

**Reprint
as at 1 January 2018**



Gas Governance (Compliance) Regulations 2008
(SR 2008/253)

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 11th day of August 2008

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to sections 43G, 43S, and 43T of the Gas Act 1992, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Energy made in accordance with sections 43J to 43O of that Act, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Gas Governance (Compliance) Regulations 2008.

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Purpose

These regulations provide for the monitoring and enforcement of the following gas governance rules:

- (a) the Gas (Switching Arrangements) Rules 2008; and
- (b) the Gas (Processing Facilities Information Disclosure) Rules 2008; and
- (c) the Gas (Downstream Reconciliation) Rules 2008; and
- (d) the Gas Governance (Critical Contingency Management) Regulations 2008.

Regulation 3(c): amended, on 4 December 2008, by regulation 4 of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 3(d): added, on 4 December 2008, by regulation 4 of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Gas Act 1992

allocation agent means the service provider appointed by the industry body under rule 7 of the Gas (Downstream Reconciliation) Rules 2008

breach notice means any notice given under regulation 9, 10, or 11

business day means any day of the week except—

- (a) Saturday and Sunday; and
- (b) any day that Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Christmas Day, Boxing Day, New Year's Day, the day after New Year's Day, and Waitangi Day are observed for statutory holiday purposes; and
- (c) any other day which the industry body has determined not to be a business day as published by the industry body

Commission means the Energy Commission to be established under section 43ZZH of the Act

critical contingency operator means the service provider appointed by the industry body under regulation 6 of the Gas Governance (Critical Contingency Management) Regulations 2008

financial year means the financial year of the industry body, as published by the industry body from time to time

industry body means—

- (a) the industry body approved by Order in Council under section 43ZL of the Act; or
- (b) in the event that the approval of the industry body is revoked under section 43ZM of the Act and no other industry body is approved, the Commission

investigator means any investigator appointed under regulation 25

market administrator means the industry body or the service provider appointed by the industry body under regulation 5 to undertake the role of market administrator

notifying participant means a participant that gives a breach notice under regulation 9

obligations, in relation to a person, includes the duties, powers, functions, and responsibilities of the person

participant—

- (a) means an industry participant, as defined in section 43D of the Act; and
- (b) includes any of the following, as those terms are defined in the rules:
 - (i) a registry participant and the registry operator; or
 - (ii) a facility owner; or
 - (iii) an allocation participant and the allocation agent; and
- (c) for the purposes of the monitoring and enforcement of the Gas Governance (Critical Contingency Management) Regulations 2008, also includes a transmission system owner, retailer, shipper, interconnected party, industry expert, expert adviser, technical expert, and the critical contingency operator, as defined in those regulations

publish means, in relation to a document, to make that document available at no cost —

- (a) on the industry body's Internet site at all reasonable times; and
- (b) in any other manner that the industry body may decide

registry operator means the service provider appointed by the industry body to establish, maintain, and operate the registry

reporting participant means any of the following persons:

- (a) the registry operator;
- (b) the allocation agent;
- (c) the critical contingency operator;
- (d) any other participant that, under an agreement between that participant and the market administrator, is required to notify the market administrator of an alleged breach of the rules

rules means any of the following, as they may be amended from time to time:

- (a) the Gas (Switching Arrangements) Rules 2008; and
- (b) *[Revoked]*
- (c) the Gas (Downstream Reconciliation) Rules 2008; and
- (d) the Gas Governance (Critical Contingency Management) Regulations 2008

Rulings Panel or **Panel** means the Panel established by regulation 59.

- (2) Any term that is defined in the rules and used, but not defined, in these regulations has the same meaning as in the rules.
- (3) Any term that is defined in the Act and used in these regulations, but not defined in these regulations or the rules, has the same meaning as in the Act.

Regulation 4(1) **critical contingency operator**: inserted, on 4 December 2008, by regulation 5(1) of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 4(1) **participant**: substituted, on 4 December 2008, by regulation 5(2) of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 4(1) **participant** paragraph (c): amended, on 1 March 2014, by regulation 4(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 4(1) **reporting participant**: inserted, on 1 March 2014, by regulation 4(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 4(1) **rules** paragraph (b): revoked, on 1 March 2014, by regulation 4(3) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 4(1) **rules** paragraph (c): amended, on 4 December 2008, by regulation 5(3) of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 4(1) **rules** paragraph (d): added, on 4 December 2008, by regulation 5(3) of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

5 Role of market administrator

- (1) The role of the market administrator is to—
 - (a) receive breach notices; and
 - (b) provide a filter so that breach allegations that do not raise material issues are not automatically referred to the investigation process and the Rulings Panel; and
 - (c) provide a pragmatic, fast, and efficient resolution service for complaints that do not raise a material issue; and
 - (d) refer complaints that do raise material issues to investigators for investigation.
- (2) The industry body may, by agreement with a person, appoint that person to undertake the role of market administrator.
- (3) To avoid doubt, the industry body does not have a conflict of interest by reason of the fact that it may be carrying out the role of market administrator.

6 Breaches

- (1) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that—
 - (a) has contravened the provision; or
 - (b) has attempted to contravene the provision; or
 - (c) has aided, abetted, counselled, or procured any other participant to contravene the provision; or
 - (d) has induced, or attempted to induce, any other participant, whether by threats or promises or otherwise, to contravene the provision; or
 - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other participant of the provision; or
 - (f) has conspired with any other participant to contravene the provision.
- (2) In these regulations, unless the context otherwise requires, a reference to a breach (including an alleged breach) of the rules refers only to a breach—
 - (a) that was discovered, or ought reasonably to have been discovered, within 3 years of the date of the breach; and
 - (b) that occurred within 10 years of the date of any investigation or other proceedings under these regulations in relation to the breach.

7 Relationship between remedies under these regulations or rules and other remedies

These regulations are subject to section 43Y of the Act.

Part 1 Reporting and investigation of breaches

Participants must investigate complaints made to them

8 Participants must investigate complaints made to them

- (1) Any person may complain, in writing, to a participant about any business activity of the participant that the person believes might constitute a breach of the rules.
- (2) The participant must ensure that the complaint is promptly, thoroughly, and fairly investigated by the participant, and that appropriate remedial action is taken.
- (3) The participant must promptly notify in writing the person who made the complaint of the result of the investigation and the remedial action (if any) taken by the participant.

Voluntary reporting to market administrator of alleged breaches

9 Participant may notify market administrator of alleged breach

- (1) If any participant believes, on reasonable grounds, that it or another participant has breached the rules, that participant may notify the market administrator of that alleged breach.
- (2) The notice must be in writing and must specify—
 - (a) the participant that is alleged to have breached the rules; and
 - (b) the rule allegedly breached; and
 - (c) the alleged circumstances relating to the alleged breach; and
 - (d) the estimated date and time on which the alleged breach occurred.

10 Voluntary reporting of alleged breaches

- (1) Any consumer or other person (other than a participant) may notify the market administrator if the consumer or other person believes, on reasonable grounds, that—
 - (a) a participant has breached the rules; and
 - (b) the consumer or other person is affected by that alleged breach.
- (2) If the industry body becomes aware of an alleged breach of the rules by a participant, the industry body may notify the market administrator of that alleged breach at any time.

Regulation 10(2): replaced, on 1 March 2014, by regulation 5 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Mandatory reporting to market administrator of alleged breaches

11 Reporting participants must notify market administrator of alleged breaches

- (1) If a reporting participant believes on reasonable grounds that any other participant has breached the rules, the reporting participant must, subject to regulation 11A, notify the market administrator of the alleged breach as soon as possible.
- (2) A notice under subclause (1) must be in writing and must specify—
 - (a) the participant that is alleged to have breached the rules; and
 - (b) the rule or rules that are alleged to have been breached; and
 - (c) the alleged circumstances relating to the alleged breach; and
 - (d) the estimated date and time that the alleged breach occurred.
- (3) The reporting participant may include notices under subclause (1) in regular reports to the market administrator as agreed between that reporting participant and the market administrator.

- (4) If, during the course of an audit carried out under Part 4 of the Gas (Downstream Reconciliation) Rules 2008 or regulation 42, 65A, or 83 of the Gas Governance (Critical Contingency Management) Regulations 2008, the auditor determines that there may have been an alleged breach of those rules or regulations, the auditor must notify the market administrator of that alleged breach at the same time it provides the final audit report to the industry body.

Regulation 11: replaced, on 1 March 2014, by regulation 6 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

11A Exception to regulation 11 for certain rule breaches

- (1) Regulation 11(1) does not apply to the extent that—
- (a) the rules that a reporting participant believes to have been breached are 1 or more of the following:
- (i) rule 37 of the Gas (Downstream Reconciliation) Rules 2008;
- (ii) rules 67.3, 69.1, 69.2, 70.2, and 72.2 of the Gas (Switching Arrangements) Rules 2008; and
- (b) the reporting participant is satisfied that, if it were to notify the market administrator of the alleged breach of any rule specified in paragraph (a), there is no likelihood that the market administrator would determine under regulation 18 that the alleged breach raises a material issue on the basis of information known to the reporting participant.
- (2) In making a decision for the purpose of subclause (1)(b), a reporting participant must have regard to—
- (a) any determinations published by the market administrator under regulation 22; and
- (b) any guidelines issued by the market administrator under regulation 19(2) or 19A.
- (3) Each reporting participant must ensure that the market administrator receives a monthly report detailing any alleged breaches that the reporting participant, in reliance on this regulation, does not notify under regulation 11(1).
- (4) This regulation does not limit regulations 9 and 10 (voluntary reporting of alleged breaches).

Regulation 11A: inserted, on 1 March 2014, by regulation 6 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

12 Market administrator must notify participant allegedly in breach

- (1) If the market administrator receives a breach notice, the market administrator must—
- (a) acknowledge receipt of the breach notice in any manner considered appropriate by the market administrator; and
- (b) notify the participant allegedly in breach of the following:

- (i) the name of the notifying participant or other person that gave the breach notice; and
 - (ii) the rule allegedly breached; and
 - (iii) the alleged circumstances relating to the alleged breach; and
 - (iv) the estimated date and time on which the alleged breach occurred; and
 - (v) the information specified in subclause (1A), if the rule allegedly breached is regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 and if the participant allegedly in breach is a consumer.
- (1A) If this subclause applies, the market administrator must also notify the participant that, if the Rulings Panel is to determine the alleged breach, the Rulings Panel may decide to take no action if it is satisfied that—
- (a) the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
 - (b) the threat could not reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.
- (2) The market administrator must use reasonable endeavours to give the acknowledgement and notice within 5 business days of receiving the breach notice.
- Regulation 12(1)(b)(iv): amended, on 14 May 2015, by regulation 4(1) of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).
- Regulation 12(1)(b)(v): inserted, on 14 May 2015, by regulation 4(2) of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).
- Regulation 12(1A): inserted, on 14 May 2015, by regulation 4(3) of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).

13 Alleged breach must be notified and affected participants may join as parties

- (1) At the same time as the market administrator notifies a participant under regulation 12(1)(b) of the information specified in that paragraph (the **information**), the market administrator must—
- (a) notify the industry body of the information; and
 - (b) use reasonable endeavours to identify all other participants and notify them of the information.
- (2) Within 5 business days after the market administrator notifies participants under subclause (1)(b), any participant may notify the market administrator that the participant considers that it is affected by the alleged breach and wishes to become a party to the matter.
- (3) The participant is then joined as a party to the matter.

Regulation 13(1): replaced, on 1 March 2014, by regulation 7(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 13(2): replaced, on 1 March 2014, by regulation 7(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 13(3): amended, on 1 March 2014, by regulation 7(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

14 Market administrator may request further information

- (1) The market administrator may request information about the circumstances of the alleged breach from any of the following:
 - (a) the notifying participant or other person that gave the breach notice;
 - (b) the participant that is allegedly in breach;
 - (c) the registry operator or the allocation agent or the critical contingency operator;
 - (d) any other participant that has joined as a party to the matter;
 - (e) the industry body.
- (2) Any person who is requested to provide information in accordance with subclause (1) must disclose it to the market administrator as soon as practicable, to the extent practicable.

Regulation 14(1)(c): amended, on 4 December 2008, by regulation 7 of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 14(1)(d): amended, on 1 March 2014, by regulation 8(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 14(1)(e): inserted, on 1 March 2014, by regulation 8(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

14A Market administrator may amend or consolidate breach notices

- (1) The market administrator may, at any time prior to determining, under regulation 18, the materiality of an alleged breach,—
 - (a) amend a breach notice to correct a typographical or factual error; or
 - (b) if the market administrator considers that 2 or more breach notices relate to substantially the same matter or have substantially the same factual basis, consolidate those notices into 1 breach notice.
- (2) Within 5 business days after taking any action under subclause (1) (the **action**), the market administrator must—
 - (a) notify the following parties in writing of the action:
 - (i) the notifying participant or other person that gave the breach notice; and
 - (ii) each participant that is allegedly in breach; and
 - (iii) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
 - (iv) the industry body; and

- (b) use reasonable endeavours to identify all other participants and notify them of the action.

Regulation 14A: inserted, on 1 March 2014, by regulation 9 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

15 Market administrator must keep information confidential

- (1) The market administrator must keep confidential all information provided or disclosed to it except to the extent that disclosure—
 - (a) is required to enable the market administrator to carry out its obligations under these regulations or the rules; or
 - (b) is otherwise compelled by a law other than these regulations.
- (2) Any person that provides or discloses information to the market administrator must identify to the market administrator any information that the person considers to be confidential and should not be published under regulation 22.

Regulation 15(2): amended, on 1 March 2014, by regulation 10(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 15(2): amended, on 1 March 2014, by regulation 10(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Notices and receipt of information

16 Giving of notices

- (1) If these regulations require any notice to be given, the notice must be in writing and be—
 - (a) delivered by hand to the nominated office of the addressee; or
 - (b) sent by post to the nominated postal address of the addressee; or
 - (c) sent by fax to the nominated fax number of the addressee; or
 - (d) sent by electronic transmission or any other similar method of electronic communication to the nominated electronic address of the addressee.
- (2) In the case of an emergency, a person may give notice other than in accordance with subclause (1), but the person must, as soon as practicable, confirm the notice in writing and by a method set out in subclause (1).

17 When notices taken to be given

In the absence of proof to the contrary, notices are taken to be given,—

- (a) in the case of notices delivered by hand to a person, when actually received at that person's address; and
- (b) in the case of notices sent by post, at the time when the letter would be delivered in the ordinary course of post; and in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted; and
- (c) in the case of notices sent by fax, at the time indicated on a record of its transmission; and

- (d) in the case of notices sent by electronic transmission or any other similar method of electronic communication, at the time—
 - (i) the computer system used to transmit the notice has received an acknowledgement or receipt to the electronic mail address of the person transmitting the notice; or
 - (ii) the person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

Market administrator to determine materiality

18 Market administrator to determine materiality

- (1) The market administrator must determine whether an alleged breach raises a material issue on the information provided in the breach notice and any other information obtained in accordance with regulation 14.
- (2) If, in the opinion of the market administrator, the alleged breach does not raise a material issue, the market administrator may—
 - (a) determine to take no action on the alleged breach; or
 - (b) attempt to resolve the alleged breach with the agreement of the parties, in accordance with regulation 21.
- (3) If, in the opinion of the market administrator, the alleged breach does raise a material issue, the market administrator must refer the alleged breach to an investigator for investigation.
- (4) If the market administrator is unable to determine whether an alleged breach raises a material issue because the market administrator cannot obtain sufficient information, the market administrator must refer the alleged breach to an investigator for investigation.
- (5) The market administrator may decline to make a determination in respect of an alleged breach that relates to a matter that has already been referred to, or that the market administrator considers is more properly dealt with by, either—
 - (a) the Electricity and Gas Complaints Commission; or
 - (b) any other complaints resolution system that is approved under section 43E of the Act or for which provision is made by any rules or regulations made under section 43G(2)(a) of the Act.

19 Factors to be taken into account when determining materiality

- (1) The market administrator must, in determining whether or not an alleged breach raises a material issue, take into account the following factors, to the extent that they are practical or relevant:
 - (a) the severity of the alleged breach:

- (b) whether the alleged breach had a material impact on the operation of the market:
 - (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
 - (d) whether the participant allegedly in breach took remedial action immediately upon, or soon after, discovery of the breach:
 - (e) whether the alleged breach has a potential anti-competitive effect:
 - (f) whether the alleged breach has resulted in costs being borne by other participants or persons:
 - (g) whether the alleged breach is admitted:
 - (h) whether the alleged breach was an isolated event, or indicates a systemic problem with compliance with the rules:
 - (ha) the extent to which the breach was caused by an event or circumstance beyond the reasonable control of the participant allegedly in breach:
 - (i) whether the breach allegation is frivolous or vexatious or is not made in good faith:
 - (j) whether, considering the length of time that has elapsed, an investigation of the alleged breach is no longer practicable or desirable:
 - (k) whether the participant allegedly in breach is, or has been, subject to any other orders made by the Rulings Panel under the Act or these regulations:
 - (l) the likelihood that the same breach or a similar breach may occur in the future:
 - (m) whether the participant allegedly in breach has benefited from the breach:
 - (n) whether the complexity of the facts warrant investigation:
 - (o) any other factors that the market administrator considers relevant.
- (1A) However, the market administrator must not take into account any claim by the participant allegedly in breach that the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person.
- (2) The market administrator may publish guidelines to illustrate how it is weighting and applying these factors.

Regulation 19(1)(ha): inserted, on 4 December 2008, by regulation 8 of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 19(1)(k): amended, on 1 March 2014, by regulation 11 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 19(1A): inserted, on 14 May 2015, by regulation 5 of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).

19A Market administrator may publish guidelines on how it will determine materiality

- (1) The market administrator may publish guidelines, in addition to any guidelines published under regulation 19(2), to assist reporting participants to assess, for the purpose of regulation 11A, the likelihood that the market administrator would determine under regulation 18 that an alleged breach raises a material issue.
- (2) The market administrator must consult participants before publishing guidelines under this regulation.
- (3) The market administrator may amend or revoke guidelines published under this regulation at any time after consulting participants.
- (4) The market administrator must revoke guidelines published under this regulation if the market administrator considers that participants' reliance on the guidelines is contributing to an increase in the number of breaches of the rules.

Regulation 19A: inserted, on 1 March 2014, by regulation 12 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

20 Determination to be made expeditiously and in fair and reasonable manner

- (1) The market administrator must make its determination under regulation 18 expeditiously and in a fair and reasonable manner.
- (2) If regulation 18(2)(a) applies, the market administrator must notify the following parties of its determination as soon as practicable:
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
 - (d) the industry body.

Regulation 20(2)(c): replaced, on 1 March 2014, by regulation 13 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 20(2)(d): inserted, on 1 March 2014, by regulation 13 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

21 Market administrator to use informal resolution process

- (1) If regulation 18(2)(b) applies, the market administrator must endeavour to resolve the alleged breach with the agreement of the following parties:
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A.

- (1A) However, the agreement of the notifying participant under subclause (1)(a) is not required if—
- (a) the notifying participant is a reporting participant; and
 - (b) the notifying participant has notified the market administrator in writing that it does not want to be involved in endeavouring to resolve an alleged breach under this regulation.
- (2) In effecting an agreement, the market administrator may use any process that the market administrator thinks fit.
- (3) Every resolution under regulation 18(2)(b) must—
- (a) be in writing; and
 - (b) specify the details of any breach of the rules that is admitted by a participant; and
 - (c) record the terms of the resolution.
- (4) The persons referred to in subclause (1) must notify their acceptance of the terms of the resolution in writing to the market administrator, unless subclause (1A) applies.

Regulation 21(1)(c): replaced, on 1 March 2014, by regulation 14(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 21(1A): inserted, on 1 March 2014, by regulation 14(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 21(4): amended, on 1 March 2014, by regulation 14(3) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

22 Market administrator must publish determinations

The market administrator must notify the industry body in a monthly report to the industry body and, subject to regulation 15, publish all of its determinations under regulation 18, including the outcome of any resolutions achieved under regulation 21.

Provisions relating to referral of alleged breaches to investigator

23 Market administrator to refer alleged breaches to investigator

- (1) This regulation applies if the market administrator determines, under regulation 18(3) or (4), that an alleged breach must be referred to an investigator for investigation.
- (2) The market administrator must—
- (a) refer the alleged breach to an investigator; and
 - (b) notify the following parties that the alleged breach has been referred to an investigator:
 - (i) the notifying participant or other person that gave the breach notice; and

- (ii) the participant allegedly in breach; and
 - (iii) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
 - (iv) the industry body; and
- (c) provide the investigator with all relevant materials provided to, or created by, the market administrator concerning the alleged breach.
- (3) The notification referred to in subclause (2)(b) must include the identity and contact details of the investigator.

Regulation 23(2)(b)(iii): replaced, on 1 March 2014, by regulation 15 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 23(2)(b)(iv): inserted, on 1 March 2014, by regulation 15 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

24 Right to refer alleged breach to investigator directly

- (1) This regulation applies if—
- (a) the market administrator has determined not to take any action on the alleged breach; or
 - (b) the attempt by the market administrator to resolve the alleged breach with the agreement of the parties in accordance with regulation 21 has been unsuccessful within 35 business days after the alleged breach was notified under regulation 13.
- (2) The following parties may require the market administrator to refer the alleged breach to the investigator:
- (a) the notifying participant or other person that gave the breach notice; or
 - (b) the participant allegedly in breach; or
 - (c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A.
- (3) If the market administrator is required to refer the alleged breach to an investigator under subclause (2), regulation 23(2) applies to the market administrator.

Regulation 24(2)(c): replaced, on 1 March 2014, by regulation 16 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Investigation of alleged breaches

25 Appointment and selection of investigators

- (1) The industry body must appoint 1 or more persons as investigators who have the requisite skills and experience to carry out independent investigations of alleged breaches.
- (2) In selecting an investigator under regulation 23, the market administrator must take reasonable steps to ensure that the investigator selected is free from conflicts of interest in carrying out the investigation.

26 Investigator may appoint other persons to give advice

In carrying out an investigation, the investigator may, subject to the agreement of the market administrator, appoint any external auditor, technical expert, or other persons that the investigator thinks fit to give advice or assistance to the investigator.

26A Investigator may amend or consolidate breach notices or join affected participants as parties

- (1) The investigator may, at any time before effecting a settlement under regulation 32, do any of the following:
 - (a) amend a breach notice to correct a typographical or factual error;
 - (b) if the investigator considers that 2 or more breach notices relate to substantially the same matter or have substantially the same factual basis, consolidate those notices into 1 breach notice;
 - (c) allow a participant to join as a party to the matter if the investigator is satisfied that—
 - (i) the participant considers that it has been affected by the alleged breach; and
 - (ii) at the time the participant was notified of the alleged breach under regulation 13(1), the participant did not anticipate how it could be affected by the alleged breach.
- (2) Within 5 business days after taking any action under subclause (1) (the **action**), the investigator must—
 - (a) notify the following parties in writing of the action:
 - (i) the notifying participant or other person that gave the breach notice; and
 - (ii) each participant that is allegedly in breach; and
 - (iii) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
 - (iv) the industry body; and
 - (b) use reasonable endeavours to identify all other participants and notify them of the action.

Regulation 26A: inserted, on 1 March 2014, by regulation 17 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

27 Investigator must keep information confidential

- (1) The investigator must keep, and must ensure that every person appointed by the investigator under regulation 26 keeps, confidential all information provided or disclosed to him or her, except to the extent that disclosure—
 - (a) is required to enable the investigator or other person to carry out his or her obligations under these regulations; or

- (b) is otherwise compelled by a law other than these regulations.
- (2) The investigator must require any person that provides or discloses information to the investigator to identify any information that the person—
 - (a) considers to be confidential; and
 - (b) considers should not be included in the investigator’s report under regulation 38(2).

Regulation 27(2): amended, on 1 March 2014, by regulation 18(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 27(2): amended, on 1 March 2014, by regulation 18(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

28 Investigator must investigate

The investigator must conduct an investigation of the facts surrounding all alleged breaches notified to him or her under regulations 23 and 24.

29 Participants must co-operate with investigation

Every participant must co-operate fully with any investigation carried out by the investigator in accordance with section 43U of the Act.

30 Privileges protected

Privileges are protected in accordance with section 43V of the Act.

31 Limits on investigative powers

The investigative powers of the investigator are limited by section 43W of the Act.

Procedures if alleged breach resolved by settlement

32 Settlement process

- (1) The investigator must endeavour to effect a settlement of every alleged breach under investigation by agreement between—
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A.
- (2) In effecting a settlement, the investigator may use any process that the investigator thinks fit, after consultation with the persons referred to in subclause (1).
- (3) However, the agreement of the notifying participant under subclause (1)(a) and consultation with the notifying participant under subclause (2) are not required if—
 - (a) the notifying participant is a reporting participant; and

- (b) the notifying participant has notified the investigator in writing that it does not want to be involved in endeavouring to effect a settlement under this regulation.

Regulation 32(1)(c): replaced, on 1 March 2014, by regulation 19(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 32(3): inserted, on 1 March 2014, by regulation 19(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

33 Settlements must be written, etc

- (1) Every settlement must—
 - (a) be in writing; and
 - (b) specify the details of any breach of the rules that is admitted by a participant; and
 - (c) record the terms of the settlement.
- (2) The persons referred to in regulation 32(1) must notify their acceptance of the terms of the settlement in writing to the investigator, unless regulation 32(3) applies.

Regulation 33(2): amended, on 1 March 2014, by regulation 20 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

34 Rulings Panel to decide whether to approve settlements

- (1) The investigator must provide the Rulings Panel with—
 - (a) a copy of the settlement; and
 - (b) a report containing as much of the information specified in regulation 38(3) as the investigator reasonably considers relevant in the circumstances of the matter.
- (2) The investigator may make a recommendation to the Panel that the Panel should not approve the settlement on the ground that the settlement is not in the best interests of the gas industry or the public.
- (3) The Panel must either approve the settlement or reject the settlement.
- (4) A settlement that is approved by the Rulings Panel is final and binding on the persons referred to in regulation 32(1), all other participants, and the Rulings Panel, to the extent that no further action can be taken in respect of the alleged breach.

35 Settlements must be published

- (1) The industry body must publish the terms of every settlement approved by the Rulings Panel under regulation 34.
- (2) However, the Panel may direct the industry body not to publish any part, or all, of any particular settlement if the Panel considers that there are special circumstances that justify the non-publication.

36 What happens if Rulings Panel rejects settlement

If the Rulings Panel rejects a settlement under regulation 34(3), it must—

- (a) direct the investigator to further endeavour to effect a settlement under regulation 32; or
- (b) direct the investigator to abandon the investigation; or
- (c) determine the alleged breach itself under regulations 38 to 49.

37 What happens if investigator unable to effect settlement

- (1) If, within the time frame specified in subclause (2), an investigator is unable to effect a settlement of an alleged breach in accordance with regulation 32, the investigator must refer the alleged breach to the Rulings Panel for determination under regulations 38 to 49.
- (2) The time frame is—
 - (a) within 30 business days (or any longer period that the investigator agrees in writing) of the alleged breach being referred to the investigator under regulation 23 or 24; or
 - (b) if applicable, within 10 business days of the investigator further endeavouring to effect a settlement in accordance with a direction given under regulation 36(a).

Process if alleged breach is determined by Rulings Panel

38 Process if Rulings Panel to determine alleged breach

- (1) This regulation applies if the Rulings Panel—
 - (a) decides under regulation 36(c) that it will determine an alleged breach itself; or
 - (b) must determine an alleged breach under regulation 37(1) because an investigator has been unable to effect a settlement between the parties.
- (2) The investigator must provide to the Panel a report and recommendation sufficient to enable the Panel to determine the alleged breach.
- (3) The report must, to the extent reasonably practicable, specify or contain the following information:
 - (a) the rule allegedly breached; and
 - (b) the participant allegedly in breach; and
 - (c) the estimated date and time the breach allegedly occurred; and
 - (d) the relevant issues raised by the participant allegedly in breach in response to the allegations of breach; and
 - (da) the information specified in subclause (3A), if the rule allegedly breached is regulation 55(1) or 57 of the Gas Governance (Critical Contingen-

- cy Management) Regulations 2008 and if the participant allegedly in breach is a consumer; and
- (e) the comments made to the investigator by any other person in response to the relevant issues raised by the participant allegedly in breach; and
 - (f) any additional information that the investigator considers relevant to the decision of the Panel as to how the matter may be dealt with by the Panel; and
 - (g) the investigator's assessment of the impact on the other participants of the conduct alleged to constitute the breach; and
 - (h) the investigator's assessment of the likelihood of the alleged breach recurring; and
 - (i) details of any similar situations previously dealt with by the Panel, including any settlement approved by the Panel under regulation 34(3) in response to those situations (if known by the investigator); and
 - (j) a copy of all correspondence with the investigator or market administrator relating to the alleged breach.
- (3A) If this subclause applies, the report must also include the following information:
- (a) the details of any claim by the participant that the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
 - (b) if the participant makes a claim described in paragraph (a), the investigator's assessment of—
 - (i) whether the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
 - (ii) whether the threat could reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.
- (4) The investigator must use reasonable endeavours to give the report to the Panel within 5 business days of—
- (a) the Panel deciding that it will determine the alleged breach; or
 - (b) the investigator referring the alleged breach to the Panel for determination under regulation 37.
- (5) The investigator must forward a copy of the report to the following parties as soon as practicable:
- (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and

- (c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A; and
- (d) the industry body.

Regulation 38(3)(da): inserted, on 14 May 2015, by regulation 6(1) of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).

Regulation 38(3A): inserted, on 14 May 2015, by regulation 6(2) of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).

Regulation 38(5)(c): replaced, on 1 March 2014, by regulation 21 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 38(5)(d): inserted, on 1 March 2014, by regulation 21 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

39 Rulings Panel to set date for considering alleged breach

- (1) If regulation 38(1) applies, the Rulings Panel must set a date for considering the alleged breach, and must give to the persons referred to in subclause (2) at least 20 business days notice of the place, date, and time at which the Panel will consider the alleged breach.
- (2) The following persons are entitled to be heard at any hearing or, if there is to be no hearing, to provide written submissions and evidence:
 - (a) the notifying participant or other person that gave the breach notice;
 - (b) the participant allegedly in breach;
 - (c) any other participant that has joined as a party to the matter under regulation 13, 26A, or 40A;
 - (ca) the industry body;
 - (d) the investigator who investigated the alleged breach.

Regulation 39(2)(c): replaced, on 1 March 2014, by regulation 22 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 39(2)(ca): inserted, on 1 March 2014, by regulation 22 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

39A Interim injunctions in respect of actions in breach of Gas Governance (Critical Contingency Management) Regulations 2008

- (1) The industry body may apply to the High Court for the grant of an interim injunction—
 - (a) restraining a participant or consumer from doing, or omitting to do, anything that is in breach of the Gas Governance (Critical Contingency Management) Regulations 2008; or
 - (b) requiring a participant or consumer to do, or omit to do, something in accordance with the Gas Governance (Critical Contingency Management) Regulations 2008.
- (2) The court may grant the injunction if, in the opinion of the court, it is desirable to do so.

- (3) Subclause (2) applies, in the case of an injunction under subclause (1)(a),—
- (a) whether or not the participant or consumer has done, or omitted to do, that thing; and
 - (b) whether or not there is an imminent danger of substantial damage to any person if the participant or consumer does, or omits to do, that thing.
- (4) The court may rescind or vary the injunction on application by the industry body or any participant or consumer affected by the injunction.
- (5) In this regulation, **consumer** has the same meaning as in regulation 5 of the Gas Governance (Critical Contingency Management) Regulations 2008.

Regulation 39A: inserted, on 4 December 2008, by regulation 9 of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Regulation 39A(1)(a): amended, on 1 March 2014, by regulation 23(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 39A(1)(b): amended, on 1 March 2014, by regulation 23(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 39A(3)(a): amended, on 1 March 2014, by regulation 23(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 39A(3)(b): amended, on 1 March 2014, by regulation 23(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 39A(4): amended, on 1 March 2014, by regulation 23(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 39A(5): inserted, on 1 March 2014, by regulation 23(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Part 2

Proceedings of Rulings Panel

40 Rulings Panel may regulate own procedures

- (1) The Rulings Panel may regulate its own procedures, except as otherwise provided in these regulations, and subject to the requirements of natural justice.
- (2) The Panel must provide a summary of its procedures to the industry body and the industry body must publish that summary.

40A Rulings Panel may allow affected participants to join as parties

The Rulings Panel may allow a participant to join as a party to a matter if the Rulings Panel is satisfied that—

- (a) the participant considers that it has been affected by the alleged breach; and
- (b) at the time the participant was notified of the alleged breach under regulation 13(1), the participant did not anticipate how it could be affected by the alleged breach.

Regulation 40A: inserted, on 1 March 2014, by regulation 24 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

41 Rulings Panel must conduct hearings

- (1) The Rulings Panel must conduct a hearing in respect of a matter that is being considered by the Panel—
 - (a) if the Panel considers that it is appropriate for any participant to be given an opportunity to be heard; or
 - (b) if any participant requests a hearing in respect of the matter.
- (2) Hearings must be in public, unless the Panel directs otherwise.
- (3) If there is no hearing, the Panel must consider and decide the matter on the basis of the written submissions and evidence provided in accordance with regulation 39(2).

42 Pre-hearing statements and materials

- (1) If there is to be a hearing, the Rulings Panel must ensure that the persons referred to in regulation 39(2) have been provided with—
 - (a) a copy of any report provided by the investigator under regulation 38(2); and
 - (b) a copy of all relevant material collected or prepared during the course of the investigation of the matter up to the time the copy is provided.
- (2) The Panel must comply with subclause (1)—
 - (a) not less than 10 business days before the hearing; or
 - (b) if the Panel decides that an urgent hearing is desirable, as soon as practicable.

43 Private hearings may be opposed

- (1) If the Rulings Panel decides that a hearing should be held in private, it must advise the industry body, and the industry body must publish the decision of the Panel and the grounds for that decision.
- (2) Any participant that disagrees with the decision may, within 5 business days of the decision being published, make a written submission to the Panel setting out the reasons for its disagreement.
- (3) The Panel must consider the submission and then advise the industry body of its decision in respect of that submission.
- (4) The industry body must publish any further decision of the Panel and the grounds for that further decision.

44 Urgent hearings

If the Rulings Panel considers that the subject matter of a hearing involves a significant area of dispute, or is a matter of urgency, it must arrange for a hearing to take place as soon as practicable.

45 Evidence not otherwise admissible

- (1) The Rulings Panel may receive in evidence any statement, document, or information that would not otherwise be admissible as evidence that may, in its opinion, assist it to deal effectively with its consideration of a matter.
- (2) This regulation is subject to regulation 30.

46 Rights of persons entitled to be heard at hearing

- (1) Any person that is entitled to be heard under regulation 39(2) at any hearing of the Rulings Panel,—
 - (a) is entitled to be represented:
 - (b) must be given a reasonable opportunity to make written and oral submissions:
 - (c) is entitled to call witnesses and to cross-examine any witness called against it:
 - (d) is entitled to make a plea to the Panel in mitigation of penalties:
 - (e) is entitled to have any other person present to give evidence.
- (2) At any hearing of the Panel, the investigator who has investigated the alleged breach must, if requested to do so by the Panel, speak to his or her report and recommendation provided under regulation 38(2).
- (2A) Despite subclause (2), the Rulings Panel must allow another investigator to speak to the report and recommendation if the investigator who has investigated the alleged breach is not available for any reason.
- (3) Subclause (1) is subject to regulations 41 to 43.

Regulation 46(2A): inserted, on 1 March 2014, by regulation 25 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

47 Rulings Panel may request further information

- (1) The Rulings Panel may request the investigator to obtain any further information if the Panel considers that, in relation to any matter before it, the Panel does not have sufficient information for it to determine what action to take under regulation 50.
- (2) The Panel may make the request of its own initiative or following an application by any person referred to in regulation 39(2).
- (3) Participants and the industry body must provide any information reasonably requested under this regulation.
- (4) Subclause (3) is subject to regulation 30.

Regulation 47(3): amended, on 1 March 2014, by regulation 26 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

48 Rulings Panel may seek advice

- (1) The industry body may approve as industry experts any external auditor, technical expert, or other person to give advice or assistance to the Rulings Panel as and when required.
- (2) The Panel may employ, or otherwise seek advice or assistance from, not more than 2 of the industry experts approved by the industry body under subclause (1) when the Panel is—
 - (a) considering whether to approve a settlement under regulation 34(3); or
 - (b) determining an alleged breach of the rules under regulation 36(c) or 37(1).

49 Written submissions

- (1) Any person referred to in regulation 39(2) may make written submissions to the Rulings Panel on the subject of any order that the Panel may make, including any penalty.
- (2) Any submission under this regulation must be made by the date set by the Panel as the closing date for submissions.

Regulation 49 heading: replaced, on 1 March 2014, by regulation 27 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Part 3 Decisions of Rulings Panel

50 Rulings Panel may make certain orders

- (1) Section 43X(1) of the Act provides for requirements and orders that can be made by the Rulings Panel.
- (2) If the Rulings Panel is determining an alleged breach of regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 by a participant that is a consumer, the Rulings Panel may decide to take no action if the Rulings Panel is satisfied that—
 - (a) the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
 - (b) the threat could not reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.
- (3) Subclause (2) does not limit the general discretion of the Rulings Panel under section 43X(1) of the Act to decide whether to take action, or what action to take, in respect of any alleged breach.

Regulation 50(2): inserted, on 14 May 2015, by regulation 7 of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).

Regulation 50(3): inserted, on 14 May 2015, by regulation 7 of the Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72).

51 Offence to breach compliance orders

Every participant commits an offence, and is liable on conviction to a fine not exceeding \$20,000, that breaches a requirement or order made under section 43X(1) of the Act.

Regulation 51: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

52 Rulings Panel may order payment of civil pecuniary penalty up to \$20,000

- (1) Section 43X(1)(e) of the Act provides for an order for a civil pecuniary penalty of an amount not exceeding \$20,000 in any case where a participant has breached any provision of gas governance regulations or any provision of the rules.
- (2) When ordering payment of a civil pecuniary penalty, the Panel must—
 - (a) take account of the level of civil pecuniary penalties it has previously ordered in any similar situations; and
 - (b) impose a civil pecuniary penalty that is commensurate with the seriousness of the case.
- (3) In making that assessment, the Panel must have regard to the following matters:
 - (a) the severity of the breach:
 - (b) the impact of the breach on other participants:
 - (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
 - (d) the circumstances in which the breach occurred:
 - (e) any previous breach of the rules by the participant:
 - (f) whether the participant disclosed the matter to the market administrator:
 - (g) the length of time the breach remained unresolved:
 - (h) the participant's actions on learning of the breach:
 - (i) any benefit that the participant obtained, or expected to obtain, as a result of the breach:
 - (j) any other matters that the Panel thinks relevant.

53 Rulings Panel decisions

- (1) The Rulings Panel must use reasonable endeavours to make its final decision on each matter under its consideration within 40 business days of the date by which it has received all written and oral submissions on the matter.
- (2) The Panel must give the decision, in writing together with the reasons for the decision, to the persons that were entitled to be heard under regulation 39(2).
- (3) The Panel must give the decision to the industry body as soon as practicable after the decision is made.

54 Decisions must be published

- (1) The industry body must publish every decision made by the Rulings Panel under this Part, together with the reasons for the Panel's decision, within 10 business days of receiving the decision from the Panel.
- (2) However, the industry body must not publish any part, or all, of any particular decision if the Panel advises the industry body that there are special circumstances that justify the non-publication.

55 Participants must comply with orders and directions

- (1) Every participant must comply with every requirement or order relating to it, including any direction or arrangement made by the Rulings Panel for the purpose of giving effect to the requirement or order, that is required or made under section 43X of the Act.
- (2) Every participant must perform any action, or make any payment, directed by the Panel within 10 business days of receiving notice of the direction, or any longer period that the Panel allows.

56 Sums to be paid by party are debt due

- (1) Any sum due to be paid by a participant under these regulations is a debt due by the participant and is recoverable as such in any court of competent jurisdiction.
- (2) A failure by a participant to pay a sum due to be paid under these regulations is a breach of these regulations.
- (3) A sum that is not paid when due bears interest, which must be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Regulation 56(3): amended, on 1 January 2018, by section 29 of the Interest on Money Claims Act 2016 (2016 No 51).

57 Liability of registry operator

- (1) The registry operator is liable for any breach that it commits of rules 16, 18, 19, and 83 of the Gas (Switching Arrangements) Rules 2008.
- (2) The registry operator is not liable under these regulations for a sum in excess of—
 - (a) \$20,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or
 - (b) \$100,000 in respect of all events occurring in any financial year.

58 Liability of allocation agent

- (1) The allocation agent is liable for any breach that it commits of rules 9 to 13, 43 to 62, and 78, 79, and 84 of the Gas (Downstream Reconciliation) Rules 2008.
- (2) The allocation agent is not liable under these regulations for a sum in excess of—

- (a) \$50,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or
- (b) \$250,000 in respect of all events occurring in any financial year.

58A Liability of critical contingency operator

- (1) The critical contingency operator is liable for any breach that it commits of regulations 9, 28, 32, 34 to 38, 41, 42, 48 to 53, and 59 to 65 of the Gas Governance (Critical Contingency Management) Regulations 2008.
- (2) The critical contingency operator is not liable under these regulations for a sum in excess of the annual fee stipulated in the critical contingency operator service provider agreement in respect of all events occurring in any financial year.

Regulation 58A: inserted, on 4 December 2008, by regulation 10 of the Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427).

Part 4
Rulings Panel

59 Establishment of Rulings Panel

- (1) A Rulings Panel is established.
- (2) The Panel is a body corporate with perpetual succession.

Functions of Rulings Panel

60 Functions of Rulings Panel

The functions of the Rulings Panel are to—

- (a) determine, in accordance with these regulations, whether a participant has committed a breach of the rules:
- (b) propose to the industry body that it recommend to the Minister a change to any regulation or rule that the Panel considers, in the course of considering any matter, to be necessary or desirable:
- (c) do anything else referred to in the Act or these regulations.

Membership of Rulings Panel

61 Membership of Rulings Panel

- (1) The Rulings Panel must comprise 1 person, and appointment to the Panel must be made by the Minister.
- (2) The member of the Panel must—
 - (a) have the characteristics described in regulation 69; and
 - (b) be a person who has been nominated by the industry body for appointment as a member of the Panel.

- (3) A member of the board of the industry body may not be appointed as the member of the Panel.
- (4) The appointment must be made by written notice to the member (with a copy to the industry body).
- (5) The notice must—
 - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the term of the appointment; and
 - (c) be published by the Minister in the *Gazette* as soon as practicable after being given.
- (6) The appointment is effective from the later of—
 - (a) the date specified in the notice of appointment; or
 - (b) the day that the appointee provides the industry body with written consent to the appointment and a written undertaking to be bound by these regulations.

62 Alternate member

- (1) The Minister may appoint a person to act as the alternate of the member of the Rulings Panel in accordance with this regulation.
- (2) Regulation 61(2) to (6) applies to the making of an appointment.
- (3) The alternate member may act in place of the member of the Panel, but only if the member of the Panel is unable by illness, absence, or other reason to so act.
- (4) The alternate member is to be treated as the member of the Panel for the purposes of the performance of any obligation under the Act or these regulations.
- (5) Unless the context otherwise requires, a reference to the member of the Panel in these regulations also includes a reference to the alternate member.
- (6) No appointment of a person under this regulation as the alternate member, and no acts done by that person or the Panel while that person is the alternate member, may in any proceedings be questioned on the ground that the occasion of the person's appointment had not arisen or had ceased.

63 Restrictions on membership of Rulings Panel

The following persons are disqualified from being the member of the Rulings Panel:

- (a) a person who is an undischarged bankrupt;
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:

- (c) a person who is subject to an order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act:
- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person:
- (e) a person who may not be appointed as the member of the Panel under regulation 70(1) or who has failed to disclose all interests under regulation 71:
- (f) a person who is not a natural person.

Regulation 63(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

64 Term of appointment

- (1) The member of the Rulings Panel—
 - (a) holds office for the term specified in his or her notice of appointment, which must be at least 3 years and no more than 5 years; and
 - (b) may be reappointed; and
 - (c) continues in office despite the expiry of his or her term of office until—
 - (i) that member is reappointed; or
 - (ii) that member's successor is appointed; or
 - (iii) the industry body informs that member by written notice that he or she is not to be nominated for reappointment and no successor is to be nominated for appointment.
- (2) This regulation is subject to regulation 67.

65 Removal and resignation of member of Rulings Panel

- (1) The Minister must remove the member of the Rulings Panel—
 - (a) in the event of his or her serious misconduct;
 - (b) in the event of his or her inability to perform the obligations of the office;
 - (c) if he or she becomes a person to whom regulation 63 applies.
- (2) The Minister must state his or her reasons in any notice of removal.
- (3) The member of the Panel may resign from office by written notice to the industry body signed by him or her.
- (4) The resignation is effective on receipt by the industry body of the notice, or at any later time specified in the notice.

- (5) The Minister must fill a vacancy created by a removal or resignation as soon as possible in accordance with regulation 61 or 62, as the case may be.

66 No compensation

The member of the Rulings Panel is not entitled to any compensation or other payment or benefit relating to his or her removal from office.

67 Member ceasing to hold office

The member of the Rulings Panel ceases to hold office if he or she—

- (a) resigns in accordance with regulation 65; or
- (b) is removed from office in accordance with regulation 65 or any other enactment; or
- (c) becomes disqualified from being a member under regulation 63; or
- (d) otherwise ceases to hold office in accordance with any enactment.

68 Validity of acts

The acts of a person as the member of the Rulings Panel are valid even if—

- (a) the person's appointment was defective; or
- (b) the person is not qualified for appointment.

69 Characteristics of Rulings Panel

The member of the Rulings Panel—

- (a) must have the requisite knowledge, skills, and experience to carry out the obligations to be performed by the Panel; and
- (b) must act impartially in carrying out those obligations; and
- (c) must not be disqualified from being the member of the Rulings Panel under regulation 63.

70 Member of Rulings Panel must not be interested

- (1) No person may be appointed as the member of the Rulings Panel if that person—
- (a) has a material financial interest in a participant; or
 - (b) is a director, officer, member, employee, or trustee of a participant; or
 - (c) is otherwise directly or indirectly materially interested in a participant.
- (2) The member is **interested** in a matter relating to the Panel if, and only if, the member—
- (a) is a party to, or will or may derive a material financial benefit from, the matter; or
 - (b) has a material financial interest in another party to the matter or in a person to whom the matter relates; or

- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the matter; or
- (d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the matter; or
- (e) is otherwise directly or indirectly materially interested in the matter.

71 Obligation to disclose interests and step aside

- (1) If the member of the Rulings Panel is interested in a matter before the Panel, the member must—
 - (a) disclose the nature of the interest in accordance with regulation 72 as soon as practicable after he or she becomes aware of the interest; and
 - (b) immediately step aside from any deliberations or decisions of the Panel in relation to the matter.
- (2) If subclause (1) applies, the alternate member must act in place of the interested member.

72 Method of disclosure of interest

- (1) If regulation 71 applies, the member must disclose the details listed in subclause (2) in an interests register and to the industry body.
- (2) The details are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

73 Remuneration and expenses of Rulings Panel

The member of the Rulings Panel is entitled to receive, from the funds of the Panel,—

- (a) remuneration and other benefits for services as a member at a rate and of a kind determined by the industry body; and
- (b) reasonable and actual travelling and other expenses relating to the performance of his or her obligations as a member.

Other matters relating to Rulings Panel

74 Powers

The Rulings Panel has all the powers necessary to enable it to perform its obligations.

75 Rulings Panel to keep information confidential

The Rulings Panel must keep confidential all information provided or disclosed to it under these regulations except to the extent that disclosure—

- (a) is required to enable the Panel to carry out its obligations under these regulations; or
- (b) is necessary for complying with regulations 71 and 72; or
- (c) is otherwise compelled by a law other than these regulations.

76 Rulings Panel may prohibit publication of information

(1) The Rulings Panel may prohibit the publication or communication of any information or document—

- (a) that is, or is intended to be, supplied or given or tendered to, or obtained by, the Panel under these regulations; or
- (b) in connection with any notification, investigation, report, or procedure under Part 1, 2, or 3.

(2) The Panel may impose the prohibition only after it has had regard to the following factors:

- (a) whether the information or document is confidential, commercially sensitive, or otherwise unsuited to publication or communication; and
- (b) whether the publication or communication is required to enable the Panel to carry out its obligations under these regulations; and
- (c) whether the publication or communication is compelled by a law other than these regulations; and
- (d) the rules of natural justice.

(3) The Panel may make the prohibition—

- (a) on the application of any participant or the industry body, or on its own initiative; but
- (b) only after—
 - (i) notifying the industry body and each participant that the Panel considers would be affected by the publication, communication, or prohibition; and
 - (ii) having regard to any views that the industry body or the participant may make known to the Panel within the time specified by the Panel.

Regulation 76(3)(a): amended, on 1 March 2014, by regulation 28(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 76(3)(b)(i): amended, on 1 March 2014, by regulation 28(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 76(3)(b)(ii): amended, on 1 March 2014, by regulation 28(3) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

77 Liability of Rulings Panel

No member or employee of the Panel is personally liable for—

- (a) any liability of the Panel; or
- (b) any act done or omitted to be done by the Panel, any member, or any employee of the Panel, in good faith in pursuance or intended pursuance of the obligations of the Panel.

78 Rulings Panel costs and performance objectives

- (1) As early as practicable before the beginning of each financial year, the industry body and the Rulings Panel must agree on a budget for the expenses anticipated by the Panel, and on any performance objectives for the next 12 months.
- (2) Each month, the Panel must provide the industry body with a written report on actual costs incurred during the month compared with budgeted costs.
- (3) If the Panel anticipates incurring expenditure in excess of any budgeted amount, it must notify the industry body and apply for a variation to the agreed budget.

79 Rulings Panel reports quarterly on other matters

At the end of each quarter of the financial year, the Rulings Panel must provide the industry body with—

- (a) a report summarising the decisions made by the Panel during that quarter, including details of all awards of costs and compensation; and
- (b) a report summarising the Panel's—
 - (i) current workload; and
 - (ii) ability to meet performance objectives; and
 - (iii) resources; and
- (c) any other matters of concern.

80 Rulings Panel reports annually

At the end of each financial year, the Rulings Panel must provide the industry body with an annual report—

- (a) summarising the performance of the Panel against budget for the financial year; and
- (b) summarising the decisions of the Panel during the financial year; and
- (c) summarising the performance of the Panel during the financial year against agreed performance objectives; and
- (d) commenting on any area of these regulations or the rules where the Panel considers that a change is necessary or desirable.

*Funding***81 Funding of market administrator, investigator, and Rulings Panel**

- (1) The industry body must fund the market administrator, any investigators, and the Rulings Panel.
- (2) Each year of operation, the industry body must—
 - (a) calculate the compliance costs, which are—
 - (i) the costs payable by the industry body to the market administrator, any investigators, and the Rulings Panel in respect of the year; and
 - (ii) the costs of the industry body associated with the operation of, and its obligations under, these regulations during the year; and
 - (b) apportion those compliance costs in respect of the compliance related to each set of rules (these costs are called the **compliance costs apportioned to the relevant rules**).
- (3) The industry body may recover the compliance costs apportioned to the relevant rules from industry participants as follows:
 - (a) through compliance ongoing fees under regulations 82 to 84, if the industry participant is liable to pay ongoing fees under the relevant rules; or
 - (b) through levies under section 43ZZE of the Act; or
 - (c) in any other manner that is available to the industry body.
- (4) As soon as practicable after these regulations apply to a set of rules, the industry body must publish how the industry body intends to recover the compliance costs apportioned to the relevant rules.
- (5) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.
- (6) To avoid doubt, regulations 82 to 84 do not apply to costs that are recovered under subclause (3)(b) or (c).
- (7) In this regulation and regulations 82 and 83, **year** means a financial year unless the context otherwise requires.

Regulation 81(4): amended, on 1 March 2014, by regulation 29 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

82 How and when estimated compliance ongoing fees payable

- (1) The estimated compliance ongoing fees are payable to the industry body.
- (2) As soon as practicable after the commencement date of these regulations, the industry body must determine and publish a breakdown of the estimated compliance costs apportioned to the relevant rules for the first year or part year of operation of these regulations.

- (3) As soon as practicable after publication of those estimated compliance costs, the industry body must notify every person to whom regulation 84(1) applies of the compliance ongoing fees payable by that person in that year or part year calculated in accordance with the following formula:

$$a \times b$$

where—

- a equals the compliance costs apportioned to the relevant rules estimated in accordance with subclause (2) and divided by the number of months in the applicable year or part year; and
- b equals the proportion in which the person is liable to pay fees under that set of rules.
- (4) For each year following the first year or part year of operation, the industry body must—
- (a) estimate and publish, at least 2 months prior to the beginning of that year, a breakdown of the estimated compliance costs apportioned to the relevant rules for that year; and
- (b) as soon as practicable after publication of those estimated compliance costs, notify every person to whom regulation 84(1) applies of the compliance ongoing fees payable by that person in that year calculated in accordance with the formula in subclause (3).
- (5) On the first business day of each month, the industry body or the market administrator must invoice every person to whom regulation 84(1) applies for that person's share of the compliance ongoing fees payable during that month calculated in accordance with the formula in subclause (3).

Regulation 82(2): amended, on 1 March 2014, by regulation 30(1) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

Regulation 82(4)(a): amended, on 1 March 2014, by regulation 30(2) of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

83 How and when actual compliance ongoing fees payable

- (1) The actual compliance ongoing fees are payable to the industry body.
- (2) As soon as practicable after the end of each year of operation, the industry body must determine and publish a breakdown of the actual compliance costs apportioned to the relevant rules for that year.
- (3) Not less than 10 business days after publication of those actual compliance costs, the industry body or the market administrator must invoice, or issue a credit note to, every person to whom regulation 84(1) applies for the difference between—
- (a) that person's share of the actual compliance costs calculated in accordance with the formula in regulation 82(3), with the necessary modifications; and

- (b) the amount of the estimated compliance costs paid by that person in respect of the year.

Regulation 83(2): amended, on 1 March 2014, by regulation 31 of the Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495).

84 General provisions regarding fees

- (1) Every person who is liable to pay ongoing fees under a set of rules for a month is also liable to pay compliance ongoing fees for that month in accordance with these regulations.
- (2) The due date for the payment of any invoice or credit note is the tenth business day after the date on the invoice or credit note.
- (3) The fees payable under regulations 82 and 83 are exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985, and goods and services tax on those fees (if any) will be added to the invoices or credit notes issued under regulations 82(5) and 83(3).

Rebecca Kitteridge,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

This is a reprint of the Gas Governance (Compliance) Regulations 2008 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Interest on Money Claims Act 2016 (2016 No 51): section 29

Gas Governance (Compliance) Amendment Regulations 2015 (LI 2015/72)

Gas Governance (Compliance) Amendment Regulations 2013 (SR 2013/495)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Criminal Procedure Act 2011 (2011 No 81): section 413

Gas Governance (Compliance) Amendment Regulations 2008 (SR 2008/427)