

6 July 2021

Legislative Statement: Gas (Information Disclosure and Penalties) Amendment Bill

Purpose

1. This legislative statement supports the Third Reading of the Gas (Information Disclosure and Penalties) Amendment Bill (the Bill).
2. The purpose of the Bill is to strengthen the regulation-making powers in the Gas Act 1992 (the Act) to provide for enhanced information disclosure requirements for the gas market, and to ensure that settings around enforcement and penalties are suitably robust.

Regulatory Context

3. The Bill proposes changes to the Act, which is the principal piece of legislation that governs the gas industry in New Zealand.
4. The Act provides for a unique regulatory model whereby a private company, the Gas Industry Company (GIC) regulates the industry. The GIC has the power to recommend to the Government that regulations relating to the governance of the gas industry be made.

Background

5. In 2018, multiple major outages at the Pohokura gas field (which provides 40 per cent of all natural gas), combined with a statutory inspection and shutdown at the Kupe field caused a large reduction in the supply available for gas consumers. The outages also coincided with lower than normal hydro lake storage due to dry spring conditions.
6. These had a significant impact on energy prices, and concerns have been raised about the extent and timeliness of information disclosure from gas producers about these outages and the impact that this information may have on both the electricity and gas markets. As the electricity system operator, Transpower noted its concerns with the GIC that it was not given enough information to effectively manage short and medium-term security of supply for electricity.
7. In response to these issues, I wrote to the GIC in July 2018 asking the GIC to determine if information disclosure arrangements were sufficient and fit-for-purpose to achieve the Government's objectives for the gas market.
8. Subsequently, several market issues were identified by the GIC:
 - Planned and unplanned outage information related to production and major gas user facilities is generally not publicly available;
 - Volume and price information in the natural gas spot market is not publicly available, as it sits behind a paywall;

- Average wholesale price and aggregate traded volume information is not available to the market which can hinder market and GIC decision-making ability; and
- There is no information available on forecast production over the short term or the medium term.

New regulation-making power for information disclosure

9. The Bill proposes to amend the scope of regulation-making powers in the Act. The Bill adds a new regulation-making power to enable gas governance arrangements to be made that provide for the disclosure of information. This includes information about matters that may have a significant downstream impact or may contribute to the risk of critical gas shortages.
10. The new provision provides for a broad scope for the types of information that may be required under information disclosure regulations. The broad scope of information enables arrangements to evolve over time as the market changes.
11. This amendment enables the GIC to recommend to the Minister of Energy and Resources a regulatory solution to identified information disclosure issues. Such a recommendation would be required to follow the statutory process in the Act, including:
 - a. Ensuring that the objective of the proposed regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than regulation;
 - b. The GIC has consulted with the industry; and
 - c. Analysing the costs and benefits of all reasonably practicable options.
12. The Bill also provides transitional provisions to ensure that the policy work the GIC has conducted since 2018 is considered as part of the regulation-recommending process in the Act.

Ensuring the penalties regime is fit-for-purpose

Penalties for industry participants

13. The Bill proposes to amend the penalty regime for industry participants¹ by increasing the maximum civil pecuniary penalty able to be imposed by the Gas Rulings Panel from \$20,000 to \$200,000.
14. This addresses concerns about the low level of pecuniary penalty able to be issued by the Gas Rulings Panel, particularly for situations where a wide range of consumers may be affected by a potential breach (such as failure to reduce demand during a critical gas shortage).
15. This amendment has a delayed commencement of up to six months. This approach to commencement enables the provisions to be brought into force at the same time as

¹ The term industry participant is defined in the Act and includes a gas retailer, a gas distributor, a gas producer, a pipeline owner, a gas wholesaler, a person who purchases gas directly from a gas producer or gas wholesaler or on any wholesale gas market.

new regulations are made, preventing any issues with the regulatory regime between Royal assent and the date on which new regulations are made.

Penalties for consumers who are not industry participants

16. The Bill repeals the current criminal penalty that that might be imposed on non-industry participants who are consumers. It replaces this penalty with a new civil pecuniary penalty that may be imposed on non-industry participants for a regulation breach (but not for domestic consumers)² by the High Court. The Bill also makes a number of supporting changes to enforcement provisions in the Act.
17. This is similar to the penalties for industry participants, but is applied by the High Court instead of the Gas Rulings Panel.
18. Several clauses relating to these changes have a delayed commencement of up to six months. This approach to commencement enables the provisions to be brought into force at the same time as new regulations are made, preventing any issues with the regulatory regime between Royal Assent and the date on which new regulations are made.

Amendments to the Bill since introduction

19. The version of the Bill reported back from the Select Committee contains one notable amendment to the Bill as introduced.
20. The Bill now proposes a specific criminal offence if an industry participant were to breach a requirement or an order of the Gas Rulings Panel (clause 15A). This replaces the current offence under regulation 51 in the Gas Governance (Compliance regulations) which is repealed by the Bill. It provides that for every industry participant that breaches a requirement or order made by the Gas Rulings Panel would commit an offence and be liable to a fine not exceeding \$20,000. This penalty is imposed by the High Court.
21. The amendment establishes a new, specific, penalty that ensures there are incentives for industry participants to comply with the Gas Rulings Panel requirements or orders.
22. Committee of the Whole House for the Bill was held on the 23rd and 29th of June. During the Committee of the Whole no further amendments were made.

² Domestic consumer is a defined term in the Act, and essentially refers to residential users of gas.