



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 of Energy and Resources
Chair, Cabinet Economic Development Committee

Gas Act 1992: Report back on emerging technologies, gas market information disclosure, and penalties

Proposal

1. This paper reports back on feedback received on the public discussion document '*Options for amending the Gas Act 1992*' and makes final policy recommendations in relation to the issues consulted on.
2. The paper seeks Cabinet authorisation to instruct the Parliamentary Counsel Office to draft a Gas Act 1992 Amendment Bill to implement these policy decisions.

Executive Summary

3. On 1 May 2019, the Cabinet Economic Development Committee (DEV) agreed to release a discussion document entitled '*Options for amending the Gas Act 1992*' for public consultation [DEV-19-MIN-0096 refers]. This consultation document sought the views of stakeholders on:
 - 3.1. Potential regulatory issues posed by emerging technologies and alternative fuels (such as hydrogen) for the Act;
 - 3.2. Potential new regulation-making powers under Part 4A of the Gas Act 1992 (the Act) to require the release of information by industry that promotes transparency in the gas wholesale market, including information on planned and unplanned outages, market volumes and prices; and
 - 3.3. Potential improvements to the penalties able to be applied in regulations that govern the gas industry under Part 4A, to ensure that there are strong incentives for compliance, particularly for the management of acute situations where there are critical gas supply shortages.
4. Consultation has not identified any issues in the Act that need to be addressed immediately to facilitate the adoption of emerging technology and alternative fuels. However, several issues were identified in relation to some regulations made under the Act, as well as some specific technical standards that are part of the New Zealand Standards regime. I will report back to Cabinet in due course on how these issues may be addressed.

Information Disclosure

5. The last two years have shown that there may be issues with information disclosure in the gas market. The Pohokura production outages in 2018 led to record gas spot market prices, and high electricity wholesale prices. Issues with information transparency can have a wide range of effects including on energy prices and

security of supply. Public consultation has confirmed that the current regulation making provisions in regards to information disclosure in the Act are insufficient.

6. New information disclosure requirements for the entire gas market may be required in order to ensure the timely disclosure of information that may have significant downstream impact, or may create the risk of a critical gas shortage occurring. The Gas Act does not currently allow this and requires amendment.
7. I seek Cabinet agreement to provide the Minister of Energy and Resources with the ability to recommend gas governance arrangements be made for the purposes of establishing a broad regulatory regime for information disclosure in the gas market. A recommendation that regulations be made would first require the GIC to recommend that government regulation is required to achieve the outcomes sought in regards to information disclosure.

Penalties

8. I seek Cabinet agreement to three changes to the penalties regime that Part 4A of the Act provides. These changes will help ensure that regulations and rules made under Part 4A of the Act have a penalty regime that is robust, equitable, and appropriately incentivises compliance. The changes I seek to make are to:
 - 8.1. Increase the maximum civil pecuniary penalty able to be imposed by the Gas Rulings Panel from \$20,000 to \$200,000. This will be particularly important for managing critical contingency management situations and for incentivising compliance with any information disclosure gas governance arrangements;
 - 8.2. Repeal the criminal penalty in Section 43T of the Act as I consider that the conduct this is used to penalise is not appropriate. This penalty has created an inequitable treatment between consumers who are not classed as industry participants, and those that are not classified as industry participants; and
 - 8.3. Introduce a new civil pecuniary penalty to replace the current criminal penalty with a maximum of \$200,000 that may be imposed by the High Court and be used to deter breaches by consumers who are not classed as industry participants.¹

Minor changes

9. I also seek Cabinet agreement to make a number of minor changes to the Act. These changes clarify unintended drafting issues, redundant provisions in the Act, or clarify the policy intent of existing provisions. These changes are:
 - 9.1. Repealing the redundant definition of “corporation” in the Act;
 - 9.2. Aligning the self-incrimination privilege with modern practice; and
 - 9.3. Clarifying that regulations managing situations of critical gas shortages can be applied to the whole gas market, rather than just the wholesale market.

¹ Residential consumers are excluded from these penalties.

Background

Regulatory regime

10. The Gas Act 1992 (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.
11. 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).
12. 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. These are set out in the Act and the Government Policy Statement on Gas Governance 2008 (the GPS), 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.
13. 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 me, as Minister of Energy and Resources.

Previous decisions

14. On 1 May 2019, the Cabinet Economic Development Committee (DEV) agreed to release a discussion document entitled 'Options for amending the Gas Act 1992' [DEV-19-MIN-0096 refers] for public consultation. This consultation document sought the views of stakeholders on:
 - 14.1. The suitability of the Act in regulating emerging technologies and alternative fuels, such as hydrogen;
 - 14.2. Targeted amendments to the Act to enable greater information disclosure requirements to be put in place; and
 - 14.3. Changes to the penalties regime provided for by the Act in order to ensure that this is sufficiently robust.
15. This document was released for four weeks of public consultation on 12 May 2019. MBIE received 24 submissions on this paper from a range of stakeholders from the gas and electricity industries. These views have informed the final policy decisions I seek from Cabinet.

16. This Cabinet Paper constitutes the report back requested by Cabinet [DEV-19-MIN—0096 refers] and seeks Cabinet’s agreement to amend the Act following the outcome of this consultation.

Emerging technology and alternative fuels

17. Consultation has not identified any issues in the Act that need to be addressed immediately in order to facilitate the adoption of emerging technology and alternative fuels in the Act. However, a number of issues were identified in relation to the underpinning regulations and some specific technical standards under the New Zealand Standards regime.
18. I will report back to Cabinet in due course to seek agreement to any changes that may be required. I expect that Officials, Worksafe New Zealand, and the GIC will proactively identify any other regulatory changes that may be needed and commence work to recommend changes to regulations and standards as required.
19. Many submitters noted that hydrogen was the most promising alternative fuel that may require regulation under the Act. This demonstrates the level of interest in New Zealand in the developing hydrogen economy, which aligns well with the vision articulated in the Government’s *‘A vision for hydrogen in New Zealand’* green paper.

Information disclosure

20. In July 2018, I asked the GIC to determine if information disclosure arrangements in the gas market are sufficient and fit-for-purpose for achieving the Government’s objectives for the gas sector.² 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.
21. The GIC subsequently identified four potential issues with the current information disclosure settings in the gas market:
- 21.1. Planned and unplanned outage information related to production and major gas user facilities is generally not available publicly. The Pohokura production outages are one such example of this sort of event, although some producers have voluntarily disclosed information;
 - 21.2. Volume and price information in the natural gas spot market is not publicly available, as it sits behind a paywall within the natural gas spot market (called ems TradePoint);
 - 21.3. Average wholesale price and aggregate traded volume is not available to the market which can hinder market decision making and the GIC’s decision making ability; and
 - 21.4. There is no information available on forecast production over the short term or the medium term. This can limit the demand side of the market’s understanding of gas availability and liquidity with the consequence that they may be less likely to engage in market activities.

² These are articulated in the Government Policy Statement on Gas Governance 2008.

22. Officials have determined that Part 4A of the Act does not enable the GIC to provide a recommendation for regulations to address the identified issues. On 1 May 2019, Cabinet noted that amendments to the Act to address these issues were likely to be required [DEV-19-MIN-0096 refers]. Subsequent consultation has confirmed this need.

Amendments to the Gas Act 1992 to improve information disclosure settings

23. I seek Cabinet's agreement to amend the Gas Act to enable me, as Minister of Energy and Resources, to recommend that regulations relating to information disclosure be made should I receive and accept a recommendation from the GIC.
24. Analysis has shown that the current provisions are insufficient to allow for regulations that compel disclosure from industry participants of information that may have significant downstream impact, or potentially could create the risk of a critical contingency event. New information disclosure requirements need to be able to be applied to all industry participants, and potentially larger consumers (who may not be classed as industry participants), in order to ensure that there is effective and timely disclosure of information, and that potential security of supply risks are appropriately managed.
25. The Gas Act does not currently provide for such broad regulations and, therefore, requires amendment. If new information disclosure requirements are recommended then I consider that these will likely, over time, present tangible benefits for the operation of the market through greater transparency and more efficient market operation. This may, over time, lead to lower prices for consumers, as well as facilitate long-term security of supply through better coordination of outages.
26. I consider the amendment is consistent with the Government's desired outcomes for gas governance regulation, particularly around minimising barriers to competition in the gas industry and ensuring that delivered gas costs and prices are subject to sustained downward pressure.
27. This amendment would provide the GIC a clear regulatory backing for investigating potential options for addressing information disclosure in the gas market.
28. These new regulations would be subject to the same regulatory provisions that other gas governance arrangements are. This includes the process upon which GIC must follow for making such a recommendation, including broad consultation with affected parties. Any new information disclosure regulations would be subject to the Gas Act's penalty regime for breaches of regulations which I also propose to strengthen in this paper.
29. I will seek Cabinet agreement to any new information disclosure regulations should I accept a recommendation from the GIC for these. These will be covered by a separate Regulatory Impact Analysis process.

Public consultation supported the addition of a new information disclosure provision

30. Amending the Act to address the issues around information disclosure was strongly supported by stakeholders, and that this should be addressed as a matter of priority.

There were three issues raised by submitters who did not support the addition of a new information disclosure provision:

- 30.1. The impact that new information disclosure may have on country and regulatory risk due to new requirements being put into the market. I do not consider this to be a material concern given the economic and social benefits of more efficient operations (through enhanced information disclosure) in the gas market;
 - 30.2. One submitter had a different interpretation of the provisions of the Act and suggested that the current Act may be able to provide for information disclosure. This view is not supported by either the GIC's or MBIE's analyses and I consider that there are benefits in clearly providing the GIC with the mandate to address information disclosure issues; and
 - 30.3. Concerns around the disclosure of demand-side planned and unplanned outage information as this may prejudice commodity traders (for example, the international methanol trade). This is a matter that the GIC will be able to address through regulations rather than through amendments to the Act.
31. There were a range of views on whether a regulated solution to address the information disclosure issues was required, or whether the threat of regulation would be enough for the industry to address the identified issues.

Implementation

32. The GIC have initiated a work stream to investigate potential information disclosure issues and are engaging with stakeholders to identify specific problems and potential solutions. If changes to the Act are made, the GIC will be able to formally consider whether regulation is required, or if a non-regulated option may 'satisfactorily achieve' the same outcomes as regulation would. The Act sets out prescriptive requirements for the process the GIC must undertake in order to make this recommendation. This includes a cost-benefit analysis and consultation with affected stakeholders.
33. The GIC will then be able to consider whether a formal recommendation to me, as Minister of Energy and Resources, should these requirements be met.
34. The GIC has indicated that any formal recommendation for government regulation, if the Act were to be amended, is unlikely to be made before March 2020. This will mean that new information disclosure requirements may be able to be put in place before the end of 2020. However, I note that these dates are indicative and will depend on the outcomes of the GIC's consultation process.

Penalties regime

35. Pecuniary penalties are generally used as part of regulatory regimes' targeting commercial behaviour, in situations where a monetary penalty would deter breaches, and the nature of the offending conduct does not warrant a criminal conviction. The use of pecuniary penalties under the Act is consistent with this, with the exception that they are imposed by an independent Gas Rulings Panel, rather than the High Court. There is currently no civil pecuniary penalty under the Act that may be imposed on non-industry participants who breach the Act.

Ruling Panel pecuniary penalties may not reflect the extent of harm caused

36. I seek Cabinet's agreement to increase the maximum fine that the Gas Rulings Panel is able to order to \$200,000, from \$20,000. Increasing the penalty to \$200,000 will align the maximum pecuniary penalty with the analogous penalty under the Electricity Industry Act 2010 (the penalty for an industry participant breaching the electricity code). This penalty would apply across all gas governance arrangements, and will require subsequent amendment to the Gas Governance (Compliance) Regulations 2008 to ensure that the Gas Rulings Panel has jurisdiction.
37. Compliance by industry participants has been generally good with few breaches being referred to the Gas Rulings Panel in recent years. The reputational impacts of being ordered to pay a fine on the basis of a gas governance breach are likely to also increase the incentive to comply with gas governance regulations.
38. 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.
39. In particular, I am concerned about situations where the penalty is used as a deterrent for regulations that manage high-risk, low likelihood, events such as for situations with critical gas shortages. These situations can have significant economic impacts if the gas network was to depressurize due to an industry participant not curtailing its gas demand. A large municipal network may take a long time to be recertified and brought back into service, potentially affecting commercial, industrial and residential consumers. Therefore, I consider that strong compliance incentives are required to ensure that the likelihood of these events occurring is minimised.
40. Consultation on this issue did not reveal any particular concerns that stakeholders had with the current Gas Rulings Panel penalty regime. Submitters who did not support changes to the penalties regime cited two reasons:
- 40.1. That the changes should wait until the GIC completes its information disclosure work stream, and its programme of work to review the regulations that apply when there is a critical shortage of gas;³ and
- 40.2. The Rulings Panel's compensation orders mitigate the need for large fines from the Rulings Panel, particularly in the context of Gas Governance Critical Contingency Management Regulations 2008 (the CCM regulations) breaches.
41. I am comfortable that an increased penalty limit will provide the Rulings Panel with a broader range of orders that enable it to provide for penalties that better reflect the extent of harm. I note that there may be some situations where compensation orders are not appropriate (for example, new information disclosure requirements). The exact situations where penalties are applied will be determined by the Gas Rulings Panel, who will apply penalties based on the extent of the harm.

³ The Gas Governance (Critical Contingency Management) Regulations 2008.

42. It is also important to note that a higher pecuniary penalty limit does not derogate from the Rulings Panel's ability to make compensation orders.

Proposed changes to the penalty regime for industry participants that I do not propose to proceed with

43. The public discussion document sought the views of stakeholders on the addition of volumetric and daily penalties to the Act. There were mixed views on the addition of these penalties with some submitters supporting them as they added more flexibility to the penalty regime under the Act.
44. Those that did not support volumetric penalties argued that the quantum of gas consumed was not proportional to the extent of the harm (with volumetric penalties disproportionately affecting larger users). However, I note that larger users breaching gas curtailment orders will have larger effects on security-of-supply in situations of gas shortages, which means that these penalties will reflect the extent of the harm. Stakeholders identified issues with determining what an appropriate daily penalty may be.
45. Given the complexity in determining these penalties, I have decided not to pursue these options at this time. I am comfortable that increasing the maximum fine under that the Gas Rulings Panel is able to order will present a material improvement on current settings.

The treatment of industry participants and non-industry participants under the Act's penalty regime is inequitable

46. For industry participants, penalties are imposed by the Gas Rulings Panel. 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 gas governance regulations by consumers who are not classed as industry-participants under the CCM regulations.
47. I note that some consumers are classed as industry-participants. I am concerned that this creates an inequitable situation where contractual settings determine what penalty applies for a breach of gas governance arrangements:
- 47.1. If a consumer were to purchase gas from a gas retailer, rather than through a gas producer, wholesaler, or on the wholesale market, it is a non-industry participant. This means it would be subject to criminal prosecution through the High Court if it is found to have breached a gas governance arrangement; or
- 47.2. If the same consumer decided to shift to purchasing gas directly from a gas wholesaler, then this would make it an industry participant. This means it would be subject to the Rulings Panel's determinations if it was found to have breached gas governance arrangements and subject to a fine.
48. I seek Cabinet's agreement to make amendments to the Act to remove the current inequities that are created by the different treatment of industry participants and for non-industry participants under the Act's penalty regime. Different penalties are required as the Gas Rulings Panel does not have jurisdiction over non-industry

participants who may still breach gas governance arrangements. These penalties do not apply to residential consumers

49. I intend to make the following changes:
- 49.1. Introduce a new civil pecuniary penalty with a maximum of \$200,000 imposed by the High Court that may be applied to non-industry participants to ensure that they are incentivised to comply with regulatory requirements which apply to them; and
- 49.2. Repeal the criminal penalty under Section 43T of the Act as a criminal penalty is inappropriate for the conduct that it is penalising.
50. Stakeholders who submitted on this issue agreed that the treatment of both industry participants and non-industry participants under the penalty regime should be equitable, and that the criminal penalty may not be appropriate for the type of conduct it is penalising.
51. As the Gas Rulings Panel does not have jurisdiction over non-industry participants, civil pecuniary penalties for non-industry participants would be imposed by the High Court. We intend for this penalty to have the same maximum as the civil pecuniary penalty for industry participants. This is also to ensure equity between consumers and industry participants for similar conduct.
52. I am confident that removing the criminal penalty will not reduce the effectiveness of the Part 4A penalties regime. I do not consider that the likely nature of the breaches by non-industry participants under gas governance arrangements meets the threshold for warranting the use of criminal penalties.
53. I consider that the use of civil pecuniary penalties imposed by the High Court is the best way to penalise breaches by non-industry participants. This application is consistent with the purpose of civil pecuniary penalties being used to deter breaches of the gas regulatory regime, and targets situations where commercial behaviour in the gas industry leads to a breach. Consultation with stakeholders supported the alignment of the regime between industry and non-industry participants.

I do not intend to change the definition of “industry participant”

54. An alternative option that was consulted on was to change the definition of “industry participant” under the Act to include all consumers of gas over a certain consumption level, for example, ten terajoules per day. Further policy work and consultation with stakeholders is required to establish what an appropriate limit is, and to work through any consequences associated with the change.
55. Given the need to make changes to the Act in the short term, I do not consider that the benefits outweigh the potential unintentional consequences presented by this option.
56. I consider that a new civil pecuniary penalty is the best way to address the issues associated with the design of the current dual-penalty regime. I consider that the definition of “industry participant” could be reviewed in future, but it is not a short term priority.

Minor changes to the Gas Act 1992

57. I seek Cabinet agreement to make a number of minor changes to the Act. These proposed changes are largely drafting clarification issues, redundant legislation, or clarify the policy intent of existing provisions in the Act. I have not formally consulted on the proposals below as I consider they are not controversial.

Repealing the definition of “corporation” in the Act

58. The Natural Gas Corporation (NGC) used to play a key role in the gas sector and was privatised in 1992. The company has been sold a number of times and is now part of First Gas. The Act still contains a definition of the “Corporation” referring to the NGC. It is defined as a “gas wholesaler” in the Act.
59. These provisions are redundant given that the functions of the NGC’s successors are captured under the definition of “industry participant”. I propose that these redundant provisions are repealed.

Self-Incrimination Privilege

60. There is an inconsistency between the Act and the Electricity Industry Act regarding the self-incrimination privilege⁴. Section 48(3) of the Electricity Industry Act preserves privilege for officers, employees or an industry participant that is an individual. This does not cover body corporates. The Act preserves privilege for “persons” which includes body corporates. The Electricity Industry Act’s approach aligns with the Evidence Act 2006.
61. I propose that section 43V of the Act be aligned with the Evidence Act 2006 and the Electricity Industry Act. This change would likely change the use of “persons”, as is currently used in the Act, to “individuals” which is used in the Electricity Industry Act 2010 and the Evidence Act 2006. In effect, this will remove the self-incrimination privilege from applying to body corporates. We have not identified any material costs or benefits associated with this proposal.

Empowering provisions for critical contingency management regulations

62. The objective of the CCM regulations is to achieve the effective management of critical gas outages and other security of supply contingencies without compromising long-term security of supply. As noted previously in the Cabinet paper, the main tools to achieve this are issuing curtailment notices or by instigating public appeals for conservation in the case of residential consumers.
63. These regulations, therefore, play an important role across the whole gas market. The problem is that they are currently placed under the “wholesale gas market” subheading in section 43F. This creates ambiguity as to which classes of “industry participants” and “consumers” the Regulations can cover.

⁴ This privilege allows a person to refuse to provide specific information that would be likely to incriminate them under the law in relation to an offence punishable by a fine or imprisonment.

64. I propose to clarify that these regulations can be applied across the whole gas market. This approach will clarify current practice and remove the ambiguity as to whom these regulations can apply to.

Consultation

65. The Treasury, Te Puni Kōkiri, Ministry for the Environment, Ministry of Justice, the Gas Industry Company, the Electricity Authority, the Commerce Commission, Te Arawhiti, the Environmental Protection Authority, the Ministry for Primary Industries, the Parliamentary Council Office (PCO), Worksafe New Zealand, and the Ministry of Transport were consulted on the contents of this paper and the associated Regulatory Impact Assessment.
66. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

67. There are no financial implications associated with this paper. Any additional marginal costs to the GIC as a result of the proposals in this paper will be met by the GIC levy that is set annually. This is paid to the GIC by industry participants and is set by regulation each year.

Legislative Implications

68. Legislation is required to implement the proposals in this paper. The proposed Act will bind the Crown. Constitutional conventions
69. The proposed changes to the Act are likely to result in recommendations for new, or amendments to, gas governance arrangements by the GIC. If these recommendations are agreed to, I will seek Cabinet agreement to these recommendations in due course.

Impact Analysis

70. A Regulatory Impact Summary has been prepared and is attached to this paper as Annex One.
71. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Summary prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Human Rights

72. There are no human rights implications associated with the proposals in this paper.

Gender Implications and disability perspective

73. There are no gender implications, or considerations for people with disabilities, associated with the proposals in this paper.

Publicity

74. I intend to issue a press release announcing Cabinet's decisions on the targeted changes to the Gas Act 1992 alongside the proactive release of this Cabinet Paper. The Regulatory Impact Summary will be published on the Ministry of Business, Innovation and Employment website.
75. I expect a moderate level of attention from energy companies and sector commentators on the proposed changes particularly on information disclosure.

Proactive Release

76. 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 on 1 May 2019, the Cabinet Economic Development Committee agreed to release a discussion document entitled "*Options for amending the Gas Act 1992*" which sought stakeholders views on the following:
 - 1.1. Potential regulatory barriers that the Gas Act 1992 may present to the adoption of emerging technologies and alternative fuels;
 - 1.2. The addition of a new power to the Act to enable broad information disclosure regulations to be made; and
 - 1.3. The design of the penalties regime provided for by the Act and potential ways to make this fit-for-purpose for ensuring compliance with regulations.
2. **Note** that advice from Officials and consultation with stakeholders suggests that there are no issues in the Act that need to be addressed immediately in order to facilitate the adoption of emerging technology and alternative fuels.
3. **Note** that consultation revealed a few minor changes that may need to be made to regulations under the Gas Act 1992 at a later date to support the uptake of emerging technology and alternative fuels.

Information disclosure

4. **Note** that identified issues with information disclosure in the gas market include information such as planned and unplanned outages, volume and price information, average wholesale and aggregated trading volumes, and production forecasting.

5. **Note** that public consultation has confirmed the need to amend the Gas Act 1992 to provide a clear regulatory backing for enhanced information disclosure requirements to be able to be placed on the gas market, should the Gas Industry Company recommend that these are made.
6. **Agree** to amend the Gas Act 1992 to enable the Minister of Energy and Resources to recommend that regulations for a broad regime for the disclosure of information that may have significant downstream impact, or may contribute to the risk of critical contingency events be made.
7. **Note** that this new empowering provision for information disclosure will be subject to the same process and requirements as other gas governance arrangements under the Gas Act 1992.
8. **Note** that I consider these amendments are consistent with the objectives of Part 4A of the Gas Act, and the government's policy objectives for the sector as stated in the Government Policy Statement on Gas Governance 2008.
9. **Note** that the co-regulatory model requires the Gas Industry Company to follow the process set out in the Act, including consultation with affected stakeholders and cost benefit analysis before making a recommendation.

Penalties regime

10. **Note** that the penalty regime provided for by the Gas Act 1992 does not provide confidence that there are appropriate compliance incentives in place for the management of high-impact, low likelihood events such as critical gas shortages.
11. **Agree** to increase the maximum penalty available to the Gas Rulings Panel from \$20,000 to \$200,000 to ensure sufficient incentives are in place for industry participants and enable the Gas Rulings Panel to apply pecuniary penalties proportional to the extent of harm.
12. **Note** that the current penalty regime is inequitable because it may criminalise a breach by a non-industry participant for conduct that is subject to the civil proceedings of the Gas Rulings Panel for an industry participant.
13. **Agree** to repeal the current criminal penalty provided under section 43T of the Gas Act 1992 as it creates an inequity in the penalties regime for gas consumers who are non-industry participants and industry participants.
14. **Agree** to add a new civil pecuniary penalty to the Gas Act 1992 with a maximum limit of \$200,000 to be determined by the High Court in situations where the Gas Rulings Panel does not have jurisdiction.

Minor changes

15. **Agree** to make a range of minor changes to the Act including:
 - 15.1. Repealing the redundant definition of "corporation" in the Act;
 - 15.2. Aligning the self-Incrimination privilege with modern practice; and

15.3. Clarifying that gas governance arrangements for the management of critical gas shortages can be applied to the whole gas market.

16. **Authorise** the Minister of Energy and Resources to make other minor changes if they are identified through the drafting process.

Implementation

17. **Authorise** the Minister of Energy and Resources to make further decisions on minor and technical matters in line with policy decisions outlined in the paper.

18. **Invite** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Council Office to give effect to the above recommendations.

Authorised for lodgement

Hon Dr Megan Woods

Minister for Energy and Resources

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PROACTIVELY RELEASED