

Regulatory Impact Statement

EXECUTIVE SUMMARY

1 To give effect to the changes made to the Gas Act 1992 through the Gas Amendment Act 2006, address the credibility issues identified for the gas appliance safety regime and update and improve clarity in the regulatory regime for gas the preferred option is to revoke the existing regulations and replace them with the new regulations, the gas safety and measurement regulations. The regulatory implications of this approach are considered to be minor and will provide the most effective mechanism to reinforce the public safety focus of the regulations and generate the greatest amount of scrutiny in the requirements.

2 While some of the regulatory requirements are likely to have some significant cost implications for both the regulator and industry these costs are considered to be necessary to meet the Act's intentions for safety and remove the free trade restrictions between New Zealand and Australia for gas appliances.

ADEQUACY STATEMENT

3 The Ministry of Economic Development has reviewed the Regulatory Impact Statement and considers it is adequate according to the adequacy criteria agreed by Cabinet.

STATUS QUO AND PROBLEM

4 The Gas Regulations 1993 currently provide for the measurement and safety of gas in New Zealand. The primary focus of the regulations is on safety and particularly public safety. The safety elements cover the suitability of gas (specification), pressure and odourisation; gas distribution systems, installations, appliances and fittings; and testing and certification requirements for gas installations.

5 In addition to public safety the Gas Regulations 1993 also contain requirements for the measurement of gas.

6 In 1999 a multi agency review was undertaken of the energy sector to determine the effectiveness of the legislative and regulatory framework for the sector. Although the review found that the framework, overall, was working well, the findings highlighted a number of issues. These issues include overlap and duplication between the Health and Safety in Employment, Gas and Plumbers, Gasfitters and Drainlayers Acts that cause confusion, add unnecessary costs, that accountabilities are not sufficiently clear, current processes are not as effective as they could be, and that the level, scope and range of penalties and remedies available are too limited.

7 This review prompted the Gas Amendment Act 2006, with the mandate to improve the safety regimes to effectively protect members of the public and property. The 2006 amendments represent an ongoing commitment by government to the safe delivery and use of gas in New Zealand. The specific provisions introduced through the 2006 amendments were the addition of infringements offences to the

enforcement regime, requirements for owners or operators of energy supply systems to put in place safety management systems and to define the point of supply for gas.

8 The workability and clarity of certain elements within the current regulations has been highlighted as an issue by industry and the regulator, such as who is responsible for gas quality and where in the supply chain their responsibilities lie.

9 The existing regulations rely on an undefined term, “supplier” in establishing requirements for gas quality, pressure and detectability and has caused some confusion about who and where responsibilities lie for these elements.

10 The safety management systems (SMS) provisions introduced in the Gas Amendment Act 2006 established a requirement for owners or operators of gas supply systems to establish SMS. This requires the owner or operator of a gas supply system to implement and maintain a system that manages the risks their operation pose to public safety and property.

11 The regulations need to outline to owners or operators of gas supply systems the outcomes expected from the SMS regime, i.e. a documented system for identifying the risks to public safety and property damage, assessing those risks, and providing for any mitigation of them. They must also have in place both an internal and external (independent third party) auditing regime to assess the system on a regular basis and establish a continual improvement system to ensure the safety management system is working as intended. Industry has developed a standard (NZS 7901) to provide for guidance on how these outcomes could be achieved and it is intended to be a means of compliance with the regulations.

12 In contrast to the Electricity Act the Gas Act does not have a defined boundary for those that must have a SMS and those that must meet the more prescriptive regulated requirements for gas distributions systems. Given the flexible and semi-autonomous nature of SMS it is considered that some parties involved in the supply of gas may not have the capability to take on the additional responsibility and accountability that comes with the SMS requirements.

13 A separate review of the gas appliance safety regime, carried out by the Ministry of Economic Development in June 2006, has indicated that the current self declaration regime for appliances lacks credibility and assurance in the safety of appliances. This is because the current appliance declaration regime does not require any formal process for determining the safety of an appliance, for example through testing or certification.

14 The gas appliance safety regime review also indicated issues for Trans-Tasman trade. That is, the regime’s credibility is contributing to gas appliances being exempted from the Trans-Tasman Mutual Recognition Arrangement and therefore hindering free trade in gas appliances between New Zealand and Australia.

15 Given the issues identified by the two reviews it is not considered feasible to retain the status quo.

OBJECTIVES

- 16 The public policy objective is to have regulations that:
- 16.1 provide for public safety and the protection of property in relation to the supply and use of gas in New Zealand;
 - 16.2 provide for the accurate measurement of gas supplied in New Zealand;
 - 16.3 are clear and understandable to enable industry compliance;
 - 16.4 provide for safe gas appliances for use in New Zealand;
 - 16.5 provide guidance to industry as to what is expected of the sector by Government;
 - 16.6 provide flexibility so that innovation is not constrained while still achieving safe outcomes;
 - 16.7 provide for free trade in safe gas appliances between New Zealand and Australia and meet our TTMRA obligations;
 - 16.8 provide an effective enforcement regime to enable compliance with the safety and measurement outcomes.

ALTERNATIVE OPTIONS

17 The new requirements introduced by the Gas Amendment Act 2006 are clear in their intention and direction for the regulations; however, scope has been provided for the regulations to specify particular requirements and define where they apply.

Alternative options - Responsibilities for gas quality, pressure and detectability

18 The existing regulations provide that the supplier of gas must ensure the gas meets quality, pressure and detection requirements. Supplier is an undefined term and has caused some confusion. It is understood that supplier is intended to mean that at all points in the supply chain (wholesale, distribution and retail) there is responsibility for ensuring gas meets quality and pressure and detectability requirements. Accountability for these aspects is another issues that has resulted been identified.

19 While there is some confusion surrounding the responsibility and accountability the actual practice appears to be working relatively well from a safety perspective. It is therefore a viable option to retain the status quo; however, this would mean that the issue with responsibility and accountability would not be addressed.

Alternative options - Safety Management Systems

20 The SMS provisions reflect the regulation-making powers for SMSs in the Act, with a mixture of “must have” with optional provisions. The outcomes identified in the must have provisions necessitate inclusion many of the optional provisions. The outcomes for SMS reflect best industry practice, which the majority of large players in

the gas supply industry currently follow. Therefore for these large players the SMS compliance costs are expected to be minimal.

21 It is not intended for owners and operators to construct a new system for public safety SMS, as components of the public safety SMS will be adequately covered by other management systems (such as environmental) that are already in place. There will be some compliance costs for those operations that are not currently at this level. It is intended to have a 3 to 5 year transition period to allow systems to be developed where necessary.

22 It is noted that the initial intention for SMS was to provide the five main players in the gas supply sector (encompassing the vast majority of gas supplied in New Zealand) with more scope in managing the hazards their business poses to public safety and property. As previously noted, the Gas Act requires all owners or operators of gas supply systems (a broadly defined term) to implement and maintain SMS. The Act also provides for the regulations to define the scope of a gas supply system and therefore set who must have a SMS.

23 When it comes to the application of SMS three options have been identified. The first is to apply the SMS requirements to all owners or operators of “gas supply systems”. This would mean that anyone involved in the supply gas, regardless of the size of their operation or capability to adequately manage the added responsibility and accountability associated with the SMS requirements, would have to comply.

24 Given the design of the SMS framework, the scope of work involved to meet the requirements and the potential costs involved is it not considered practicable to require SMS of all parties operating gas supply systems. This consideration is based on the grounds that as gas supply systems get smaller the cost and rigor associated with the SMS becomes comparatively greater. Further, as the systems decrease in size, typically so does the capability of the owner or operator and their ability to cover the associated liabilities. Evidence for the size/capability argument is provided through examples from the United Kingdom where a similar SMS type approach has been applied and a “light” (flexible but less onerous than a full blown SMS) version of the SMS has been provided to cater for smaller industry players.

25 The second option is to establish a threshold for SMS where those below that threshold have the option to use the SMS provisions or follow the current prescriptive requirements for gas supply operations. Those above the threshold will have to comply with the SMS requirements.

26 The third option is to require all owners or operators of gas supply systems to have a SMS but apply a less onerous (light) version of the SMS to the smaller less capable gas suppliers. The development of a “light” SMS would involve a significant amount of work and given the limited number of small scale gas suppliers the benefits to be gained for this part of the industry are considered to be minimal. Balancing the costs involved with developing a “light” SMS against the benefits this option is not considered viable.

27 There is a risk that the establishment of a threshold may enable owners or operators of gas supply systems to divide up their assets and operations to avoid the SMS requirements. It is noted; however, that industry has expressed a desire for

SMS and that the safety requirements proposed for those under the threshold are more prescriptive.

Alternative options - Gas Appliance Safety Regime

28 The current gas appliance safety regime is based on self declaration and a significant review of the regime has highlighted concerns with the regimes credibility in providing safety. The current regime has also been implicated as an issue in relation to Trans-Tasman trade of gas appliances and as one of the reasons that gas appliances still have a special exemption from the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Special exemptions to the TTMRA are seen, by government, as something that should be avoided and eliminated where possible.

29 Work conducted as part of the review has developed a proposal for enhancing the credibility of the gas appliance safety regime and that this will contribute toward removal of the special exemption. These options focus on increasing accountabilities for appliance safety and assurance therein.

PREFERRED OPTIONS

Preferred option - Issues of the Gas Safety and Measurement Regulations

30 The preferred option is to revoke the existing gas regulations and put in their place new regulations. While much of the regulatory requirements would be carried over with little change, the release of new regulations would generate more interest in, and scrutiny of the entire content of the regulations as opposed to looking for specific changes. The costs associated with the creation of the new regulations is not considered to be significant over that of amending the current regulations to accommodate the changes and updating required.

31 The preferred option is to provide three definitions for the point of supply: for non-reticulated gas (gas supplied to a single consumer from cylinders or tanks) both generally and specifically for liquefied petroleum gas (LPG); for reticulated gas; and for very large consumers.

32 The option to separate the point of supply out is intended to provide the sector with the necessary clarity and scope and tailor the definition to meet the needs of the safety elements that rely upon it, for example the gasfitting, to ensure public safety.

33 With any new definition there will be a period of uncertainty in how to apply the new definition in practice and that it may not provide sufficient flexibility for technological developments within the gas sector.

Preferred option - Responsibilities for gas quality, pressure and detectability

34 The preferred option is to clarify that all gas in distribution systems (excluding transmission systems) and supplied to installations with a design energy consumption capacity below 60,000 megajoules per hour must be odourised in accordance with the prescribed technical standard. It is also the preference to establish particular responsibilities between the retailer and consumer providing a clear contact point to identify issues to and from which they can expect to have those issues resolved.

35 The options outlined above are preferred because they provide greater clarity and accountability within the gas supply chain for aspects related to gas safety that have a direct impact on the public and consumers. The current system does not make this distinction and the clarity is intended to focus certain parts of the industry on these elements crucial to public safety. These responsibilities clearly identify who the consumer can contact to report an issue and expect a response.

36 It is recognised that certain gas users require access to non-odorised gas because their process and equipment are adversely affected by the odorant. Cost savings may also result from access to non-odorised gas because there is one less process involved in the supply of that gas. To accommodate this it is proposed to enable installations and appliances with a design capacity for energy consumption over 60,000 megajoules per hour that have alternative means of detection in place to be supplied and use non-odorised gas without having to apply for an exemption from the Ministry of Economic Development. Certain criteria will be established around this to ensure that public safety is non-compromised.

Preferred option - Safety Management Systems

37 The preferred option for the SMS regime is to create a distinction in who must meet the SMS requirements by setting a threshold within the definition of a gas supply system. Owners or operators of gas supply systems above the threshold must meet the SMS and take on the additional responsibility and accountability that comes with it. Those below the threshold will have to meet the existing prescribed requirements, as they currently do, or can choose to take on the additional responsibility and liability of SMS.

38 The threshold proposed is based on the Gas Act's definition for a "small consumer". "Small consumers" are those that use less than 10 terajoules (TJ) of gas per year (equivalent to the use of 500 average households over a year) and are considered to require the additional protection of a disputes resolution service when dealing with gas suppliers. Other thresholds could be applied; however, the 10 TJ level has already been established for a similar purpose, that is, defining a level of capability in the sector.

39 While application of this threshold to SMS is arbitrary it is recognised as a "size" boundary in Part 4 of the Gas Act..

Preferred option - Gas Appliance Safety Regime

40 The 2006 review of the gas appliance safety regime indicated that changes are needed to the regime to increase confidence in the safety of appliances entering the New Zealand market and to drive toward removing the special exemption for gas appliances under the TTMRA.

41 The preferred option is to require an independent third party, a conformity assessment body (CAB), to certify an appliance as being safe based on test reports and that this certification must form part of the appliance declaration to the regime. To ensure the validity of test reports it is likely that CABs will only accept reports from accredited facilities, such as IANZ (International Accreditation New Zealand).

42 As opposed to the current self declaration scheme the preferred approach is likely to introduce significant additional costs for industry in that they will have to cover the cost of testing and independent safety certification.

43 The regulator will also be faced with additional costs to modify the existing systems or develop new systems to manage the new declaration regime. The costs associated managing the new appliance safety regime will need to be budgeted for by the regulator.

44 As noted there are some potentially significant costs associated with the proposed enhancements to the gas appliance safety regime for both industry and the regulator. Offsetting those costs are the benefits to be derived from increased confidence in the safety of appliances entering the New Zealand market. Improving credibility of the regime will also aid in removal of the special exemption for gas appliances under the TTMRA. These benefits are considered to be substantial and necessary in providing for the continued viable and safe use of gas in New Zealand and in meeting our single economic market obligations.

Preferred option - Infringement offences and notices

45 The 2006 amendments to the Act established that infringement notices may be introduced as an enforcement tool for clear, minor breaches of the regulations.

46 Infringement notices provide a proportionate response to minor breaches of the Regulations which are currently missing from the enforcement toolbox. Currently, the regulations allow for the regulator to take prosecutions for certain breaches of the regulations. For minor breaches of the regulations the taking of a prosecution would be a disproportionate response, for example failing to supply a gasfitting certificate within 10 days from completion of the work.

47 Infringement notices will have administrative costs for the regulator for development of the regime including databases. It is proposed that the regime will be similar to that for the existing Radio Spectrum Management infringement scheme and the two will be administered side by side to avoid duplication of costs. A similar infringement regime and approach is proposed for the electricity regulations.

48 Dissemination of information relating to infringement offences and the notification systems will involve cost. This information will be included with information on the changes to the regulations and is intended to be included in the regulators guidelines on enforcement, similar to that produced for Radio Spectrum Management.

IMPLEMENTATION AND REVIEW

49 This proposal will be given effect through the creation of the gas safety and measurement regulations and will require revocation of the current gas regulations 1993. These regulations are expected to be in place in mid 2009, with the remainder of the Plumbers, Gasfitters and Drainlayers Act 2006 coming into effect at the same time. The issuing of new regulations is considered to be the most efficient mechanism to focus industry on the new safety requirements.

50 Certain provisions within the new regulations require implementation periods to be established to allow for the necessary infrastructure to be developed and for

industry to generate the data necessary to meet the requirements, for example, the establishment of conformity assessment bodies and accreditation of test facilities.

51 Given that there are some significant changes to the regulatory requirements the effectiveness and operation of the regulations will need to be monitored and reviewed in the future. The timing of for review will be dependent on the observed outcomes and feedback from industry.

CONSULTATION

52 A discussion paper entitled "Proposed Gas Safety Regulations" was circulated to a number of industry members, including industry organisations, other stakeholders and government agencies. The discussion paper was released in December 2006 with submission closing at the end of February 2007 (CAB Min (07) 45/5, EDC Min (07) 29/25, refers).

53 A total of 31 submissions were received with the majority coming from within the gas supply and appliance sectors. Most comments received were supportive of the intent to provide clarity, enhance workability of the regulatory framework and establish the focus on public safety. Within the submissions several areas, such as, the threshold for safety management systems and the "point of supply" were identified as needing further development and clarification.

54 As required by section 54(6) of the Act, the Ministry of Economic Development has consulted with the Environmental Risk Management Authority on the content of the proposed regulations. Submissions made by the Authority have been taken into account.

55 The comments and suggestions put forward by submitters have been used to inform the development the regulations proposed and these proposals have undergone further consultation with key stakeholders.

56 There is also the intention to consult with industry further on an exposure draft of the regulations. This is considered important due to the technical nature of the regulations and that the wording can have some significant implications for industry.