Impact Summary: Gas Act 1992 Amendments

General information

Purpose

1. The Ministry of Business Innovation and Employment (MBIE) is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet in relation to a proposed package of amendments to the Gas Act 1992 (the Gas Act).

2. This Impact Summary covers three sets of proposals:

   - Proposal A: Information disclosure;
   - Proposal B: Amendments to the penalties regime; and
   - Proposal C: Minor and technical changes

Key limitations or constraints on analysis

3. The Minister of Energy and Resources (the Minister) directed officials to make changes to the Gas Act as soon as practicable to address issues associated with information disclosure and penalties to address potential market volatilities and coordination issues. This direction has limited the time and consultation opportunities available for considering policy changes.

4. In relation to Proposal A, it is difficult to quantify the costs and benefits associated with potential information disclosure arrangements. Other regulatory regimes have instead taken qualitative assessment of benefits resulting from improved information disclosure.

5. For example, both the Electricity Authority and the Australian Energy Market Commission elected to undertake qualitative assessments when proposing new information disclosure requirements. MBIE has adopted the same approach in considering quantify the direct costs and benefits of the proposal in this regulatory impact statement, but our ability to do this is limited at this time.

6. The GIC is responsible for making recommendations to the Minister that regulations be made. In relation to Proposal A, this means that the GIC is responsible for recommending the details and detailed requirements of any new information disclosure settings. This limits the level of detail and analysis of costs and benefits able to be provided in this impact statement. Further assessment will be further undertaken through analysis of any regulations that are recommended by GIC (in a separate regulatory summary).

7. In relation to Proposal A, analysis by the GIC has informed the development of this impact summary. Where this has occurred is explicitly indicated.

8. In relation to proposal B, it is also difficult to quantify the costs and benefits associated with changes to the penalty regime. It is difficult to measure the marginal contribution

that an increased, or changed, penalty may have on the likelihood of an industry participant or consumer to comply with gas governance arrangements. In this situation, it is challenging to establish a counterfactual upon which to assess the costs and benefits.

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Date: 16/10/2019

Background

9. The Gas Act is the principal piece of legislation that regulates the governance of New Zealand's natural gas industry. Part 4A of the Gas Act sets out the co-regulatory model for governance of the gas industry. This means that an approved industry body (the GIC) co-regulates the gas industry through making recommendations that secondary legislation be made to the Minister. This secondary legislation is referred to as a 'gas governance arrangement'.

10. The Government has set out a range of objectives in the Gas Act and in the Government Policy Statement on Gas Governance 2008 (the GPS). The principal policy objective of the GIC is:

> *To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.*

Recommending gas governance arrangements

11. Part 4A of the Gas Act sets out a regulatory framework that enables the Minister to recommend that regulations be made by Order-in-Council and sets out a number of purposes that regulations may be made for. Generally, the Minister must first receive and accept a recommendation from the GIC before recommending that regulations be made by Order-in-Council.

12. The GIC must follow a process and apply criteria set out in the Gas Act before making a recommendation. This includes ensuring, to the extent possible, that the objective of the gas governance arrangement is unlikely to be 'satisfactorily achieved' by other practicable methods other than the making of the regulation, i.e. industry-led solutions.[1]

13. Regulation-making provisions act as a 'regulatory backstop' by enabling the GIC to recommend to the Minister that gas governance regulations be made by Order-in-Council if an industry-led or non-regulatory solution is not workable.

14. We note that the Gas Act also provides for gas governance rules to be made (rather than regulations). These can be made for all purposes that regulations can be made for. Rules are notified by the Minister in the *New Zealand Gazette*.

Gas market overview

Supply Side

15. The supply side of the New Zealand gas sector is concentrated. Bilateral gas supply agreements are the preferred market arrangement. This is largely due to the capital-intensive nature of the supply-side with a desire for medium to long term supply certainty from the demand-side. Recent years have also seen the supply-side concentrate further, with fewer operators controlling more market share. This means fewer operators now have a greater overview of outages and the potential market impacts. New Zealand does not import natural gas from other countries so is entirely reliant on domestic supply to meet natural gas demand.

Demand Side

16. The demand side is also concentrated with most gas consumed by a small number of larger users. This means that demand side outages may affect the volumes and prices

[1] Section 43N(1)(c) of the Gas Act.

traded (either through contractual mechanisms or through the spot market for natural gas). Demand side outages are generally not publicly disclosed. The bilateral supply contracts may contribute to possible information transparency issues in the wholesale gas market with larger gas users (who may have more contracts) having a greater amount of knowledge of the market.

Role of natural gas in the electricity market

17. While natural gas-fired electricity generation has declined over the last decade, both baseload and peaking gas generation continue to play important roles in the market. Approximately 20 per cent of the gas supply is used for electricity generation. Gas generation is particularly important for 'dry-years' where hydro storage may be limited.

18. This means that the behaviour of the gas market can affect the electricity market, extending these impacts to almost all New Zealanders. Parties that do not commonly operate in the gas markets (such as independent electricity retailers) may have limited information about the market regarding supply and demand issues, and the impact this can have on generation.

Proposal A: Information Disclosure

A.1 Problem definition

19. There is an ongoing decline of reserves at New Zealand's offshore gas production fields. These fields have provided the historical flex in supply capability for the gas market – particularly the Maui field. Reduced supply side flexibility has particularly highlighted the need for fit-for-purpose arrangements to ensure that the gas market operates efficiently.

20. Efficient market operation helps ensure that the prices paid by consumers are fair and subject to downward pressure to the extent possible, and that long-term security of supply of both the electricity and gas markets is maintained in the face of reducing supply flexibility.

Multiple outages in 2018 highlighted issues with the flow of information

21. In 2018, multiple major outages at the Pohokura production field and a statutory inspection at the Kupe field caused a large reduction in the supply of natural gas available to the market. The consequence of this shortage was a significant impact on energy prices, as well as concerns about the management of security of supply. Spot prices reached historic highs of around $30 per gigajoule (GJ) on very small traded volumes, compared to the normal spot prices for natural gas which range from $6 to $10 per GJ.

22. When combined with the lower than normal hydro lake storage (due to dry spring conditions toward the end of 2018) wholesale electricity prices were pushed up to around $300MWh. This is higher than the typical price over similar periods and much higher than the average wholesale price of around $80 per MWh experienced in previous years.

23. This supply shortfall occurred despite strong gas spot market prices which should have encouraged producers to make more gas available to the market (if there was more gas available) and had broad effects across the gas and electricity industries, as well as for larger consumers.

24. This market behaviour is the principal problem that this analysis seeks to address.

These outages further highlighted issues with information disclosure in the gas market

25. Supply disruption events affected a broad range of parties, including gas market participants, electricity market participants, and consumers. Affected parties have raised several information disclosure issues associated with the 2018 outages[2]. Information is critical to the function of the market where potential information asymmetries and lack of transparency can undermine both the performance and confidence in the market. Broadly, these issues are:

    a. Several industry participants raised a concern about the timing of when different companies became aware of outages. For instance, companies that were counterparties to Pohokura gas supply agreements had information on two of the recent outage events and were able to make decisions based on this knowledge.

[2] From the GIC's "Options Paper for Information Disclosure" paper, available here.

Other parties had less information apart from details that were reported in the media.

b. Concerns were raised that the Critical Contingency Operator (CCO) was not fully briefed about the outages as operators became aware of the issues. A complete understanding of gas availability is critical for the CCO to be able to effectively manage the system during a critical contingency event.

c. The electricity system operator raised its concerns in correspondence with GIC that it was not given enough visibility over the outages to effectively manage short- and medium-term electricity security of supply. A lack of information on gas supply issues makes it more difficult for the system operator to manage outages on the electricity network. It can also lead to potential gaps in security of supply forecasting and information. The electricity system operator noted that, in some circumstances, this information scarcity could also impact real time operations. Wholesale electricity market participants were also affected by the lack of information – the wholesale electricity market was impacted by the withdrawal of gas-fired generation and these parties had no visibility on the drivers behind these actions.

d. emsTradepoint, the gas wholesale market, had no information on the outages and its implications for prices and traded quantities on the emsTradepoint market. emsTradepoint raised its concerns the GIC over this information scarcity and stressed the importance of information availability to support a well-functioning gas market.

26. Residential consumers were generally less affected due to most electricity retailers purchasing electricity hedges on the electricity futures market. Consumers on spot market electricity pricing plans were highly affected by price increases.

Information disclosure issues undermined market performance

27. The 2018 supply disruptions have shown weaknesses in the gas market's information disclosure settings, which has undermined confidence in gas market operation and broader energy markets. While price fluctuations in both the gas and electricity markets occur often, the price fluctuations experienced in 2018 are unprecedented in the gas market. If Government regulation or appropriate industry-led arrangements were in place then it is likely that some of these price spikes could have been mitigated.

28. Formal requirements for the supply of various kinds of information by industry participants may have helped mitigate large spikes in prices, and provide confidence to participants that the market is operating well. This is because there would be clear rules and requirements around disclosure of this type of information, creating better incentives for efficient market behaviour and opportunities for alignment between producers and consumers.

29. Information disclosure cannot in and of itself create of gas supply; but the pricing impacts may have been able to have been mitigated through demand side response, for example, by aligning planned plant outages with the timing of supply disruptions. This may help to ensure that gas was available for generation purposes.

Regulation-making powers cannot currently provide for the systematic collection of information

30. Part 4A of the Gas Act sets out the approach to regulating the governance of the gas industry in New Zealand. Current information disclosure regulatory powers relate to a narrow range of matters, such as disclosure by certain participants of tariff and other charges, and other market information.

31. MBIE analysis has shown that these provisions are too narrow to enable regulations to be made to address the types of information disclosure issues associated with the 2018 production outages. The types of information that may be useful to the market is as follows which is not currently provided is as follows[3]:

    a. Planned and unplanned outage information related to production and major gas user facilities is generally not available publicly (notwithstanding recent disclosure by some parties, e.g., some high-level information on the Pohokura Intervention Campaign). Examples of recent events where information was limited include the Pohokura flexible pipeline leak, the Pohokura offshore platform shutdown valve failure, Kupe production facility planned maintenance outage (information was made available when requested), and Methanex's planned outage;

    b. emsTradePoint (the gas wholesale and spot market) volume and price information is not publicly available – it sits behind a paywall;

    c. Average wholesale price and aggregate traded volume (covering gas traded under bilateral contracts, brokered arrangements, and the emsTradePoint market) are not available to the market; and

    d. Information available on forecast production over the short term (e.g. one week) or medium term (one year).

32. We consider that the current scope of Part 4A information disclosure does not enable the GIC to adequately address issues identified through the 2018 production outages. It also impedes the ability for the GIC to meet the government's objectives in relation to the governance of the gas industry.[4]

33. Therefore, we consider that providing the GIC with the clear backing of a regulation-making power will enable it to determine what improvements need to be made to address issues raised as part of the 2018 outages. A clear regulatory backing provides the GIC with the mandate to recommend that regulation be made should industry-led arrangements not be appropriate. In determining what future requirements should be placed on industry participants, government regulation may be required given the commerciality and market sensitivity of information that may need to be disclosed to inform efficient market operation and the likely unwillingness of some industry participants to supply this kind of information.

34. This view is supported by the GIC, which considers that the Gas Act requires amendment to enable it to address the identified issues, should they determine that government regulation is required (following the process set out in the Gas Act). In its letter[5] to the Minister, the GIC stated *"..Part 4A of the Gas Act should be amended to*

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[3] See footnote 5.

[4] The Government's objectives for gas governance are articulated in the GPS, which is available here.

[5] The Minister's letter to the GIC, and the GIC's response is available here.

clearly provide for the regulation making powers… it is important that any future work that [the GIC] undertakes in relation to information disclosure is backed by a clear regulation making power".

A.2 Who is affected and how?

35. Consumers are principally affected by potential information asymmetries in the gas market. They are most likely to experience these asymmetries through inefficient market behaviour that leads to higher prices experienced for both electricity and gas. This has been demonstrated by the record prices in the gas spot market and unseasonably high electricity prices during the 2018 gas shortages.

36. The current situation also impedes the efficiency of the market in scheduling outages, and managing unplanned outages. The CCO, who monitors the security of supply of the gas pipeline and declares critical contingency events, has raised concerns that it has had insufficient information to perform its role in managing the long term security of supply of the gas pipeline. Gas supply disruptions and subsequent critical gas shortages can have large economic impacts. For example, the Maui Pipeline outage in 2011 is estimated to have had an economic impact of approximately $200 million.[6]

A.3 Are there any constraints on the scope for decision-making?

37. The Government is eager to progress changes to the Gas Act to empower the Minister to make information disclosure regulations in the event that a recommendation is received from the GIC to do so. This has limited the scope of approaches that could be taken to address the issues. Options included in this impact summary focus on targeted changes to the existing regulatory framework in contrast to more significant changes to the Part 4A regulatory framework.

38. The regulatory framework limits the Minister's ability to develop and recommend gas governance arrangements to be made without a prior recommendation from the GIC. The government's role is primarily to set the objectives and framework in the legislation. The GIC's role is to provide a recommendation to the Minister should it identify that a regulated solution is required. Industry-led solutions are first required to be assessed to see if they would 'satisfactorily achieve the outcomes that regulation would.

39. Legislative changes could be made so that the Minister has the power to recommend regulations be made by Order-in-Council without a GIC recommendation. However, MBIE's view is that this would undermine the purpose of the co-regulatory model that sets out clear processes for the GIC to follow and require a large amount of policy development.

40. The main dependency is the GIC's parallel work stream to assess potential information disclosure issues within the gas industry, and proposed options for making changes. Amendments to the Gas Act will be required to be in force before a formal recommendation can be made by the GIC, should this be determined.

A.4 Options and Impact Analysis

41. We have applied the relevant government objectives for governance of the gas industry to assess whether legislative change would lead to better outcomes for the GIC's 'co-regulatory' role.

Status Quo

[6] See Maui pipeline outage report here.

42. The empowering provisions under the Gas Act would not be changed. The GIC may be able to develop an industry-led solution but this will not have a 'regulatory-backstop'. Other information disclosure arrangements may be developed for the specific purposes set out in the Act, e.g. tariffs.

43. The main benefit of this option is that industry participants[7] would not bear the increases in compliance costs from new information disclosure regulation. There is potential that voluntary arrangements for industry participants, which may be lower cost, will be developed.

44. The main cost is the forgone benefit in that the economic benefits resulting from efficiency gains to the gas market (and other markets impacted) will not be realised to the extent that they would through providing the GIC with a clear backing to consider disclosure issues. MBIE's rationale for this is that the ability to regulate is likely to provide a modest incentive to the gas industry to consider what non-regulatory solutions could be put in place to avoid regulation.

Preferred option: Expand the GIC's co-regulatory role

45. MBIE's preferred option is to provide the Minister with the power to recommend that regulations be made by Order-in-Council. This recommendation would be made on the basis that a GIC recommendation for these was received and accepted by the Minister.

46. The preferred option would expand the range of regulation-making provisions under Part 4A of the Gas Act, therefore expanding the scope of industry co-regulation. As gas governance rules can be made for all purposes that gas governance regulations may be made for, an amendment to the regulatory empowering provisions will also enable rules to be recommended (if required).

47. The main benefit of this option is that a new provision in the Gas Act will clearly enable the GIC to consider what improvements may be made to the current regulatory arrangements for information disclosure. The proposed option provides a clear backing to the GIC to consider if further intervention is required, which makes it difficult to more accurately assess the magnitude and likelihood of costs and benefits at this stage.

48. The main costs are likely to fall to the GIC in determining whether a recommendation should be made, and then implementing a new regime should this be required. These costs are able to be recouped by the GIC through a levy of industry participants.

49. There may also be some costs to any regulated-parties through increased compliance costs to comply with any new information disclosure requirements.

50. There is a robust process in the Act that the GIC must follow before making a recommendation to the Minister that gas governance arrangements be made. We consider that the benefits of any resulting recommendations aimed at improving market efficiency and lowering gas prices will outweigh the costs to regulated-parties.

Assessment against the GIC's policy objectives

51. The GPS provides the GIC with its principal objective, which it must have regard to when making recommendations for gas governance arrangements. This objective is:

[7] Industry Participant is a defined term under the Act, covering a range of different firms in the gas market such as producers, transmission, distribution, retailers and some larger consumers.

To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.

52. There are a number of sub-objectives which we have used to assess if legislative changes will enable the GIC to drive better outcomes against its policy objectives. The GIC has developed an analysis to determine how the status quo derogates from the stated Government's policy objectives for sector regulation. This analysis was originally produced by the GIC in its *'Options for Information Disclosure'* discussion paper.[8]

Government Policy Objective	**GIC Assessment of Status Quo**
The facilitation and promotion of the ongoing supply of gas… by providing access to… competitive market arrangements.	Some gas wholesale market participants may be making decisions based on incomplete, inaccurate, and outdated information. Given that information availability for all market participants is a condition for an efficient market, this implies that there may be issues with the functioning of the wholesale gas market.
Barriers to competition in the gas industry are minimised.	The inability for all parties to have access to a common pool of information may restrict competition in the market.
Incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced.	Upstream investment is unlikely to be affected by limited information because investment decisions are associated with supply agreements with downstream users. However, a lack of information transparency may adversely affect other parties' ability to make investment decisions.
Delivered gas costs and prices are subject to sustained downward pressure.	Limited information transparency and asymmetry between parties may lead to delivered gas costs and prices being higher than they otherwise would be.
Risks relating to security of supply… are properly and efficiently managed by all parties.	Effective and efficient risk mitigation (including security of supply risks) requires all parties to have complete, accurate, and timely access to market information. A lack of information transparency and information asymmetry implies that risks in the gas market and broader energy sector may not be properly and efficiently managed by all parties

53. We agree with the GIC's analysis that the status quo does not enable it to best meet the Government's objectives for gas governance. We consider that the preferred option will enable the GIC to have the clear backing of a regulation-making power to address these potential issues. The GIC would then be able to recommend to the Minister that gas governance arrangements be made, should they determine that this is the appropriate course of action.

54. In practice, some of these issues may not be addressed given the need to manage other considerations, such as commercial and technical reasons. However, we consider that providing the GIC a clear backing to investigate these issues provides substantial benefit, against the government objectives, compared to the status quo.

55. We therefore consider that legislative change to enable gas governance arrangements be made to facilitate timely, accurate, and complete information disclosure that achieves better co-regulatory outcomes, is consistent with the Government's stated objectives.

[8] See page 16 of the GIC's paper *'Options for Information Disclosure'* here.

Alternative options

56. We have identified no alternative options to the preferred option, other than the status quo. Under the status quo, industry is able to develop voluntary industry arrangements. As noted in the decision constraints section, we have limited our analysis to incremental changes to the Act rather than substantial changes to the co-regulatory model.

Impact Analysis

57. It is difficult to quantify the direct costs and benefits of the preferred option. However, we consider that this is not a reason to maintain the status quo. This is because:

    a. The introduction of a new empowering provision into the Gas Act does not in itself create any real cost for regulated parties;

    b. Any marginal costs to the GIC of the changes in the preferred option are minimal as they are already funded through the industry levy[9] to investigate information disclosure issues. The preferred option provides a clear mandate to the GIC to make a recommendation for a gas governance arrangement to address information disclosure issues;

    c. The proposal will enable the GIC to consider if new gas governance arrangements are required, enabling it to better achieve the stated Government objectives for the GIC in co-regulating the gas industry; and

    d. Any recommendations by the GIC for gas governance arrangements are subject to their own cost-benefit analysis and regulatory impact statement and the approval by the Minister.

Wider Impacts

58. It is also difficult to quantify the wider impacts of introducing a new gas governance arrangement making provision. MBIE's empirical evidence around these impacts is low, and the nature of these wider impacts is difficult to quantify. We have identified three potential impacts:

    a. It is likely that amending the Gas Act will provide some certainty to relevant stakeholders that the GIC will be able to robustly assess if gas governance arrangements for information disclosure are required;

    b. The preferred option may encourage industry stakeholders to seek industry-led solutions. There is some evidence that upstream gas producers are considering a voluntary information disclosure arrangement; and

    c. The preferred option may provide some confidence to broader energy markets that the identified issues with information disclosure are being addressed, and that the market may operate more efficiently in future. This may improve confidence in energy markets.

59. The costs and benefits associated with information disclosure interventions are difficult to quantitatively assess. Regulators in comparable regulatory systems (e.g. electricity) and in other jurisdictions have typically developed a qualitative assessment of benefits

[9] Set each year through the Gas Governance (Levy of Industry Participants) regulations.

that information disclosure may provide. It is generally accepted that better information disclosure informs more efficient and competitive market places.

60. Therefore, we consider that legislative change will deliver some benefit to the gas market, although the extent to which it will be difficult to quantify. This will likely be the case if the GIC were to make a detailed recommendation for an information disclosure regime.

A.5 Stakeholder views on information disclosure

61. In May 2018, MBIE released a public consultation document entitled '*Options for amending the Gas Act 1992'*. In respect of Proposal A, the consultation document sought the views of stakeholders on possible amendments to the Act to enable greater information disclosure requirements to be put in place.

62. The consultation document was targeted primarily at industry stakeholders who may be directly impacted by information disclosure changes. We received a total of 24 submissions with most focusing on the potential amendments to the Gas Act around information disclosure.

63. Almost all submitters supported introducing a 'regulatory backstop' into the Gas Act to enable broad information disclosure rules or regulations to be recommended by the GIC. However, there were a range of views on whether a regulatory approach should be adopted, or if a voluntary approach (with the gas governance arrangement making provision as a backstop) would be sufficient.

64. Separate consultations by the GIC and MBIE have confirmed that there is strong support from stakeholders to provide the GIC with the mandate, by providing a gas regulation-making provision in the Act, to address these issues. Stakeholders who had contrary views provided the following reasons:

- Regulatory and country risk[10] issues may arise if new information disclosure arrangements are put in place. We do not consider this as a material concern as the changes proposed are not unexpected, and will not significantly alter the current legal rights of industry participants. There may be substantial benefits to the domestic energy markets from this change which renders this concern immaterial.
- One stakeholder had a different interpretation of the provisions in the Gas Act and suggested the requirements could be made under the current regime. We consider that if this approach is taken there still could be concerns of *ultra vires* gas governance arrangements, as well as a lack of a clear mandate for the GIC to address these substantial issues through a regulated solution.
- One stakeholder did not support the release of demand-side gas market information on the basis of commercial sensitivity. We consider that this is an issue for the GIC to work through in any future recommendation for gas governance arrangements. The Gas Act allows for any gas governance recommendation to treat industry participants differently, if appropriate.

10 These can be considered as a sovereign risk issue. Under the Crown Minerals Act 1991 regime, the Minerals Programme for Petroleum 2013 defines this as the risk that the government may unexpectedly change significant aspects of its policy and investment regime and the legal rights applying to investors to the detriment of investors."

65. MBIE produced a summary of submissions document which outlines the views of submitters on the nature of the problem and its causes and on the preferred approach. This is available here.

Proposal B: Penalties

Background

Part 4A of the Gas Act 1992 provides a penalty regime for governance of the gas industry

66. The penalty regime in part 4A of the Gas Act provides for two types of penalties:

    - A range of orders that the Gas Rulings Panel may make to penalise industry participants for regulation breaches. A range of orders are available, with the two most relevant for this impact summary being a $20,000 civil pecuniary penalty and the ability for the Panel to order a sum to be paid as compensation to any other person; and

    - A criminal penalty that may applied to either industry participants or non-industry participants that breaches gas governance rules or regulations. In practice, this penalty has been used to penalise consumers (that are not considered industry participants) who breach gas curtailment notices under the Gas Governance (Critical Contingency Management) Regulations 2008 (CCM Regulations).

67. Penalties for industry participants are determined by the independent Gas Rulings Panel (the Rulings Panel). It approves or rejects settlements referred to it by an investigator. The Rulings Panel is made up of one member, Hon Sir John Hansen KNZM, a former High Court Judge. The criminal penalties is applied upon conviction by the High Court.

Critical Contingency Events are the main driver for considering changing the penalties

68. Penalties are particularly important for management of gas critical contingency events. They are primarily used to incentivise compliance with orders to reduce demand for gas when there is a critical supply shortage. An unmanaged disruption to the gas supply through a transmission pipeline could result in gas distribution pipeline pressures falling below operational thresholds; allowing air to get into pipeline systems. The purging and re-pressurising of pipelines to domestic gas consumers following such an event would take many months and would be extremely costly.

69. The gas critical contingency management system is designed to avoid this scenario by reducing gas demand quickly to buy time for the supply disruption to be remedied before pipeline pressure falls below operational thresholds. A secondary objective of the system is to prioritise supply to consumers for whom curtailment would result in significant social costs. However, all gas consumers, except for domestic consumers, may ultimately be required to curtail their demand during a critical contingency.

70. The contingency system is defined by the CCM Regulations. Amongst other things, the CCM Regulations provide for:

    a. A Critical Contingency Operator (CCO) which is tasked with managing critical contingencies, principally via powers to require certain consumers to curtail demand;

    b. Curtailment bands which classify non-domestic consumers into groups and which define the order in which the CCO will curtail those groups; and

c. Certain consumers to apply for a designation that allows them to defer their curtailment and consume a small amount of gas, if doing so would avoid serious damage to the plant or to the environment.

71. There are eight curtailment bands which classify consumers primarily according to their average annual consumption. The CCO will successively curtail enough bands to ensure pipeline pressure is maintained. This generally means that large consumers are curtailed first which is the most operationally efficient way to stabilise pipeline pressure.

Proposal B.1: Ruling Panel pecuniary penalties may not reflect the extent of the harm caused

What is the policy problem?

72. We are concerned that the civil pecuniary penalty limit under Part 4A is too low compared with other regulatory regimes, particularly under the Electricity Industry Act 2010 (the Electricity Industry Act). This may limit the ability for the Gas Rulings Panel to impose pecuniary penalties that reflect the extent of harm caused.

The maximum civil pecuniary penalty able to be imposed by the Gas Rulings Panel is low

73. The Gas Rulings Panel is limited to ordering civil pecuniary penalties up to a maximum of $20,000. A range of other orders may also be made. Notably, the Rulings Panel may order an industry participant to compensate any other persons for a breach of a gas governance arrangement. However, compensation orders may not be appropriate in all situations.

74. These penalties cover a range of breaches in the gas governance regulations, including those that are designed to manage high risk, low likelihood situations such as critical supply shortages. In the context of breaches of the CCM regulations, there are potentially significant economic impacts that can result from an industry participant not following orders to curtail usage, as well as other security of supply impacts for New Zealand's energy system.

Industry compliance has been generally good, but the penalties regime needs to be fit-for-purpose

75. It should be noted that compliance with gas governance arrangements is generally good and that the penalties have been used rarely in practice. This issue was originally flagged in 2013 when the CCM regulations were amended.[11] The ability for the Gas Rulings Panel to determine compensation for affected parties does to some degree mitigate our concerns (particularly in the context of managing critical shortages of gas supply).

76. Industry participants are generally large businesses with significant operating costs and the penalty represents a relatively small fine compared to other costs to the business. We have calculated that the $20,000 fine constitutes approximately 5.40 per cent of an average industrial user's annual natural gas bill.[12] Reputational impacts of being

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11 See page 23 of the Regulatory Impact Assessment prepared on amending the gas critical contingency management regulations here.

12 This figure uses MBIE data on price volumes (published quarterly) along with high-level average gas demand for industrial purposes. Therefore this figure is a broad, high-level estimate for an average consumer and should not be applied to any individual consumers.

ordered to pay a pecuniary penalty, on the basis of a gas governance breach, are likely to also increase the incentive to comply with gas governance regulations. The effect of reputational impact on likelihood to comply is difficult to quantify.

77. There were a variety of views on the current penalty regime provided for by the Gas Act. Of those that submitted on the issue, most submitters did not identify explicit issues with the current penalties regime. However, the GIC and the Electricity Authority consider that the penalties are too low in comparison to the analogous penalty under the Electricity Industry Act[13]. They consider that changes need to be made to ensure that effective compliance incentives are in place.

78. Given the need for this penalty to manage low likelihood, high-impact events, the status quo presents an unacceptable situation in that the Government does not have confidence in the strength of the penalties regime.

79. Note that, as outlined under Proposal A, a regulated information disclosure regime will require robust penalties in order to meaningfully enforce any new information disclosure requirements.

Constraints on decision making

80. The constraints on decision making in this instance are the same as those for Proposal A.

81. We understand that the GIC is also planning on reviewing the CCM regulations in the next twelve months. The GIC will require amendments to the Gas Act to be in force in order to formally recommend any changes to the penalties contained in these regulations (which are one of the main drivers for changes).

Proposed options and Impact Analysis

82. We consider that the current penalty limit is too low compared with other regulatory regimes, particularly the equivalent under the Electricity Industry Act. Pecuniary penalties are used to deter breaches of a regulatory regime where the nature of the offending conduct does not warrant the *'denunciatory and stigmatising effects of a criminal conviction'*.[14] They are generally used as part of regulatory regimes targeting commercial behaviours in a particular industry. This is consistent with how they have been implemented in the Gas Act except they are applied by an independent Gas Rulings Panel rather than the High Court.

83. The overall objective of changing this penalty is to ensure that the Gas Rulings Panel can apply sufficient penalties reflecting the extent of the harm caused by a breach of gas governance arrangements. Penalties that reflect the potential extent of the harm caused will provide the government and the GIC with confidence that appropriate incentives are in place for compliance with gas governance arrangements by industry participants.

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[13] The penalty referred to is the section 54(1)(d) penalty under the Electricity Industry Act 2010 for an industry participant breaching the electricity code.

[14] Legislation Design and Advisory Committee guidelines Chapter 26.

Proposed option

84. We propose to increase the maximum civil pecuniary penalty the Gas Rulings Panel can impose from $20,000 to $200,000. This would increase the maximum limit of the civil pecuniary penalty for breaches set out in gas governance arrangements.

85. We have identified the following benefits over the status quo:

    a. Increased confidence by government and the GIC that the penalties regime is effective for incentivising compliance with gas governance arrangements;

    b. Implementation costs for the GIC and government are likely to be marginal as they will be implemented through amendments to the Gas Governance (Compliance Regulations) 2008;

    c. Stronger penalties may help to ensure that high-impact, low likelihood events such as critical gas shortages are better managed (although the marginal effects of the change are hard to quantify);

    d. The Gas Rulings Panel will determine, on a case-by-case basis, what level of penalty should be applied – thus ensuring that penalties reflect the extent of the harm; and

    e. The costs of this proposal (i.e. the penalty) will only be incurred by those found to have breached gas governance regulations.

86. The GIC would be responsible for recommending what specific gas governance arrangement breaches the preferred option would apply to, but the penalty would apply across all breaches. If changes are made, the GIC has indicated it will likely review current offences, including those under the CCM regulations for the management of situations of critical gas supply shortages. The penalty would likely be applied for any breaches of gas governance arrangements developed as a result of Proposal A.

Alignment between the Electricity Industry Act and the Gas Act

87. The preferred option would align the Gas Act penalty regime for industry participants with the equivalent penalty under the Electricity Industry Act.[15] We consider that, as the type of offending is similar, it is appropriate for these regimes to be aligned. There are differences in the markets between the two sectors but the regulatory frameworks are broadly similar.[16] However, it is difficult to quantify assess if the potential extent of harm between the two issues is significantly different so our preferred option is to ensure that the two regimes are aligned.

88. We do note that the Electricity Authority indicated in its submission that although it supports increasing the penalty, it does not necessarily view the penalty under the Electricity Industry Act as sufficient. The compliance and penalty regime for the Electricity Industry will be reviewed as part of the subsequent work resulting from the Government's response to the Electricity Pricing Review. However, we consider that this is warranted in the short term to ensure that appropriate incentives are in place.

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15 Section 54(1)(d), if an industry participant breaches the electricity code.

16 It is possible that one regulator may regulate both sectors in future as Part 4A of the Gas Act provides that an Energy Commission to regulate both gas and electricity may be established if industry self-regulation fails.

89. While the outcomes of this work are unknown, the penalty regime may need to be reviewed again in the near future if substantial changes to the Electricity Industry Act's model are made.

90. The preferred option would apply across all breaches of gas governance arrangements, such as the downstream reconciliation rules, switching rules, and CCM regulations. We are comfortable that the Gas Rulings Panel has appropriate discretion to making rulings for penalties that reflect the extent of harm.

91. In the CCM context, the preferred option would provide confidence to regulators and the Government that the incentives for compliance with gas curtailment orders are sufficient. This was the initial context for the review of the penalties and was first identified as an issue in 2010. Given the potentially high impacts of a depressurisation event, we consider it appropriate that there are strong incentives for compliance with the gas governance arrangements.

Alternative options considered

92. We consulted on alternative options to ensure the penalties regime is robust. One alternative option was the addition of penalties aligned with the amount of gas consumed while in breach of gas governance regulations (i.e., volumetric penalties). We also consulted on the addition of daily penalties to the Act to penalise ongoing non-compliance with gas governance arrangements.

93. There were mixed views on the addition of volumetric and daily penalties with some submitters supporting them as they added more flexibility to the penalty regime under the Gas Act. Those that did not support volumetric penalties considered the quantum of gas consumed was not proportional to the extent of the harm caused (with volumetric penalties disproportionally affecting larger users). However, we note that larger users breaching gas curtailment orders will have larger effects on security of supply in situations of gas shortages. This means that these penalties will still reflect the extent of harm.

94. Stakeholders suggested that another option that could be considered was introducing penalties for specific conduct i.e. including explicit penalties for certain breaches directly in primary legislation. This would create problems if these breaches (and therefore associated penalties) were required to be amended in future, as changing primary legislation is more difficult than amending secondary legislation.

95. As noted earlier in this Regulatory Impact Assessment, we intend to limit our proposed changes to the Act to more incremental changes rather than substantive changes to the regulatory framework. Providing penalties for specific breaches in the Act would present challenges for the co-regulatory model where the GIC is required to formally consider a range of factors before making a recommendation.

96. We consider that Proposal B.1 represents a pragmatic option that addresses the identified issues. It also introduces the least complexity into the regulatory regime.

Impact Analysis

97. It is difficult to quantify the direct costs and benefits of increasing the pecuniary penalties under the Act. However, we consider that the preferred option presents a number of benefits over the status quo:

a. We consider that a much higher pecuniary penalty will increase incentives for compliance with gas governance arrangements, particularly in situations where compensation orders are not appropriate;

b. The proposal will align the penalty limits across the electricity and gas sectors;

c. The costs of implementation are likely to be minimal because the work to implement these changes is unlikely to subs tantially increase the work programme of the co-regulator;

d. The Maui Pipeline outage in 2011 is estimated to have had an economic impact of approximately $200 million.[17] This demonstrates the large impact that supply disruptions can have and the need for effective management of situations that can lead to pipeline outages. New Zealand has not had a significant depressurisation event so impacts cannot be directly quantified; and

e. The direct costs of this proposal are likely to be minimal. Penalties are imposed by the Gas Rulings Panel and will be able to be tailored to reflect the extent of harm.

What do stakeholders think?

98. In May 2018, MBIE released a public consultation document entitled *'Options for amending the Gas Act 1992'*. This consultation document sought the views of stakeholders on changes to the penalties regime provided in the Act in order to ensure they are sufficiently robust, including the alignment of the penalties regimes for non-industry participants and industry participants. A summary of submissions is available here.

99. There were a variety of views on the current penalties regime provided in the Gas Act. Of those that submitted on the issue, most submitters did not identify explicit issues with the current penalties regime.

100. Several submitters, generally industry associations, considered that a review of penalties should wait until the GIC undertakes a review of the Gas Governance Critical Contingency Management Regulations 2010 (CCM regulations), and/or the resolution of the information disclosure issues. The Gas Act will require amendment before the GIC can formally consider recommending increased penalties. We consider, therefore, that the penalties regime should be amended now rather than waiting until a review of the CCM regulations is completed. The GIC is supportive of the preferred option to increase the civil pecuniary limit.

101. Several submitters contended that the Rulings Panel's ability to make compensation orders mitigates the need for large civil pecuniary penalties particularly in the context of CCM regulation breaches. We agree that this may be so in some circumstances.

102. However, we consider that the new limits on the pecuniary penalties will increase the flexibility that the Gas Rulings Panel has in applying penalties when compensation orders may not be appropriate. This would be determined by the Gas Rulings Panel on a case-by-case basis.

103. The Ministry of Justice has indicated that it is comfortable with this increase in the civil pecuniary penalty imposed by the Gas Rulings Panel for industry participants.

[17] See Maui pipeline outage report here.

Proposal B.2: The treatment of industry participants and non-industry participants under the Gas Act's penalty regime is inequitable

What is the Policy problem?

104. The current penalty regime provided for by Part 4A of the Act does not provide confidence that the appropriate incentives are in place to incentivise compliance with gas governance arrangements. In particular, there is an inequity in the types of penalties able to be applied to industry participants and consumers.

105. The criminal penalty under section 43T of the Act may be applied to both industry participants and non-industry participants. In practice, this may only be used to penalise conduct by consumers[18] who are not industry-participants during a critical contingency event under the CCM regulations.[19] Residential consumers are explicitly excluded from these offences. No prosecutions have been taken since the offences were introduced into the CCM regulations in 2013 (Regulations 82A and Regulation 82B).

106. The policy intent behind this is that consumers may contribute to an event which causes significant economic disruption and cost if a municipal gas network was to depressurise during a critical contingency.

107. The defences provided in Regulation 82B(2) for alleged breaches mean the consumer will be charged with a strict liability offence. Strict liability offences are usually used to enforce requirements of regulatory regimes. The prosecution is not required to prove *'mens rea'*[20], but the defendant can escape liability if they can show the existence of a defence or an absence of fault. Broadly, there are two defences available that relate to health and safety, and the ability of the defendant to mitigate the conduct that constituted the offence.

108. There are no civil pecuniary penalties that may be imposed on non-industry participants under the Gas Act. This means that the conduct for non-industry participants may result in criminal prosecution whereas the conduct of an industry participant is potentially subject to a fine from the Gas Rulings Panel.

The difference between industry participants who are consumers and non-industry participants who are also consumers can be arbitrary

109. The terms "industry participants" and "consumers" are both defined in the Gas Act. Some parts of the gas industry are more clearly defined as industry participants than others, in particular, gas consumers. For consumers, the contractual relationships in place, rather than the nature of a consumer, can determine whether they are industry participants or not. Consumers who are non-industry participants may range from small commercial users to some large industrial facilities (such as a dairy processing facility).

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18 A "consumer" is a defined in the Gas Act in Part 1 – preliminary provisions.

19 See Regulations 82A and 82B of the Gas Governance (Critical Contingency Management) Regulations 2008.

20 Known as the 'mental element' – the prosecution is required to prove that the defendant went about the breach with specified intent.

110. The way in which these penalties are currently included in the gas governance arrangements creates a situation where contractual settings determine what penalty applies:

    a. 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 gas governance regulations or rules; and

    b. 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 has found to have breached gas governance arrangements and subject to a $20,000 fine.

The treatment of these two different classes is inequitable

111. The current system creates an inequitable situation where two different types of penalties may apply depending on the contractual arrangements of the consumer. While we consider that a criminal offence may be appropriate for some types of conduct, it is inappropriate when the equivalent penalty for industry participants is a pecuniary penalty from the Rulings Panel for a similar breach.

112. We are concerned that the penalties provided for non-industry participants are not appropriate given the nature of potential breaches of the gas governance arrangements and the current different regime for industry participants. While non-industry participant offences have not yet been tested in court, we consider it prudent to consider the appropriateness of penalties alongside changes to the penalties for industry participants.

113. We have consulted on the suitability of a criminal offence being included in the Act more generally. Stakeholders considered that there were no obvious offences (aside from theft of gas) which should be criminalised. Submitters who commented on this topic supported harmonising the penalty regimes between non-industry participants and industry participants (i.e., aligning the criminal penalties and the Gas Rulings Panel).

Who is affected and how?

114. Non-industry participants are currently exposed to criminal prosecution for breaches of gas governance arrangements, while industry participants are not. In practice, this only applies to the CCM regulations. This is a fundamental equity issue with the penalties regime. Consultation has shown that stakeholders support addressing this inequity in the penalties regime.

115. The current penalty regime affects industry practice as it, along with other factors, incentivises compliance with gas governance arrangements. Compliance with gas governance arrangements is generally good. However, we consider that this does not in itself mean that the settings should not be fit-for-purpose.

116. Changes to the penalties regime are supported by regulators (in both the gas and electricity sectors). Industry participants have previously shown support for ensuring that the penalties regime for industry participants and consumers is equitable.

Constraints on decision making

117. The constraints on decision making in this instance are the same as those for Proposal A.

118. The GIC is also planning on reviewing the CCM regulations in the next twelve months. The GIC will require amendments to the Act to be in force in order to formally recommend any changes to the penalties contained in these regulations (which are one of the main drivers for changes).

Proposed options and Impact Analysis

119. We consider that amendments should be made to the Act to ensure that the penalties are aligned for similar conduct by consumers and industry participants, i.e., that the conduct of consumers and industry participants are penalised in an equitable way.

Proposed option

120. Our preferred option is the removal of the criminal penalty for consumers under section 43T, and replacement with a new civil pecuniary penalty. This will align the penalties for industry participants and consumers by ensuring that they are both subject to civil proceedings. We consider that the use of a pecuniary penalty is appropriate in this regulatory context, and aligns with the LDAC guidance on the use of such penalties.

121. MBIE analysis and consultation has not revealed any situations in which conduct should be criminalised under the Gas Act. The nature of breaches by non-industry participants is unlikely to meet the tests for the application of criminal penalties.[21] Given the magnitude of criminal convictions on corporations, there is merit in including these explicitly in the legislation if and when they are required.

122. As the Rulings Panel does not have jurisdiction over non-industry participants, these penalties would be imposed by the High Court. If the maximum penalty limit for industry participants is increased to $200,000 (the preferred option under Proposal B.2), we intend for the maximum limit of the civil pecuniary penalty able to be imposed by the High Court be aligned with this amount. This is also to ensure equity between consumers and industry participants for similar conduct.

123. The preferred option provides equity between consumers and industry participants at little to no marginal cost to the regulators and regulated parties. This type of penalty would mean that instead of the criminal standard of proof required under section 43T (i.e., beyond reasonable doubt), the High Court would apply a civil standard of proof (i.e., on the balance of probabilities). This may result in greater willingness to commence High Court proceedings if any breaches occur.

124. It is also intended that domestic consumers of gas are excluded from the scope of these penalties so that only commercial behaviour that may have a large impact on the market is targeted. This is currently the case under the CCM regulations where section 43T has been applied.

125. We understand that the GIC intends to review the penalty regime for non-industry participants pending amendment to the Act.

[21] See Chapter 24 of the LDAC guidelines on creating criminal penalties here.

Alternative options considered

126. An alternative option we considered was to change the definition of "industry participants" to cover consumers of a certain size who are not currently classed as industry participants. This option is not preferred because:

    a. The complexity associated in changing the participant class definitions due to the industry co-governance model. The GIC is owned by industry participants and changes to the classification of industry participants would likely require more time than is available to MBIE to provide recommendations for amending the Act for limited benefit. In particular, there may be unintended consequences from this change (e.g. operational matters such as the burden of who pays the GIC levy payment) which would need to be worked through in detail and require further consultation;

    b. It may not address the identified problem with the treatment of industry participants and non-industry participants. Depending on what the consumption limit is, it may still be appropriate to be able to penalise smaller consumers if they breach gas governance arrangements; and

    c. This option would likely increase costs for both the regulator and regulated-parties.

Impact Analysis

127. It is difficult to quantify the direct costs and benefits of aligning the treatment of industry participants and non-industry participants under the Act's penalty regime. However, we consider that this is not a reason to maintain the status quo. This is because:

    a. The preferred option ensures that there is equity between different groups who behave in the same way;

    b. A greater likelihood that non-industry participants will be penalised for breaches as the burden of proof requirements in civil proceedings is lower than for criminal prosecutions; and

    c. There are likely to be low additional costs for the regulator or regulated parties due to this change.

128. The impacts of introducing a civil pecuniary penalty for non-industry participants are substantively the same as those identified under proposal B.1.

What do stakeholders think?

129. We also consulted on this issue as part of the public consultation document discussed under proposal B.1. We received few submissions on equity between industry participants and consumers. Those that did respond suggested that there was no conduct under gas governance arrangements that should be criminalised. The Major Gas Users Group suggested that MBIE review section 43T in light of gas governance arrangements and supported aligning the treatment of industry participants and non-industry participants.

130. The Ministry of Justice has indicated that it is comfortable with creating a new civil pecuniary penalty under the Act to better align the penalising of breaches for industry participants and non-industry participants.

Proposal C: Minor changes

131. Alongside Proposals A, B.1 and B.2 several minor changes are proposed to be made to the Gas Act. We have packaged these into one proposal – Proposal C.

132. These changes are to clarify the original policy intent, remove redundant provisions, or address inconsistencies in the legislation. This section outlines the minor changes proposed.

Proposal C.1 Repealing the definition of "corporation"

133. The Natural Gas Corporation (NGC) used to play a key role in the gas sector. It was privatised in 1992. The company has been sold a number of times since then and is now part of First Gas. The Act still contains a definition of "Corporation" referring to the NGC and it is explicitly defined as a gas wholesaler in the Act. These provisions are redundant given that the functions of NGC are captured under the definition of "industry participant".

134. The proposal is to repeal the redundant provisions of the Act as part of the package of gas act changes. We have identified no benefits or costs associated with the change as the definitions are defunct for the purposes of the Act. There may be some benefit in greater clarity in the Act.

Proposal C.2 Privileges protected

135. There is an inconsistency between the Gas Act and the Electricity Industry Act regarding the self-incrimination privilege. 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 Gas Act preserves privilege for "persons" which includes body corporates. The Electricity Industry Act's approach aligns with the Evidence Act 2006.

136. The proposal is that section 43V of the Gas Act be aligned with the Evidence Act 2006 and the Electricity Industry Act. We have not identified any material costs or benefits associated with this proposal.

Proposal C.4 Empowering provisions for critical contingency management regulations

137. 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 this impact statement, the main tool to achieve this is by issuing curtailment notices and/or by instigating public appeals for conservation in the case of residential consumers.

138. The 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 makes it unclear which classes of industry participants and consumers the regulations cover.

139. The proposal is to clarify that these regulations can be applied across the market. This approach will clarify current practice and remove the ambiguity as to whom these regulations can apply.

Implementation and operation of proposals

140. This section covers the implementation and operation of all proposals covered in this regulatory impact statement.

Giving effect to the Proposals

141. The preferred approach is to give effect to the proposals through legislative amendment to the Gas Act. Once the Gas Act is amended, the GIC will be empowered to consider whether changes, or new gas governance arrangements, should be recommended to the Minister.

142. Our preferred option is to include an empowering provision in the Act that allows for gas governance arrangements to be made upon the recommendation of the Minister following a recommendation from the GIC. This is consistent with the design of the co-regulatory regime where the Minister can only recommend that regulations be made after first accepting a recommendation from the GIC that these should be made.

143. The detail of gas governance arrangements is set out in secondary legislation. The process and tests that the GIC must meet before making a recommendation for gas governance arrangements is laid out in the Act. These tests include an assessment of whether non-regulatory (i.e. industry-led) solutions would achieve similar outcomes.

144. We have not identified any inconsistencies with the Government's expectations for good regulatory practice.

145. We intend for Gas Act changes to come into legal effect as soon as practicable after Royal Assent so that the GIC is able to make recommendations as soon as practicable. Transitional provisions will be used to ensure that there are no issues for the current gas governance arrangements.

Process for implementing new recommendations

146. Under the co-regulatory model, the GIC is responsible for determining if gas governance arrangements are required, and what changes will be desirable. The substantive nature of the changes in Proposal A and B.2 will be implemented through gas governance arrangements made under the Act. Proposal B.1 will require amendments to the Gas Governance (Compliance Regulations) 2008, on the basis of a GIC recommendation.

147. Proposal A provides the Minister with the ability to recommend that gas governance arrangements are made through Order-in-Council. Under the co-regulatory model, this would require a recommendation that these are made by the GIC, following the Act's process.

148. If the GIC recommends regulations, the Minister will be able to accept or reject this recommendation. Cabinet agreement and a separate regulatory impact analysis will be required for any gas governance recommendation from the GIC.

149. We understand that, dependent on the changes made to the Act, a recommendation from the GIC for a regulated information disclosure regime may be expected in March 2020 at the earliest.

Ongoing operation and enforcement of new arrangements

150. The GIC has not raised any concerns about operationalising new requirements in the Act. The GIC has an annual levy that is set in new regulations each year. This is tailored to meet its operational and work programme requirements for each financial year. This levy (on industry participants) is required to be consulted on with stakeholders under the Act.

151. This means that the GIC is able to recommend increases to the levy to meet increasing costs. Costs of the proposals identified in this regulatory impact statement are likely to include the marginal costs of developing recommendations for changes to gas governance arrangements and any ongoing costs for the implementation of new requirements (such as a technology platform for information disclosure).

Monitoring, evaluation and review

152. This section covers the implementation and operation of all proposals covered in this regulatory impact statement.

How will the impact of the new arrangements be monitored?

153. As noted previously, it is difficult to quantify the costs and benefits associated with information disclosure or changes to the penalties regime. It is difficult to measure the impact of the potential new arrangements as they will enable the GIC to decide to make changes to the gas governance arrangements, rather than the proposals in this statement having measureable impacts in and of themselves.

154. We expect the GIC as the co-regulator to monitor any new arrangements and review their effectiveness. This will be done on a 'continuous improvement' basis.

155. Benefits of any new information disclosure regime should be apparent in better coordination of system outages across the electricity and gas systems.

156. Once a formal recommendation for gas governance arrangements relating to Proposal A (information disclosure) is made, more information will be able to be provided. At this point, it is likely that the marginal costs for the regulatory and regulated parties will be better understood.

When and how will the new arrangements be reviewed?

157. As part of MBIE's ongoing regulatory stewardship obligations, we will continue to work with the GIC to advise Ministers on matters relating to the Gas Act. Given the relatively high-level nature of the Proposals, with substantial detail being delegated to secondary legislation, we have not yet planned a formal review of the potential changes to Gas Act amendments.

158. The GIC will have a key role in recommending developing and monitoring any new gas governance arrangements that may be a result of Act changes. MBIE will be involved in responding to any such recommendation. It is likely that, at the time of a recommendation to the Minister, the GIC would advise MBIE if any of the Act changes were insufficient.

159. Stakeholders will have the opportunity to comment on any proposed changes in the Bill through the Select Committee process. An exposure draft of the Bill is not planned to be released.