

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) substitutes a new definition of the term “machinery”. The main difference is that it now includes lifting vehicles.

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 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) unless the motor is used for a purpose other than that of propelling the vehicle.

Clause 4 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 5 substitutes a new section 29 in the principal Act. 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 6 makes a minor amendment to section 39 of the principal Act.

Clause 7 effects repeals.

Hon. Mr Bolger

MACHINERY AMENDMENT

ANALYSIS

Title	4. 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
	5. Penalties
	6. Regulations
	7. 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 1984, and shall be read together with and deemed part of the Machinery Act 1950* (hereinafter referred to as the principal Act).
- 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:
- 15 “‘Lifting vehicle’ means a vehicle drawn or propelled by mechanical or manual power designed principally to lift, carry, or stack goods by means of—

*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

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

“(b) A platform; or

“(c) Any attachment or other mechanism.”.

(2) Section 2 of the principal Act is hereby further amended 5
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 10
the motion of a prime mover is transmitted; and

“(b) Includes—

“(i) A lifting machine; and

“(ii) A lifting vehicle; and

“(iii) A machine (being a machine situated in a 15
factory) driven wholly or partly by
manual power; but—

“(c) Does not include any machinery excluded from
the provisions of this Act pursuant to section 3 of
this Act.”. 20

(3) The following enactments are hereby consequentially
repealed:

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

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

3. Machinery to which Act does not apply—(1) Section 25
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:

“(aa) Any lifting vehicle used on any barge or hulk or on
any wharf, or in any shed or store on or near to a 30
wharf wherein cargo unloaded from a ship or to be
loaded on to a ship may be stored.”.

(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)”. 35

4. 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 40
of Factories appointed under section 4 (6) of the
Factories and Commercial Premises Act 1981:

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

5 “ ‘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, dimensions, weight, grade, durability, origin, age, intensity, duration, or other characteristic
10 whatsoever, or any 2 or more of them, and may also include a glossary of terms, definitions, and symbols, or any of them.

“(2) The Chief Inspector of Factories or the Chief Construction Safety Engineer may from time to time, issue for
15 the purposes of this Act, codes of practice relating to safety in the assembly, maintenance, use or operation of machinery, 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—
20 (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 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—

25 “(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

30 “(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

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

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

40 “(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.”

5. 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:

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“(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:

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“(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.

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“(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.

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“(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.”

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

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

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

7. Repeals—The following enactments are hereby repealed—

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- (a) Section 12 (3) of the principal Act;
- (b) Section 47 (2) of the Summary Offences Act 1981;
- (c) Section 3 (1) and (6) of the Machinery Amendment Act 1978;
- (d) Section 6 (2) of the Machinery Amendment Act 1979.