



Bas Walker

Presentation to 2009 Consumer Forum
Options for Governing
Retail Terms and Conditions

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Gas Act and GPS

- **Principal Objective:**

"Gas is delivered to existing and new customers in a safe, efficient, fair and environmentally sustainable manner"

- **Primary GPS outcome:**

- Contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers.

- **Also relevant:**

- The respective roles of gas metering, pipeline and gas retail participants are able to be clearly understood.
- An efficient market structure for the provision of gas metering pipeline and energy services.
- All small gas consumers have effective access to the complaints resolution scheme.

Progress to date

2005 – mid 2006

**MCG developed for
voluntary adoption**

- MCWG developed and published Model Contract Guidelines (MCG).
- Gas Industry Co recommended to Minister of Energy the EGCC code of practice (with modifications) as appropriate proxy for model contract in June 2006.
- Minister advised model contract recommendation would not be accepted until EGCC approved in June 2006.
- Approval of EGCC by Minister would have extended coverage of EGCC code of practice to all industry participants.

Mid 2006 – 2007

Issues and Delays

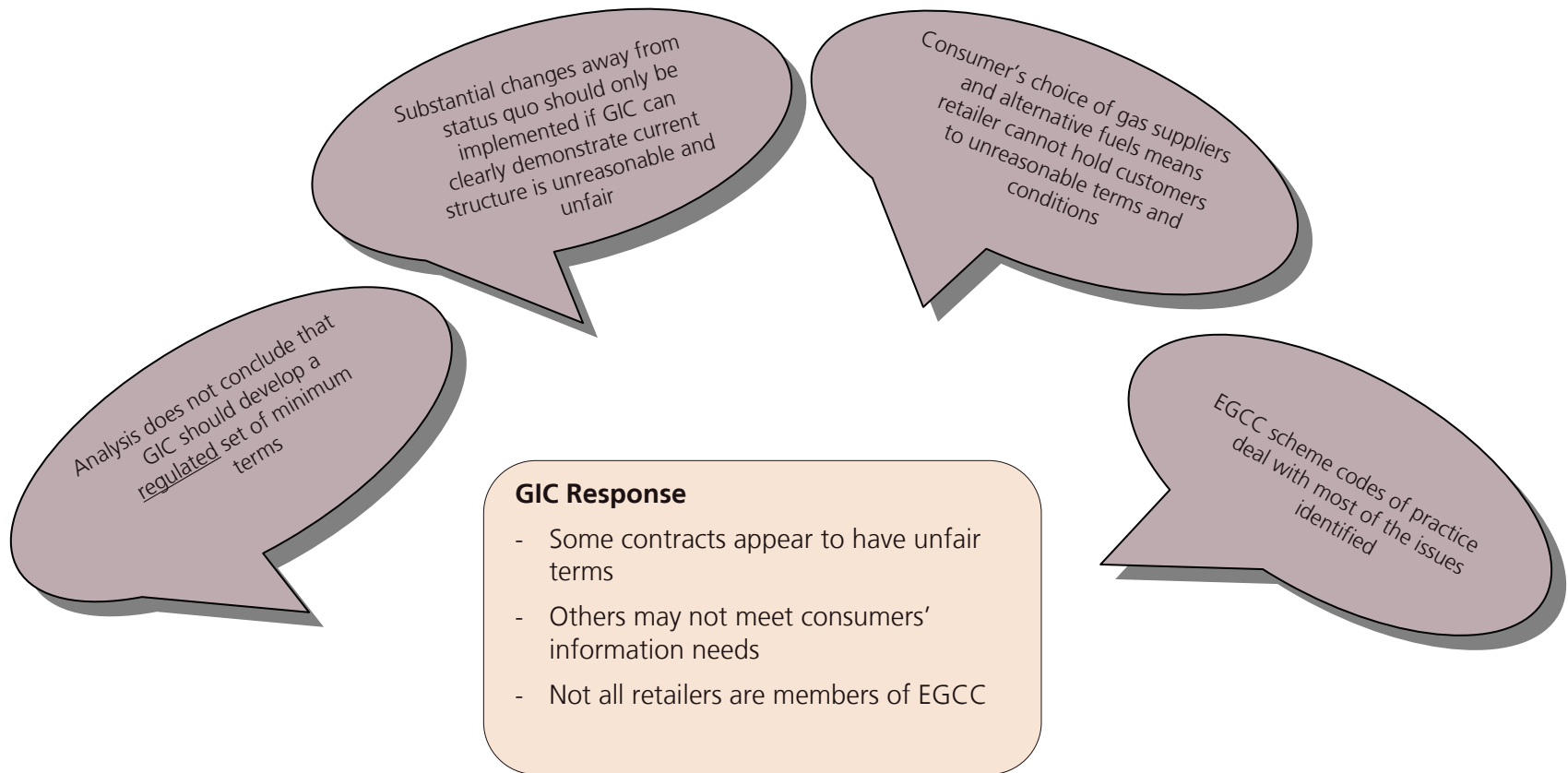
- GIC recommendations for approval of EGCC in March 2005 and March 2006 not accepted by Minister.
- MED required pro-active monitoring of MCG.
- Modifications to EGCC code of practice not made by EGCC for governance reasons.
- Stakeholders suggested separation between code development and monitoring.
- Withdrew our Model Contracts recommendation to Minister in December 2007.

Mid 2008 - 2009

Revised Approach

- Joint project with EC on complaints has code of practice limited to conduct regarding complaints.
- Developed statement of consumer expectations.
- Identified contracts with unfair terms.
- Proposal to develop minimum benchmark terms for either regulation or voluntary compliance.

Feedback on proposal to develop minimum terms



Preferred Approach

- Gas Industry Co does not favour a comprehensive approach to governing retail contract terms, ie, regulator setting out all the terms of contract (increases costs, reduces focus on problem areas and a “model contract” is hard to maintain).
- Nor do we favour prescriptive approach (less flexible).
- We have developed a set of outcome based specifications (“benchmark terms”) using as source documents: Model Contract Guidelines, the EGCC Code of Practice and parts of the January 2009 Energy Retail Code of ESC in Victoria.
- Selection of topics was based on consumer needs and covers matters we think are required to achieve fair and reasonable outcomes for consumers.

Example of Benchmark Term

How to stop being a customer of your current retailer

Model Contract Guidelines:

The contract must set out the ways in which the company and the consumer may terminate the contract and should clearly set out the responsibilities of the consumer when they wish to terminate the account (11.3).

ESC Energy Retail Provisions:

On request a retailer must disconnect customers, and, if requested finalise the customer's request (13.5).

Prior to the expiry of a fixed term contract, the retailer must notify the customer of the following information... (including) the tariff and terms and conditions that will apply to the customer beyond the expiry of the fixed term if the customer does not exercise any other options... With these options to include.... The customer entering into a market contract with the retailer or any other retailers.

Proposed Benchmark:

- 2.1 The contract must provide that, subject only to any initial term that may be agreed in the contract, the customer shall have the right to terminate the contract (and cease gas supply and charges) with its existing retailer, for any reason including to obtain supply from a new retailer and irrespective of any offer that the existing retailer makes in respect of price or any other aspect of continued supply; or no more than one month's notice and any shorter period allowed by the retailer.
- 2.2 The contract must provide that;
 - (a) if the customer is switching retailers, termination will be affected in accordance with the Gas (Switching Arrangements) Rules 2008 (Switching Rules), and
 - (b) if the customer is ceasing gas supply altogether, termination will be affected as soon as reasonably practicable following the customer's notice of termination.

15 Topics Covered in proposed benchmark terms

1. How to become a customer
2. How to stop being a customer of your current retailer
3. Changes to contracts
4. Service standards
5. Prices, bills and payment
6. Bonds
7. Obligations of parties in relation to supply to the site and access
8. Metering
9. Disconnection and reconnection
10. Faults and planned shutdowns
11. Privacy
12. Liability of the company and the customer
13. Dispute resolution
14. How consumers communicate with retailers
15. Retailer notices to consumer

Consultation is on:

- (a) Appropriateness of each benchmark term
- (b) Drafting of benchmark
- (c) Method of governance (discussed below)

Unfair Terms

- Focus of our analysis has been on what should be included in contracts between retailers and consumers.
- Also identified some terms which may be unfair and tailored benchmarks terms to preclude these clauses.

Some terms we are seeking guidance on “fairness”

Existing term	Comment	Solution
<ul style="list-style-type: none"> • If the consumer does not want to continue with Retailer “X”, the consumer must give “X” at least 5 business days to match any price or other terms offered by another retailer. Only if retailer “X” does not match that offer can the consumer terminate. 	<ul style="list-style-type: none"> • Effectively locks the consumer into contract rollover, at the discretion of the existing retailer. 	<ul style="list-style-type: none"> • We gave amended benchmark term to preclude this clause.
Existing term	Comment	Solution
<ul style="list-style-type: none"> • If any person living at your property owes us money we may refuse to supply energy to your property until that amount has been paid. 	<ul style="list-style-type: none"> • Maybe unfair to the consumer who may have no supply related connection with or control over the other person who has the debt. 	<p>Should we amend the benchmarks to exclude these types of terms</p>
<ul style="list-style-type: none"> • We are not under any obligation to continue to supply you with energy. We may for example terminate supply where we believe the supply is impractical, uneconomic etc; 	<ul style="list-style-type: none"> • Maybe unfair to the consumer who may have made other commitments or have expectations which rely on continuing supply. 	
<ul style="list-style-type: none"> • If the gas supply at your premises is disconnected (but not decommissioned) we may still charge you a daily fixed charge for gas 	<ul style="list-style-type: none"> • Maybe unfair to the consumer who may be faced with the continuation of daily charges for an indefinite period despite disconnection. 	

Comparison of Benchmarks with Current Practice

- GIC asked an independent consultant to analyse existing terms and conditions of retailers against proposed benchmarks.
- Compliance was assessed in terms of five subject categories – full, substantial, partial, minimal, none.
- High level results :
 - Considerable variations in alignment amongst retailers between topic areas.
 - Median result for alignment is somewhat better than “partial” and more retailers fall within the “partial-substantial” category than any others.
 - There is one outlier at each extreme. Minimal alignment in one case and substantial alignment in the other.
 - Retailers who are members of the EGCC have a substantially better level of alignment (at least partial-substantial) than retailers who are not members of the EGCC (ranging from minimal to partial).
- Results suggest unmonitored guidelines may not achieve GPS objectives.
- Results will only be published in generic form or benchmarks have not been previously discussed with industry.

Example Only

1. How to become a customer	None	None		
2. How to stop being a customer	Full	None		
3. Changes to a contract	Full	None		
4. Service standards	Partial	None	None	
5. Prices, bills and payments	Substantial	Partial	None	
6. Bonds	Partial			
7. Site and access obligations	Full	Full	Full	Full
8. Metering	Partial			
9. Disconnection and reconnection	Substantial			
10. Faults and planned shutdowns	Partial			
11. Privacy	Partial			
12. Limitation of liability	Full			
13. Dispute resolution	Minimum			
14. How the customer communicates with the retailer	Full			
15. Notices from the retailer	None			

Nb: Columns reflect component parts of each benchmark term.

Options for Implementation

- Benchmarks will be finalised following consultation.
- Also need to consider whether to adopt a voluntary or mandatory implementation approach.
- Choice is between:
 - Publication of recommended benchmark terms and conditions with monitoring of uptake occurring on the basis of voluntary disclosure, or
 - Regulation of benchmark terms with enforcement provided by the existing Gas Governance (Compliance) Regulations 2008.
- Cost benefit analysis is indeterminate (higher costs and higher benefits with regulation).
- Depends on consultation feedback.
- Aware that not a trivial exercise to change standard terms.

Making a submission

Closing Date: Tuesday 3 November

Form of Submission: Preferably template in Options Paper

How?: Electronically by registering on www.gasindustry.co.nz
Hard copy addressed to Bas Walker at Gas Industry Co

Workshop discussion

- Divide into groups: One GIC staff member per group
- Group discussions to follow question sheet to be distributed- individual as well as group responses welcome
- Report back to main session at 12.45 pm