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Resource Markets Policy  
Ministry of Business, Innovation & Employment  
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Via Email: [Resource.Markets.Policy@MBIE.govt.nz](mailto:Resource.Markets.Policy@MBIE.govt.nz)

To Whom it may concern,

**Re: Options for amending the Gas Act 1992**

Fonterra thanks MBIE for the opportunity to make a submission on Options for amending the Gas Act 1992.

Fonterra is a member of the Major Gas Users' Group (MGUG) and Major Energy User Group (MEUG) and supports the points raised in those submissions, as well as making the additional points in this submission.

As noted in the discussion document, the GIC is currently reviewing information disclosure. We also understand that the critical contingency process may be reviewed next year. We feel it would be more appropriate for a review of penalties to be considered as part of these reviews, and once the compliance requirements are determined. Fonterra feels the scope of this review could be wider than the three points selected, given the changing nature of the gas market, including emerging technologies and predicted changes in supply over the coming years.

Fonterra looks forward to further engagement on this topic and is willing to discuss any matters regarding this submission.

Yours sincerely

Andrea Gibson  
Energy and Utility Manager

## Answers to questions in consultation document:

### Information disclosure

<p><b>Question eight:</b> 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?</p>	<p>Fonterra have made a submission on the GIC's consultation paper Options for Information Disclosure in the Wholesale Gas Sector.</p> <p>As outlined in that submission, our concerns are in several areas,</p> <p><b>Outages- both planned and unplanned:</b> We currently operate with a voluntary outage disclosure option, and based on experience with recent gas events (Spring 2018) believe there are significant gaps in information disclosure. This has impacted us directly through reduced gas supply, and indirectly through asymmetry in the electricity market, leading to high electricity spot prices.</p> <p><b>Reserves and contingent resource information:</b> This information is critical to determining whether investment in gas is appropriate for our operations.</p>
<p><b>Question nine:</b> 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?</p>	<p>This should be investigated with the GIC consultation that is currently underway. We support measures to improve disclosure of outages, both planned and unplanned.</p>

### Penalties under the Gas Act 1992

<p><b>Question ten:</b> What concerns do you have about the current penalty regime for gas governance arrangements provided for by the Act?</p>	<p>We believe the current penalty regime should be reviewed in line with timing of reviews for information disclosure and critical contingency management, not before.</p>
<p><b>Question eleven:</b> Are there other factors, such as contractual arrangements between parties, that mitigate any concerns about the penalties regime?</p>	<p>Fonterra purchase gas from industry participants. While liability falls on the participant itself, we are contractually liable to compensate the participant where it is Fonterra's breach that has caused their loss. In practice, financial penalties for industry and non-industry participants are therefore effectively indistinguishable.</p>
<p><b>Question twelve:</b> Aside from the penalties for breaching gas governance arrangements, are there any other penalties under the Act that you consider are not fit-for-purpose?</p>	<p>We would expect that it would be more appropriate, and more effective, for penalties to be considered as part of a wider review of the gas act. For example, it would not be good for penalties to change substantially as part of the Gas Act review, only to be re-implemented, or changed again, when we have a better understanding of what strong critical contingency management requires, and how to most effectively incentivise conduct that aligns, or if changes are implemented around disclosure requirements.</p>
<p><b>Question thirteen:</b> Do you consider it still appropriate for the Gas Rulings Panel to only have one member if the penalties are increased to higher levels?</p>	<p>Fonterra favours having more than one member. This minimises perceived or actual risk of bias, or entrenched thinking.</p>

<p><b>Question fourteen:</b> 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?</p>	<p>No, The level of penalties currently in place sufficiently encourages compliance.</p> <ul style="list-style-type: none"> <li>• Although the financial penalties afforded to non-industry participants are not hugely significant, the reputational issues that could arise out of breach are material. The existence of the threat of a criminal prosecution intensifies the impact of the reputational risks.</li> <li>• The limited number of penalties enforced, and prosecutions made, support the status quo.</li> </ul>
<p><b>Question fifteen:</b> Are there circumstances where the Act should impose a criminal offence on either industry participants or on non-industry participants? What are these?</p>	<p>No</p>
<p><b>Question sixteen:</b> 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?</p>	<p>The level of penalties currently in place sufficiently encourages compliance.</p> <ul style="list-style-type: none"> <li>• Although the financial penalties afforded to non-industry participants are not hugely significant, the reputational issues that could arise out of breach are material. The existence of the threat of a criminal prosecution intensifies the impact of the reputational risks.</li> <li>• The limited number of penalties enforced, and prosecutions made, support the status quo.</li> </ul>
<p><b>Question seventeen:</b> 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?</p>	<p>Fonterra purchase gas from industry participants. While liability falls on the participant itself, we are contractually liable to compensate the participant where it is Fonterra's breach that has caused their loss. In practice, financial penalties for industry and non-industry participants are therefore effectively indistinguishable.</p>