



Gas (Information Disclosure and Penalties) Amendment Act 2021

Public Act 2021 No 30
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Commencement see section 2

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Part 2

Amendments to regulations

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New Schedule 1AA inserted

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Gas (Information Disclosure and Penalties) Amendment Act 2021.

2 Commencement

- (1) Sections 4, 5, 7 to 12, 14, 18, and 20 come into force on the day after the date of Royal assent.
- (2) The rest of this Act comes into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions and for different purposes.
- (3) However, any provision that has not earlier been brought into force comes into force immediately after the expiry of the 6-month period that starts on the date of Royal assent.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116
<i>This note is not part of the Act.</i>		

**Part 1
Amendments to Gas Act 1992**

3 Principal Act

This Part amends the Gas Act 1992 (the **principal Act**).

4 Section 2 amended (Interpretation)

- (1) In section 2(1), repeal the definition of **Corporation**.
- (2) In section 2(1), definition of **gas wholesaler**, replace paragraph (a) with:
 - (a) means any person who supplies gas to any other person or persons for the purpose of resupply by the other person or persons (whether or not the person who so supplies the gas is also a gas retailer); and

5 New section 3A inserted (Transitional, savings, and related provisions)

After section 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

6 Section 43B amended (Outline of Part)

After section 43B(5), insert:

- (5A) Subpart 5 enables the High Court to impose pecuniary penalties on consumers (other than domestic consumers) for a breach of gas industry regulations or rules.

7 Section 43C amended (Outline of regulation-making powers)

In section 43C(1), after the item relating to regulations on transmission and distribution of gas, insert:

Regulations on arrangements relating to outages and other security of supply risks
Regulations on information disclosure for the whole gas industry

8 Section 43D amended (Interpretation)

In section 43D, definition of **gas governance regulations**, replace “43T” with “43TA”.

9 Section 43F amended (Gas governance regulations for wholesale market, processing facilities, transmission, and distribution of gas)

- (1) In the heading to section 43F, replace “**and distribution of gas**” with “**distribution of gas, security of supply, and disclosure**”.
- (2) Repeal section 43F(2)(a)(vi).
- (3) After section 43F(2)(d), insert:

Arrangements relating to outages and other security of supply risks

- (e) providing, in relation to wholesale or any other markets for gas, for arrangements relating to outages and other security of supply risks, including imposing requirements in connection with those matters on any industry participant or consumer (other than a domestic consumer):

Information disclosure for whole gas industry

- (f) providing for the provision and disclosure of data and information by any industry participant or consumer (other than a domestic consumer).

- (4) After section 43F(2), insert:

- (3) The data and information referred to in subsection (2)(f) may include, for example, any of the following to the extent that it relates to the gas industry:

- (a) volume, price, or other market information:
(b) forecasts of supply or demand:
(c) information about actual or potential outages:

- (d) information about risks to security of supply:
 - (e) information about an industry participant or a consumer (other than a domestic consumer) that has, or may have, a significant impact on other industry participants or consumers:
 - (f) information to help other industry participants or consumers (other than domestic consumers) to make informed decisions in connection with the gas industry.
- (4) Nothing in subsection (2)(a) to (e) or section 43G limits subsection (2)(f).

10 Section 43I amended (Which gas governance regulations can be made if there is no industry body or Commission)

In section 43I(b), replace “43T” with “43TA”.

11 Section 43J amended (Which gas governance regulations can be made if there is industry body but no Commission)

In section 43J(1)(c), replace “43T” with “43TA”.

12 Section 43S amended (Supplementary empowering provision for regulations and rules)

In the heading to section 43S, replace “empowering provision for” with “provision relating to”.

13 Section 43T repealed

Repeal section 43T.

14 New section 43TA inserted (Regulations may provide for pecuniary penalties for consumers (other than domestic consumers))

After section 43S, insert:

43TA Regulations may provide for pecuniary penalties for consumers (other than domestic consumers)

- (1) Any regulations made under this subpart may do 1 or more of the following:
- (a) identify provisions of regulations made under this subpart, or provisions of rules made under section 43Q, for the purposes of subpart 5 (which allows the High Court to impose a pecuniary penalty on a consumer (other than a domestic consumer) for a breach of those identified provisions):
 - (b) prescribe, in relation to each of those provisions, the maximum pecuniary penalty that may be imposed under subpart 5 for a breach:
 - (c) prescribe a defence to a proceeding under subpart 5 or prescribe other matters relating to when a breach gives rise to liability for a pecuniary penalty under that subpart.

- (2) A maximum pecuniary penalty referred to in subsection (1)(b) must not exceed \$200,000.

15 Section 43V amended (Privileges protected)

- (1) In section 43V(3), after “given”, insert “by an individual”.
(2) In section 43V(3)(a) and (b), replace “person” with “individual”.

16 Section 43X amended (Rulings Panel may make certain orders)

In section 43X(1)(e), replace “\$20,000” with “\$200,000”.

17 New section 43YA inserted (Offence to breach compliance orders)

After section 43Y, insert:

43YA Offence to breach compliance orders

Every industry participant that breaches a requirement or an order made under section 43X(1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Compare: SR 2008/253 r 51

18 Section 43ZP amended (What Minister can do with industry body recommendations about wholesale market, processing facilities, transmission, and distribution of gas)

In the heading to section 43ZP, replace “and distribution of gas” with “distribution of gas, security of supply, and disclosure”.

19 New subpart 5 of Part 4A inserted

After section 43ZZR, insert:

Subpart 5—High Court may impose pecuniary penalty on certain consumers for breach of gas industry regulations or rules

43ZZS When High Court may order certain consumers to pay pecuniary penalty

- (1) The High Court may, on the application of the Secretary or the Commission, order a consumer (other than a domestic consumer) to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the consumer has breached—
- (a) a provision of the gas governance regulations that is identified under section 43TA(1)(a); or
- (b) a provision of the rules made under section 43Q that is identified under section 43TA(1)(a).
- (2) The maximum amount of a pecuniary penalty for a breach of a provision is the amount prescribed under section 43TA(1)(b) for that provision.

- (3) The court may not order an industry participant to pay a pecuniary penalty under subsection (1) (*see instead* section 43X, which allows the Rulings Panel to take action if an industry participant has breached any gas governance regulations or rules).

43ZZT Considerations for High Court in deciding on amount of pecuniary penalty

- (1) The High Court must have regard to all relevant matters when deciding on an appropriate pecuniary penalty to impose on a consumer (A).
- (2) Those matters include—
- (a) the severity of the breach:
 - (b) the impact of the breach on industry participants and consumers:
 - (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
 - (d) the circumstances in which the breach occurred:
 - (e) any previous breach of the regulations or rules by A:
 - (f) the length of time the breach remained unresolved:
 - (g) A's actions on learning of the breach:
 - (h) any benefit that A obtained, or expected to obtain, as a result of the breach.

43ZZU Rules of civil procedure and civil standard of proof apply

- (1) A proceeding under this subpart is a civil proceeding.
- (2) The usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

43ZZV Only 1 pecuniary penalty order may be made for same conduct

- (1) This section applies if conduct by a consumer (A) constitutes a breach of 2 or more provisions identified under section 43TA(1)(a).
- (2) One or more proceedings under this subpart may be brought against A for the breach of any 1 or more of the provisions.
- (3) However, A is not liable to more than 1 pecuniary penalty order for the same conduct.

20 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Amendments to regulations

Subpart 1—Gas Governance (Compliance) Regulations 2008

21 Amendments to Gas Governance (Compliance) Regulations 2008

This subpart amends the Gas Governance (Compliance) Regulations 2008.

22 Regulation 51 revoked (Offence to breach compliance orders)

Revoke regulation 51.

23 Regulation 52 amended (Rulings Panel may order payment of civil pecuniary penalty up to \$20,000)

- (1) In the heading to regulation 52, replace “\$20,000” with “\$200,000”.
- (2) In regulation 52(1), replace “\$20,000” with “\$200,000”.

Subpart 2—Gas Governance (Critical Contingency Management) Regulations 2008

24 Amendments to Gas Governance (Critical Contingency Management) Regulations 2008

This subpart amends the Gas Governance (Critical Contingency Management) Regulations 2008.

25 Regulations 82A and 82B revoked

Revoke regulations 82A and 82B.

Schedule
New Schedule 1AA inserted

s 20

Schedule 1AA
Transitional, savings, and related provisions

s 3A

Part 1
Provisions relating to Gas (Information Disclosure and Penalties)
Amendment Act 2021

- 1 Action taken by gas industry body before enactment is valid for purposes of new regulations**
- (1) Any action taken by the industry body for the purposes of making a recommendation relating to regulations made under section 43F(2)(e) or (f) or for the purpose of section 43TA (as in force immediately after the commencement of this clause) must be treated as having been validly taken by the industry body under, and for the purposes of, sections 43I to 43P.
- (2) However, the industry body may make the recommendation relating to those regulations only after the commencement of this clause.
- (3) Subclause (1) applies even if the action is taken before the Gas (Information Disclosure and Penalties) Amendment Act 2021 is enacted.
- 2 Rulings Panel not required to take into account amount of previous civil pecuniary penalties**
- (1) This clause applies when the Rulings Panel is making a decision under section 43X in relation to a breach of any gas governance regulations or rules committed on or after the commencement of section 16 of the Gas (Information Disclosure and Penalties) Amendment Act 2021.
- (2) The Rulings Panel is not required to take into account under section 43X(2) the amount of any civil pecuniary penalty imposed under section 43X before the commencement of section 16 of the Gas (Information Disclosure and Penalties) Amendment Act 2021.
- 3 Offences for breach of Rulings Panel's compliance orders**
- (1) Regulation 51 of the Gas Governance (Compliance) Regulations 2008 continues to apply as if it were still in force in relation to a breach that occurs before the commencement of section 22 of the Gas (Information Disclosure and Penalties) Amendment Act 2021.

- (2) Section 43YA applies to a breach that occurs on or after the commencement of section 22 of the Gas (Information Disclosure and Penalties) Amendment Act 2021.
- (3) In this clause, **breach** means a breach of a requirement or an order made under section 43X(1).

Legislative history

11 March 2020	Introduction (Bill 224–1)
27 May 2020	First reading and referral to Economic Development, Science and Innovation Committee
1 March 2021	Reported from Economic Development, Science and Innovation Committee (Bill 224–2)
10 June 2021	Second reading
29 June 2021	Committee of the whole House
8 July 2021	Third reading
12 July 2021	Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.