



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of briefing</b>	Updating Health and Safety in Employment (Pipelines) Regulations 1999: Proposed Updates to Standards	<b>Date to be published</b>	8 February 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
November 2022	Updating Health and Safety in Employment (Pipelines) Regulations 1999: Proposed Updates to Standards	Office of the Minister of Workplace Relations and Safety
9 November	DEV-22-MIN-0257 Minute	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Minister of Workplace Relations and Safety

Cabinet Economic Development Committee

## Updating Health and Safety in Employment (Pipelines) Regulations 1999 Standards details

### Proposal

- 1 This paper seeks to update the Health and Safety in Employment (Pipelines) Regulations 1999 to remove the outdated Standards cited in the Regulations and replace them with a provision for a Safe Work Instrument administered by WorkSafe New Zealand, to future proof the Regulations.

### Relation to Government priorities

- 2 This is part of Government's response to the Auckland Fuel Supply Disruption Inquiry's recommendations made following the Refinery to Auckland Pipeline rupture in September 2017.

### Executive Summary

- 3 Following the rupture of the Refinery to Auckland Pipeline (RAP) in September 2017, the Auckland Fuel Supply Disruption Inquiry (the Inquiry) provided 21 recommendations for improving the resiliency of Auckland's fuel supply and New Zealand's pipeline network. One of these recommendations was to update the Health and Safety in Employment (Pipelines) Regulations 1999 (the Regulations) to remove outdated Standards. To meet this recommendation, I propose replacing the references to Standards in the relevant provisions in the Regulations with provision for a Safe Work Instrument (SWI) administered by WorkSafe New Zealand (WorkSafe).
- 4 This approach is preferable to updating the Standards in the Regulations, because a SWI can be updated more quickly, allowing the regulations to better keep pace as technology and industry practice evolve. I have consulted with stakeholders on this proposal, and the feedback from almost all stakeholders was positive.
- 5 In accordance with feedback from stakeholders, WorkSafe has agreed to undertake a further consultation with stakeholders using the actual draft of the intended SWI. The Ministry of Business, Innovation & Employment (MBIE) and WorkSafe have also developed advice for stakeholders and accreditors to ensure a smooth transition to the new system. This advice will be shared as part of the SWI consultation. This consultation can be done in-parallel with drafting of the amendment to the Regulations. The changes – both the amended Regulations and the SWI – are expected to be implemented in April 2023.

## Background

- 6 On 14 September 2017, the RAP, which transports diesel, petrol and jet fuel from Marsden Point Oil Refinery into Auckland, ruptured. It leaked jet fuel into rural properties and stopped the transmission of fuels into Auckland for ten days. This caused significant disruption to operations at Auckland Airport, as the RAP is the only supply of jet fuel to the airport.
- 7 The Inquiry was established on 10 December 2018, to investigate and provide recommendations on the rupture. The Inquiry made 21 recommendations, one of which was to update the Regulations to remove the outdated Standards that are currently cited.
- 8 The proposal in this paper focuses on addressing the Inquiry's recommendation on the Regulations only. The Minister of Energy and Resources is expected to report back separately to Cabinet later this year on a fuel resilience policy package, addressing other recommendations from the Inquiry.

## Analysis

### *A Safe Work Instrument allows for regulations to keep pace with industry*

- 9 The process for updating Standards cited in a regulation is lengthy and complex, making it difficult to keep citations current as industry standards evolve. Therefore, I propose to replace the references to standards in Regulation 8 of the Regulations (listed in Annex One) with a provision for a SWI.
- 10 A SWI is a legislative tool provided for under the Health and Safety at Work Act 2015 (the HSW Act). SWIs are developed by WorkSafe in consultation with appropriate parties and approved by the Minister for Workplace Relations and Safety. They are often industry-specific, and better lend themselves to periodic adjustment of technical details or Standards that change relatively frequently.
- 11 I am proposing a SWI rather than updating the citation of Standards, because a SWI can be updated more easily and promptly than regulations, allowing standards to keep pace with current industry practice and safety standards.

### *Stakeholders are supportive of this approach*

- 12 Over December 2021 and January 2022, I consulted relevant stakeholders on the proposal to use a SWI to update the citation of Standards in future. I received 13 submissions, which was as anticipated given the relatively discrete nature of the proposed changes.
- 13 All stakeholders, except for one, agreed with the proposal to amend the regulations to create a provision for a SWI, although a number felt that they needed to see the full draft text of the SWI before confirming their agreement. The dissenting submission considered that prescribing Standards was not the best regulatory approach for this industry, and that a Code of Practice or WorkSafe Guideline should instead be used. However, my view is that the risks inherent to pipelines (buried underground, cross different boundaries, operated at high pressure with hazardous substances) warrant

Standards that have legal standing, and that this is proportionate to the risk posed by a failure of pipeline safety.

- 14 WorkSafe has agreed to conduct additional consultation on the specific text of the proposed SWI, given the feedback received from stakeholders to date.
- 15 MBIE and WorkSafe are also jointly developing advice to support stakeholders to understand how the retrospective application of certificates of fitness and authorisations will be managed once the regulations are updated and the SWI comes into effect.
- 16 This advice will be checked with International Accreditation New Zealand (IANZ) and shared with stakeholders as part of WorkSafe's additional consultation on the SWI. The advice will support relevant Persons Conducting a Business or Undertaking (PCBUs) to navigate the transition from the current system of managing pipeline safety, back to one where the prescribed Standards are up-to-date and in accordance with generally accepted and appropriate industry practice. My approach seeks to minimise disruption to the industry, while ensuring that the appropriate regulatory controls are in place.

#### *Other options I considered*

- 17 *Directly referencing the latest industry Standards in the Regulations* – While this would fix the issue of outdated standards, it is likely that the Standard citation would become outdated again as technology, industry practice and the appropriate requirements change.
- 18 *A full review and update of the Regulations* – The Regulations are still aligned with old legislation (Health and Safety in Employment Act 1992), so need to be updated at some stage to align with the current legislative framework and terminology. Updating Regulation 8 addresses the key critical issue in the most timely and efficient manner, and is a direct response to the recommendation from the Inquiry.
- 19 *Status Quo* – Feedback from stakeholders is that most pipeline owners and operators are already abiding by the most up-to-date Standards and practice, even though the Regulations are outdated. Notwithstanding this, enabling updated Standards increases clarity and certainty for industry and requires that all operators are following the safest practices in their work.

#### **Implementation**

- 20 Following Cabinet approval to amend the Regulations, my officials will work with Parliamentary Counsel Office (PCO) to draft the amendment. Once ready, the amended Regulations will go to Cabinet LEG Committee for approval.
- 21 Cabinet approval to amend the Regulations will also allow for WorkSafe to begin their process for consulting on the SWI. WorkSafe have indicated that this process generally takes about five months from drafting to implementation.

- 22 The amendment to the Regulations and the SWI will need to either come into effect on the same date, or a provision will need to be inserted as part of drafting to ensure that the Regulations do not refer to an SWI that is not yet in effect. The steps required to amend the Regulations and consult on the SWI are outlined in the table below, as well as an indicative timeframe:

<b>Regulations amendment</b>	<b>SWI consultation</b>	<b>Indicative timeframe</b>
Cabinet approval to amend Regulations	N/A	October 2022
Develop drafting instructions	Legal drafting	November 2022
PCO drafting	Public consultation	December 2022
PCO drafting	Public consultation/make changes from consultation	January 2023
Cabinet LEG Committee/Cabinet confirmation	Design and website publishing/Ministerial approval	February 2023
Gazette of amendment Regulations	Gazette of SWI	March 2023
Regulations come into effect	SWI comes into effect	April 2023

- 23 Note that the timeline above is indicative only, and subject to change depending on resourcing availability across relevant agencies. If one or both concurrent workstreams runs behind schedule, then the other could be paused prior to gazetting to ensure that both changes come into effect on the same date.

### **Financial Implications**

- 24 No financial implications have been identified as being related to this proposal.

### **Legislative Implications**

- 25 Drafting the amendment to the Regulations will require PCO resource.

### **Impact Analysis**

#### **Regulatory Impact Statement**

- 26 The Treasury's Regulatory Impact Analysis team has determined that the proposal to update the Health and Safety in Employment (Pipelines) Regulations 1999 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

**Climate Implications of Policy Assessment**

- 27 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

**Population Implications**

- 28 This proposal has no population implications.

**Human Rights**

- 29 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

**Consultation**

- 30 This paper was drafted by MBIE. The following agencies and departments were consulted: Environmental Protection Authority, Ministry for the Environment, PCO, The Treasury, and WorkSafe. DPMC have been informed.

**Communications**

- 31 In addition to standard Gazetting processes, WorkSafe will use existing contacts to notify authorisation holders of the changes once they come into effect.

**Proactive Release**

- 32 This paper will be proactively released.

## Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 Note that in 2019, the Auckland Fuel Supply Disruption Inquiry recommended that the Health and Safety in Employment (Pipelines) Regulations 1999 be updated to remove references to outdated Standards;
- 2 Agree to amend the Regulations to replace references to Standards in the relevant provisions in the Regulations with provision for a Safe Work Instrument administered by WorkSafe;
- 3 Invite the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendation;
- 4 Authorise the Minister for Workplace Relations and Safety to make decisions, consistent with the proposals in these recommendations, on any issues that arise during the drafting process.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations of Safety

**Annex One – Standards currently cited in Regulation 8(1)**

	<b>Standard has since been updated (Yes/No)</b>	<b>Updated standard</b>
<b>(a) NZS/AS 2885, Pipelines – Gas and Liquid Petroleum</b>		
2885 1 Part 1: Design and Construction, 1997	Yes	AS/NZS 2885.1-2018, Part 1: Design and Construction
2885 2 Part 2: Welding, 1995	Yes	AS/NZS 2885.2-2020, Part 2: Welding
2885 3 Part 3: Operation and Maintenance, 1997	Yes	AS 2885.3-2022, Part 3: Operation and Maintenance
<b>(b) NZS 5223, Code of Practice for High Pressure Gas and Petroleum Liquids Pipelines 1987</b>	No	No longer used for new pipelines but is included in the Regulations as it still applies to pipelines predating the 1999 Regulations.
<b>(c) ANSI B 31, American National Standards Institute Code for Pressure Piping</b>		
ASME B 31.3:1999, Chemical Plant and Petroleum Refinery Piping, 1990	Yes	ASME B 31.3-2020 Process Piping
ASME B 31.4:1998, Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols, 1989	Yes	ASME B 31.4-2019 Pipeline Transportation Systems for Liquids and Slurries
ASME B 31.8:1995, Gas Transmission and Distribution Systems, 1989	Yes	ASME B 31.8-2020 Gas Transmission and Distribution System
<b>(d) Institute of Petroleum Pipeline Safety Code (IP Part 6), 1982</b>	No	Now obsolete and has no replacement.