Fuel Industry (Improving Fuel Resilience) Amendment Bill

Government Bill

As reported from the Economic Development, Science and Innovation Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Fuel Industry (Improving Fuel Resilience) Amendment Bill and is unable to recommend that the bill be passed, but recommends amendments to the bill, set out in this report, should it be determined by the House that the bill be passed. We recommend all amendments unanimously.

Introduction

The Fuel Industry (Improving Fuel Resilience) Amendment Bill would amend the Fuel Industry Act 2020. The bill aims to ensure that New Zealand has sufficient stocks of diesel, petrol, and aviation kerosene (jet fuel) to mitigate the risk of plausible disruptions to domestic or international fuel supplies. The bill would impose a minimum fuel stockholding obligation (MSO) and information disclosure requirements on some fuel importers.

The initial period of the MSO would continue from the day it was introduced until amended through regulations. During this period, the MSO would apply to importers who have the right to draw fuel from bulk storage facilities[1] in New Zealand (obliged persons). The bill would allow the definition of obliged persons to be amended by regulations in the future.

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[1] Under the Fuel Industry Act 2020, a bulk storage facility is defined as a facility for the storage of 5 million litres or more of engine fuel.

The bill provides for penalties on, or enforceable undertakings from, obliged persons who were found to be in breach of the MSO or information disclosure requirements (or where a breach is anticipated). It would also allow the responsible Minister to grant exemptions from the MSO, based on a set of criteria.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House's attention to some issues relating to clause 2 and proposed new section 59 (clause 13), which we discuss in more detail later in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Commencement dates

Clause 2 as introduced provides for the bill to come into force no later than the second anniversary of the date of Royal assent, or on an earlier date appointed by the Governor-General by Order in Council. The Governor-General would be able to make 1 or more orders bringing different provisions into force on different dates and appointing different dates for different purposes. We think that an earlier date might not allow enough time for industry to prepare for the changes.

We recommend providing for the bill to come into force on 1 July 2024, but for the MSO provisions in subpart 2 of Part 4 (stockholding obligation, as inserted by clause 13), only to come into force on 1 January 2025. To do this, we recommend replacing clause 2(1) through (3) with new clause 2(1) and (2).

Minimum level of cover, and calculation method for determining minimum stockholding volume

Clause 13 would insert new section 57 setting the minimum stockholding levels, expressed as the number of days of demand or consumption required to be covered for each type of fuel during the initial period. New section 57(4) sets out the formula for converting these minimum levels into volume for each obliged person and each fuel type. We understand that the minimum levels are intended to be understood as the minimum average daily stock levels over a month (though this compliance period could be changed through regulations). However, some submitters interpreted the obligation as one that is to be met every day of the compliance period.

We recommend making it explicit in the definition of variable a in the formula (obliged person's stockholding obligation) that the required minimum stockholding volume would have to be met on an average basis. An obliged person's average daily stock level over the month would have to be no less than the required minimum volume.

As introduced, variable c in the formula defines the obliged person's average daily demand or consumption as their average daily drawings from bulk storage facilities during the 12 months immediately before the compliance period. Several importers told us that their normal cycle of fuel shipments is every 3 to 4 months. To meet their requirements, they need to be able to plan this far in advance.

To accommodate this industry practice, we recommend amending the definition of variable c to base it on the average during the 12-month period that ends 4 months before the compliance period. We also recommend amending proposed new section 57(4) to change the definitions of variable a and variable c accordingly.

Entitlement agreements

Proposed new section 60 would allow an obliged person to enter into an "entitlement agreement" with another obliged person to transfer between them the right to count some fuel stocks for the purpose of complying with a stockholding obligation. We note that the fuel industry sometimes uses a consignment inventory model under which a fuel importer sells imported stock to another person (the consignor) who retains ownership of the stock in a bulk storage facility until it is drawn down by the consignee.

Under the bill as introduced, the consignor would not be an obliged person and so could not be a counterparty to an entitlement agreement. We think that the bill should accommodate current industry practice by allowing non-obliged persons to be a counterparty to an entitlement agreement. We recommend amending proposed new section 60(1) to this effect.

Maximum penalty for individuals

Proposed new section 65 specifies civil pecuniary penalties for contravention of the MSO or the information disclosure requirements. In the case of an individual, this could be as much as $500,000. Some submitters suggested that this amount was too high for an individual, and we agree.

We note that the bill is aimed at ensuring compliance by obliged persons—at present, they would all be companies—rather than the individuals who have delegated authority to sign off on fuel resilience data, such as chief executives, directors, or managers (although individuals may be liable if they are involved in a contravention). We therefore recommend leaving the maximum penalty for non-individuals unchanged, but amending proposed new section 65(2)(a) to reduce the maximum penalty for individuals to $100,000.

Exemptions

Proposed new section 59 would allow the responsible Minister to exempt obliged persons from all or any of their stockholding obligation, if satisfied that an event has caused significant disruptions to engine fuel supplies or stocks. Some submitters considered that the threshold for granting exemptions would be too high, and should allow for a broader range of scenarios, such as removal of infrastructure for inspection or maintenance. We agree that the threshold should not be linked only to events that have caused significant disruption. We recommend replacing proposed new section 59(2)(a) to replace the term "event" with "exceptional circumstances beyond the reasonable control of the obliged person", and to allow for examples of such circumstances to be prescribed in regulations.

We also think that the Minister should be required to publish their reasons for granting the exemption, and recommend inserting proposed new section 59(4A) to this effect.

Enforceable undertakings

Proposed new sections 66 through 68 would give the chief executive of the Ministry of Business, Innovation and Employment discretion to accept enforceable undertakings from obliged persons in connection with any matter relating to the enforcement of the MSO, instead of applying to the High Court to impose pecuniary penalties for non-compliance. Enforceable undertakings are intended to be a flexible tool to allow for a credible plan for compliance.

We consider that this should be made clearer in the bill, and recommend amending proposed new section 67(1)(a), and inserting new transitional provisions in the Schedule of the bill, to provide that an undertaking may include a compliance plan. This would allow an obliged person who is or may be in breach of their obligation to propose a plan to address non-compliance over an agreed period of time.

Under the transitional provisions, within the first two years of the commencement of the stockholding obligation, obliged persons would be able to propose a compliance plan if they could not comply with the obligation because of circumstances beyond their reasonable control, despite their best endeavours.

Information-sharing provisions in section 29 and proposed new section 71

Proposed new section 71 would allow the Commerce Commission and the chief executive of the Ministry of Business, Innovation and Employment to share information with each other that relates to the exercise of powers, or the performance of functions and duties, in respect of proposed new Part 4 of the bill. The Commerce Commission submitted that this provision replicates section 29 of the Fuel Industry Act in a way that would make section 29 redundant and cause interpretative issues. We agree, and recommend amending proposed new section 71 to apply these provisions to the Act as a whole, not only to new Part 4. We also agree that section 29 of the Act should be deleted as a result, and recommend inserting clause 10A to provide for this.

National Party differing view

The National Party supports the Fuel Industry (Improving Fuel Resilience) Amendment Bill as a means to increase resilience in fuel supply, however we have serious concerns with the speed at which it is progressing through Parliament.

The Government introduced the bill as recently as June and has given the Economic Development, Science and Innovation Committee an unrealistic timeframe of just two months to report back, allowing stakeholders only two weeks to submit their views. We feel this timeline has been rushed considering the Marsden Point Oil Refinery closure occurred 15 months ago.

The National Party believes the submission period has provided inadequate time for stakeholders and the public to share their views on what is a significant piece of legislation for New Zealand's fuel market, particularly because suppliers would have only until April 2024 after Royal assent to comply with stockholding obligations. We share the industry's concerns that a requirement to quickly invest in new tankage in order to meet obligations could impact consumers through subsequent potential increases to the cost of fuel.

Appendix

Committee process

The Fuel Industry (Improving Fuel Resilience) Amendment Bill was referred to the committee on 6 June 2023. The Ministry of Business, Innovation and Employment provided an initial briefing on the bill on 22 June 2023.

We called for submissions on the bill with a closing date of 20 June 2023. We received and considered submissions from 11 interested groups and individuals. We heard oral evidence from 8 submitters.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee wrote to us about the powers contained in clause 2.

Committee membership

Naisi Chen (Chairperson)

Glen Bennett

Ingrid Leary (until 19 July 2023)

Melissa Lee

Stuart Smith

Hon Michael Wood (from 19 July 2023)

Hon Michael Woodhouse

Key to symbols used in reprinted bill

As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted unanimously~~

Hon Dr Megan Woods

Fuel Industry (Improving Fuel Resilience) Amendment Bill

Government Bill

Contents

Part 4
Promotion of resilience of engine fuel supplies in New Zealand

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fuel Industry (Improving Fuel Resilience) Amendment Act **2023**.

2 Commencement

~~(1) This Act comes into force on the date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates and appointing different dates for different purposes.~~

~~(2) To the extent that this Act is not previously brought into force under **subsection (1)**, this Act comes into force on the second anniversary of the date of Royal assent.~~

~~(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).~~

(1) This Act comes into force on **1 July 2024**.

(2) However, **section 13** to the extent that it inserts **subpart 2 of Part 4** (stockholding obligation) comes into force on **1 January 2025**.

3 Principal Act

This Act amends the Fuel Industry Act 2020.

4 Section 3 amended (Purpose)

(1) In section 3, replace “purpose of this Act” with “purpose of Parts 1 to 3”.

(2) In section 3, insert as subsection (2):

(2) The purpose of **Part 4** is to promote resilience of engine fuel supplies in New Zealand.

5 New section 3A inserted (Act does not apply to certain reserve fuel)

After section 3, insert:

3A Act does not apply to certain reserve fuel

This Act does not apply to—

(a) fuel that is imported, for the purpose of holding reserve fuel stock, by the Crown or under an agreement with the Crown; or

(b) any activities or any person in respect of that fuel.

6 Section 13 amended (Regulations under this subpart)

In section 13(2)(b)(iii), replace “this Act” with “Parts 1 to 3”.

7 Section 20 amended (Regulations under this subpart)

In section 20(2)(b), replace “this Act” with “Parts 1 to 3”.

8 Section 24 amended (Consumer information requirements may be prescribed)

In section 24(3)(b), replace “this Act” with “Parts 1 to 3”.

9 Section 25 amended (Purposes of this subpart)

In section 25(b), replace “this Act” with “Parts 1 to 3”.

10 Section 27 amended (Information disclosure requirements may be prescribed)

In section 27(3)(b), replace “this Act” with “Parts 1 to 3”.

10A Section 29 repealed (Information sharing between Commission and chief executive)

Repeal section 29.

11 Part 3 heading amended

In the Part 3 heading, after “**miscellaneous provisions**”, insert “**for purpose of Parts 1 to 3**”.

12 New section 50 inserted (This Part does not apply to Part 4 matters)

After section 49, insert:

50 This Part does not apply to Part 4 matters

This Part does not apply to any matters under **Part 4**, except as otherwise provided in **sections 69(3) and 70**.

13 New Parts 4 and 5 inserted

After Part 3, insert:

Part 4
Promotion of resilience of engine fuel supplies in New Zealand

Subpart 1—Preliminary provision

51 Interpretation

In this Part, unless the context otherwise requires,—

compliance period,—

(a) during the initial period, means a calendar month:

(b) after the initial period, means the compliance period specified in the regulations

fuel importer means a fuel industry participant that imports fuel into New Zealand

information disclosure requirement means the obligation imposed by **subpart 3** and any regulations referred to in **section 63**

initial period, in respect of an obligation fuel, means the period that starts with the commencement of **subpart 2** and that ends on the earlier of the following:

(a) the date on which regulations provide that the initial period ends in respect of that type of fuel:

(b) the end of the 5-year period referred to in **section 61** (review)

minimum level of cover means the level of engine fuel stock that represents the minimum number of days for which the fuel stock must last in order to meet the daily fuel demand or consumption, where—

(a) the minimum number of days for the initial period is set in **section 57(3)**; and

(b) the minimum number of days after the initial period is set in the regulations~~; and~~

~~(c) daily fuel demand or consumption is measured by the obliged person's drawings of fuels from bulk storage facilities in New Zealand at which the obliged person has the right to draw fuel~~

~~**minimum stock** means engine fuel stock that is—~~

~~(a) in a bulk storage facility in New Zealand; or~~

~~(b) fuel cargo in a vessel within New Zealand's exclusive economic zone that is scheduled for delivery to a New Zealand port; or~~

~~(c) otherwise counted by the regulations as minimum stock~~

obligation fuel has the meaning given in **section 54**

obliged person has the meaning given in **section 53**

regulations means regulations made under **subpart 6**

stockholding obligation or **obligation** means the obligation imposed by **subpart 2** and any regulations made for the purpose of that obligation.

Subpart 2—Stockholding obligation

Application

52 Purpose of this subpart

The purpose of this subpart is to promote the resilience of engine fuel supplies by requiring certain fuel industry participants to hold a certain level of engine fuel stocks in New Zealand to mitigate the risk of fuel supply disruptions.

53 Persons to which obligation applies

(1) During the initial period, this subpart applies to every fuel industry participant (an **obliged person**) that, during a compliance period,—

(a) is a fuel importer of a type of obligation fuel; and

(b) owns or operates a bulk storage facility for that type of obligation fuel or has the right to draw that type of obligation fuel at a bulk storage facility.

(2) After the initial period, this subpart applies to every fuel industry participant (an **obliged person**)—

(a) that is of a type described in **subsection (1)**; or

(b) that is of an additional type or types specified in the regulations.

(3) The Minister may recommend regulations for the purpose of **subsection (2)(b)** only if the Minister is satisfied that—

(a) fuel industry participants of that type or those types supply (in the form of production or import) a significant volume of fuels to the New Zealand fuel market (that is, their market share must be significant); and

(b) the fuel supplied by fuel industry participants of that type constitute a significant proportion of the energy used by the transport sector in New Zealand.

54 Fuel on which obligation is based

This subpart applies to the following types of engine fuel (**obligation fuel**):

(a) during the initial period, the types referred to in **section 57(2)**; and

(b) after the initial period, any type or types that are specified by the regulations to be obligation fuels.

55 Disregarded fuels

The following are disregarded for the purpose of this Part and the regulations:

(a) fuel held under an agreement with the Crown for the purpose of compliance by the Crown with New Zealand's obligation, under Article 2 of the International Energy Agreement (within the meaning given in section 2 of the International Energy Agreement Act 1976), to maintain the emergency reserve commitment set out in that Article:

(b) fuel imported for consumption by the Crown (for example, by the New Zealand Defence Force).

Imposition of stockholding obligation

56 Imposition of obligation

Each obliged person must ~~maintain~~ hold minimum stock, of each type of obligation fuel in respect of which it is an obliged person, at a level that is sufficient to sustain the minimum level of cover required by this Part and the regulations.

57 Initial obligation

(1) This section sets the stockholding obligation for the initial period.

(2) The types of obligation fuel to which the initial stockholding obligation applies are—

(a) diesel (within the meaning of regulation 5(1) of the Engine Fuel Specifications Regulations 2011):

(b) petrol (within the meaning of regulation 5(1) of the Engine Fuel Specifications Regulations 2011):

(c) aviation kerosene (being kerosene-type fuel that is used in aviation turbine engines).

(3) The required number of days of demand or consumption, for the purpose of the minimum level of cover, is—

(a) 21 for diesel:

(b) 28 for petrol:

(c) 24 for aviation kerosene.

(4) The formula for translating minimum level of cover to the required minimum stockholding volume for each obliged person and each fuel type is—

$$a = b \times c$$

where—

~~a~~ ~~is the obliged person's stockholding obligation (that is, the minimum stock of the fuel type (measured in thousands of litres) that the person must maintain for the compliance period to sustain the minimum level of cover required by this Part and the regulations)~~

a is the obliged person's stockholding obligation (that is, the minimum stock of the fuel type (measured in thousands of litres) that the person must hold, on an average basis, during the compliance period to sustain the minimum level of cover required by this Part and the regulations), where **average** means an average of daily stock level (measured or estimated) over the compliance period

b is the required number of days that is referred to in **subsection (3)** for the fuel type and for the purpose of the minimum level of cover

c is the obliged person's average daily demand or consumption (that is, the obliged person's average daily drawings from bulk storage facilities in New Zealand at which the obliged person has the right to draw fuel, during the ~~12 months immediately before the compliance period~~ 12-month period that ends 4 months before the compliance period begins, of the fuel type (measured in thousands of litres per day)).

(5) Engine fuel counts as minimum stock if—

(a) the stock is—

(i) in a bulk storage facility in New Zealand; or

(ii) fuel cargo in a vessel within New Zealand's exclusive economic zone that is scheduled for delivery to a New Zealand port; and

(b) the fuel complies with any requirements of the regulations for counting fuel as minimum stock.

58 Regulations relating to stockholding obligation

(1) The regulations may provide for matters relating to the stockholding obligation, including all or any of the following matters:

~~(a) for each type of fuel,—~~

~~(i) the methodologies for calculating each obliged person's stockholding obligation for each compliance period; and~~

~~(ii) when the initial period ends:~~

(a) for any period and any fuel,—

(i) how each obliged person's stockholding obligation must be calculated for each compliance period:

(ii) requirements relating to circumstances, characteristics, location, and ownership or drawing rights for counting fuel as minimum stock:

(iii) when the initial period ends:

(b) for each period after the initial period,—

(i) the type or types of engine fuel that are obligation fuels (which may be prescribed by reference to either or all of the circumstances or characteristics of the fuel or other matters):

(ii) the type or types of fuel industry participant that are obliged persons in respect of obligation fuel (in which case, **section 53(3)** applies):

(iii) matters relating to the minimum level of cover required.

(2) The regulations may provide—

(a) different obligations for different types of things (for example, different stockholding levels for different fuels at different locations or for different periods); and

(b) for recalculation of obligations (for example, if a person ceases to be an obliged person, for the recalculation of other persons' obligations).

(3) The Minister may recommend regulations for matters referred to in this section only if—

(a) the Minister has had regard to the resilience of supplies of each type of obligation fuel; and

(b) the Minister has had regard to the current or recent commercial stockholding levels for that type of fuel; and

(c) the Minister considers that the stockholding obligation balances the following objectives:

(i) that there are sufficient engine fuel stocks available in New Zealand to meet demand and to adequately manage the impacts of plausible fuel supply disruption scenarios; and

(ii) that the economic costs associated with complying with the stockholding obligation are not disproportionate.

59 Exemptions from stockholding obligation

(1) The Minister may exempt by notice an obliged person, or a class of obliged persons, from all or any of their stockholding obligation.

(2) The Minister may grant the exemption only if—

~~(a) the Minister is satisfied that an event—~~

~~(i) has caused significant disruption to engine fuel supplies or stocks (for example, a natural disaster has affected fuel storage facilities or a crisis has affected international shipping routes); and~~

~~(ii) prevents the obliged person or persons from complying with the obligation; and~~

(a) the Minister is satisfied that exceptional circumstances beyond the reasonable control of the obliged person have prevented, or are likely to prevent, the obliged person from complying with the obligation, for example,—

(i) a natural disaster that has affected fuel storage facilities, or a crisis that has affected international shipping routes; or

(ii) other exceptional circumstances prescribed in the regulations; and

(b) the Minister has taken into account—

(i) the impact of the~~ event~~ circumstances on fuel imports and fuel storage capacity; and

(ii) the duration of the~~ event~~ circumstances; and

(iii) the level of control of the fuel importer over the~~ event~~ circumstances; and

(iv) the time required to achieve compliance with the obligation; and

(v) the impact on fuel resilience in regions; and

(c) the Minister is satisfied that—

(i) there is good reason for granting the exemption that outweighs the interests of the public in having the obligation met; and

(ii) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

(3) The regulations may prescribe—

(a) ~~the ~~circumstances in which exemptions may be granted:

(b) matters related to the process for exemptions:

(c) the maximum period during which an exemption may continue in force:

(d) when and how other obliged persons' stockholding obligations may be recalculated as a result of an exemption.

(4) The Minister may grant the exemption unconditionally or subject to any conditions that the Minister may prescribe in the notice.

(4A) The Minister's reasons for granting the exemption (including why the exemption is appropriate) must be published together with the exemption.

(5) An exemption granted under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Entitlement agreements

60 Entitlement agreements as mechanism for meeting obligations

(1) This section applies if an obliged person enters into an agreement with another ~~obliged~~ person that records a transfer of the right to count an amount of fuel stocks for the purpose of complying with a stockholding obligation.

(2) Only the transferee of the right ~~can count ~~is treated as the holder of the stock (for the purpose of counting the amount towards compliance with the stockholding obligation after the transfer).

Example 1

A and B are both obliged persons and an agreement records a transfer from A to B of the right to count an amount of fuel stocks for the purpose of complying with a stockholding obligation. Only B holds the amount for the purpose of compliance with the stockholding obligation after the transfer.

Example 2

A fuel importer sells an amount of imported stock to a consignor who will maintain ownership of the stock in a bulk supply facility until it is drawn down by the fuel importer. The agreement records a transfer from the consignor to the fuel importer of the right to be considered the holder of the amount for the purpose of complying with a stockholding obligation. Only the fuel importer is treated as the holder of that amount for that purpose (despite the consignor being the owner of the stock).

(3) The regulations may set requirements related to entitlement agreements and their use.

Review

61 Review

(1) The Minister must review the stockholding obligation within 5 years after the commencement of this subpart.

(2) The review of the stockholding obligation must take into account the following considerations:

(a) the Government's emissions budget and emissions reduction plan:

(b) fuel demand in New Zealand:

(c) the fuel mix for the transport fleet:

(d) any relevant data and findings on the resilience of supply chains, such as national and regional fuel stocks data and reports on resilience of international and domestic fuel supply chains:

(e) domestic fuel production capacity.

Subpart 3—Information disclosure requirements for purpose of this Part

62 Obligation to comply with information disclosure requirements

(1) Every fuel industry participant to which requirements prescribed by the regulations apply must comply with those requirements.

(2) Without limiting **subsection (1)**, a fuel industry participant must disclose information to the chief executive in any circumstances prescribed by the regulations.

(3) The fuel industry participant must disclose the information in any form and manner specified by the chief executive.

Compare: 2020 No 60 s 26

63 Information disclosure requirements may be prescribed

(1) The regulations may prescribe requirements relating to record keeping, and the retention and disclosure of information, about the resilience of engine fuel supplies in New Zealand, including—

(a) fuel stocks of industry participants identified in regulations and obliged persons at national, regional, and bulk storage facility levels:

(b) international supply chains:

(c) contingency arrangements<u> (such as compliance plans)</u>:

(d) any other information considered necessary for planning and implementing the stockholding obligation.

(2) In particular, the regulations may prescribe—

(a) the kinds of fuel industry participants, the engine fuels, and other matters that the regulations apply to:

(b) the information that must be recorded and retained:

(c) the methodologies that must be applied in recording the information:

(d) the circumstances in which information must be disclosed to the chief executive (for example, when requested by the chief executive, at a specified time, or on the occurrence of a specified event):

(e) requirements for the contents of information disclosed to the chief executive to be independently assessed for accuracy and certified by an auditor who is approved by the chief executive (in the prescribed manner, if any, for that purpose):

(f) requirements relating to the publication of information that is required to be disclosed to the chief executive.

(3) The Minister may recommend regulations only if the Minister has had regard to the need for—

(a) transparency and timeliness of information about fuel industry participants' fuel stockholding levels at national, regional, and bulk storage facility levels and at specific locations (such as Auckland International Airport):

(b) information required for assessing the adequacy of fuel stockholding levels in New Zealand for meeting New Zealand demand in a plausible fuel supply disruption scenario.

Compare: 2020 No 60 s 27

64 Publication of analysis or summary

The chief executive may,—

(a) for the purpose of this Part, analyse and summarise any information disclosed to them under this subpart; and

(b) publish any resulting analysis or summary.

Compare: 2020 No 60 s 28

Subpart 4—Pecuniary penalties under this Part

65 Pecuniary penalties under this Part

(1) The High Court may, on the application of the chief executive, order a person to pay to the Crown a civil pecuniary penalty if satisfied that the person—

(a) has contravened any of the provisions of the following:

(i) the stockholding obligation:

(ii) an information disclosure requirement; or

(b) has attempted to contravene any of those provisions; or

(c) has aided, abetted, counselled, or procured any other person to contravene any of those provisions; or

(d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those provisions; or

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any of those provisions; or

(f) has conspired with any other person to contravene any of those provisions.

(2) The amount of any pecuniary penalty must not exceed,—

(a) in the case of an individual, ~~$500,000~~ $100,000 for each act or omission; or

(b) in any other case, the greater of the following for each act or omission:

(i) $5 million:

(ii) either,—

(A) if it can be readily ascertained and if the court is satisfied that the contravention occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or

(B) if the commercial gain cannot readily be ascertained, 10% of the turnover of the person and all its interconnected bodies corporate (if any) in each accounting period in which the contravention occurred.

(3) In determining an appropriate penalty under this subpart, the court must have regard to all matters referred to in section 30(6).

(4) Sections 30(7) and (8), 31, 34, and 40(c) apply with any necessary modifications.

Subpart 5—Enforceable undertakings

66 Chief executive may accept undertakings

(1) The chief executive may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of this Part.

(2) The person may withdraw or vary the undertaking with the consent of the chief executive.

Compare: 1986 No 5 s 74A

67 Matters included in undertakings

(1) An undertaking under **section 66** may, without limitation, include either or both of the following:

(a) an undertaking (which may include a compliance plan) to take action to avoid, remedy, or mitigate any actual or likely ~~adverse effects arising from a~~ contravention, or possible contravention, of this Part:

(b) an undertaking to pay to the chief executive all or part of the chief executive's costs incurred in investigating, or bringing proceedings in relation to, a contravention, or possible contravention, of this Part.

(2) If the chief executive accepts an undertaking that involves payment of the chief executive's costs, the chief executive must make the following information publicly available:

(a) the amount of the chief executive's costs that has been undertaken to be paid; and

(b) a brief description of the circumstances and nature of the contravention or possible contravention of this Part to which the undertaking relates.

(3) In this section, a **contravention** means any of the following:

(a) an actual contravention:

(b) aiding, abetting, counselling, or procuring a contravention:

(c) inducing a contravention, whether by threats, promises, or otherwise:

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention:

(e) conspiring with any other person in a contravention.

Compare: 1986 No 5 s 74B

68 Enforcement of undertakings

(1) If the chief executive considers that a person has breached an undertaking given under **section 66**, the chief executive may apply to the High Court for an order under **subsection (2)**.

(2) The court may make any 1 or more of the following orders if it is satisfied that the person has breached a term of the undertaking:

(a) an order directing the person to comply with the term:

(b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach.

Compare: 1986 No 5 s 74C

Subpart 6—Regulations and other miscellaneous provisions

69 Regulations under this Part

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—

(a) providing for anything that this Part says may or must be provided for by regulations:

(b) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Part.

(2) The Minister may recommend regulations under this Part only if—

(a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and

(b) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Part and to the relevant costs and benefits.

(3) Section 48 applies to any regulations made under this Part.

(4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2002 No 40 s 168(1)(k), (l), (2)

70 Chief executive may approve forms

Section 49 applies with any necessary modifications.

Part 5
General provisions

Information sharing

71 Information sharing between Commission and chief executive

(1) The Commission and the chief executive, and any other person with functions, powers, or duties under this Act, may use any information provided under this Act, or a copy of any document provided under this Act, for any purpose of this Act.

~~(2) The chief executive may provide to the Commission any information, or a copy of any document, that the chief executive—~~

~~(a) holds in relation to the exercise of powers, or the performance of functions and duties, in respect of **Part 4**; and~~

~~(b) considers may assist the Commission for the purpose of Parts 1 to 3.~~

~~(3) The Commission may provide to the chief executive any information, or a copy of any document, that the Commission—~~

~~(a) holds in relation to the exercise of powers, or the performance of functions and duties, in respect of Parts 1 to 3; and~~

~~(b) considers may assist the chief executive for the purpose of **Part 4**.~~

(2) The Commission may provide to the chief executive, and the chief executive may provide to the Commission, any information, or a copy of any document, that the Commission or the chief executive (as the case may be)—

(a) holds in relation to the exercise of powers, or the performance of functions and duties, in respect of this Act; and

(b) considers may assist the other for any purpose of this Act.

(4) The Commission or the chief executive must not provide any information or document under this section unless satisfied that appropriate protections are or will be in place to maintain the confidentiality of the information or document (including information that is personal information within the meaning of the Privacy Act 2020).

72 Sharing of information and documents with other entities

(1) The chief executive may provide to a public service agency or a statutory entity (other than the Commission) any information, or a copy of any document, that the chief executive—

(a) holds in relation to the performance or exercise of the chief executive's functions, powers, or duties under this Act or any other legislation; and

(b) considers may assist the public service agency or statutory entity in the performance or exercise of its functions, powers, or duties under any legislation.

(2) The chief executive may provide information, or a copy of a document, under this section only if satisfied that—

(a) doing so will not substantially affect the performance of their functions; and

(b) appropriate protections are or will be in place to maintain the confidentiality of the information or document provided (in particular, information that is personal information within the meaning of the Privacy Act 2020).

(3) The chief executive may use any information, or a copy of any document, in the chief executive's performance or exercise of their functions, powers, or duties under any legislation if the information or copy is provided to the chief executive by a public service agency or a statutory entity (other than the Commission).

(4) In this section,—

public service agency has the meaning given in section 5 of the Public Service Act 2020

statutory entity means an entity or office named in Schedule 1 of the Crown Entities Act 2004.

Compare: 1986 No 5 s 99AA

73 Effect of information sharing provisions

(1) **Sections 71 and 72** apply despite anything to the contrary in any contract, deed, or document.

(2) Nothing in **section 71 or 72** limits—

(a) the Privacy Act 2020; or

(b) section 99AA of the Commerce Act 1986; or

(c) any provision of this Act or any other legislation that allows the use or disclosure of information (for example, section 17 of the Crown Entities Act 2004).

14 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 3 inserted into Schedule 1

s 14

Part 3
Provisions relating to Fuel Industry (Improving Fuel Resilience) Amendment Act **2023**

6 Transitional provision about compliance with stockholding obligation

(1) This clause applies to an obliged person that is unable to comply with all or any of the provisions of **subpart 2 of Part 4** (stockholding obligation) within the period of 2 years after the commencement of that subpart because of circumstances that are beyond the reasonable control of the obliged person despite their best endeavours.

(2) The obliged person may submit to the chief executive terms and conditions based on the obliged person's circumstances (for example, a compliance plan).

(3) The chief executive may accept those terms and conditions if—

- (a) the chief executive considers that they are likely to lead to compliance within a time that is reasonable in the circumstances; and
- (b) the chief executive has taken into account the matters referred to in **section 59(2)(b)**; and
- (c) the chief executive is satisfied of the matters referred to in **section 59(2)(c)**; and
- (d) the chief executive makes a summary of those terms and conditions, and their reasons for accepting them, publicly available.

(4) If accepted, the terms and conditions are treated as if they were an enforceable undertaking accepted under **section 66**.

Legislative history

1 June 2023	Introduction (Bill 257–1)
6 June 2023	First reading and referral to Economic Development, Science and Innovation Committee

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