

House of Representatives

Supplementary Order Paper

Tuesday, 8 June 2021

Gas (Information Disclosure and Penalties) Amendment Bill

Proposed amendments

Simon Court, in Committee, to move the following amendments:

New clause 11AA

After *clause 11* (page 5, after line 3), insert:

11AA Section 43N amended (Assessment of proposed gas governance regulations)

After section 43N(1), insert:

- (1A) If a voluntary compliance alternative is, or may be, one of the options identified under subsection (1)(a), the industry body or the Commission, when carrying out its assessment under subsection (1)(b), must—
- (a) actively collaborate and engage with industry participants to develop that voluntary compliance alternative in order to promote or achieve the objective; and
 - (b) carry out the assessment of benefits and costs under subsection (1)(b)(i) on the assumption of compliance with the voluntary option unless the industry body or the Commission believes, on reasonable grounds, that there is likely to be substantial non-compliance.

Schedule

In the *Schedule*, new *Schedule 1AA*, *clause 1*, after *subclause (3)* (page 9, after line 21), insert:

- (4) However, **subclause (1)** only applies if the actions taken by the industry body would have complied with **section 43N(1A)**, as in

**Proposed amendments to
Gas (Information Disclosure and Penalties) Amendment
Bill**

SOP No 41

force from the commencement of this clause, had it been in force at the time the actions were taken.

Explanatory note

This Supplementary Order Paper amends the Gas (Information Disclosure and Penalties) Amendment Bill. The industry is governed under a co-regulatory model, which is founded on a relationship of co-operation between the Government and the industry via an industry body (the Gas Industry Company (GIC)).

The industry body may recommend regulations to the Minister following a consultation process with the industry. This process involves identifying and assessing any other practicable alternatives for meeting the regulatory objective at issue, with regulation being the option of last resort (*see* section 43N).

The Gas (Information Disclosure and Penalties) Amendment Bill introduces to the Gas Act 1992 the power for the industry body to recommend, and the Minister to make, regulations concerning gas information disclosure. The amendment is in response to concerns about availability of certain information following recent gas production outages, and the impact of that lack of information on the electricity market and other gas consumers.

The industry body and industry participants commenced a work programme to investigate and respond to those concerns, resulting in a voluntary disclosure code, which has been in operation since March 2020. More than 70 relevant disclosures have been made under that code.

However, the industry body has at the same time taken actions towards recommending regulations to the Minister, consulting on a draft statement of proposal in early 2021. The Bill explicitly anticipates this work through Schedule 1AA, which validates any actions already taken by the industry body towards recommending regulations which will only be empowered via the amendment.

The final report of the Economic Development, Science and Innovation Committee on the Bill acknowledged industry concerns about additional regulation but considered that the safeguards in section 43N would ensure against recommendations where other practicable options were available. The Committee noted that: “In particular, the GIC is required to ensure that an industry-led solution is unlikely to satisfactorily achieve the objectives that a proposed regulation would. The GIC cannot recommend that regulations be made unless all other reasonably practicable options have been properly considered (including the benefits and costs of each option)”.

The assessment made by the industry body in its draft statement of proposal includes an assessment of the benefits and costs. However, it assesses the regulatory option against a status quo of no disclosure. That assessment was made on the assumption that the voluntary code was unenforceable and therefore had to be treated as ineffective, despite the fact that all relevant industry participants are signatories to it and it has successfully resulted in over 70 relevant disclosures since March 2020.

This approach ignores the explicit requirement in section 43N(1)(c) to consider voluntary compliance options, as reflected in the comments from the Committee. To allow industry-led solutions to be dismissed outright in this manner undermines the co-regulatory model and cannot have been the intention of Parliament when enacting section 43N. This amendment therefore introduces an explicit requirement that any assessment of benefits and costs must, where a voluntary option is one of the alternatives, assume compliance with that voluntary alternative unless there are reasonable grounds to believe there will be substantial non-compliance.

The industry body's assessment also identified some areas of the voluntary code that it considered needed enhancement or improvement. Section 43N should be read as requiring the industry body to take reasonable steps to assist in developing industry-led solutions where there is an industry willingness for such an option.

Schedule 1AA will consequently require amendment to align the retrospective validation of actions taken by the industry body with the clarified requirements of section 43N.