



# Fuel Industry Amendment Act 2023

Public Act 2023 No 38  
Date of assent 26 July 2023  
Commencement see section 2

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### Part 2A

#### Price regulation of terminal gate prices

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## Schedule

### New Part 2 inserted into Schedule 1

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The Parliament of New Zealand enacts as follows:

#### 1 Title

This Act is the Fuel Industry Amendment Act 2023.

#### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

#### 3 Principal Act

This Act amends the Fuel Industry Act 2020.

## Part 1

### Amendment to principal Act to enable price regulation of terminal gate prices

#### 4 New Part 2A inserted

After Part 2, insert:

## Part 2A

### Price regulation of terminal gate prices

#### Subpart 1—Preliminary provisions

##### 29A Interpretation and overview

- (1) In this Part, unless the context otherwise requires,—  
**price regulation or regulation** means regulation under this Part  
**regulated terminal gate price** means a terminal gate price that is declared to be regulated by an Order in Council under section 29J.
- (2) The process for imposing price regulation on particular terminal gate prices involves the following steps:
  - (a) the Commission holds an inquiry into whether to regulate the terminal gate prices, and then makes a recommendation to the Minister under section 29G:
  - (b) the Minister considers the Commission's recommendation and decides whether to recommend to the Governor-General that price regulation be imposed:
  - (c) if the Minister decides to recommend price regulation, an Order in Council may be made under section 29J that makes the terminal gate prices subject to that regulation:
  - (d) for each regulated terminal gate price (or group of regulated terminal gate prices), the Commission makes a determination under section 29L specifying the pricing principles or pricing methodologies that apply.
- (3) This section is intended only as a guide to the general scheme and effect of this Part.

Compare: 1986 No 5 s 52E

##### 29B Effect of terminal gate prices being subject to price regulation

- (1) If terminal gate prices are subject to price regulation, every wholesale supplier must comply with every determination made under section 29L applying to those prices and the supplier.
- (2) Sections 30 to 38 (which relate to civil proceedings relating to contraventions of this Part) apply to a wholesale supplier on and from the date on which the wholesale supplier is obliged to comply with a relevant determination made under section 29L.
- (3) The Commission is entitled to exercise any of its powers under this Act and under the Commerce Act 1986 (as applied by this Act) for the purpose of monitoring compliance with price regulation.

Compare: 1986 No 5 s 52F

**29C When terminal gate prices may be regulated**

The Commission may make a recommendation that price regulation should be imposed on terminal gate prices only if it is satisfied that the relevant wholesale supplier has posted terminal gate prices, for the relevant specified engine fuel and bulk storage facility, that were above what would be expected in a competitive market.

**Example**

The Commission holds an inquiry into all terminal gate prices in New Zealand for diesel (in respect of all wholesale suppliers and all bulk storage facilities).

However, if only 1 supplier at 1 bulk storage facility has posted terminal gate prices for diesel that were above what would be expected in a competitive market, the Commission may recommend regulation only in respect of the diesel terminal gate prices of that supplier at that facility (and not other prices).

Compare: 1986 No 5 s 52G

**Subpart 2—How price regulation may be imposed***Commission inquiry***29D How inquiry triggered**

- (1) The Commission—
  - (a) must hold an inquiry if required to do so by the Minister in writing; and
  - (b) may hold an inquiry on its own initiative.
- (2) In both cases, the Minister must specify a time frame within which the Commission must make a recommendation under section 29G to the Minister.

Compare: 1986 No 5 s 52H

**29E Commission inquiry into particular terminal gate prices**

- (1) In conducting an inquiry into particular terminal gate prices, the Commission must consider—
  - (a) whether the test in section 29C is met in relation to the terminal gate prices; and
  - (b) if so, whether price regulation should be imposed on the terminal gate prices and for how long; and
  - (c) if so, how the terminal gate prices should be defined (that is, by reference to all or any of specified engine fuel, wholesale supplier, or bulk storage facility).
- (2) During an inquiry, the Commission may have regard to any other matters it considers necessary or desirable for the purpose of the inquiry.

Compare: 1986 No 5 s 52I

**29F Process of inquiry**

- (1) At the start of an inquiry, the Commission must publish in the *Gazette* a notice setting out,—
  - (a) in the case of an inquiry required by the Minister, the Minister’s requirements; and
  - (b) in the case of an inquiry on the initiative of the Commission, the terms of reference for the inquiry.
- (2) The notice must set out indicative time frames and key steps.
- (3) Before making a recommendation under section 29G, the Commission must consult interested persons about the proposed recommendation (including the Commission’s reasons for proposing to make a recommendation).

Compare: 1986 No 5 s 52J; 2022 No 21 s 13

**29G Commission’s recommendation following inquiry**

- (1) At the end of an inquiry, having considered the matters in section 29E, the Commission must make a recommendation to the Minister on whether, in its opinion, price regulation should be imposed on all or any of the terminal gate prices that were the subject of the inquiry.
- (2) If the Commission recommends that price regulation should be imposed on particular terminal gate prices, the recommendation must state—
  - (a) which terminal gate prices should be regulated, by reference to all or any of the following:
    - (i) the specified engine fuel or fuels:
    - (ii) the wholesale supplier or suppliers:
    - (iii) the bulk storage facility or facilities; and
  - (b) how long the regulation should be in place.
- (3) The Commission must make the recommendation publicly available as soon as practicable after making it, including a statement of its reasons for making the recommendation.
- (4) To avoid doubt, a recommendation by the Commission is not a determination of the Commission.

Compare: 1986 No 5 s 52K

*Order in Council imposing regulation***29H Minister’s consideration**

- (1) The Minister must consider any recommendation of the Commission made under section 29G.
- (2) As part of that consideration, the Minister—

- (a) must consult the Minister of Commerce and Consumer Affairs and the Minister of Transport; and
  - (b) may request further information or advice from the Commission; and
  - (c) may request that the Commission reconsider any matter (for example, an error, an oversight, or a competing policy interest).
- (3) The Minister must make publicly available any request made under subsection (2)(c), and the Commission must make publicly available its advice given following that request.
- (4) If the Commission receives a request under subsection (2)(c), it may, at its discretion,—
- (a) consult interested parties; or
  - (b) reopen its inquiry, in which case section 29F applies with all necessary modifications.

Compare: 1986 No 5 s 52L

## **29I Minister's decision and recommendation**

- (1) Having considered the Commission's recommendation in accordance with section 29H, the Minister must—
- (a) decide whether, in the opinion of the Minister, price regulation should be imposed on all or any of the terminal gate prices recommended by the Commission; and
  - (b) make a recommendation to that effect, if so.
- (2) The Minister's decision may be—
- (a) the same as the Commission's recommendation under section 29G; or
  - (b) different from the Commission's recommendation under section 29G only to the extent that all or any of the terminal gate prices recommended by the Commission should be not regulated.

### **Example**

After an inquiry, the Commission recommends that all diesel terminal gate prices that are posted by suppliers A and B should be regulated.

The Minister may recommend the same or the Minister may recommend that regulation should apply only to all or some of supplier A's diesel terminal gate prices and not supplier B's (or vice versa). The Minister cannot recommend that regulation should apply to supplier C unless the Commission makes a separate recommendation to that effect.

- (3) If the Minister's decision is different from the Commission's recommendation, the Minister must set out the reasons for the decision and make the decision, with the reasons, publicly available.

Compare: 1986 No 5 s 52M

**29J Order in Council imposing regulation**

- (1) The Governor-General may, on the recommendation of the Minister made under section 29I, make an Order in Council imposing regulation on particular terminal gate prices.
- (2) The order must declare that the terminal gate prices are regulated under this Part.
- (3) The order may identify the terminal gate prices it relates to by reference to all or any of—
  - (a) the specified engine fuel or fuels:
  - (b) the wholesale supplier or suppliers:
  - (c) the bulk storage facility or facilities.
- (4) The order must include an expiry date (which must be a date not later than 5 years after its commencement date) at the close of which the order is revoked.
- (5) Despite subsection (5), the order may be earlier revoked in the manner in which it was made.
- (6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1986 No 5 s 52N

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

**29K Revocation or amendment of Order in Council**

- (1) An Order in Council made under section 29J in respect of particular terminal gate prices may not be revoked or significantly amended unless the Commission has held an inquiry into the terminal gate prices.
- (2) In subsection (1), **significantly amended** means amended in a way that materially alters the terminal gate prices to which the price regulation applies, so that—
  - (a) the terminal gate prices, or any of them, are no longer regulated; or
  - (b) terminal gate prices that were not identified in the original order are now subject to regulation.
- (3) An Order in Council made under section 29J may be amended in any other material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.

Compare: 1986 No 5 s 52O

*Commission determination about how regulation applies*

**29L Commission determination about how regulation applies**

- (1) The Commission must make determinations under this section specifying how price regulation applies to wholesale suppliers and regulated terminal gate prices.
- (2) In considering whether the Act's purpose is promoted in making a determination, the Commission must take into account the outcomes that would be expected in a competitive market, including wholesale suppliers' incentives to invest to meet the demand of end users of engine fuel products.
- (3) Determinations must be made—
  - (a) only after consultation with interested parties on the draft pricing principle or pricing methodology that the Commission proposes to apply; and
  - (b) as soon as practicable after the Order in Council under section 29J is made.
- (4) Determinations must—
  - (a) set out, for each regulated terminal gate price, the pricing principles or pricing methodologies that apply and the requirements that apply to each wholesale supplier; and
  - (b) set out any time frames that must be met or that apply.
- (5) It is not necessary for a single determination to address all matters relating to particular regulated terminal gate prices, or to a wholesale supplier of regulated terminal gate prices, and different parts of any determination may come into effect at different times.
- (6) A determination under this section may require a wholesale supplier to comply with the requirements set out in any other determination that has been made under this section in respect of regulated terminal gate prices of the same type.
- (7) The Commission must, as soon as practicable after making a determination under this section, give to each wholesale supplier to which the determination relates notice of the determination and where it is available.
- (8) Each wholesale supplier to which the determination relates must comply with the requirements imposed by the determination.
- (9) A determination under this section and an amendment to a determination are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1986 No 5 s 52P

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021 Subsection (7) must also be complied with	LA19 s 74(1)(aa)
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<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116
<i>This note is not part of the Act.</i>		

### **29M Amendment of determination made under section 29L**

- (1) A determination made under section 29L may be amended in a material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.
- (2) However, the Commission is not required to conduct an inquiry before amending a determination.
- (3) As soon as practicable after making an amendment, the Commission must give to each wholesale supplier to which the determination relates notice of the amendment and where it is available.

Compare: 1986 No 5 s 52Q

### Subpart 3—Miscellaneous provisions

#### **29N Commerce Act 1986 not limited**

This Part does not limit subpart 2 of Part 4 of the Commerce Act 1986, which allows for regulation to be imposed on particular goods or services.

Compare: 1986 No 5 s 56N

#### **29O Application of Commerce Act 1986 to this Part**

- (1) The following provisions of the Commerce Act 1986 apply to this Part with any necessary modifications (including the following modifications):
  - (a) section 26 (Commission to have regard to economic policies of Government):
  - (b) section 53N (monitoring compliance with price-quality paths) as if each reference to a price-quality path were a reference to regulation under this Part:
  - (c) section 53ZD (powers of Commission under Part 4) as if section 53ZD(1)(b) referred to investigation as to the terminal gate prices that would be expected in a competitive market and how any pricing principles or pricing methodologies being considered by the Commission may be applied or have been applied:
  - (d) section 98 (Commission may require person to supply information or documents or give evidence).
- (2) This section does not limit the application of other provisions of the Commerce Act 1986.

## Part 2

### Other amendments to principal Act

#### 5 Section 4 amended (Interpretation)

In section 4, insert in its appropriate alphabetical order:

**competition** means workable or effective competition

#### 6 Section 9 amended (Obligation to post terminal gate price)

After section 9(3), insert:

(4) Subsection (3) is subject to Part 2A, if that Part applies.

#### 7 Section 30 amended (Pecuniary penalties)

After section 30(1)(a)(iii), insert:

(iv) requirements imposed by a determination made under section 29L (which relates to Part 2A price regulation of terminal gate prices); or

#### 8 Section 33 amended (Application of Commerce Act 1986)

After section 33(h), insert:

(ha) sections 99B to 99P (assistance to overseas regulators), as if—

- (i) references to an overseas regulator were references to an overseas body that has functions relating to the regulation of the fuel industry;
- (ii) references in those sections to the Minister were references to the Minister responsible for the administration of this Act:

#### 9 Section 42 amended (Offences in respect of sections 98 and 98A of Commerce Act 1986)

- (1) Replace the heading to section 42 with “Offences in respect of provisions of Commerce Act 1986”.
- (2) In section 42(1)(a), replace “notice under section 98” with “notice under sections 53N, 53ZD, and 98”.

#### 10 Section 45 amended (Application of Commerce Act 1986)

After section 45(c), insert:

(ca) section 17 (assent to determination):

#### 11 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

## Schedule

### New Part 2 inserted into Schedule 1

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#### Part 2

#### Provisions relating to Fuel Industry Amendment Act 2023

##### 4 Interpretation in this Part

In this Part, **pre-commencement price** means a terminal gate price that was posted before the commencement of the Fuel Industry Amendment Act 2023.

##### 5 Application of new Part 2A to existing prices

- (1) The Commission must not consider whether a pre-commencement price has met the test in section 29C.
- (2) However, the Commission may take into account a pre-commencement price when considering whether a post-commencement price has met that test.

##### Example

A supplier posts an equal number of terminal gate prices before and after commencement. The prices that the Commission assesses against the test in section 29C will be only the prices from after commencement (that is, half of them). However, in assessing those prices against the test, the Commission can base its assessment, at least in part, on data that pre-dates commencement.

#### Legislative history

15 November 2022	Introduction (Bill 188–1)
22 November 2022	First reading and referral to Economic Development, Science and Innovation Committee
16 May 2023	Reported from Economic Development, Science and Innovation Committee (Bill 188–2)
6 June 2023	Second reading
18 July 2023	Committee of the whole House, third reading
26 July 2023	Royal assent

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