



09 June 2017

Secretariat
Government Administration Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

Petition 2014/111 of Franz Ombler

This letter responds to a request from the Chairperson of the Committee dated 15 May 2017 that the Ministry of Business, Innovation and Employment provide a written submission based on the issues raised by the petitioner. We have prepared this response in consultation with WorkSafe.

Mr Ombler's petition and associated submission has three key concerns related to requirements currently prescribed in the Hazardous Substances (Compressed Gases) Regulations 2004. Those concerns are:

- the regulations make it expensive, difficult or impossible to get European Union and United States diving cylinders approved for use in New Zealand;
- the regulations need to be updated to enable WorkSafe to operate a banned cylinders list; and
- the regulations are too restrictive about the types of gas mixtures that can be used in diving cylinders.

Mr Ombler raises some valid points in his petition and associated submission.

In relation to his first point, we note that the requirements currently set in the Hazardous Substances (Compressed Gases) Regulations 2004 are in the final stages of being built into the new regulations for work involving hazardous substances under the *Health and Safety at Work Act 2015*. These new regulations are expected to come into effect in December 2017. There is no time to make further policy changes at this late stage in the process. We will further consider the issues Mr Ombler has raised in the next phase of regulatory review, which will begin within two years of the new regulations come into effect.

In relation to the second point, we note that WorkSafe is currently working with the Cylinder Testing Laboratories Association and New Zealand Underwater Association to develop a notice withdrawing design approvals for diving cylinders made from materials that have been determined to be at risk of failure. This will mean that those cylinders cannot legally be filled or tested.

In relation to the third point, the new regulations for work involving hazardous substances includes a provision that will enable WorkSafe to develop requirements in a tertiary legislative instrument known as a Safe Work Instrument for mixtures of gases that can be safely used for the filling of diving cylinders.

A more detailed response to the concerns raised by Mr Ombler is set out below.

The regulations make it expensive, difficult or impossible to get European Union and United States diving cylinders approved for use in New Zealand

Mr Ombler's petition proposes that the New Zealand regulations covering the importation of gas cylinder be extended to "recognise US, EU and Australian approved cylinders". Mr Ombler's petition has merit, but would require a regulatory change if it were to be progressed. To consider this further, it is important to understand the basis of the current system.



The regulations that apply to the importation of gas cylinders are the Hazardous Substances (Compressed Gases) Regulations 2004, which are made under the *Hazardous Substances and New Organisms Act 1996* (the HSNO Act). These regulations provide a rigorous evaluation process to ensure the safety of imported cylinders. This includes verification of the cylinder design, testing of a sample of cylinders against the design (“pre-commissioning”) and clearance by a WorkSafe approved test certifier of each batch of cylinders imported.

There is an alternative pathway for cylinders that comply with the United Nations Model Regulations for the Transport of Dangerous Goods and that are stamped with the UN Mark. These cylinders do not require design verification or pre-commissioning in New Zealand. This is because they will have already been subject to this quality assurance process in their country of manufacture, in order to have been stamped with the UN Mark.

The Hazardous Substances (Compressed Gases) Regulations were amended in 2012 to provide this pathway. Since then, this pathway has been used 37 times to import approximately 5,900 cylinders. These cylinders have come from six different countries and six different cylinder manufacturers.

New Zealand’s regulatory framework already recognises overseas standards and practices in a number of other areas. Extending this to include the EU and US approval processes for cylinders would offer further import pathways, and should be considered if they provide an equivalent level of safety and assurance as to the design and manufacture of gas cylinders.

On 16 March 2015 Cabinet agreed to new regulations for work involving hazardous substances under the *Health and Safety at Work Act 2015* that would continue requirements currently prescribed under the HSNO Act, including those set out in the Hazardous Substances (Compressed Gases) Regulations.

The new regulations for work involving hazardous substances are expected to come into effect in December 2017. There is no time to make further policy changes at this late stage in the process. Any change to the regulations to recognise other jurisdictional approval processes for cylinders would require considerable policy work to determine the extent of the problem and any changes that could ease importation while ensuring the safety of users of the equipment and others is maintained. An amendment to the regulations could be considered after the new regulations come into effect in December 2017.

The regulations need to be updated to enable WorkSafe to operate a banned cylinders list

Mr Ombler’s petition expresses concern that “*old and dangerous*” aluminium cylinders are allowed to continue in service. We understand that Mr Ombler is referring to aluminium cylinders made from aluminium alloy 6351.

Diving cylinders are required to undergo an annual visual inspection and biennial hydrostatic testing by WorkSafe approved periodic testers. If a cylinder fails this inspection or hydrostatic test it cannot legally be filled. In effect, it must be withdrawn from service.

Following recent incidents in Australia and Bali in which aluminium cylinders manufactured from aluminium alloy 6351 failed, WorkSafe re-issued a safety alert with the support of the Cylinder Testing Laboratories Association (CTLA) and New Zealand Underwater Association (NZUA). These parties are working alongside WorkSafe to develop a notice withdrawing design approvals for cylinders made from the aluminium alloy 6351 that have been determined to be at risk of failure. The intention is that this notice will be issued before the end of June 2017 under the provisions of the Hazardous Substances (Compressed Gases) Regulations 2004. Withdrawing cylinder design approvals means that existing cylinders cannot legally be filled or tested.

It is our understanding that WorkSafe will be working closely with the CTLA and NZUA to ensure the withdrawal of designs for cylinders made from aluminium alloy 6351 is widely disseminated within the cylinder testing and diving sectors.

The regulations are too restrictive about the types of gas mixtures that can be used in diving cylinders

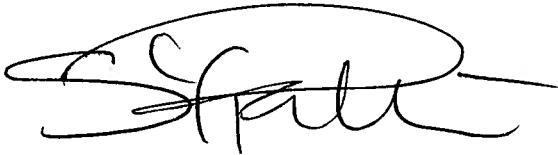
Mr Ombler's petition advises that the requirements of technical diving are not covered by the regulations, which currently limit filling of cylinders with air in accordance with the joint Australian and New Zealand Standard on standard operational practice for the conduct of occupational diving operations (AS/NZS 2299.1:2007).

WorkSafe acknowledges that even if 'air' is interpreted broadly to include the enriched air nitrox specifications provided for in the recently updated version of the Standard (AS/NZS 2299.1:2015), this Standard does not allow for oxygen levels in excess of 40% and for the addition of helium.

WorkSafe has recently brought this matter to our attention and has requested that the new Health and Safety at Work (Hazardous Substances) Regulations include a provision that will enable a Safe Work Instrument to be issued for the use of air mixtures not currently covered by AS/NZS 2299.1:2015. Safe Work Instruments are made under section 227 of the *Health and Safety at Work Act 2015* for the purposes of prescribing rules, standards and methods for managing workplace risk. They allow for greater flexibility and timelier up-dates to the regulatory framework, reflecting changes in technology, standards and health and safety practice.

Thank you for the opportunity to provide a submission to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Patton', with a large, sweeping flourish above the name.

Saskia Patton
Manager – Health and Safety Policy
Labour and Immigration Policy
Ministry of Business, Innovation and Employment