



# Retail Gas Contracts Oversight Scheme – review of Benchmarks and RCEs

CONSULTATION PAPER

8 April 2024



Gas Industry Co.



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# Introduction

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The purpose of this paper is to consult with stakeholders as part of Gas Industry Company's review of the Retail Gas Contracts Oversight Scheme's benchmarks and reasonable consumer expectations (RCEs) developed by Gas Industry Co.

In particular, this paper seeks stakeholders' views on a number of the Scheme's benchmarks or Gas Industry Co's interpretation of those benchmarks, and the RCEs, prefaced by an overview of the Scheme and the broader context including the recent (2023) independent assessment of retailer alignment.

The paper references aspects of that assessment and associated commentary or observations from the independent reviewer (and, as applicable, from previous assessments) informing Gas Industry Co's analysis and questions we would like retailers to provide us with feedback on as to areas of potential amendment or clarification across the Scheme's benchmarks and RCEs.

Information on the Scheme and the reports discussed in this paper is available on our website — [Retail Gas Contracts Oversight Scheme — Gas Industry](#).

Gas Industry Co invites feedback on this paper from stakeholders.

## Submissions

Submissions on this consultation paper are due by **17 May 2024**.

Submissions should be emailed to [consultations@gasindustry.co.nz](mailto:consultations@gasindustry.co.nz)

Submissions may be amended at any time prior to the closing date. Submissions will be published automatically on Gas Industry Co's website after the closing date. Submitters should discuss any intended provision of confidential information with Gas Industry Co prior to submitting the information.

Gas Industry Co is happy to meet with any stakeholder who wishes to discuss the consultation paper in more detail.



# 1. Background

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## 1.1 Retail Gas Contracts Oversight Scheme

Gas Industry Co's Retail Gas Contracts Oversight Scheme (the Scheme) was introduced in 2010 and is designed to achieve improved outcomes for small gas consumers — those using less than 10 terajoules of gas per year.

The Scheme assesses standard published gas supply contracts offered by gas retailers against 18 contract benchmarks, and a set of Reasonable Consumer Expectations (RCEs) developed by Gas Industry Co.

The assessment completed by the independent reviewer (Simpson Grierson) in 2023 was the fourth such assessment. Previous such assessments were undertaken in 2012, 2015 and 2018, following a transitional assessment in 2011.

Alignment of retailer contract terms with the Scheme's benchmarks was again assessed on a scale of *full, substantial, moderate* and *low*. In 2023, overall alignment was assessed as 'substantial', with all 11 sets of retailer terms and conditions being substantially aligned with the benchmarks. This result was consistent with the trend of the retailers' alignment with the benchmarks over time.

Gas Industry Co wrote to gas retailers following the 2023 assessment, highlighting focus areas for their corrective action and requesting that they prioritise and address those areas as soon as practicable, noting that we would be following up with retailers on their progress.

## 1.2 Review of Scheme Benchmarks and RCEs

Gas Industry Co also signalled that we would undertake a review of the Scheme's benchmarks and RCEs (last amended in 2015) as part of our FY2024/25 work programme, informed by the independent assessment and in light of changes to industry processes (e.g. Consumer Care Guidelines) and legislative changes over that time.

To this end, we invited the independent reviewer to comment on retailer feedback received on the appropriateness of the benchmarks in the course of the 2023 assessment. We also invited the independent reviewer to appraise us of feedback received from gas retailers where retailers provided comments on or questioned the benchmarks.

The feedback collated by the independent reviewer highlighted where retailers questioned either the benchmark or Gas Industry Co's interpretation of the benchmark.

Gas Industry Co has considered the 2023 assessment report and feedback from the independent reviewer alongside previous assessments and considers there may be opportunities to streamline the benchmarks and clarify some of our interpretations through review of the benchmarks and RCEs before the next independent assessment takes place.

In this regard, we note that similar to the 2018 assessment, the benchmarks with the highest level of non-compliance in 2023, and a focus of discussion in section 2.0 of this paper, were benchmarks 8 (*clear price increases*), 13 (*clear disconnection processes*) and 16 (*clear description of liability and redress*).

### 1.3 Alignment with Consumer Care Guidelines and legislative developments

The later timing of the 2023 assessment (deviating from the usual three-yearly cycle) of retailer alignment with the Scheme enabled Gas Industry Co to focus our 'enhancing consumer outcomes' workstream, and engagement and consultation with industry in this area through 2020-22, on the development and implementation of the Gas Consumer Care guidelines to align the gas industry's processes with the Electricity Price Review's (EPR) recommendations for the electricity market.

In 2023, Gas Industry Co assessed dual fuel retailers' alignment with the Gas Consumer Care Guidelines. We are currently in the process of reviewing feedback received from dual fuel retailers about the guidelines, and considering, what, if any, changes should be made to the guidelines.

We intend to complete our review of the Gas Consumer Care Guidelines following the Electricity Authority's review of the electricity Consumer Care Guidelines. This will enable us to align with the electricity Consumer Care Guidelines where appropriate. Stakeholders will be provided with an opportunity to comment on any proposed changes through a separate Gas Industry Co consultation process.

We also acknowledge that retail contracts are not frequently updated and that in addition to the Electricity Authority, other agencies also have roles in respect of matters similar to, or that may relate to, aspects of the Retail Gas Contracts Oversight Scheme and the Gas Consumer Care Guidelines, for example, Utilities Disputes (UDL), Commerce Commission and Office of the Privacy Commissioner.

We do not consider there have been any notable legislative developments in recent years that actually or potentially materially impact the suitability, format, or content, of the Scheme's benchmarks and RCEs in their current form.



## 2. Problem assessment

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### 2.1 Benchmark 2

Benchmark 2 provides:

*The gas supply arrangements must provide information to Consumers on emergency procedures and safety information, or provide a description of where information on emergency procedures and safety information is located.*

In relation to the requirement in benchmark 2, the independent reviewer received some retailer commentary to the effect that the obligation in benchmark 2 should appropriately be relaxed given, for example, that retailer terms may refer/link to safety-related information as available on the retailer website.

Gas Industry Co considers the obligation in benchmark 2 continues to provide an appropriate mechanism for raising safety awareness but we acknowledge that this benchmark could be modernised to better reflect that retailers' terms are unlikely to be the immediate 'go-to' for customers in an emergency situation.

**Q1:** *Do you consider the obligation in benchmark 2 (and/or the interpretation of this benchmark) should be amended to better reflect that consumers are unlikely to look to their gas and energy terms and conditions for safety and emergency information in the event of an emergency and, if so – how do you consider it should be amended?*

### 2.2 Benchmark 5.1

Benchmark 5.1 provides:

*Retailers may change the non-price terms and conditions of the gas supply arrangements upon giving the Consumer no less than 30 days' notice of the changes.*

In relation to the requirement in benchmark 5.1 the independent reviewer received some commentary that it is administratively burdensome to have to notify customers of minor changes of the nature contemplated by this provision.

Gas Industry Co notes that neither retailer terms nor the benchmarks require such changes to be *individually* notified to consumers, and unless the retailer terms change very frequently (contrary to common industry practice), the notification process does not appear to be overly burdensome.

**Q2:** *Do you consider the obligation in benchmark 5.1 to be suitable in its current form, or unreasonably burdensome (and therefore requiring appropriate amendment – in which case what do you suggest)?*

## 2.3 Benchmark 8(a)

Benchmark 8(a) provides:

*In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state: (a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice;*

The independent reviewer received some commentary in relation to benchmark 8(a) that fees for irregular or occasional additional services such as meter disconnections/reconnections, or service fees, are excluded from the "price of gas supplied".

We note that retailers also raised this point in both the 2015 and 2018 assessments.

In the 2023 assessment, the independent reviewer, for consistency with the previous assessments, interpreted "the price of gas supplied" as applying to both energy prices and service fees (including non-regular ones), for consistency with the previous assessments.

Q3: *Do you consider the term "price of gas supplied" in benchmark 8(a) requires some amendment as to the scope of the term and, if so, in what way?*

## 2.4 Benchmark 8(b)

Benchmark 8(b) provides:

*In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state: (b) the method by which notice shall be given ...*

As above, the phrase "price of gas supplied" in benchmark 8 has been interpreted historically (at least back to 2015) as including irregular service fees and charges, not just energy prices, and that interpretation was continued by the independent reviewer for the 2023 assessment.

In this regard, we note that several retailers' terms were identified as being non-compliant with elements of benchmark 8 because they do not provide for the required notices to be sent to customers when the service fees change.

Q4: *As per Q3 above do you consider the term "price of gas supplied" in benchmark 8(b) requires some amendment as to the scope of the term and, if so, in what way?*

## 2.5 Benchmark 9.1(a)

Benchmark 9.1(a) provides:

*The gas supply arrangements must: (a) refer to the relevant prices or pricing schedule (as may be produced by the Retailer from time to time) of products and services available to the Consumer;*

With reference to the interpretation of benchmark 9.1(a) and the making available of pricing information, we note that the independent reviewer received some commentary questioning the scope of the term 'publicly accessible location'.

Q5: Do you consider that benchmark 9.1(a) requires any amendment (for clarification) as to what satisfies the requirement for price information to be in a "publicly accessible location" and, if so – in what way?

## 2.6 Benchmark 12(a)

Benchmark 12(a) provides:

*In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe: (a) the requirements for metering relevant to the pricing options selected by the Consumer;*

Gas Industry Co seeks retailer feedback as to whether benchmark 12(a) or the interpretation of this benchmark should be amended and/or clarified to better reflect that a retail gas customer does not generally own or install their own meters (e.g. assume this to be the case unless the terms say something else, or prevent the terms saying something else).

Q6: Do you consider benchmark 12(a) or the interpretation of this benchmark requires any amendment or clarification to better reflect that a retail gas customer does not generally own or install their own meters and, if so – in what way?

## 2.7 Benchmark 12(b)

Benchmark 12(b) provides:

*In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe: (b) the frequency of meter readings;*

We note that the independent reviewer received commentary from several retailers regarding the interpretation of benchmark 12(b), principally as to whether a generic statement that meter readings are carried out in accordance with relevant industry standards and regulations is considered sufficient.

We note that this benchmark cites several requirements, some of which only apply to certain retailers (e.g. those that sell to business customers).

Gas Industry Co seeks retailer feedback as to whether we should be looking to clarify exactly what level of detail we consider is required by benchmark 12(b).

Q7: Do you consider benchmark 12(b) or the interpretation of this benchmark requires any amendment or clarification and/or whether a statement about meter reading being done in accordance with Industry Standards and Regulations should be considered aligned with this benchmark and, if so – in what way do you consider it should be amended?

## 2.8 Benchmark 13.1(b)

Benchmark 13.1(b) provides:

*The gas supply arrangements must: (a) set out the conditions under which Consumers can be disconnected.*



The independent reviewer received commentary from several retailers regarding the interpretation of benchmark 13 relating to the process for disconnecting consumers.

As most of the elements of benchmark 13 are not specific to disconnections initiated by the retailer, this means benchmark 13 can be interpreted as requiring retailer terms to provide the same protections for both retailer and third party (e.g. network operator) initiated disconnections, even though retailers don't have direct control over how third parties may go about disconnecting a consumer.

In this regard we note that some retailer terms don't commit to notices being given when the disconnection is initiated by the network operator, and agree with the independent reviewer that it seems possible the consumer could, in that case, be disconnected without notice and without an opportunity to correct whatever the issue is.

We acknowledge that retailers have less control over network operator and other third party initiated disconnections, but we do think some degree of control, and compliance with the benchmark, could be achieved through the agreements between retailers and those third parties.

We therefore seek retailer feedback in clarifying how the benchmark should apply to network operator disconnections.

Q8: *Do you consider benchmark 13.1(b)) or the interpretation of this benchmark requires any amendment or clarification regarding retailer terms as to the process for disconnecting consumers (in particular with respect to network operator disconnections) and, if so, in what way?*

## 2.9 Benchmark 16.1

Benchmark 16.1 provides;

*Any exclusion of liability in the gas supply arrangements must be clearly described.*

We note that, consistent with the 2018 assessment, the independent reviewer took the view that the availability of remedies under the Consumer Guarantees Act is adequate to satisfy benchmark 16.1 for residential consumers, regardless of what other purported liability exclusions and limitations are in the retailer's terms.

Gas Industry Co concurs with the independent reviewer's assessment that some retailers' exclusions of liability to business consumers for everything but direct physical damage arising from breach or negligence is not "clearly reasonable" in terms of benchmark 16.1.

Direct business interruption losses could arise from a retailer's breach or negligence, or from direct physical damage.

The independent reviewer received some retailer comment regarding the interpretation of benchmark 16.1 in terms of business customers and the fact that some retailer terms exclude completely the liability of third parties involved in the delivery of gas to the consumer (network operators in particular). We note that the independent reviewer considered and discussed the points raised at length in the discussion of liability issues in their report.

Gas Industry Co has considered these issues and we consider that whilst some liability protection for third party suppliers in retailer terms is reasonable given the absence of direct

contracts, that protection does not need to be in the form of a complete exclusion of liability. A reasonable limit could be applied instead.

**Q9:** *Do you consider benchmark 16.1 or the interpretation of this benchmark requires any amendment or clarification and, in particular, as to the extent of network operator liability exclusions that are considered "clearly reasonable" under the benchmark and, if so – how should it be amended or clarified?*

## 2.10 Reasonable Consumer Expectations

### 2.10.1 General comment

Having reviewed the RCEs and in light of the 2023 independent assessment, we consider that they remain fit for purpose in the contemporary environment in achieving improved outcomes for small gas consumers, and that no changes are needed to be made to the RCEs at this time.

We do, however, invite retailer feedback on this and the general content and scope of the RCEs, and make some observations in relation to a number of the RCEs below, further to high level comments made by the independent reviewer in their 2023 report.

For completeness, and as several of the RCEs relate to the way retailers behave towards consumers rather than the content of their terms, we acknowledge the independent reviewer's observation that retailers' contract terms do not always reflect their more consumer-friendly practices.

### 2.10.2 Meaningful choice

RCEs 1, 2 and 3 relate to there being a range of pricing plans, products and services and ready access to information on those options and suppliers, such that consumers are readily able to choose between them.

RCE 1	<i>There is a range of pricing plans, products and services available for consumers to consider and make informed decisions</i>
RCE 2	<i>There is ready access to good quality, comprehensive and easy to understand information on gas options, gas suppliers and alternatives to gas</i>
RCE 3	<i>From the options available in the market, consumers are readily able to choose between gas suppliers, products and services, and pricing plans, and to change their choice</i>

Gas Industry Co is inclined to the independent reviewer's view (see para 468 of their report) that retailers should consider changes to their websites to make the information relating to RCEs 1 — 3 (meaningful choice) easier for consumers to locate, and/or include direct links to it in their terms.

### 2.10.3 Supply connections and disconnections, and contract termination

RCEs 5, 6 and 7 relate to the disconnection process being reasonable, including consumers being notified and having an opportunity to remedy the issue that has triggered disconnection.

RCE 5	<i>The connection process is timely and well managed</i>
RCE 6	<i>Arrangements for supply disconnections and terminations of the consumer contracts are reasonable, and disconnections are undertaken safely and in a timely and well-managed way</i>
RCE 7	<i>Apart from safety, maintenance and similar actions under Gas Regulations (such as the Gas (Safety and Measurement) Regulations 2010), the company does not take any action to alter or terminate the supply of gas without providing reasonable notice to the consumer and an opportunity for the consumer to remedy any failing on their part which may have triggered that action</i>

Gas Industry Co notes the independent reviewer's comment that retailers should take more responsibility for communicating with their customers about disconnections that are initiated by the network operator.

Whilst supportive of this we acknowledge that this may require some changes to the agreements or protocols that exist between retailers and network operators.

#### **2.10.4 Contractual terms and conditions**

RCEs 11 and 12 relate to the contractual terms being reasonable, complete and easy to understand.

RCE 11	<i>The contractual terms and conditions of supply of gas to the consumer are lawful, fair and reasonable, while accurately reflecting any reasonable upstream conditions or constraints</i>
RCE 12	<i>The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the company and the consumer</i>

We note that the independent reviewer identified that the majority of retailer terms include descriptive titles that signpost the content of the clauses that follow and make it reasonably easy for readers to locate the topics they are looking for.

However, the independent reviewer did consider there is room for improvement. As discussed in the general comments section of their report they found some retailers' terms harder to navigate and understand than others. They found the provisions in the terms relating to liability were relatively likely to suffer from a lack of clarity.

Amongst other things they commented on the fact that some of the terms contain complicated liability provisions that are wordy and difficult to piece together, and that some liability provisions could be more clearly drafted to highlight the primacy of the Consumer Guarantees Act 1993 (CGA) remedies for residential consumers.

In this regard, whilst we consider RCEs 11 and 12 remain fit for purpose in their current form, Gas Industry Co continues to encourage retailers to consider how the consumer-friendliness of their terms, in terms of format and drafting-style, ease of readability etc, can be improved as they are updated.

#### **2.10.5 Access to remedies**

RCEs 21 and 22 relate to consumers having access to arrangements for dealing with complaints and appropriate remedies.

RCE 21	<i>Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies</i>
RCE 22	<i>Consumers have access to the information necessary to help resolve complaints</i>

The independent reviewer observed that some of the retailer terms that apply to business consumers do not appear to provide clearly reasonable remedies for those consumers ("clearly reasonable" being the standard under benchmark 16).

In this regard we acknowledge concern as to the complete exclusion of all network operator liability in some retailer terms, as discussed at para 2.9 above.

**Q10:** *Do you agree that the RCEs for the Scheme remain fit for purpose in the contemporary environment and that no changes need to be made to the RCEs at this time (or if you disagree with this, please explain what specific changes you consider are required and whether as to form, content or both)?*



## 3. Next steps

### 3.1 Analysis of feedback and alignment with Consumer Care Guidelines and related developments

Gas Industry Co considers that the 2023 independent assessment confirmed that the Scheme continues to have its desired effect of achieving policy objectives for small gas consumers, through the majority of retailers continuing to use the benchmarks and RCEs to improve their consumer offerings and contract terms.

Having considered the 2023 independent report and the outcomes of previous assessments we consider no substantive change is needed to the Scheme at this time but that, subject to consultation feedback and further analysis, some amendment or clarification could appropriately be made to a number of the benchmarks (and potentially RCEs).

We consider the Scheme generally continues to be fit for purpose, and appropriately future proofed, and that it continues to improve and contribute to outcomes for small gas consumers and Gas Industry Co's policy objective "to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner".

**Q11:** *Do you agree that the Retail Gas Contracts Oversight Scheme remains fit for purpose and that no substantive change is needed to the Scheme at this time (if not, please explain why)?*

We will consider and analyse the feedback received in response to this consultation document before proposing any changes or minor amendments to the Scheme's benchmarks and/or RCEs.

As part of this we will also consider any related upcoming developments or changes regarding the Consumer Care guidelines (both for gas and electricity, including the mandating of the electricity Consumer Care Guidelines set to be implemented by 1 January 2025) and any related legislative developments.

In this regard we note the Electricity Authority has signalled that much of its stakeholder engagement, analysis and activity in relation to the update and strengthening of the electricity Consumer Care Guidelines is to be completed by the end of August 2024.

We expect to be in position to provide an update and/or to seek further feedback from stakeholders on the Scheme's benchmarks and RCEs in the latter part of 2024.

### 3.2 Retail terms – improving consumer friendliness

In the interim Gas Industry Co continues to encourage retailers to consider how the consumer-friendliness of their contract terms, in terms of format and drafting-style, ease of readability etc) can be improved as they are updated.

In this regard we note that the benchmarks do not currently include any requirements for retailers' terms to be drafted in a consumer-friendly way, other than requiring some particular rights and obligations to be expressed clearly.

For completeness we note that, whilst the independent reviewer found some retailers' terms harder to navigate and understand than others (for the reasons discussed in their report), they found all retailers' terms to be drafted in reasonably consumer-friendly language.

*Q12: Do you consider the Scheme's benchmarks should and/or could practicably include any requirements for retailers' terms to be drafted in a consumer-friendly way? Please give your reasoning for this.*

*Q13: Do you have any other comments or consider any amendments should be made to any of the Scheme's benchmarks [or RCEs] additional to those discussed in this paper (if so, please explain, and detail any specific changes suggested)?*



## Questions

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### Title of Report

Submission prepared by: <company name and contact>

Question	Comment
<p>Q1 <i>Do you consider the obligation in benchmark 2 (and/or the interpretation of this benchmark) should be amended to better reflect that consumers are unlikely to look to their gas and energy terms and conditions for safety and emergency information in the event of an emergency and, if so – how do you consider it should be amended?</i></p>	
<p>Q2 <i>Do you consider the obligation in benchmark 5.1 to be suitable in its current form, or unreasonably burdensome (and therefore requiring appropriate amendment – in which case what do you suggest)?</i></p>	
<p>Q3 <i>Do you consider the term "price of gas supplied" in benchmark</i></p>	

<p><i>8(a) requires some amendment as to the scope of the term and, if so, in what way?</i></p>	
<p><b>Q4</b>  <i>As per Q3 above do you consider the term "price of gas supplied" in benchmark 8(b) requires some amendment as to the scope of the term and, if so, in what way?</i></p>	
<p><b>Q5</b>  <i>Do you consider that benchmark 9.1(a) requires any amendment (for clarification) as to what satisfies the requirement for price information to be in a "publicly accessible location" and, if so – in what way?</i></p>	
<p><b>Q6</b>  <i>Do you consider benchmark 12(a) or the interpretation of this benchmark requires any amendment or clarification to better reflect that a retail gas customer does not generally own or install their own meters and, if so – in what way?</i></p>	
<p><b>Q7</b>  <i>Do you consider benchmark 12(b) or the interpretation of this benchmark requires any amendment or clarification and/or whether a statement about meter reading being done in accordance with Industry Standards and Regulations should be</i></p>	



<p><i>considered aligned with this benchmark and, if so – in what way do you consider it should be amended?</i></p>	
<p><b>Q8</b> <i>Do you consider benchmark 13.1(b)) or the interpretation of this benchmark requires any amendment or clarification regarding retailer terms as to the process for disconnecting consumers (in particular with respect to network operator disconnections) and, if so, in what way?</i></p>	
<p><b>Q9</b> <i>Do you consider benchmark 16.1 or the interpretation of this benchmark requires any amendment or clarification and, in particular, as to the extent of network operator liability exclusions that are considered “clearly reasonable” under the benchmark and, if so – how should it be amended or clarified?</i></p>	
<p><b>Q10</b> <i>Do you agree that the RCEs for the Scheme remain fit for purpose in the contemporary environment and that no changes need to be made to the RCEs at this time (or if you disagree with this please explain what specific changes you consider are required and whether as to form, content or both)?</i></p>	

<p>Q11 <i>Do you agree that the Retail Gas Contracts Oversight Scheme remains fit for purpose and that no substantive change is needed to the Scheme at this time (if not, please explain why)?</i></p>	
<p>Q12 <i>Do you consider the Scheme's benchmarks should and/or could practicably include any requirements for retailers' terms to be drafted in a consumer-friendly way? Please give your reasoning for this?</i></p>	
<p>Q13 <i>Do you have any other comments or consider any amendments should be made to any of the Scheme's benchmarks [or RCEs] additional to those discussed in this paper (if so, please explain, and detail any specific changes suggested)?</i></p>	

## About Gas Industry Co

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- Develop arrangements, including regulations where appropriate, which improve:
  - the operation of gas markets;
  - access to infrastructure; and
  - consumer outcomes;
- Develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- Oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

### SUBMISSIONS CLOSE:

Friday, 17 May 2024

### SUBMIT TO:

[consultations@gasindustry.co.nz](mailto:consultations@gasindustry.co.nz)

### ENQUIRIES:

[info@gasindustry.co.nz](mailto:info@gasindustry.co.nz)