

12 June 2019

Submission on the Discussion document: Options for amending the Gas Act 1992  
Resource Markets Policy  
Ministry of Business, Innovation and Employment  
Submitted by email to [resource.markets.policy@mbie.govt.nz](mailto:resource.markets.policy@mbie.govt.nz)

## PEPANZ Submission: Options for Amending the Gas Act 1992

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### Introduction

1. This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of *Discussion document: Options for amending the Gas Act 1992*<sup>1</sup>. Established in 1972, we are the industry association of the upstream oil and gas sector.
2. We proudly represent the companies that explore for, and produce, New Zealand's oil and gas resources. Our members produce an estimated 95 percent of New Zealand's petroleum. We also represent more than 50 associate member companies who provide a wide range of goods and services to the industry.

### Recommendations

- **Recommendation One** on regulating-making powers:
  - a. progress an amendment to the Gas Act to provide an enabling provision for the Minister of Energy and Resources to require information disclosure from gas producers and users, providing the presumption in the Gas Act for industry-led solutions is retained and favoured.
  - b. include a statutory requirement for consultation with stakeholders in the gas market before regulations can be made.
  - c. consider establishing in the enabling provision a principle that commercially sensitive material should not be required for disclosure unless there is a substantial public interest reason for requiring it.
- **Recommendation Two:** note that PEPANZ and upstream gas producers are actively working alongside the GIC to develop an industry-led disclosure framework in relation to Planned Outage Information and Unplanned Outage Information.
- **Recommendation Three:** note that upstream natural gas producers currently disclose a range of information relating to pricing and traded volumes, gas production and consumption, gas forecasts, permit data, field deliverability and reserves and resources.<sup>2</sup>
- **Recommendation Four:** consider how the transport of carbon dioxide through pipelines to sites for underground injection is managed under the Gas Act, and whether any barriers, gaps or issues exist in legislation.

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<sup>1</sup> <https://www.mbie.govt.nz/have-your-say/amending-the-gas-act/>

<sup>2</sup> <https://www.gasindustry.co.nz/assets/Consultations/Uploads/Submission-Todd-Schedule-to-Submission.pdf>

- **Recommendation Five** on penalties:
  - a. carefully consider whether it is appropriate to advance amendments to penalty's given a regime to which the penalties may relate (namely regulated information disclosure) is yet to be developed.
  - b. amend penalty rates only in light of the nature of the offence and harm, and not arbitrarily align rates with a different regime.
  - c. note that variable penalties on a per unit basis may be inappropriate on the basis that the behaviour is not necessarily more culpable just because it ultimately relates to a greater volume of gas.

## Submission

*We are actively working to improve information about upstream outages*

1. PEPANZ agrees that information about outages is important for a well-functioning gas market. We addressed this in our recent submission to the Gas Industry Company on its the *Options for Information Disclosure in the Wholesale Gas Sector Consultation Paper*<sup>3</sup> Outage information can be important to gas users for two key reasons:
  - i. Gas availability can affect operations.
  - ii. Knowledge of outages and their duration can allow coordination of plant maintenance.
2. Along with the country's gas producers and consistent with the Gas Act's current presumption for industry-led solutions, we are actively working alongside the GIC to develop an industry-led disclosure framework in relation to Planned Outage Information and Unplanned Outage Information. This will ensure that consistent information is made publicly available to all interested parties.

*We support enabling regulations for information disclosure*

3. We support amending the Gas Act to provide an enabling provision for regulations on information disclosure to be made.
4. In the first instance, we support the presumption in the Gas Act for industry-led solutions it is a simple and low cost solution, and can be amended with ease over time to ensure the framework is achieving the intended purpose. Gas producers have a strong interest in the framework being satisfactory to gas users and other stakeholders, fully aware that (upon proposed changes to the Gas Act being made) regulatory intervention sits there as an option if needed (whether to formally regulate the industry-devised regime or indeed to devise a different regime if necessary).
5. We understand from the discussion document that the proposed enabling provision would not be restricted in terms of what can be required. We note our current view which is that increased information and planned and unplanned disclosure is appropriate, but that requiring further information about petroleum field data or contracts (including pricing) is neither useful or appropriate. A range of information is already made available by gas producers, and this is usefully summarised in Todd Energy's recent submission to the Gas Industry Company<sup>4</sup>.
6. We recommend that any enabling provision establish a statutory requirement for consultation with stakeholders in the gas market before regulations can be made. Consideration should be given to the provision establishing a principle that commercially sensitive material should not be required for disclosure unless there is a substantial public interest reason for requiring it.
7. As part of an outage disclosure regime, we consider that ideally major users should also be part of a disclosure regime given their major role on the demand side, and we support that the proposed changes would enable regulations for this.

*Reducing gas reserves is an impending issue*

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<sup>3</sup> <https://www.pepanz.com/dmsdocument/104>

<sup>4</sup> <https://www.gasindustry.co.nz/assets/Consultations/Uploads/Submission-Todd-Schedule-to-Submission.pdf>

8. We take this opportunity to note that issues in the gas market in 2018 were largely a function of a lack of natural gas and corresponding inability of unaffected fields to increase production. With 10 years of natural gas reserves the market is likely to tighten further in the absence of new natural gas discoveries, and new gas supplies coming online is the solution to the underlying problem. Ultimately, information cannot replace molecules of gas.

*Consideration should be given to how transport of carbon dioxide through pipelines is managed*

9. We support the consideration being given to how transportation of hydrogen can be managed. Hydrogen from steam methane reformation of natural gas is the most economic method of production, and to have low emissions this must be done in conjunction with carbon capture and storage. Unless CCS is conducted directly at the site, the carbon dioxide must be transported to a suitable site for injection underground. Consideration should be given to how the transport of carbon dioxide through pipelines is managed under the Gas Act, and whether any barriers, gaps or issues exist in legislation.

*We have concerns about the discussion on the penalty's regime*

10. We question whether it is appropriate and sensible to contemplate a specific penalty's regime before a regime to which the penalties may apply has been devised. The regime which may be subject to regulations is that relating to regulated information disclosure.
11. The paper contemplates that offences be classified as criminal (rather than civil) offences. Setting criminal offences should be reserved for the more serious offences so civil sanctions may be more appropriate. We note following comments from Chapter 24 of the Legislation Design and Advisory Committee guidelines:
  - "Imposing criminal sanctions is a serious matter that has significant consequences."
  - "Because of the possible consequences, criminal offences should be created with care..."<sup>5</sup>
12. The upstream petroleum sector is compliance-focussed and concerned for corporate reputation. Although the current \$20,000 penalty is relatively low, the conviction itself is a strong disincentive against poor behaviour. We note the consideration to increase the penalty to \$200,000 to align with the Electricity Industry Act 2010, but alignment with another regime for its own sake seems to be inadequate policy rationale. Instead, we suggest that the nature of the offence and the harm is the fundamental driver of an appropriate penalty.
13. We are not inclined to support variable penalties on a per unit basis (as per Option 2B), because the behaviour is not necessarily more culpable just because it ultimately relates to a greater volume of gas.
14. If it has not been consulted, we would encourage officials to consider the principles outlined in chapters 24-26 of the Legislation Design and Advisory Committee guidelines.

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<sup>5</sup> <http://ldac.org.nz/guidelines/legislation-guidelines-2018-edition/>