



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Gas Act 1992: Report back on emerging technologies, gas market information disclosure, and penalties	Date of release	28 May 2020

List of documents that have been proactively released

Date	Title	Author
23 October 2019	<i>Gas Act 1992: Report back on emerging technologies, gas market information disclosure, and penalties</i>	<i>Office of the Minister of Energy and Resources</i>
23 October 2019	<i>Cabinet Environment, Energy and Climate Committee Minute of Decision (ENV-19-MIN-0055)</i>	<i>Cabinet Office</i>
18 February 2020	<i>Gas (Information Disclosure and Penalties) Amendment Bill: Approval for Introduction</i>	<i>Office of the Minister of Energy and Resources</i>
18 February 2020	<i>Cabinet Legislation Committee Minute of Decision (LEG-20-MIN-0016)</i>	<i>Cabinet Office</i>

Information redacted

YES /-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.

Some information has been withheld for the following reasons:

- confidential advice to Government.

In Confidence

Office of the Minister for Energy and Resources

Chair, Cabinet Legislation Committee

Gas (Information Disclosure and Penalties) Amendment Bill: Approval for Introduction

Proposal

1. This paper seeks approval for the introduction of the Gas (Information Disclosure and Penalties) Amendment Bill (the Bill).

Policy

2. The Bill amends the Gas Act 1992 (the Act) to:
 - 2.1. strengthen the regulation-making powers to provide for enhanced information disclosure requirements for the gas market; and
 - 2.2. to ensure that settings around enforcement and penalties are suitably robust.

3. Constitutional conventions

Regulatory Regime

4. The Act regulates the use of any gas as a fuel in New Zealand. It provides for the regulation of the gas industry and for the supply and use of gas. It also protects the health and safety of the public in connection with the supply of gas, and prevents damage to property in connection with the supply and use of gas.
5. Part 4A of the Act sets out the government's co-regulatory approach for governance of the industry. The Gas Industry Company (GIC) co-regulates the industry alongside the government. The GIC has the ability to recommend to the Minister of Energy and Resources that the government makes secondary legislation (referred to as gas governance arrangements).
6. Gas governance arrangements may only be recommended for particular purposes, which are set out in the Act. In making recommendations that such arrangements be made, the GIC must adhere to the government's objectives for the gas industry.
7. These are set out in the Act and the Government Policy Statement on Gas Governance 2008, the ultimate policy objective of which is "*to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.*"

8. The Act provides a clear process that the GIC must follow to make a recommendation to the Minister of Energy and Resources. Before a recommendation is made, the GIC must consider whether non-regulatory options would satisfactorily achieve the objectives. These recommendations are then required to be approved by the Minister of Energy and Resources.

Background

9. In July 2018, I asked the GIC to determine if information disclosure arrangements in the gas market were sufficient and fit-for-purpose for achieving the Government's objectives for the gas sector.¹ Information disclosure concerns were highlighted by prolonged gas outages at the Pohokura production station, combined with a planned outage at Kupe and dry spring conditions, leading to sustained high wholesale prices for electricity and historic prices on the gas spot market.
10. A number of potential information disclosure issues in the market have been identified, including unplanned and planned outage information, volume and price information, average wholesale price and aggregate traded volume information, and forecast production information.
11. Officials have determined that Part 4A of the Act does not enable the GIC to provide a recommendation for regulation to address potential information disclosure issues that have been highlighted through its investigation of the current information disclosure settings above.
12. In addition, a number of issues have also been noted by Officials in regards to the Act's penalty regime. The penalty regime is important for ensuring that there are strong compliance incentives in place for industry participants, and for consumers (who may not be industry participants) to comply with gas governance arrangements.
13. The current low level of the civil pecuniary penalty able to be imposed by the Gas Rulings Panel does not provide the Government with confidence that appropriate incentives are in place for industry participants to comply with gas governance arrangements. This is particularly the case for the management of situations where the penalty is used as a deterrent for regulations that manage high-risk, low likelihood, events such as critical gas shortages.
14. The Act also provides a criminal penalty, imposed by the High Court that may be applied to industry participants and non-industry participants. In practice, this criminal penalty may be used to penalise breaches of regulations by consumers who are not classed as industry-participants under the Gas Governance (Critical Contingency Management) Regulations 2010. Industry participants are subject to the Gas Rulings Panel.
15. As consumers can either be industry participants, or non-industry participants, there is a concern that the current penalty regime creates an inequitable situation where industry participants are subject to a pseudo-civil offence and non-industry participants a criminal offence for the same conduct.

¹ These are articulated in the Government Policy Statement on Gas Governance 2008.

Discussion document

16. On 1 May 2019, Cabinet agreed to release a discussion document entitled '*Options for amending the Gas Act 1992*' for public consultation [DEV-19-MIN-0096 refers]. Consultation ran from 12 May to 12 June 2019, with 24 submissions received. These submissions were used to inform policy decisions on how to address identified issues.

What does the Bill do?

17. On 4 November 2019, Cabinet agreed to a number of policy decisions for amending the Act in response to these issues [ENV-19-MIN-0055, CAB-19-MIN-0561 refers]. The Bill will amend the Act to implement Cabinet's decisions.
18. The Bill amends section 43F, 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 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.
19. The Bill also amends the penalty regime for industry participants by increasing the maximum civil 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.
20. 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.
21. 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 that there are no gaps in the penalty regime:
 - 21.1. The Bill ensures that actions taken for the purposes of making a recommendation, 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, amended, arrangements can be put in place as soon as possible.
 - 21.2. Makes a number of consequential amendments to gas governance regulations to update the provisions relating to penalties.

Transitional provisions

22. The Bill enables the GIC to perform all actions required to develop a recommendation for gas governance arrangements, but stops short of enabling them to make a formal recommendation. This ensures all work currently being performed by the GIC through its information disclosure and critical contingency management can be used to make a recommendation for gas governance arrangements once the amendments to the Act commence.
23. The Bill also ensures that previous rulings from the Gas Rulings Panel on civil pecuniary penalties do not prejudice the level of penalty able to be applied under the proposed amendments. This is because the Act requires the Gas Rulings Panel to consider previous penalties issued when issuing a ruling.

Impact analysis

24. Regulatory Impact Analysis (RIA) requirements apply to the policies implemented through this Bill. A Regulatory Impact Summary was prepared at the time policy decisions were sought from Cabinet [ENV-19-MIN-0055, CAB-19-MIN-0561 refer].

Compliance

25. The Bill complies with each of the following:
 - 25.1. The principles of the Treaty of Waitangi;
 - 25.2. The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 25.3. The Departmental Disclosure Statement requirements. This has been prepared and is attached to this paper;
 - 25.4. The principles and guidelines set out in the Privacy Act 1993;
 - 25.5. Relevant international standards and obligations;
 - 25.6. The LAC Guidelines on the Process and Content of Legislation (2018 edition).

Consultation

26. Public submissions were sought and received on a discussion paper 'Options for amending the Gas Act 1992' published on the Ministry of Business, Innovation and Employment's website on 12 May 2019. Consultation was open for one month, and 24 submissions were received. These submissions helped inform the final policy decisions that were agreed to be Cabinet on 4 November 2019.
27. Departmental consultation on the draft Bill has taken place with the Ministry of Justice. The GIC has been consulted on the contents of the Bill. The GIC, as industry co-regulator, is supportive of a range of matters included in the amendment Bill.

Binding on the Crown

28. The Act to be amended by the Bill already binds the Crown. The Bill does not change this.

Allocation of decision making powers

29. The Bill does not involve the allocation of decision making powers between the executive, the courts and tribunals.

Associated regulations

30. Regulations will likely need to be made within a year of the Bill coming into force to allow:
- 30.1. A range of changes to current gas governance arrangements to reflect changes to the penalties regime made through the amendment Bill. These amendments would likely be of low complexity and small size; and
- 30.2. If the GIC makes a recommendation for a new regulated information disclosure regime as a result of amendments to the Act, new regulations will be required to be made to implement this. These regulations would likely be of medium complexity and medium size.
31. The timing of these regulations is dependent on the time upon which the GIC makes a recommendation. Once a recommendation is made, the Minister has 90 days to make a decision on whether to accept or reject these regulations. While the exact timing is unknown, it is likely that regulations relating to information disclosure, if recommended, would likely be in place before the end of 2020.
32. Transitional provisions in the Act will enable the GIC to perform all actions and activities, up to the point of making a recommendation before amendments to the Act commence.

Other instruments

33. The Bill does not contain any provisions that empower the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

34. The proposed Bill does not contain a definition of Minister, department, government agency or chief executive of a department.

Commencement of legislation

35. A range of clauses (4,5,7-11,13,16 and 18) in the Bill will come into force the day after the date of royal assent. The Bill provides for several clauses to come into force by Order in Council, or to come into force after the expiry of a six month period that starts on the date of Royal Assent.

36. Commencement via Order in Council is required to prevent a gap in the Act's penalty regime. The Bill repeals Section 53T which provides for criminal offences for industry participants and non-industry participants. This is being replaced with Section 53TA, which provides for civil offences for non-industry participants.
37. The Act's co-regulatory model requires the GIC to make a recommendation for new regulations to replace those that have been repealed. The transitional provisions preserve the existing section 53T until the GIC is able to make such a recommendation, or for a six month period after commencement. This prevents a situation where non-industry participants may not be covered by offence provisions under the Act's penalty regime before the GIC can make a new recommendation.
38. Officials have consulted with the GIC and have determined that six months from commencement of the Act will be sufficient time for the recommendation to be made, and for a decision to be made by the Minister of Energy and Resources on whether to accept such a recommendation.

Parliamentary stages

39. The Bill should be introduced by 5 March 2020 and should be passed by 31 July 2020. The Bill should be referred to the Economic Development, Science and Innovation Committee.

Proactive Release

40. Consistent with the Government's proactive release policy, I intend to release this paper within 30 business days from the date that Cabinet considers this paper.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

1. **note** that the Gas (Information Disclosure and Penalties) Amendment Bill will strengthen the regulation-making powers in the Gas Act 1992 to provide for enhanced information disclosure requirements of the gas market and to ensure that settings around enforcement and penalties are suitably robust.

2. Constitutional conventions

3. **approve** the Gas (Information Disclosure and Penalties) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives.

4. **agree** that the Bill be introduced as soon as practicable.

5. **agree** that the Government propose that the Bill is:

- 5.1. referred to the Economic Development, Science and Innovation Select Committee for consideration;

5.2. enacted by 31 July 2020.

Authorised for lodgement

Hon Dr Megan Woods
Minister of Energy and Resources

PROACTIVELY RELEASED