



**Vector Limited**  
101 Carlton Gore Road  
PO Box 99882, Newmarket  
Auckland, New Zealand  
[www.vectornetworks.co.nz](http://www.vectornetworks.co.nz)

Corporate Telephone  
+64-9-978 7788

Corporate Facsimile  
+64-9-978 7799

Gael Webster  
Gas Industry Company Ltd  
1 Willis Street  
PO Box 10-646  
Wellington

16 May 2006

## **SUBMISSION ON GAS SECTOR COMPLIANCE AND ENFORCEMENT**

Dear Gael

1. Vector welcomes the opportunity to submit on the document "Compliance and Enforcement Arrangements in the New Zealand Gas Sector" by the Gas Industry Company (GIC) dated 12 April. Answers to specific questions are provided with this cover letter, which also discusses some issues which Vector believes are not necessarily or suitably captured under the question framework provided.
2. At a broad principle level, Vector supports the introduction of a more explicit compliance and enforcement regime for the New Zealand gas sector and believes the GIC has done an excellent job of articulating a functional set of possible arrangements and a number of the essential considerations.

### **Scope of Possible Rules**

3. The consultation paper discusses several areas where rules are pending but does not provide any idea of the nature and extent of any rules that may fall under the compliance regime described.
4. Because the extent of the scope of the rules is not clear, Vector reserves judgment on the suitability of the functions described. While Vector supports a compliance framework for the development of a central registry, and would also do so for the National Gas Outage Contingency Plan, the scope to which these functions outlined by the GIC extend make it difficult to make a realistic assessment of many of the objectives set out such as scalability, efficiency, or even at the more basic level of effectiveness (both in terms of cost and in correcting behavior).
5. Prior to any endorsement of any particular compliance regime, Vector requests that the GIC clearly outline its intent on the scope to which such a compliance regime may apply. Vector believes there is considerable risk of regulatory overlap between a number of regulatory functions and existing industry rules, and would not support an ad hoc approach to the setting of the scope to which the rules apply.

### **Comparative Status of Possible Rules**

6. As above, it is difficult to ratify the suitability of the proposed compliance framework when the degree to which any possible rules may override existing industry or inter-party arrangements is not known or considered.
7. Vector believes it would be useful if the GIC indicated the extent to which it believes existing industry arrangements, within the scope of the proposed compliance regime, would need to be modified.
8. Furthermore the relationship between the proposed compliance and enforcement regime and existing arrangements is an issue that will need careful consideration.

### **Alternative Approaches**

9. Vector understands that some well developed compliance and enforcement regimes exist in sectors other than the New Zealand electricity regime, which appears to be similar to the regime proposed by the GIC.
10. The New Zealand electricity regime may be a suitable model for the gas sector, and if so it may also be appropriate to seek to utilise existing bodies such as the Rulings Panel.
11. However, the electricity industry developed its own industry arrangements and rulebook over a number of years, and the scope of rules and their status in the sector were well understood by the sector when the current compliance and enforcement regime was established.
12. The New Zealand gas sector, on the other hand, has not had the equivalent period experienced by the electricity sector, where rules were developed across the board as an industry-led regulatory regime was sought and allowed by the Minister.
13. Vector has briefly examined other possible compliance and enforcement regime and believes there is merit in further exploration of the regime that supports the New Zealand Racing Industry, which has evolved over many years. If nothing else there would be obvious benefit in providing a counterfactual to the regime proposed.
14. One aspect Vector believes is relevant about the regulations governing the New Zealand racing community is that many of the regulation making powers are delegated to industry groups. Furthermore, rather than just having a Rulings Panel, any regulations are subject to the scrutiny of Parliaments Regulatory Review Committee, set up for the purposes of reviewing all regulations in New Zealand. Additionally, the sector regularly appoints members of the New Zealand judiciary to a Judicial Control Authority, which oversees some core regulations.
15. While this system may be similar or different in many ways to what is proposed, there is an opportunity for the GIC to further develop a possible compliance regime that has different levels of compliance and enforcement for rules of various degrees of consequence.

### **Need for Clear Scope, Status and Development Period**

16. Vector believes the GIC needs to outline the scope of the compliance regime, and the extent of rule coverage to which it will apply.
17. What would also be of benefit, as well as an indication by the GIC of what will or should fall within the proposed regime, would be an indication of what is outside

the regime - where the industry has an opportunity to provide its own solutions to issues without the necessity or expense of regulatory oversight.

### **Conclusion**

18. In short, Vector is supportive of improving the compliance and enforcement regime in the New Zealand gas sector but without understanding the scope of the regime, and the status of the rules relative to existing industry arrangements it is difficult to make a realistic assessment of the proposal.
19. The opportunity still exists for the development of a regime that provides for further development of industry arrangements that do not require regulatory oversight. Given the relatively short period of time the gas sector has had to develop pan industry solutions in the face of a clear regulatory alternative, this should be seriously considered.
20. Thank you for your consideration of these matters and please feel free to contact me or Paul Hodgson, Group Regulatory Affairs Manager, should you wish to discuss this matter further.

Kind regards

A handwritten signature in black ink that reads "Ewan Gebbie". The signature is written in a cursive, flowing style.

**Ewan Gebbie**

Industry Policy Manager

QUESTION	COMMENT
Q 1: Do you agree that these are the likely needs of the gas industry for a compliance and enforcement regime for switching and registry?	Vector agrees that a compliance and enforcement regime will be beneficial for switching and registry,
Q 2: Are there other needs for compliance and dispute resolution in the gas industry that would support a different outcome to the preferred model in any area, or support the other alternatives?	One aspect that does not appear in the assessment framework is the effectiveness of the regime (other than cost effectiveness). The presence of the proposed regime as a deterrent to breaching could be enough, and, in fact establishing an industry group step in the compliance regime prior to independent investigation could be beneficial.
Q 3: Do you think it is important to have a compliance regime which is scalable?	Yes.
Q 4: Is this an appropriate objective for the proposed compliance regulations?	Yes, though the extent of effectiveness of the regime in changing behavior does not appear to be explicitly considered.
Q 5: Are these assessment criteria appropriate for evaluating a suitable compliance and enforcement regime for the gas industry?	See above.
Q 6: Do you agree with our assessment of the options for decision maker?	Yes.
Q 7: Do you agree with our assessment of the options for monitoring and reporting of breaches	Yes.
Q 8: Do you agree with our assessment of the options for administration and receipt of breach notices?	Yes.

QUESTION	COMMENT
<p>Q 9: Do you agree with our assessment of the options for investigation of breaches, if so do you consider that the Gas Industry Co should have the option to have the investigative function in house rather than contracted out?</p>	<p>Yes, GIC should have the option. The GIC should also have the discretion to allow the industry to sort the matter out prior to an independent investigation being carried out, subject to the agreement and satisfaction of all affected parties.</p>
<p>Q 10: Do you agree with our assessment of the options for early resolution and/or settlement</p>	<p>See earlier comments.</p>
<p>Q 11: Do you agree with our assessment of the options for enforcement?</p>	<p>See earlier comments.</p>
<p>Q 12: Do you consider that these are appropriate functions for a Rulings Panel?</p>	<p>See earlier comments, particularly with regard to the possible alternative model in the racing community.</p>
<p>Q 13: Do you consider that the Rulings Panel should have only a single member? If not, how many members should there be, and how should a quorum be defined?</p>	<p>The answer to this depends on the robustness of the appointment process as much as anything. Vector suggests closer consideration of the racing community process, where several members of the judiciary are appointed.</p>
<p>Q 14: Do you agree that the Gas Industry Co should appoint the member of the Rulings Panel and be able to remove them on the listed grounds?</p>	<p>Yes, and to be clear, the Board of the GIC should seek, appoint and remove any gas industry judicial body.</p>
<p>Q 15: Do you agree with a term of appointment of three to five years with a right of renewal?</p>	<p>Not sure. This could be something a wider scrutiny could assist with.</p>
<p>Q 16: Do you concur with this limit on the liability of the Rulings Panel member and insurance arrangements?</p>	<p>See answer to Q 15.</p>

QUESTION	COMMENT
Q 17: <i>Should the Rulings Panel have discretionary power to require a participant who has breached a rule, or unsuccessfully brought an action, to pay the Rulings Panel's costs in some circumstances?</i>	Yes.
Q 18: <i>Do you agree with the mandatory payment of Rulings Panels in contractual dispute resolution, are there other cases where this should be the case?</i>	Do not understand the question.
Q 19: <i>Do you agree with this reporting requirement?</i>	Yes.
Q 20: <i>Do you agree the procedures of the Rulings Panel being contained in rules or that the Rulings Panel should be able to regulate its own procedures?</i>	The rules governing the industry's judicial body should be overseen by the Board of the GIC.
Q 21: <i>Do you agree with these procedural requirements?</i>	As above.
Q 22: <i>Do you agree with the concept that the Rulings Panel can call on up to two suitably qualified industry experts to assist in hearing complex disputes?</i>	Yes, though there may be special cases where this may not be enough.
Q 23: <i>Do you agree with the list of factors for determining penalties in para 11.32, or are there others which should be included?</i>	Vector has no view on this aspect.
Q 24: <i>Do you agree with the proposal to enable the appointment of an investigator with the powers outlined in the Act?</i>	Yes, but as above, there should be scope within the enforcement regime to provide for a pre investigation settlement, or for the incorporation of any existing settlement that may be underway at the time of reporting any breach.

QUESTION	COMMENT
Q 25: Do you agree with the proposal to enable the appointment of an investigator with the functions outlined above?	Vector has no view on this aspect.
Q 26: Are the proposed procedures for the investigator appropriate?	Vector has no view on this aspect.
Q 27: Do you agree with the proposed appointment process?	Vector has no view on this aspect.
Q 28: Do you agree that the rulings Panel should have the discretion to award the cost of the investigative process on the grounds specified, or any other grounds?	Vector has no view on this aspect.
Q 29: Do you agree with the reporting requirements?	Vector has no view on this aspect.
Q 30: Do you agree that this proposal provides for an appropriate level of involvement for the Gas Industry Co?	Yes, though the regime should be able to provide the industry greater involvement than is currently outlined, both in settlement and rule development.
Q 31: Do you agree with the proposed administrative processes, or are there others which should be included?	Yes. See above comments regarding the administration of rule development.
Q 32: Do you consider that the Gas Industry Co should have the reporting requirements outlined in this section, or any others?	Agree.