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Gas Amendment Act 2004

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Commerce.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Gas Amendment Act 2004.
- (2) In this Act, the Gas Act 1992 is called “the principal Act”.

2 Commencement

- (1) Subpart 3 of Part 4A of the Gas Act 1992 (as inserted by section 5 of this Act) comes into force on a date to be appointed by the Governor-General by Order in Council on the recommendation of the Minister of Energy in accordance with section 3 of this Act.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Subsection (1) was amended, with effect as from 18 October 2004, by section 201(1) Crown Entities Act 2004 (2004 No 115) by substituting the expression

“Subpart 3” for the expression “Subpart 2”. See section 201(2) of that Act as to this Act being deemed to be, and always to have been, a valid Act of Parliament.

Commencement of Energy Commission provisions

3 Process to apply before Energy Commission provisions may be commenced

- (1) The Minister of Energy may recommend the making of the Order in Council under section 2(1) only if—
 - (a) the Minister has publicly notified his or her intention to do so by publishing in the *Gazette* a notice—
 - (i) stating that the Minister is proposing to recommend that the Order in Council be made, when the Minister proposes that the Order in Council will come into force, and that the effect of the Order in Council will be to establish the Energy Commission under the Gas Act 1992; and
 - (ii) stating the reason or reasons that the Minister proposes recommending the making of the Order in Council or stating where copies of that statement may be obtained; and
 - (iii) inviting members of the public to make submissions on the proposal; and
 - (iv) stating the last date on which the Minister will receive submissions on the proposal (which date must be no less than 28 days after the date of the notice’s publication); and
 - (b) the Minister has considered all submissions on the proposal that are received by him or her on or before the date stated under paragraph (a)(iv); and
 - (c) at least 3 months have expired since the date of the notice’s publication; and
 - (d) no more than 6 months have expired since the date of the notice’s publication or, if the Minister renews the period by notice in the *Gazette* before the end of that 6 months, no more than 12 months have expired since the date of the notice’s publication.
- (2) If the Minister of Energy commences a notice and submission process under subsection (1) but subsequently decides not to

recommend the making of an Order in Council, he or she must publish a further notice in the *Gazette* stating that decision and terminating the notice and submission process, as soon as practicable after making that decision.

- (3) Subsection (1) does not apply if the Minister considers that it is necessary or desirable in the public interest that the Order in Council be made urgently.
- (4) The Minister may carry out more than 1 notice and submission process under subsection (1), and those processes may be carried out concurrently or consecutively.

Amendments to principal Act

4 Title amended

The Title of the principal Act is amended by inserting, after the words “of gas”, the words “and the gas industry”.

5 New Part 4A inserted

The principal Act is amended by inserting, after section 43, the following Part:

“Part 4A

“Governance of Gas Industry

“Subpart 1—General and regulation-making powers

“Preliminary provisions

“43A Purpose

The purpose of this Part is to provide for the governance of the gas industry.

“43B Outline of Part

- “(1) Subpart 1 principally contains regulation-making powers that can be used for the governance of the gas industry.
- “(2) Subpart 2 enables co-regulation of the gas industry by the Government and an industry body.
- “(3) Subpart 3 enables regulation of the gas industry by the Government and a Crown entity called the Energy Commission.

- “(4) Subpart 2 expires if subpart 3 is brought into force by Order in Council.
- “(5) Subpart 4 contains exemptions from the restrictive trade practice provisions of the Commerce Act 1986.
- “(6) This section is intended only as a guide to the general scheme and effect of this Part.

“**43C Outline of regulation-making powers**

- “(1) In this subpart, the principal regulation-making powers are as follows:

Type of regulations	How they can be made
Regulations for terms and conditions of access to Maui pipeline Regulations on retail and consumer issues	They can be made at any time, (whether or not the industry body has been approved, or the Commission is established, or has made a recommendation).
Regulations on wholesale market	They can be made only if— (a) an industry body is approved (and then only to implement the effect of a recommendation by that body); or
Regulations on gas processing facilities	(b) the Commission is established (and then only for transitional purposes or to implement the effect of a recommendation by the Commission).
Regulations on transmission, and distribution of gas (other than on terms and conditions of access to Maui pipeline)	

“(2) This section is intended only as a guide to the general scheme and effect of the principal regulation-making powers in this Part.

“**43D Interpretation**

1) In this Part, unless the context otherwise requires,—

“**board**, in relation to the industry body, means the directors, trustees, or other persons who constitute the governing board of the industry body

“**Commission** means the Energy Commission to be established under section 43ZZH

“**constitution**, in relation to the industry body, means its constitution or trust deed or other similar governing document

“**domestic consumer** means any person who purchases gas in respect of any dwellinghouse

“**gas governance** regulations means regulations made under sections 43F to 43T

“**gas producer** means a person who supplies gas that is transmitted on gas transmission or distribution pipelines

“**GPS objectives and outcomes** means objectives and outcomes set under section 43ZO

“**industry body** means the body approved by Order in Council under section 43ZL

“**industry participant** means—

“(a) a gas retailer:

“(b) a gas distributor:

“(c) a gas producer:

“(d) a pipeline owner:

“(e) a gas wholesaler:

“(f) a person who purchases gas directly from a gas producer or gas wholesaler or on any wholesale gas market:

“(g) a service provider appointed under any gas governance regulations:

“(h) a gas metering equipment owner:

“(i) a data administrator that provides data administration services to the gas industry,—

but does not include the industry body or the Commission (even to the extent that the industry body or the Commission may be acting as

a service provider after an appointment under gas governance regulations)

“**member**,—

“(a) in relation to the board of the industry body, means a director or trustee or other person occupying a similar position by whatever name called; and

“(b) in relation to the industry body itself, means a share-holder or beneficiary or other person occupying a similar position by whatever name called

“**publicise**, in relation to a document, means,—

“(a) to make the document available to the public, at no cost, on a website maintained by or on behalf of the industry body or the Commission, as the case may be, at all reasonable times; and

“(b) to give notice of the document in the *Gazette*

“**recommending body**, in relation to a recommendation for gas governance regulations or rules, means the industry body, the Commission, or the Minister who makes the recommendation

“**rules and gas governance rules** mean rules made under section 43Q

“**Rulings Panel** means any Rulings Panel established under gas governance regulations

“**small consumer** means a consumer who is supplied with less than 10 terajoules of gas per year.

“*Complaints resolution system*

“43E **Complaints resolution system**

“(1) Every gas distributor and every gas retailer must participate in a complaints resolution system that is approved by the Minister for the purpose of addressing complaints relating to those gas retailers and gas distributors by all or any of—

“(a) small consumers (including potential small consumers):

“(b) owners and occupiers of land into, through, or against which pipelines have been laid down or placed.

“(2) This section applies to a gas distributor or a gas retailer provided the Minister has approved, by notice in the *Gazette*, 1 or more complaints resolution systems that apply to that gas distributor or gas retailer.

“Gas industry regulation-making powers

“43F Gas governance regulations for wholesale market, processing facilities, transmission, and distribution of gas

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the purposes in subsection (2).

“(2) The purposes are—

“Wholesale gas market

“(a) providing for the establishment and operation of wholesale markets for gas, including for—

“(i) protocols and standards for reconciling and balancing gas:

“(ii) clearing, settling, and reconciling market transactions:

“(iii) the provision and disclosure of data and other market information:

“(iv) minimum prudential standards of market participation:

“(v) minimum standards of market conduct:

“(vi) arrangements relating to outages and other security of supply contingencies:

“Processing facilities

“(b) setting reasonable terms and conditions for access to, and use of, gas processing facilities where—

“(i) this is reasonably necessary to allow new fields to be developed; and

“(ii) spare capacity is available or could be made available if the person accessing or using the facilities paid the reasonable costs (including the costs of capital) of providing the additional capacity:

“Transmission and distribution of gas

“(c) prescribing reasonable terms and conditions for access to transmission or distribution pipelines:

“(d) requiring expansions, upgrades, or service quality improvements to gas transmission pipelines including specifying how these will be paid for.

“43G Other gas governance regulations

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the purposes in subsection (2).

“(2) The purposes are

“Complaints resolution system

“(a) providing for the establishment of, or participation by gas distributors and gas retailers in, a complaints resolution system (that may include codes of practice) for the purpose of addressing complaints by all or any of small consumers (including potential small consumers), or owners and occupiers of land into, through, or against which pipelines have been laid down or placed, relating to gas retailers and gas distributors, or setting out minimum requirements in relation to that system, including—

“(i) provision for compensation up to a maximum of \$20,000 to be awarded, and other actions to be taken, by the complaints resolution agency in relation to those complaints:

“(ii) provision for rights of review, or rights of appeal on a question of law only, in relation to decisions relating to those complaints:

“Prepayment meters

“(b) requiring gas retailers to offer prepayment meters to domestic consumers at a reasonable cost, and prescribing conditions on which those meters must be offered, with the objective of ensuring that all domestic consumers who wish to pay for gas in advance have the option to do so at reasonable cost:

“Ability of consumers to choose preferred gas retailer

“(c) requiring all gas retailers to comply with, and give effect to, a system or set of rules that will enable any consumer or class of consumer to choose, and alternate, between competing gas retailers, with the objective of promoting competition in gas retail markets:

- “Transition arrangements for insolvent gas retailers*
- “(d) providing a system of transition arrangements for consumers in the event of a gas retailer becoming insolvent, and requiring industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other gas retailers:
- “Disclosure of information*
- “(e) providing for the disclosure of information by gas transmitters, distributors, and retailers on tariff and other charges:
- “Terms and conditions of access*
- “(f) providing for terms and conditions of access to gas meters by gas retailers:
- “Information on customer accounts*
- “(g) providing for information on customer accounts:
- “Consumer contracts*
- “(h) providing for minimum terms and conditions in contracts between domestic consumers and gas distributors or gas retailers:
- “Dispute resolution procedures*
- “(i) providing procedures for resolving disputes between industry participants:
- “(j) providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person:
- “Enforcement of gas governance regulations*
- “(k) providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedure of that person or court:
- “Processes*
- “(l) providing for processes for settling particular issues within the gas industry that may result in recommendations for gas governance regulations or rules, and requiring compliance by industry participants, the industry body, and the Commission with those processes,

including compliance with requirements to produce documents as part of those processes.

“43H Low fixed charge tariff option for domestic consumers

- “(1) The objective of this section is to enable the making of regulations to ensure that gas providers offer a low fixed charge tariff option or options for delivered gas to domestic consumers that will assist low-use consumers and encourage energy conservation.
- “(2) In this section,—
- “**delivered gas** includes components like gas supply, line function services, customer service, meter provision, and meter reading services
- “**fixed charge** means a charge levied for each customer connection in currency per time period (for example, cents per day)
- “**gas provider** means a gas retailer or other business that contracts with consumers to sell delivered gas or a component of delivered gas.
- “(3) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the following purposes:
- “(a) requiring gas providers to make available to domestic consumers 1 or more tariff options that include a fixed charge for delivered gas to dwellinghouses at not more than a specified amount:
- “(b) regulating the variable (cents per kilowatt hour) charges in those required tariff options to ensure that low-use domestic consumers would pay a lower total charge on the required tariff option than on any similar alternative tariff option available from that gas provider:
- “(c) regulating other charges and other terms and conditions of the contracts to which the low fixed charge tariff options in paragraph (a) relate, to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:

- “(d) setting rules as to the offering, supply, advertisement, promotion, availability, and unbundling of regulated charging options:
 - “(e) specifying criteria for the Minister to exempt gas providers, or gas providers in relation to particular areas, from the application of the regulations if, in the opinion of the Minister, the gas providers materially comply with the objective of this section.
- “(4) No gas provider that is a customer trust or a community trust may pay a domestic consumer who is on the required tariff option a different rebate only because the consumer is on the required tariff option.
- “(5) Each trustee of a gas provider that contravenes subsection (4) commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000.
- “(6) If the components that make up the delivered gas are unbundled, regulations may be made under subsection (3) for each component, or group of components, of delivered gas to ensure that the objective of this section is achieved for the aggregate of all the components.
- “(7) Subsection (6) applies regardless of whether different components of delivered gas are supplied by the same gas provider.
- “(8) Regulations made under subsection (3) may provide for the way in which the total charge of the low-use domestic consumer is to be assessed, which may be (without limitation) calculated with reference to national data or the data relating to any gas retailer or gas distributor.
- “(9) The Governor-General may, for the purpose of assisting retailers to deliver low fixed charge tariff options, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the following purposes:
- “(a) regulating all or any charges charged by gas distributors to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:
 - “(b) regulating the terms and conditions under which gas distributors supply their services in relation to domestic

consumers to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:

“(c) setting rules as to the offering, availability, supply, and unbundling of gas distributors’ services:

“(d) regulating the charging, offering, supply, and availability of delivered gas by other gas providers.

“(10) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations providing for the supply and collection of information from gas providers and gas distributors—

“(a) about contracts, offers, advertising, or promotion relating to the supply of delivered gas, or components of delivered gas, to domestic consumers; or

“(b) information that is necessary for the purposes of calculating the total charge for the low-use domestic consumer.

*“Process for making recommendations for gas
governance regulations*

“43I Which gas governance regulations can be made if there is no industry body or Commission

If there is no industry body and no Commission, the Minister may recommend only—

“(a) regulations prescribing terms and conditions for access to the Maui pipeline under section 43F(2)(c):

“(b) regulations under section 43G, section 43H, section 43S, or section 43T.

“43J Which gas governance regulations can be made if there is industry body but no Commission

“(1) If there is an industry body but no Commission, the Minister may recommend only—

“(a) regulations prescribing terms and conditions for access to the Maui pipeline under section 43F(2)(c):

“(b) other gas governance regulations under section 43F but only if the recommendation—

- “(i) implements the effect of a recommendation of the industry body; and
 - “(ii) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail):
 - “(c) regulations under section 43G, section 43H, section 43S, or section 43T.
- “(2) If there is an industry body but no Commission, the Minister must not recommend gas governance regulations under paragraph (a) or paragraph (c) or paragraph (h) of section 43G(2) unless the industry body has been given a reasonable opportunity to recommend gas governance regulations under those paragraphs.

“43K Which gas governance regulations can be made if there is Commission

If there is a Commission, the Minister may recommend any gas governance regulations but only if—

- “(a) the recommendation is for transitional purposes if the Commission has not yet made a recommendation to the Minister on the matter; or
- “(b) the recommendation—
 - “(i) implements the effect of a recommendation of the Commission; and
 - “(ii) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).

“43L Consultation before making recommendation for gas governance regulations

- “(1) Before making a recommendation for any gas governance regulations, the recommending body must—
- “(a) undertake an assessment under section 43N; and
 - “(b) consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and
 - “(c) give those persons the opportunity to make submissions; and

- “(d) consider those submissions.
- “(2) However, subsection (1) does not apply to the Minister if the Minister’s recommendation—
 - “(a) implements the effect of a recommendation of the industry body or the Commission; and
 - “(b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).
- “(3) Before making a recommendation concerning regulations under section 43G(2)(a) to (h) or section 43H, the Minister must consult with the Minister of Consumer Affairs.
- “(4) This section is subject to section 43P in the case of urgent regulations.
- “(5) A regulation that is found by a court to be invalid solely because of a contravention of this section may not be declared to be invalid with effect earlier than 6 months after the date of the declaration.

“43M Other process for making recommendations for gas governance regulations

- “(1) The following also applies to the making of recommendations for gas governance regulations:
 - “(a) sections 43ZN to 43ZP apply to a recommendation of the industry body;
 - “(b) sections 43ZZN and 43ZZO apply to a recommendation of the Commission;
 - “(c) the industry body or the Commission must undertake an assessment under section 43N before making a recommendation;
 - “(d) the Minister must, before making a recommendation for gas governance regulations for which a recommendation of the industry body is not required under section 43J, have regard to any recommendation that the industry body may have made about those regulations.
- “(2) Subsection (1)(c) is subject to section 43P in the case of urgent regulations.

“43N Assessment of proposed gas governance regulations

- “(1) Before making a recommendation to the Minister for a gas governance regulation, the industry body or the Commission must—
- “(a) seek to identify all reasonably practicable options for achieving the objective of the regulation; and
 - “(b) assess those options by considering—
 - “(i) the benefits and costs of each option; and
 - “(ii) the extent to which the objective would be promoted or achieved by each option; and
 - “(iii) any other matters that the industry body or the Commission considers relevant; and
 - “(c) ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance); and
 - “(d) prepare a statement of the proposal for the purpose of consultation under section 43L(1).
- “(2) The statement of the proposal referred to in subsection (1)(d) must contain—
- “(a) a detailed statement of the proposal; and
 - “(b) a statement of the reasons for the proposal; and
 - “(c) an assessment of the reasonably practicable options, including the proposal, identified under subsection (1); and
 - “(d) other information that the industry body or the Commission considers relevant.
- “(3) The industry body or the Commission is not required to comply with subsection (1) if it is satisfied that the effect of the recommendation is minor and will not adversely affect the interests of any person in a substantial way.

“43O Process after making recommendation for gas governance regulation

- “(1) The industry body and the Commission must, no later than 10 working days after it gives a recommendation to the Minister for a gas governance regulation, publicise—
- “(a) that recommendation; and

“(b) the assessment completed under section 43N.

“(2) The Commission or the Minister must advise the Commerce Commission as soon as practicable after making any recommendation for a gas governance regulation that is likely to affect any powers of the Commerce Commission under Part 4 or sections 70 to 72 of the Commerce Act 1986.

“43P Urgent regulations

Sections 43L and 43N (which relate to consultation and assessments) do not apply if the recommending body considers that it is necessary or desirable in the public interest that the proposed regulations be made urgently and, in this case, the recommendation must state that it is made in reliance on this section and then, within 6 months of those regulations being made,—

“(a) the recommending body must—

“(i) comply with sections 43L and 43N; and

“(ii) make a recommendation to the Minister on whether the regulations should be revoked, replaced, or amended; and

“(iii) no later than 10 working days after making the recommendation, publicise the recommendation and the assessment completed under section 43N; and

“(b) after receiving that recommendation, the Minister must publish a notice in the *Gazette* stating whether or not he or she decides to recommend the revocation, replacement, or amendment of the regulations and explaining the reasons for that decision, or stating where copies of that explanation may be obtained,—

and then, within a further 6 months, the Minister must make that recommendation.

“Gas governance rules

“43Q Gas governance rules

“(1) The Minister may make a rule for all or any of the purposes for which a gas governance regulation may be made.

- “(2) In deciding whether to make a rule rather than recommend the making of a gas governance regulation, the Minister must have regard to only—
- “(a) the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals:
 - “(b) the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle:
 - “(c) the application of the rule, including—
 - “(i) whether the rule applies principally to a particular group (eg, industry participants) rather than the general public:
 - “(ii) whether the benefits of publication in accordance with section 43R rather than the Acts and Regulations Publication Act 1989 outweigh the costs of publication by that method:
 - “(d) the expertise and rule-making procedures of the recommending body.
- “(3) If the Minister makes, or the recommending body recommends, a rule for a purpose for which a gas governance regulation may be made, sections 43I to 43P apply (with necessary modifications) as if the rule were a gas governance regulation.
- “(4) Section 43R applies to the method of making the rule.
- “(5) A rule is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989).
- “(6) To the extent that a rule is inconsistent with a gas governance regulation, the rule is subject to the gas governance regulation.
- “(7) A rule that is found by a court to be invalid solely because of a contravention of subsection (2) may not be declared to be invalid with effect earlier than 6 months after the date of the declaration.

“43R Method of making gas governance rules

- “(1) A rule may be made under section 43Q by the Minister publishing a notice in the *Gazette* that states—

- “(a) the empowering provision for the gas governance regulation in relation to which the rule is made and a brief description of the nature of the rule; and
 - “(b) where copies of the rule are available for inspection and purchase.
- “(2) The notice in the *Gazette* need not contain the rule.
- “(3) A rule comes into force 28 days after the date on which it is notified in the *Gazette* or on any later date stated in the notice.
- “(4) The Minister and the recommending body must make all of the rules made under section 43Q available to the public by making copies of them available—
- “(a) for inspection, free of charge,—
 - “(i) at the head office of the Ministry and the principal office of the recommending body (during ordinary office hours); and
 - “(ii) on the Internet in an electronic form that is publicly accessible (at all reasonable times); and
 - “(b) for purchase at a reasonable price.

“Supplementary provisions

“43S Supplementary empowering provision for regulations and rules

- “(1) Any regulations or rules made under this subpart may—
- “(a) provide for 1 or more persons or bodies or groups of persons to carry out functions in relation to those regulations or rules, and for matters concerning their establishment, constitution, functions, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration and operation, funding by industry participants, and reporting requirements:
 - “(b) provide for systems, processes, and procedures (including dispute resolution procedures), and the keeping, supply, and disclosure of information, in relation to any of the matters specified in this subpart:
 - “(c) prescribe the form and manner in which information is to be disclosed:

- “(d) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner, by persons belonging to any specified class of persons:
 - “(e) prescribe when and for how long information must be disclosed:
 - “(f) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements in regulations or rules made under this subpart:
 - “(g) provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:
 - “(h) provide for transitional provisions:
 - “(i) provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.
- “(2) Regulations or rules that may be made in respect of all industry participants or classes of industry participants may be made in respect of all or any of the persons in that class and in respect of all or part of their business.
- “(3) In this subpart, unless the context otherwise requires, **terms and conditions** includes both contractual matters and other types of arrangements and requirements.

“**43T Supplementary empowering provision for regulations**

Any regulations made under this subpart may provide for offences that are punishable on summary conviction for a contravention of those regulations, or of rules made under section 43Q, and provide for fines not exceeding \$20,000 for those offences.

“Provisions that apply if gas governance regulations or rules are in force

“**43U Party must co-operate with investigations**

Every industry participant must co-operate fully with any investigation carried out, for the purposes of monitoring or en-

forcing any gas governance regulations or rules, by the industry body or the Commission, or by an investigator appointed under those regulations,—

- “(a) by providing, within any reasonable time specified by the industry body, Commission, or investigator, all information, papers, recordings, and documents concerning the matter that are in the possession, or under the control, of the industry participant and that are requested for the purpose of the investigation; and
- “(b) by permitting its officers or other employees to be interviewed (which interview may be recorded) and by ensuring as far as possible that they are made available for interview and answer truthfully and fully any questions put to them; and
- “(c) by giving to the industry body or the Commission, or any person authorised by the industry body or the Commission, at all reasonable times, full access to any premises (subject to complying with any safety requirements that apply to visitors to those premises) at which the industry participant carries on business or maintains records; and
- “(d) by giving all other assistance that may be reasonable and necessary to enable the matter to be fully investigated.

“43V Privileges protected

- “(1) Section 43U does not limit any claim for legal professional privilege.
- “(2) A person is not excused from answering a question or giving any information or document on the ground that to do so may incriminate or tend to incriminate that person.
- “(3) However, a self-incriminating statement or document made or given—
 - “(a) is not admissible as evidence in criminal or civil proceedings against that person; and
 - “(b) may not be used against the person in any proceedings before the Rulings Panel, except for information provided under any self-reporting obligation under those regulations.

“43W Limits on investigation powers

- “(1) The industry body or the Commission may authorise, in writing, any person or persons to exercise all or any of the powers referred to in section 43U(b) or (c) in respect of an industry participant.
- “(2) An authorised person must, before entering premises under section 43U(c), give reasonable notice to the owner or occupier of the premises (at least 4 days before entry) of his or her intention to enter the premises.
- “(3) An authorised person must, on first entering any premises under section 43U(c) and, if requested, at any later time, produce to the person apparently in charge of the premises the authorisation under subsection (1).
- “(4) If an authorised person enters any premises under section 43U(c) and is unable, despite reasonable efforts, to find any person apparently in charge, the authorised person must, before leaving the premises, leave a written notice stating—
- “(a) the authorised person’s identity; and
 - “(b) the address of premises where the authorised person may be contacted; and
 - “(c) the date and time of entry; and
 - “(d) the reasons for entering.
- “(5) Section 43U(c) does not authorise an authorised person to enter a home, except with the consent of an occupier or under the authority of a warrant.
- “(6) An authorised person may apply for a warrant by written application on oath.
- “(7) A District Court Judge, Justice, or Community Magistrate, or a Court Registrar (not being a constable) who is satisfied that there are reasonable grounds to believe that it is necessary, for the purpose of ascertaining whether or not an industry participant has breached, or may breach, the gas governance regulations or rules, for an authorised person to search any place may, by warrant, authorise that person to search a place specified in the warrant.

“43X Rulings Panel may make certain orders

- “(1) A Rulings Panel may, after considering any complaint or matter referred to it in respect of any allegation that an industry participant has breached any gas governance regulations or rules,—
- “(a) decide that no action should be taken:
 - “(b) issue a private warning or reprimand to an industry participant:
 - “(c) issue a public warning or reprimand to an industry participant:
 - “(d) impose additional or more stringent record-keeping or reporting requirements under or in connection with any gas governance regulation or rule:
 - “(e) order an industry participant to pay a civil pecuniary penalty not exceeding \$20,000:
 - “(f) order an industry participant to pay a sum by way of compensation to any other person:
 - “(g) order an industry participant that is found not to be complying with the gas governance regulations or rules to take any action that is necessary to restore it to a position of compliance:
 - “(h) make an order terminating or suspending the rights of an industry participant under any gas governance regulation or rule:
 - “(i) make orders regarding the reasonable costs of any investigations or proceedings:
 - “(j) propose to the industry body or the Commission that it recommend to the Minister that a change should be made to a regulation or rule.
- “(2) In making any such decision, the Rulings Panel must take into account its previous decisions in respect of any similar situations previously dealt with by the industry body, the Commission, or the Rulings Panel.

“43Y Restriction of remedies

- “(1) The remedies provided for in section 43X and in any gas governance regulations and rules are the only remedies in respect of a breach of those regulations or rules.

- “(2) No one can bring an action for breach of statutory duty that arises out of, or relates to, a breach of those regulations or rules by an industry participant.
- “(3) This section does not limit the recovery of—
- “(a) a debt owing under any gas governance regulations or rules; or
 - “(b) damages in tort other than breach of statutory duty, for breach of contract, or for any other wrong, that arises from any act or omission that is also a breach of those regulations or rules.

“43Z Limit on tort claims against service providers

- “(1) No industry participant may bring an action in tort against a service provider that arises out of, or relates to, any act, matter, or thing done, or required or omitted to be done, by the service provider in its role as service provider, provided that the act or omission is not a fraudulent act or omission by the service provider.
- “(2) **Service provider** means a service provider appointed under the gas governance regulations.

“Appeals

“43ZA Appeals on ground of lack of jurisdiction

An industry participant affected by a decision of the Rulings Panel may appeal that decision to the High Court on the ground of lack of jurisdiction.

“43ZB Judicial review not precluded

Nothing in this Act limits access to the courts in an action for judicial review.

“43ZC Appeals on question of law in relation to decisions by industry body, Commission, or Rulings Panel

- “(1) There is a right of appeal to the High Court on a question of law only against a decision of the industry body, the Commission, or the Rulings Panel under any gas governance regulations or rules.

- “(2) The appeal must be made by giving notice of appeal within 20 working days after the date of the decision appealed against or within any further time that the Court allows.

“43ZD Right of appeal against suspension or termination orders

- “(1) An industry participant in respect of which a suspension order or termination order is made may appeal to the High Court against the order.
- “(2) The appeal must be made by giving notice of appeal within 20 working days after the date of the order appealed against or within any further time that the Court allows.

“43ZE Persons entitled to appeal

The industry body, the Commission, and the following industry participants, may exercise a right of appeal under this Part:

- “(a) an industry participant in whose favour or against whom a decision or order of the industry body, the Commission, or the Rulings Panel is made:
- “(b) an industry participant who was a party to a dispute that was determined by the industry body, the Commission, or the Rulings Panel:
- “(c) any industry participant who joined as a party to the investigation of the matter that is subject to the appeal.

“43ZF Determination of appeals

In its determination of any appeal (other than an appeal to the High Court by way of case stated for the opinion of the Court on a question of law only), the High Court may do any 1 or more of the following things:

- “(a) confirm, modify, or reverse the decision or any part of it:
- “(b) exercise any of the powers that could have been exercised by the industry body, the Commission, or the Rulings Panel in relation to the matter to which the appeal relates.

“Compare: 1986 No 5 s 93

“43ZG High Court may refer appeals back to industry body, Commission, or Rulings Panel for reconsideration

- “(1) The High Court may, in any case, instead of determining any appeal, direct the industry body, the Commission, or the Rulings Panel to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.
- “(2) In giving any direction under this section, the Court must—
- “(a) advise the industry body, the Commission, or the Rulings Panel, as the case may be, of its reasons for doing so; and
 - “(b) give to the industry body, the Commission, or the Rulings Panel, as the case may be, any directions that it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back.
- “(3) In reconsidering the matter, the industry body, the Commission, or the Rulings Panel, as the case may be, must have regard to the Court’s reasons for giving the direction, and the Court’s directions.

“Compare: 1986 No 5 s 94

“43ZH Provisions pending determination of appeal

If an appeal is brought under this Part against any decision of the industry body, the Commission, or the Rulings Panel, the decision to which the appeal relates remains in full force pending the determination of the appeal, unless the High Court orders to the contrary.

“Compare: 1985 No 5 s 95

“43ZI High Court may order proceedings be heard in private

- “(1) The High Court may, in its discretion, order that the hearing or any part of the hearing of any proceedings under this Part be held in private.
- “(2) The High Court may make an order prohibiting the publication of any report or description of proceedings or any part of proceedings (whether heard in public or in private), but no

order may prohibit the publication of any determination of the Court.

“Compare: 1985 No 5 s 96

“43ZJ Appeal to Court of Appeal in certain cases

“(1) Any party to any appeal before the High Court against any decision of the industry body, the Commission, or the Rulings Panel, as the case may be, who is dissatisfied with any decision or order of the High Court may, with the leave of the High Court or of the Court of Appeal, appeal to the Court of Appeal.

“(2) Section 66 of the Judicature Act 1908 applies to the appeal.

“(3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to the following matters:

“(a) whether any question of law or general principle is involved:

“(b) the importance of the issues to the parties:

“(c) the amount of money in issue:

“(d) any other matters that in the particular circumstances the court thinks fit.

“(4) The court granting leave may, in its discretion, impose any conditions that it thinks fit, whether as to costs or otherwise.

“Compare: 1985 No 5 s 97

“Subpart 2—Co-regulation of gas industry

“43ZK Purpose of subpart

The purpose of this subpart is to provide for co-regulation of the gas industry by the Government and an industry body.

“Approval of industry body

“43ZL Approval of industry body

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve a body to be an industry body for the purposes of this Part.

“(2) Before making the recommendation, the Minister must be satisfied that—

- “(a) the industry body is broadly inclusive of industry participants; and
 - “(b) the constitution of the industry body requires the board of that body to have a majority of independent members, including an independent chairperson; and
 - “(c) the industry body is capable of delivering outcomes that meet the Government’s objectives for the gas industry; and
 - “(d) the industry body has objectives, in its constitution, that are consistent with the objectives in section 43ZN; and
 - “(e) the industry body enables, and has provisions in its constitution that enable, all industry participants to become members of the industry body; and
 - “(f) the constitution of the industry body requires it to report regularly to the Minister on—
 - “(i) the performance and present state of the New Zealand gas industry; and
 - “(ii) the industry body’s performance and achievement of its objectives; and
 - “(iii) any other matters the industry body thinks fit or the Minister requests in writing.
- “(3) A member of the board is not **independent** if that person—
- “(a) has a material financial interest in an industry participant; or
 - “(b) is a director, officer, member, employee, or trustee of an industry participant; or
 - “(c) is otherwise directly or indirectly materially interested in an industry participant.
- “(4) The references to ‘industry participants’ in subsection (2)(a) and (e) do not include service providers appointed under any gas governance regulations.

“**43ZM Revocation of approval of industry body**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, revoke any approval given under section 43ZL.
- “(2) Before making a recommendation for the revocation of the approval of an industry body, the Minister must—
 - “(a) consult with the industry body; and

- “(b) be satisfied either that a Commission has been, or is to be, established or that the industry body has ceased to be a body that meets the criteria in section 43ZL.

*“Objectives of industry body in relation
to recommendations for gas governance
regulations*

**“43ZN Objectives of industry body in recommending
regulations for wholesale market, processing facilities,
transmission, and distribution of gas**

The objectives of the industry body, in recommending gas governance regulations under section 43F, are as follows:

- “(a) the principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner; and
- “(b) the other objectives are—
- “(i) the facilitation and promotion of the ongoing supply of gas to meet New Zealand’s energy needs, by providing access to essential infrastructure and competitive market arrangements:
 - “(ii) barriers to competition in the gas industry are minimised:
 - “(iii) incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced:
 - “(iv) delivered gas costs and prices are subject to sustained downward pressure:
 - “(v) risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties:
 - “(vi) consistency with the Government’s gas safety regime is maintained.

“GPS objectives and outcomes

“43ZO Setting of GPS objectives and outcomes

- “(1) The Minister may set objectives and outcomes that the Government wants the industry body to pursue in relation to the

governance of the gas industry, and against which the industry body must report.

- “(2) The Minister must set those objectives and outcomes by—
 - “(a) giving the industry body a statement of government policy containing those objectives and outcomes; or
 - “(b) giving the industry body an amendment to, or replacement of, that statement.
- “(3) The Minister must publish in the *Gazette*, and present to the House of Representatives, each statement (or amendment to, or replacement of, a statement) under subsection (2) as soon as practicable after giving it to the industry body.
- “(4) The industry body must have regard to those objectives and outcomes when making recommendations for gas governance regulations under this Part.

“43ZP What Minister can do with industry body recommendations about wholesale market, processing facilities, transmission, and distribution of gas

- “(1) The Minister must decide, within 90 days of receiving a recommendation from the industry body in relation to gas governance regulations under section 43F, either to accept or reject the recommendation.
- “(2) Subsection (1) does not apply to regulations made under section 43F(2)(c) prescribing terms and conditions for access to the Maui pipeline.
- “(3) The Minister must publish a notice in the *Gazette* stating his or her decision under subsection (1) and explaining the reasons for it or where copies of that explanation may be obtained.

“Industry body strategic plan

“43ZQ Industry body strategic plan

- “(1) At or before the start of each financial year, the industry body must prepare a strategic plan for the industry body for that financial year and at least the 2 following financial years.
- “(2) The plan must contain the following information for the next financial year and at least the 2 following financial years:
 - “(a) key background information about the industry body and its operating environment:

- “(b) the nature and scope of the industry body’s intended operations:
 - “(c) the specific impacts, outcomes, or objectives that the industry body seeks to achieve or contribute to and how those objectives might relate to any outcomes or objectives referred to in this subpart or in any GPS objectives and outcomes:
 - “(d) how the industry body intends to conduct its operations to achieve those impacts, outcomes, or objectives:
 - “(e) the main financial and non-financial measures and standards by which the future performance of the industry body may be judged:
 - “(f) the matters on which the industry body will consult or notify the Minister before making a decision, the matters on which it will report to the Minister, and the frequency of reporting:
 - “(g) other matters the industry body is required to include in the industry body strategic plan under this Act or another Act:
 - “(h) any other matters that are reasonably necessary to achieve an understanding of the industry body’s intentions and direction.
- “(3) The plan must also contain the information required by section 43ZR for the first financial year to which it relates.
- “(4) The plan must be in writing, be dated, and be signed on behalf of the board by 2 members of the board of the industry body.

“43ZR Extra information required in strategic plan for first financial year

The industry body’s strategic plan must contain the following information for the first financial year to which it relates:

- “(a) forecast financial statements for the industry body that have been prepared in accordance with the Financial Reporting Act 1993 as if the industry body were a reporting entity under that Act; and
- “(b) other measures and standards necessary to judge the industry body’s performance at the end of the financial year; and

- “(c) a statement of all significant assumptions underlying the forecast financial statements; and
- “(d) any additional information and explanations needed to fairly reflect the forecast financial operations and financial position of the industry body.

“43ZS Application and term of strategic plan

An industry body strategic plan is in force—

- “(a) from the later of—
 - “(i) the date on which the final plan is provided to the Minister; or
 - “(ii) the first day of the period to which the plan specifies that it relates; and
- “(b) until a new strategic plan is in force in relation to the industry body (despite the end of any financial year to which the plan relates); and
- “(c) with any amendments that are made as described in section 43ZU.

“43ZT Process for providing strategic plan to Minister

- “(1) The industry body must provide a strategic plan to the Minister.
- “(2) The process that must be followed in providing a strategic plan is as follows:
 - “(a) the industry body must provide a draft strategic plan to the Minister no later than 60 days before the start of each financial year; and
 - “(b) the Minister must provide to the industry body any comments that he or she may have on the draft no later than 30 days before the start of the financial year; and
 - “(c) the industry body must consider the comments (if any) on the draft and provide the final strategic plan to the Minister on or before the start of the financial year.

“43ZU Amendments by industry body

- “(1) The industry body may amend its strategic plan.
- “(2) The industry body must amend its strategic plan if—
 - “(a) the information contained in it is false or misleading in a material particular; or

- “(b) the intentions and undertakings in it are significantly altered or affected by—
 - “(i) any change in the law; or
 - “(ii) any other change in the industry body’s operating environment.
- “(3) The industry body must make the amendment required under subsection (2) as soon as practicable after the industry body becomes aware of the facts that give rise to the obligation to amend under that subsection.
- “(4) The industry body must amend its strategic plan in accordance with the following process:
 - “(a) the industry body must provide a draft amendment to the Minister; and
 - “(b) the Minister must provide to the industry body any comments that he or she may have no later than 30 days after receiving the draft; and
 - “(c) the industry body must consider the comments (if any) and must provide a final amendment to the Minister as soon as practicable; and
 - “(d) the final amendment to the strategic plan is in force from the date on which the final amendment is provided to the Minister.

“43ZV Strategic plan must be publicised

The industry body must publicise a final strategic plan or a final amended strategic plan as soon as practicable after it is provided to the Minister.

“Industry body annual report

“43ZW Annual report

- “(1) Within 3 months after the end of each financial year, the industry body must deliver to the Minister an annual report of the industry body’s operations and performance for that year, including—
 - “(a) information that is necessary to enable an informed assessment to be made of the industry body’s operations and performance under this Part for that year, including an assessment against its strategic plan prepared under

- this subpart at the beginning of the year and against the GPS objectives and outcomes; and
- “(b) a report on the exercise of the powers conferred on it by this Part during the year; and
 - “(c) audited consolidated financial statements for the industry body for that financial year that have been prepared in accordance with the Financial Reporting Act 1993 as if the industry body were a reporting entity under that Act; and
 - “(d) the report on those financial statements that is signed by an auditor who was appointed or reappointed by the industry body within 12 months before the end of the period to which the statements relate; and
 - “(e) a report of the matters required to be included in the annual report of a company by paragraphs (e), (f), and (g) of section 211(1) of the Companies Act 1993; and those paragraphs apply as if references to—
 - “(i) an accounting period were references to that year; and
 - “(ii) the company were references to the industry body; and
 - “(iii) a director or former director were references to a member or former member of the board of the industry body; and
 - “(f) the disclosures required under section 43ZX; and
 - “(g) any matters that relate to or affect the body’s operations that the body is otherwise required, or has undertaken, or wishes to report on in its annual report.
- “(2) An annual report must be in writing, be dated, and be signed on behalf of the board of the industry body by 2 members of the board of the industry body.

“43ZX Disclosure of payments in respect of industry body board members and employees

- “(1) The annual report must include—
 - “(a) for each member of the board, the total value of the remuneration (other than compensation or other benefits referred to in paragraph (c)) paid or payable to the member during that financial year; and

- “(b) the number of employees to whom, during the financial year, remuneration (other than compensation or other benefits referred to in paragraph (c)) was paid or payable in their capacity as employees, the total value of which is or exceeds \$100,000 per annum, and the number of those employees in brackets of \$10,000; and
 - “(c) the total value of any compensation or other benefits paid or payable to persons who ceased to be members of the board or employees during the financial year in relation to that cessation and the number of persons to whom all or part of that total was paid or payable; and
 - “(d) details of any indemnity provided during the financial year to any member of the board or employee; and
 - “(e) details of any insurance cover effected by the board during the financial year in respect of the liability or costs of any member of the board or employee.
- “(2) In subsection (1), **member** and **employee** include a person who was a member of the board or employee at any time after the commencement of this section but who is no longer a member or employee.

“**43ZY Annual report must be presented to House of Representatives**

The Minister must present a copy of the industry body’s annual report to the House of Representatives as soon as practicable after receiving it.

“Miscellaneous provisions

“**43ZZ Publication of industry body documents**

- “(1) The industry body must publicise its annual report from the earlier of—
- “(a) as soon as practicable after it is presented to the House of Representatives; or
 - “(b) no later than 10 working days after it is delivered to the Minister.
- “(2) The industry body must publicise its constitution.

“43ZZA Auditors

For the purposes of the audit of any financial statements referred to in section 43ZW, an auditor has, and may exercise and perform, all the functions, powers, and duties of an auditor under the Companies Act 1993 as if the industry body were a company.

“Levy to fund industry body

“43ZZB Industry body recommendation for levy regulations

- “(1) The industry body may recommend to the Minister that regulations be made under section 43ZZE to require industry participants to pay a levy to the industry body.
- “(2) The recommendation may recommend different levies or levy rates for different classes of industry participants.

“43ZZC Costs that may be met from levy

- “(1) Levy regulations under section 43ZZE may provide for the levy to meet the following estimated costs:
 - “(a) the costs of making recommendations concerning any gas governance regulations and rules under this Part:
 - “(b) the costs of administering, monitoring compliance with, investigating, enforcing, and applying penalties or other remedies for contraventions of, gas governance regulations and rules, to the extent that the industry body is required to do so by those regulations or rules or requested to do so by any government policy statement applicable to the gas industry or the Minister:
 - “(c) the costs of establishing, operating, and facilitating the operation of markets for industry participants (including by contracting with other parties, entering into a joint venture or contractual arrangement, or other means):
 - “(d) the costs of establishing or implementing 1 or more complaints resolution systems:
 - “(e) the costs of providing advice to the Minister on matters concerning the gas industry:
 - “(f) the costs of governance of the industry body:
 - “(g) the costs of collecting the levy:

- “(h) the costs of the industry body of carrying out any other functions or duties, or exercising any powers, under this Part.
- “(2) The levy may include any costs from the date on which the industry body is approved, even though regulations imposing the levy may be made after that date.
- “(3) The levy may—
 - “(a) deduct over-recoveries in respect of a financial year from the levy payable in subsequent financial years; or
 - “(b) add under-recoveries in respect of a financial year to the levy payable in subsequent financial years.

“43ZZD Minister must accept recommendations if certain conditions met

- “(1) The Minister may accept or reject a recommendation of the industry body to make levy regulations under section 43ZZB.
- “(2) However, the Minister must accept that recommendation, and recommend to the Governor-General that levy regulations be made, if he or she is satisfied that—
 - “(a) the levy rate or amount is reasonable, having regard to the industry body strategic plan, the latest industry body annual report, and any GPS objectives and outcomes; and
 - “(b) the industry body has consulted with industry participants on the levy rate or amount; and
 - “(c) the requirements of sections 43ZZB to 43ZZE are met.

“43ZZE Levy regulations that may be made

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make levy regulations that meet the requirements of sections 43ZZB to 43ZZD.
- “(2) The levy regulations must prescribe the amount of the levy, or the levy rate according to which the amount of the levy may be calculated.
- “(3) The levy regulations must apply only to the financial year in respect of which the levy regulations are made.
- “(4) The levy regulations may require payment of a levy for a financial year or part financial year, irrespective of the fact that

the regulations may be made after that financial year has commenced.

- “(5) Every industry participant (or prescribed class of industry participants) must pay to the industry body the levy that is prescribed.
- “(6) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the industry body.
- “(7) The levy regulations may exempt or provide for exemptions from, or provide for waivers of, the whole or any part of the levy for any case or class of cases.

“43ZZF Expiry of subpart

- “(1) This subpart expires on the date on which subpart 3 comes into force.
- “(2) The expiry of this subpart does not affect any gas governance regulations or rules made on the recommendation of the industry body.

“Subpart 3—Governance of gas industry by
Energy Commission

“Preliminary provisions

“43ZZG Purpose

The purpose of this subpart is to enable the establishment of the Energy Commission to be responsible for—

- “(a) developing recommendations for gas governance regulations or rules that promote its principal objective:
- “(b) other matters relating to the governance of the gas industry.

“Energy Commission

“43ZZH Commission to govern gas industry established

- “(1) An Energy Commission is established.
- “(2) The Energy Commission is the same body as the Electricity Authority established by section 12 of the Electricity Industry Act 2010.

Section 43ZZH(2): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZI Continuation of Commission’s functions, objectives, etc

- “(1) The Electricity Authority continues under both the Electricity Industry Act 2010 and this Act—
- “(a) under the new name Energy Commission; and
 - “(b) with the additional objectives, specific outcomes, functions, powers, and duties specified in this Act; but
 - “(c) otherwise without any change in respect of its continuity, assets, rights, liabilities, and contracts.
- “(2) All references to the Electricity Authority in any enactment or document must be read as references to the Energy Commission.

Section 43ZZI(1): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

Section 43ZZI(2): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZJ Additional principal objective of Energy Commission

- “(1) The principal objective of the Energy Commission in relation to gas is to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner.
- “(2) This objective in relation to gas ranks equally with the objective specified in section 15 of the Electricity Industry Act 2010 in relation to electricity.

Section 43ZZJ(2): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZK Additional specific outcomes in relation to gas

- “(1) Consistent with its principal objective in relation to gas, the Commission must seek to achieve, in relation to gas, the following specific outcomes:
- “(a) the facilitation and promotion of the ongoing supply of gas to meet New Zealand’s energy needs, by providing access to essential infrastructure and competitive market arrangements;
 - “(b) energy and other resources are used efficiently;
 - “(c) barriers to competition in the gas industry are minimised to the long-term benefit of end-users;

- “(d) incentives for investment in gas processing facilities, transmission and distribution, energy efficiency, and demand-side management are maintained or enhanced:
- “(e) the full costs of producing and transporting gas are signalled to consumers:
- “(f) delivered gas costs and prices are subject to sustained downward pressure:
- “(g) the quality of gas services and in particular trade-offs between quality and price, as far as possible, reflect customer’s preferences:
- “(h) risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties:
- “(i) consistency with the Government’s gas safety regime is maintained:
- “(j) the gas sector contributes to achieving the Government’s climate change objectives by minimising gas losses and promoting demand-side management and energy efficiency.

“(2) *[Repealed]*

Section 43ZZK(2): repealed, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“**43ZZL Additional functions**

- “(1) The functions of the Energy Commission in relation to gas are—
 - “(a) to formulate and make recommendations concerning gas governance regulations and rules in accordance with this Part:
 - “(b) to administer, monitor compliance with, enforce, and apply penalties or other remedies for contraventions of, gas governance regulations and rules:
 - “(c) to establish, operate, and facilitate the operation of (by contracting with other parties, entering into a joint venture or contractual arrangement, or other means) markets for gas industry participants:
 - “(d) to undertake forecasting and modelling of future gas supply and demand:

- “(e) to promote improvement in the efficiency with which gas is used:
 - “(f) to approve 1 or more complaints resolution system for the purpose of section 43E:
 - “(g) to develop best practice methodologies and other standards and model agreements for use by gas industry participants:
 - “(h) to provide advice to the Minister on matters concerning the gas industry.
- “(2) In performing its functions, the Energy Commission must promote its principal objective.
- “(3) The functions in this section rank equally with the functions specified in section 16 of the Electricity Industry Act 2010.

Section 43ZZL(3): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZM Additional members and their duties

- “(1) The Minister may recommend, and the Governor-General may appoint, up to 2 additional persons as members of the Energy Commission, having regard to the need to ensure that the Commission has among its members knowledge and experience of, and capability in, the gas industry.
- “(2) In that case, section 13(1) of the Electricity Industry Act 2010 must be read as if the Commission comprises between 5 and 9 members.
- “(3) A member appointed under this section, when acting as a member, must not act as a representative of, or promote the interests or views of, any organisation, a particular gas industry participant, or a particular group of gas industry participants.

Section 43ZZM: substituted, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

*“Role of Energy Commission in relation to gas
governance regulations and rules*

“43ZZN Objectives of recommendations

In formulating recommendations for gas governance regulations and rules, the Commission must give effect to its princi-

pal objective and specific outcomes and have regard to its GPS objectives and outcomes.

Section 43ZZN: amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZO Consultation and accountability sections apply

Section 172Z of the Electricity Act 1992 applies (as if it had not been repealed) in relation to the Energy Commission in respect of gas.

Section 43ZZO: amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZP Levy of industry participants

- “(1) Section 128 of the Electricity Industry Act 2010 applies—
- “(a) as if references to industry participants applied equally to gas industry participants; and
 - “(b) as if gas industry participants were levied for the estimated costs of performing the Commission’s gas-related functions, powers, and duties, and electricity industry participants were levied for the estimated costs of performing the Commission’s electricity-related functions, powers, and duties; and
 - “(c) with all other necessary modifications.
- “(2) Levy regulations made under that section in respect of gas may also—
- “(a) include in the levy amount or method any costs the Commission may have incurred in preparing to perform its gas-related functions, powers, and duties; and
 - “(b) provide for the transition from the industry body to the Commission.

Section 43ZZP(1): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“43ZZQ Amendments to Ombudsmen Act 1975 and Public Finance Act 1989

- “(1) The Ombudsmen Act 1975 is amended by omitting from Part 2 of Schedule 1 the item relating to the Electricity Authority, and substituting, in its appropriate alphabetical order, the following item:

“ ‘Energy Commission and every subsidiary of the Energy Commission.

“(2) The Public Finance Act 1989 is amended by omitting from Schedules 4, 5, and 6 the item relating to the Electricity Authority, and substituting, in its appropriate alphabetical order, the following item:

“ ‘Energy Commission.’ ”

Section 43ZZQ(1): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

Section 43ZZQ(2): amended, on 1 November 2010, pursuant to section 166 of the Electricity Industry Act 2010 (2010 No 116).

“Subpart 4—Exemptions from restrictive trade practice provisions of Commerce Act 1986

“43ZZR Authorisations for purposes of Commerce Act 1986

The following are specifically authorised for the purpose of section 43 of the Commerce Act 1986:

“(a) any act, matter, or thing done, or omitted to be done, by the industry body or an industry participant in the course of, or for the purpose of,—

“(i) determining the form of the industry body’s constitution and strategic plan, including any amendments to those documents:

“(ii) complying with the constitution of the industry body, including any amendments to that constitution:

“(iii) recommending any gas governance regulations or rules:

“(iv) recommending a levy of industry participants in accordance with this Act:

“(b) anything done, or omitted to be done, by the industry body, the Energy Commission, the Rulings Panel, or an industry participant, that is reasonably necessary to comply with, enforce, or otherwise administer any gas governance regulations or rules:

- “(c) the industry body’s constitution and strategic plan and any amendments to those documents.
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Notes**1 General**

This is an eprint of the Gas Amendment Act 2004. The eprint incorporates all the amendments to the Act as at 1 November 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

3 List of amendments incorporated in this eprint (most recent first)

Electricity Industry Act 2010 (2010 No 116): section 166
