. Some technical language would also be amended to ensure the original intent of the provisions is accurate.
7. Across the fee types, the average fee increase will be 111 percent. The fees increase will recover an additional \$1million annually and a further \$200,000 annually for source licences over eight years to address the deficit balance that has built up since 2016. While these are significant percentage increases, the Ministry’s view is that the new fees do not constitute significant costs, compared to the overall operating costs for organisations and people who are required to pay the fees.

## Background information on the radiation safety legislation

11. One purpose of the Act is to establish a framework to protect the health and safety of people and to protect the environment from the harmful effects of ionising radiation while allowing for its safe and beneficial use. The other purpose of the Act is to enable New Zealand to meet some of its international obligations relating to radiation protection, radiation safety and security, and nuclear non-proliferation.
12. The Act applies to ‘radiation sources’ which are radioactive material and irradiating apparatus (devices that produce ionising radiation when operated). The Act does not apply to non-ionising radiation.

13. The legislation includes the Radiation Safety Regulations 2016 (specifying general requirements) and Codes of Practice (specifying technical requirements). The Act requires licencing of the management and control of ionising radiation sources (source licences), the use of ionising radiation (use licences) and the export or import of radioactive material (consents). The Act also requires a register of most categories of radiation sources to be kept for the purpose of ascertaining the location of radiation sources (among other things).
14. A programme of routine on-site inspections to verify compliance with the radiation safety requirements is applied to source licence holders. The frequency of inspections is derived from the categories set out in Schedule 2 of the Regulations (which is subject to the Amendment Regulations). Facilities that receive annual inspections attract the highest source licence fee and the lowest fee category is for facilities that receive an inspection once every five years.

## **Development of the Amendment Regulations**

15. In 2021, the Ministry reviewed the fees payable under the Act and concluded the aim of full cost recovery was not being met. On this basis, the previous Minister of Health agreed to take proposals to Cabinet that would amend the fees and some other provisions set out in the Radiation Safety Regulations 2016.
16. In February 2022, Cabinet agreed the public consultation on proposals for the Amendment Regulations [SWC-22-MIN-0001, CAB-22-MIN-0021]. Public consultation was conducted in March and April 2022. Approximately 3,690 licence and consent holders were directly advised of the consultation. Professional registration bodies and representative groups were also directly advised.
17. The public consultation document provides a report on the Ministry's fees review, outlines the costs of administering the radiation safety legislation, and provides a model for allocating the fees as closely as possible to the costs incurred. The public consultation also included a report from PriceWaterhouse Cooper New Zealand on the model used to set the proposed fees. These documents are available on the Ministry's website.
18. Twenty submissions were received in response to the public consultation. Eighteen submissions were from source licence holders. Generally, submitters did not want to pay higher fees and some submitters wanted the Crown to meet the costs of recovering the deficit. No submitters identified a social goal that justified partial Crown funding of the legislative framework (such as safety or equity). No submitters identified faults or suggested improvements to the fees model.
19. Submitters supported (or did not comment on) the proposals that were not related to fees.
20. The fees set out in the public consultation document were approved by Cabinet unaltered. Other amendments agreed by Cabinet are in-line with the public consultation but incorporate several technical suggestions provided by submitters.

The Ministry's assessment of the impact of the proposals is fully disclosed in the cost recovery impact statement (CRIS) that Cabinet considered when it approved the amendments set out in SWC-22-MIN-0207. The CRIS will be included in the documents proactively released after Cabinet makes its final decisions on the amended Regulations.

## **Responsible Minister's statutory recommendation relating to fees**

21. In order to comply with section 92(1) of the Act, you must recommend regulations relating to fees, including amending fees.
22. Before making your recommendation, you must, as far as reasonably practicable, (in determining the method of recovering the costs of administering the legislation) have regard to the principles set out in section 92(3) of the Act, which are:
  - a. equity – costs are recovered fairly from the users or beneficiaries
  - b. efficiency – costs are allocated to achieve the maximum benefit for the minimal cost
  - c. justifiability – only actual and reasonable costs are recovered
  - d. transparency – costs are identified, including the period for which they apply
  - e. ease of administration – costs of collection should be as low as possible.
1. Under section 92(4) of the Act, you can only recommend regulations relating to fees if there has been appropriate consultation with people substantially affected by the fees, and those people have been given sufficient time to respond.
2. The Ministry advises that the consultation process, already publicly available documents, and the documents that will be proactively released once Cabinet has made its final decisions on the Amendment Regulations meet your statutory obligations under section 92 of Act. On this basis, you can recommend the fee amendments set out in the Amendment Regulations.
3. Your statutory recommendation is presented in paragraphs 11 and 12 of the LEG paper and made in recommendation 6 of the LEG paper.

### **Equity**

23. The Amendment Regulations would not directly affect existing health equity programmes nor directly contribute to further health inequity.

### **Next steps**

24. The LEG paper and draft Amendment Regulations can be distributed for Ministerial consultation. PCO will provide a certified copy of the Amendment Regulations for lodgement.
25. The LEG paper has been prepared for the LEG meeting scheduled for Thursday 4 May 2023. The final time for lodgement for this LEG meeting is 10am, Thursday 27 April 2023.
26. The Amendment Regulations are scheduled to come into force on 28 June 2023.

**ENDS.**

## Minister's Notes

PROACTIVELY RELEASED