

Departmental Disclosure Statement

Gas (Information Disclosure and Penalties) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 February 2020.

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Part One: General Policy Statement

Introduction

The Gas (Information Disclosure and Penalties) Amendment Bill contains amendments to the Gas Act 1992 (the **Act**), administered by the Ministry of Business, Innovation and Employment. The Bill makes amendments to Part 4A of the Gas Act 1992, which sets out the co-regulatory model that the government has entered into with the natural gas industry.

Prolonged natural gas supply outages at the Pohokura production station in 2018, combined with planned outages at other production stations and dry spring conditions, led to record gas spot market prices and high electricity wholesale prices. These outages have highlighted a number of issues in relation to the transparency of information in the gas market, which can have a wide range of effects.

Policy to be given effect by the Bill

The policy to be given effect in this Bill was informed by a discussion document that was released in 2019 titled *Options for amending the Gas Act 1992*. Policy issues consulted on arose from concerns held by a wide range of stakeholders about information transparency due to the Pohokura outages.

The purpose of the Bill is to strengthen the regulation-making powers in the Act to provide for enhanced information disclosure requirements for the gas market and to ensure that settings around enforcement and penalties are suitably robust.

The Bill amends section 43F of the Act, which sets out the scope of regulation-making powers, to enable gas governance arrangements to be made that provide for a broad regime for the disclosure of information about matters that may have a significant downstream impact or may contribute to the risk of critical gas shortages. The Bill also clarifies the existing policy intent that regulations made under section 43F for arrangements relating to outages and other security of supply contingencies may apply across all industry participants and consumers (excluding domestic consumers).

The Bill also amends the penalty regime for industry participants by increasing the maximum pecuniary penalty able to be imposed by the Gas Rulings Panel from \$20,000 to \$200,000. This amendment addresses concerns about the low level of civil pecuniary penalty able to be issued by the Gas Rulings Panel, particularly for situations where a wide range of consumers may be affected by a potential breach. The Bill brings the penalty limits into alignment with the equivalent penalty under the Electricity Industry Act 2010.

The Bill introduces a new civil pecuniary penalty to replace the current criminal penalty, with a maximum of \$200,000. The intention is for this penalty to be used to deter breaches of regulation by consumers who are not classified as industry participants. The Bill also makes a number of supporting changes to enforcement provisions in the Act, and seeks to clarify current practices around these.

There are also a number of other elements in the Bill that are designed to ensure that new arrangements can be put in place as soon as practicable and there are no gaps in the penalty regime:

- the Bill ensures that actions taken for the purpose of making a recommendation for new gas governance arrangements in relation to new information disclosure requirements, or changes to the arrangements for managing critical contingency events, will be treated as being made under the provisions that the

Bill proposes. This is important for ensuring that new arrangements can be put in place as soon as possible:

- the Bill makes a number of consequential amendments to gas governance regulations to update the provisions relating to penalties.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none"> • <i>Discussion Document: Options for amending the Gas Act 1992</i>, Ministry of Business, Innovation and Employment, May 2019 (accessible at: https://www.mbie.govt.nz/dmsdocument/5478-discussion-document-options-for-amending-the-gas-act-1992) • <i>Summary of Submissions: Options for Amending the Gas Act 1992</i>, Ministry of Business Innovation and Employment, September 2019 (accessible at: https://www.mbie.govt.nz/dmsdocument/6852-summary-of-submissions-options-for-amending-the-gas-act-1992) • <i>Options for Information Disclosure in the Wholesale Gas Sector</i>, Gas Industry Company, March 2019 (accessible at: https://gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation/) 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Summary: Gas Act 1992 Amendments</i>, Ministry of Business, Innovation and Employment, 12 October 2019</p> <p>This Regulatory Impact Summary (RIS) is accessible at https://www.mbie.govt.nz/dmsdocument/7309-gas-act-1992-information-disclosure-and-penalties-regulatory-impact-summary and can also be found and downloaded at: http://www.treasury.govt.nz/publications/informationreleases/ris.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIS identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the Regulatory Impact Assessment Team based in the Treasury.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The impact summary sets out a broad assessment of potential costs and benefits associated with the policy, but no attempt has been made to quantify the size of these due to the difficulties in measurement and attribution.</p> <p>Potential costs and benefits associated will be dependent on new, or amended, gas governance arrangements made after a recommendation for such arrangements is made by the Gas Industry Company.</p> <p>This type of analysis is required under the Gas Act 1992 to be made as part of a recommendation for any new or amended gas governance arrangements.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Provisions relating to penalties in the Act will only have the intended effect of deterring non-compliance with gas governance arrangements if the regulated parties comply with any obligations. It is also dependent on the level of enforcement action taken against non-compliant parties by the enforcement agency.</p> <p>The magnitude of the costs and benefits associated will be dependent on new, or amended, gas governance arrangements made after a recommendation for such arrangements is made by the Gas Industry Company.</p> <p>No further analysis is available on the extent to which the costs or benefits are likely to be impacted by (a) or (b).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Business, Innovation and Employment is unaware of any international obligations relevant to the policy to be given effect by the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The proposals are consistent with the principles of the Treaty of Waitangi. Te Arawhiti was also consulted on the proposed policies as part of the agency consultation process.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry's website upon introduction of a Bill at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p><i>Relevant clauses: 12, 13, 15 and 17</i></p> <p>The Bill specifies in clause 12 that the provision that allows gas governance regulations to provide for offences and fines of up to \$20,000 for breaches of gas governance regulations or rules for both industry participants and consumers who are not industry participants is repealed.</p> <p>Clause 13 allows regulations to provide for the High Court to impose a pecuniary penalty on consumers (other than domestic consumers) for breaches of the gas governance regulations or rules. The regulations will specify the maximum penalty, which must not exceed \$200,000.</p> <p>Clause 15 increases the maximum level of civil pecuniary penalty that the Rulings Panel can order an industry participant to pay. The amount is increased from \$20,000 to \$200,000.</p> <p>Clause 17 provides for when and how the High Court may impose pecuniary penalties on consumers for breaches of the gas governance regulations or rules.</p> <p>The Bill includes a delayed commencement of up to six months for several clauses. It is intended for new regulations to be made, based on a Gas Industry Company recommendation, to replace the penalty repealed by the Bill (clause 12). This is to avoid any gaps in the penalty regime in the interim period.</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the policy development process before seeking Cabinet agreement to introduce this Bill, and on the Bill itself.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry of Business, Innovation and Employment released a consultation document entitled “<i>Options for amending the Gas Act 1992</i>” in May 2019. This directly informed the development of policy in this Bill. Please refer to the hyperlinks provided in question 2.1.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Gas Industry Company has been engaged during the development of the Bill as it will be the co-regulatory agency that will be responsible for implementing the changes to the Act.</p> <p>We have also consulted with other regulators, such as the Electricity Authority and the Commerce Commission to ensure that the proposals do not in some way cause inconsistencies across the broader energy regulatory regime.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<i>Relevant Clause: Clause 14</i> The Bill removes the self-incrimination privilege for body corporates by amending the Act's definition from individual to persons. The purpose of this provision is to align the Gas Act 1992 with both the Electricity Industry Act 2010 and Evidence Act 2006.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><i>Relevant clauses: Clause 5, Clause 9</i></p> <p>The Bill amends the scope of section 43F of the Gas Act 1992 which provides for regulation-making powers for wholesale market, processing facilities, transmission and the distribution of gas. It makes two changes:</p> <ul style="list-style-type: none"> • Clarifying that gas governance arrangements in relation to the management of gas supply contingencies applies to all industry participants and consumers; • Adds a new power to make gas governance arrangements in order to establish a broad regime for the disclosure of information by industry participants and consumers that make have significant impact on downstream users, or contribute to security of supply risks. <p>These changes do not alter the process the Gas Industry Company must follow in order to make a recommendation for gas governance arrangements to the Minister of Energy and Resources.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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