



26 April 2023

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Ref: OIA 2223-2190

Kia ora Bernard Sorenson,

Thank you for your email of 26 March 2023 to the Ministry of Business, Innovation and Employment (MBIE) requesting, under the Official Information Act 1982 (OIA), the following information:

*"MBIE reference 2223-1711.*

*Request dated: 8 feb 2023.*

*Subject: the (former) Department of Labour's standard for clip-on adaptors based on LPGITA Code of Practice No 15 Part 1:1992.*

*I also request the following additional information under the Official Information Act related to request 2223-1711:*

- Did MBIE hold the requested document on 8 February 2023.*
- If so, did MBIE know they held the document on 8 February 2023.*
- At the time of citation of the (former) Department of Labour's standard for clip-on adaptors based on LPGITA Code of Practice No 15 Part 1:1992 in the Health and Safety at Work (Hazardous Substances) Regulations 2017, what steps did MBIE take to ensure compliance with section 51 and 52 of the Legislation Act 2012.*
- In relation to the (former) Department of Labour's standard for clip-on adaptors based on LPGITA Code of Practice No 15 Part 1:1992, as cited by the Health and Safety at Work (Hazardous Substances) Regulations 2017, on 8 February 2023, what steps had MBIE taken to ensure compliance with either Section 2 of Schedule 2 of the Legislation Act 2019 or Section 52 of the Legislation Act 2012."*

The OIA request 2223-1711 you refer to was withdrawn after I advised the requestor that MBIE was seeking an extension in time to locate the former Department of Labour document that was being sought. The reason for the extension had been that the document had not been able to be accessed within the usual timeframes because it needed to be retrieved from archived material by specialist staff at WorkSafe.

We have since been advised that the document has not been able to be located by WorkSafe because of difficulties in transferring electronic documents from the former Department of Labour. A paper copy is not available.

Responding to your questions:

*Did MBIE hold the requested document on 8 February 2023?*

It is not clear from remaining records from the former Department of Labour, if the document was held on that date.

*If so, did MBIE know they held the document on 8 February 2023?*

MBIE and WorkSafe both understood that the document was held by WorkSafe. After a search of electronic and paper-based files this has proven not to be the case.

*At the time of citation ... what steps did MBIE take to ensure compliance with section 51 and 52 of the Legislation Act 2012?*

At the time of citation MBIE complied with the requirements of section 51 of the Legislation Act 2012. As the administering agency, MBIE was not required to publish *Gazette* notices or meet other consultation requirements in relation to materials incorporated by reference in former regulations, including the Hazardous Substances (Compressed Gases) Regulations 2004. These regulations were, among others, exempted from the requirement to consult by clause 8 of Schedule 1 (transitional and savings provisions) of the Health and Safety at Work Act 2015 (the principal Act).

The former Department of Labour guideline referred to in regulation 15.35 (1) (c) (i) of the Health and Safety at Work (Hazardous Substances) Regulations 2017 had been previously incorporated in regulation 34 of the 2004 regulations.

Our understanding is that in developing both sets of regulations the policy was that this requirement referred to legacy equipment (in particular LPG heaters), some of which was still in use, but that the Standard was no longer used for new equipment.

When the 2017 regulations were being developed, the Section 51 requirements did, however, apply to 12 new international Standards which were included in the regulations. The Cabinet (Legislation) Committee paper for those regulations refers to consultation requirements being met, including *Gazette* notices, and this was certified by Parliamentary Counsel Office.

*In relation to the ... what steps had MBIE taken to ensure compliance with either Section 2 of Schedule 2 of the Legislation Act 2019 or Section 52 of the Legislation Act 2012?*

The Legislation Act 2019 had not been passed at the time the regulations were made, but section 52 of the 2012 Act did apply.

Section 52 requires the administering department, ie MBIE, to make copies of all material incorporated by reference available on request.

The requirement to make incorporated material available under section 52 is invoked by a request. In anticipation of any requests, MBIE's development of the regulations included the preparation of lists of all documents incorporated by reference. The Department of Labour document is excluded from these lists, which suggests it was assumed to be available from material transferred over to WorkSafe.

This is the first request for the document and it seems the document is no longer available. In response to this realisation, we note that sections 51 and 52 provide that failure to meet their requirements does not invalidate the provision. This means that any affected legacy equipment remains compliant with the regulation concerned.

When MBIE next reviews the regulations it will work with WorkSafe to address this issue. I hope this summary addresses your concerns.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Nga mihi

A handwritten signature in black ink, appearing to read 'H.C. Fenwick', written on a light-colored background.

Hayden Fenwick  
Manager – Health and Safety Policy  
Workplace Relations and Safety Policy Branch