



# LEGISLATIVE REVIEW CONSULTATION RESULTS

*Occupational Health and Safety Act*

JANUARY 2023







## INSIDE

- 4 Introduction
- 5 Recommendation #1  
*Occupational Health and Safety Act*
- 6 Recommendation #2  
*Administration Regulation 84-26*
- 7 Recommendation #3  
*General Regulation 91-191*
- 8 Stakeholder Consultation
- 9 Concluding Remarks



# INTRODUCTION

This report includes proposals WorkSafeNB's board of directors identified in a review of the provisions of occupational health and safety legislation. This is part of WorkSafeNB's statutory obligation to review health and safety legislation every five years. This is the first review of the legislation and regulations under this obligation.

This report identifies three recommended areas for change:

1. *OHS Act*
2. *Administration Regulation 84-26*
3. *General Regulation 91-191*

The proposed changes focus primarily on housekeeping matters and items that have minimal impact on stakeholders. Two changes the board of directors identified required consultation:

- A proposed amendment in the requirements for joint health and safety committee (JHSC) minutes.
- An amendment to the requirement for head protection selection on project sites.

The board chose this approach due to the substantial changes introduced to legislation and regulations in recent years which include:

- Changes to supervision
- Introduction of administrative penalties
- Harmonization of standards
- Significant changes in progress to the *General Regulation 91-191* and
- Further harmonization of CSA standards



## Recommendation #1

WorkSafeNB recommends a series of administrative and housekeeping amendments to the *OHS Act*. Appendix A – *Occupational Health and Safety Act* recommended changes, provides the current sections of legislation with details of the proposed changes, the recommended change, and the rationale for change.

Summary of the changes include:

- Updating definitions to modernize the language or to align with other parts of the legislation.
- Clarifying legislated requirements for health and safety programs.
- Resolving inconsistencies between English and French provisions.
- Removing the requirement for administrative penalties to be associated with a compliance order. This change would allow administrative penalties to be issued in cases where an officer does not have the authority to write an order, but a violation can be proven (failing to report an accident to WorkSafeNB, for example).
- Amending the Act to require employers to maintain minutes for a specified amount of time rather than requiring JHSCs to send meeting minutes to WorkSafeNB. This change will continue to provide timely access to the minutes without the need for WorkSafeNB to receive and store the documents. This change would also align New Brunswick with other Canadian jurisdictions, including two jurisdictions that repealed similar requirements in 2015 and 2016.

### OHS Act

## Jurisdictions in Canada requiring JHSC minutes to be automatically submitted

PROVINCE	REQUIRED TO SUBMIT MINUTES?
NL	No
NS	No
PE	No
QC	No
ON	No
MB	No
SK	No (but yes until 2016)
AB	No
BC	No
YK	No
NWT/NU	No (but yes until 2015)

## Recommendation #2

### Administration Regulation 84-26

WorkSafeNB recommends repealing the *Regulation* and transferring relevant sections to the *OHS Act*. Appendix B – *Administration Regulation 84-26* recommended changes provides the current sections of legislation with details of the proposed changes, the recommended change and the rationale for change.

Summary of the changes include:

- Modernizing the language (gender neutral, plain language).
- Removing all prescribed forms to “on a form acceptable to the Commission”.
- Moving all relevant sections of the regulation including provisions for discriminatory action and arbitrators, appeals to the Chief Compliance Officer and restricting the use of a tool, equipment, a machine or device to the *OHS Act*.





## Recommendation #3

WorkSafeNB recommends several administrative and housekeeping amendments to the regulation. Appendix C - *General Regulation 91-191* recommended changes provide the current sections of the regulation with details of the proposed changes, the recommended change and the rationale for change.



### *General Regulation 91-191*

Summary of the changes include:

- Aligning the definition of “Engineer” with the Association of Professional Engineers and Geoscientists of New Brunswick.
- Repealing sections that are no longer in effect.
- Resolving inconsistencies between English and French provisions.
- Resolving previous regulatory changes:
  - An oversight in previous amendments to fall protection requirements for flat surface that are now inconsistent for flat roof when weatherproofing.
  - An oversight when amendments were made to require CSA headwear created an inconsistency between the CSA standard cited and the requirement for type 2 headwear on project site.

# STAKEHOLDER CONSULTATION

This report and the statutory review process provide an opportunity for WorkSafeNB's board of directors to enhance the health and safety of New Brunswick workplaces. Two proposals requiring stakeholder consultation were:

- The amendment to Section 14 of the Act requiring JHSC minutes to be submitted to WorkSafeNB automatically, and
- Harmonizing the requirement for Type 2 headwear on project sites.

Of the 119 people who responded to the request for feedback on JHSC minutes, 96% were in favour of the amendment. Many respondents said the change would reduce paperwork and administrative burdens on their workplace. Those

not in favour were concerned with the potential for employers to abandon the still existing responsibility to establish and support the JHSC if the requirement to submit was removed, as well as a concern that WorkSafeNB would be left with less information about the workplace during inspections or investigations. Staff contacted the respondent expressing these concerns to provide context about strategies to be implemented to address the concerns.

During the consultation on fall protection amendments, we asked stakeholders about potential business impacts of the proposed changes on Type 2 headwear. Appendix D – Type 2 headwear consultation, provides the summary of that consultation.





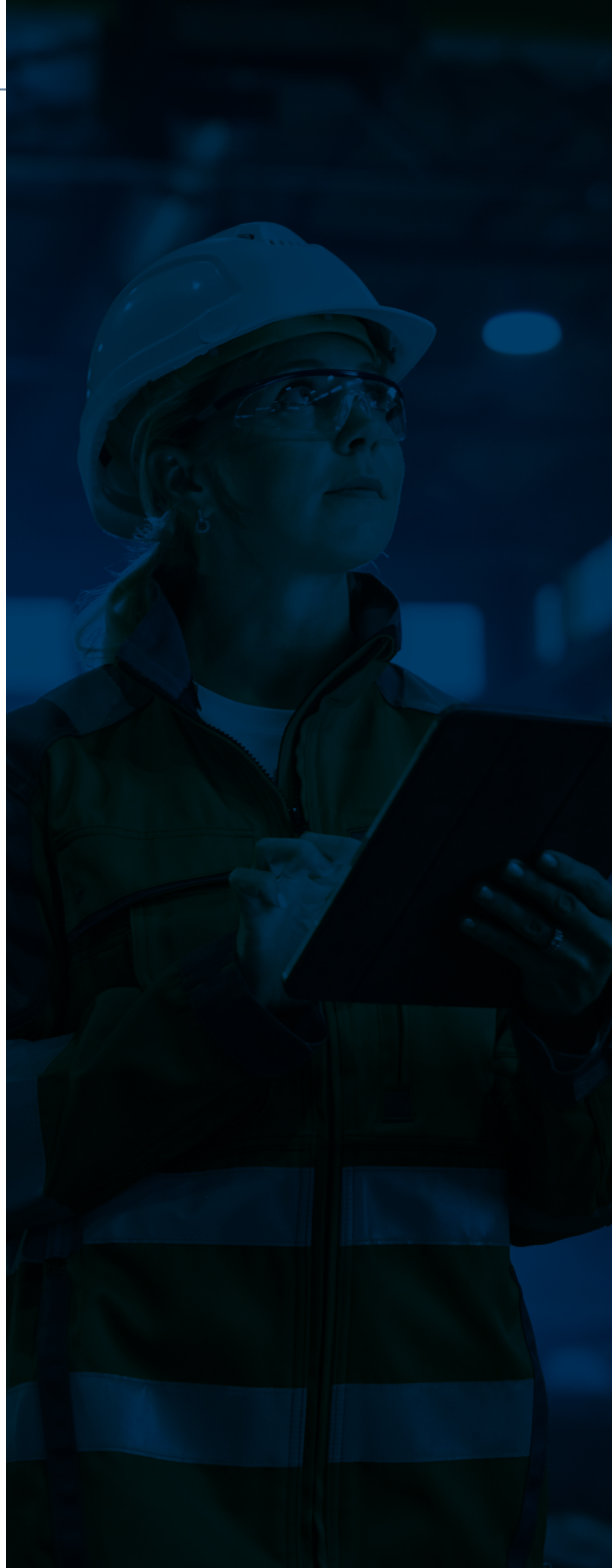
# CONCLUDING REMARKS

WorkSafeNB is committed to promoting healthy and safe workplaces for New Brunswick's workers and employers. To meet this commitment, it was crucial that the issues outlined in this report included stakeholder and public consultation.

WorkSafeNB and its board of directors – which includes equal representation from workers and employers – facilitated comprehensive consultation in the third quarter of 2022.

During consultation, WorkSafeNB brought forward the issues found in this report and developed firm recommendations for government that reflect the voices of stakeholders and strike the balance required to maintain fair compensation for injured workers and the fiscal sustainability of the system.

WorkSafeNB looks forward to working with GNB and provincial stakeholders to work on a plan to implement the recommendations from the legislated five-year review. Together, we can make New Brunswick the safest place to work.



# Appendix A

## Occupational Health and Safety Act recommended changes

Definition- Employer	"employer" means a person who employs one or more employees or the person's agent;	<b>Recommend removing "agent" from the definition of employer</b>  <i>"employer" means a person who employs one or more employees</i>	The meaning of "agent" hasn't changed in any meaningful way since the OHS Act was written in the early 1980s.
Definition- Occupational Disease	"occupational disease" means any disease or illness or departure from normal health arising out of employment, and includes an industrial disease as defined by the <i>Workers' Compensation Act</i> ;	<b>Recommend updating definition of occupational disease</b>  <i>"occupational disease" means any disease, which by the regulations, is declared to be an occupational disease and includes any other disease peculiar to or characteristic of a particular industrial process, trade or occupation.</i>	Update definition to align with <i>Workers' Compensation Act</i> definition
<b>Establishment of Health &amp; Safety Program</b>			
8.1	Every employer with 20 or more employees regularly employed in the Province shall establish a written health and safety program, in consultation with the committee or the health and safety representative, that includes provisions with respect to the following matters:	<b>Recommend breaking up the paragraph into two parts and updating the language</b>  Every employer with 20 or more employees regularly employed in the Province shall <i>ensure a written health and safety program is implemented</i> in consultation with the committee or the health and safety representative.  The employer shall ensure that the health and safety program includes the following:	Update the language to clarify that the employer is responsible to implement the program.



## Appendix A continued

8.1(e)	(e) a system for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences	Recommend updating French language to reflect the intent that investigations begin as soon as reasonable without delay after an incident.  <i>(e) sur un système nécessaire pour assurer la tenue d'enquêtes immédiat sur les situations dangereuses de déterminer les causes de ces situations et les mesures à prendre pour prévenir leurs récurrences</i>	The English version speaks to a prompt investigation, while the French can be interpreted as a quick investigation.  Other language used in the OHS Act: Promptly = sans délais, promptement, immédiat, sans tarder, rapidement Prompt = immédiat, rapide,
JHSC minutes 14(10)	A copy of the minutes signed by the co-chairmen of the committee shall be sent to the Commission.	Amend the requirement for JHSC minutes to be sent to WorkSafeNB to require employers to ensure retention of the minutes for a specified length of time.  <i>14(10) The employer shall ensure that minutes are retained for a period of three years and made available to the Commission on request.</i>	Current provisions require employers to automatically send copies of JHSC minutes to WorkSafeNB. Staff believe this provision places an unnecessary burden on resources in receiving, sorting and reviewing the minutes. Resources could be better used if the requirement was for employers to retain records of the minutes for a specified length of time. Resources would then be focused on obtaining the records on a prioritized basis based on high-risk industries and strategically identified workplaces. The requirement to retain the records ensures that they are available to us on demand.
Enforcement	Enforcement	<i>Recommend updating French heading to match English</i>	Update headings, discrepancy between English & French
Admin Penalties 36.1(1)	If an officer makes an order in writing under section 31 or 32, the officer may impose an administrative penalty in respect of any contravention of the Act or the regulations specified in the order.	<b>Recommend changing the language to make</b>  <i>Either update 47 to include AP or update 36.1(1) to be more consistent with 47</i>	Current legislation does not allow for Administrative Penalties to be imposed unless it is attached to an order. Instead imposing an AP should be applied if there is violation or failure to comply with provisions of the Act or regulations. For example, this change would allow for WorkSafeNB to impose an AP for a notification violation without the need to issue an order for a violation that has already occurred but difficult to remedy.

In the *OHS Act* and Regulation 91-191 retention of records is mentioned seven times. Time frame is between two years in Confined space, three years for Orientation & Training, and Explosives – Blasting, to a maximum of five years in Diving.

# Appendix B

## Administration Regulation 84-26 recommended changes

1	This Regulation may be cited as the Administration Regulation - Occupational Health and Safety Act.	<b>Repeal</b>	Regulation predates the establishment of WorkSafeNB. Staff believe the remaining provisions are more suitable to be included in the Act with the other provisions.
2	"arbitrator" means an arbitrator appointed by the Commission pursuant to subsection 25(2) of the Act.	<b>Repeal and move to the Act</b>	This section will have to be moved to the Act because regulation 84-26 will be repealed.
3(1)	The forms prescribed by this Regulation may be varied or modified according to circumstances.	<b>Repeal</b>	From the changes proposed, there won't be legislated forms required. This section won't be required after those changes.
3(2)	No proceeding before an arbitrator or the Commission shall be defeated or affected by any technical objection as to the form used or based on defects of form.	<b>Repeal</b>	From the changes proposed, there won't be legislated forms required. This section won't be required after those changes.
4	Except as otherwise provided in the Act or this Regulation, the Rules of Court apply with respect to the service of documents under this Regulation.	<b>Amend and move to the OHS Act</b> Except as otherwise provided in the Act the Rules of Court apply with respect to the service of documents.	<b><i>Should only apply to the arbitration section</i></b>
5(1)	The Rules of Court apply with respect to the computation of time under this Regulation.	<b>Move to OHS Act</b>	<b><i>Should only apply to the arbitration section</i></b>
5(2)	An arbitrator or the Commission, as the case may be, may extend or abridge the times prescribed by this Regulation on such terms as may be just.	<b>Repeal</b>	Allowing one year to file a complaint is sufficient and therefore an extension beyond that time should not be required.

### Arbitrator

6	A complaint filed by an employee with the Commission under subsection 25(1) of the Act shall be in Form 1.	<b>Repeal and modify 25(1) of the OHS Act:</b>  25(1) Where an employee complains that an employer, supervisor or union has violated section 24, the employee may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint in writing, on a form acceptable to the Commission	By not having a form to be used in the regulation, it will be easier to update and make modification.
7(1)	Subject to subsection (2), an arbitrator who is able to conduct a hearing in the language selected by the employee shall be appointed on a rotating basis from a list kept by the Commission.	<b>Move to the OHS Act</b>	



## Appendix B continued

7(2)	No person shall be appointed as arbitrator who is directly affected by the matter to be arbitrated or who has been involved in an attempt to negotiate or settle the matter.	<b>Move to the OHS Act</b>	
8(1)	Within five days after his appointment, an arbitrator shall issue a Notice of Hearing in Form 2 setting a date for the hearing which date shall be not more than thirty days after the date of issue of the Notice.	<b>Modify and move to the OHS Act</b>  An arbitrator shall issue a Notice of Hearing on a form acceptable to the Commission setting a date for the hearing where a date shall be set as soon as reasonably practicable after the date of issue of the Notice.	After a discussion with arbitrators, it is very difficult to meet the five days to notice of hearing. There are similar provisions in the Act (i.e. form for JHSC minutes – 14(8)) for a form acceptable to the Commission. And section 37(1), has a similar language for hearing appeals as promptly as practicable with no issue. Current section is difficult to understand, could be modernized.
8(2)	The Notice of Hearing referred to in subsection (1) shall be served on the employee and on the employer not later than ten days before the hearing.	<b>Modify and move to the OHS Act</b>  The Notice of Hearing referred to in subsection (1) shall be served on the employee and on the employer, supervisor, or union not later than ten days before the hearing.	A discriminatory action can be taken against a supervisor or union as well.
9(1)	An arbitrator shall give his decision and reasons therefor in writing not later than thirty days after the completion of the hearing.	<b>Repeal. Modify and move to the OHS Act</b>  An arbitrator shall give his decision and reasons therefore in writing after the completion of the hearing.	Section 5(2) of <i>Regulation 84-26</i> did allow the arbitrator to extend or abridge time prescribed in this regulation. It is not recommended to move that section to the Act, therefore providing a time for a decision is too prescriptive. The same language is currently used in the Act for appeals decision by the Chief Compliance Officer under section 37(1).
9(2)	An order of an arbitrator under subsection 26(2) of the Act shall be in Form 3.	<b>Modify and move to the OHS Act</b>  An arbitrator shall give his decision and reasons therefore in writing under subsection 26(2) of the Act shall be on a form acceptable to the Commission.	See proposed change to 8(1)
9(3)	An arbitrator shall deal with a request for clarification under subsection 26(4) of the Act within five days after receipt of the request	<b>Repeal and move to the OHS Act</b>  An arbitrator shall deal with a request for clarification under subsection 26(4) as promptly as is practicable.	Section 5(2) repealed this would not allow any discretion to extend the time by an arbitrator.  The language as practicable is borrowed from section 37 of the Act The language “of the Act” can be removed because this section will not be in the Act.

## Appendix B continued

Appeal			
10	An application to appeal to the Commission under subsection 38(1) of the Act shall be in Form 4.	<b>Repeal</b> <b>New Section - Add in the OHS Act under section 37</b>  Application to the Chief Compliance Officer shall be done on a form provided by the Commission or in a manner acceptable to the Chief Compliance Officer.	By not having a form to be used in the regulation, it will be easier to update and make modification. By having some liberties as the CCO to accept other means of notice of appeals, it can simplify the appeal process. Small companies or individuals can appeal orders, Administrative Penalties and advice on the right to refuse, and the first level of appeal should be as simple as possible.
11(1)	Within five days after receipt of an application under subsection 38(1) of the Act, the Commission shall issue a Notice of Hearing in Form 5 setting a date for the hearing of the appeal which date shall be not more than thirty days after the date of issuance of the Notice	<b>Repeal</b>	As not all appeals may necessitate a hearing, this will provide flexibilities to the Chief Compliance Officer on how best to review the appeals.
11(2)	The Commission shall serve the Notice of Hearing referred to in subsection (1) on the parties to the appeal not later than ten days before the date set for the hearing of the appeal.	<b>Repeal</b>	By repealing section 11(1), section 11(2) is now unnecessary.
12	The Commission shall give its decision and reasons therefor in writing not later than thirty days after the completion of the hearing of the appeal and shall serve a copy on the parties to the appeal.	<b>Repeal</b> <b>New Section - Add in the OHS Act under section 37</b>  The Chief Compliance Officer shall provide a written decision and rationale to the decision to the parties of the appeal.	
13	An order of the Commission made under subsection 38(4) of the Act shall be in Form 6 and the Commission shall serve a copy of the order on the parties to the appeal.	<b>Repeal</b>	Section 38(4) no longer exists



## Appendix B continued

Officer			
14(1)	<p>Where, in the opinion of an officer, a tool, equipment, a machine or device at a place of employment does not comply with the Act or regulations, the officer shall</p> <p>(a) make an order that the tool, equipment, machine or device shall not be used;</p> <p>(b) make an order that the tool, equipment, machine or device shall be used only under conditions which the officer believes will ensure the safety of employees at the place of employment; or</p> <p>(c) take any measure that will result in the employer, owner, contractor, sub-contractor, employee, supplier or lessee adopting a course of action that will bring the tool, equipment, machine or device into compliance with the Act or regulations.</p>	<p><b>Repeal section 32(4) of the Act</b></p> <p>32(4) Where an officer is of the opinion that any tool, equipment, machine, or device does not comply with this Act or the regulations, the officer shall</p> <p>(a) give notice in writing to the contractor, sub-contractor, owner, operator, supplier or lessee of the tool, equipment, machine or device, that such tool, equipment, machine or device does not comply with this Act or the regulations; and</p> <p>(b) take any measure or make any order prescribed by regulation that prevents the unauthorized operation or use of such tool, equipment, machine, or device.</p> <p>and replace with section 14(1) &amp; (2)</p> <p>Missing contracting employer and supervisor from the list. Remove lessee.</p>	
14(2)	<p>When an officer makes an order that a tool, equipment, a machine or device shall not be used, he shall</p> <p>(a) give the order in writing to the employer, owner, contractor, sub-contractor, employee, supplier or lessee affected by the order, and</p> <p>(b) attach to the tool, equipment, machine or device a warning that an order has been issued with respect to it.</p>	<p><b>Repeal section 32(4) of the Act and replace with section 14(1) &amp; (2)</b></p> <p>Missing contracting employer and supervisor from the list.</p> <p>Remove lessee.</p>	
Form 1	COMPLAINT	<b>Repeal</b>	All the forms to be repealed and changed to a form acceptable to WorkSafeNB in its place in the appropriate section. This will provide some latitude to change the forms more quickly to update the language or correct defects.
Form 2	NOTICE OF HEARING	<b>Repeal</b>	
Form 3	ORDER	<b>Repeal</b>	
Form 4	APPLICATION TO APPEAL	<b>Repeal</b>	
Form 5	NOTICE OF HEARING	<b>Repeal</b>	
Form 6	ORDER	<b>Repeal</b>	

# Appendix C

## General Regulation 91-191 recommended changes

Interpretation Section 2 Engineer	<p>"engineer" means a person who</p> <p>(a) is registered as a member of the Association of Professional Engineers and Geoscientists of New Brunswick as entitled to engage in the practice of engineering,</p> <p>(b) has received a licence from the Executive Council of the Association of Professional Engineers and Geoscientists of New Brunswick to engage in engineering, or</p> <p>(c) is practising as a professional engineer in New Brunswick under subsection 10(7) of the Engineering and Geoscience Professions Act;</p>	<p><b>Recommend updating the engineer definition.</b></p> <p><i>"engineer" means a person who is registered as a member or licensee of the Association of Professional Engineers and Geoscientists of New Brunswick as entitled to engage in the practice of engineering under the Engineering and Geoscience Professions Act.</i></p>	<p>The definition of "engineer" contained in Regulation 91-191 is based on an older version of the Engineering and Geoscience Professions Act. The recommendation is to update to the current version of the Act (2015)</p>
Interpretation Section 3.1(d)&(e)	<p>The following provisions do not apply to a place of employment that is a ferry, a train or a vehicle used or likely to be used by an employee:</p> <p>(d) subsections 12(1), (2), (3) and (4);</p> <p>(e) subsection 13(1);</p>	<p><b>Recommend repealing section 3.1 (d) and (e)</b></p>	<p>Section 3.1(d) references subsections 12(1),(2),(3) and (4) and section 3.1(e) references subsection 13(1) which were both repealed when First Aid was pulled out of 91-191.</p>
VII- Protective Equipment 40(1)	<p>On a project site, an employee shall use Class E, Type 1 headwear that conforms to CSA standard CSA Z94.1-15, "Industrial protective headwear – Performance, selection, care, and use" or a standard offering equivalent or better protection.</p>	<p><b>Recommend changing from Type 1 to Type 2 headwear on project sites</b></p> <p><i>On a project site, an employee shall use Class E, Type 2 headwear that conforms to CSA standard CSA Z94.1-15, "Industrial protective headwear – Performance, selection, care, and use" or a standard offering equivalent or better protection.</i></p>	<p>Almost 20 years ago, during the 2001 legislative changes, WorkSafeNB chose to switch from CSA to the ANSI standard. This was done because, at the time, CSA had eliminated Type 1 hard hats in its 1992 version. In its head protection standards since 1992, CSA has re-introduced Type 1 hard hats. Therefore, with the 2020 legislative change, the ANSI Standard was replaced with the 2015 version of CSA Z94.1.</p> <p>Despite the standard requiring Type 2 on construction sites, our 2020 legislative change to section 40(1) maintained Type 1 headwear for project sites. This was an oversight.</p>
X Construction, Traffic and Building Safety	New	<p>Add a section in General Regulation 91-191 indicating that in the event of inconsistency between this regulation and the <i>Building Code Administration Act</i>, the <i>Building Code Administration Act</i> will prevail.</p>	<p>The <i>NB Building Code Act</i> was recently repealed and replaced with the <i>Building Code Administration Act</i>. What was lost in the transfer is a section that use to say something like: In case of conflicts with the code and any other Act or Regs that the Code applied.</p>



## Appendix C continued

XVI- Mechanical Safety- Drive Shafts & Pulleys 250(2)	An employer shall ensure that exposed parts of permanently installed vertical shafting within 2.1 m of a floor, walkway or work area are enclosed with stationary casings.	<b>Recommend updating the French language.</b>	To fix the language so that both English and French say the same. English references vertical shafting and French speaks of horizontal.
Weather Proofing of roof-106(b)	An employer shall ensure that an employee who is engaged in the weatherproofing of a roof that (b) has a slope exceeding 4 in 12	<b>Recommend change the slope of the roof for weatherproofing from 4 in 12 to 3 in 12.</b>  <i>An employer shall ensure that an employee who is engaged in the weatherproofing of a roof that (b) has a slope exceeding 3 in 12</i>	This was an oversight in the 2010 amendments to the sections of General Regulation 91-191 related to fall protection.

## Appendix D

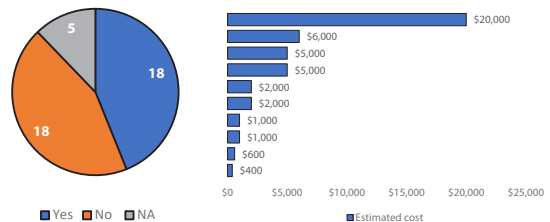
### Type 2 headwear consultation

From Page 9

[fall-protection-consultation-report.pdf](#)  
(worksafenb.ca)

#### Type 2 headwear

If we adopt the new standard, will you have to purchase Type 2 headwear to comply? If yes, please estimate the cost.



#### Stakeholder comments:

"None of our workers have type 2 headwear."

"Will this apply to rope access work?"

"Our organization has already moved to Type 2 as they provide the required protection for our workers."

"We already use Type 2."

"We work in all Maritime provinces and use type II in other provinces. We do not see it as a big issue for workers to wear the type II hardhats. If workers can wear either it is harder to comply at all times."

"Adding an exception for a written head hazard assessment that verifies a lesser level of protection is appropriate puts the onus on the person or entity with the most control, and allows an appropriate control when situations do not require the side impact protection."

"We are a construction company. We use our Field Level Hazard Assessment to determine which hard hat is needed; 95% of our tasks does not need side protection."

"All our workers wear Type II hard hats; none complained. We did tests and found weights were similar."

"We already require Type 2 on all sites."

"We already require type 2 headwear for our employees."









