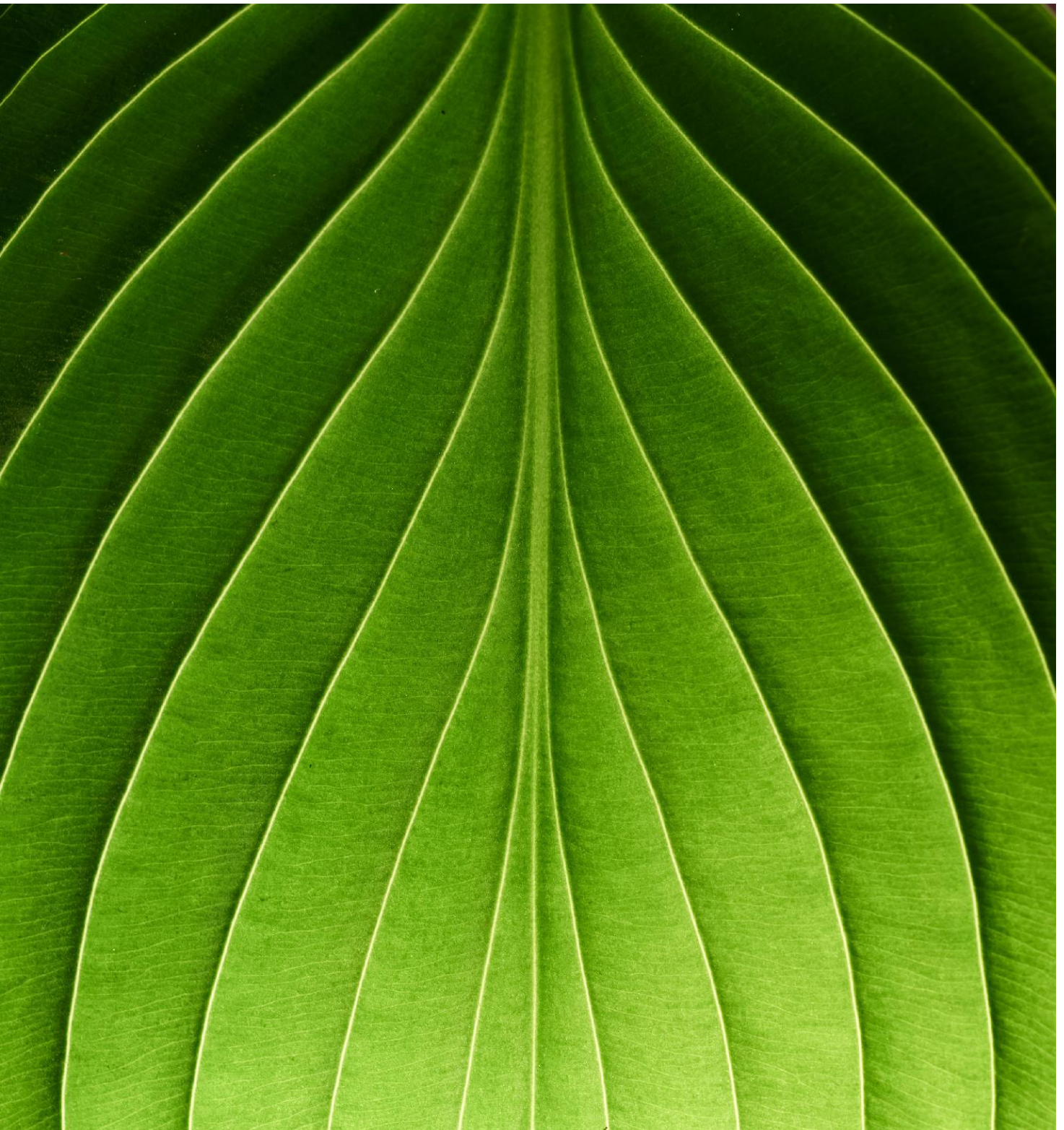


# Gas Industry Company

## Retail Gas Contracts Oversight Scheme Benchmark Assessment Report

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# Introduction

Simpson Grierson has been appointed by the Gas Industry Company (**GIC**) as the independent assessor for the GIC's Retail Gas Contracts Oversight Scheme (**Scheme**) for 2023.

The Scheme involves assessing gas retailers' terms and conditions for supply of natural gas<sup>1</sup> (**Terms**) against the GIC's benchmarks and interpretations of the benchmarks. The benchmarks and interpretations, which we refer to collectively as the **benchmarks**, are in Appendix 1.

The Scheme is voluntary and there are no direct consequences for retailers if their Terms have low alignment with the benchmarks.

This is the fourth full benchmark assessment. The previous full assessments were undertaken in 2012, 2015 and 2018 and there was also a transitional assessment in 2011. Simpson Grierson was also the independent assessor for the 2018 assessment. The benchmarks have not changed since the 2015 assessment.

This report includes the following sections:

- (a) Key Findings;
- (b) General Comments;
- (c) Methodology;
- (d) Individual Retailer Results;
- (e) Reasonable Consumer Expectations; and
- (f) The following Appendices:
  - (i) Appendix 1 – Scheme Benchmarks;
  - (ii) Appendix 2 – Alignment with Scheme Benchmarks; and
  - (iii) Appendix 3 – Reasonable Consumer Expectations for the Scheme.

The views expressed in this report are our own and do not necessarily reflect GIC's views. Nothing in this report constitutes legal advice to the retailers or anyone else.

Chris Browne, Stefan Baldwin and Isabel van Tuinen  
June 2023

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<sup>1</sup> Terms and conditions for the supply of LPG are not in scope.

## Key findings

1. Consistent with the 2018 assessment, we have measured alignment with the benchmarks on a scale of **full**, **substantial**, **moderate** and **low**. We have explained this approach in the Methodology section of this report.
2. In 2018 all the assessed Terms were considered to have substantial overall alignment with the benchmarks.
3. There have been four changes in the retailers between 2018 and 2023:
  - (a) Energy Online has become Frank Energy;
  - (b) Switch Utilities has exited;
  - (c) Megatel has come in; and
  - (d) Hanergy has come in.
4. In our view, the Terms we assessed this year have substantial overall alignment with the benchmarks.
5. The following table sets out the Terms we assessed:<sup>2</sup>

Retailer	Standard terms	Sampled fixed plan terms	Sampled open plan terms	Overall alignment with benchmarks
<b>Contact Energy</b>	Your Connection with Contact (Terms and Conditions for Residential and Business Customers), updated 12 October 2021	Contact Residential Plan Special Terms and Conditions, v220914  Contact Business Plan Special Terms and Conditions, v220529	Contact Residential Plan Special Terms and Conditions, v220914  Contact Business Plan Special Terms and Conditions, v220529	Substantial
<b>Frank Energy</b>	Standard Terms and Conditions, updated 22 February 2022	Fixed plans not offered	No separate open plan terms published	Substantial
<b>Genesis Energy</b>	Standard Terms and Conditions for Basic, Plus and Business Energy Plans, effective date not specified	Basic Plan 12 Months Terms and Conditions, effective date not specified  Energy Plus Plan Terms and Conditions,	Energy Plus Plan Terms and Conditions, effective date not specified	Substantial

<sup>2</sup> Some of the Terms may have been updated or replaced since we reviewed them for this assessment.



## Key Findings

Retailer	Standard terms	Sampled fixed plan terms	Sampled open plan terms	Overall alignment with benchmarks
Hanergy		effective date not specified	Business Energy Plan Terms and Conditions, effective 12 September 2022	
	Standard Terms and Conditions for Other Plans, effective 10 April 2018	eSaver 12 Months Plan Terms, effective date not specified eSaver 24 Months Plan Terms, effective date not specified	No separate open plan terms published	Substantial
	General Terms and Conditions, effective 1 January 2019	1 Year Fixed Plan – Residential Customer, effective date not specified	Freedom Plan Special Terms – Residential Customer, effective date not specified	Substantial
	Piped Gas Terms and Conditions, effective date not specified	2 Year Fixed Plan – Residential Customer, effective date not specified		
		Business Fixed Price Agreement Special Conditions, effective date not specified		
Megatel	General Terms and Conditions, effective date not specified	Energy Bundle Promotion, offered 14 March 2022 to 31 March 2023	No separate open plan terms published	Substantial
	General Promotional Terms and Conditions – Residential, effective date not specified	Natural Gas Only Plan Promotion, offered 14 March 2022 to 31 March 2023		
	General Promotional Terms and Conditions – Business, effective date not specified			
	Contract Renewal Terms and Conditions,			

## Key Findings

Retailer	Standard terms	Sampled fixed plan terms	Sampled open plan terms	Overall alignment with benchmarks
Mercury	effective date not specified			
	Energy Plan Special Terms – Applicable to All Electricity and Gas Customers, effective date not specified			
	Standard Terms & Conditions for Residential Customers, effective 16 September 2022	<p>\$100 Bonus Credit on a 1 Year Fixed Price Plan Terms and Conditions, effective date not specified</p> <p>\$250 Bonus Credit on a 2 Year Fixed Price Plan Terms And Conditions, effective date not specified</p> <p>Great Rates on 2 Year Fixed Price Plan Terms And Conditions, effective date not specified</p>	No separate open plan terms published	Substantial
Nova Energy	General Terms and Conditions for Residential Energy Customers – March 2015	TV Bundle Plan Special Terms, effective 1 October 2021	<p>Natural Gas Plan Special Terms, effective 1 October 2021</p> <p>Natural Gas Multisaver Plan Special Terms, effective 1 September 2022</p>	Substantial
	General Terms and Conditions for Commercial Customers – March 2015, effective 17 March 2015	<p>Business EnergySure Natural Gas Plan 2025 Special Terms, effective 1 May 2022</p> <p>Business EnergySure Natural Gas Multisaver Plan 2025 Special Terms, effective 1 May 2022</p>	<p>Business Natural Gas Plan Special Terms, effective 1 September 2021</p> <p>Business Natural Gas Multisaver Plan Special Terms, effective 1 September 2021</p>	Substantial

## Key Findings

Retailer	Standard terms	Sampled fixed plan terms	Sampled open plan terms	Overall alignment with benchmarks
Pulse		Business EnergyFix Natural Gas Plan Special Terms, effective 1 March 2022		
	Standard Terms and Conditions for the Supply of Energy – Residential Customers, effective date not specified	Fixed plans not offered	Product Schedule for Pulse Energy Freedom Plan, post 1 January 2020  Product Schedule for Pulse Energy Freedom Online Plan, post 1 January 2020  Product Schedule for Pulse Energy Price Promise, post 1 April 2021	Substantial
Trustpower	Full Terms for Your Power and Gas (Customer Service Agreement), effective 4 October 2022	Friends Extra Terms and Conditions, effective 14 April 2021	No separate open plan terms published	Substantial

6. As well as the Terms referred to above, we have also considered pricing plans, fee schedules, privacy policies and other documents on the retailers' websites, where such documents are referred to in the Terms or otherwise relevant to our assessment. We have not reviewed documentation that is not publicly accessible, such as welcome packs. This is consistent with the approach taken for the previous assessments.
7. Although overall alignment with the benchmarks has not deteriorated since the 2018 assessment, there does appear to have been less action to correct previously identified non-compliances between 2018 and 2023 than there was between 2015 and 2018. Many of the same non-compliances we identified in 2018 have persisted, several of which the relevant retailer had indicated it would address. We are hopeful this somewhat disappointing level of retailer engagement with the benchmark assessment exercise is an anomaly and, following this review, retailer engagement will return to historical levels.

## Key Findings

8. The following table shows retailers' overall alignment with the benchmarks over time:

Overall alignment	2023	2018	2015	2012	2011
Full	-	-	-	-	-
Substantial	11	9	9	6	3
Moderate	-	-	1	3	4
Low	-	-	-	1	3
TOTAL	11	9	10	10	10

9. **Appendix 2** of this report includes a table showing the alignment of each of the retailers' Terms with each of the 18 benchmarks. In summary:
- (a) We consider that overall there is an average to high level of alignment with the benchmarks. This is evidenced by the extent of full compliance with the benchmarks in the table. None of the Terms have been marked as having overall low compliance with the benchmarks, although there were three instances of low compliance with benchmark 8.
  - (b) Four of the benchmarks are assessed as fully compliant for all retailers' Terms – these are benchmarks 1, 3, 7 and 17. A further six benchmarks (benchmarks 2, 5, 6, 10, 11, 12 and 18) have full or substantial alignment for all retailers' Terms.
10. The total number of issues and issues of concern is higher than in 2018. The total number of issues is 146 (there were 77 issues in 2018) and the total number of issues of concern is 71 (there were 39 issues of concern in 2018). Although these numbers are jarring on their face, we consider much of the difference is attributable to the authors of this report taking a more rigorous approach to identifying “cascading” non-compliances than in 2018 (see paragraph 35). We have sought to be consistent with the 2018 assessment in terms of how we have interpreted the benchmarks.<sup>3</sup>
11. Similar to the 2018 assessment, the benchmarks with the highest number of non-compliances are benchmarks 8, 13 and 16.

<sup>3</sup> For the 2018 assessment we sought to be consistent with the benchmark interpretations for the 2015 assessment, for which Simpson Grierson was not the independent assessor.



# General Comments

## Feedback on benchmarks

12. We received some feedback from retailers on the appropriateness of the benchmarks themselves. Those comments did not have a direct bearing on our task, which was to assess the retailers' Terms against the benchmarks as they are. However, we will provide the comments to the GIC so they can be factored into any review of the benchmarks in the future.
13. GIC may wish to consider reviewing the benchmarks before the next assessment. We think there may be opportunities to streamline the benchmarks and clarify some of the interpretations. For example:
  - (a) The phrase "price of gas supplied" in benchmark 8 has been interpreted historically (at least back to 2015) as including service fees, not just energy prices, and we have stayed with that interpretation for the 2023 assessment. Several retailers' Terms are non-compliant with elements of benchmark 8 because they do not provide for the required notices to customers when the service fees change.
  - (b) Benchmark 13 relates to the process for disconnecting consumers. Most of the elements of benchmark 13 are not specific to disconnections initiated by the retailer (the one exception being benchmark 13.2). This means benchmark 13 can be interpreted as requiring the Terms to provide the same protections for both retailer and third party (eg network operator) initiated disconnections, even though retailers do not have direct control over how third parties may go about disconnecting a consumer. This is how benchmark 13 has been interpreted historically (at least back to 2015) and we have stayed with that interpretation for the 2023 assessment.
14. We have some sympathy for the retailers whose Terms are non-compliant with elements of benchmarks 8 and 13 because of these interpretations, and have weighted those non-compliances accordingly in making our overall compliance assessments.

## Format of Terms and drafting style

15. The benchmarks do not include any requirements for retailers' Terms to be drafted in a consumer-friendly way, beyond requiring some particular rights and obligations to be expressed clearly.
16. We found some retailers' Terms to be harder to navigate and understand than others. Some of the things contributing to this were:
  - (a) the absence of clause and/or subclause numbering;
  - (b) provisions appearing in unexpected places in the Terms, and in particular clauses relating to one subject including provisions relating to a different subject;
  - (c) duplication – addressing the same subject in different places in the Terms (eg liability), sometimes using different language. This can make it difficult for

## General Comments

consumers to get a full picture of their rights and obligations, and language differences can result in the Terms being internally inconsistent. Also, some of the Terms have different rules for disconnection and termination but are not clear on what the difference is;

- (d) spreading Terms across several documents without providing links between the documents or being clear about the hierarchy of the documents; and
  - (e) not providing direct links or any links to important information published on the retailer's website, such as price lists or price-finding tools. Links that take readers to the retailer's website home page rather than the relevant page are not very helpful.
17. We found all Terms to be drafted in reasonably consumer-friendly language, although some were better than others in this regard. Some of the non-compliances with the benchmarks we identified may be the result of retailers' efforts to draft their Terms in a straightforward way (Frank Energy's Terms perhaps being the clearest example of this). We support those efforts. We do not think fixing the non-compliances we have identified needs to come at the cost of consumer-friendliness.
18. We found the provisions in the Terms relating to liability were relatively likely to suffer from a lack of clarity. Some of the Terms contain complicated liability provisions that are wordy and difficult to piece together. We suspect some of the liability provisions have been developed iteratively, which has led to repetition, overlap and ordering issues. We also consider some liability provisions could be more clearly drafted to highlight the primacy of the Consumer Guarantees Act 1993 (**CGA**) remedies for residential consumers.
19. We encourage retailers to consider how the consumer-friendliness of their Terms could be improved when they are next updated.

## Liability to residential consumers

20. All retailers' Terms state that residential consumers retain their rights and remedies under the CGA. All retailers contract out of the CGA for business consumers, as is permitted by the CGA.
21. The CGA contains a mandatory guarantee of acceptable quality (ie safe, reliable and consistent) for gas and electricity. A consumer has remedies against its electricity retailer if the guarantee is breached, even if the breach was caused by a network operator. The consumer may recover damages for any foreseeable loss or damage resulting from the breach.
22. Consistent with the 2018 assessment, we have taken the view that the availability of remedies under the CGA is adequate to satisfy benchmark 16.1 (liability exclusions and limitations must be clearly reasonable) for residential consumers, regardless of what other purported liability exclusions and limitations are in the retailer's Terms.
23. The reasonableness of the liability exclusions and limitations in terms of benchmark 16.1 is still relevant for those retailers who supply gas to business consumers.

## General Comments

### Liability to business consumers

24. Some retailers' Terms exclude completely the liability of third parties involved in the delivery of gas to the consumer (network operators in particular). In our view, this is not a "clearly reasonable" position in terms of benchmark 16.1 for business consumers.
25. In response to our draft assessments, some retailers argued this was reasonable because:
- (a) third party suppliers typically will not have individual contracts with the consumer under which their liability is limited;
  - (b) a complete exclusion of liability for network operators is consistent with the default distributor agreement (DDA) in schedule 12A.4 of the Electricity Industry Participation Code 2010 (Code);<sup>4</sup>
  - (c) the Commerce Commission's August 2016 review of energy retail contract terms<sup>5</sup> did not identify limited liability for electricity distributors as an unfair contract term under the Fair Trading Act 1986; and
  - (d) compensation recovered by the retailer from a third party supplier is passed through to affected consumers.
26. We do not agree for the following reasons:
- (a) Although some liability protection for third party suppliers in the retailers' 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.
  - (b) The DDA requires the retailer to exclude the distributor's liability to consumers "in respect of the supply of electricity".<sup>6</sup> We do not read that as meaning the distributor should have no liability for wrongful acts or omissions in the supply of line function services, particularly where the consumer does not have access to remedies under the CGA. For example, why should a distributor carrying out a line inspection not be liable to a consumer if the distributor damages the consumer's premises in the process?
  - (c) As we noted in the 2018 assessment report, the Commerce Commission identified retailer terms that limit the liability of electricity distributors as potentially unfair when it reviewed energy retail contract terms in August 2016. In the end, the Commission decided the limits were not unfair because they only applied to the supply of electricity and not to the supply of line function services.<sup>7</sup> This is consistent with our interpretation of the DDA.

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4 [Part 12A of the Code](#). The DDA was added to the Code in July 2020.

5 Commerce Commission, [Energy Retail Contracts Review: Unfair Contract Terms](#), August 2016.

6 DDA clause 24.10(b). This is the same in the model use-of-system agreements the Electricity Authority published in 2012, which we commented on in the 2018 assessment report - clause 26.10(b) of the [Model Use of System Agreement \(Interposed\)](#) and clause 18.10(b) of the [Model Use of System Agreement \(Conveyance\)](#).

7 Paragraph 80 of the Commerce Commission's report (footnote 5). The Commerce Commission was also influenced by the availability of CGA remedies for some consumers (paragraphs 81 and 82).

## General Comments

- (d) We do not consider it reasonable for a business consumer to have to rely on its retailer pursuing a third party supplier on the consumer's behalf. The retailer is unlikely to be motivated to do that unless it has itself incurred liability to the consumer, leaving business consumers potentially without a remedy.
  - (e) A complete exclusion of liability in favour of the supplier and not the consumer has the characteristics of an unfair contract term under clause 47L(1) of the Fair Trading Act 1986.
27. In 2018 we assessed some retailers' exclusions of liability to business consumers for everything but direct physical damage arising from breach or negligence as not "clearly reasonable" in terms of benchmark 16.1. We noted that direct business interruption losses are at least as likely to arise from a retailer's breach or negligence as direct physical damage.
28. While we are still of that view, we acknowledge that the DDA provides that, subject to some limited exceptions:
- (a) the Trader (retailer) and Distributor are liable to each other "for only direct damage to the physical property of any person";<sup>8</sup> and
  - (b) neither the Trader nor Distributor is liable to the other for "any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract or loss of goodwill of any person".<sup>9</sup>
29. Although the default distributor agreement is not an agreement between an electricity retailer and consumer, we accept it would be reasonable for an electricity retailer to pass these exclusions on to its business customers. The same would be true if the default distributor agreement applied to gas. For this reason, we have assessed exclusions of liability to business consumers for everything but direct physical damage as compliant with benchmark 16.1 in 2023.

## Retailer practice vs Terms

30. In response to issues of non-compliance in the draft assessments, some retailers provided explanations of what they did in practice and how those practices were compliant with the benchmarks. This is encouraging to hear. Our task, however, was to review compliance of the Terms against the benchmarks. If compliant practice is out of step with the Terms then the Terms should change, as some retailers have committed to do.

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<sup>8</sup> DDA clause 24.2.

<sup>9</sup> DDA clause 24.3(a).

# Methodology

## Process

31. The assessment process has consisted of the following stages:
- (a) Retailers provided their Terms to GIC and GIC then provided the Terms to us.
  - (b) We assessed the Terms against the benchmarks and provided draft assessments to the retailers.
  - (c) Retailers that wished to respond to our draft assessments provided their feedback on the draft assessments to us.
  - (d) We prepared this report, taking into account feedback received from the retailers who provided comments on our draft assessments. We have taken the feedback provided by retailers into account across the benchmark assessment as a whole (ie applied the feedback to our assessments of all retailers' Terms, as appropriate).

## Scoring

32. Consistent with previous assessments, we have assessed whether the alignment of the retailers' Terms to each individual benchmark is **full**, **substantial**, **moderate** or **low**.
33. Where we refer to an element of a benchmark, this refers to a defined subsection within a benchmark, for example 1.2, 3(a), 4(a), 13.1(a), 13.3(b) etc. For the purpose of calculating the number of issues, we have counted non-compliance with an element of a benchmark as one issue (irrespective of the number of issues within that element).
34. Our approach to applying these standards is as follows:
- (a) **Full alignment** applies where there are no issues with the relevant benchmark, or any element of the benchmark.
  - (b) If there are issues with an element of a benchmark, we have determined whether the issue(s) constitute **substantial**, **moderate** or **low** alignment based on a combination of the number of the issues (in light of the number of elements of the benchmark) and the nature / seriousness of the issues.
35. We have not treated this as a purely numerical exercise because, in our view, some failures to comply with the benchmarks are more significant than others and sometimes the same type of failure "cascades" through different elements of the same benchmark. For example, although some of the retailers' Terms have four or five issues under benchmark 13, we have assessed this as moderate compliance for both the individual retailers and overall. In many cases, the reason for non-compliance is a failure to provide for notice of (and notice of the reasons for) network company disconnection, which has led to non-compliance with several elements of the benchmark.
36. We have assessed all retailers' Terms as substantially aligned because:

## Methodology

- (a) all of the Terms have been scored as being fully or substantially compliant with at least 13 of the 18 benchmarks; and
- (b) we have put somewhat less weight on benchmarks 8 and 13, which have relatively high levels of low and moderate compliance across the Terms, for the reasons explained in paragraphs 13 and 14.



## Individual Retailer Results

- 37. This section of the report includes summaries of the alignment issues we identified within each retailer's Terms.
- 38. We have grouped the issues identified into two categories – issues of concern and other issues.

### Contact Energy

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- 39. We assessed Contact's *Terms and Conditions for Residential and Business Customers*, updated 21 October 2021.
- 40. We also assessed Contact's *Residential Plan Special Terms and Conditions* (v220914) and *Business Plan Special Terms and Conditions* (v220529), against the benchmarks for fixed plans and open plans.
- 41. Contact supplies both residential and business consumers under the Terms.
- 42. Contact provided comments on our draft assessment, which we have considered in coming to our final view.
- 43. We consider Contact's Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified eight non-compliances with the benchmarks, five of which we consider to be issues of concern.

### Issues of concern

#### Benchmark 13.1(b) – Clear disconnection process

- 44. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
- 45. The Terms may allow the network operator to disconnect the consumer without notice (from either Contact or the network operator). Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection when the disconnection is by the network operator.

#### Benchmark 13.3(a) – Clear disconnection process

- 46. The benchmark requires Contact to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
- 47. The Terms do not clearly require this notice to be given for network operator initiated disconnections.

## Individual Retailer Results

### Benchmark 13.3(b) – Clear disconnection process

- 48. The benchmark requires Contact to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 49. The Terms do not clearly require this notice to be given for network operator initiated disconnections.

### Benchmark 13.4 – Clear disconnection process

- 50. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 51. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Contact's discretion.
- 52. Contact says, in practice, if there is a valid dispute it will delay disconnection until the dispute is resolved. This practice is not reflected in the Terms.

### Benchmark 16.1 – Clear description of liability and redress

- 53. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
- 54. While it is reasonable for Contact to contract out of the CGA for business consumers (which it does), the other exclusions of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are because the network operator's liability to business consumers is excluded completely.
- 55. Contact says this is reasonable for some of the reasons in paragraph 25, which we disagree with for the reasons in paragraph 26. Absent the operation of the CGA, we think it is unlikely Contact would accept liability to a business consumer for a network operator issue. That would leave the consumer without a remedy.

## Other issues

### Benchmark 8(b) – Clear price increases

- 56. The benchmark requires Contact to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%.
- 57. The Terms do not require Contact to notify the consumer individually if Contact increases a non-regular service fee by more than 5%. The Terms also permit notification "via telephone or other voice communication method", which is not notice in writing.
- 58. Contact says the "price of gas supplied" excludes non-regular service fees. While we have some sympathy for that interpretation, for consistency with the 2015 and 2018 assessments, we have interpreted the benchmark as applying to both energy prices and service fees (including non-regular ones).

## Individual Retailer Results

### Benchmark 13.2 – Clear disconnection process

- 59. The benchmark requires the Terms to permit disconnection for non-payment only if the non-payment relates to the supply of energy (gas or dual fuel).
- 60. The Terms allow Contact to disconnect for any non-payment by the consumer, even if unrelated to the gas supplied under the agreement (eg broadband).
- 61. Contact says in practice, where a consumer has an account with different contracted services, Contact issues one bill for all the services. Contact says it would not arbitrarily disconnect services that have been paid for, but services may be disconnected to prevent debt across multiple services from growing. This practice is not reflected in the Terms.

### Benchmark 16.3(b) – Clear description of liability and redress

- 62. The benchmark requires the Terms to be clear that any remedies the consumer has under the Terms are in addition to, and do not detract from, the consumer's remedies under the CGA. The benchmark is not met by a statement that the CGA is excluded to the maximum extent permitted by law because a residential consumer may wrongly assume they have no CGA remedies.
- 63. The Terms include the statement "except as expressly set out in these terms and conditions, all warranties, guarantees or obligations imposed on us...by the Consumer Guarantees Act 1993 ... are excluded to the maximum extent permitted by law."
- 64. Contact says this provision is only in reference to the permitted exclusion of CGA remedies for business consumers. However, that is not evident from the provision itself or its context within the Terms. The provision is in a stand-alone paragraph of the liability clause and is not expressly or impliedly limited in its application to business consumers.
- 65. Contact points to the words "except as expressly set out in these terms and conditions" and a number of other provisions throughout the Terms where the preservation of CGA remedies for residential consumers is expressed more clearly. While we agree those other provisions are compliant with the benchmark, there is no guarantee a consumer reading the Terms would find them, or even look for them, if they found the problematic provision first. The CGA position may not be clear to the consumer, which is what the benchmark requires.

## Individual Retailer Results

### Frank Energy

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- 67. We assessed Frank Energy's *Standard Terms and Conditions*, updated 22 February 2022.
- 68. Frank Energy does not appear to offer fixed plans and there were no separate open plan terms published.
- 69. We have assumed Frank Energy supplies both residential and business consumers under the Terms.
- 70. Frank Energy did not provide a detailed response to our draft assessment.
- 71. We consider Frank Energy's Terms to be substantially compliant with the benchmarks. We have identified 18 non-compliances<sup>10</sup> with the benchmarks, five of which we consider to be issues of concern.

#### Issues of concern

##### **Benchmark 9.1(f) – Clear pricing information**

- 72. The benchmark requires the Terms to contain reasonable limits on Frank Energy's ability to recover under-charged amounts, including time limits and waiving late payment interest.
- 73. The Terms do not contain any limits on Frank Energy's ability to recover under-charged amounts or interest on those amounts.

##### **Benchmark 13.1(b) – Clear disconnection process**

- 74. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
- 75. The Terms allow the network operator to disconnect the consumer without notice (from either Frank Energy or the network operator). Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection when the disconnection is by the network operator.

##### **Benchmark 13.3(a) – Clear disconnection process**

- 76. The benchmark requires Frank Energy to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
- 77. The Terms allow the network operator to disconnect the consumer without notice (from either Frank Energy or the network operator).
- 78. For disconnection by Frank Energy, the Terms only require Frank Energy to give at least seven days' (not working days') notice of the disconnection.

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<sup>10</sup> One of which (benchmark 12(b)) is based on our assumption that Frank Energy supplies business consumers under the Terms, which may not be the case.

## Individual Retailer Results

### Benchmark 13.3(b) – Clear disconnection process

- 79. The benchmark requires Frank Energy to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 80. The Terms allow the network operator to disconnect the consumer without notice (from either Frank Energy or the network operator).

### Benchmark 13.4 – Clear disconnection process

- 81. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 82. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Frank Energy's discretion.
- 83. Further, the Terms require the payment dispute to be "an active complaint ... with Utilities Disputes Limited" before Frank Energy must delay disconnection. This means Frank Energy could effect the disconnection if the consumer has not yet referred the dispute to Utilities Disputes, even if the dispute is still working its way through Frank Energy's internal dispute resolution process.

## Other issues

### Benchmark 2 – Clear safety information

- 84. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required.
- 85. The Terms do not contain, or refer to documents containing, clear information about:
  - (a) who the consumer should call in an emergency;
  - (b) how to switch off the gas supply; or
  - (c) when the consumer must obtain compliance certificates.
- 86. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer's first or primary source of information about gas safety measures, especially in an emergency.

### Benchmark 6 – Clear supply obligations

- 87. The benchmark requires the Terms to clearly define the point of supply for gas.
- 88. The Terms do not clearly define the point of supply for gas.

## Individual Retailer Results

### Benchmark 8(c) – Clear price increases

- 89. The benchmark requires Frank Energy to provide reasons for all increases in the “price of gas supplied”. For consistency with the 2015 and 2018 assessments we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 90. The Terms do not require Frank Energy to provide reasons for any increase in the price of gas supplied.

### Benchmark 9.1(d) – Clear pricing information

- 91. The benchmark requires Frank Energy to provide a simple explanation of how any estimated charges are calculated. The benchmark is met if the Terms state Frank Energy will provide an explanation of the calculation method on request.
- 92. The Terms do not say how Frank Energy calculates estimated charges or require Frank Energy to provide an explanation of the calculation method on request.

### Benchmark 9.1(e) – Clear pricing information

- 93. The benchmark requires Frank Energy to refund any amount that has been over-charged, and the Terms to specify a timeframe for the refund (eg promptly or next invoice).
- 94. The Terms do not require Frank Energy to refund over-charged amounts promptly or within any specific timeframe.

### Benchmark 9.2 – Clear pricing information

- 95. The benchmark requires the Terms to contain a simple explanation of alternative payment options if Frank Energy offers any.
- 96. There are alternative payment options published on Frank Energy’s website but they are not referred to in the Terms.

### Benchmark 12(b) – Clear metering obligations

- 97. The benchmark requires the Terms to clearly describe the meter reading frequency, which must be monthly where business or business/residential consumption is between 250GJ and 10TJ per annum.
- 98. We are unsure whether Frank Energy supplies gas to business or business/residential consumers at volumes over 250GJ per annum (or at all). Assuming it does, the Terms are not compliant with the benchmark because they do not require monthly meter reading for those consumers.

### Benchmark 14.1(c) – Clear supply interruption procedures

- 99. The benchmark requires Frank Energy to notify consumers urgently of supply resumption following curtailment due to a critical contingency situation. The benchmark can be complied with by Frank Energy regularly updating a fault information line or website.



## Individual Retailer Results

100. The Terms do not require Frank Energy to notify the consumer of supply resumption following curtailment due to a critical contingency situation, either individually or by regularly updating a fault information line or website.

### Benchmark 14.2 – Clear supply interruption procedures

101. The benchmark requires the Terms to include information about where consumers may access information about supply interruptions, or refer to a document that contains that information.
102. The Terms do not include information about where the consumer may access information about supply interruptions, or refer to a document that contains that information.

### Benchmark 15 – Clear privacy obligations

103. The benchmark requires the Terms to state Frank Energy will comply with privacy laws.
104. The Terms refer to Frank Energy's Privacy Policy, which states that Frank Energy will comply with the Privacy Act 2020. However, the Terms themselves state only that Frank Energy will comply with its Privacy Policy. Our interpretation is that this is insufficient to comply with the benchmark, which, unlike other benchmarks, does not permit the relevant information to be in a referenced document.

### Benchmark 15(a) – Clear privacy obligations

105. The benchmark requires the Terms to state the purposes for which Frank Energy may collect personal information from the consumer.
106. This information is in Frank Energy's Privacy Policy, but we consider this is insufficient to comply with the benchmark (see paragraph 104).
107. We consider this a marginal non-compliance only. We would have found the Terms to be compliant with the benchmark if they had specifically stated that information about the purposes for which Frank Energy may collect personal information from the consumer is in the Privacy Policy.

### Benchmark 15(b) – Clear privacy obligations

108. The benchmark requires the Terms to state that consumers may access their personal information held by Frank Energy, and have it corrected if necessary.
109. This information is in Frank Energy's Privacy Policy, but we consider this is insufficient to comply with the benchmark (see paragraph 104).
110. We consider this a marginal non-compliance only. We would have found the Terms to be compliant with the benchmark if they had specifically stated that information about how consumers may access and correct their personal information is in the Privacy Policy.

## Individual Retailer Results

### Benchmark 18.1 – Clear communication

- 111. The benchmark requires the Terms to include contact information for Frank Energy, which the consumer can use if they have any issues or need information. The benchmark is not met by a reference to contact information on Frank Energy's website.
- 112. The Terms do not contain any contact information for Frank Energy beyond a reference to Frank Energy's website.

## Individual Retailer Results

### Genesis Energy – Basic, Plus and Business Energy Plans

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113. We assessed Genesis' *Standard Terms and Conditions for Basic, Plus and Business Energy Plans*.
114. We also assessed:
- (a) Genesis' *Basic Plan 12 Months Terms and Conditions and Energy Plus Plan Terms and Conditions* and *Business Energy Plan Terms and Conditions*, effective 12 September 2022, against the benchmarks for fixed plans; and
  - (b) Genesis' *Energy Plus Plan Terms and Conditions* and *Business Energy Plan Terms and Conditions*, effective 12 September 2022, against the benchmarks for open plans.
115. Genesis supplies both residential and business consumers under the Terms.
116. Genesis did not provide a detailed response to our draft assessment.
117. We consider Genesis' Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified 16 non-compliances with the benchmarks, seven of which we consider to be issues of concern.

#### Issues of concern

##### **Benchmark 4(d) – Clear consumer exit rights (fixed term)**

118. The benchmark requires the Terms to contain a right for consumers to terminate a fixed plan without incurring a termination fee if there is a material change to the Terms.
119. Genesis has the right to change the Terms unilaterally. Despite this, there is no right for the consumer to terminate a fixed plan without incurring a termination fee if the change is material.

##### **Benchmark 5.2 – Clear contract variation procedures (non-price)**

120. The benchmark requires Genesis to notify consumers individually of any material non-price change to the Terms.
121. Genesis may communicate a change to the Terms to the consumer, including a material non-price change, by any “reasonable method”. This expressly includes advertising in the local paper or posting a notice on Genesis’ website. These methods are not individual notice to the consumer.

##### **Benchmark 13.1(b) – Clear disconnection process**

122. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
123. The Terms allow the network operator to disconnect the consumer without notice (from either Genesis or the network operator). Therefore, the consumer will not necessarily be

## Individual Retailer Results

notified of the actions they can take to prevent a disconnection when the disconnection is by the network operator.

### Benchmark 13.3(a) – Clear disconnection process

- 124. The benchmark requires Genesis to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
- 125. The Terms allow the network operator to disconnect the consumer without notice (from either Genesis or the network operator).
- 126. For disconnection by Genesis, the Terms require at least seven days' notice, with a further three days for delivery of the notice. Depending on when the notice is given, this may be less than seven working days' notice of disconnection

### Benchmark 13.3(b) – Clear disconnection process

- 127. The benchmark requires Genesis to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 128. The Terms allow the network operator to disconnect the consumer without notice (from either Genesis or the network operator).

### Benchmark 13.4 – Clear disconnection process

- 129. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 130. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Genesis' discretion.
- 131. The Terms only require the disconnection to be delayed if the dispute is going through Genesis' internal dispute resolution process or the dispute has been referred to Utilities Disputes. This means Genesis could effect the disconnection during any gap between Genesis' internal process having been exhausted and the dispute being referred to Utilities Disputes (ie when the dispute is deadlocked, which is a condition for referring a dispute to Utilities Disputes in the first place).

### Benchmark 16.1 – Clear description of liability and redress

- 132. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
- 133. While it is reasonable for Genesis to contract out of the CGA for business consumers (which it does), the other exclusions of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are in the following respects:

## Individual Retailer Results

- (a) A network operator's liability to a business consumer is "subject to any limitations of liability agreed between [Genesis] and the network company". This could operate as a complete exclusion of liability in favour of the network operator depending on what has been agreed with Genesis. We note this provision is somewhat buried in a clause titled "What is your [ie the consumer's] liability to us [ie Genesis] or the network company?". This is not an obvious place to find provisions about liability going the opposite way.
- (b) To the extent the network operator's liability is not excluded, the network operator's \$10,000 per event liability limit is spread across all business consumers.<sup>11</sup> This could leave individual business consumers without an effective remedy.

## Other issues

### Benchmark 2 – Clear safety information

- 134. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required.
- 135. The Terms do not contain, or refer to documents containing, clear information about how to switch off the gas supply, other than directing the consumer to turn the gas off at the mains.
- 136. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer's first or primary source of information about gas safety measures, especially in an emergency.

### Benchmark 8(a) – Clear price increases

- 137. The benchmark requires Genesis to give consumers at least 30 days' notice of any increase in the "price of gas supplied". For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 138. The Terms allow Genesis to increase service fees without providing at least 30 days' notice to the consumer.

### Benchmark 8(b) – Clear price increases

- 139. The benchmark requires Genesis to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).

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<sup>11</sup> We note that under clause 24.7 of the DDA the Distributor's per event liability to the Trader (and vice versa) is limited to \$10,000 per installation control point (broadly, per consumer) up to \$2m.

## Individual Retailer Results

140. The Terms say Genesis will notify a consumer individually of any increase in a service fee of more than 5% only if the increase is “reasonably likely to have a material effect on [the consumer]”.

### Benchmark 8(c) – Clear price increases

141. The benchmark requires Genesis to provide reasons for all increases in the “price of gas supplied”. For consistency with the 2015 and 2018 assessments we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
142. The Terms do not require Genesis to provide reasons for any increase in service fees.

### Benchmark 9.1(d) – Clear pricing information

143. The benchmark requires Genesis to provide a simple explanation of how any estimated charges are calculated. The benchmark is met if the Terms say Genesis will provide an explanation of the calculation method on request.
144. The Terms do not say how Genesis calculates estimated charges or require Genesis to provide an explanation of the calculation method on request.

### Benchmark 12(b) – Clear metering obligations

145. The benchmark requires the Terms to clearly describe the meter reading frequency, which must be monthly where business or business/residential consumption is between 250GJ and 10TJ per annum.
146. The Terms say Genesis will read meters “on a regular basis”, which is not specific enough to comply with the benchmark. Also, the Terms do not require monthly meter reading for business or business/residential consumers with consumption over 250GJ per annum.

### Benchmark 15(a) – Clear privacy obligations

147. The benchmark requires the Terms to state the purposes for which Genesis may collect personal information from the consumer.
148. The Terms refer to Genesis’ Privacy Policy, which includes the information required by the benchmark. Our interpretation is that this is insufficient to comply with the benchmark, which, unlike other benchmarks, does not permit the relevant information to be in a referenced document.
149. We consider this a marginal non-compliance only. We would have found the Terms to be compliant with the benchmark if they specifically stated that information about the purposes for which Genesis may collect personal information from the consumer is in the Privacy Policy.

### Benchmark 15(b) – Clear privacy obligations

150. The benchmark requires the Terms to state that consumers may access their personal information held by Genesis, and have it corrected if necessary.



## Individual Retailer Results

- 151. This information is in Genesis' Privacy Policy, but we consider this is insufficient to comply with the benchmark (see paragraph 148).
- 152. We consider this a marginal non-compliance only. We would have found the Terms to be compliant with the benchmark if they specifically stated that information about how consumers may access and correct their personal information is in the Privacy Policy.

### Benchmark 18.1– Clear communication

- 153. The benchmark requires the Terms to include contact information for Genesis, which the consumer can use if they have any issues or need information. The benchmark is not met by a reference to contact information on Genesis' website.
- 154. The Terms do not contain any contact information for Genesis beyond a link to Genesis' website.

## Individual Retailer Results

### Genesis Energy – Other Plans

155. We assessed Genesis' *Standard Terms and Conditions for Other Plans*, effective 10 April 2018.
156. We also assessed Genesis Energy's *eSaver 12 Month Plan Terms* and *eSaver 24 Month Plan Terms* against the benchmarks for fixed plans. There were no separate open plan terms published (that are applicable under the *Standard Terms and Conditions for Other Plans*).
157. We have assumed Genesis supplies both residential and business consumers under the Terms.<sup>12</sup>
158. Genesis did not provide a detailed response to our draft assessment.
159. We consider Genesis Energy's Terms to be substantially compliant with the benchmarks. We have identified 13<sup>13</sup> non-compliances with the benchmarks, seven of which we consider to be issues of concern.

#### Issues of concern

##### **Benchmark 4(d) – Clear consumer exit rights (fixed term)**

160. The benchmark requires the Terms to contain a right for consumers to terminate a fixed plan without incurring a termination fee if there is a material change to the Terms.
161. Genesis has the right to change the Terms unilaterally. Despite this, there is no right for the consumer to terminate a fixed plan without incurring a termination fee if the change is material.

##### **Benchmark 5.2 – Clear contract variation procedures (non-price)**

162. The benchmark requires Genesis to notify consumers individually of any material non-price change to the Terms.
163. Genesis may communicate a change to the Terms to the consumer, including a material non-price change, by any “reasonable method”. This expressly includes advertising in the local paper or posting a notice on Genesis’ website. These methods are not individual notice to the consumer.

##### **Benchmark 13.1(b) – Clear disconnection process**

164. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.

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<sup>12</sup> While the sampled plans appear to apply to residential consumers only, the standard terms and conditions contain some provisions that contemplate gas being supplied to business consumers.

<sup>13</sup> One of which (benchmark 12(b)) is based on our assumption that Genesis supplies business consumers under the Terms, which may not be the case.

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165. The Terms allow the network operator to disconnect the consumer without notice (from either Genesis or the network operator). Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection when the disconnection is by the network operator.

### Benchmark 13.3(a) – Clear disconnection process

166. The benchmark requires Genesis to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
167. The Terms allow the network operator to disconnect the consumer without notice (from either Genesis or the network operator).
168. For disconnection by Genesis, the Terms require at least seven days' notice, with a further three days for delivery of the notice. Depending on when the notice is given, this may be less than seven working days' notice of disconnection

### Benchmark 13.3(b) – Clear disconnection process

169. The benchmark requires Genesis to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
170. The Terms allow the network operator to disconnect the consumer without notice (from either Genesis or the network operator).

### Benchmark 13.4 – Clear disconnection process

171. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
172. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Genesis' discretion.
173. The Terms only require the disconnection to be delayed if the dispute is going through Genesis' internal dispute resolution process or the dispute has been referred to Utilities Disputes. This means Genesis could effect the disconnection during any gap between Genesis' internal process having been exhausted and the dispute being referred to Utilities Disputes (ie when the dispute is deadlocked, which is a condition for referring a dispute to Utilities Disputes in the first place).

### Benchmark 16.1 – Clear description of liability and redress

174. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
175. While it is reasonable for Genesis to contract out of the CGA for business consumers (which it does), the other exclusions and limitations of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are because, to the extent the network operator's liability is not

## Individual Retailer Results

excluded, the network operator's \$10,000 per event liability limit is spread across all business consumers.<sup>14</sup> This could leave individual business consumers without an effective remedy.

### Other issues

#### Benchmark 2 – Clear safety information

- 176. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required.
- 177. The Terms do not contain, or refer to documents containing, clear information about who the consumer should call in an emergency. There is a provision encouraging the consumer to call a natural gas fitter if equipment “looks unsafe”, but we consider this is insufficient to comply with the benchmark. There should be clear information about how contact can be made with Genesis in an emergency.
- 178. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer’s first or primary source of information about gas safety measures, especially in an emergency.

#### Benchmark 8(a) – Clear price increases

- 179. The benchmark requires Genesis to give consumers at least 30 days' notice of any increase in the "price of gas supplied". For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 180. The Terms allow Genesis to increase service fees without providing at least 30 days' notice to the consumer.

#### Benchmark 8(b) – Clear price increases

- 181. The benchmark requires Genesis to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 182. The Terms say Genesis will notify a consumer individually of any increase in a service fee of more than 5% only if the increase is “reasonably likely to have a material effect on [the consumer]”.

#### Benchmark 8(c) – Clear price increases

- 183. The benchmark requires Genesis to provide reasons for all increases in the “price of gas supplied”. For consistency with the 2015 and 2018 assessments we have interpreted this as applying to both energy prices and service fees (including non-regular ones).

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<sup>14</sup> We note that under clause 24.7 of the DDA the Distributor’s per event liability to the Trader (and vice versa) is limited to \$10,000 per installation control point (broadly, per consumer) up to \$2m.

## Individual Retailer Results

184. The Terms do not require Genesis to provide reasons for any increase in service fees.

### Benchmark 12(b) – Clear metering obligations

185. The benchmark requires the Terms to clearly describe the meter reading frequency, which must be monthly where business or business/residential consumption is between 250GJ and 10TJ per annum.
186. We are unsure whether Genesis supplies gas to business or business/residential consumers at volumes over 250GJ per annum (or at all) under the Terms. Assuming it does, the Terms are not compliant with the benchmark because they do not require monthly meter reading for those consumers.

### Benchmark 16.3(b) – Clear description of liability and redress

187. The benchmark requires the Terms to be clear that any remedies the consumer has under the Terms are in addition to, and do not detract from, the consumer's remedies under the CGA.
188. The Terms deal with Genesis' exclusions and limitation of liability in separate subclauses. The exclusions subclause does not say the exclusions are subject to the consumer's CGA remedies, whereas the limitations subclause does. We consider this omission makes the Terms unclear – a residential consumer may understand the Terms to be saying that, while the limitation is subject to the consumer's CGA remedies, the exclusions are absolute.

## Individual Retailer Results

### Hanergy

189. We assessed Hanergy's *General Terms and Conditions*, effective 1 January 2019, and *Piped Gas Terms and Conditions*.
190. We also assessed:
- (a) Hanergy's *1 Year Fixed Plan – Residential Customer*, *2 Year Fixed Plan – Residential Customer* and *Business Fixed Price Agreement Special Conditions* against the benchmarks for fixed plans; and
  - (b) Hanergy's *Freedom Plan Special Terms – Residential Customer* against the benchmarks for open plans.
191. Hanergy supplies both residential and business consumers under the Terms.
192. Hanergy did not respond to our draft assessment.
193. We consider Hanergy's Terms to be substantially compliant with the benchmarks. We have identified 14 non-compliances with the benchmarks, nine of which we consider to be issues of concern.

### Issues of concern

#### Benchmark 4(a) – Clear consumer exit rights

194. The benchmark requires the Terms to state clearly the expiry date of any fixed plan. The benchmark is not met if the plan automatically rolls over for the same term instead of converting to an open plan.
195. Both of the residential fixed plan terms we sampled say the plan will automatically renew for a further fixed term if Hanergy notifies the consumer of new fixed prices for the further fixed term. This means Hanergy could keep a fixed plan consumer forever unless the consumer pays a termination fee to exit.

#### Benchmark 4(d) – Clear consumer exit rights

196. The benchmark requires the Terms to contain a right for consumers to terminate a fixed plan without incurring a termination fee if there is a material change to the Terms.
197. Hanergy has the right to change the Terms unilaterally. Despite this, there is no right for the consumer to terminate a fixed plan without incurring a termination fee if the change is material.

#### Benchmark 5.2 – Clear contract variation procedures (non-price)

198. The benchmark requires Hanergy to notify consumers individually of any material non-price change to the Terms.
199. The Terms say Hanergy is not required to notify the consumer individually of a material non-price change to the Terms if Hanergy considers the change does not affect the



## Individual Retailer Results

consumer. While there may be some material changes where it is clear the consumer is not affected (eg a business change will not affect a residential consumer) we consider this additional condition on individually notifying the consumer does not comply with the benchmark.

### Benchmark 13.1(b) – Clear disconnection process

- 200. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
- 201. The Terms may allow the network operator to disconnect the consumer without notice (from either Hanergy or the network operator). Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection when the disconnection is by the network operator.

### Benchmark 13.3(a) – Clear disconnection process

- 202. The benchmark requires Hanergy to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
- 203. The Terms do not clearly require this notice to be given for network operator initiated disconnections.

### Benchmark 13.3(b) – Clear disconnection process

- 204. The benchmark requires Hanergy to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 205. The Terms do not clearly require this notice to be given for network operator initiated disconnections.

### Benchmark 13.4 – Clear disconnection process

- 206. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 207. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Hanergy's discretion.

### Benchmark 16.1 – Clear description of liability and redress

- 208. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
- 209. While it is reasonable for Hanergy to contract out of the CGA for business consumers (which it does), the other exclusions of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are because the network operator's liability to business consumers is excluded completely.

## Individual Retailer Results

### Benchmark 16.2 – Clear description of liability and redress

- 210. The benchmark prohibits no-fault indemnities from the consumer in the Terms. These are indemnities from the consumer that may be triggered by circumstances the consumer is not responsible for or where the consumer has not acted, or failed to act, wrongfully.
- 211. The Terms say the consumer indemnifies Hanergy against “any claim, loss, damage, accident or injury of any kind, however sustained, which arises out of or in connection with this agreement”. There is a carve out for events that arise due to Hanergy’s breach of the agreement, but this does not eliminate the possibility of the indemnity applying in circumstances where the consumer has done nothing wrong.

### Other issues

### Benchmark 8(b) – Clear price increases

- 212. The benchmark requires Hanergy to notify consumers individually in writing if the “price of gas supplied” increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 213. The Terms say Hanergy does not need to notify the consumer individually of any change to a non-regular service fee.

### Benchmark 9.1(d) – Clear pricing information

- 214. The benchmark requires Hanergy to provide a simple explanation of how any estimated charges are calculated. The benchmark is met if the Terms say Hanergy will provide an explanation of the calculation method on request.
- 215. The Terms do not say how Hanergy calculates estimated charges or require Hanergy to provide an explanation of the calculation method on request.

### Benchmark 9.2 – Clear pricing information

- 216. The benchmark requires the Terms to contain a simple explanation of alternative payment options if Hanergy offers any.
- 217. The Terms say there are “a number of ways” the consumer can pay, but there are no details about those payment options in the Terms or any we could find on Hanergy’s website.

### Benchmark 15(b) – Clear privacy obligations

- 218. The benchmark requires the Terms to state that consumers may access their personal information held by Hanergy, and have it corrected if necessary.
- 219. This information is in Hanergy’s Privacy Policy, which is referred to in the Terms. However, our interpretation is that this is insufficient to comply with the benchmark, which, unlike

## Individual Retailer Results

other benchmarks, does not permit the relevant information to be in a referenced document.

220. We consider this a marginal non-compliance only. We would have found the Terms to be compliant with the benchmark if they had specifically stated that information about how consumers may access and correct their personal information is in the Privacy Policy.

### **Benchmark 16.3(b) – Clear description of liability and redress**

221. The benchmark requires the Terms to be clear that any remedies the consumer has under the Terms are in addition to, and do not detract from, the consumer's remedies under the CGA. The benchmark is not met by a statement that the CGA is excluded to the maximum extent permitted by law because a residential consumer may wrongly assume they have no CGA remedies.
222. The Terms include the statement "except as expressly set out in these terms and conditions, all warranties, guarantees or obligations imposed on us...by the Consumer Guarantees Act 1993...are excluded to the maximum extent permitted by law."
223. We acknowledge the Terms say elsewhere that CGA remedies are preserved for residential consumers. However, there is no guarantee a consumer reading the Terms would find that statement, or even look for it, if they found the problematic provision first. The CGA position may not be "clear" to the consumer, which is what the benchmark requires.

## Individual Retailer Results

### Megatel

224. We assessed Megatel's *General Terms and Conditions, General Promotional Terms and Conditions – Residential, General Promotional Terms and Conditions – Business and Contract Renewal Terms and Conditions*.
225. We also assessed Megatel's *Energy Bundle Promotion*, offered 14 March 2022 to 31 March 2023, and *Natural Gas Only Plan Promotion*, offered 14 March 2022 to 31 March 2023, against the benchmarks for fixed plans. There were no separate open plan terms published.
226. Megatel supplies both residential and business consumers under the Terms.
227. Megatel did not provide a detailed response to our draft assessment.<sup>15</sup>
228. We consider Megatel's Terms to be substantially compliant with the benchmarks. We have identified 19 non-compliances with the benchmarks, eight of which we consider to be issues of concern.

#### Issues of concern

##### Benchmark 4(d) – Clear consumer exit rights

229. The benchmark requires the Terms to contain a right for consumers to terminate a fixed plan without incurring a termination fee if there is a material change to the Terms.
230. Megatel has the right to change the Terms unilaterally. Despite this, there is no right for the consumer to terminate a fixed plan without incurring a termination fee if the change is material.

##### Benchmark 5.2 – Clear contract variation procedures (non-price)

231. The benchmark requires Megatel to notify consumers individually of any material non-price change to the Terms.
232. The Terms say Megatel may communicate a material non-price change to the Terms by advertising the change on Megatel's website. This is not individual notice to the consumer.

##### Benchmark 9.1(b) – Clear pricing information

233. The benchmark requires the Terms to clearly specify the charges consumers are liable for. The benchmark is not met if the consumer is liable for unspecified charges.
234. The Terms say the consumer may be liable for charges "not expressly covered under your Pricing Schedule or the Special Terms". This is an open-ended obligation to pay unspecified charges.

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<sup>15</sup> Megatel is a division of Nova Energy. Nova says work is underway to replace Megatel's general terms and conditions and align them with Nova's.

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### Benchmark 13.1(b) – Clear disconnection process

- 235. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
- 236. The Terms do not require a notice of disconnection to describe the actions the consumer can take to prevent disconnection.

### Benchmark 13.3(a) – Clear disconnection process

- 237. The benchmark requires Megatel to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
- 238. The Terms do not clearly require this notice to be given for network operator initiated disconnections.
- 239. For disconnection by Megatel:
  - (a) the Terms only require Megatel to give at least seven days' (not working days') notice of the disconnection; and
  - (b) Megatel only needs to "endeavour" to give this notice. This should be an absolute obligation.

### Benchmark 13.3(b) – Clear disconnection process

- 240. The benchmark requires Megatel to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 241. The Terms do not clearly require this notice to be given for network operator initiated disconnections.

### Benchmark 13.4 – Clear disconnection process

- 242. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 243. The Terms do not provide for disconnection to be delayed if the consumer disputes the basis for disconnection.

### Benchmark 16.1 – Clear description of liability and redress

- 244. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
- 245. While it is reasonable for Megatel to contract out of the CGA for business consumers (which it does), the other exclusions of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are because the network operator's liability to business consumers is excluded completely.

## Individual Retailer Results

### Other issues

#### Benchmark 2 – Clear safety information

246. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required.
247. The Terms do not contain, or refer to documents containing, clear information about:
- (a) who the consumer should call in an emergency;
  - (b) how to switch off the gas supply; or
  - (c) when the consumer must obtain compliance certificates.
248. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer's first or primary source of information about gas safety measures, especially in an emergency.

#### Benchmark 6 – Clear supply obligations

249. The benchmark requires the Terms to clearly define the point of supply for gas.
250. The Terms do not clearly define the point of supply for gas.

#### Benchmark 8(a) – Clear price increases

251. The benchmark requires Megatel to give consumers at least 30 days' notice of any increase in the "price of gas supplied". For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
252. The Terms say:
- (a) only increases in passed-through third party charges need to be notified 30 days in advance, and then only if Megatel receives sufficient notice from the third party. Otherwise only 15 days' notice is required to increase charges, and then only if the increase "can materially affect you"; and
  - (b) changes to the schedule of fees on Megatel's website are effective immediately without notice.

#### Benchmark 8(b) – Clear price increases

253. The benchmark requires Megatel to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).

## Individual Retailer Results

254. The Terms do not require Megatel to notify the consumer individually if the energy price or a service fee increases by more than 5%. The Terms say changes to the schedule of fees on Megatel's website are effective immediately without notice.

### Benchmark 8(c) – Clear price increases

255. The benchmark requires Megatel to provide reasons for all increases in the “price of gas supplied”. For consistency with the 2015 and 2018 assessments we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
256. The Terms do not require Megatel to provide reasons for any increase in energy prices or service fees.

### Benchmark 9.1(e) – Clear pricing information

257. The benchmark requires Megatel to refund any amount that has been over-charged, and the Terms to specify a timeframe for the refund (eg promptly or next invoice).
258. The Terms require Megatel to promptly credit the consumer's electricity account with any over-charged amount. It is not clear whether this applies to over-charges for gas.

### Benchmark 9.2 – Clear pricing information

259. The benchmark requires the Terms to contain a simple explanation of alternative payment options if Megatel offers any.
260. Megatel's website says “we provide a wide range of payment options” but there is no reference to payment options in the Terms.

### Benchmark 12(b) – Clear metering obligations

261. The benchmark requires the Terms to clearly describe the meter reading frequency, which must be monthly where business or business/residential consumption is between 250GJ and 10TJ per annum.
262. The Terms say Megatel will read meters “on a regular basis”, which is not specific enough to comply with the benchmark. Also, the Terms do not require monthly meter reading for business or business/residential consumers with consumption over 250GJ per annum.

### Benchmark 14.1(c) – Clear supply interruption procedures

263. The benchmark requires Megatel to notify consumers urgently of supply resumption following curtailment due to a critical contingency situation. The benchmark can be complied with by Megatel regularly updating a fault information line or website.
264. The Terms do not require Megatel to notify the consumer of supply resumption following curtailment due to a critical contingency situation, either individually or by regularly updating a fault information line or website.

## Individual Retailer Results

### Benchmark 14.2 – Clear supply interruption procedures

- 265. The benchmark requires the Terms to include information about where consumers may access information about supply interruptions, or refer to a document that contains that information.
- 266. The Terms do not include information about where the consumer may access information about supply interruptions, or refer to a document that contains that information.

### Benchmark 15 – Clear privacy obligations

- 267. The benchmark requires the Terms to state Frank Energy will comply with privacy laws.
- 268. Megatel's Privacy Policy (which is on Megatel's website but not referred to in the Terms) says Megatel will comply with the Privacy Act 2020. The Terms themselves do not. Our interpretation is that this is insufficient to comply with the benchmark, which, unlike other benchmarks, does not permit the relevant information to be in a referenced document.



## Individual Retailer Results

### Mercury

269. We assessed Mercury's *Standard Terms & Conditions for Residential Customers*, effective 16 September 2022.
270. We also assessed Mercury's *\$100 Bonus Credit on a 1 Year Fixed Price Plan Terms and Conditions*, *\$250 Bonus Credit on a 2 Year Fixed Price Plan Terms and Conditions* and *Great Rates on 2 Year Fixed Price Plan Terms and Conditions* against the benchmarks for fixed plans. There were no separate open plan terms published.
271. Mercury supplies residential consumers only under the Terms.
272. Mercury provided comments on our draft assessment, which we have considered in coming to our final view.
273. We consider Mercury's Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified ten non-compliances with the benchmarks, six of which we consider to be issues of concern.

#### Issues of concern

##### **Benchmark 4(d) – Clear consumer exit rights**

274. The benchmark requires the Terms to contain a right for consumers to terminate a fixed plan without incurring a termination fee if there is a material change to the Terms.
275. Mercury has the right to change the Terms unilaterally. If the change is to the standard terms and conditions and not accepted by the consumer, either the agreement will continue unchanged or Mercury will terminate it. Either way, the consumer will not incur a termination fee. However, if the change is to the plan terms and conditions, the change will apply unless the consumer terminates the agreement and incurs a termination fee.
276. Mercury says it will address this issue in the next update of the Terms.

##### **Benchmark 5.2 – Clear contract variation procedures (non-price)**

277. The benchmark requires Mercury to notify consumers individually of any material non-price change to the Terms.
278. Mercury may communicate a material non-price change to the Terms to the consumer by advertising in the local paper or posting a notice on Mercury's website. These methods are not individual notice to the consumer.
279. Mercury says material changes will be communicated directly through letters, emails, bills or the consumer's account, and public notice is a backstop notification process if the consumer cannot be individually contacted. This practice is not reflected in the Terms.

##### **Benchmark 13.1(b) – Clear disconnection process**

280. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.

## Individual Retailer Results

281. The Terms allow Mercury to disconnect the consumer without notice (from either Mercury or the network operator) if the consumer defaults on a payment arrangement. Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection when the disconnection is by reason of the consumer defaulting on a payment arrangement.

### Benchmark 13.3(a) – Clear disconnection process

282. The benchmark requires Mercury to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
283. The Terms do not require Mercury to give seven working days' notice of disconnection if the consumer defaults on a payment arrangement. Mercury could give less or no notice in this situation.
284. Mercury says a payment arrangement will only be put in place after the consumer has already received a warning notice, and therefore in practice the consumer will have received the seven working days' notice. However, that notice will be for a default preceding the payment arrangement default. We consider the benchmark requires a fresh notice for each default that may result in disconnection.

### Benchmark 13.4 – Clear disconnection process

285. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
286. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Mercury's discretion.
287. Mercury says in practice it would not disconnect a consumer for reasons that are the subject of a dispute. Mercury says it will address this issue in the next update of the Terms.

### Benchmark 16.2 – Clear description of liability and redress

288. The benchmark prohibits no-fault indemnities from the consumer in the Terms. These are indemnities from the consumer that may be triggered by circumstances the consumer is not responsible for or where the consumer has not acted, or failed to act, wrongfully.
289. The Terms contain two indemnities that may be triggered in these circumstances:
- (a) The consumer indemnifies Mercury against third party liability due to (among other things) the consumer's "wilful act or omission". It is possible for an act or omission to be wilful without being wrongful.
  - (b) The consumer indemnifies Mercury against fines and penalties relating to metering breaches including, potentially, where the meter has been tampered with by a third party not associated with the consumer.

## Individual Retailer Results

290. Mercury does not agree with our characterisation of these indemnities as potential no-fault indemnities. However, Mercury says it will consider this issue in the next update of the Terms.

### Other issues

#### Benchmark 2 – Clear safety information

291. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required.
292. The Terms contain a link to the (now discontinued) Energy Safety Service website, which then links to the WorkSafe website. We do not consider this complies with the benchmark because the gas safety and emergency information on the WorkSafe website is difficult to locate and not linked directly in the Terms.
293. Mercury says it will review the website link in the next update of the Terms.
294. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer's first or primary source of information about gas safety measures, especially in an emergency.

#### Benchmark 8(b) – Clear price increases

295. The benchmark requires Mercury to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
296. The Terms require Mercury to notify the consumer individually if "the total aggregate invoiced price is increased by more than 5%". This does not appear to capture increases in service fees.

#### Benchmark 8(c) – Clear price increases

297. The benchmark requires Mercury to provide reasons for all increases in the "price of gas supplied". For consistency with the 2015 and 2018 assessments we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
298. The Terms require Mercury to give reasons for an increase in the price of gas supplied only if the total aggregate invoiced price is increased by more than 5% (in which case the reasons will be in the individual notice to the consumer).
299. Mercury says it will address this issue in the next update of the Terms.

#### Benchmark 10.2(b) – Clear bond obligations

300. The benchmark requires the Terms to include information on how bonds kept for more than 12 months will be refunded.

## Individual Retailer Results

301. The Terms say Mercury will refund a bond by crediting the consumer's account. This does not explain how the bond will be repaid if the agreement has been terminated and the consumer no longer has an account with Mercury.

## Individual Retailer Results

### Nova Energy – Residential

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302. We assessed Nova's *General Terms and Conditions for Residential Customers – March 2015*.
303. We also assessed:
- (a) Nova's *TV Bundle Special Terms*, effective 1 October 2021, against the benchmarks for fixed plans; and
  - (b) Nova's *Natural Gas Plan Special Terms*, effective 1 October 2021, and *Natural Gas Multisaver Plan Special Terms*, effective 1 September 2022, against the benchmarks for open plans.
304. Mercury supplies residential consumers only under the Terms.
305. Nova provided comments on our draft assessment, which we have considered in coming to our final view.
306. We consider Nova's Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified 11 non-compliances with the benchmarks, six of which we consider to be issues of concern.

#### Issues of concern

##### **Benchmark 4(d) – Clear consumer exit rights**

307. The benchmark requires the Terms to contain a right for consumers to terminate a fixed plan without incurring a termination fee if there is a material change to the Terms.
308. Nova has the right to change the Terms unilaterally. In the general terms and conditions there is a termination right for the consumer if Nova changes the Terms, which arguably exempts the consumer from any termination fee for a fixed plan (although the drafting is not clear about that).
309. However, the general terms and conditions are expressly subordinate to the terms of the fixed plan we sampled (the TV Bundle Special Terms), and the fixed plan says “if you end your electricity ... under this plan for any reason before the end of the energy term ... an early termination fee will apply”.<sup>16</sup> This means, regardless of what the position may be under the general terms and conditions, the consumer still has to pay the termination fee if they terminate the fixed plan in response to Nova changing the Terms.

##### **Benchmark 13.1(a) – Clear disconnection process**

310. The benchmark requires the Terms to set out the circumstances in which consumers may be disconnected.

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<sup>16</sup> The plan says the consumer is excused from the termination fee if the consumer terminates because the model of television provided under the plan changes, but not in any other circumstance.

## Individual Retailer Results

311. The Terms provide for disconnection by the network operator and other (unnamed) third parties “in some circumstances” but do not say what those circumstances are beyond the consumer breaching the agreement.
312. Nova says it will address this issue when it updates the Terms or create a separate network operator disconnection process document.

### Benchmark 13.1(b) – Clear disconnection process

313. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
314. The Terms:
- (a) allow Nova to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested (see benchmark 13.3); and
  - (b) allow the network operator and other (unnamed) third parties to disconnect the consumer without notice (from either Nova or the network operator/third party).

Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection.

315. Nova says it will address the issue in paragraph 314(a) in the next update of the Terms or create a separate network operator disconnection process document. We note a network operator disconnection process document would not, by itself, fully address this issue, which is not only about network operator requested disconnections.
316. Nova says the issue in paragraph 314(b) is not necessarily controllable by Nova. We agree Nova has less control over network operator and other third party initiated disconnections, but do think some degree of control, and compliance with the benchmark, could be achieved through agreements between Nova and those third parties.

### Benchmark 13.3(a) – Clear disconnection process

317. The benchmark requires Nova to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
318. The Terms:
- (a) allow Nova to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested, (eg when the disconnection is requested by the network operator for any reason); and
  - (b) allow the network operator and other (unnamed) third parties to disconnect the consumer without notice (from either Nova or the network operator/third party).

## Individual Retailer Results

319. Nova says it will address the issue in paragraph 318(a) in the next update of the Terms or create a separate network operator disconnection process document. We note a network operator disconnection process document would not, by itself, fully address this issue, which is not only about network operator requested disconnections.
320. Nova says the issue in paragraph 318(b) is not necessarily controllable by Nova. We agree Nova has less control over network operator and other third party initiated disconnections, but do think some degree of control, and compliance with the benchmark, could be achieved through agreements between Nova and those third parties. At the very least, the Terms should say who the other (non-network operator) third parties are.

### Benchmark 13.3(b) – Clear disconnection process

321. The benchmark requires Nova to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
322. The Terms:
- (a) allow Nova to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested, (eg when the disconnection is requested by the network operator for any reason); and
  - (b) allow the network operator and other (unnamed) third parties to disconnect the consumer without notice (from either Nova or the network operator/third party).
323. Nova says it will address the issue in paragraph 322(a) in the next update of the Terms or create a separate network operator disconnection process document. We note a network operator disconnection process document would not, by itself, fully address this issue, which is not only about network operator requested disconnections.
324. Nova says the issue in paragraph 318(b) is not necessarily controllable by Nova. We agree Nova has less control over network operator and other third party initiated disconnections, but do think some degree of control, and compliance with the benchmark, could be achieved through agreements between Nova and those third parties. At the very least, the Terms should say who the other (non-network operator) third parties are.

### Benchmark 13.4 – Clear disconnection process

325. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
326. The Terms say disconnection will be delayed if there is a dispute about the basis for disconnection in some situations but not in other situations, and those other situations are not necessarily emergencies. For example, a dispute will not necessarily delay disconnection if the basis for disconnection is an alleged refusal by the consumer to provide access. In that case, disconnection or not is at Nova's discretion.
327. Nova says the Terms comply with the benchmark because they provide for disconnection to be delayed if there is a dispute about the basis for disconnection in some non-

## Individual Retailer Results

emergency situations. We disagree. The benchmark requires disconnection to be delayed if there is a dispute about the basis for disconnection in any non-emergency situation.

### Other issues

#### Benchmark 2 – Clear safety information

- 328. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required. This includes information about who the consumer should call in an emergency.
- 329. The Terms do not say clearly who the consumer should call in an emergency.
- 330. Nova points to various references in the Terms to Nova's website and its customer care team. However, these references are not in the clause relating to emergencies, which says the consumer should contact Nova but does not contain any specific information about the best way to do that. Further, the references to Nova's website are to the home page rather than a specific page about who to contact in an emergency, and the contact number on Nova's website for gas emergencies is different to the customer care team number in the Terms.
- 331. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer's first or primary source of information about gas safety measures, especially in an emergency.

#### Benchmark 8(b) – Clear price increases

- 332. The benchmark requires Nova to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 333. The Terms say Nova will notify a consumer individually of any increase in a service fee of more than 5% only if the increase is "reasonably likely to have a material effect on [the consumer]".
- 334. Nova says it considers it has struck an appropriate balance between notifying consumers of changes that affect them (eg energy price changes) and the compliance cost of notifying consumers of changes that are unlikely to affect them. Nova says consumers will be made aware of changes to fees and charges that affect them at the relevant time. However, Nova also says it will take our feedback on board when it updates the Terms.

#### Benchmark 9.1(e) – Clear pricing information

- 335. The benchmark requires Nova to refund any amount that has been over-charged, and the Terms to specify a timeframe for the refund (eg promptly or next invoice).
- 336. The Terms require Nova to promptly refund any over-charged amount, but only if the over-charge was due to a metering problem. Over-charging could result from things other than a metering problem, such as Nova applying the wrong energy price in an invoice. The



## Individual Retailer Results

Terms need to provide for prompt refunds of all over-charged amounts, regardless of cause, to comply with the benchmark.

### Benchmark 11.1(a) – Clear consumer site responsibilities

- 337. The benchmark requires the Terms to explain the consumer’s responsibilities in relation to equipment on the consumer’s premises. The benchmark is not met if the consumer is required to provide certification for any of Nova’s equipment on the consumer’s premises (which we interpret as equipment provided and/or owned by Nova).
- 338. The Terms say the consumer is responsible for certification of any equipment within the consumer’s home, regardless of who provided or owns it.
- 339. Nova says most equipment within a consumer’s home will be provided and/or owned by the consumer, not Nova. We agree. However, “most” is not “all”, so by Nova’s own estimation there could be a situation where the Terms make the consumer responsible for certifying Nova provided and/or owned equipment.

### Benchmark 12(a) – Clear metering obligations

- 340. The benchmark requires the Terms to be clear about who is responsible for providing and maintaining meters.
- 341. The Terms do not say clearly who is responsible for providing or maintaining meters.
- 342. Nova says it is well known that meters are not provided or maintained by the consumer, and points to provisions in the Terms where it is implied Nova is responsible for providing and maintaining meters. We consider this insufficient to comply with the benchmark, which requires responsibilities for meters to be clear in the Terms.

## Individual Retailer Results

### Nova Energy – Commercial

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343. We assessed Nova's *General Terms and Conditions for Commercial Customers*, effective 17 March 2015.
344. We also assessed:
- (a) Nova's *Business EnergySure Natural Gas Plan Special Terms*, effective 1 May 2022, *Business EnergySure Natural Gas Multisaver Plan 2025 Special Terms*, effective 1 May 2022, and *Business EnergyFix Natural Gas Plan Special Terms*, effective 1 March 2022, against the benchmarks for fixed plans; and
  - (b) Nova's *Business Natural Gas Plan Special Terms*, effective 1 September 2021, and *Business Natural Gas Multisaver Plan Special Terms*, effective 1 September 2021, against the benchmarks for open plans.
345. Nova supplies business consumers only under the Terms.
346. Nova provided comments on our draft assessment, which we have considered in coming to our final view.
347. We consider Nova's Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified 11 non-compliances with the benchmarks, seven of which we consider to be issues of concern.

#### Issues of concern

##### **Benchmark 5.1 – Clear contract variation procedures (non-price)**

348. The benchmark requires Nova to give consumers at least 30 days' notice of any non-price change to the Terms.
349. The Terms allow Nova to change the Terms without providing at least 30 days' notice to the consumer (or any notice) if the consumer is not on a fixed plan.
350. Nova says, in practice, it does not make any changes to the Terms without providing at least 30 days' notice to the consumer. This practice is not reflected in the Terms.
351. Nova says it intends to update the Terms so that it can only change the Terms without notice if the change does not increase the consumer's charges and is unlikely to be materially detrimental to the consumer. We consider this change would be insufficient to comply with the benchmark, which requires all non-price changes to be notified regardless of Nova's assessment of how the change may impact the consumer.

##### **Benchmark 5.2 – Clear contract variation procedures (non-price)**

352. The benchmark requires Nova to notify consumers individually of any material non-price change to the Terms.

## Individual Retailer Results

353. The Terms say Nova may communicate a material non-price change to the Terms by advertising in the local paper or posting a notice on Nova's website. These methods are not individual notice to the consumer.
354. Nova says, in practice, it communicates directly with consumers for all matters pertaining to their gas supply, including any material non-price change to the Terms. This practice is not reflected in the Terms.
355. Nova says it intends to update the Terms to address this issue.

### Benchmark 13.1(a) – Clear disconnection process

356. The benchmark requires the Terms to set out the circumstances in which consumers may be disconnected.
357. The Terms provide for disconnection by the network operator and other (unnamed) third parties "in some circumstances" but do not say what those circumstances are beyond the consumer breaching the agreement.
358. Nova says it will address this issue when it updates the Terms or create a separate network operator disconnection process document.

### Benchmark 13.1(b) – Clear disconnection process

359. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
360. The Terms:
- (a) allow Nova to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested (see benchmark 13.3); and
  - (b) allow the network operator and other (unnamed) third parties to disconnect the consumer without notice (from either Nova or the network operator/third party).

Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection.

361. Nova says it will address the issue in paragraph 360(a) when it updates the Terms or create a separate network operator disconnection process document. We note a network operator disconnection process document would not, by itself, fully address this issue, which is not only about network operator requested disconnections.
362. Nova says the issue in paragraph 360(b) is not necessarily controllable by Nova. We agree Nova has less control over network operator and other third party initiated disconnections, but do think some degree of control, and compliance with the benchmark, could be achieved through agreements between Nova and those third parties.

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### Benchmark 13.3(a) – Clear disconnection process

363. The benchmark requires Nova to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
364. The Terms:
- (a) allow Nova to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested, (eg when the disconnection is requested by the network operator for any reason); and
  - (b) allow the network operator and other (unnamed) third parties to disconnect the consumer without notice (from either Nova or the network operator/third party).
365. Nova says it will address the issue in paragraph 364(a) in the next update of the Terms or create a separate network operator disconnection process document. We note a network operator disconnection process document would not, by itself, fully address this issue, which is not only about network operator requested disconnections.
366. Nova says the issue in paragraph 364(b) is not necessarily controllable by Nova. We agree Nova has less control over network operator and other third party initiated disconnections, but do think some degree of control, and compliance with the benchmark, could be achieved through agreements between Nova and those third parties. At the very least, the Terms should say who the other (non-network operator) third parties are.

### Benchmark 13.3(b) – Clear disconnection process

367. The benchmark requires Nova to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
368. The Terms:
- (a) allow Nova to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested, (eg when the disconnection is requested by the network operator for any reason); and
  - (b) allow the network operator and other (unnamed) third parties to disconnect the consumer without notice (from either Nova or the network operator/third party).
369. Nova says it will address the issue in paragraph 368(a) in the next update of the Terms or create a separate network operator disconnection process document. We note a network operator disconnection process document would not, by itself, fully address this issue, which is not only about network operator requested disconnections.
370. Nova says the issue in paragraph 368(b) is not necessarily controllable by Nova. We agree Nova has less control over network operator and other third party initiated disconnections, but do think some degree of control, and compliance with the benchmark, could be

## Individual Retailer Results

achieved through agreements between Nova and those third parties. At the very least, the Terms should say who the other (non-network operator) third parties are.

### Benchmark 13.4 – Clear disconnection process

- 371. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 372. The Terms say disconnection will be delayed if there is a dispute about the basis for disconnection in some situations but not in other situations (specifically, situations where a disconnection notice is not required), and those other situations are not necessarily emergencies. For example, a dispute will not necessarily delay disconnection if the basis for disconnection is an alleged refusal by the consumer to provide access. In that case, disconnection or not is at Nova's discretion.
- 373. Nova says the Terms comply with the benchmark because they provide for disconnection to be delayed if there is a dispute about the basis for disconnection in some non-emergency situations. We disagree. The benchmark requires disconnection to be delayed if there is a dispute about the basis for disconnection in any non-emergency situation.

## Other issues

### Benchmark 8(a) – Clear price increases

- 374. The benchmark requires Nova to give consumers at least 30 days' notice of any increase in the "price of gas supplied". For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 375. The Terms allow Nova to increase a fee in its standard fees schedule (which is on Nova's website) without notifying the consumer.
- 376. Nova says it intends to update the Terms to address this issue.

### Benchmark 8(b) – Clear price increases

- 377. The benchmark requires Nova to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 378. The Terms say Nova will notify a consumer individually of any increase in the energy price or a service fee of more than 5% only if the increase is "reasonably likely to have a material effect on [the consumer's] total bill". In addition, the Terms do not require Nova to notify the consumer where the increase is to a fee in Nova's standard fees schedule.
- 379. Nova says it considers it has struck an appropriate balance between notifying consumers of changes that affect them (eg energy price changes) and the compliance cost of notifying consumers of changes that are unlikely to affect them. Nova says consumers will be made aware of changes to service fees that affect them at the relevant time.

## Individual Retailer Results

380. Nova says, in practice, it individually notifies consumers of any change in the energy price regardless of the percentage change. This practice is not reflected in the terms.

381. Nova says it considers the Terms are compliant with the benchmark. We disagree.

### Benchmark 9.1(a) – Clear pricing information

382. The benchmark requires the Terms to refer to the prices for products and services available to the consumer. The benchmark is not met if the Terms do not say where the price information can be found.

383. The Terms do not say where Nova’s standard energy prices and fees can be found (although they are published on Nova’s website).

384. Nova says it intends to update the Terms to address this issue.

### Benchmark 9.1(e) – Clear pricing information

385. The benchmark requires Nova to refund any amount that has been over-charged, and the Terms to specify a timeframe for the refund (eg promptly or next invoice).

386. The Terms require Nova to refund any over-charged amount, but only if the over-charge was due to a metering problem. Over-charging could result from things other than a metering problem, such as Nova applying the wrong energy price in an invoice. The Terms need to provide for prompt refunds of all over-charged amounts, regardless of cause, to comply with the benchmark.

387. Also, the Terms do not require Nova to refund over-charged amounts promptly or within any specific timeframe.

388. Nova says it considers the Terms are compliant with the benchmark. We disagree.

## Individual Retailer Results

### Pulse Energy

389. We assessed Pulse's *Standard Terms and Conditions for the Supply of Energy – Residential Customers*.
390. We also assessed Pulse's *Product Schedule for Pulse Energy Freedom Plan*, post 1 January 2020, *Product Schedule for Pulse Energy Freedom Online Plan*, post 1 January 2020, and *Product Schedule for Pulse Energy Price Promise*, post 1 April 2021, against the benchmarks for open plans. Pulse does not offer fixed plans.
391. Pulse supplies residential consumers only under the Terms
392. Pulse did not provide a detailed response to our draft assessment.
393. We consider Pulse's Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified 14 non-compliances with the benchmarks, six of which we consider to be issues of concern.

#### Issues of concern

##### Benchmark 13.1(a) – Clear disconnection process

394. The benchmark requires the Terms to set out the circumstances in which consumers may be disconnected.
395. The Terms say Pulse can stop supplying gas to the consumer (which is equivalent to a disconnection in our view) where Pulse determines the supply of gas is no longer financially viable for Pulse. This is an arbitrary basis for disconnection.

##### Benchmark 13.1(b) – Clear disconnection process

396. The benchmark requires notices of disconnection to describe the actions consumers can take to prevent disconnection.
397. The Terms allow Pulse to disconnect the consumer without notice in some situations where the disconnection is not an emergency, legally required or consumer-requested (see benchmark 13.3). Therefore, the consumer will not necessarily be notified of the actions they can take to prevent a disconnection.

##### Benchmark 13.3(a) – Clear disconnection process

398. The benchmark requires Pulse to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
399. The Terms:
- (a) require Pulse to give seven to ten days' notice of disconnection if the disconnection is due to the consumer not setting up or cancelling its Convenient Pay arrangement. This may be less than seven working days' notice of disconnection; and

## Individual Retailer Results

- (b) do not require Pulse to give any notice for vacant disconnections, which we understand to mean nobody is occupying the premises being disconnected. We do not think it is necessarily the case there will be nobody to notify of a vacant disconnection as Pulse's customer may live somewhere else.

### Benchmark 13.3(b) – Clear disconnection process

- 400. The benchmark requires Pulse to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 401. The Terms:
  - (a) do not require Pulse to give a final notice of disconnection if the disconnection is due to the consumer not setting up or cancelling its Convenient Pay arrangement; and
  - (b) do not require Pulse to give any notice for vacant disconnections, which we understand to mean nobody is occupying the premises being disconnected. We do not think it is necessarily the case there will be nobody to notify of a vacant disconnection as Pulse's customer may live somewhere else.

### Benchmark 13.4 – Clear disconnection process

- 402. The benchmark requires disconnection to be delayed if any dispute about the basis for disconnection has been raised by the consumer, except in emergencies.
- 403. The Terms say, where a dispute about the basis for disconnection has been raised, disconnection will only be delayed if the dispute relates to payment. If the dispute is about something else, disconnection or not is at Pulse's discretion.

### Benchmark 16.1 – Clear description of liability and redress

- 404. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
- 405. While it is reasonable for Pulse to contract out of the CGA for business consumers (which it does), the other exclusions of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are because the network operator's and meter owner's liability to business consumers is excluded completely.

## Other issues

### Benchmark 2 – Clear safety information

- 406. The benchmark requires the Terms to contain, or refer to documents containing, safety-related information, and includes examples of the type of information required.



## Individual Retailer Results

407. The Terms do not contain, or refer to documents containing, clear information about how to switch off the gas supply, other than directing the consumer to turn the gas off at the mains.
408. We note that, while gas safety is obviously very important, we do not have this non-compliance as an issue of concern because we think the Terms are very unlikely to be the consumer's first or primary source of information about gas safety measures, especially in an emergency.

### Benchmark 6 – Clear supply obligations

409. The benchmark requires the Terms to clearly define the point of supply for gas.
410. The Terms do not clearly define the point of supply for gas.

### Benchmark 8(a) – Clear price increases

411. The benchmark requires Pulse to give consumers at least 30 days' notice of any increase in the "price of gas supplied". For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones)
412. The Terms allow Pulse to adjust "Delivery charges and flow through costs" without necessarily giving the consumer 30 days' notice.

### Benchmark 8(b) – Clear price increases

413. The benchmark requires Pulse to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
414. The Terms say Pulse does not need to notify the consumer individually of any change to a non-regular service fee.

### Benchmark 10.1(a) – Clear bond obligations

415. The benchmark requires Pulse to provide consumers with detailed reasons why Pulse requires a bond, if one is required.
416. The Terms do not contain, or require Pulse to provide, detailed reasons for requiring a bond from the consumer.

### Benchmark 10.2(a) – Clear bond obligations

417. The benchmark requires Pulse to provide consumers with reasons for keeping a bond for longer than 12 months.
418. The Terms do not require Pulse to provide reasons for keeping a bond longer than 12 months. The bond is not automatically repaid where the consumer has paid on time for 12 months. Instead, the consumer has to request repayment.

## Individual Retailer Results

### Benchmark 12(a) – Clear metering obligations

- 419. The benchmark requires the Terms to be clear about who is responsible for providing and maintaining meters.
- 420. The Terms do not say clearly who is responsible for providing or maintaining meters.

### Benchmark 16.3(a) – Clear description of liability and redress

- 421. The benchmark requires the Terms to describe any payments that will be made to consumers as a result of services not being provided. The benchmark is not met if the consumer's CGA remedies are not expressly preserved.
- 422. The Terms contain a clause saying Pulse's liability for network operator failures is limited to Pulse passing on any recovery it makes from the network operator, and Pulse otherwise has no liability to the consumer. A residential consumer's CGA remedies, which include potential recovery from Pulse for network problems, are not expressly preserved in that clause.

## Individual Retailer Results

### Trustpower

423. We assessed Trustpower's *Full Terms for Your Power & Gas*, effective 4 October 2022.
424. We also assessed Trustpower's *Friends Extra Terms and Conditions and Terms*, effective 14 April 2021, against the benchmarks for fixed plans. There were no separate open plan terms published.
425. Trustpower supplies both residential and business consumers under the Terms.
426. Trustpower provided comments on our draft assessment, which we have considered in coming to our final view.
427. We consider Trustpower's Terms to be substantially compliant with the benchmarks. This is the same as the overall level of compliance assessed in 2018. We have identified 12 non-compliances with the benchmarks, five of which we consider to be issues of concern.

### Issues of concern

#### Benchmark 9.1(e) – Clear pricing information

428. The benchmark requires Trustpower to refund any amount that has been over-charged, and the Terms to specify a timeframe for the refund (eg promptly or next invoice).
429. The Terms require Trustpower to promptly refund any over-charged amount, but only if the over-charge was due to a metering problem. Over-charging could result from things other than a metering problem, such as Trustpower applying the wrong energy price in an invoice. The Terms need to provide for prompt refunds of all over-charged amounts, regardless of cause, to comply with the benchmark.

#### Benchmark 13.3(a) – Clear disconnection process

430. The benchmark requires Trustpower to give consumers at least seven working days' written notice for all disconnections, except emergency, legally required or consumer-requested disconnections.
431. The Terms:
- (a) allow Trustpower to disconnect without notice if it ceases to have an agreement with the network operator that provides line function services to the consumer's premises. Trustpower says it may not be possible to provide this notice if Trustpower no longer has an agreement with the network operator. We think this would be possible in most cases because Trustpower is unlikely to lose its agreement with the network operator with no or very short notice; and
  - (b) say Trustpower must give the consumer ten working days' notice before disconnecting the customer for a material or persistent breach of the Terms, but only if the breach is capable of remedy. If the breach is not capable of remedy, Trustpower could disconnect the consumer without giving at least seven working days' notice.

## Individual Retailer Results

### Benchmark 13.3(b) – Clear disconnection process

- 432. The benchmark requires Trustpower to give consumers a final notice of disconnection at least 24 hours before disconnection, except for emergency, legally required or consumer-requested disconnections.
- 433. The Terms allow Trustpower to disconnect without notice if it ceases to have an agreement with the network operator that provides line function services to the consumer's premises.
- 434. Trustpower says it may not be possible to provide this notice if Trustpower no longer has an agreement with the network operator. We think this would be possible in most cases because Trustpower is unlikely to lose its agreement with the network operator with no or very short notice.
- 435. We have assumed a final notice is required before Trustpower disconnects the consumer for a material or persistent breach of the Terms that is incapable of remedy, although the Terms are not clear about that.

### Benchmark 16.1 – Clear description of liability and redress

- 436. The benchmark requires any exclusion of liability in the Terms to be "clearly reasonable".
- 437. While it is reasonable for Trustpower to contract out of the CGA for business consumers (which it does), the other exclusions of liability applicable to business consumers must still be "clearly reasonable" for the Terms to comply with the benchmark. We do not consider they are because all third party service provider obligations (and therefore liability) to the consumer are excluded completely.
- 438. Trustpower says this is reasonable for some of the reasons in paragraph 25, which we disagree with for the reasons in paragraph 26. Absent the operation of the CGA, we think it is unlikely Trustpower would accept liability to a business consumer for a third party service provider issue. That would leave the consumer without a remedy.

### Benchmark 16.2 – Clear description of liability and redress

- 439. The benchmark prohibits no-fault indemnities from the consumer in the Terms. These are indemnities from the consumer that may be triggered by circumstances the consumer is not responsible for or where the consumer has not acted, or failed to act, wrongfully.
- 440. The Terms say the consumer indemnifies Trustpower against network operator liability due to (among other things) the consumer's "wilful act or omission". It is possible for an act or omission to be wilful without being wrongful.
- 441. Trustpower does not agree with our characterisation of this indemnity as a potential no-fault indemnity.

## Individual Retailer Results

### Other issues

#### Benchmark 5.1 – Clear contract variation procedures (non-price)

- 442. The benchmark requires Trustpower to give consumers at least 30 days' notice of any non-price change to the Terms.
- 443. The Terms allow Trustpower to make minor changes to its Terms without notice, provided the change more closely aligns the Terms with good industry practice or mandated requirements, and the change is beneficial and/or of immaterial consequence to the consumer.
- 444. Trustpower says it is administratively burdensome to notify customers of such changes to the Terms, and not notifying such changes is not contrary to the overall intention of the benchmarks which is to protect consumers. We note neither the Terms nor benchmarks require such changes to be individually notified to consumers, so unless the Terms change very frequently we do not think the notification process needs to be overly burdensome.

#### Benchmark 8(a) – Clear price increases

- 445. The benchmark requires Trustpower to give consumers at least 30 days' notice of any increase in the "price of gas supplied".
- 446. The Terms do not require Trustpower to notify the consumer if Trustpower increases a service fee unless the increase "is reasonably likely to have a material effect on [the consumer]".
- 447. Trustpower says the "price of gas supplied" excludes service fees. While we have some sympathy for that interpretation, for consistency with the 2015 and 2018 assessments we have interpreted the benchmark as applying to both energy prices and service fees (including non-regular ones).

#### Benchmark 8(b) – Clear price increases

- 448. The benchmark requires Trustpower to notify consumers individually in writing if the "price of gas supplied" increases by more than 5%. For consistency with the 2015 and 2018 assessments, we have interpreted this as applying to both energy prices and service fees (including non-regular ones).
- 449. The Terms say Trustpower will notify a consumer individually of an increase in a service fee of more than 5% only if the increase is "reasonably likely to have a material effect on [the consumer]".
- 450. Trustpower says the "price of gas supplied" excludes service fees. While we have some sympathy for that interpretation, for consistency with the 2015 benchmark assessment report we have interpreted the benchmark as applying both to rates and to service fees and charges.

## Individual Retailer Results

### Benchmark 9.1(a) – Clear pricing information

- 451. The benchmark requires the Terms to refer to the prices for products and services available to the consumer. The benchmark is not met if the Terms do not say where the price information can be found.
- 452. The Terms require the consumer to call an 0800 number to find out what Trustpower's energy prices and service fees are. We consider this is insufficient to comply with the benchmark, which requires the price information to be in the Terms or "on the Retailer's website or in another publicly accessible location". We do not think a telephone number meets this requirement.
- 453. Trustpower disagrees with our interpretation of the benchmark.

### Benchmark 12(b) – Clear metering obligations

- 454. The benchmark requires the Terms to clearly describe the meter reading frequency, which must be monthly where business or business/residential consumption is between 250GJ and 10TJ per annum.
- 455. Terms do not require monthly meter reading for a business or business/residential consumer whose consumption is between 250GJ and 10TJ per annum.
- 456. Trustpower says an undertaking contained in its Terms to read meters in accordance with applicable regulations or codes of practice is sufficient for Trustpower to comply with the benchmark. We consider this undertaking to be insufficient because the benchmark requires the frequency of meter readings to be "clearly described".

### Benchmark 13.2 – Clear disconnection process

- 457. The benchmark requires the Terms to permit disconnection for non-payment only if the non-payment relates to the supply of energy (gas or dual fuel).
- 458. The Terms may allow Trustpower to disconnect for any non-payment by the consumer, even if unrelated to the gas supplied under the agreement (eg broadband). It is unclear if "account" in the Terms refers to the consumer's account for other services as well as energy.
- 459. Trustpower says it will consider this issue in the next update of the Terms.

### Benchmark 16.3(b) – Clear description of liability and redress

- 460. The benchmark requires the Terms to be clear that any remedies the consumer has under the Terms are in addition to, and do not detract from, the consumer's remedies under the CGA. The benchmark is not met by a statement that the CGA is excluded to the maximum extent permitted by law because a residential consumer may wrongly assume they have no CGA remedies.
- 461. The Terms include the statement "except as expressly set out in our agreement, all warranties, guarantees or obligations imposed on us...by the Consumer Guarantees Act 1993...are excluded to the maximum extent permitted by law."

## Individual Retailer Results

462. We acknowledge the Terms say elsewhere that CGA remedies are preserved for residential consumers. However, there is no guarantee a consumer reading the Terms would find that statement, or even look for it, if they found the problematic provision first. The CGA position may not be clear to the consumer, which is what the benchmark requires.

## Reasonable Consumer Expectations

463. We have been asked to comment on the Terms' alignment with the GIC's Reasonable Consumer Expectations for the Scheme (RCEs). The RCEs are attached to this report as **Appendix 3**.
464. Several of the RCEs relate to the way the retailers behave towards consumers rather than the content of their Terms. Commenting on those aspects of the RCEs is beyond the scope of this exercise. We know from some of the feedback we received on the draft assessments that the Terms do not always reflect the more consumer-friendly practices of the retailers.
465. However, the Terms and their links to the retailers' websites do allow us to comment on some RCEs at a high level.

### Meaningful choice

466. 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.
467. Information on rates and pricing plans is reasonably accessible on the retailers' websites by inputting an address into a price comparison or billing estimate tool. Pulse is the only retailer that requires consumers to provide their contact details before displaying the applicable rates. We think this approach means consumers are somewhat less likely to get to a page with Pulse's rates on it (or become a Pulse customer at all). We think Pulse should reconsider this approach to allow consumers to more readily compare prices.
468. All of the retailers also have information about service fees (eg standard disconnection and reconnection charges) on their website, although sometimes this information is relatively difficult to find. We recommend retailers consider changes to their websites to make this information easier to locate, and/or include direct links to it in their Terms.

### Supply connections and disconnections, and contract termination

469. 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.
470. The Terms generally require the retailers to give benchmark-compliant notices of disconnection when the retailer is initiating the disconnection, although there are some carve-outs that go beyond what is permitted by the benchmarks.
471. However, some Terms do not commit to notices being given when the disconnection is initiated by the network operator. In that case, it seems possible the consumer will be disconnected without notice and without an opportunity to correct whatever the issue is. Also, some Terms are vague about what the grounds for network operator disconnection are.
472. We think the retailers should take more responsibility for communicating with their customers about disconnections that are initiated by the network operator. This may



## Reasonable Consumer Expectations

require some changes to the agreements or protocols that exist between the retailers and the network operators.

### Contractual terms and conditions

473. RCEs 11 and 12 relate to the Terms being reasonable, complete and easy to understand.
474. We have assessed all of the Terms as substantially compliant with the benchmarks overall. The Terms are therefore reasonable and complete by the standards reflected in the benchmarks.
475. We are pleased overall with the presentation of the Terms. The majority of the 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.
476. However, there is room for improvement. We found some retailers' Terms to be harder to navigate and understand than others for various reasons. See paragraphs 15 to 19 for more about this.

### Access to remedies

477. RCEs 21 and 22 relate to consumers having access to arrangements for dealing with complaints and appropriate remedies.
478. All of the Terms:
- (a) contain clear information about how a consumer can raise a complaint or dispute with the retailer;
  - (b) refer to the consumer's right to raise complaints with UDL; and
  - (c) preserve residential consumers' rights and remedies under the CGA.
479. In our view, some of the Terms that apply to business consumers do not provide clearly reasonable remedies for those consumers ("clearly reasonable" being the standard under benchmark 16). Of particular concern in this regard are the complete exclusion of all network operator liability in some Terms, as discussed in paragraphs 24 to 26.

## Appendix 1: Scheme Benchmarks

## Benchmark 1 - Clear supply commencement

Benchmark	GIC Interpretation
1.1. The gas supply arrangements must state when the <b>supply</b> of gas is to commence, either by stating a specific commencement date or the circumstances that will determine the commencement date.	<p>This benchmark concerns <b>supply commencement</b> not contract commencement.</p> <p>It must be <b>reasonably clear</b> when supply commences.</p> <p>The benchmark requires the commencement date to be either:</p> <ul style="list-style-type: none"> <li>an actual date agreed between the Retailer and the Consumer;</li> <li>a method for determining a date (e.g. “the earliest possible date” or “the date you move in” or “the date you start taking supply from us” or “as soon as possible following our acceptance of your application”); or</li> <li>a date determined by the switching regulations or rules.</li> </ul> <p>Benchmark is not met by a statement that supply commences when the Consumer starts taking supply.</p> <p>Benchmark not met by the customer stating (eg on an Application Form) when they would “like” supply to occur, but is met by the customer stating when they “require” supply to occur.</p>
1.2. Where the gas supply arrangements are completed after the Retailer has begun supplying gas to the Consumer, the gas supply <b>arrangements</b> will commence from the date that gas is first supplied to the Consumer.	<p>This benchmark concerns <b>contract commencement</b> not supply commencement.</p> <p>Benchmark requires it to be clear that arrangements can be back-dated to the date that supply commenced.</p> <p>Benchmark met by statement that Consumer becomes a customer by:</p> <ul style="list-style-type: none"> <li>continuing to receive and use gas at premises where a previous customer has left</li> <li>arranging for Retailer to turn on gas supply that had been previously turned off.</li> </ul> <p>Benchmark not met if back-dating of contract commencement date is not mentioned.</p>

## Benchmark 2 - Clear safety information

Benchmark	GIC Interpretation
2. 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.	<p>Benchmark met if the specified safety information and information on emergency procedures is contained in:</p> <ul style="list-style-type: none"> <li>the contract; or</li> <li>a document referred to in the contract, even if the contract does not specify what information is contained in that other document.</li> </ul> <p>Safety issues are also addressed by other industry requirements and Gas Industry Co acknowledges that, in an emergency, safety information recorded in contractual arrangements is unlikely to be immediately at hand. However, contractual arrangements are a mechanism for raising safety awareness.</p> <p>Information on emergency procedures is to include information on how the Consumer can turn off their gas supply in an emergency and information on the procedures for reconnection after the emergency.</p> <p>Safety information is to include information such as:</p> <ul style="list-style-type: none"> <li>when the Consumer must obtain compliance certificates</li> <li>what the Consumer should do to ensure gas safety at the Consumer’s premises, including how to turn off gas supply</li> <li>who the Consumer should call if there is an emergency involving gas at the Consumer’s premises.</li> </ul>

## Benchmark 3 - Clear consumer exit rights (open term)

Benchmark	GIC Interpretation
3. Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer:	<p>If an arrangement has an initial fixed term followed by an open term, both benchmark 4 and 3 are relevant respectively.</p> <p>“Cease gas supply” includes provisions dealing with disconnection, discontinuing supply, terminating the agreement, exiting and ceasing being a customer.</p>
(a) at any time without unnecessary delay;	<p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>there are restrictions on the circumstances in which the Consumer can terminate (the Consumer should be able to terminate at ANY time)</li> <li>following termination, the charges only cease on a date agreed by the Retailer (as the Retailer could unreasonably withhold its agreement, except under the switching rules)</li> <li>the Retailer can continue its daily fixed charge until gas is disconnected or decommissioned (as this is outside the Consumer’s control).</li> </ul> <p>Benchmark may be met where:</p> <ul style="list-style-type: none"> <li>termination is subject to the Consumer allowing the Retailer to perform a final</li> </ul>

	<p>meter reading</p> <ul style="list-style-type: none"> <li>the length of notice that the Consumer must give is specified, but there is not a corresponding obligation on the Retailer to disconnect (one is implied).</li> </ul> <p>There is an <b>unnecessary delay</b> if more than one month's notice of termination is needed.</p>
(b) irrespective of any offer that the existing Retailer may make with respect to price or any other aspect of continued supply from that Retailer; and	Benchmark not met where the Consumer can't switch to an alternative Retailer, unless the current Retailer is unwilling to match the alternative Retailer's offer.
(c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees.	

## Benchmark 4 - Clear consumer exit rights (fixed term)

Benchmark	GIC Interpretation
4. Fixed term gas supply arrangements must clearly state:	If application form or terms and conditions do not specify a fixed term, assume that the arrangement is for open term only and that the benchmark is not applicable.
(a) the expiry date;	<p>Benchmark met if the expiry date can be calculated as provided in the contract.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>arrangement automatically rolls over for the same fixed term, unless prior notice is given. Gas Industry Co considers that roll-overs should be on an open term basis</li> <li>the Consumer can't switch to an alternative Retailer at the end of the term, unless the current Retailer is unwilling to match the alternative Retailer's offer.</li> </ul>
(b) the provisions for early termination (i.e. prior to the expiry date);	<p>Benchmark relates to the <b>Consumer's</b> right to terminate, not the Retailer's.</p> <p>Benchmark is:</p> <ul style="list-style-type: none"> <li>not met by <b>general</b> right to terminate (eg for breach) or if contract is <b>silent</b> on right to convenience termination</li> <li>met by a statement that the Consumer has <b>no right</b> or has <b>limited rights</b> to convenience termination.</li> </ul>
(c) the basis on which any early termination charges will be calculated, if early termination is allowed; and	Benchmark met if no early termination charge is mentioned.
(d) if the Retailer seeks to materially change the terms or conditions during the fixed term period, the Consumer may terminate the arrangement during the notice period before such changes take effect, without paying any charges associated with the early termination.	

## Benchmark 5 - Clear contract variation procedures (non-price)

Benchmark	GIC Interpretation
5.1. 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.	<p>If arrangement has separate provisions for price terms, assume that general right to amend contract applies to non-price terms only.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>the Retailer has no express right to amend the contract (assume that the Retailer won't change without each Consumer's agreement)</li> <li>one month's notice is given (February is less than 30 days).</li> </ul> <p>Benchmark not met if less than 30 days' notice can be given.</p> <p>Benchmark not failed merely because the Retailer can change the arrangement on shorter notice, in the event of temporary supply emergencies.</p>
5.2. The gas supply arrangements must specifically provide for material changes in the terms of the gas supply arrangements to be directly communicated to Consumers and not through public notices.	<p>This benchmark relates to non-price variations only. Price variations are addressed in benchmark 8.</p> <p>Benchmark met if all non-price variations must be directly communicated to the Consumer.</p>

## Benchmark 6 - Clear supply obligations

Benchmark	GIC Interpretation
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Benchmark	GIC Interpretation
6. Each arrangement should describe the Retailer's obligation to supply gas of an acceptable quality to a specified point.	<p><b><u>Supply obligation</u></b></p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> <li>the Retailer's obligation is to: <ul style="list-style-type: none"> <li><b>endeavour</b> to supply gas (including "best" and "reasonable" endeavours and "aim to")</li> <li>supply <b>up to a maximum</b> quantity of gas</li> <li>provide an "<b>energy service</b>" or "<b>energy supply</b>" rather than "supply gas"</li> </ul> </li> <li>the Retailer cannot guarantee to provide a <b>continuous supply</b> of gas</li> <li>the arrangement describes the point of supply, but there is <b>no express requirement</b> for the Retailer to supply to that point (the obligation is assumed)</li> <li>supply is subject to the <b>safety</b> of the Consumer's site when connected to the local distribution gas network</li> <li>supply must be <b>exclusively</b> from the Retailer</li> <li>obligations for transporting gas across a distribution network is excluded only where the network operator requires its own agreement with the Consumer.</li> </ul> <p><b><u>Quality</u></b></p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> <li>the Retailer agrees to comply with all relevant laws; or</li> <li>quality may vary for reasons beyond the Retailer's control</li> </ul> <p><b><u>Point of supply</u></b></p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> <li>the point of supply is: <ul style="list-style-type: none"> <li><b>as defined by reference to gas regulations (see regulation 5 of the Gas (Safety and Measurement) Regulations 2010)</b></li> <li><b>the point at which gas exits the meter</b></li> <li><b>defined as "all energy past the meter is your responsibility"</b></li> </ul> </li> </ul> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>the arrangement only describes the point of <b>electricity</b> supply</li> <li>the Retailer or network company can <b>determine</b> the point of supply (too general), unless the arrangement also details where the point of supply is usually.</li> <li>the point of supply is described as "<b>the point</b> at which gas flows from a gas network into the Consumer's installation, appliance or reticulation system" as that point itself is unclear.</li> </ul>

## Benchmark 7 - Clear supply restoration procedures

Benchmark	GIC Interpretation
7. The gas supply arrangements must set out how the Retailer will respond to the Consumer where the gas supply is interrupted.	<p>Benchmark relates to how the Retailer <b>responds</b> to interruptions to <b>gas supply</b>, not other service issues. The <b>circumstances</b> in which supply may be interrupted are addressed in benchmark 14.</p> <p>Benchmark not met by a <b>standard complaints procedure</b>. Supply interruptions should be dealt with more promptly.</p> <p>Benchmark met by:</p> <ul style="list-style-type: none"> <li>reasonable endeavours obligation (e.g. by the Retailer using reasonable endeavours to restore supply as soon as reasonably practicable); or</li> <li>the Retailer 'working with the relevant parties to try to minimise any inconvenience'.</li> </ul>

## Benchmark 8 - Clear price increases

Benchmark	GIC Interpretation
8. 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;	
(b) the method by which notice shall be given...	<p>Benchmark not met where the method of notice is unclear.</p> <p>Benchmark met by public notice (eg on website or newspaper).</p> <p>Benchmark may be met by a general notice clause specifying how all notices from the Retailer will be given.</p>

Benchmark	GIC Interpretation
...provided that, if the increase in price is more than 5%, a separate notice of the increase must be individually communicated to the Consumer in writing...	<p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>public notice (eg on website or newspaper)</li> <li>automatic price review (eg annual) that is not notified, despite it being “communicated” in the arrangement.</li> </ul> <p>Benchmark met by:</p> <ul style="list-style-type: none"> <li>emailed notice</li> <li>notice in next invoice.</li> </ul>
(c) that the notice will include the reasons for the increase.	<p>Benchmark met if contract only requires notice of the general reasons for the increase.</p> <p>Benchmark not met by provision that Consumers can request the cause of a price increase.</p>

## Benchmark 9 - Clear pricing information

Benchmark	GIC Interpretation
9.1. 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;	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether prices are accurately and comprehensively described in any arrangement.</p> <p>The benchmark requires the prices to be clear to the Consumer, whether in the arrangement itself (eg application form) or publically available (eg on the Retailer’s website or in another publically accessible location).</p> <p>Benchmark met if a price plan is referenced to in the arrangement but the arrangement does not describe where Consumers may find the price plan, provided the price plan is in fact available on the Retailer’s website.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>if arrangement does not specify <b>where</b> price information can be found</li> <li>if the specified location of price information is not publically available.</li> </ul>
(b) state that the Consumer is liable for the charges, but only for those charges, for all of the services provided under the gas supply arrangements;	<p>Benchmark met if contract <b>clearly specifies</b> the charges that the Consumer will be liable for.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>Consumer liable for <b>unspecified charges</b> (eg “all other costs”)</li> <li>the amount of any charges are open ended (does not apply where the Consumer will receive advance notice of change to these charges).</li> </ul>
(c) state the time from which the Consumer will be liable for the charges;	The intention behind this benchmark is adequately addressed in benchmark 1. No need to assess here.
(d) in the case of bills based on estimates, the Retailer will provide a simple explanation of how the estimate will be calculated...	<p>Benchmark met if the:</p> <ul style="list-style-type: none"> <li>the contract itself explains how the estimate is calculated; or</li> <li>the contract simply provides that the estimate must be “reasonable”.</li> <li>the contract states that an explanation will be given on request (e.g. by calling)</li> </ul>
...and of the process that will be used for correcting any estimates;	<p>Benchmark met:</p> <ul style="list-style-type: none"> <li>if Retailer will invoice according to a meter reading performed by the Consumer</li> <li>even where the Consumer’s right to request a correction is limited (eg because Consumer can only request a test annually).</li> </ul>
(e) provide that if the Retailer makes an error and charges an incorrect amount to the Consumer, then upon becoming aware of the error the Retailer will promptly refund any amount that has been over-charged...	<p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>over-charging will be <b>credited</b> against next invoice</li> <li>an <b>appropriate adjustment</b> will be made.</li> </ul> <p>However, benchmark not met if:</p> <ul style="list-style-type: none"> <li>the time frame is not mentioned (“next invoice” is acceptable)</li> <li>the Consumer can only request metering tests each 12 months and adjustment only extends back to the date of testing (as refund may exclude many months of overcharging).</li> </ul>
...and may invoice the Consumer for any amounts which have been under-charged subject to sub-clause (f); and	<p>Benchmark not met if arrangement does not provide that under-charging may be invoiced.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>under-charging can be included in subsequent invoice</li> <li>the under-charged amount is payable after the dispute is resolved, even if the amount is not required to be invoiced.</li> </ul>
(f) the gas supply arrangements must include reasonable limits on the Retailer’s ability to invoice consumers for amounts which have previously been under-charged.	<p>“Reasonable limits” on a Retailer’s ability to invoice Consumers for amounts which have been previously under-charged include provisions to the effect of the following (where the Consumer is not responsible for the lateness of the invoice):</p> <ul style="list-style-type: none"> <li>the Retailer must consider and reasonably take into account whether the Retailer or the Consumer contributed to the error or could reasonably have been expected to know of the error;</li> </ul>

Benchmark	GIC Interpretation
	<ul style="list-style-type: none"> <li>if the bill is sent more than two months after the end of the period to which it relates, the Consumer has at least the length of time covered by the bill to pay it;</li> <li>if a bill is more than three months late, the Company should negotiate an appropriate discount with the Consumer; and</li> <li>no interest will be payable on any incorrect or late bills.</li> <li>The Retailer will not seek to recover amounts for under-charging if an unreasonable period has lapsed (for example 3+ years).</li> </ul>
9.2. If the Retailer offers alternative payment options to Consumers, a simple explanation of how those options operate must be set out in the gas supply arrangements.	Benchmark met if arrangement <b>does not provide</b> for payment options (assumed that Retailer does not offer any).
<p>9.3. Metering:</p> <p>In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:</p> <p>(a) any additional costs associated with providing, correcting, changing, or removing metering equipment, which may be listed in a separate schedule;</p>	<p>Benchmark met if the arrangement:</p> <ul style="list-style-type: none"> <li><b>specifies the costs</b> in a separate schedule;</li> <li><b>does not mention</b> any additional costs (assume there are none)</li> <li><b>says costs of an unspecified amount</b> may be payable (eg "inspection, repair and/or replacement costs") <b>and provides that the Consumer will be informed</b> prior to taking any action on a meter which may incur a charge.</li> </ul> <p>Benchmark not met if the arrangement:</p> <ul style="list-style-type: none"> <li><b>says costs of an unspecified amount may be payable, but does NOT provide that the Consumer will be informed</b> prior to taking any action on a meter which may incur a charge.</li> </ul>
(b) the process to be followed in the event that either the Retailer or the Consumer suspects that a meter is recording or reading incorrectly...	
...and the method for correcting previous billed consumption if found to be incorrect.	<p>Benchmark requires the contract to deal with both:</p> <ul style="list-style-type: none"> <li>the <i>quantum</i> of the correction (eg consumption will be reasonably adjusted); and</li> <li>the <i>manner</i> of the correction (eg invoices will be re-issued and/or the customer's account credited).</li> </ul> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>dealing with the method of testing, without describing the quantum or the manner of the correction; ; or</li> <li>providing that consumption will be adjusted, without describing the manner of the correction.</li> </ul>

## Benchmark 10 - Clear bond obligations

Benchmark	GIC Interpretation
10.1. Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state:	<p>Benchmark met in full if arrangement does not reference bonds (assume that bonds are not required).</p> <p>If arrangements provides that "other lending criteria apply" it is assumed that bonds may be required.</p>
(a) the requirement for the Retailer to provide to the Consumer the reasons for requiring a bond;	Benchmark not met if arrangement says "if we have concerns about your ability to pay we may require a bond". The arrangement must oblige the Retailer to give more detailed reasons in each case.
(b) the period of time within which the bond must be paid to the Retailer; and	This benchmark does not need to be scored. It is reasonable for bonds to be paid before supply commences. Any additional time for payment allowed by a Retailer will not prejudice the Consumer.
(c) how long the Retailer will keep the bond.	<p>Benchmark met if arrangement:</p> <ul style="list-style-type: none"> <li>describes the <b>circumstances</b> in which the bond will be released, rather than a specific time period</li> <li>provides an indefinite period for retaining bonds, provided the bond will be returned on <b>termination and payment</b> of outstanding charges.</li> </ul>
<p>10.2. If the Retailer keeps the bond for longer than 12 months, it must provide:</p> <p>(a) its reasons for doing so;</p>	<p>Benchmark not met if arrangement includes no restriction on the time that a bond may be kept (assume it may be kept for longer than 12 months).</p> <p>Benchmark met if arrangement provides that the balance of any bond will be repaid after 12 months if you have paid all invoices on time (assume that reason for keeping it is non-payment of invoices on time).</p>
(b) information on how the bond will be refunded; and	
(c) whether or not interest is payable on the bond.	

## Benchmark 11 - Clear consumer site responsibilities

Benchmark	GIC Interpretation
11.1 The gas supply arrangements must:	
(a) explain the Consumer's responsibilities in relation to gas lines, meters and other equipment on the Consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice;	"On the Consumer's premises" includes both sides of the point of supply. Benchmark not met if the Consumer is required to provide certification in relation to the Retailer's equipment at the Consumer's site.
(b) state the rights of the Retailer and/or their agents to gain access to gas lines and equipment located on the Consumer's premises; and	"On the Consumer's premises" includes both sides of the point of supply.
(c) the consequences the Consumer may face for not granting access.	Benchmark not met by <b>general statement</b> that the Retailer may terminate or suspend the arrangement for breach.
11.2 Metering In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe the Consumer's responsibility for protecting, not tampering with, and providing access to meter(s) for maintenance and reading purposes.	

## Benchmark 12 - Clear metering obligations

Benchmark	GIC Interpretation
12. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:	See also benchmarks 8 and 11.
(a) the requirements for metering relevant to the pricing options selected by the Consumer;	The arrangement must make it clear who has responsibility for: <ul style="list-style-type: none"> <li>providing the meter</li> <li>maintaining the meter.</li> </ul>
(b) the frequency of meter readings; and	<p>The arrangement must:</p> <ul style="list-style-type: none"> <li>clearly describe the frequency in which the Retailer will read meters</li> <li>be consistent with the Retailer's legal obligations for frequency of meter reading.</li> </ul> <p>Gas Industry Co assumes all TOU (time of use) meters will comply with legal frequency obligations. In terms of Retailer's legal obligations for frequency of non-TOU meters:</p> <ul style="list-style-type: none"> <li>the Gas (Downstream Reconciliation) Rules 2008 require (in general terms) that Retailers <b>must</b> read meters as follows: <ul style="list-style-type: none"> <li>for expected consumption between 250 GJ pa and 10 TJ pa, monthly</li> <li>for all lower expected consumption: <ul style="list-style-type: none"> <li>each individual meter at least once every 12 months, unless exceptional circumstances prevent; and</li> <li>at least 90% of the meters once every 4 months (Gas Industry Co notes that this aggregate obligation cannot be applied at the level of individual arrangements)</li> </ul> </li> </ul> </li> <li>Under the EGCC's Gas Code of Practice meter readings <b>should</b> take place a minimum of four times a year, unless the Consumer agrees individually otherwise or does not provide the Retailer with reasonable access to the meter. For the purpose of this benchmark, the code is not a legal obligation unless the Retailer agrees in the arrangement to comply with it.</li> </ul>



Benchmark	GIC Interpretation								
	<p>Accordingly, arrangements must provide at least the following:</p> <table border="1"> <thead> <tr> <th>Frequency</th><th>Arrangement Type</th></tr> </thead> <tbody> <tr> <td>Monthly</td><td>"Business" or "Business/Residential" (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)</td></tr> <tr> <td>Four times a year (including "plans to" or "should" do so, but not "several times a year")</td><td>"Residential Only" where the Retailer <b>agrees</b> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)</td></tr> <tr> <td>Once every 12 months</td><td>"Residential Only" where Retailer <b>does not</b> agree in the arrangement to comply with industry codes of practice</td></tr> </tbody> </table> <p>The "individual agreement" noted in the Code of Practice cannot be contained in the Retailer's standard documentation but must be provided individually (for example a Consumer may agree that the Retailer may miss a meter read where the Consumer recently provided its own estimate).</p> <p>The benchmark is not met if the arrangement states that a longer time between readings is permitted for rural meters.</p>	Frequency	Arrangement Type	Monthly	"Business" or "Business/Residential" (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)	Four times a year (including "plans to" or "should" do so, but not "several times a year")	"Residential Only" where the Retailer <b>agrees</b> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)	Once every 12 months	"Residential Only" where Retailer <b>does not</b> agree in the arrangement to comply with industry codes of practice
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Once every 12 months	"Residential Only" where Retailer <b>does not</b> agree in the arrangement to comply with industry codes of practice								
(c) the obligation to ensure metering is conducted in accordance with relevant industry standards and codes of practice.	<p>Relevant standards and codes of practice include:</p> <ul style="list-style-type: none"> <li>NZS5259, which has legal effect under the Gas Act on all meter owners</li> <li>EGCC's Gas Code of Practice, which is not legally binding in itself.</li> </ul> <p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>Retailer agrees to comply with: <ul style="list-style-type: none"> <li>"relevant" industry standards and codes of practice, rather than all of them.</li> <li>"industry requirements", rather than "standards and codes of practice".</li> </ul> </li> <li>The contractual wording implies metering will be in accordance with relevant industry standards and codes of practice (for example, this is implied if the retailer agrees to fix the meter and adjust the customer's account if the meter doesn't comply with industry requirements).</li> </ul> <p>Not met if Retailer merely agrees to comply with "laws", as the EGCC Code of Practice is not a law and NZS5259 is not directly binding on Retailers.</p>								

## Benchmark 13 - Clear disconnection process

Benchmark	GIC Interpretation
13.1. The gas supply arrangements must:	<p>Benchmark addresses <b>disconnection, termination or suspension</b> by the Retailer for the Consumer's breach. These are distinct to "disconnections" dealt with in other benchmarks:</p> <ul style="list-style-type: none"> <li>Benchmark 3 (How to stop being a Consumer of your current Retailer)</li> <li>Benchmark 14 (Faults and Planned Shutdowns).</li> </ul>
(a) Set out the conditions under which Consumers can be disconnected;	<p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>there is no ability to disconnect other than under benchmark 14</li> <li>a Retailer may disconnect a Consumer for reasons other than non-payment where there has been a material or persistent breach of the gas supply arrangements by the Consumer.</li> </ul>
(b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection.	<p>Benchmark not met if the arrangement is silent on this, even if the actions the Consumer can take to prevent disconnection are notified <b>in practice</b>.</p>
13.2. A Retailer may only disconnect a Consumer for non-payment where the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds.	<p>Benchmark not met if can discontinue gas supply for non-payment of an invoice for services unrelated to gas supply.</p> <p>However, Benchmark met if the Retailer in a dual fuel contract can discontinue gas supply for non-payment of invoices related to energy supply (with those invoices covering gas and electricity supply).</p>
13.3 Except for emergency disconnections, or in the case of disconnections under the provisions of the Gas Act 1992 or Gas Regulations, or where a Consumer requests disconnection, the gas supply arrangements must provide:	<p>Notice requirements apply regardless of whether the retailer or network company is disconnecting.</p> <p>Notice requirement not met if arrangement:</p> <ul style="list-style-type: none"> <li>merely provides that the Retailer will give notice, without specifying the length of notice</li> <li>allows Retailer to attempt to give the required length of notice (although force majeure clause may apply).</li> </ul> <p>"Emergency disconnections" relate to disconnections for the purpose of protecting health, safety or damage to property. Grounds for disconnection under regulatory arrangements are primarily focused on safety. The benchmark can be met where emergency disconnections include disconnections where the retailer suspects that the metering equipment or other equipment at your premises supplied by the retailer or a network company or meter company has been tampered or interfered with.</p>

Benchmark	GIC Interpretation
	<p>Accordingly, the following wording requires notice be given as it does not meet the carve out (as the wording may extend beyond emergency or safety purposes):</p> <ul style="list-style-type: none"> <li>instructions from a Lines Company or Network Operator to disconnect</li> <li>breach of contract by the Consumer</li> <li>mere suspicion that there has been tampering with a meter, equipment, pipes or fittings</li> <li>failing to advise the Retailer of any damage to metering or network equipment</li> <li>tampering, hacking into, or interfering with any metering network equipment</li> <li>deliberately taking advantage of the fact that the meter was inaccurate or not working properly.</li> <li>restrictions on the availability of gas</li> <li>non-payment.</li> </ul>
(a) for the receipt by the Consumer of at least 7 working days' written notice of warning of disconnection;	<p>See comments above.</p> <p>Benchmark not met if arrangements merely provide that the Retailer:</p> <ul style="list-style-type: none"> <li>will give notice, without specifying the length of notice.</li> <li>will try/attempt to give the required length of notice (although force majeure clause may apply).</li> </ul>
(b) for a further notice to the Consumer at least 24 hours before the disconnection.	<p>See comments above.</p> <p>Benchmark may be met if retailer agrees to take "all reasonable steps" to provide the notice.</p> <p>Benchmark not met if arrangements merely provide that the Retailer:</p> <ul style="list-style-type: none"> <li>will give "notice", without specifying the length of notice.</li> <li>will "try/attempt" to give the required length of notice (although force majeure clause may apply).</li> <li>will take "reasonable steps" to give the required length of notice (this is less than an "all reasonable endeavours" obligation).</li> </ul>
13.4. If a dispute resolution under the gas supply arrangements has been initiated by the Consumer in regard to the cause of any disconnection, then disconnection action specifically related to that cause must be delayed until after the conclusion of the dispute resolution process or when the dispute resolution processes have been exhausted.	<p>Benchmark may be met:</p> <ul style="list-style-type: none"> <li>if Retailer may still disconnect if dispute is not in good faith or is frivolous or vexatious.</li> <li>if disconnection proceeds where undisputed amounts not paid.</li> </ul> <p>Benchmark not met if disconnection only delayed for payment disputes.</p> <p>Benchmark does not require dispute resolution process to have been completed where it is an emergency disconnection or if customer is contesting minor or inconsequential issue.</p>
13.5. The gas supply arrangements must set out the charges that will apply to disconnection and/or connection and where information on those charges is located, and the circumstances under which the charges will apply.	<p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by the arrangement merely providing that "charges will apply"</li> <li>if prices are available online, but the online price plan is not referenced in the arrangement</li> <li>if an online price plan is referenced in the arrangement, but the online price plan does not specify disconnection and connection charges.</li> </ul> <p>Benchmark met:</p> <ul style="list-style-type: none"> <li>if prices are available online and the price plan is referenced (anywhere) in the arrangement.</li> </ul>

## Benchmark 14 - Clear supply interruption procedures

Benchmark	GIC Interpretation
14.1. The gas supply arrangements must clearly:	
(a) describe the circumstances under which supply may be interrupted without prior warning;	<p>Benchmark met with any description of circumstances (assume the description is comprehensive) including "for reasons beyond our control".</p>
(b) provide a minimum notice period before a planned shutdown, which should be no less than four business days unless agreed otherwise with the Consumer; and	<p>Benchmark not met if arrangement merely provides that the Retailer will:</p> <ul style="list-style-type: none"> <li>"give notice" without specifying any time period</li> <li>"give notice where practical"</li> <li>"try to give notice"</li> <li>"use best endeavours to give advance notice" without specifying any time period.</li> </ul> <p>Benchmark met if Retailer:</p> <ul style="list-style-type: none"> <li>must give "as much notice as is reasonably practicable" as a typical force majeure clause would excuse delays beyond the Retailer's control</li> <li>notice period is subject to the network operator or meter owner (whichever is responsible for the shutdown) giving sufficient notice to do so.</li> </ul> <p>The phrase "unless agreed otherwise with the Consumer" refers to a case specific agreement and thus reference to a shorter notice period in the arrangement itself is insufficient.</p>
(c) describe the Retailer's rights and obligations under special or emergency operating situations.	<p>Specifically, this benchmark addresses "critical contingencies" under the Gas Governance (Critical Contingency Management) Regulations 2008. Under these regulations, Retailers must:</p> <ul style="list-style-type: none"> <li>notify each of their Consumers to apply to the Retailer if the Consumer wishes to be classified as an "essential service provider" or "minimal load Consumer" (regulations 44 and 45). In practice, this classification will not be relevant to the vast majority of Consumers on standard gas supply arrangements and the necessary notice may be covered in an application form, in the gas supply</li> </ul>

Benchmark	GIC Interpretation
	<p>arrangement or elsewhere. Accordingly, compliance with this requirement not been assessed for the purpose of compliance with this benchmark</p> <ul style="list-style-type: none"> <li>during a critical contingency, comply with directions from a transmission system owner given under the regulations (regulation 55(1))</li> <li>on receiving such a direction, urgently notify each of their Consumers affected by the critical contingency to curtail demand in accordance with the direction (regulation 56(1)). Directions for a Consumer to curtail its demand are only of practical relevance for Consumers with very large consumption or agreed “minimum load” requirements. For the purpose of this review, it is assumed that minimum load Consumers are on bespoke agreements. For the Consumers covered by this review it is understood their gas will either be supplied in a contingency or curtailed</li> <li>if applicable, urgently notify each of their Consumers affected by the critical contingency that supply has resumed (regulation 56(1)).</li> </ul> <p>Accordingly, all arrangements (business or residential) must:</p> <ul style="list-style-type: none"> <li>permit the Retailer to curtail supply in a critical contingency situation. The following phrases meet the benchmark: <ul style="list-style-type: none"> <li>the Retailer may curtail supply to the extent required by law</li> <li>the Retailer does not guarantee supply.</li> </ul> </li> <li>require the Retailer to urgently notify the Consumer of supply resumption following a critical contingency situation. A simple statement that the Retailer will “comply with laws” is not sufficient as most Consumers would not be aware of this particular legal requirement. However, it is sufficient to regularly update a fault information line or website.</li> </ul>
<p>14.2. Provision of information to Consumers</p> <p>The gas supply arrangements must provide information to Consumers on where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.</p>	<p>Benchmark not met unless the information is referred to in:</p> <ul style="list-style-type: none"> <li>the contract</li> <li>a document referred to in the contract.</li> </ul> <p>The contract does not need to specify what particular information is contained in a referenced document.</p>

## Benchmark 15 - Clear privacy obligations

Benchmark	GIC Interpretation
	<p>Benchmark applies to residential arrangements and to business arrangements (to the extent personal information is held about individuals in that business).</p>
<p>15. The gas supply arrangements must provide that the Retailer will comply with the provisions of the Privacy Act 1993, and accordingly the gas supply arrangements must:</p>	<p>Benchmark met by obligation to comply with relevant privacy laws, without mentioning the Act.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by general obligation to comply with laws</li> <li>if arrangement purports to exclude privacy considerations in relation to personal information obtained from a business.</li> </ul>
<p>(a) set out the purposes for which the Retailer may collect personal information from the Consumer;</p>	<p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by a right to use the personal information for any purpose</li> <li>by general obligation on the Retailer to comply with privacy laws</li> <li>by arrangement merely providing that the information will be used for the purpose for which it was collected (without having specified that purpose).</li> </ul>
<p>(b) confirm that individuals will be able to access personal information held about them...</p>	<p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by general obligation on the Retailer to comply with privacy laws</li> <li>by arrangement merely providing that individuals may access telephone recordings of themselves.</li> </ul>
<p>...and have the opportunity to correct this information; and</p>	<p>Benchmark not met by general obligation on the Retailer to comply with privacy laws.</p>
<p>(c) set out where the Consumer can get information about how the Retailer collects, uses, discloses and stores personal information about the Consumer.</p>	<p>Benchmark met if the information is included in the contract.</p> <p>Benchmark not met if the information is in an online privacy statement, unless the privacy statement is referred to in the arrangement.</p>

## Benchmark 16 - Clear description of liability and redress

Benchmark	GIC Interpretation
<p>16.1 Any exclusion of liability in the gas supply arrangements must be clearly described.</p>	<p>Due to the nature of this benchmark, clarity can be assessed in terms of what is likely to be clear to a lawyer, rather than what is likely to be clear to an average consumer. For example, phrases such as “consequential loss”, “direct loss” and “indirect loss” may be assessed as clear as they are likely to be understood by a lawyer (even if not clear to a Consumer and often difficult to apply in practice).</p>

Benchmark	GIC Interpretation
16.1 Any exclusion of liability in the gas supply arrangements must be clearly reasonable. A complete exclusion of all liability would be unreasonable.	<p>The benchmark requires that allocations of financial risk be ‘reasonable’. In this case, reasonableness depends on factors such as: ☐</p> <ul style="list-style-type: none"> <li>• what financial risks are involved (their impact and likelihood)</li> <li>• who is best placed to manage the financial risks (including by way of insurance)</li> <li>• what premium has been included in the charges to address the risk.</li> </ul> <p>An exclusion of liability can be assumed to not be unreasonable and to meet the benchmark, except where the contract limits all of the Retailer’s liability for all acts or omissions</p> <p>Gas Industry Co considers that a complete exclusion of all liability is clearly unreasonable, and in some cases may even breach the Consumer Guarantees Act 1993.</p> <p>Complete exclusions of liability include express statements that all liability is excluded and include contractual drafting which, in essence, excludes all of the retailer’s liability. For example:</p> <ul style="list-style-type: none"> <li>• excluding liability for all of the Retailer’s obligations;</li> <li>• excluding liability for all of the Retailer’s core obligations;</li> <li>• excluding liability for the acts or omissions of the Retailer’s: <ul style="list-style-type: none"> <li>◦ officers, employees or agents, as the retailer in practice acts through them; or</li> <li>◦ subcontractors, as the core obligations of retailers are usually subcontracted (eg the supply of gas is usually subcontracted to network operators).</li> </ul> </li> </ul> <p>The benchmark may be met where the claim must be lodged within a certain time of the event or damage occurring.</p> <p>As per previous assessments, this benchmark does not address exclusions to the benefit of Consumers.</p>
16.2 The Retailer must not ask the Consumer to indemnify the Retailer from all loss the Retailer may suffer as a result of the gas supply arrangement.	<p>The Benchmark is not met where the Consumer is required to indemnify the Retailer from any loss the Retailer suffers as a result of the gas supply. A very broad indemnity has the potential of making Consumers responsible for loss they did not cause and could not have prevented. For example, a broad indemnity may have the potential of making a Consumer responsible for loss effectively caused by the industry. The Retailer and upstream industry participants are better placed to protect themselves against losses.</p>
16.3 The gas supply arrangement must: (a) describe any payments that will be made to the Consumer as a result of services not being supplied; and	<p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>• arrangements provide there will be no payment;</li> <li>• the contract expressly and clearly excludes all of the retailer’s liability for supply interruptions, except any liability under the Consumer Guarantees Act (e.g. “we will not be liable to you for loss or damage in connection with any interruption or reduction in the supply of gas into the gas network, or the quality of that gas, except to the extent (if any) that we are liable under the Consumer Guarantees Act 1993 to compensate you for such loss or damage”); or</li> <li>• the supplier does not guarantee the continuous supply of gas.</li> </ul> <p>“Payment” includes any financial benefit to Consumer (eg discounts).</p> <p>Benchmark not met if the contract is silent as to whether or not payments will be made.</p>
(b) make it clear that any redress offered by the Retailer in relation to services not being supplied as described, is in addition to and does not detract from, the Consumer’s rights under the Consumer Guarantees Act 1993.	<p>The objective behind this benchmark is to clearly notify Consumers of their rights.</p> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>• <b>general</b> statement that the Retailer will comply with laws as this does not notify Consumers of this important statutory protection</li> <li>• statement that the Consumer Guarantees Act is <b>excluded to the maximum extent permitted by law</b> as non-business Consumers may wrongly assume they have no Consumer Guarantees Act rights.</li> </ul> <p>Benchmark met by:</p> <ul style="list-style-type: none"> <li>• reference to “Consumer protection legislation” instead of “Consumer Guarantees Act”</li> <li>• statement that arrangement does not exclude or limit rights under the Consumer Guarantees Act</li> <li>• exclusion of the Consumer Guarantees Act as permitted under that Act (i.e. for businesses) an exclusion of liability clause not excluding Consumer Guarantees Act liability eg “except to the extent of any liability arising pursuant to the Consumer Guarantees Act”.</li> </ul>

## Benchmark 17 - Clear dispute resolution

Benchmark	GIC Interpretation
17. The gas supply arrangements must:	
(a) advise Consumers, either directly or by reference to other accessible documents, of the process they should follow, including timelines, to bring a complaint to the Retailer, for resolution directly between the Retailer and the Consumer; and	<p>Arrangement not met if:</p> <ul style="list-style-type: none"> <li>Contract procedures inconsistent with internal code of practice</li> <li>Not clear where Consumers should address complaints to.</li> <li>Individual Consumers must appoint person from within their "organisation".</li> </ul> <p>Benchmark met if there is no express timeline for lodging a complaint, as the complaint may then be raised at <b>any</b> time.</p>
(b) advise Consumers that complaints not resolved to their satisfaction may be taken to the Electricity and Gas Complaints Commission scheme approved under the Gas Act 1992.	<p>Benchmark requires reference to:</p> <ul style="list-style-type: none"> <li>"the Electricity and Gas Complaints Commission scheme"</li> <li>"an independent dispute resolution scheme approved under the Gas Act".</li> </ul> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>reference to "any independent complaints resolution process" offered by the Retailer</li> <li>a restriction of the time within which the Consumer may refer the matter to the EGCC for investigation, which is contrary to the rules of the scheme.</li> </ul>

## Benchmark 18 - Clear communication

Benchmark	GIC Interpretation
<p>Consumers to Retailers</p> <p>18.1. The gas supply arrangements must provide advice to the Consumer on practicable and effective means for the Consumer to communicate with the Retailer on any issues over which they have concerns or need information.</p>	Not met by contact information on a website, as the information must be contained in the arrangement.
<p>Retailers to Consumers</p> <p>18.2. The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer.</p>	This benchmark relates to general notices, not specifically addressed in other benchmarks.

## Appendix 2: Alignment with Scheme Benchmarks

	Contact Energy	Frank Energy	Genesis Energy - Basic	Genesis Energy - Other	Hanergy	Megatel	Mercury	Nova Energy - Residential	Nova Energy - Commercial	Pulse	Trustpower
1. Clear supply Commencement	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
2. Clear safety information	Full	Substantial (1)	Substantial (1)	Substantial (1)	Full	Substantial (1)	Substantial (1)	Substantial (1)	Full	Substantial (1)	Full
3. Clear consumer Exit rights (open Term)	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
4. Clear consumer exit rights (fixed term)	Full	N/A	Substantial (1)	Substantial (1)	Moderate (2)	Substantial (1)	Substantial (1)	Substantial (1)	Full	Full	Full
5. Clear contract variation procedures (non- price)	Full	Full	Substantial (1)	Substantial (1)	Substantial (1)	Substantial (1)	Substantial (1)	Full	Substantial (2)	Full	Substantial (1)
6. Clear supply obligations	Full	Substantial (1)	Full	Full	Full	Substantial (1)	Full	Full	Full	Substantial (1)	Full
7. Clear supply restoration procedures	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
8. Clear price increases	Substantial (1)	Substantial (1)	Low (3)	Low (3)	Substantial (1)	Low (3)	Moderate (2)	Substantial (1)	Moderate (2)	Moderate (2)	Moderate (2)
9. Clear pricing information	Full	Moderate (4)	Substantial (1)	Full	Substantial (2)	Moderate (3)	Full	Substantial (1)	Substantial (2)	Full	Substantial (2)
10. Clear bond obligations	Full	Full	Full	Full	Full	Full	Substantial (1)	Full	Full	Substantial (2)	Full
11. Clear consumer site obligations	Full	Full	Full	Full	Full	Full	Full	Substantial (1)	Full	Full	Full
12. Clear metering obligations	Full	Substantial (1)	Substantial (1)	Substantial (1)	Full	Substantial (1)	Full	Substantial (1)	Full	Substantial (1)	Substantial (1)
13. Clear disconnection process	Moderate (5)	Moderate (4)	Moderate (4)	Moderate (4)	Moderate (4)	Moderate (4)	Substantial (3)	Moderate (5)	Moderate (5)	Moderate (5)	Substantial (3)
14. Clear supply interruption procedures	Full	Moderate (2)	Full	Full	Full	Moderate (2)	Full	Full	Full	Full	Full
15. Clear privacy obligations	Full	Moderate (3)	Moderate (2)	Full	Substantial (1)	Substantial (1)	Full	Full	Full	Full	Full
16. Clear description of liability and redress	Moderate (2)	Full	Moderate (1)	Moderate (2)	Moderate (3)	Moderate (1)	Moderate (1)	Full	Full	Moderate (2)	Moderate (3)
17. Clear dispute resolution	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
18. Clear communication	Full	Substantial (1)	Substantial (1)	Full	Full	Full	Full	Full	Full	Full	Full

2023 Overall	2018 Overall	2015 Overall	2012 Overall	2011 Overall
Full	Full	Substantial	Substantial	Moderate
Substantial	Substantial	Moderate	Low	Low
Full	Substantial	Full	Substantial	Substantial
Substantial	Substantial	Substantial	Substantial	Substantial
Substantial	Substantial	Moderate	Moderate	Moderate
Substantial	Substantial	Full	Substantial	Substantial
Full	Full	Full	Substantial	Substantial
Moderate	Substantial	Substantial	Moderate	Moderate
Substantial	Substantial	Substantial	Moderate	Moderate
Substantial	Substantial	Substantial	Substantial	Moderate
Substantial	Full	Full	Substantial	Substantial
Substantial	Substantial	Full	Substantial	Moderate
Moderate	Moderate	Moderate	Moderate	Low
Substantial	Full	Full	Substantial	Moderate
Substantial	Substantial	Substantial	Moderate	Moderate
Moderate	Substantial	Substantial	Substantial	Low
Full	Full	Full	Substantial	Moderate
Substantial	Full	Full	Substantial	Moderate

Average rating	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial
Total issues	8	18	16	13	14	19	10	11	11	14	12
Issues of concern	5	5	7	7	9	8	6	6	7	6	5

Substantial	Substantial	Substantial	Substantial	Moderate
146	77	72	166	271
71	39	27	12	18

## Appendix 2 - Alignment with Retail Gas Contracts Oversight Scheme Benchmarks 2018

The numbers included in brackets indicate the number of alignment issues with the particular benchmark.

## **Appendix 3: Reasonable Consumer Expectations for the Scheme**



## **A. MEANINGFUL CHOICE**

**RCE 1. There is a range of pricing plans, products and services available for consumers to consider and make informed decisions**

**RCE 2. There is ready access to good quality, comprehensive and easy to understand information on gas options, gas suppliers and alternatives to gas**

**RCE 3. 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**

**RCE 4. [Deleted]**

## **B. SUPPLY CONNECTIONS AND DISCONNECTIONS, AND CONTRACT TERMINATION**

**RCE 5. The connection process is timely and well managed**

**RCE 6. 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**

**RCE 7. 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**

## **C. GAS SUPPLY AND RELATED SERVICES**

**RCE 8. The supply of gas is safe, reliable and 'fit for purpose'**

**RCE 9. The consumer has access to a good standard of information in a supply interruption situation, and supply is restored within a reasonable timeframe**

**RCE 10. Other services reasonably required as part of receiving gas supply (such as metering services) are readily available and 'fit for purpose'**

## **D. CONTRACTUAL TERMS AND CONDITIONS**

RCE 11. 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

RCE 12. The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the company and the consumer

#### **E. COSTS**

RCE 13. The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply

RCE 14. The company does not impose unexpected costs on the consumer

#### **F. BILLING AND PAYMENT**

RCE 15. Consumers have access to timely and accurate billing and payment information for gas and associated services, and that information is easy to understand and check

RCE 16. Consumers have access to appropriate mechanisms for making payment that take account of consumer circumstances

#### **G. TREATMENT BY THE COMPANY**

RCE 17. The company is honest and open, and acts with integrity in all its dealings with the consumer.

RCE 18. The company will either directly answer where possible, or otherwise assist in obtaining an answer, to consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.

#### **H. ACCESS TO PROPERTY**

RCE 19. The company will act courteously, considerately and professionally at all times when requiring access to consumers' property

RCE 20. The company or any third parties will, except in routine situations (such as, for example, reading or inspecting a meter that is located on the outside of a building) or emergency situations, give the consumer reasonable notice of its requirement to access the consumer's property, including the intended timing, nature and purpose

#### **I. ACCESS TO REMEDIES**

RCE 21. Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies

**RCE 22. Consumers have access to the information necessary to help resolve complaints**



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