

Version  
as at 27 July 2023



## Fuel Industry Act 2020

Public Act      2020 No 60  
Date of assent    11 August 2020  
Commencement    see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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

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## Schedule 1 Transitional, savings, and related provisions

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

#### 1 Title

This Act is the Fuel Industry Act 2020.

#### 2 Commencement

- (1) Sections 1 and 2, Part 1 (preliminary provisions), and Part 3 (proceedings and miscellaneous provisions) other than section 46 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (3) To the extent that they are not previously brought into force under subsection (2),—
  - (a) subparts 1 (terminal gate pricing) and 2 (fixed wholesale contractual terms) of Part 2 and section 46 (dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation) come into force 1 year after the date on which this Act receives the Royal assent; and
  - (b) subparts 3 (consumer information standards) and 4 (disclosure of information) of Part 2 come into force 18 months after the date on which this Act receives the Royal assent.
- (4) In this section, **provision** includes any item, or any part of an item, in Schedule 1.
- (5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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#### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 2(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Part 1

### Preliminary provisions

#### 3 Purpose

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

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

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

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

**Commission** means the Commerce Commission

**competition** means workable or effective competition

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

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

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

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

**fixed wholesale contract**—

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

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

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

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

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

**reseller**—

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

**retail fuel site**—

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

**retailer**—

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

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

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

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

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

Section 4 **competition**: inserted, on 27 July 2023, by section 5 of the Fuel Industry Amendment Act 2023 (2023 No 38).

## 5 Transitional, savings, and related provisions

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

## 6 Act binds the Crown

This Act binds the Crown.

## 7 Status of examples

- (1) An example used in this Act or in an enactment made under this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

## **Part 2**

### **Requirements applying to fuel industry participants**

#### Subpart 1—Terminal gate pricing

#### **8 Application and definition**

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

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

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

Section 9(4): inserted, on 27 July 2023, by section 6 of the Fuel Industry Amendment Act 2023 (2023 No 38).

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

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

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

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

**12 Reasonable grounds to refuse to supply**

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

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**Example**

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

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

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

The wholesale supplier—

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

- (3) A wholesale supplier to which subsection (1)(e)(i) and (ii) applies (that is, the wholesale supplier requires the specified engine fuel that it has available to supply to meet obligations under its contracts with end users or its fixed wholesale contracts or to meet forecast demand) must provide or publish a notice in accordance with any regulations made under this subpart.
- (4) A wholesale supplier that has supplied the prescribed minimum supply amount to an independent reseller (or to independent resellers) during a prescribed time period must provide or publish a notice in accordance with any regulations made under this subpart.
- (5) For the purposes of this section, **independent reseller** means a reseller that is not—
  - (a) an interconnected body corporate of the wholesale supplier; or
  - (b) a party to a fixed wholesale contract with the wholesale supplier or with an interconnected body corporate of the wholesale supplier.

### 13 Regulations under this subpart

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) prescribing any engine fuels that are included in, or excluded from, the definition of specified engine fuel for the purpose of section 8(2); or
  - (b) prescribing requirements relating to posting terminal gate prices for the purpose of section 9(2), for example,—
    - (i) how terminal gate prices must be expressed (for example, as cents per litre and whether they are inclusive or exclusive of tax); or
    - (ii) how any additional charges must be itemised (for example, that additional charges, fees, duties, or taxes must be identified separately); or
    - (iii) where terminal gate prices must be posted (for example, on a wholesale supplier's Internet site); or
  - (c) prescribing requirements relating to requests by resellers under section 10; or

- (d) prescribing the following terms and conditions for the purposes of sections 11(3) and 12(1)(b):
    - (i) the documentation that must be provided by wholesale suppliers to resellers for each sale at the terminal gate price;
    - (ii) providing for pre-certification to allow wholesale suppliers to determine before supply if the reseller is likely to pay or to meet health and safety requirements; or
  - (e) prescribing the minimum purchase amount for the purpose of section 12(1)(a); or
  - (f) prescribing the period over which demand may be forecast for the purpose of section 12(1)(e)(ii); or
  - (g) prescribing any other grounds to refuse to supply for the purpose of section 12(1)(f); or
  - (h) prescribing the time period for the purpose of section 12(2); or
  - (i) prescribing the minimum supply amount for the purpose of section 12(2); or
  - (j) prescribing requirements relating to notices under section 12(3) and (4) (for example, the information that must be contained in the notice, the form and manner in which it must be published or provided, or to whom it must be provided).
- (2) The Minister may make a recommendation only if—
- (a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations;
  - (b) in the case of regulations specifying engine fuels that are included in, or excluded from, the definition of specified engine fuel,—
    - (i) the Minister has had regard to the impact of the regulations on incentives to innovate and to invest in markets for specified engine fuels; and
    - (ii) the Minister is satisfied that a significant proportion of the relevant engine fuel is used by motor vehicles (as defined in section 2(1) of the Land Transport Act 1998); and
    - (iii) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Act.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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<b>Legislation Act 2019 requirements for secondary legislation made under this section</b>		
<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 13(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Subpart 2—Fixed wholesale contractual terms

### 14 Application of this subpart

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

### 15 Transparency obligation

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

### 16 Transparent pricing under fixed wholesale contracts

- (1) A wholesale supplier must ensure that—
  - (a) its fixed wholesale contracts specify, in accordance with any regulations made under this subpart, the method (**pricing method**) by which the price of any engine fuel supplied under those contracts is to be calculated; and
  - (b) the price of any engine fuel supplied under its fixed wholesale contracts is calculated using that pricing method.
- (2) A wholesale supplier must not vary the pricing method specified in a fixed wholesale contract, except in accordance with any regulations made under this subpart.

### 17 Right to terminate certain fixed wholesale contracts

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

- (3) A distributor may terminate a fixed wholesale contract under subsection (1) by giving reasonable notice in writing to the wholesale supplier.

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

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

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

- (1) A wholesale supplier must not enter into a fixed wholesale contract that contains a provision that—
- (a) is likely to limit the ability of the reseller who is a party to that contract to compete with the wholesale supplier or any other person; and
  - (b) is not reasonably necessary in order to protect the reasonable commercial interests of the supplier.
- (2) A provision that is prohibited under subsection (1) is of no effect.
- (3) In determining whether a provision of a wholesale contract is prohibited under subsection (1), a court must take into account—
- (a) the fixed wholesale contract as a whole; and
  - (b) any other matters that the court thinks are relevant.
- (4) Without limiting subsection (1)(a), the following are examples of provisions that may be likely to limit the ability of the reseller to compete with the wholesale supplier or any other person:
- (a) provisions that limit the ability of the reseller to obtain supply of fuel from another wholesale supplier following the end of the term of the

fixed wholesale contract (for example, a provision that gives the wholesale supplier a right to renewal of the fixed wholesale contract):

- (b) provisions that prevent the reseller from competing in any retail market that the wholesale supplier is active in, for example,—
  - (i) a provision preventing the reseller from competing in a certain geographic area; or
  - (ii) a provision that prioritises the allocation of engine fuel to the wholesale supplier’s retail fuel sites over allocation to the reseller, in the event of a supply constraint:
- (c) provisions that restrict the ability of the reseller to make independent decisions about the conduct of their business (for example, a provision that gives the wholesale supplier a first right of refusal for the transfer of ownership of the reseller’s business).

## 20 Regulations under this subpart

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) relating to the specification of a pricing method in a fixed wholesale contract for the purpose of section 16(1)(a); or
  - (b) prescribing the circumstances in which a pricing method may be varied for the purpose of section 16(2) (for example, as to notice to the other party or the agreement of the other party); or
  - (c) prescribing the maximum duration for the purpose of section 17; or
  - (d) prescribing the maximum percentage for the purpose of section 18.
- (2) The Minister may make a recommendation under subsection (1) only if—
  - (a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and
  - (b) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Act.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 20(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### Subpart 3—Consumer information requirements

#### 21 Purpose of this subpart

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

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

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

#### 23 Notice to take corrective action

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

#### 24 Consumer information requirements may be prescribed

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements relating to the display of information at retail fuel sites about the price of engine fuels.
- (2) In particular, the regulations may prescribe—
  - (a) the engine fuels and kinds of retail fuel sites the regulations apply to; or
  - (b) the information in relation to the price of those engine fuels that must be displayed; or
  - (c) the circumstances in which the information must be displayed; or
  - (d) the form and manner in which the information must be displayed; or
  - (e) any information that must not be displayed (for example, discounts on the price of engine fuels).
- (3) The Minister may make a recommendation under subsection (1) only if—
  - (a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and

- (b) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purposes of this Act and this subpart.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 24(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Subpart 4—Disclosure of information

### 25 Purposes of this subpart

The purposes of this subpart are—

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

### 26 Obligation to comply with information disclosure requirements

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

### 27 Information disclosure requirements may be prescribed

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements relating to record keeping, and the retention and disclosure of information, about engine fuel markets.
- (2) In particular, the regulations may prescribe—
- (a) the kinds of fuel industry participants, the engine fuels, and other matters that the regulations apply to; or
- (b) the information that must be recorded and retained; or

- (c) the methodologies that must be applied in recording the information, including—
    - (i) how common costs are to be allocated; and
    - (ii) how assets are to be valued; or
  - (d) the circumstances in which information must be disclosed to the chief executive, the Commission, or both (for example, when requested by the chief executive or the Commission, at a specified time, or on the occurrence of a specified event); or
  - (e) requirements relating to the publication of information that is required to be disclosed to the chief executive or the Commission.
- (3) The Minister may make a recommendation under subsection (1) only if—
- (a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and
  - (b) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Act and this subpart.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 27(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 28 Publication of analysis or summary

The chief executive or the Commission may,—

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

## 29 Information sharing between Commission and chief executive

- (1) The Commission may provide to the chief executive, and the chief executive may provide to the Commission, any information, or a copy of any document, that the Commission or the chief executive (as the case may be)—
- (a) holds in relation to the exercise of powers, or the performance of functions and duties, in respect of this subpart; and
  - (b) considers may assist the other for the purposes of this subpart.

- (2) The Commission and the chief executive may use any information, or a copy of any document, provided under this section for the purposes of this subpart.
- (3) The Commission or the chief executive must not provide any information or document under this section unless satisfied that appropriate protections are or will be in place to maintain the confidentiality of the information or document (including information that is personal information within the meaning of the Privacy Act 2020).
- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) Nothing in this section limits the Privacy Act 2020 or section 99AA of the Commerce Act 1986.

Section 29(5): amended, on 5 May 2022, by section 47(2) of the Commerce Amendment Act 2022 (2022 No 11).

## Part 2A

### Price regulation of terminal gate prices

Part 2A: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### Subpart 1—Preliminary provisions

Subpart 1: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### 29A Interpretation and overview

- (1) In this Part, unless the context otherwise requires,—  
**price regulation** or **regulation** means regulation under this Part  
**regulated terminal gate price** means a terminal gate price that is declared to be regulated by an Order in Council under section 29J.
- (2) The process for imposing price regulation on particular terminal gate prices involves the following steps:
  - (a) the Commission holds an inquiry into whether to regulate the terminal gate prices, and then makes a recommendation to the Minister under section 29G:
  - (b) the Minister considers the Commission’s recommendation and decides whether to recommend to the Governor-General that price regulation be imposed:
  - (c) if the Minister decides to recommend price regulation, an Order in Council may be made under section 29J that makes the terminal gate prices subject to that regulation:

- (d) for each regulated terminal gate price (or group of regulated terminal gate prices), the Commission makes a determination under section 29L specifying the pricing principles or pricing methodologies that apply.
- (3) This section is intended only as a guide to the general scheme and effect of this Part.

Compare: 1986 No 5 s 52E

Section 29A: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### **29B Effect of terminal gate prices being subject to price regulation**

- (1) If terminal gate prices are subject to price regulation, every wholesale supplier must comply with every determination made under section 29L applying to those prices and the supplier.
- (2) Sections 30 to 38 (which relate to civil proceedings relating to contraventions of this Part) apply to a wholesale supplier on and from the date on which the wholesale supplier is obliged to comply with a relevant determination made under section 29L.
- (3) The Commission is entitled to exercise any of its powers under this Act and under the Commerce Act 1986 (as applied by this Act) for the purpose of monitoring compliance with price regulation.

Compare: 1986 No 5 s 52F

Section 29B: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### **29C When terminal gate prices may be regulated**

The Commission may make a recommendation that price regulation should be imposed on terminal gate prices only if it is satisfied that the relevant wholesale supplier has posted terminal gate prices, for the relevant specified engine fuel and bulk storage facility, that were above what would be expected in a competitive market.

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#### **Example**

The Commission holds an inquiry into all terminal gate prices in New Zealand for diesel (in respect of all wholesale suppliers and all bulk storage facilities).

However, if only 1 supplier at 1 bulk storage facility has posted terminal gate prices for diesel that were above what would be expected in a competitive market, the Commission may recommend regulation only in respect of the diesel terminal gate prices of that supplier at that facility (and not other prices).

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Compare: 1986 No 5 s 52G

Section 29C: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

## Subpart 2—How price regulation may be imposed

Subpart 2: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### *Commission inquiry*

Heading: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### **29D How inquiry triggered**

- (1) The Commission—
  - (a) must hold an inquiry if required to do so by the Minister in writing; and
  - (b) may hold an inquiry on its own initiative.
- (2) In both cases, the Minister must specify a time frame within which the Commission must make a recommendation under section 29G to the Minister.

Compare: 1986 No 5 s 52H

Section 29D: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### **29E Commission inquiry into particular terminal gate prices**

- (1) In conducting an inquiry into particular terminal gate prices, the Commission must consider—
  - (a) whether the test in section 29C is met in relation to the terminal gate prices; and
  - (b) if so, whether price regulation should be imposed on the terminal gate prices and for how long; and
  - (c) if so, how the terminal gate prices should be defined (that is, by reference to all or any of specified engine fuel, wholesale supplier, or bulk storage facility).
- (2) During an inquiry, the Commission may have regard to any other matters it considers necessary or desirable for the purpose of the inquiry.

Compare: 1986 No 5 s 52I

Section 29E: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### **29F Process of inquiry**

- (1) At the start of an inquiry, the Commission must publish in the *Gazette* a notice setting out,—
  - (a) in the case of an inquiry required by the Minister, the Minister’s requirements; and
  - (b) in the case of an inquiry on the initiative of the Commission, the terms of reference for the inquiry.
- (2) The notice must set out indicative time frames and key steps.

- (3) Before making a recommendation under section 29G, the Commission must consult interested persons about the proposed recommendation (including the Commission's reasons for proposing to make a recommendation).

Compare: 1986 No 5 s 52J; 2022 No 21 s 13

Section 29F: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### **29G Commission's recommendation following inquiry**

- (1) At the end of an inquiry, having considered the matters in section 29E, the Commission must make a recommendation to the Minister on whether, in its opinion, price regulation should be imposed on all or any of the terminal gate prices that were the subject of the inquiry.
- (2) If the Commission recommends that price regulation should be imposed on particular terminal gate prices, the recommendation must state—
- (a) which terminal gate prices should be regulated, by reference to all or any of the following:
    - (i) the specified engine fuel or fuels;
    - (ii) the wholesale supplier or suppliers;
    - (iii) the bulk storage facility or facilities; and
  - (b) how long the regulation should be in place.
- (3) The Commission must make the recommendation publicly available as soon as practicable after making it, including a statement of its reasons for making the recommendation.
- (4) To avoid doubt, a recommendation by the Commission is not a determination of the Commission.

Compare: 1986 No 5 s 52K

Section 29G: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### *Order in Council imposing regulation*

Heading: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### **29H Minister's consideration**

- (1) The Minister must consider any recommendation of the Commission made under section 29G.
- (2) As part of that consideration, the Minister—
- (a) must consult the Minister of Commerce and Consumer Affairs and the Minister of Transport; and
  - (b) may request further information or advice from the Commission; and

- (c) may request that the Commission reconsider any matter (for example, an error, an oversight, or a competing policy interest).
- (3) The Minister must make publicly available any request made under subsection (2)(c), and the Commission must make publicly available its advice given following that request.
- (4) If the Commission receives a request under subsection (2)(c), it may, at its discretion,—
  - (a) consult interested parties; or
  - (b) reopen its inquiry, in which case section 29F applies with all necessary modifications.

Compare: 1986 No 5 s 52L

Section 29H: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

## **29I Minister's decision and recommendation**

- (1) Having considered the Commission's recommendation in accordance with section 29H, the Minister must—
  - (a) decide whether, in the opinion of the Minister, price regulation should be imposed on all or any of the terminal gate prices recommended by the Commission; and
  - (b) make a recommendation to that effect, if so.
- (2) The Minister's decision may be—
  - (a) the same as the Commission's recommendation under section 29G; or
  - (b) different from the Commission's recommendation under section 29G only to the extent that all or any of the terminal gate prices recommended by the Commission should be not regulated.

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### **Example**

After an inquiry, the Commission recommends that all diesel terminal gate prices that are posted by suppliers A and B should be regulated.

The Minister may recommend the same or the Minister may recommend that regulation should apply only to all or some of supplier A's diesel terminal gate prices and not supplier B's (or vice versa). The Minister cannot recommend that regulation should apply to supplier C unless the Commission makes a separate recommendation to that effect.

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- (3) If the Minister's decision is different from the Commission's recommendation, the Minister must set out the reasons for the decision and make the decision, with the reasons, publicly available.

Compare: 1986 No 5 s 52M

Section 29I: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**29J Order in Council imposing regulation**

- (1) The Governor-General may, on the recommendation of the Minister made under section 29I, make an Order in Council imposing regulation on particular terminal gate prices.
- (2) The order must declare that the terminal gate prices are regulated under this Part.
- (3) The order may identify the terminal gate prices it relates to by reference to all or any of—
  - (a) the specified engine fuel or fuels:
  - (b) the wholesale supplier or suppliers:
  - (c) the bulk storage facility or facilities.
- (4) The order must include an expiry date (which must be a date not later than 5 years after its commencement date) at the close of which the order is revoked.
- (5) Despite subsection (4), the order may be earlier revoked in the manner in which it was made.
- (6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1986 No 5 s 52N

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 29J: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**29K Revocation or amendment of Order in Council**

- (1) An Order in Council made under section 29J in respect of particular terminal gate prices may not be revoked or significantly amended unless the Commission has held an inquiry into the terminal gate prices.
- (2) In subsection (1), **significantly amended** means amended in a way that materially alters the terminal gate prices to which the price regulation applies, so that—
  - (a) the terminal gate prices, or any of them, are no longer regulated; or
  - (b) terminal gate prices that were not identified in the original order are now subject to regulation.

- (3) An Order in Council made under section 29J may be amended in any other material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.

Compare: 1986 No 5 s 52O

Section 29K: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

*Commission determination about how regulation applies*

Heading: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**29L Commission determination about how regulation applies**

- (1) The Commission must make determinations under this section specifying how price regulation applies to wholesale suppliers and regulated terminal gate prices.
- (2) In considering whether the Act's purpose is promoted in making a determination, the Commission must take into account the outcomes that would be expected in a competitive market, including wholesale suppliers' incentives to invest to meet the demand of end users of engine fuel products.
- (3) Determinations must be made—
- (a) only after consultation with interested parties on the draft pricing principle or pricing methodology that the Commission proposes to apply; and
  - (b) as soon as practicable after the Order in Council under section 29J is made.
- (4) Determinations must—
- (a) set out, for each regulated terminal gate price, the pricing principles or pricing methodologies that apply and the requirements that apply to each wholesale supplier; and
  - (b) set out any time frames that must be met or that apply.
- (5) It is not necessary for a single determination to address all matters relating to particular regulated terminal gate prices, or to a wholesale supplier of regulated terminal gate prices, and different parts of any determination may come into effect at different times.
- (6) A determination under this section may require a wholesale supplier to comply with the requirements set out in any other determination that has been made under this section in respect of regulated terminal gate prices of the same type.
- (7) The Commission must, as soon as practicable after making a determination under this section, give to each wholesale supplier to which the determination relates notice of the determination and where it is available.
- (8) Each wholesale supplier to which the determination relates must comply with the requirements imposed by the determination.

- (9) A determination under this section and an amendment to a determination are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1986 No 5 s 52P

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021 Subsection (7) must also be complied with	LA19 s 74(1)(aa)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 29L: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**29M Amendment of determination made under section 29L**

- (1) A determination made under section 29L may be amended in a material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.
- (2) However, the Commission is not required to conduct an inquiry before amending a determination.
- (3) As soon as practicable after making an amendment, the Commission must give to each wholesale supplier to which the determination relates notice of the amendment and where it is available.

Compare: 1986 No 5 s 52Q

Section 29M: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**Subpart 3—Miscellaneous provisions**

Subpart 3: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**29N Commerce Act 1986 not limited**

This Part does not limit subpart 2 of Part 4 of the Commerce Act 1986, which allows for regulation to be imposed on particular goods or services.

Compare: 1986 No 5 s 56N

Section 29N: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

**29O Application of Commerce Act 1986 to this Part**

- (1) The following provisions of the Commerce Act 1986 apply to this Part with any necessary modifications (including the following modifications):
- (a) section 26 (Commission to have regard to economic policies of Government):

- (b) section 53N (monitoring compliance with price-quality paths) as if each reference to a price-quality path were a reference to regulation under this Part:
  - (c) section 53ZD (powers of Commission under Part 4) as if section 53ZD(1)(b) referred to investigation as to the terminal gate prices that would be expected in a competitive market and how any pricing principles or pricing methodologies being considered by the Commission may be applied or have been applied:
  - (d) section 98 (Commission may require person to supply information or documents or give evidence).
- (2) This section does not limit the application of other provisions of the Commerce Act 1986.

Section 29O: inserted, on 27 July 2023, by section 4 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### **Part 3**

#### **Proceedings and miscellaneous provisions**

##### **Subpart 1—Proceedings**

#### **30 Pecuniary penalties**

- (1) The High Court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
- (a) has contravened any of the following provisions:
    - (i) section 9 or 11 (terminal gate pricing):
    - (ii) section 15, 16, 18(2), or 19(1) (wholesale contractual terms):
    - (iii) section 22 (consumer information requirements):
    - (iv) requirements imposed by a determination made under section 29L (which relates to Part 2A price regulation of terminal gate prices);  
or
  - (b) has attempted to contravene any of those provisions; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any of those provisions; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those provisions; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any of those provisions; or
  - (f) has conspired with any other person to contravene any of those provisions.

- (2) The High Court may, on the application of the Commission or the chief executive, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
  - (a) has contravened section 26 (information disclosure requirements); or
  - (b) has attempted to contravene that provision; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene that provision; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene that provision; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that provision; or
  - (f) has conspired with any other person to contravene that provision.
- (3) The amount of any pecuniary penalty under subsection (1) or (2) must not exceed,—
  - (a) in the case of an individual, \$500,000 for each act or omission; or
  - (b) in any other case, \$5,000,000 for each act or omission.
- (4) The District Court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
  - (a) has failed to provide or publish a notice as required by section 12(3) or (4); or
  - (b) has failed to comply with a notice given by the Commission under section 23(1).
- (5) The amount of any pecuniary penalty under subsection (4) must not exceed,—
  - (a) in the case of an individual, \$10,000 for each act or omission; or
  - (b) in any other case, \$30,000 for each act or omission.
- (6) In determining an appropriate penalty under this section, the court must have regard to,—
  - (a) in the case of a contravention referred to in subsection (1)(a) or (4)(b),—
    - (i) the nature and extent of the contravention; and
    - (ii) the nature and extent of any loss or damage suffered by any person because of the contravention; and
    - (iii) any gains made or losses avoided by the person in contravention; and
    - (iv) whether or not the person in contravention has paid an amount in compensation or taken other steps for reparation or restitution; and

- (b) the circumstances in which the contravention or other act or omission took place (including whether it was intentional, inadvertent, or caused by negligence); and
  - (c) any previous contraventions of a similar nature; and
  - (d) any other relevant matter.
- (7) Where conduct by any person constitutes a contravention of 2 or more provisions referred to in subsection (1)(a), proceedings may be instituted under this Act against that person in relation to the contravention of any 1 or more of the provisions.
- (8) However, no person is liable to more than 1 pecuniary penalty under this section in respect of the same conduct.

Compare: 1986 No 5 s 80

Section 30(1)(a)(iv): inserted, on 27 July 2023, by section 7 of the Fuel Industry Amendment Act 2023 (2023 No 38).

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

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

- (a) the standard of proof is the standard of proof that applies in civil proceedings; and
- (b) the Commission may, by order of the court, obtain discovery and administer interrogatories.

Compare: 1986 No 5 s 79A

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

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

Compare: 1986 No 5 s 87A

### *Application of Commerce Act 1986*

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

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

- (a) section 74A (Commission may accept undertakings);
- (b) section 74B (matters included in undertakings):

- (c) section 74C (enforcement of undertakings):
- (d) section 79 (evidence not otherwise admissible):
- (e) section 90 (conduct by employees, agents, and others):
- (f) section 98 (Commission may require person to supply information or documents or give evidence):
- (g) sections 98A and 98G (Commission's powers of search and seizure):
- (h) section 99 (powers of Commission to take evidence):
- (ha) sections 99B to 99P (assistance to overseas regulators), as if—
  - (i) references to an overseas regulator were references to an overseas body that has functions relating to the regulation of the fuel industry:
  - (ii) references in those sections to the Minister were references to the Minister responsible for the administration of this Act:
- (i) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (j) section 100A (Commission may state case for opinion of High Court).

Section 33(ha): inserted, on 27 July 2023, by section 8 of the Fuel Industry Amendment Act 2023 (2023 No 38).

### 34 Additional proceedings

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

Compare: 2003 No 52 s 114

### *Injunctions*

### 35 Court may grant injunction

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

Compare: 2013 No 69 s 480

### **36 When court may grant restraining injunctions**

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

Compare: 2013 No 69 s 481

### **37 When court may grant performance injunctions**

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

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

- (1) If the Commission applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.

- (2) In determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

Compare: 2013 No 69 s 482

### *Other orders*

#### **39 Other orders**

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

Compare: 1986 No 5 s 89

### *Jurisdiction*

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

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

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

Compare: 1986 No 5 s 75

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

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

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

Compare: 1986 No 5 s 76

### *Offences*

#### **42 Offences in respect of provisions of Commerce Act 1986**

- (1) A person must not,—
  - (a) without reasonable excuse, refuse or fail to comply with a notice under sections 53N, 53ZD, and 98 of the Commerce Act 1986; or
  - (b) in purported compliance with such a notice, provide information, or produce a document, or give evidence, or authorise the making of a statement in a document, knowing it to be false or misleading; or
  - (c) resist, obstruct, or delay an employee of the Commission acting under a warrant issued under section 98A of the Commerce Act 1986.
- (2) A person must not attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- (3) A person must not, having been required to appear before the Commission in accordance with section 98(1)(c) of the Commerce Act 1986,—

- (a) without reasonable excuse, refuse or fail to appear before the Commission to give evidence; or
  - (b) refuse to take an oath or make an affirmation as a witness; or
  - (c) refuse to answer any question; or
  - (d) refuse to produce to the Commission any book or document that that person is required to produce.
- (4) A person who contravenes subsection (1), (2), or (3) commits an offence and is liable on conviction to,—
- (a) in the case of an individual, a fine not exceeding \$100,000:
  - (b) in any other case, a fine not exceeding \$300,000.

Compare: 1986 No 5 s 103

Section 42 heading: replaced, on 27 July 2023, by section 9(1) of the Fuel Industry Amendment Act 2023 (2023 No 38).

Section 42(1)(a): amended, on 27 July 2023, by section 9(2) of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### *Other matters*

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

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

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

- (1) Proceedings for offences against section 42 of this Act or against section 100 of the Commerce Act 1986 may be commenced no later than 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) Any civil proceedings relating to a contravention of any of the provisions of this Act may be commenced—
  - (a) no later than 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered; and
  - (b) no later than 10 years after the matter giving rise to the contravention.

#### Subpart 2—Miscellaneous provisions

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

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

- (a) section 13 (termination of appointment of members):

- (b) section 15 (meetings of Commission):
- (c) section 16 (chairperson may direct Commission to sit in Divisions):
- (ca) section 17 (assent to determination):
- (d) section 25 (functions of Commission in relation to dissemination of information):
- (e) sections 101 (notices) and 102 (service of notices):
- (f) section 106 (proceedings privileged):
- (g) section 106A (judicial notice):
- (h) section 109 (Commission may prescribe forms).

Section 45(ca): inserted, on 27 July 2023, by section 10 of the Fuel Industry Amendment Act 2023 (2023 No 38).

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

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

Compare: 2013 No 91 s 117

#### **47 Other regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) prescribing procedures for the purpose of section 46 (dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation):
  - (b) specifying or setting out a method of calculation for how mediation costs incurred under section 46 must be split between the parties:
  - (c) prescribing 1 or more dispute resolution schemes for the purpose of section 46:

- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Minister may make a recommendation under this section only if the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 47(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

#### **48 Differential regulations**

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

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

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

Compare: 1986 No 5 s 109

## Schedule 1

### Transitional, savings, and related provisions

s 5

#### Part 1

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

#### 1 Interpretation in this Part

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

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

- (1) Section 17 (right to terminate certain fixed wholesale contracts) applies to contracts entered into before commencement in the same way in which it applies to contracts entered into on or after commencement.
- (2) The rest of subpart 2 of Part 2 does not apply to an existing contract until the earlier of—
  - (a) the date appointed by the Governor-General by Order in Council for the purpose of this clause:
  - (b) 2 years after the date on which this Act receives the Royal assent.
- (3) The Governor-General may, by Order in Council, appoint a date for the purpose of this clause.
- (4) An order under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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##### Legislation Act 2019 requirements for secondary legislation made under this clause

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Schedule 1 clause 2(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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

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

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## Part 2

### Provisions relating to Fuel Industry Amendment Act 2023

Schedule 1 Part 2: inserted, on 27 July 2023, by section 11(a) of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### 4 Interpretation in this Part

In this Part, **pre-commencement price** means a terminal gate price that was posted before the commencement of the Fuel Industry Amendment Act 2023.

Schedule 1 clause 4: inserted, on 27 July 2023, by section 11(a) of the Fuel Industry Amendment Act 2023 (2023 No 38).

#### 5 Application of new Part 2A to existing prices

- (1) The Commission must not consider whether a pre-commencement price has met the test in section 29C.
- (2) However, the Commission may take into account a pre-commencement price when considering whether a post-commencement price has met that test.

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#### Example

A supplier posts an equal number of terminal gate prices before and after commencement. The prices that the Commission assesses against the test in section 29C will be only the prices from after commencement (that is, half of them). However, in assessing those prices against the test, the Commission can base its assessment, at least in part, on data that pre-dates commencement.

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Schedule 1 clause 5: inserted, on 27 July 2023, by section 11(a) of the Fuel Industry Amendment Act 2023 (2023 No 38).

## Notes

### **1** *General*

This is a consolidation of the Fuel Industry Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Fuel Industry Amendment Act 2023 (2023 No 38)

Commerce Amendment Act 2022 (2022 No 11): section 47

Secondary Legislation Act 2021 (2021 No 7): section 3