



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Gas Governance (Critical Contingency Management) Amendment Regulations 2021	<b>Date to be published</b>	19 November 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
November 2021	Gas Governance (Critical Contingency Management) Amendment Regulations 2021	Office of the Minister of Energy and Resources
11 November 2021	Cabinet minute: LEG-21-MIN-0180	Cabinet Office

### Information redacted

**YES / NO** [select one]

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**In Confidence**

Office of the Minister of Energy and Resources  
Cabinet Legislation Committee

**Gas Governance (Critical Contingency Management) Amendment Regulations 2021**

**Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Gas Governance (Critical Contingency Management) Amendment Regulations 2021 which will amend the Gas Governance (Critical Contingency Management) Regulations 2008.

**Executive summary**

- 2 The Gas (Information Disclosure and Penalties) Amendment Act 2021 (the Amendment Act) received royal assent on 12 July 2021. The Amendment Act amends the Gas Act 1992 (the Gas Act) to provide for more equitable treatment between industry participants and consumers (other than domestic consumers) who are not industry participants by introducing section 43TA.
- 3 Section 43TA allows gas governance regulations to be made that empower the High Court to impose a civil pecuniary penalty on a consumer (other than a domestic consumer) who is not an industry participant of up to \$200,000 for specific breaches of the Gas Governance (Critical Contingency Management) Regulations 2008, including providing false or misleading information to the industry body and failing to comply with a direction during a critical contingency.
- 4 Currently, 82A and 82B create criminal offences for providing false or misleading information to the industry body and failing to comply with a direction during a critical contingency.
- 5 On 21 July 2021 the Gas Industry Company (GIC), the co-regulator of the gas industry under the Gas Act, made a recommendation to replace Regulations 82A and 82B of the Gas Governance (Critical Contingency Management) Regulations 2008 that will be revoked by the Amendment Act.
- 6 The GIC's recommendation is to replace the current criminal offences and instead enable the High Court to impose civil pecuniary penalties of up to \$200,000 on consumers (other than domestic consumers) who are not industry participants for the following breaches:
  - knowingly providing false or misleading information to the industry body in an application for a designation under regulation

- knowingly providing false or misleading information to the Critical Contingency Operator under regulation
- failure to comply with a direction during a critical contingency where the failure affects, or may affect, the operation of wholesale markets for gas.

7 I accepted the GIC's recommendation on 22 August 2021 pursuant to the statutory criteria in the Gas Act.

8 To avoid a regulatory gap, the new regulations should come into force on or before 12 January 2022.

## Policy

*The Amendment Act amended the Gas Act to ensure that enforcement and penalties settings are suitably robust by enabling regulations to provide for civil pecuniary penalties*

9 The purpose of the Gas Governance (Critical Contingency Management) Regulations 2008 (CCM regulations) is to achieve effective management of critical gas outages and other security of supply contingencies without compromising the long-term security of supply. If alternative fuel sources are not available, a gas disruption event and subsequent curtailment can cause significant business disruption.

10 The Amendment Act amends the Gas Act to provide for more equitable treatment between industry participants<sup>1</sup> and consumers<sup>2</sup> (other than domestic consumers<sup>3</sup>) who are not industry participants by making both groups subject to civil pecuniary penalties of up to \$200,000.

11 Specifically, the Amendment Act:

11.1 repeals section 43T of the Gas Act that allows the making of gas governance regulations to provide for offences and a fine of up to \$20,000; and will revoke existing criminal offences in regulations 82A and 82B of the current CCM regulations; and

11.2 introduces new section 43TA to empower gas governance regulations to be made that allow the High Court to impose a civil pecuniary penalty on a consumer (other than a domestic consumer) who is not an industry participant of up to \$200,000.

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<sup>1</sup> Under Section 43D of the Gas Act, industry participant means: (a) a gas retailer; (b) a gas distributor; (c) a gas producer; (d) a pipeline owner; (e) a gas wholesaler; (f) a person who purchases gas directly from a gas producer or gas wholesaler or on any wholesale gas market; (g) a service provider appointed under any gas governance regulations; (h) a gas metering equipment owner; (i) a data administrator that provides data administration services to the gas industry.

<sup>2</sup> Under the Gas Governance (Critical Contingency Management) Regulations 2008, 'consumer' means any person who is supplied, or who applies to be supplied, with gas; but does not include any gas producer or any gas distributor or gas retailer, except where the gas producer or, as the case may be, the gas distributor or gas retailer is supplied, or applies to be supplied, with gas for its own consumption and not for the purposes of resupply to any other person.

<sup>3</sup> Under 43D of the Gas Act, domestic consumer means any person who purchases gas in respect of any dwellinghouse.

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- 12 Under the co-regulatory model, in the Gas Act, the Government must first receive a recommendation from the GIC to amend the CCM regulations.
- 13 The Amendment Act contains transitional provisions that preserve regulations 82A and 82B for a six-month period after commencement of the Amendment Act, to allow time for the GIC to make a recommendation on changes to the CCM regulations. This was to prevent a regulatory gap, where consumers (other than domestic consumers) who are not industry participants would not be covered by offence provisions under the Gas Act's penalty regime before the GIC could make a new recommendation.
- 14 On 21 July 2021, the GIC made a recommendation to replace regulations 82A and 82B which will be revoked by the Amendment Act.
- 15 The recommendation is to replace the current criminal offences under 82A and 82B, for providing false or misleading information to the industry body or Critical Contingency Operator, and failing to comply with a direction during a critical contingency, and instead enable the High Court to impose civil pecuniary penalties of up to \$200,000 on consumers (other than domestic consumers) who are not industry participants for these breaches of the CCM regulations. The specific breaches and defences would remain the same as they were under the previous criminal provisions.
- 16 Consistent with the Amendment Act, this will increase the quantum of the penalty to increase incentives for compliance with gas governance arrangements.

*I have considered the necessary statutory pre-requisites have been met*

- 17 Sections 43L, 43N, 43O, 43ZN, and 43ZO of the Gas Act set out the requirements that the GIC must meet in making the recommendation to the Minister.
- 18 For regulations made under section 43F of the Gas Act, section 43ZP(1) outlines that the Minister must decide within 90 days of receiving a recommendation from the industry body (currently the GIC) in relation to gas governance regulations to either accept or reject the recommendation.
- 19 Under section 43ZP(3) of the Gas Act, the Minister must publish a notice in the New Zealand Gazette stating his or her decision and explaining the reasons for it or where copies of that explanation may be obtained.
- 20 I have considered the necessary pre-requisites under the Gas Act and I am satisfied that they have been met. I therefore accepted the GIC's recommendation on 22 August 2021 pursuant to the statutory criteria in the Gas Act. My decision and reasons for accepting the GIC's recommendation was published in the Gazette on 31 August 2021.

**Compliance**

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- 21 The proposed Gas Governance (Critical Contingency Management) Amendment Regulations 2021 comply with:
- 21.1 the principles of the Treaty of Waitangi;
  - 21.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 21.3 the principles and guidelines set out in the Privacy Act 2020;
  - 21.4 relevant international standards and obligations; and
  - 21.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 22 The proposed Gas Governance (Critical Contingency Management) Amendment Regulations 2021 also meet the criteria contained in section 43J of the Gas Act, that is:
- 22.1 the regulations implement the effect of a recommendation of the industry body (currently the GIC); and
  - 22.2 the regulations do not differ from that recommendation in any material way (e.g. other than style or minor detail).

### **Regulations Review Committee**

- 23 I do not consider there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 24 The proposed Gas Governance (Critical Contingency Management) Amendment Regulations 2021 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

### **Timing and 28-day rule**

- 25 The proposed Gas Governance (Critical Contingency Management) Amendment Regulations 2021 will adhere to the 28-day rule following its notification in the New Zealand Gazette, and will come into force on 12 January 2022.

### **Impact Analysis**

- 26 Treasury's Regulatory Impact Analysis Team has determined that the proposal in this Cabinet paper to replace criminal penalties with civil penalties is exempt from the requirement to provide a Regulatory Impact Statement (RIS) on the grounds that relevant issues have already been addressed by existing impact analysis. [Refer to Cabinet Minute: ENV-19-MIN-005 and the published RIS: Impact Summary: Gas Act 1992 Amendments - 11 March

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2020 - Regulatory Impact Assessment - Ministry of Business, Innovation and Employment (treasury.govt.nz)].

### 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.

### Publicity

- 28 The Ministry of Business, Innovation and Employment (MBIE) will notify interested stakeholders.

### Proactive release

- 29 I intend to proactively release this paper in full, within 30 business days of Cabinet approval. MBIE will publish a copy on its website.

### Consultation

- 30 The policy given effect to by the Amendment Act was informed by a Discussion document: *Options for amending the Gas Act 1992*, which was released by MBIE in 2019. The GIC released a consultation paper May 2020. Stakeholders are generally supportive of the proposed amendments to the regulations.
- 31 The Ministry of Justice and the Treasury has been consulted.

### Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 23 October 2019 the Cabinet Environment, Energy and Climate Committee agreed to repeal the criminal penalty provided under section 43T of the Gas Act 1992 (the Gas Act), and to add a new civil pecuniary penalty for consumers (other than domestic consumers) who are not industry participants [CAB-19-MIN-0561 refers];
- 2 **note** that the Gas Governance (Critical Contingency Management) Amendment Regulations 2021 will give effect to the decision referred to in paragraph 1 above;
- 3 **authorise** the submission to the Executive Council of the Gas Governance (Critical Contingency Management) Amendment Regulations 2021;
- 4 **note** that the Gas Governance (Critical Contingency Management) Amendment Regulations 2021 will come into force on 12 January 2022;
- 5 **note** that the Gas Governance (Critical Contingency Management) Amendment Regulations 2021 will be made under section 43F of the Gas Act and that the following criteria contained in section 43J of the Gas Act are met:

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- 5.1 the regulations implement the effect of a recommendation of the industry body (currently the GIC); and
- 5.2 the regulations do not differ from that recommendation in any material way (e.g. other than style or minor detail).

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

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