

MACHINERY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Machinery Act 1950.

Clause 1 relates to the Short Title.

Clause 2 amends section 2 of the principal Act which relates to the definition of terms used in that Act.

Subclause (1) adds a definition of the term "lifting vehicle". A lifting vehicle is defined as a vehicle drawn or propelled by mechanical or manual power designed principally to lift, carry, or stack goods by means of—

- (a) A fork consisting of one or more arms which support the load; or
- (b) A platform; or
- (c) An attachment or other mechanism.

The definition will apply to what is commonly described as a "fork lift truck", and to other similar types of vehicle used to lift, carry, or stack goods.

Subclause (2) repeals the definition of the term "machinery", and substitutes a new definition. The main difference is that the definition now includes lifting vehicles and tractors.

Subclause (3) inserts a definition of the term "tractor".

Clause 3 amends section 3 (1) of the principal Act. Section 3 specifies classes of machinery to which the principal Act does not apply.

Subclause (1), which inserts a new *paragraph (aa)*, adds a further class. This is any lifting vehicle or tractor used on a barge, hulk, or wharf, or in a shed or store on or near a wharf in which cargo unloaded from a ship or to be loaded on to a ship, may be stored.

Subclause (2) amends section 3 (1) (c). The effect of this amendment is that the principal Act will not apply to the motor of a vehicle within the meaning of the Transport Act 1962, (not being a lifting vehicle or tractor) unless the motor is used for a purpose other than that of propelling the vehicle.

Clause 4 repeals section 12 of the principal Act, and substitutes a new section. The new section re-enacts the prohibition against persons under 15 years being employed in working or assisting to work at or in connection with machinery but excludes the use of tractors on farms by children of or over the age of 12 years. Subsection (3) of the existing section, which provides that no gas or oil engine or lifting, hauling, or conveying appliance shall be left in charge of a person under 18 years, is not re-enacted.

Clause 5 amends section 21B (1) of the principal Act by omitting the definition of the term “tractor”.

Clause 6 repeals section 21c of the principal Act (which relates to children on tractors and implements), and substitutes a new section. The new *section 21c* is similar to the existing section 21c except that the age limit under which a child is not permitted to drive or ride upon a tractor, or ride on an implement drawn by a tractor, is raised from 12 years to 15 years unless the child is of or over the age of 12 years and the tractor is being used for agricultural operations or to instruct such child to drive a tractor for use in agricultural operations.

Clause 7 inserts new *sections 26A to 26c* in the principal Act. The effect of these new sections is to enable codes of practice to be recommended, approved by the Minister, and promulgated, regarding safety in the assembly, maintenance, use, and operation of machinery and amusement devices.

The new *section 26A* authorises the Chief Inspector of Factories or the Chief Construction Safety Engineer appointed under the Factories and Commercial Premises Act 1981 and the Construction Act 1959 respectively, to issue codes of practice and to amend and revoke any code of practice.

The new *section 26B* relates to the approval of codes of practice by the Minister, publication of codes of practice, and the effect of evidence of compliance or non-compliance with a code of practice in proceedings in respect of an offence of failure to comply with any provision of the Act.

The new *section 26c* relates to proof of codes of practice in any proceedings.

Clause 8 repeals section 29 of the principal Act, and substitutes a new section. Section 29 relates to penalties for offences. The main difference between the new section 29 and the existing section is that the fines which may be imposed are increased.

Clause 9 makes a minor amendment to section 39 of the principal Act.

Clause 10 effects repeals.

Hon. Stan Rodger

MACHINERY AMENDMENT

ANALYSIS

Title	7. New sections inserted
1. Short Title	26A. Codes of practice
2. Interpretation	26B. Codes of practice to be approved by Minister
3. Machinery to which Act does not apply	26C. Proof of codes of practice
4. Young persons not to be employed in certain cases	8. Penalties
5. Safety of tractors	9. Regulations
6. Children on tractors and implements	10. Repeals

A BILL INTITULED

An Act to amend the Machinery Act 1950

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Machinery Amendment Act 1985, and shall be read together with and deemed part of the Machinery Act 1950* (hereinafter referred to as the principal Act).

*Reprinted 1972, Vol. 3, p. 2543

Amendments: 1974, No. 100; 1976, No. 37; 1977, No. 185; 1978, No. 105; 1979, No. 145; 1981, No. 10

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “lifting tackle”, the following definition:

“‘Lifting vehicle’ means a vehicle drawn or propelled by mechanical or manual power designed principally to lift, carry, or stack goods by means of— 5

“(a) A fork consisting of one or more arms which support the load; or

“(b) A platform; or

“(c) Any attachment or other mechanism:” 10

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “machinery”, and substituting the following definition:

“‘Machinery’—

“(a) Means any prime mover or transmission machinery and any machine or appliance to which the motion of a prime mover is transmitted; and 15

“(b) Includes—

“(i) A lifting machine; and

“(ii) A lifting vehicle; and 20

“(iii) A machine (being a machine situated in a factory) driven wholly or partly by manual power; and

“(iv) A tractor; but—

“(c) Does not include any machinery excluded from the provisions of this Act pursuant to section 3 of this Act.” 25

(3) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “secretary”, the following definition: 30

“‘Tractor’ means a vehicle propelled by mechanical power, controlled by a driver carried thereon, that is designed exclusively or principally for the purposes of traction and not for the carriage thereon of passengers (other than the driver) or of goods; but does not include a traction engine within the meaning of the Transport Act 1962:” 35

(4) The following enactments are hereby consequentially repealed:

(a) Section 2 of the Machinery Amendment Act 1969: 40

(b) Section 2 (4) of the Machinery Amendment Act 1970.

3. Machinery to which Act does not apply—(1) Section 3 (1) of the principal Act (as substituted by section 3 (1) of the Machinery Amendment Act 1970) is hereby amended by inserting, after paragraph (a), the following paragraph:

5 “(aa) Any lifting vehicle or tractor used on any barge or hulk or on any wharf, or in any shed or store on or near to a wharf wherein cargo unloaded from a ship or to be loaded on to a ship may be stored.”.

10 (2) Section 3 (1) (c) of the principal Act (as so substituted) is hereby amended by inserting, after the words “any vehicle”, the words “(not being a lifting vehicle or a tractor)”.

4. Young persons not to be employed in certain cases—

15 (1) The principal Act is hereby amended by repealing section 12 (as amended by section 3 of the Machinery Amendment Act 1956 and section 2 of the Machinery Amendment Act 1972), and substituting the following section:

 “12. (1) No person under the age of 15 years shall be employed in working or assisting to work at or with any machinery.

20 “(2) Nothing in **subsection (1)** of this section applies in respect of a tractor in any case to which **section 21c (2)** of this Act applies.

25 “(3) No person under the age of 18 years shall be allowed to clean any machinery while any part of the machinery is in motion, or to work between the fixed and traversing part of any self acting machine while the traversing part is in motion by the action of mechanical power.”

 (2) The following enactments are hereby consequentially repealed—

30 (a) Section 3 of the Machinery Amendment Act 1956:

 (b) Section 5 (2) of the Machinery Act 1969:

 (c) The Machinery Amendment Act 1972.

5. Safety of tractors—Section 21B (1) of the principal Act (as enacted by section 2 (1) of the Machinery Amendment Act 35 1965) is hereby amended by omitting the definition of the term “tractor”.

6. Children on tractors and implements—The principal Act is hereby amended by repealing section 21c (as inserted by section 47 (1) of the Summary Offences Act 1981), and 40 substituting the following section:

- “21C. (1) Every person commits an offence against this Act who permits any child under the age of 15 years—
- “(a) To drive any tractor; or
 - “(b) To ride upon any tractor while it is drawing any implement; or 5
 - “(c) To ride upon any implement (not being a sled or trailer designed or adapted exclusively or principally for the carriage of passengers or of goods) drawn by any tractor.
- “(2) Nothing in **subsection (1)** of this section applies where— 10
- “(a) The tractor is being used—
 - “(i) In connection with agricultural operations; or
 - “(ii) To instruct a child to drive a tractor for use in connection with agricultural operations; and
 - “(b) The child who— 15
 - “(i) Drives the tractor; or
 - “(ii) Rides upon the tractor while it is drawing any implement; or
 - “(iii) Rides upon any implement (not being a sled or trailer designed or adapted exclusively or principally for the carriage of passengers or of goods) drawn by the tractor,— 20
- is of or over the age of 12 years.
- “(3) It is a defence in a prosecution under this section if the defendant proves— 25
- “(a) That he had reasonable cause to believe and did believe that the child was of or over the age of 15 years; or
 - “(b) That, in the case of a child under the age of 12 years who does an act of a kind referred to in **subsection (2) (b)** of this section, he had reasonable cause to believe, and did believe, that the child was of or over the age of 12 years. 30
- “(4) In this section the term ‘agricultural operations’ has the same meaning as it has in section 21B of this Act. 35

7. New sections inserted—The principal Act is hereby amended by inserting, after section 26, the following sections:

“26A. **Codes of practice**—(1) In this section and in **sections 26B and 26C** of this Act—

“ ‘Chief Inspector of Factories’ means the Chief Inspector of Factories appointed under section 4 (6) of the Factories and Commercial Premises Act 1981:

5 “ ‘Chief Construction Safety Engineer’ means the Chief Construction Safety Engineer appointed under section 4 (1) of the Construction Act 1959:

10 “ ‘Code of practice’ means a recommended practice and includes a description of any commodity, phenomenon, process, or practice, by reference to its nature, quality, strength, purity, composition, quantity, dimension, weight, grade, durability, origin, age, intensity, duration, or other characteristic whatsoever, or any 2 or more of them, and may also include a glossary of terms, definitions, and symbols, 15 or any of them.

“(2) The Chief Inspector of Factories or the Chief Construction Safety Engineer may, from time to time, issue for the purposes of this Act, codes of practice relating to safety in the assembly, maintenance, use or operation of machinery, 20 or any amusement device, and may from time to time amend or revoke any such code of practice.

“26B. Codes of practice to be approved by Minister—

(1) No code of practice and no amendment or revocation of a code of practice shall have any force or effect until it has been 25 approved by the Minister.

“(2) The Minister shall not approve any code of practice or any amendment or revocation of a code of practice unless—

30 “(a) Not less than 1 month has elapsed since the publication in the *Gazette* of a notice of the intention of the Chief Inspector of Factories or Chief Construction Safety Engineer, as the case may be, to apply for approval; and

35 “(b) The Minister has consulted such persons as he considers will be affected thereby, or representatives of those persons, and they have had the opportunity to consider its possible effects and comment on those effects to the Minister; and

“(c) The Minister has considered any comments made to him concerning those effects.

40 “(3) When the Minister approves a code of practice, or any amendment or revocation of a code of practice, he shall—

“(a) Publish a notice of his approval in the *Gazette*; and

“(b) Cause that code of practice or amendment or revocation to be promulgated in such manner as he thinks fit.

“(4) Publication in the *Gazette* of a notice under **subsection (3) (a)** of this section shall be conclusive evidence that the requirements of this section have been complied with in respect of the approval specified in the notice.

“(5) Where any person is charged with an offence in respect of a failure to comply with any provision of this Act, and it is proved that there was in existence at the time of the alleged failure a code of practice relating to matters of the kind to which that provision relates,—

“(a) Evidence that that code of practice was in all relevant respects complied with shall be rebuttable evidence that that person complied with that provision; and

“(b) Evidence that that code of practice was in one or more relevant respects not complied with shall be rebuttable evidence that that person failed to comply with that provision.

“**26C. Proof of codes of practice**—Without affecting any other method of proof, the production in any proceedings of a copy of any code of practice purporting to be issued by the Chief Inspector of Factories or the Chief Construction Safety Engineer, as the case may be, shall, in the absence of proof to the contrary, be sufficient evidence that it has been issued under the authority of **section 26A** of this Act and that it has been approved by the Minister under **section 26B** of this Act.”

8. Penalties—The principal Act is hereby amended by repealing section 29 (as substituted by section 3 (1) of the Machinery Amendment Act 1978 and amended by section 6 (2) of the Machinery Amendment Act 1979 and section 47 (2) of the Summary Offences Act 1981), and substituting the following section:

“29. (1) Every person who commits an offence against this Act shall be liable on summary conviction—

“(a) In the case of an offence against section 11 of this Act, to imprisonment for a term not exceeding 6 months:

“(b) In the case of an offence against section 18 of this Act, to a fine not exceeding \$2,500:

“(c) In the case of an offence against section 19 of this Act,—

“(i) To a fine not exceeding \$5,000 where that person is the owner of the machinery concerned; or

“(ii) To a fine not exceeding \$2,500 in every other case:

“(d) In the case of an offence against **section 21c** of this Act, to a fine not exceeding \$1,250:

“(e) In the case of an offence against section 31 (3) of this Act, to a fine not exceeding \$250 for every day on which the default continues:

5 “(f) In the case of an offence against section 32 of this Act, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months:

10 “(g) In the case of an offence against a provision of this Act not specified in paragraphs (a) to (f) of this subsection, for which no specific penalty is elsewhere provided, to a fine not exceeding \$5,000 and, if the offence is a continuing one, to a further fine not exceeding \$250 for every day or part of a day during which the offence has continued.

15 “(2) Every person who commits an offence against any regulation made under this Act for which no specific penalty is elsewhere provided, shall be liable on summary conviction to a fine not exceeding \$5,000 and, if the offence is a continuing one, to a further fine not exceeding \$250 for every day or part of a day during which the offence has continued.

20 “(3) A fine imposed in respect of an offence against section 31 (3) of this Act shall be irrespective of any fine to which the defendant is liable in respect of the original offence concerned.”

9. Regulations—Section 39 (1)(k) of the principal Act (as amended by section 3 (6) of the Machinery Amendment Act 25 1978) is hereby amended—

(a) By omitting from subparagraph (i) the expression “\$2,000”, and substituting the expression “\$5,000”; and

30 (b) By omitting from subparagraph (ii) the expression “\$100”, and substituting the expression “\$250”.

10. Repeals—The following enactments are hereby repealed—

(a) Section 3 (1) and (6) of the Machinery Amendment Act 1978:

35 (b) Section 6 (2) of the Machinery Amendment Act 1979:

(c) Section 47 of the Summary Offences Act 1981.