

12 June 2019

Submissions  
Resource Markets Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington

By email: [Resource.Markets.Policy@mbie.govt.nz](mailto:Resource.Markets.Policy@mbie.govt.nz)

**Re: Discussion document — ‘Options for amending the Gas Act 1992’**

Thank you for the opportunity to provide comment on the Discussion Document: ‘Options for amending the Gas Act 1992’.

We support MBIE’s commitment to review the Act and seek the industry’s views on how the regulatory regime can interact with emerging technologies. However, as a general principle, Contact Energy proposes that unless there are specific barriers or issues identified with the Act and/or clearly defined problems that need to be resolved it is unnecessary and potentially counterproductive to make legislative changes. We have provided minimal comments to questions 1-4 as we do not consider there are particular issues which require resolving through legislative change.

The discussion document considers that there is a need to improve the information disclosure regime to ensure the timely provision of information that underpins effective and efficient market behaviour. We support the proposal for the need for broader information disclosure gas governance arrangements. For further details and Contact’s response to the specific questions in the discussion document please see Appendix 1.

If you require further clarification on any of the above comments please do not hesitate to contact me directly.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "MLH".

Merinda-Lee Hassall

**Senior Regulatory Advisor, Contact Energy**

## Appendix 1

### **1. What emerging technologies or alternative fuel sources are likely to be covered by the Act's definition of "gas"?**

The discussion document has identified hydrogen as an alternative fuel source covered by the Act's definition of "gas". We are unaware of additional alternative fuel sources that need to be covered.

### **2. What aspect(s) of the Act could be a barrier to the uptake of emerging technologies or alternative fuels?**

The discussion document has not identified any specific barriers imposed by the legislation, and we do not see the Act as a barrier to the uptake of emerging technologies or alternative fuels.

We caution against any changes to the primary legislation in the absence of a clearly defined problem so as to avoid any unintended consequences.

### **3. What aspects should be amended or changed to facilitate the emergence of new technologies and alternative fuels?**

Please refer to our response to question 2.

### **4. How will your business be impacted if changes to the Act are not made in the short-term (e.g. two to three years)?**

If no changes are made to the Act, it is unlikely our business will be impacted directly. However, again we caution against making any changes to the Act in the absence of clearly defined problems as this may increase the risk of unintended consequences for business.

### **5. Does the Act cause any issues with complying with other legislation?**

No comment.

### **6. Are you or your organisation involved in the development or deployment of emerging technologies or alternative fuels?**

Yes.

### **7. Are you interested in being contacted as MBIE develops a longer-term programme of regulatory work around the development of emerging technologies and alternative fuels relating to the Act?**

Contact would like to be involved and kept regularly informed of any changes relating to the Gas Act 1992.

**8. What concerns do you have about the flow and availability of information available to you or your organisation regarding situations that may affect the price and/or availability of gas supply?**

The supply of gas is an essential and critical component for a reliable, resilient and economically sustainable energy system in New Zealand. There are currently few obligations on gas market operators to formally advise electricity or gas market participants of any supply issues. The recent gas supply and production constraint issues experienced in 2018 reinforced the need to increase the transparency and flow of gas information. Contact supports the concerns raised by the Gas Industry Company regarding the availability of gas information, including:<sup>1</sup>

- planned and unplanned outage information related to production and major gas user facilities is generally not publically available;
- disaggregated pricing and volume data is not publically available;
- average wholesale gas price and aggregate traded volume is not available to the market;
- minimal information available on forecast production over the short term (e.g. one week) and/or medium term (one year).

Along with gas, the role of the wholesale electricity price is also an important part in the electricity generation market. The increasing role of electricity to help decarbonise New Zealand's energy sector, notably in the transport and process sectors, brings increasing demands for transparency of information across the supply chain. The following areas are also of concern:

- Knowledge of a generation plant's characteristics and role in the market, is not well understood outside the industry (e.g. ramp rates, minimum operating levels, start times, and efficient economic scheduling).
- The delayed release of MBIE's quarterly gas and electricity data and the 'Energy in New Zealand' publication. In some cases to obtain New Zealand's aggregated monthly gas production and consumption data industry participants refer to the Joint Oil Development Initiative (JODI) Database hosted in Saudi Arabia ([www.jodidb.org](http://www.jodidb.org)). The JODI database sources its information from the International Energy Agency, which in turn receives the information from MBIE. MBIE does not publish this granular level of data and when data is published it is at a later date than JODI.

**9. Do you support the inclusion of an additional regulation/rule making power in the Act to require broader disclosure of information from the gas industry?**

Contact agrees that the information collection and disclosure powers in the Act are relatively narrow, particularly as they relate to upstream producers. Contact previously submitted to

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<sup>1</sup> Gas Industry Company, *Consultation Paper: Options for Information Disclosure in the Wholesale Gas Sector*, available at: <https://gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation/>.

the Gas Industry Company that information disclosure requires full coverage to provide the most efficient outcomes. Specifically, Contact submitted to the GIC that:

- full coverage for information disclosure requirements is possible and would provide the most efficient market outcome, and that this could be achieved while protecting confidentiality if the information was handled on a confidential basis by a third party and aggregated for public disclosure.
- publishing a timely twelve-month gas production outlook (in step with actual production volumes) would benefit the market and allow it to prepare in advance for any gas shortfall. It would also allow parties to schedule plant outages in periods of shortfall of supply and allow for demand shifting to minimise the impact on the industry.

**10. What concerns do you have about the current penalty regime for gas governance arrangements provided for by the Act?**

Contact agrees with the limitations of the current penalty regime for gas governance arrangements provided for by the Act as outlined in section 4.2.2 of the discussion document. Namely:

- The maximum penalty limit of \$20,000 is low, particularly when compared with the limit of \$200,000 that applies to the electricity sector; and
- The fixed limit of the penalty may create a perverse incentive as the penalty per unit of gas consumed goes down with the more that is consumed.

**11. Are there other factors, such as contractual arrangements between parties that mitigate any concerns about the penalties regime?**

Contact does not consider there are other factors that mitigate concerns with the penalties regime. In times of critical contingency, the regulations override contractual arrangements. Any breach of the critical contingency regulations means that only the penalty regime in the regulations applies.

**12. Aside from the penalties for breaching gas governance arrangements, are there other penalties under the Act that you consider are not fit-for-purpose?**

No comment.

**13. Do you consider it still appropriate for the Gas Rulings Panel to only have one member if the penalties are increased to higher levels?**

Contact considers it still appropriate for the Rulings Panel to only have one member if the penalties are increased to higher levels. The membership size of the Rulings Panel needs to reflect the size of the industry and the body of work involved. Increasing the membership size will result in increased fixed costs that maybe passed on to consumers.

- 14. Do you support the addition of daily or volumetric penalties to the Act to enhance the flexibility of penalties available? What would be an appropriate minimum or maximum rate, if any?**

Yes. Contact supports the addition of daily and volumetric penalties to the Act. Volumetric penalties could apply in the case of a critical contingency, with the penalty measured in accordance with the determination of the critical contingency price under section 71 of the Gas Governance (Critical Contingency Management) Regulations 2008.

- 15. Are there circumstances where the Act should impose a criminal offence on either industry participants or on non-industry participants? What are these?**

We are not aware of circumstances where the Act should impose a criminal offence on either industry participants or non-industry participants.

- 16. Do you support the addition of a civil pecuniary fine as an additional penalty to improve the effectiveness of the penalties regime? If not, why not?**

Yes. We support this addition.

- 17. What are your views on expanding the definition of industry-participant to include all large gas users (e.g. any user averaging over a certain level of consumption per day)? If so, what would be an appropriate threshold?**

We support expanding the definition of industry participant to include all large users and propose that an average annual consumption threshold equivalent to 10 TJ per day be used.

