



Gas Amendment Act 2006

Public Act 2006 No 71
Date of assent 4 December 2006
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Gas Amendment Act 2006.

2 Commencement

- (1) Section 1, this section, sections 3, 6(1), 8, 9, 13, and 14 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 to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

3 Principal Act amended

This Act amends the Gas Act 1992.

4 Title repealed

The Title is repealed.

5 New section 1A inserted

The following section is inserted after section 1:

“1A Purposes

The purposes of this Act are—

- “(a) to provide for the regulation, supply, and use of gas in New Zealand; and

- “(b) to provide for the regulation of the gas industry in New Zealand; and
- “(c) to protect the health and safety of members of the public in connection with the supply and use of gas in New Zealand; and
- “(d) to promote the prevention of damage to property in connection with the supply and use of gas in New Zealand.”

6 Interpretation

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**all practicable steps**, in relation to achieving any result in any circumstances, means all steps to achieve the result that it is reasonably practicable to take in the circumstances, having regard to—

- “(a) the nature and severity of the serious harm or significant property damage that may be suffered if the result is not achieved; and
- “(b) the current state of knowledge about the likelihood that harm or damage of that nature and severity will be suffered if the result is not achieved; and
- “(c) the current state of knowledge about harm or damage of that nature; and
- “(d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means; and
- “(e) the availability and cost of each of those means

“**serious harm** means—

- “(a) death; or
- “(b) harm that incapacitates, or is likely to incapacitate, the person suffering harm for 48 hours or more; or
- “(c) harm that incapacitates, or is likely to incapacitate, the person suffering harm due to the inhalation of carbon monoxide; or
- “(d) harm of the kinds and descriptions that are serious harm under the Health and Safety in Employment Act 1992”.

- (2) Section 2(1) is amended by repealing the definition of **distribution system** and substituting the following definition:

“distribution system—

“(a) means all fittings, whether above or below ground, under the control of a gas distributor and used to distribute gas from—

“(i) the boundary of the gasworks or gate station outlet flange supplying gas for distribution to the point of supply of the place at which the gas is supplied to a consumer or gas refueller; or

“(ii) the outlet of the container in which gas for distribution is stored to the point of supply of the place at which the gas is supplied to a consumer or gas refueller; and

“(b) includes, for the purposes of any regulations made under section 54 relating to odorisation or the measurement of calorific value, a gas transmission system”.

(3) Section 2(1) is amended by repealing the definition of **gas inspector**.

(4) Section 2(1) is amended by repealing paragraph (a) of the definition of **place** and substituting the following paragraph:

“(a) the whole or any part of any land, house, shop, factory, premises, or building:”.

(5) Section 2(1) is amended by inserting, in their appropriate alphabetical order, the following definitions:

“infringement fee, in relation to an infringement offence, means the amount prescribed by regulations made under section 54 as the infringement fee for the offence

“infringement notice means a notice given under section 57C

“infringement offence means—

“(a) an offence against section 21(d) or section 27:

“(b) a breach of any regulation made under this Act that is prescribed as an infringement offence

“point of supply, in relation to any place, means the point of supply of that place as prescribed by regulations made under section 54”.

7 Special powers of Secretary

(1) Section 9(3) is amended by—

(a) omitting “in respect of any place”; and

- (b) inserting “do or” after “require any person to”.
- (2) Section 9 is amended by inserting the following subsections after subsection (3):
 - “(3A) The Secretary’s power to require a person to do a thing under subsection (3) includes the power to require, by notice in writing, that the person—
 - “(a) produce for inspection, within any reasonable period that the Secretary may specify, any document or class of document in the possession or under the control of the person that the Secretary considers would assist the Secretary to remove or minimise a danger or potential danger:
 - “(b) supply, within any reasonable period that the Secretary may specify, any information or class of information that the Secretary considers would assist the Secretary to remove or minimise a danger or potential danger.
 - “(3B) Every person who is required to produce documents or supply information under this section has the same privileges in relation to the production of the documents or the supply of the information as witnesses have in any court.”

8 Notification and investigation of accidents

- (1) The heading to section 17 is amended by omitting “**and investigation**”.
- (2) Section 17 is amended by repealing subsections (1) and (2) and substituting the following subsection:
 - “(1) This section applies to every accident—
 - “(a) that involves the production, conversion, supply, distribution, or use of gas; and
 - “(b) that results in—
 - “(i) serious harm to any person; or
 - “(ii) significant property damage.”
- (3) Section 17 is amended by adding the following subsection:
 - “(6) Notification of an accident in accordance with either or both of the following provisions is compliance with subsection (3):
 - “(a) section 16(3) of the Electricity Act 1992:
 - “(b) section 25(3) of the Health and Safety in Employment Act 1992.”

9 New section 17A inserted

The following section is inserted after section 17:

“17A Transfer of accident information

“(1) The Secretary must, as soon as practicable after he or she is notified of an accident under section 17, provide the notice or information that has been given to the Secretary to—

“(a) the person who must be notified of the particulars of an accident under section 16(3) of the Electricity Act 1992 if the Secretary is of the opinion that section 16 of that Act applies to the accident; and

“(b) the person who must be notified of the occurrence of an accident under section 25(3) of the Health and Safety in Employment Act 1992 if the Secretary is of the opinion that section 25 of that Act applies to the accident.

“(2) Subsection (1)(a) does not apply if the Secretary and the person who must be notified of the particulars of an accident under section 16(3) of the Electricity Act 1992 are the same person.”

10 Obstructing Secretary

(1) Section 21 is amended by omitting “\$10,000” and substituting “\$50,000 in the case of an individual, or \$250,000 in the case of a body corporate,”.

(2) Section 21(d) is amended by omitting “report” and substituting “notify”.

11 New sections 46A and 46B inserted

The following sections are inserted after section 46:

“46A Owners or operators of gas supply systems must have safety management system

“(1) Every person that owns or operates a gas supply system must implement and maintain, in accordance with regulations made under section 54, a safety management system that requires all practicable steps to be taken to prevent the gas supply system from presenting a significant risk of—

“(a) serious harm to any member of the public; or

“(b) significant damage to property owned by a person other than the person that owns or operates the gas supply system.

“(2) For the purposes of this section and sections 46B and 54A, **gas supply system** means the distribution systems, gas installations, fittings, and gas appliances prescribed in regulations made under section 54, being distribution systems, gas installations, fittings, and gas appliances that form part of a system for conveying gas to consumers.

“**46B Offence to breach requirement to have safety management system**

Every person who, being a person that owns or operates a gas supply system, breaches section 46A commits an offence and is liable on summary conviction to a fine not exceeding \$250,000.”

12 Section 49 repealed
Section 49 is repealed.

13 Regulations

- (1) Section 54(1) is amended by inserting the following paragraphs after paragraph (b):
 - “(bb) prescribing requirements for safety management systems:
 - “(bc) prescribing, for the purposes of sections 46A, 46B, and 54A, what distribution systems, gas installations, fittings, and gas appliances are deemed to be or not to be a gas supply system (or part of a gas supply system) and the circumstances and conditions in which any distribution systems, gas installations, fittings, and gas appliances are deemed to be or not to be a gas supply system (or part of a gas supply system):”.
- (2) Section 54(1)(s) is amended by omitting “\$10,000” and substituting “\$50,000”.
- (3) Section 54(1) is amended by inserting the following paragraphs after paragraph (s):
 - “(sb) prescribing infringement offences:
 - “(sc) setting the infringement fee for each infringement offence, which,—
 - “(i) in the case of an individual, must not exceed \$1,000; or

- “(ii) in the case of a body corporate, must not exceed \$3,000:
- “(sd) prescribing information to be included in infringement notices and reminder notices:
- “(se) prescribing, for the purposes of this Act, where the point of supply is deemed to be or not to be in relation to any place and the circumstances and conditions in which any point is deemed to be or not to be a point of supply:”.

14 New sections 54A and 54B inserted

The following sections are inserted after section 54:

“54A Regulations that prescribe requirements for safety management systems

- “(1) Regulations made under section 54(1)(bb) must provide for requirements relating to—
 - “(a) the systematic identification of—
 - “(i) existing hazards; and
 - “(ii) new hazards (if possible before, and otherwise as, they arise); and
 - “(b) the taking of all practicable steps to eliminate, isolate, or minimise those hazards; and
 - “(c) the regular assessment of each hazard identified; and
 - “(d) the documentation of the safety management system; and
 - “(e) the audit of the safety management system.
- “(2) Regulations made under section 54(1)(bb) for the purposes of subsection (1)(b) may include, for example, requirements relating to—
 - “(a) the design, construction, operation, maintenance, and inspection of the gas supply system; and
 - “(b) security and the control of access to the gas supply system; and
 - “(c) the skills, knowledge, and experience of persons who do, or assist in doing, work on or in connection with the gas supply system; and
 - “(d) the implementation and management of contingency plans for emergency situations that may affect, or be affected by, the gas supply system; and
 - “(e) processes for the ongoing improvement of safety in connection with the gas supply system; and

- “(f) the investigation of accidents that involve or affect the gas supply system.
- “(3) Regulations made under section 54(1)(bb) for the purposes of subsection (1)(e) may include, for example, requirements relating to—
 - “(a) who may conduct audits; and
 - “(b) how often audits must be conducted; and
 - “(c) the outcomes and objectives of audits.
- “(4) Subsections (2) and (3) do not limit subsection (1).
- “(5) In this section, **hazard**—
 - “(a) means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether arising or caused within or outside the gas supply system) that presents or may present a significant risk of—
 - “(i) serious harm to any member of the public; or
 - “(ii) significant damage to property owned by a person other than the person that owns or operates the gas supply system; and
 - “(b) includes—
 - “(i) a situation where a person’s behaviour may present a significant risk of the matters referred to in paragraph (a)(i) or (ii); and
 - “(ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person’s behaviour.

“54B Miscellaneous provisions relating to regulations that prescribe requirements for safety management systems

- “(1) To avoid doubt, a person required by a safety management system to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about.
- “(2) Different requirements may be prescribed under section 54(1)(bb) in respect of different classes of persons.”

15 New section 56B inserted

The following section is inserted before section 57:

“56B Offences for actions or omissions likely to cause serious harm or significant property damage

- “(1) Every person commits an offence if—
- “(a) the person takes an action knowing that the action is reasonably likely to cause serious harm to any person or significant property damage; and
 - “(b) the action is contrary to a provision of this Act; and
 - “(c) the person fails to take all practicable steps to prevent the serious harm or significant property damage.
- “(2) Every person commits an offence if—
- “(a) the person fails to take an action knowing that the failure to take the action is reasonably likely to cause serious harm to any person or significant property damage; and
 - “(b) the person is required by this Act to take the action; and
 - “(c) the person fails to take all practicable steps to prevent the serious harm or significant property damage.
- “(3) Every person who commits an offence under this section is liable on conviction on indictment to—
- “(a) imprisonment for a term of not more than 2 years; or
 - “(b) a fine of not more than \$100,000 in the case of an individual, or \$500,000 in the case of a body corporate; or
 - “(c) both.
- “(4) A person charged with an offence under this section may be convicted of an offence under any other section in this Act as if the person had been charged under that section.
- “(5) To avoid doubt, a person required by this section to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about.

Compare: 1992 No 96 s 49”.

16 Offences

Section 57 is amended by omitting the heading and substituting the heading “**Other offences**”.

17 New sections 57A to 57F inserted

(1) The following sections are inserted after section 57:

“57A Time for laying information

Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against any provision of this Act or against any regulations made under sections 54 or 55 may be laid at any time within 5 years after the time when the matter of the information arose.

“57B Infringement offences

“(1) If a person is alleged to have committed an infringement offence, that person may either—

“(a) be proceeded against summarily for the alleged offence under the Summary Proceedings Act 1957; or

“(b) be served with an infringement notice as provided in section 57C.

“(2) Despite section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or Registrar to lay an information is not necessary where the Secretary proceeds with an infringement offence summarily.

“57C Infringement notices

“(1) The Secretary may issue an infringement notice to a person if—

“(a) the Secretary believes on reasonable grounds that the person is committing, or has committed, an infringement offence; and

“(b) the Secretary or another person has not taken enforcement action against the same defendant in respect of the same matter.

“(2) The Secretary may revoke an infringement notice before the infringement fee is paid, or before an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

“(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

“(4) For the purposes of this section, **enforcement action** means,—

“(a) in relation to the Secretary,—

“(i) the laying of an information under this Act; or

- “(ii) the issuing of an infringement notice under this Act; and
- “(b) in relation to a person other than the Secretary, the laying of an information under this Act.

“57D Procedural requirements for infringement notices

- “(1) An infringement notice may not be issued after the close of the 14th day after the Secretary becomes aware of the alleged infringement offence.
- “(2) An infringement notice may be served on a person—
 - “(a) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or
 - “(b) by sending it, or a copy of it, by post, addressed to the person at the person’s last known place of residence or business.
- “(3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under subsection (2)(b) must be treated as having been served on the person on the date it was posted.
- “(4) An infringement notice must be in the prescribed form and must contain—
 - “(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and
 - “(b) the amount of the infringement fee; and
 - “(c) an address at which the infringement fee may be paid; and
 - “(d) the time within which the infringement fee must be paid; and
 - “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - “(f) a statement that the person served with the notice has a right to request a hearing; and
 - “(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
 - “(h) any other prescribed matters.
- “(5) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—

- “(a) reminder notices may be prescribed under regulations made under this Act; and
- “(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- “(6) Reminder notices must contain the prescribed information.

“57E Payment of infringement fee

The Secretary must pay all infringement fees received into a Crown Bank Account.

“57F Effect of infringement notice

- “(1) If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.
- “(2) Subsection (1) does not prevent a court being told, for the purpose of sentencing a person convicted of an offence under this Act, that the person has paid, or is obliged to pay, an infringement fee for a particular infringement offence.”
- (2) Nothing in section 57A of the principal Act (as inserted by this section) enables any proceedings to be brought that were barred before the commencement of this section.

18 Consequential amendment

Section 2(1) of the Summary Proceedings Act 1957 is amended by inserting in the definition of **infringement notice**, after paragraph (c), the following paragraph:

“(ca) section 57C of the Gas Act 1992; or”.

Legislative history

21 November 2006	Divided from Energy Safety Review Bill (Bill 269–2) as Bill 269–3C
23 November 2006	Third reading
4 December 2006	Royal assent

This Act is administered by the Ministry of Economic Development.
