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Submission on Proposed Compliance Procedures

1. Vector welcomes the opportunity to submit to the Gas Industry Company ("GIC") on the proposed procedures ("the Procedures"), released on 19 September, that operationalise the "Gas Governance (Compliance) Regulations 2008" (the "Regulations"). Specifically we refer to the following documents:

- The "Notice of Breach";
- the "Market Administrator – summary of procedures";
- The "Investigator – summary of procedures";
- The "Ruling Panel summary of procedures",

and note that this submission represents the views of the Vector Group.

2. Vector provides general comments in the main body of this submission under the various headings. In addition we have suggested specific word-changes in Appendix 1, which we believe will provide more clarity and will more closely align with the wording in the Regulations.

General Comments on Consultation

3. Vector would like to acknowledge and thank the GIC for extending the deadline for this submission until the 10th of October. We appreciate the lower relative importance of the Procedures compared with the consultation on the Regulations but feel, however, that the extended deadline is in the

interests of a robust and fair consultancy process. This also recognises regulatory best-practice on consultation timelines, which allows submitting companies sufficient time to consider all the issues as well as to mobilise internal and external resources that may already be committed over shorter timeframes.

Consideration of these Regulations in Future Cost Benefit Analysis

4. Vector would like to take the opportunity to convey our views on the use of regulatory cost/benefit analysis as it relates to these Regulations, which are generic in nature. It is important any future cost/benefit analysis of amendments or additions to the Regulations (e.g. the potential addition of Gas Balancing or Upstream Reconciliation) should be on an incremental and stand-alone basis, focused on that specific addition or amendment i.e. each new set of rules should stand on its own merits. Costs involved in the establishment of these generic regulations should not be viewed as sunk for the purposes of considering the value of any new specific regulations that would utilise these regulations as a basis of enforcement. Efficiency gains made by already having the Regulations should not be double counted in a cost/benefit analysis for adding new Gas Rules or Regulations.

General Comments on the Procedures

5. Vector welcomes the GIC's Procedure documents as a useful industry tool for operationalising the Regulations and providing clarity to industry participants. Vector is broadly happy with the GIC's proposed Procedures. Our comments generally suggest how the procedures could be improved or "tightened-up" for clarity and legal conciseness.
6. Vector is of the view that the purpose of the Market Administrator ("MA") and Investigator Procedures is not clear. The purpose is not adequately set out in these documents itself and the Regulations make no provision for the creation of the MA or Investigator summary of procedures (compared with the Rulings Panel summary of procedures that is provided for in regulation 40(2)). We suggest that a purpose statement is added to the summary sections outlining the purpose of the MA and Investigator Procedures, referencing the Regulations, where necessary.
7. Vector also would like to see an interpretation provision added to the MA and Investigator Procedures in the form set out in paragraph 5 of the

Rulings Panel summary. Any other definitions or interpretations that fall outside of the Regulations should be added into the Procedures for clarity.

8. Paragraph 2 of the MA and Investigator Procedures and paragraph 3 of the Ruling Panel Procedures state that the actual working procedures may be amended with or without amendment to the summary document. This suggests that these documents are not intended to be a written record of the procedures actually undertaken. Vector believes that if documented procedures are to be published then they should reflect the actual ongoing working procedures of the MA, Investigator, and Ruling Panel and should be regularly updated to reflect any fundamental changes. This will ensure that the working procedures are open, transparent, and current. Vector, therefore, submits that the above paragraphs be re-written to specify that the procedures will be reviewed on a regular basis and necessary changes will be made to reflect actual ongoing working procedures. Vector suggests that every six months would be appropriate or whenever the Regulations are amended.
9. We don't envisage that the Procedures need to be updated for one-off changes in the Ruling Panel's procedures, however, but we do believe they should reflect the Panels usual ongoing procedures.
10. Vector would also like a general provision inserted into the introduction of each of the Procedures specifying that the Procedures do not in any way affect the interpretation of the Regulations, the Rules, or the Gas Act nor create any legally binding rights or obligations on any person.

Specific Comments on the Market Administrator (MA) Summary of Procedures

11. Regarding paragraph 7, there is no ability in the Regulations for the MA to request further information from a non-participant that has notified a breach to the MA. This may result in many consumer notified breaches being referred to the investigator under regulation 18(4), on the basis that the MA "cannot obtain sufficient information". Vector suggests that the GIC should consider inserting a "reasonable endeavours" obligation on the MA to seek further necessary information from a non-participant in these circumstances.
12. A statement about other participants becoming a party to a breach notice should be added to paragraph 8 as this is an important provision (regulation 13(2)).

13. In paragraph 9, more time is required to respond to a MA request for more information. It is proposed that ten business days is appropriate to align with the period given for the MA to make the request.
14. Vector notes that section 19 of the Regulations lists many factors to be taken into account when determining materiality. Vector would like to see, in the near future, a summary in the MA Procedures of how the MA determines materiality based on these factors. This could be in the form of a ranking matrix, like that provided by the Electricity Commission, and could provide examples of how these are applied.
15. The final sentence of paragraph 13 appears to amount to guidance on how the MA intends to judge materiality under regulation 19(1)(h). Regulation 19(1)(h) provides that “whether the alleged breach was an isolated event, or indicates a systemic problem with compliance with the rules” is one of 15 factors that the MA must take into account in determining materiality. The guidance set out in this paragraph establishes an overly harsh and restrictive application of this regulation and should be deleted.
16. In addition to the above comments, specific wording changes have been suggested to the MA summary of procedures document in Appendix 1.

Specific Comments on the Investigator Summary of Procedures

17. Vector has no specific comments on the Investigator Procedures apart from those we have submitted in the General Comments section and those specific wording changes suggested in Appendix 1.

Specific Comments on the Rulings Panel Summary of Procedures

18. The statement that “It is not intended that this document shall in any way fetter the discretion of the Panel” should be widened to make it clear that it does not in any way affect the interpretation of the Regulations, the Rules, or the Gas Act nor create any legally binding rights or obligations *on any person* as submitted in the General Comments on the Procedures section above.
19. Vector believes that paragraph 8 extends the effect of regulation 39(2) and should be deleted as it does not align with this regulation. Only the persons set out in regulation 39(2) are able to provide written submissions and

evidence where a matter is dealt with "on the papers". Furthermore, adding this non-participant extension for breaches considered "on the papers", and not at a hearing, would mean that matters considered "on the papers" would be dealt with differently than those dealt with at a hearing. This seems neither necessary nor desirable.

20. Vector considers that provisions need to be added specifying what the effect is of matters decided at a directions conference, dealing with the holding of the hearing itself, and with the matters referred to in regulations 42, 45, 50, 52, 53, 54, 74, 75 and 76.
21. With regard to paragraph 18, the Panel ought to be required to give reasonable notice of an adjournment and to have reasonable grounds for calling such an adjournment. Considerable time and cost is incurred by participants attending these types of hearings and this should be taken into consideration of an adjournments.
22. In addition to these comments, we have suggested specific wording changes to the Ruling Panel's Summary of Procedures document in Appendix 1.

Conclusion

23. Vector is happy to discuss this submission in more detail if that would be helpful. If you have any queries please contact myself on 04 462 8657 or, at ewan.gebbie@vector.co.nz, in the first instance.

Kind regards



Ewan Gebbie
Group Manager Regulatory Performance

Appendix 1 - Vector's suggested wording changes to more closely align with the Regulations

1. Market Administrator Summary of Procedures

Reference	Comment
Paragraph 5	The breach notice must be given "in writing".
Paragraph 5 (c)	The word "alleged" should be inserted before "circumstances" in this paragraph.
Paragraph 5 (d)	The word "estimated" should be inserted before "date" in this paragraph.
Paragraph 6	The words "of receipt" should be inserted after the words "business days".
Paragraph 7	Delete the words "Unless the breach notice comes from a consumer" and the words ", as the notifying party, unless a consumer, "must" provide it (regulations 9(2) and 11(2)". These references are unnecessary.
Paragraph 8	<p>The reference to "(i.e. within 5 business days)" should be modified to convey "reasonable endeavours" as stated in the Regulations. The obligation is to use "reasonable endeavours" to give the acknowledgement and notice within 5 business days of receiving the breach notice (regulation 12(2)). Perhaps "(i.e. reasonable endeavours for within 5 business days)". The words "and gives notice to the participant allegedly in breach" should also be inserted before these brackets.</p> <p>Delete the word "them" at the end of this paragraph and replace with "to the nominated email address" in accordance with regulation 16(1)(d).</p>
Paragraph 9	the words "of the date of receipt of the MA's request" should be inserted at the end of the paragraph.
Paragraph 10	<p>The sentence "It must do so expeditiously and in a fair and reasonable manner." should be inserted after the first sentence.</p> <p>We consider that 26 business days may not in all cases be an "expeditious" period of time. Accordingly, we suggest that this is either shortened or deleted (and the expeditious reference relied upon).</p>
Paragraph 10(a)	The word "should" should be replaced with "must" and the words "of the same (including the identity and contact

Reference	Comment
	details of the investigator)" added after the words "notify the notifying party".
Paragraph 10(c)	The words "the MA has obtained sufficient information" should be deleted as this is not a requirement of regulation 18(1). The opening sentence should instead read "the MA 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" to reflect regulation 18(1).
Paragraph 10(c)(i)	The words "(including the identity and contact details of the investigator)" should be added at the end of this paragraph, together with a reference to the MA's obligation to provide all relevant materials to the investigator.
Paragraph 10(c)(ii)	The words "of its determination" should be inserted after the words "as soon as practicable" in this paragraph.
Paragraph 13	The reference to "an investigator" should be amended to "the investigator".
Appendix 1	The reference to "insufficient information" under the "By business day 26" heading should be replaced with the words "cannot obtain sufficient information". Under the "After business day 41" heading, the words "the MA has determined not to take any action or if" should be inserted after the word "If".

2. Investigator Summary of Procedures

Reference	Comment
Paragraph 12	The words "(and recommendation)" should be deleted and the following words added at the end of the paragraph "and may make a recommendation that the Panel not approve the settlement".
Paragraph 13(b)	The words "If the investigator..... In this case" should be deleted and the words "Panel deciding it will determine the alleged breach, or" inserted <i>after</i> the words "5 business days of the". The reference at the end of this paragraph to the investigator using "best endeavours" to provide the report to the parties at the same time as it is provided to the Panel should be deleted as it modifies the regulation 38(5) obligation (the report must be forwarded as soon as practicable according to regulation 38(5)).

Reference	Comment
Appendix 1	The reference to the 26 business day period has been commented on in the MA summary above. The reference to “insufficient information” under the “By business day 26” heading should be replaced with the words “cannot obtain sufficient information”.

3. Rulings Panel Summary of Procedures

Reference	Comment
Paragraph 6(b)	Amendments to these cross references will be needed once the amendments have been made to the Regulations to take account of the Gas Governance (Critical Contingency Management) Regulations.
Paragraph 10(a)	The reference to the investigator using “best endeavours” to provide the report to the parties at the same time as it is provided to the Panel should be deleted as it modifies the regulation 38(5) obligation (the report must be forwarded as soon as practicable according to regulation 38(5)).
Paragraph 10(b)	This paragraph can probably be deleted as it is already covered by the regulation 38(4) reference in paragraph 10(a) (see regulation 10(4)(a)). The list could therefore be removed from 10.
Paragraph 11	Provisions requiring notice to be given to the conference participants should be added here.
Paragraph 13(c)	What is the purpose of a “statement of issues of fact and law” and who would prepare this? We suggest adding a reference equivalent to paragraph 13(e)(iii) (confidentiality).
Paragraph 13(e)(ix)	The reference to HCR 4410 appears unnecessary. What is the purpose of its inclusion given regulation 45(1) which allows the Panel great flexibility in terms of the admissibility of evidence?
Paragraph 13(e)(ix)	This reference is overly broad as drafted and should be replaced with the following “any further matters reasonably required to enable the Panel to perform its obligations”.
Paragraph 14	Participant notice provisions should be added here.
Paragraphs 16 and 17	These should be deleted as they are overly broad, and unnecessary. Paragraph 17 in particular appears potentially to extend the Panel’s powers under the Regulations, purporting to give it jurisdiction over “any party”, for example.