



# Fuel Industry Act 2020

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Commencement see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Fuel Industry Act 2020.

**2 Commencement**

- (1) Sections 1 and 2, Part 1 (preliminary provisions), and Part 3 (proceedings and miscellaneous provisions) other than section 46 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (3) To the extent that they are not previously brought into force under subsection (2),—
  - (a) subparts 1 (terminal gate pricing) and 2 (fixed wholesale contractual terms) of Part 2 and section 46 (dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation) come into force 1 year after the date on which this Act receives the Royal assent; and
  - (b) subparts 3 (consumer information standards) and 4 (disclosure of information) of Part 2 come into force 18 months after the date on which this Act receives the Royal assent.
- (4) In this section, **provision** includes any item, or any part of an item, in Schedule 1.

**Part 1**

**Preliminary provisions**

**3 Purpose**

The purpose of this Act is to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**bulk storage facility** means a facility for the storage of 5 million litres or more of engine fuel

**chief executive** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Commission** means the Commerce Commission

**dealer** means a reseller that sells and supplies engine fuel through its own retail fuel sites using a brand owned by another person that is not an interconnected body corporate of the reseller

**distributor** means a reseller that is not a dealer

**end user**, in relation to engine fuel, means a person who is the ultimate consumer of that engine fuel

**engine fuel** has the same meaning as in the Energy (Fuels, Levies, and References) Act 1989

**fixed wholesale contract**—

- (a) means a wholesale contract that governs,—
  - (i) for a fixed period, the wholesale price and other conditions of sale and supply of engine fuel during the period; or
  - (ii) for a fixed amount of engine fuel, the wholesale price and other conditions of sale and supply for that engine fuel; but
- (b) does not include a wholesale contract for the sale and supply of engine fuel under the terminal gate pricing regime in subpart 1 of Part 2

**fuel industry participant** means a person that purchases, or sells and supplies, engine fuel other than as—

- (a) an end user; or
- (b) an incidental part of the hiring, leasing, or selling of motor vehicles

**interconnected**, in relation to bodies corporate, has the same meaning as in section 2(7) of the Commerce Act 1986

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**reseller**—

- (a) means a person that purchases, or intends to purchase, engine fuel from a wholesale supplier to sell and supply to another person; but
- (b) does not include a person that does so, or intends to do so, only as an incidental part of their business

**retail fuel site—**

- (a) means a place at which engine fuel is sold and supplied to an end user (for example, a petrol station or a truck stop); but
- (b) does not include a place at which the primary business is the hiring, leasing, or selling of motor vehicles; and
- (c) does not include a bulk storage facility

**retailer—**

- (a) means a person that carries on a business of selling and supplying engine fuel to end users; but
- (b) does not include a person who sells and supplies engine fuel only as an incidental part of their primary business of hiring, leasing, or selling motor vehicles

**specified engine fuel** has the meaning given in section 8(2)

**terminal gate price** has the meaning given in section 9

**wholesale contract** means a contract between a wholesale supplier and a reseller for the sale and supply of engine fuel

**wholesale supplier** means a person that sells and supplies engine fuel, as the whole or part of its business, to persons other than end users.

**5 Transitional, savings, and related provisions**

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

**6 Act binds the Crown**

This Act binds the Crown.

**7 Status of examples**

- (1) An example used in this Act or in an enactment made under this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

**Part 2****Requirements applying to fuel industry participants****Subpart 1—Terminal gate pricing****8 Application and definition**

- (1) This subpart applies to—

- (a) a wholesale supplier that has a right to draw specified engine fuel at a bulk storage facility as the owner or co-owner of the fuel; and
  - (b) a reseller.
- (2) In this subpart, **specified engine fuel**—
- (a) means regular grade petrol, premium grade petrol, or diesel (each within the meaning of regulations made under section 35 of the Energy (Fuels, Levies, and References) Act 1989); and
  - (b) includes any other engine fuel that is included in this definition by any regulations made under this subpart; but
  - (c) does not include any engine fuel referred to in paragraph (a) that is excluded from this definition by any regulations made under this subpart.

### **9 Obligation to post terminal gate price**

- (1) A wholesale supplier must publicly post a price (a **terminal gate price**) for each specified engine fuel that it has the right to draw at a bulk storage facility for the specified engine fuel.
- (2) The wholesale supplier must comply with any requirements of regulations made under this subpart relating to publicly posting a terminal gate price.
- (3) The wholesale supplier may change the terminal gate price for a specified engine fuel at any time.

### **10 Right to request same-day supply**

- (1) A reseller may, in accordance with any regulations made under this subpart, request a wholesale supplier to supply, at a bulk storage facility and on the day of the request, an amount of a specified engine fuel at its terminal gate price.
- (2) The reseller may withdraw the request at any time before the request is accepted by the wholesale supplier.

### **11 Wholesale supplier must supply at terminal gate price**

- (1) The wholesale supplier must supply the reseller with the requested amount at its terminal gate price, unless the wholesale supplier has reasonable grounds to refuse to supply.
- (2) The price payable by the reseller for the specified engine fuel must not exceed the terminal gate price posted at the time the request is made.
- (3) The wholesale supplier must comply with any terms and conditions prescribed by regulations made under this subpart that apply to the wholesale supplier.

### **12 Reasonable grounds to refuse to supply**

- (1) The wholesale supplier has **reasonable grounds to refuse to supply** only if—

- (a) the amount of specified engine fuel requested by the reseller is less than any minimum purchase amount prescribed by regulations made under this subpart; or
  - (b) the wholesale supplier reasonably believes that the reseller is unable or unlikely to comply with any terms and conditions prescribed by regulations made under this subpart that apply to the reseller; or
  - (c) the wholesale supplier reasonably believes that the reseller is unable or unlikely to receive or transport the requested amount in accordance with any health and safety requirements that apply in relation to the reseller, the specified engine fuel, or the bulk storage facility concerned; or
  - (d) the wholesale supplier reasonably believes that the reseller is unable to pay for the requested amount; or
  - (e) the wholesale supplier requires the requested amount—
    - (i) to meet its obligations under its contracts with end users or its fixed wholesale contracts; or
    - (ii) to meet forecast demand, over the period prescribed by regulations made under this subpart, for specified engine fuel sold by the wholesale supplier at retail fuel sites to end users; or
  - (f) any other grounds prescribed by regulations made under this subpart apply.
- (2) A wholesale supplier is not entitled to rely on subsection (1)(e) in respect of supply of specified engine fuel to an independent reseller during a prescribed time period except to the extent that supply of the specified engine fuel would require the wholesale supplier to supply more than the prescribed minimum supply amount to independent resellers during that period.

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### Example

The prescribed time period is a month. The prescribed minimum supply amount is 30,000 litres.

A wholesale supplier has, to date during the month, supplied 20,000 litres of the specified engine fuel to independent resellers.

An independent reseller requests the wholesale supplier to supply 15,000 litres of the specified engine fuel to the independent reseller during the month.

The wholesale supplier—

- is not entitled to rely on subsection (1)(e) in respect of 10,000 litres (when it will have supplied the prescribed minimum supply amount of 30,000 litres to independent resellers in the month):
- is entitled to rely on subsection (1)(e) in respect of 5,000 litres (being the amount exceeding the prescribed minimum supply amount).

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- (3) A wholesale supplier to which subsection (1)(e)(i) and (ii) applies (that is, the wholesale supplier requires the specified engine fuel that it has available to supply to meet obligations under its contracts with end users or its fixed whole-

sale contracts or to meet forecast demand) must provide or publish a notice in accordance with any regulations made under this subpart.

- (4) A wholesale supplier that has supplied the prescribed minimum supply amount to an independent reseller (or to independent resellers) during a prescribed time period must provide or publish a notice in accordance with any regulations made under this subpart.
- (5) For the purposes of this section, **independent reseller** means a reseller that is not—
  - (a) an interconnected body corporate of the wholesale supplier; or
  - (b) a party to a fixed wholesale contract with the wholesale supplier or with an interconnected body corporate of the wholesale supplier.

### 13 Regulations under this subpart

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) prescribing any engine fuels that are included in, or excluded from, the definition of specified engine fuel for the purpose of section 8(2); or
  - (b) prescribing requirements relating to posting terminal gate prices for the purpose of section 9(2), for example,—
    - (i) how terminal gate prices must be expressed (for example, as cents per litre and whether they are inclusive or exclusive of tax); or
    - (ii) how any additional charges must be itemised (for example, that additional charges, fees, duties, or taxes must be identified separately); or
    - (iii) where terminal gate prices must be posted (for example, on a wholesale supplier's Internet site); or
  - (c) prescribing requirements relating to requests by resellers under section 10; or
  - (d) prescribing the following terms and conditions for the purposes of sections 11(3) and 12(1)(b):
    - (i) the documentation that must be provided by wholesale suppliers to resellers for each sale at the terminal gate price:
    - (ii) providing for pre-certification to allow wholesale suppliers to determine before supply if the reseller is likely to pay or to meet health and safety requirements; or
  - (e) prescribing the minimum purchase amount for the purpose of section 12(1)(a); or
  - (f) prescribing the period over which demand may be forecast for the purpose of section 12(1)(e)(ii); or

- (g) prescribing any other grounds to refuse to supply for the purpose of section 12(1)(f); or
  - (h) prescribing the time period for the purpose of section 12(2); or
  - (i) prescribing the minimum supply amount for the purpose of section 12(2); or
  - (j) prescribing requirements relating to notices under section 12(3) and (4) (for example, the information that must be contained in the notice, the form and manner in which it must be published or provided, or to whom it must be provided).
- (2) The Minister may make a recommendation only if—
- (a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations:
  - (b) in the case of regulations specifying engine fuels that are included in, or excluded from, the definition of specified engine fuel,—
    - (i) the Minister has had regard to the impact of the regulations on incentives to innovate and to invest in markets for specified engine fuels; and
    - (ii) the Minister is satisfied that a significant proportion of the relevant engine fuel is used by motor vehicles (as defined in section 2(1) of the Land Transport Act 1998); and
    - (iii) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Act.

## Subpart 2—Fixed wholesale contractual terms

### 14 Application of this subpart

This subpart applies to fixed wholesale contracts for any engine fuel.

### 15 Transparency obligation

A wholesale supplier must ensure that the terms of its fixed wholesale contracts are expressed clearly, concisely, and in plain language.

### 16 Transparent pricing under fixed wholesale contracts

- (1) A wholesale supplier must ensure that—
- (a) its fixed wholesale contracts specify, in accordance with any regulations made under this subpart, the method (**pricing method**) by which the price of any engine fuel supplied under those contracts is to be calculated; and
  - (b) the price of any engine fuel supplied under its fixed wholesale contracts is calculated using that pricing method.

- (2) A wholesale supplier must not vary the pricing method specified in a fixed wholesale contract, except in accordance with any regulations made under this subpart.

### **17 Right to terminate certain fixed wholesale contracts**

- (1) A distributor may terminate a fixed wholesale contract with a wholesale supplier at any time after it has been in force for longer than the maximum duration prescribed by any regulations made under this subpart.
- (2) Subsection (1) does not apply if—
  - (a) it is reasonably necessary for the contract to be in force for longer than the prescribed maximum duration to enable, or to enable the recovery of, specific investment by the wholesale supplier for the benefit of the distributor; or
  - (b) the contract does not require the distributor to purchase a minimum amount of engine fuel from the wholesale supplier.
- (3) A distributor may terminate a fixed wholesale contract under subsection (1) by giving reasonable notice in writing to the wholesale supplier.

### **18 Maximum percentage of annual requirement of engine fuel that may be subject to exclusivity**

- (1) A provision in a fixed wholesale contract is of no effect to the extent that it requires the distributor to purchase from the wholesale supplier more than the maximum percentage (as prescribed by any regulations made under this subpart) of the distributor's annual requirement for engine fuel.
- (2) A wholesale supplier must not enter into a fixed wholesale contract that contains a provision of the kind described in subsection (1).
- (3) Subsections (1) and (2) do not apply if a provision of the kind referred to in subsection (1) is reasonably necessary to enable, or to enable the recovery of, specific investment by the wholesale supplier for the benefit of the distributor.
- (4) A wholesale supplier may, in any fixed wholesale contract with a distributor, require the distributor,—
  - (a) for the purpose of ensuring that the wholesale supplier can comply with subsections (1) and (2), to provide to the wholesale supplier the distributor's forecast of its annual requirement for supply of engine fuel under the contract; and
  - (b) to give reasonable notice to the wholesale supplier of the distributor's intention to take supply from another supplier.

### **19 Wholesale contractual terms that limit ability of reseller to compete**

- (1) A wholesale supplier must not enter into a fixed wholesale contract that contains a provision that—

- (a) is likely to limit the ability of the reseller who is a party to that contract to compete with the wholesale supplier or any other person; and
  - (b) is not reasonably necessary in order to protect the reasonable commercial interests of the supplier.
- (2) A provision that is prohibited under subsection (1) is of no effect.
- (3) In determining whether a provision of a wholesale contract is prohibited under subsection (1), a court must take into account—
- (a) the fixed wholesale contract as a whole; and
  - (b) any other matters that the court thinks are relevant.
- (4) Without limiting subsection (1)(a), the following are examples of provisions that may be likely to limit the ability of the reseller to compete with the wholesale supplier or any other person:
- (a) provisions that limit the ability of the reseller to obtain supply of fuel from another wholesale supplier following the end of the term of the fixed wholesale contract (for example, a provision that gives the wholesale supplier a right to renewal of the fixed wholesale contract):
  - (b) provisions that prevent the reseller from competing in any retail market that the wholesale supplier is active in, for example,—
    - (i) a provision preventing the reseller from competing in a certain geographic area; or
    - (ii) a provision that prioritises the allocation of engine fuel to the wholesale supplier's retail fuel sites over allocation to the reseller, in the event of a supply constraint:
  - (c) provisions that restrict the ability of the reseller to make independent decisions about the conduct of their business (for example, a provision that gives the wholesale supplier a first right of refusal for the transfer of ownership of the reseller's business).

## **20 Regulations under this subpart**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) relating to the specification of a pricing method in a fixed wholesale contract for the purpose of section 16(1)(a); or
  - (b) prescribing the circumstances in which a pricing method may be varied for the purpose of section 16(2) (for example, as to notice to the other party or the agreement of the other party); or
  - (c) prescribing the maximum duration for the purpose of section 17; or
  - (d) prescribing the maximum percentage for the purpose of section 18.
- (2) The Minister may make a recommendation under subsection (1) 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 Act.

### Subpart 3—Consumer information requirements

#### 21 Purpose of this subpart

The purpose of this subpart is to provide transparency in retail fuel prices so that end users are able to make informed purchasing decisions.

#### 22 Obligation to comply with consumer information requirements

A retailer, or the person responsible for displaying information at a retail fuel site, must comply with any requirements prescribed by regulations made under this subpart.

#### 23 Notice to take corrective action

- (1) If satisfied that a retailer, or a person responsible for displaying information at a retail fuel site, has failed to comply with any requirements prescribed by regulations under this subpart, the Commission may, by written notice given to the retailer or person, require the retailer or person to take any steps specified in the notice to—
  - (a) remedy the non-compliance; or
  - (b) ensure that the non-compliance is not continued or repeated.
- (2) A notice given under this section must specify a reasonable period (a **specified period**) within which the required steps must be taken.
- (3) A retailer, or person responsible for displaying information at a retail fuel site, given a notice under this section must comply with the notice within the specified period.

#### 24 Consumer information requirements may be prescribed

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements relating to the display of information at retail fuel sites about the price of engine fuels.
- (2) In particular, the regulations may prescribe—
  - (a) the engine fuels and kinds of retail fuel sites the regulations apply to; or
  - (b) the information in relation to the price of those engine fuels that must be displayed; or
  - (c) the circumstances in which the information must be displayed; or
  - (d) the form and manner in which the information must be displayed; or

- (e) any information that must not be displayed (for example, discounts on the price of engine fuels).
- (3) The Minister may make a recommendation under subsection (1) 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 purposes of this Act and this subpart.

#### Subpart 4—Disclosure of information

##### **25 Purposes of this subpart**

The purposes of this subpart are—

- (a) to enable the chief executive and the Commission to monitor the performance of engine fuel markets; and
- (b) to ensure that sufficient information is readily available to the chief executive and the Commission to assess whether the purpose of this Act is being met.

##### **26 Obligation to comply with information disclosure requirements**

- (1) Every fuel industry participant to which requirements prescribed by the regulations made under this subpart apply must comply with those requirements.
- (2) Without limiting subsection (1), a fuel industry participant must disclose information to the chief executive or the Commission 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 or the Commission (as the case may be).

##### **27 Information disclosure requirements may be prescribed**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements relating to record keeping, and the retention and disclosure of information, about engine fuel markets.
- (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; or
  - (b) the information that must be recorded and retained; or
  - (c) the methodologies that must be applied in recording the information, including—
    - (i) how common costs are to be allocated; and

- (ii) how assets are to be valued; or
  - (d) the circumstances in which information must be disclosed to the chief executive, the Commission, or both (for example, when requested by the chief executive or the Commission, at a specified time, or on the occurrence of a specified event); or
  - (e) requirements relating to the publication of information that is required to be disclosed to the chief executive or the Commission.
- (3) The Minister may make a recommendation under subsection (1) 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 Act and this subpart.

## **28 Publication of analysis or summary**

The chief executive or the Commission may,—

- (a) for the purposes of this subpart, analyse and summarise any information disclosed to them under this subpart; and
- (b) publish any resulting analysis or summary.

## **29 Information sharing between Commission and chief executive**

- (1) 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 subpart; and
  - (b) considers may assist the other for the purposes of this subpart.
- (2) The Commission and the chief executive may use any information, or a copy of any document, provided under this section for the purposes of this subpart.
- (3) 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).
- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) Nothing in this section limits the Privacy Act 2020.

## Part 3 Proceedings and miscellaneous provisions

### Subpart 1—Proceedings

#### **30 Pecuniary penalties**

- (1) The High Court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
  - (a) has contravened any of the following provisions:
    - (i) section 9 or 11 (terminal gate pricing);
    - (ii) section 15, 16, 18(2), or 19(1) (wholesale contractual terms);
    - (iii) section 22 (consumer information requirements); 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 High Court may, on the application of the Commission or the chief executive, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
  - (a) has contravened section 26 (information disclosure requirements); or
  - (b) has attempted to contravene that provision; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene that provision; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene that provision; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that provision; or
  - (f) has conspired with any other person to contravene that provision.
- (3) The amount of any pecuniary penalty under subsection (1) or (2) must not exceed,—
  - (a) in the case of an individual, \$500,000 for each act or omission; or
  - (b) in any other case, \$5,000,000 for each act or omission.

- (4) The District Court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
  - (a) has failed to provide or publish a notice as required by section 12(3) or (4); or
  - (b) has failed to comply with a notice given by the Commission under section 23(1).
- (5) The amount of any pecuniary penalty under subsection (4) must not exceed,—
  - (a) in the case of an individual, \$10,000 for each act or omission; or
  - (b) in any other case, \$30,000 for each act or omission.
- (6) In determining an appropriate penalty under this section, the court must have regard to,—
  - (a) in the case of a contravention referred to in subsection (1)(a) or (4)(b),—
    - (i) the nature and extent of the contravention; and
    - (ii) the nature and extent of any loss or damage suffered by any person because of the contravention; and
    - (iii) any gains made or losses avoided by the person in contravention; and
    - (iv) whether or not the person in contravention has paid an amount in compensation or taken other steps for reparation or restitution; and
  - (b) the circumstances in which the contravention or other act or omission took place (including whether it was intentional, inadvertent, or caused by negligence); and
  - (c) any previous contraventions of a similar nature; and
  - (d) any other relevant matter.
- (7) Where conduct by any person constitutes a contravention of 2 or more provisions referred to in subsection (1)(a), proceedings may be instituted under this Act against that person in relation to the contravention of any 1 or more of the provisions.
- (8) However, no person is liable to more than 1 pecuniary penalty under this section in respect of the same conduct.

Compare: 1986 No 5 s 80

### **31 Proceedings for pecuniary penalties**

In any proceedings under this subpart for a pecuniary penalty,—

- (a) the standard of proof is the standard of proof that applies in civil proceedings; and

- (b) the Commission may, by order of the court, obtain discovery and administer interrogatories.

Compare: 1986 No 5 s 79A

### **32 Court may order compensation**

- (1) If a court orders a person to pay a pecuniary penalty under section 30 in respect of a contravention of this Act, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention.
- (2) An application for orders under this section may be made by the Commission.
- (3) The application must be made as part of proceedings under section 30.
- (4) In proceedings under this section, the court may make any orders as to costs that it thinks fit.

Compare: 1986 No 5 s 87A

### *Application of Commerce Act 1986*

### **33 Application of Commerce Act 1986**

The following provisions of the Commerce Act 1986 apply to this subpart with any necessary modifications:

- (a) section 74A (Commission may accept undertakings):
- (b) section 74B (matters included in undertakings):
- (c) section 74C (enforcement of undertakings):
- (d) section 79 (evidence not otherwise admissible):
- (e) section 90 (conduct by employees, agents, and others):
- (f) section 98 (Commission may require person to supply information or documents or give evidence):
- (g) sections 98A and 98G (Commission's powers of search and seizure):
- (h) section 99 (powers of Commission to take evidence):
- (i) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (j) section 100A (Commission may state case for opinion of High Court).

### **34 Additional proceedings**

Proceedings brought under this Act are in addition to any proceedings brought under any other Act.

Compare: 2003 No 52 s 114

*Injunctions***35 Court may grant injunction**

- (1) The court may, on the application of the Commission or any other person, grant an injunction—
  - (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention of this Act (including any matter referred to in section 30(1) or (4)(b)):
  - (b) requiring a person to do an act or a thing if—
    - (i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and
    - (ii) the refusal or failure was, is, or would be a contravention of this Act.
- (2) The court may at any time rescind or vary an injunction granted under this sub-part.

Compare: 2013 No 69 s 480

**36 When court may grant restraining injunctions**

- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
  - (a) it is satisfied that the person has engaged in conduct of that kind; or
  - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) Subsections (1)(b) and (2) apply whether or not—
  - (a) the person has previously engaged in conduct of that kind; or
  - (b) there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Compare: 2013 No 69 s 481

**37 When court may grant performance injunctions**

- (1) A court may grant an injunction requiring a person to do an act or a thing if—
  - (a) it is satisfied that the person has refused or failed to do that act or thing; or
  - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing.

- (2) The court may grant an interim injunction requiring a person to do an act or a thing if in its opinion it is desirable to do so.
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing.
- (4) Subsections (1)(b) and (2) apply whether or not—
  - (a) the person has previously refused or failed to do that act or thing; or
  - (b) there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

### **38 Commission's undertaking as to damages not required**

- (1) If the Commission applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (2) In determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

Compare: 2013 No 69 s 482

### *Other orders*

### **39 Other orders**

- (1) Where, in any proceedings under this subpart, the court finds that a party to the proceedings has suffered, or is likely to suffer, loss or damage because of another person's contravention of any of the provisions of this Act, the court may (whether or not it grants an injunction or makes any other order under this subpart) make any order that it thinks appropriate against another party—
  - (a) who is the person in contravention; or
  - (b) who did any act referred to in section 30(1)(b) to (f) or (2)(b) to (f) in relation to the contravention.
- (2) Where a contract is entered into in contravention of this Act, or contains a provision that (under this Act) is of no effect, the court may, in any proceedings under this subpart, make an order—
  - (a) varying the contract as it thinks fit, but not so that it is inconsistent with the provisions of this Act; or
  - (b) cancelling the contract; or
  - (c) requiring any party to the contract to make restitution or pay compensation to any other party to the contract.
- (3) Nothing in subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 applies to any contract entered into in contravention of this Act or to any contract that contains a provision that (under this Act) is of no effect.

- (4) Despite any enactment or rule of law, if a contract is entered into in contravention of this Act because the contract contains a particular provision, or the contract contains a provision that (under this Act) is of no effect, the enforceability of any other provision of the contract is not affected.
- (5) A person who has suffered, or is likely to suffer, loss or damage because of another person's contravention of any of the provisions of subpart 2 of Part 2, or because they are party to a contract that contains a provision that (under subpart 2 of Part 2) is of no effect, may apply to the court for an order under this section (whether or not they are also party to any other proceedings under this subpart in relation to the contravention).

Compare: 1986 No 5 s 89

### *Jurisdiction*

#### **40 Jurisdiction of High Court**

In accordance with this subpart, the High Court must hear and determine the following matters:

- (a) applications for orders under section 74C of the Commerce Act 1986 to enforce undertakings:
- (b) proceedings to determine whether a provision of a wholesale contract is prohibited under section 19:
- (c) proceedings for the recovery of pecuniary penalties under section 30(1) or (2):
- (d) applications for orders for compensation under section 32:
- (e) applications for injunctions under section 35:
- (f) applications for orders under section 39.

Compare: 1986 No 5 s 75

#### **41 Jurisdiction of District Court**

In accordance with this subpart, the District Court must hear and determine the following matters:

- (a) proceedings for the recovery of pecuniary penalties under section 30(4):
- (b) proceedings for offences against section 42 (offences):
- (c) proceedings for offences against section 100 of the Commerce Act 1986.

Compare: 1986 No 5 s 76

### *Offences*

#### **42 Offences in respect of sections 98 and 98A of Commerce Act 1986**

- (1) A person must not,—

- (a) without reasonable excuse, refuse or fail to comply with a notice under section 98 of the Commerce Act 1986; or
  - (b) in purported compliance with such a notice, provide information, or produce a document, or give evidence, or authorise the making of a statement in a document, knowing it to be false or misleading; or
  - (c) resist, obstruct, or delay an employee of the Commission acting under a warrant issued under section 98A of the Commerce Act 1986.
- (2) A person must not attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- (3) A person must not, having been required to appear before the Commission in accordance with section 98(1)(c) of the Commerce Act 1986,—
- (a) without reasonable excuse, refuse or fail to appear before the Commission to give evidence; or
  - (b) refuse to take an oath or make an affirmation as a witness; or
  - (c) refuse to answer any question; or
  - (d) refuse to produce to the Commission any book or document that that person is required to produce.
- (4) A person who contravenes subsection (1), (2), or (3) commits an offence and is liable on conviction to,—
- (a) in the case of an individual, a fine not exceeding \$100,000;
  - (b) in any other case, a fine not exceeding \$300,000.

Compare: 1986 No 5 s 103

#### *Other matters*

#### **43 Onus of proving certain provisions are reasonably necessary**

In any proceedings relating to section 17, 18, or 19, if the defendant claims that a provision of a fixed wholesale contract is reasonably necessary for a reason referred to in section 17(2)(a), 18(3), or 19(1)(b), it is for the defendant to prove, on the balance of probabilities, that the provision is reasonably necessary for that reason.

#### **44 Limitation period for proceedings**

- (1) Proceedings for offences against section 42 of this Act or against section 100 of the Commerce Act 1986 may be commenced no later than 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) Any civil proceedings relating to a contravention of any of the provisions of this Act may be commenced—
- (a) no later than 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered; and

- (b) no later than 10 years after the matter giving rise to the contravention.

### Subpart 2—Miscellaneous provisions

#### **45 Application of Commerce Act 1986**

The following provisions of the Commerce Act 1986 apply to this Act with any necessary modifications:

- (a) section 13 (termination of appointment of members):
- (b) section 15 (meetings of Commission):
- (c) section 16 (chairperson may direct Commission to sit in Divisions):
- (d) section 25 (functions of Commission in relation to dissemination of information):
- (e) sections 101 (notices) and 102 (service of notices):
- (f) section 106 (proceedings privileged):
- (g) section 106A (judicial notice):
- (h) section 109 (Commission may prescribe forms).

#### **46 Dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation**

- (1) This section applies to any dispute between a wholesale supplier and a reseller that arises from the performance or non-performance of a duty or the exercise of a right under subpart 1 or 2 of Part 2.
- (2) If a dispute to which this section applies is unable to be resolved by agreement between the parties, the dispute must be referred to mediation.
- (3) Mediation under subsection (2) must be carried out in accordance with the procedure prescribed in any regulations made under this subpart.
- (4) If the parties are unable to resolve the dispute at mediation within any time frame prescribed by regulations made under this subpart, either party may refer the dispute to arbitration.
- (5) If a dispute is referred to arbitration under subsection (2), the provisions of the Arbitration Act 1996 apply to that dispute.
- (6) Nothing in this section and no action taken under this section prevents proceedings from being brought by the Commission against a person for a failure to comply with any of that person's obligations under this Act.

Compare: 2013 No 91 s 117

#### **47 Other regulations**

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

- (a) prescribing procedures for the purpose of section 46 (dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation):
  - (b) specifying or setting out a method of calculation for how mediation costs incurred under section 46 must be split between the parties:
  - (c) prescribing 1 or more dispute resolution schemes for the purpose of section 46:
  - (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Minister may make a recommendation under this section only if the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations.

#### **48 Differential regulations**

- (1) Regulations made under this Act may make different provision for different cases on any differential basis.
- (2) Without limiting subsection (1), regulations made under this Act—
- (a) may prescribe requirements for a particular engine fuel or a class or classes of engine fuels; or
  - (b) may prescribe different requirements for different engine fuels or classes of engine fuels; or
  - (c) may prescribe different requirements for different fuel industry participants or other persons, or classes of such persons; or
  - (d) may prescribe different requirements for different retail fuel sites or classes of such sites.

#### **49 Chief executive may approve forms**

For the purposes of this Act, the chief executive may approve forms of applications, notices, and other documents required for the purposes of this Act.

Compare: 1986 No 5 s 109

## Schedule 1

### Transitional, savings, and related provisions

s 5

#### Part 1

##### Provisions relating to this Act as enacted

#### 1 Interpretation in this Part

In this Part, **commencement**, in relation to a provision of this Act, means the commencement of the provision.

#### 2 Application of subpart 2 of Part 2 to existing contracts

- (1) Section 17 (right to terminate certain fixed wholesale contracts) applies to contracts entered into before commencement in the same way in which it applies to contracts entered into on or after commencement.
- (2) The rest of subpart 2 of Part 2 does not apply to an existing contract until the earlier of—
  - (a) the date appointed by the Governor-General by Order in Council for the purpose of this clause:
  - (b) 2 years after the date on which this Act receives the Royal assent.
- (3) The Governor-General may, by Order in Council, appoint a date for the purpose of this clause.

#### 3 Transitional provision relating to references to Privacy Act 2020

- (1) This clause applies if an Order in Council is made under section 2(3)(b) bringing the provisions of subpart 4 of Part 2 into force before 1 December 2020.
- (2) Until the close of 30 November 2020, section 29(3) and (5) applies as if the references to the Privacy Act 2020 were to the Privacy Act 1993.

#### Legislative history

30 June 2020	Introduction (Bill 301–1), first reading and referral to Finance and Expenditure Committee
21 July 2020	Reported from Finance and Expenditure Committee (Bill 301–2)
4 August 2020	Second reading, committee of the whole House, third reading
11 August 2020	Royal assent

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