

# **Fuel Industry Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

On 5 December 2019, the Commerce Commission published its final report on its retail fuel market study, which concluded that fuel companies have been making higher profits than would be expected in a workably competitive market. The Commission also found that wholesale prices are higher than it would expect in a competitive market and that this flows through to consumers paying higher pump prices.

To address the Commission’s findings, the Government is introducing changes to improve competition in the wholesale and retail fuel markets. Cumulatively, these measures are designed to promote greater competition for the long-term benefit of end users of engine fuel products.

The Bill introduces changes to wholesale market arrangements in the fuel sector to improve transparency of pricing and to provide for rules to ensure that wholesale contracts are transparent and fair. These changes aim to increase wholesale market competition, which should over time lead to lower fuel prices for consumers. These changes include—

- introducing a wholesale pricing regime, “terminal gate pricing”, which requires wholesale fuel suppliers at a storage terminal to publicly post a price at which they will sell specified engine fuel to wholesale customers at that storage terminal on a spot basis. This regime will provide for greater transparency of pricing through requiring posted prices for spot sales of wholesale fuel, and could provide a source of fuel supply for potential entrants to the retail fuel market:
- providing for a regime governing contract terms between wholesale suppliers and their wholesale customers (excluding large end users or commercial customers, such as Fonterra) to ensure that contracts are fair and promote competition:

- providing for a dispute resolution scheme (namely, mediation and arbitration procedures) to address disputes relating to the wholesale market changes outlined above in an accessible, independent, and cost-effective manner:
- providing for regulation-making powers in relation to a range of matters such as terms and conditions for supply under terminal gate pricing, details of contractual requirements, and mediation and arbitration procedures.

The Bill also provides for—

- requirements for the display of certain prescribed information relating to the price of fuel at retail fuel sites. The Bill includes regulation-making powers to prescribe requirements for consumer information relating to the price of engine fuels. Requiring better display of information at retail outlets will assist consumers to compare prices, thereby promoting competition in the fuels market:
- requirements for some fuel industry participants to record and disclose certain information. This will improve transparency to enable monitoring of the performance of engine fuel markets and to assist in determining whether competition is being promoted for the long-term benefit of consumers. The Bill also provides a regulation-making power to prescribe information disclosure requirements:
- powers for the Commerce Commission to enforce the new requirements to carry out any new functions, including civil pecuniary penalties based on those in the Commerce Act 1986 (with maximum penalties of \$500,000 for an individual or \$5,000,000 in any other case).

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=301>

### **Regulatory impact assessment**

The Ministry of Business, Innovation, and Employment produced regulatory impact assessments on 11 December 2019, 31 January 2020, and 29 May 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/market-studies>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill provides for some provisions to come into force on the day after the Bill receives the Royal assent. A lead-in time is required for some provisions to allow necessary regulations to be made. Those provisions will be brought into force on a date or dates to be set by Order in Council, with a back-stop commencement date of 1 year after assent for *subparts 1 and 2 of Part 2* and *section 43* and 18 months for the rest of the Bill.

### Part 1

#### Preliminary provisions

*Clause 3* provides that the purpose of the Bill is to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products.

*Clause 4* is the interpretation clause, and sets out key definitions used in the Bill.

*Clause 5* provides for transitional, savings, and related matters, as set out in *Schedule 1*.

*Clause 6* provides that the Act binds the Crown.

### Part 2

#### Requirements applying to fuel industry participants

##### Subpart 1—Terminal gate pricing

*Clause 7* sets out the parties in respect of which *subpart 1 of Part 2* applies. The subpart applies to wholesale suppliers of specified engine fuels from bulk storage facilities and resellers. The term “reseller” is defined in *clause 4* of the Bill. “Specified engine fuel” is regular and premium grade petrol, diesel, and any other engine fuel specified in regulations made under the subpart.

*Clause 8* requires wholesale suppliers at bulk storage facilities to set and publicly post a price for each specified engine fuel at the facility.

*Clause 9* allows a reseller to request a wholesale supplier at a bulk storage facility to supply an amount of specified engine fuel in accordance with regulations made under this subpart.

*Clause 10* provides that a wholesale supplier at a bulk storage facility must supply a requested amount to a reseller at its terminal gate price unless there are reasonable grounds to refuse to supply in accordance with *clause 11*.

*Clause 11* sets out the grounds upon which a wholesale supplier can refuse to supply a requested amount of specified engine fuel.

*Clause 12* allows regulations to be made that—

- specify which engine fuels are excluded from, or included in, the definition of specified engine fuel:

- prescribe requirements for how the terminal gate price must be set, expressed, and posted:
- prescribe requirements relating to requests by resellers:
- set standard terms and conditions applying to the request and sale and supply of engine fuel under this subpart:
- prescribe a minimum purchase amount of engine fuel, a lesser amount than which a wholesale supplier may refuse to supply:
- prescribe the period over which demand may be forecast for the purpose of the wholesale supplier refusing supply on the ground that it requires the fuel amount to meet forecast demand at its own retail fuel sites:
- prescribe the period over which the wholesale supplier may refuse to supply engine fuel on the ground that it has already supplied the prescribed minimum amount of the engine fuel to the specified class of reseller during that period:
- prescribe other reasonable grounds for a wholesale supplier to refuse to supply:
- prescribe a time period for the purpose of *clause 11*:
- prescribe the minimum supply amount of engine fuel that a wholesale supplier must make available to resellers within each prescribed time period:
- relate to notices published under *clause 11*.

### Subpart 2—Wholesale contractual terms

*Clause 13* provides that *subpart 3* applies to wholesale contracts for any engine fuel.

*Clause 14* requires wholesale suppliers to ensure that wholesale contracts are written in plain language.

*Clause 15* requires wholesale suppliers to ensure that wholesale contracts contain a transparent pricing methodology, and that the price of engine fuel supplied under the contracts is set using that pricing methodology.

*Clause 16* allows distributors of engine fuel to terminate, in certain circumstances, a fixed wholesale contract at any time after the contract has exceeded a prescribed maximum duration.

*Clause 17* provides that a provision in a wholesale contract that requires a distributor to purchase more than a prescribed maximum percentage of its annual requirement for engine fuel exclusively from the wholesale supplier is of no effect, unless that requirement is reasonably necessary to enable or recover specific investment for the benefit of a distributor. The wholesale supplier may require a distributor to provide certain forecasts of likely annual requirements and give reasonable notice of intention to take supply from another supplier.

*Clause 18* prohibits provisions in wholesale contracts that are likely to limit the ability of a reseller to compete with the wholesale supplier or any other person, unless the provision is reasonably necessary to protect the reasonable commercial interests of the supplier.

*Clause 19* allows regulations to be made that—

- prescribe transparent pricing methodologies for the purpose of *clause 15(1)*;
- prescribe the circumstances in which a pricing methodology may be varied for the purposes of *clause 15(2)*;
- prescribe the maximum duration of fixed wholesale contracts for the purpose of *clause 16*;
- prescribe a maximum percentage for the purpose of *clause 17*.

### Subpart 3—Consumer information requirements

*Clause 20* requires a retailer, or a person responsible for displaying information at a retail fuel site, to comply with consumer information requirements.

*Clause 21* allows regulations to be made that prescribe consumer information requirements relating to the price of engine fuels, including which engine fuels and retail fuel sites the requirements apply to.

*Clause 22* enables the Commerce Commission to give a notice requiring a retailer, or a person responsible for displaying information at a retail fuel site, to take corrective action if they have failed to comply with a consumer information requirement.

### Subpart 4—Disclosure of information

*Clause 23* sets out the purposes of the subpart, which are to enable monitoring of the performance of engine fuel markets by the chief executive of the Ministry of Business, Innovation, and Employment (the **chief executive**) and the Commerce Commission (the **Commission**), and to ensure that sufficient information is available to allow the chief executive and the Commission to assess whether the purpose of the Bill is being met.

*Clause 24* requires fuel industry participants to comply with certain information disclosure requirements as prescribed by regulations.

*Clause 25* allows regulations to be made that prescribe requirements relating to record keeping and retention and disclosure of information about engine fuel markets, including—

- which fuel industry participants, engine fuels, and other matters the information disclosure requirements apply to;
- what information must be collected, retained, and disclosed;
- the circumstances in which information must be disclosed to the chief executive or the Commission;
- requirements relating to the publication of information that is required to be disclosed to the chief executive or the Commission;
- the methodologies that must be applied in preparing the information.

*Clause 26* enables the chief executive or the Commission to specify the form and manner in which information required to be disclosed to them must be provided.

*Clause 27* provides that the chief executive or the Commission may publish any analysis or summary of information that is disclosed to them.

*Clause 28* provides for information sharing between the chief executive and the Commission in certain circumstances.

### **Part 3**

#### **Enforcement and miscellaneous provisions**

##### **Subpart 1—Enforcement**

*Clause 29* sets out the pecuniary penalties that apply for certain contraventions of the Bill, including the factors the court must consider when determining an appropriate penalty.

*Clause 30* provides that the standard of proof that applies in a pecuniary penalty proceeding is the standard that applies in civil proceedings.

*Clause 31* provides that the court may order that a person who is ordered to pay a pecuniary penalty must, in addition, pay compensation to a person who has suffered, or is likely to suffer, loss or damage as a result of the contravention.

*Clause 32* sets out the provisions of the Commerce Act 1986 that apply to this subpart.

*Clause 33* provides that proceedings brought under this Bill are in addition to any proceedings brought under any other Act.

*Clause 34* enables the court to grant injunctions on the application of the Commission or any other person. The court may at any time vary or rescind an injunction granted under this subpart.

*Clause 35* sets out the circumstances in which the court may grant a restraining injunction.

*Clause 36* sets out the circumstances in which the court may grant a performance injunction.

*Clause 37* provides that the court must not require the Commission to make an undertaking as to damages.

*Clause 38* provides that, in any proceedings under this subpart, the court may make any other orders it thinks fit against a person who has engaged in conduct in contravention of the Bill.

*Clause 39* sets out which matters in relation to the Bill must be heard and determined by the High Court.

*Clause 40* sets out which matters in relation to the Bill must be heard and determined by the District Court.

*Clause 41* sets out offences in relation to sections 98 and 98A of the Commerce Act 1986.

## Subpart 2—Miscellaneous provisions

*Clause 42* provides that certain provisions of the Commerce Act 1986 apply to the Bill, with any necessary modifications.

*Clause 43* requires disputes arising from *subpart 1 or 2 of Part 2* to be referred to mediation if unable to be resolved by agreement between the parties. If the parties are unable to resolve the dispute at mediation, they may refer the matter to arbitration in accordance with the Arbitration Act 1996.

*Clause 44* allows regulations to be made that—

- prescribe procedure for mediation under *clause 43*;
- specify or set out a method of calculation for how mediation costs will be split between parties;
- provide for any other matters contemplated by the Bill, necessary for its administration, or necessary for giving it full effect.

*Clause 45* provides that regulations made under the Bill may make different provisions for different cases on any differential basis, including engine fuels, fuel industry participants, and retail fuel sites.

*Clause 46* provides that the chief executive may prescribe the form of applications, notices, and other documents required for the purposes of the Bill.

*Schedule 1* sets out transitional and savings provisions.





*Hon Dr Megan Woods*

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## **Contents**

		Page
1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Preliminary provisions</b>		
3	Purpose	3
4	Interpretation	3
5	Transitional, savings, and related provisions	5
6	Act binds the Crown	5
<b>Part 2</b>		
<b>Requirements applying to fuel industry participants</b>		
Subpart 1—Terminal gate pricing		
7	Application and definition	5
8	Obligation to set and post terminal gate price	6
9	Right to request supply	6
10	Wholesale supplier must supply at terminal gate price	6
11	Reasonable grounds to refuse to supply	6
12	Regulations under this subpart	8
Subpart 2—Wholesale contractual terms		
13	Application of this subpart	9
14	Transparency obligation	9
15	Pricing methodology in wholesale contracts	9
16	Right to terminate certain fixed wholesale contracts	9
17	Maximum percentage of annual requirement of engine fuel that may be subject to exclusivity	10

## Fuel Industry Bill

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18	Wholesale contract terms that limit ability of reseller to compete	10
19	Regulations under this subpart	11
	Subpart 3—Consumer information requirements	
20	Obligation to comply with consumer information requirements	11
21	Consumer information requirements may be prescribed	11
22	Notice to take corrective action	12
	Subpart 4—Disclosure of information	
23	Purposes of this subpart	12
24	Obligation to comply with information disclosure requirements	12
25	Information disclosure requirements may be prescribed	12
26	Form and manner in which information disclosed	13
27	Publication of analysis or summary	13
28	Information sharing between Commission and chief executive	13
	<b>Part 3</b>	
	<b>Enforcement and miscellaneous provisions</b>	
	Subpart 1—Enforcement	
29	Pecuniary penalties	14
30	Proceedings for pecuniary penalties	15
31	Court may order compensation	15
	<i>Application of Commerce Act 1986</i>	
32	Application of Commerce Act 1986	16
33	Additional proceedings	16
	<i>Injunctions</i>	
34	Court may grant injunction	16
35	When court may grant restraining injunctions	17
36	When court may grant performance injunctions	17
37	Commission’s undertaking as to damages not required	18
	<i>Other orders</i>	
38	Other orders	18
	<i>Jurisdiction</i>	
39	Jurisdiction of High Court	19
40	Jurisdiction of District Court	19
	<i>Offences</i>	
41	Offences in respect of sections 98 and 98A of Commerce Act 1986	19
	Subpart 2—Miscellaneous provisions	
42	Application of Commerce Act 1986	20
43	Dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation	20
44	Other regulations	21

45	Differential regulations	21
46	Chief executive may prescribe forms	21
	<b>Schedule 1</b>	22
	<b>Transitional, savings, and related provisions</b>	

**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** (enforcement and miscellaneous provisions) other than **section 43** come into force on the day after the date on which this Act receives the Royal assent. 5
- (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. 10
- (3) To the extent that they are not previously brought into force under **subsection (2)**,—
- (a) **subparts 1** (terminal gate pricing) and **2** (wholesale contractual terms) of **Part 2** and **section 43** (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 15
- (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**. 20

**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. 25

**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 30

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

**Commission** means the Commerce Commission

**dealer** means a reseller that sells and supplies engine fuel through its own retail fuel sites using a brand owned by another person that is not an interconnected body corporate of the reseller 5

**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 fuel 10

**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 during the period; or 15
  - (ii) for a fixed amount of fuel, the wholesale price and other conditions of sale and supply for that fuel; but
- (b) does not include a wholesale contract for the sale and supply of fuel under the terminal gate pricing regime in **subpart 1 of Part 2** 20

**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 25

**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**— 30

- (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**— 35

- (a) means a place at which engine fuel is sold and supplied to an end user (for example, a petrol station); 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	
	<b>retailer—</b>	
	(a) means a person that carries on a business of selling and supplying engine fuel to end users; but	5
	(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	
	<b>specified engine fuel</b> has the meaning given in <b>section 7(2)</b>	10
	<b>terminal gate price</b> has the meaning given in <b>section 8</b>	
	<b>wholesale contract</b> means a contract between a wholesale supplier and a distributor or dealer for the sale and supply of engine fuel	
	<b>wholesale supplier</b> means a person that sells and supplies engine fuel, as the whole or part of its business, to persons other than end users.	15
<b>5</b>	<b>Transitional, savings, and related provisions</b>	
	The transitional, savings, and related provisions set out in <b>Schedule 1</b> have effect according to their terms.	
<b>6</b>	<b>Act binds the Crown</b>	
	This Act binds the Crown.	20

## Part 2

### Requirements applying to fuel industry participants

#### Subpart 1—Terminal gate pricing

<b>7</b>	<b>Application and definition</b>	
(1)	This subpart applies to—	25
	(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, <b>specified engine fuel—</b>	
	(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	30
	(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.

## **8 Obligation to set and post terminal gate price**

- (1) A wholesale supplier must set and 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 of the specified engine fuel. 5
- (2) The wholesale supplier must comply with any requirements of regulations made under this subpart relating to setting and publicly posting a terminal gate price. 10

## **9 Right to request 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 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. 15

## **10 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. 20
- (2) The wholesale supplier must comply with any terms and conditions prescribed by regulations made under this subpart that apply to the wholesale supplier.

## **11 Reasonable grounds to refuse to supply**

- (1) The wholesale supplier has **reasonable grounds to refuse to supply** 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 25
- (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 30
- (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 35
- (e) the wholesale supplier requires the requested amount—

- 
- (i) to meet its obligations under its fixed wholesale contracts or under its contracts with end users; or
  - (ii) to meet forecast demand, over the period prescribed by regulations made under this subpart, at its own retail fuel sites; or
  - (f) any other grounds prescribed by regulations made under this subpart apply. 5
- (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. 10
- 
- 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. 15
- 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): 20
  - 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, it requires the specified engine fuel that it has available to supply to meet obligations under its fixed wholesale contracts or under its contracts with end users or to meet forecast demand) must, if required to do so by regulations, provide or publish a notice in accordance with those regulations. 25
- (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, if required to do so by any regulations, provide or publish a notice in accordance with those regulations. 30
- (5) For the purposes of **subsections (2) to (4)**, **independent reseller** means a reseller that is not— 35
- (a) an interconnected body corporate of the wholesale supplier; or
  - (b) a party to a fixed wholesale contract with the wholesale supplier or an interconnected body corporate of the wholesale supplier.

**12 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 7(2)**; or 5
  - (b) prescribing requirements relating to setting and posting terminal gate prices, for example,—
    - (i) how frequently terminal gate prices may be changed; or
    - (ii) how terminal gate prices must be expressed (for example, as cents per litre and whether they are inclusive or exclusive of tax); or 10
    - (iii) where terminal gate prices must be posted (for example, on a wholesale supplier’s Internet site); or
    - (iv) how any additional charges must be itemised (for example, that additional charges, fees, duties, or taxes must be identified separately); or 15
  - (c) prescribing requirements relating to requests by resellers under **section 9**; or
  - (d) prescribing terms and conditions for the purposes of **sections 10(2) and 11(1)(b)**, for example,—
    - (i) the documentation that must be provided by wholesale suppliers to resellers for each sale at the terminal gate price; or 20
    - (ii) conditions of access to bulk storage facilities (for example, 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 25
  - (e) prescribing the minimum purchase amount for the purpose of **section 11(1)(a)**; or
  - (f) prescribing the period over which demand may be forecast for the purpose of **section 11(1)(e)(ii)**; or
  - (g) prescribing any other grounds to refuse to supply for the purpose of **section 11(1)(f)**; or 30
  - (h) prescribing the time period for the purpose of **section 11(2)**; or
  - (i) prescribing the minimum supply amount for the purpose of **section 11(2)**; or
  - (j) prescribing requirements relating to notices under **section 11(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, and to whom it must be provided). 35
- (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 5
  - (ii) the Minister is satisfied that the regulations are necessary or desirable to promote competition for the long-term benefit of end users of specified engine fuels. 10

## Subpart 2—Wholesale contractual terms

### 13 Application of this subpart

This subpart applies to wholesale contracts for any engine fuel.

### 14 Transparency obligation

A wholesale supplier must ensure that the terms of its wholesale contracts are expressed clearly, concisely, and in plain language. 15

### 15 Pricing methodology in wholesale contracts

- (1) A wholesale supplier must ensure that—
  - (a) its wholesale contracts contain a transparent pricing methodology prescribed by any regulations made under this subpart; and 20
  - (b) the price of any engine fuel supplied under its wholesale contracts is set using that pricing methodology.
- (2) A wholesale supplier must not vary a pricing methodology in a wholesale contract, except in accordance with any regulations made under this subpart.

### 16 Right to terminate certain fixed wholesale contracts 25

- (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) However, **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 30
  - (b) the contract does not require the distributor to purchase a minimum amount of engine fuel from the wholesale supplier. 35
- (3) A distributor may terminate a fixed wholesale contract under this section by giving reasonable notice in writing to the wholesale supplier.

- 17 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 sub-part) of the distributor's annual requirement for engine fuel. 5
- (2) A wholesale supplier must not enter into, or offer to enter into, a fixed wholesale contract that contains a provision of the kind described in **subsection (1)**.
- (3) However, **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. 10
- (4) A wholesale supplier may, in any 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 15
- (b) to give reasonable notice to the wholesale supplier of the distributor's intention to take supply from another supplier. 20
- 18 Wholesale contract terms that limit ability of reseller to compete**
- (1) A wholesale supplier must not enter into, or offer to enter into, a wholesale contract that contains a provision that—
- (a) is likely to limit the ability of the reseller to compete with the wholesale supplier or any other person; and 25
- (b) is not reasonably necessary in order to protect the reasonable commercial interests of the supplier.
- (2) In determining whether a provision of a wholesale contract is prohibited under **subsection (1)**, a court must take into account—
- (a) the wholesale contract as a whole; and 30
- (b) any other matters that the court thinks are relevant.
- (3) No provision that is prohibited under **subsection (1)** is enforceable.
- (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: 35
- (a) provisions that limit the ability of the reseller to obtain supply of fuel from another wholesale supplier (for example, a provision that gives the wholesale supplier a right to renewal of the 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 disproportionately 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: 5
- (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). 10

### 19 Regulations under this subpart

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

- (a) prescribing transparent pricing methodologies for the purpose of **section 15(1)**; or 15
- (b) prescribing the circumstances in which a pricing methodology may be varied for the purposes of **section 15(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 16**; or 20
- (d) prescribing the maximum percentage for the purpose of **section 17**.

### Subpart 3—Consumer information requirements

### 20 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. 25

### 21 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. 30
- (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 35
  - (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 satisfied that the regulations are needed to provide transparency in retail fuel prices so as to facilitate end users' ability to make informed purchasing decisions. 5
- 22 Notice to take corrective action**
- (1) If satisfied that the retailer, or the 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— 10
- (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. 15
- (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.
- Subpart 4—Disclosure of information**
- 23 Purposes of this subpart** 20
- The purposes of this subpart are—
- (a) to enable the chief executive and the Commission to monitor the performance of engine fuel markets:
- (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. 25
- 24 Obligation to comply with information disclosure requirements**
- Every fuel industry participant to which requirements prescribed by the regulations made under this subpart apply must comply with those requirements.
- 25 Information disclosure requirements may be prescribed** 30
- (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— 35
- (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 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); or
- (d) requirements relating to the publication of information that is required to be disclosed to the chief executive or the Commission; or 5
- (e) 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. 10
- (3) The Minister may make a recommendation under **subsection (1)** only if satisfied that the regulations are needed for the purposes of this subpart.
- 26 Form and manner in which information disclosed**
- The chief executive or the Commission may specify the form and manner in which any information that is required to be disclosed to them under this subpart must be provided. 15
- 27 Publication of analysis or summary**
- The chief executive or the Commission may publish any analysis or summary they have made of information that is disclosed to them under this subpart.
- 28 Information sharing between Commission and chief executive** 20
- (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 25
- (b) considers may assist the other for the purpose 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 purpose of this subpart.
- (3) The Commission and the chief executive must not provide any information or document under this section unless the Commission or the chief executive (as the case may be) is satisfied that appropriate protections are or will be in place to maintain the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993). 30
- (4) This section applies despite anything to the contrary in any contract, deed, or document. 35
- (5) Nothing in this section limits the Privacy Act 1993.

## Part 3 Enforcement and miscellaneous provisions

### Subpart 1—Enforcement

#### 29 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— 5
- (a) has contravened any of the following provisions:
    - (i) **section 8 or 10** (terminal gate pricing):
    - (ii) **section 14, 15, 17(2), or 18(1)** (wholesale contractual terms):
    - (iii) **section 20** (consumer information requirements): 10
    - (iv) **section 24** (information disclosure requirements); or
  - (b) has attempted to contravene any of those provisions; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any of those provisions; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those provisions; or 15
  - (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. 20
- (2) The amount of any pecuniary penalty under **subsection (1)** 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. 25
- (3) 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 has contravened a notice given by the Commission under **section 22**.
- (4) The amount of any pecuniary penalty under **subsection (3)** must not exceed,— 30
- (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.
- (5) 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 (3)**,— 35

- (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 5
- (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 10
- (c) any other relevant matter.
- (6) Proceedings under this section 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. 15
- (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. 20

Compare: 1986 No 5 s 80

**30 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 25
- (b) the Commission may, by order of the court, obtain discovery and administer interrogatories.

Compare: 1986 No 5 s 79A

**31 Court may order compensation** 30

- (1) If a court orders a person to pay a pecuniary penalty under **section 29** in respect of a contravention of this Act or the regulations made under 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. 35
- (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 29**.

- (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*

## **32 Application of Commerce Act 1986** 5

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): 10
- (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): 15
- (h) section 99 (powers of Commission to take evidence):
- (i) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (j) section 100A (Commission may state case for opinion of High Court):
- (k) sections 101 (notices) and 102 (service of notices): 20
- (l) section 106 (proceedings privileged):
- (m) section 106A (judicial notice).

## **33 Additional proceedings**

Proceedings brought under this Act are in addition to any proceedings brought under any other Act. 25

Compare: 2003 No 52 s 114

### *Injunctions*

## **34 Court may grant injunction**

- (1) The court may, on the application of the Commission or any other person, grant an injunction— 30
- (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention of this Act or regulations (including any matter referred to in **section 29(1) or (3)**):
  - (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 or regulations.
- (2) The court may at any time rescind or vary an injunction granted under this sub-part. 5
- Compare: 2013 No 69 s 480

### 35 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— 10
- (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. 15
- (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 the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind. 20
- Compare: 2013 No 69 s 481

### 36 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; 25  
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. 30
- (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—
- (a) whether or not the person has previously refused or failed to do that act or thing; or 35
  - (b) where there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

**37 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.

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Compare: 2013 No 69 s 482

*Other orders***38 Other orders**

10

- (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—

15

- (a) who is the person in contravention; or
- (b) who did any act referred to in **section 29(1)(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 (if given effect to) would contravene this Act, the court may, in any proceedings under this subpart, make an order—

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- (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.

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- (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 if given effect to would constitute a contravention of this Act.

30

- (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 if given effect to would contravene this Act, the enforceability of any other provision of the contract is not affected.

- (5) In this section, a reference to a contravention of this Act includes a reference to a contravention of any regulations made under this Act.

35

Compare: 1986 No 5 s 89

*Jurisdiction*

**39 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: 5
- (b) proceedings to determine whether a provision of a wholesale contract is prohibited under **section 18**:
- (c) proceedings for the recovery of pecuniary penalties under **section 29(1)**: 10
- (d) applications for orders for compensation under **section 31**:
- (e) applications for injunctions under **section 34**:
- (f) applications for orders under **section 38**.

Compare: 1986 No 5 s 75

**40 Jurisdiction of District Court** 15

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 29(3)** for contraventions of corrective notices issued under **section 22**:
- (b) proceedings for offences against **section 41** (offences): 20
- (c) proceedings for offences against section 100 of the Commerce Act 1986.

Compare: 1986 No 5 s 76

*Offences*

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

- (1) No person may— 25
  - (a) without reasonable excuse, refuse or fail to comply with a notice under section 98 of the Commerce Act 1986; or
  - (b) in purported compliance with such a notice, provide information, or produce a document, or give evidence, or authorise the making of a statement in a document, knowing it to be false or misleading; or 30
  - (c) resist, obstruct, or delay an employee of the Commission acting under a warrant issued under section 98A of the Commerce Act 1986.
- (2) No person may attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- (3) No person, having been required to appear before the Commission in accordance with section 98(1)(c) of the Commerce Act 1986, may,— 35

- (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. 5
- (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. 10
- (5) Proceedings for an offence against **subsection (4)** 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.

Compare: 1986 No 5 s 103

## Subpart 2—Miscellaneous provisions 15

### 42 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): 20
- (c) section 16 (chairperson may direct Commission to sit in Divisions):
- (d) section 25 (functions of Commission in relation to dissemination of information):
- (e) section 109 (Commission may prescribe forms):
- (f) Schedule 5 (material incorporated by reference). 25

### 43 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**. 30
- (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, they may refer the dispute to arbitration. 35

- (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. 5  
Compare: 2013 No 91 s 117
- 44 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 43** (dispute arising from **subpart 1 or 2 of Part 2** must be referred to mediation): 10
- (b) specifying or setting out a method of calculation for how mediation costs incurred under **section 43** must be split between the parties:
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 15
- (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.
- 45 Differential regulations**
- Regulations made under this Act— 20
- (a) may prescribe requirements for a particular engine fuel or a class or classes of engine fuels; or
- (b) may prescribe different requirements for different engine fuels or classes of engine fuels; or
- (c) may prescribe different requirements for different fuel industry participants or other persons, or classes of such persons; or 25
- (d) may prescribe different requirements for different retail fuel sites or classes of such sites; or
- (e) may otherwise make different provision for different cases on any differential basis. 30
- 46 Chief executive may prescribe forms**
- For the purposes of this Act, the chief executive may from time to time prescribe forms of applications, notices, and other documents required for the purposes of this Act.
- Compare: 1986 No 5 s 109 35

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**Schedule 1**  
**Transitional, savings, and related provisions**

s 5

**Part 1**  
**Provisions relating to this Act as enacted**

5

**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 16** (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. 10
- (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: 15
  - (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.