



Statement of Proposal: Retail Gas Contracts Oversight Scheme Review

Date issued: 6 January 2014
Submissions close: 17 February 2014





About Gas Industry Co.

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

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

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

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

Submissions close: 17 February 2014

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Executive summary

In 2010, the then Associate Minister of Energy and Resources endorsed Gas Industry Co's Retail Gas Contracts Oversight Scheme (the Scheme). As set out below, the Scheme has seen significant improvements in contracts, including against the goal in the Government Policy Statement on Gas Governance 2008 that contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers.

As part of its original recommendation, Gas Industry Co proposed that a review of the Scheme should occur once the baseline, interim, and first full assessments were completed. These took place in 2010, 2011, and 2012, respectively.

On 13 June 2013, Gas Industry Co issued a paper setting out a number of options for the future direction of the Scheme¹. That paper noted that, subject to industry submissions on the options discussed, the Company would commence detailed work on re-designing the Scheme. Submissions supported amendments to the Scheme and this re-design work has now been completed. This Statement of Proposal summarises the analysis that has occurred, and the changes proposed to the Scheme.

Gas Industry Co welcomes submissions in relation to this Statement of Proposal by 17 February 2014. Gas Industry Co hopes to complete its analysis of those submissions and provide advice to the Minister on the future direction of the Scheme by the end of February 2014.

The Scheme

Under the current Scheme, an Independent Assessor reviews standard published consumer gas retail contracts against a set of principle-based benchmarks (the Benchmarks).

The Scheme was initiated in 2010 with a two year transition period (comprising baseline and interim assessments). The results of the first full assessment (post-transition period) were published in October 2012.

Since the Scheme's inception, gas retailers have taken significant steps to improve the alignment of their standard retail contracts with the Benchmarks. There has been commendable industry involvement in the voluntary Scheme. The overall average alignment of all standard published retail gas contracts (for both residential and small commercial consumers) has improved from moderate alignment in 2010 and 2011, to substantial alignment in 2012.

Gas Industry Co understands that few (if any) substantive amendments to retail contracts are likely to occur in the near future.

¹ http://gasindustry.co.nz/sites/default/files/consultations/254/review_of_scheme_consultation_document_184908.4_0.pdf

Our Analysis

This Statement of Proposal summarises why the original reasons for implementing the Scheme are still valid, and what changes to the Scheme, if any, are appropriate.

While undertaking this review Gas Industry Co has considered the results of the transitional and final assessments, industry feedback, and the activities of other relevant industry oversight regimes.

Proposal

Gas Industry Co supports the continuation of an oversight scheme broadly similar to the current Scheme, with some key changes to the assessment process. Gas Industry Co proposes that the Scheme should have the following key aspects:

- The Scheme should be voluntary, industry led, and non-regulated;
- Gas Industry Co will be responsible for the on-going development of a clear statement of matters that should be included in a retail gas contract (Reasonable Customer Expectations and Benchmarks);
- Published standard gas contracts for reticulated natural gas (including contracts for domestic consumers and small business consumers) will be independently assessed against the Benchmarks;
- Assessments will occur as appropriate, with a full assessment taking place at least every 3 years;
- Gas Industry Co will maintain a watching brief on consumer issues and will consider whether additional arrangements are required to achieve the purpose of the Scheme²; and
- Gas Industry Co will report to MBIE and the Minister on progress against the Scheme, including performing a review of the Scheme after each 3 yearly assessment, and confirming whether the Scheme remains fit for purpose (and the supported means of achieving the purpose).

² For example, if Gas Industry Co was advised of particular issues in respect of LPG contracts, special terms, larger commercial contracts or other matters it would be appropriate for Gas Industry Co to reconsider the current scope of the Scheme.

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1

Summary of current oversight of retail gas contracts

Before considering the future direction of the Scheme, it is useful to summarise the original rationale for the Scheme, the requirements of the current Scheme, and Gas Industry Co's current oversight of the Scheme. This chapter also details other Gas Industry Co work streams that have a direct interface with the oversight of retail gas contracts.

Rationale for the current Scheme

When recommending the introduction of the Scheme, Gas Industry Co first considered the objectives for the Scheme. To do this Gas Industry Co analysed the relevant provisions in the Gas Act 1992 (the Act) and the Government Policy Statement on Gas Governance published on 18 April 2008 (GPS).

The objectives for the Scheme to date have been to ensure consumer contracts for gas supply:³

- Are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers;
- Clearly set out the respective obligations of the retailer and the consumer, including any obligations the consumer has to meter or network owners;
- Reflect as far as possible market structures; and
- Support the achievement of an effective complaints resolution scheme for consumers.

After considering a range of regulatory and non-regulatory options to achieve these objectives, the recommendation was for a non-regulatory, industry-led arrangement – the current Scheme.

Requirements of the current Scheme

In 2010, Gas Industry Co recommended a Scheme comprising:

- Selective, outcome-based benchmarks. The Benchmarks were developed based on industry best practice, after consultation with industry participants. Outcome-based Benchmarks, were developed as there was not widespread support, or perceived need, for model or minimum contractual terms.

³ Refer to paragraph 1.2 of the 'Recommendation to the Associate Minister of Energy and Resources on the endorsement of arrangements for the oversight of gas retail contracts' paper issued March 2010.

- A scope limited to reticulated natural gas supply arrangements with small consumers (defined in the Gas Act as those with annual consumption under 10 TJs per annum). As a result, the Scheme did not apply to customers who had negotiated bespoke terms of supply, to large commercial customers, or to customers on reticulated LPG networks.
- Monitoring of the Scheme via assessment of published terms and conditions. The assessment approach is qualitative, with the alignment of each contract with each benchmark and the overall alignment of a contract with all the benchmarks, being assessed against a scale of 'full', 'substantial', 'moderate', 'low' or 'none'.
- Assessments being conducted by an independent assessor. To date, Gas Industry Co has used Elwood Law for this purpose. Elwood Law and Gas Industry Co have implemented an assessment framework which is as transparent as possible. The documentation produced clearly identifies which terms give rise to alignment issues.
- Gas Industry Co supplementing, where necessary, the Benchmarks by providing the assessor and industry with interpretations of the Benchmarks (the 'Interpretations'). In practice, the Interpretations have proved a useful mechanism for documenting how different contractual drafting is assessed against the Benchmarks. There was a transitional period following commencement of the Scheme as retailers needed some time to amend contracts to reflect the Benchmarks. During the transitional period, the assessor prepared an initial baseline assessment (in 2010) and a transitional assessment (in 2011). Those assessments did not identify the performance of individual retailers. The first full assessment occurred in 2012 and the publication identified the levels of alignment of each retailer and each gas supply arrangement.

Gas Industry Co's oversight of the Scheme

Since the Scheme was introduced, Gas Industry Co has had the primary oversight of the Scheme. Gas Industry Co's oversight has included:

- Contracting with an Independent Assessor to perform each assessment;
- Providing Interpretations of the Benchmarks, as required, to assist with assessments;
- Providing guidance on the assessment process;⁴
- Liaising with the Electricity Authority in relation to its process to assess electricity contracts against the Principles and Minimum Terms and Conditions (see below). It is appropriate for both regulators to communicate on this topic, as published dual fuel contracts for domestic supply are assessed under both the Scheme and the Electricity Authority assessment process;

⁴ For example, the Scheme contemplated that some legacy arrangements may be assessed as the expectation was that there would be residential customers whose arrangement was governed by previously published terms. As a general rule, when a retailer introduces a new contract all customers are migrated (after an appropriate notice period) to the new contractual terms. There are, in practice, some examples of customers on legacy arrangements (for example, promptly after release of a new contract, there will be customers on a legacy arrangement during the notice period for those customers to transfer to the new terms). Also, following the collapse of EGas there were customers whose supply was continued by other retailers, and there may have been a period where it was unclear what contractual terms those customers were on.

- Issuing a restatement of the Benchmarks. This restatement did not substantially alter the Benchmarks themselves, but clarified them through reorganising some of the Benchmarks and removing some duplication;
- Issuing a Decision Paper to further clarify the interpretation of Benchmarks 9 (Clear Pricing Information) and 16 (Clear Retailer Liability Limitations). As a result of the revised Interpretations, the assessment results for Benchmark 16 more closely aligned with the assessment in the Electricity Authority process;
- Considering feedback provided by the assessor on aspects of the Scheme. In particular, the assessor was asked to provide feedback on any clauses which technically aligned with the Scheme but which the assessor thought may be contrary to the intent of the Scheme. Gas Industry Co has met with the assessor to discuss any clauses of this nature that were identified by the assessor; and
- Discussing with each retailer the results of the assessment of that retailer's standard published contracts, and seeking information on how the retailer intends to address the alignment issues that have been identified. These discussions have helped Gas Industry Co clarify those areas where achieving alignment is problematic.

Industry Response to the Scheme

In monitoring the performance of retailers under the Scheme, Gas Industry Co has witnessed most gas retailers taking major steps to bring their contracts into line with the Benchmarks. It is significant that the six published residential gas supply arrangements that overall have 'substantial' alignment have all been amended since the Scheme was introduced.

The overall level of alignment year-by-year has been increasing. In the 2012 assessment, the overall alignment of all published gas supply arrangements was 'substantial'. This was an improvement on the overall level of alignment of the arrangements assessed in 2010 and 2011 (which had 'moderate' alignment). However, while alignment with the Benchmarks is trending in the desirable direction, progress towards alignment with some Benchmarks has been slower than progress towards alignment with others. None of those retailers that have updated their arrangements to align with the Benchmarks have achieved 'full' compliance.

Gas Industry Co's monitoring of the Scheme has also identified that the gas industry is not static. During the Scheme's operation there have been changes to retailers and to contractual arrangements. For example, EGas has ceased supplying gas and TrustPower has joined the market. Retailers who have continued supply throughout have almost all changed their terms or the structure of their contractual arrangements during the period of the Scheme's operation. For example, Contact previously had a separate domestic and business standard contract but now has a single contract covering both types of consumers, whereas Mercury previously only had one standard published gas supply contract but has introduced a business customer specific contract.

Finally, Gas Industry Co's monitoring has identified that the Scheme remains well supported. Gas Industry Co only received three submissions on its option paper on the Scheme, which was issued in June 2013⁵. Gas industry Co considers that the relatively low number of submissions illustrates a high level of industry comfort (in general terms) with the proposals outlined in that paper.

Gas Industry Co was also pleased to see a new entrant retailer voluntarily take positive steps to comply with the Scheme. Gas Industry Co is aware that TrustPower commissioned Elwood Law to conduct a review of its proposed terms and conditions against the Benchmarks prior to TrustPower commencing supply. This action demonstrates a broad level of acceptance of the existence of Benchmarks, and an encouraging desire by a new entrant to reach a high level of alignment with the Benchmarks from the outset.

Other related Gas Industry Co work streams

In addition to specifically monitoring the Scheme, other workstreams of Gas Industry Co help to maintain a watching brief on the suitability of retail gas arrangements. Gas Industry Co acknowledges that some of its upstream work can indirectly influence the ability of retailers to achieve alignment with the Scheme.

For example:

- The full implementation of the Gas (Switching Arrangements) Rules 2008 and the Gas Governance (Compliance) Regulations 2008 has resulted in more transparency of problems faced by consumers. The market administrator and investigator have assisted retailers to resolve switching and other issues, and these discussions help to identify matters where the Benchmarks could usefully give further consumer protection;
- Gas Industry Co maintains a watching brief on consumer issues, including through liaison with other regulators. The work of other agencies is discussed in Part 3 of this paper;
- Gas Industry Co has published principles for distribution contracts and arranged for the assessor to perform an initial assessment of distribution contracts (generally termed Gas Use of System Agreements) against those principles. Historically there have been provisions in distribution contracts which require retailers to include certain clauses in retail contracts. Gas Industry Co is aware that some of these back-to-back clauses result in alignment issues with the Benchmarks.

⁵ <http://gasindustry.co.nz/work-programme/background/retail-gas-contracts-review-oversight-scheme>

2

Consistency with other oversight agencies

It is important that any oversight arrangement is consistent with the oversight of other regulatory bodies. There would be compliance issues for retailers if two (or more) regulators had incompatible arrangements. It is also important to bear in mind industry compliance costs, particularly where two oversight regimes appear to be assessing similar issues with the same retailers.

There are a number of entities who have some interest in the retail gas relationship. The New Zealand Gas Story 2013⁶ published by Gas Industry Co summarises the broader regulation of the gas industry.

This part of the paper focuses on recent work by the Electricity Authority and the Ministry of Business, Innovation and Employment.

Gas Industry Co has consulted with the Electricity Authority, Electricity and Gas Complaints Commissioner and the Ministry of Business, Innovation and Employment prior to the release of this paper. Gas Industry Co remains committed to on-going dialogue with other entities with an oversight function.

Electricity Authority

The Electricity Authority has a mandate to consider domestic terms and conditions for electricity supply which is broadly similar to Gas Industry Co's mandate in respect of consumer gas supply. On 17 May 2010, the Electricity Commission (as it then was) published 'Principles and Minimum Terms and Conditions for Domestic Contracts for Delivered Electricity (interposed)', with some minor amendments being made to these in June 2011.⁷

The current Principles and Minimum Terms⁸ are broadly structured by topic, as follows:

- Each topic first details the Reasonable Consumer Expectations (RCEs) for that area, being those matters which a consumer should expect to see in a contract;
- Sitting under the RCEs are more detailed Principles and Minimum Terms and Conditions;

⁶ See <http://gasindustry.co.nz/publications/new-zealand-gas-story-2013>

⁷ An interposed relationship is one where the consumer only contracts with the retailer, and does not have a direct contractual relationship with their distributor.

⁸ The minimum terms and conditions (interposed) are available at <http://www.ea.govt.nz/our-work/programmes/market/consumer-rights-policy/domestic-electricity-retail-contracts/>

- There is no formal assessment of the alignment of a retail electricity contract against the Principles and RCEs. Instead, during the assessment, the Electricity Authority (or their appointed assessor) may make observations about such alignment;
- There are some topics where there are RCEs and Principles, but no Minimum Terms and Conditions. Accordingly, there is no formal assessment of the alignment of a contract with these topics; and
- Alignment with the Minimum Terms and Conditions is assessed, on a term by term basis on a similar qualitative scale to that used in Gas Industry Co's Scheme (for example, full, substantial, moderate, low, none).

Retailers have encouraged Gas Industry Co to consider how the Benchmarks could be better aligned with the Electricity Authority's framework. Gas Industry Co considers alignment should occur to the extent reasonably practicable. There are a lot of symmetries between Gas Industry Co's Benchmarks and the Electricity Authority's Principles and Minimum Terms, but the differences between the industries mean full alignment is not practicable.

The Electricity Authority's regime is periodically reviewed to ensure it remains fit for purpose. As such, achieving full alignment would require an on-going dialogue between Gas Industry Co and the Electricity Authority. In April 2013, the Retail Advisory Group (RAG) to the Electricity Authority released a paper titled 'Review of Domestic Contracting Arrangements' this paper highlighted the RAG is considering whether changes to the electricity oversight regime are needed to address any the following:

- The 20% of consumers that are on a conveyance⁹ model of supply;
- Planned changes to the Consumer Guarantees Act and any Ministry of Business, Innovation and Employment guidelines on unfair contract terms;
- Consumer concerns and deadlocks reported to the Electricity and Gas Complaints Commissioner (EGCC); and
- Additional monitoring and further assistance to medically dependent and vulnerable consumers. In relation to gas supply.¹⁰

The RAG published a second discussion paper on 5 November 2013, with submissions being due on 17 December 2013¹¹. The draft recommendations were for the Authority to:

- Develop minimum terms and conditions for conveyance model arrangements;
- Amend the medically dependent and vulnerable customer guidelines by:
 - Improving the clarity of the definition of medically dependent consumers;

⁹ Under a 'conveyance' model of supply the customer has a contractual relationship with both the distributor and the retailer.

¹⁰ It was noted that the medically dependent and vulnerable consumer guidelines do not always easily transfer across to dual-fuel customers. In practice dual-fuel customers who do not pay their bill (for both electricity and gas) could still have their electricity disconnected.

¹¹ See <http://www.ea.govt.nz/our-work/consultations/advisory-group/rag-options-paper-domestic-contracting/>.

- Providing a more specific process for retailers to identify and record medical dependency;
- Clarifying the circumstances under which retailers are able to remove medically dependent status from a consumer; and
- Providing better guidance on expectations for communication between retailers, distributors and emergency management agencies;
- Consider:
 - Establishing a central repository of information about medically dependent and vulnerable consumers, for example, in the registry;
 - Whether to facilitate better engagement between retailers and governmental/social agencies.

During this review, Gas Industry Co has considered how best to improve alignment with the Electricity Authority's regime, and as discussed in Parts 6 and 7, a number of changes are being proposed to improve alignment.

Ministry of Business, Innovation and Employment

The Ministry of Business, Innovation and Employment (MBIE) provides key advice to the Minister and administers key legislation, including the Gas Act, Commerce Act, Fair Trading Act, Consumer Guarantees Act and more (for example, Energy Safety work). In performing this review, Gas Industry Co has particularly considered the changes proposed in the Consumer Law Reform Bill.

This Bill (in the form of five separate amendment Acts and one replacement Act) had its third reading in Parliament on 10 December 2013 and received Royal Assent on [xx] December 2013, however many of the provisions of the Acts will not come into force for six months, and in some cases, 15 months. The Acts provide for changes to the Fair Trading Act which prohibit unfair contract terms and changes to the Consumer Guarantees Act which extend the delivery and acceptable quality guarantees in respect of gas. MBIE is likely to release guidelines on unfair contract terms which would help consumers to determine what terms are reasonable in agreements. Gas Industry Co is currently reconsidering the Benchmarks in light of the Acts, and intends to complete this work during the implementation period of the new legislation.

3

Is the purpose of the oversight still appropriate?

Discussion

As discussed in Part 2, when Gas Industry Co first recommended the introduction of the Scheme, it identified the objectives of the Scheme were to ensure consumer contracts for gas supply:¹²

- Are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers;
- Clearly set out the respective obligations of the retailers and consumer, including any obligations the consumer has to meter or network owners;
- Reflect as far as possible market structures; and
- Support the achievement of an effective complaints resolution scheme for consumers.

There have not been any significant changes to the Gas Act or GPS since this purpose was identified, so Gas Industry Co considers the purpose statement remains largely appropriate, subject to the matters discussed below.

Consumer contracts should be ‘fair’ rather than ‘balanced’

Gas Industry Co considers the term ‘balanced’ should be replaced with the word ‘fair’. This is because:

- The Gas Act elsewhere uses the term ‘fair’, rather than balanced.¹³
- The GPS also refers to the term fair¹⁴ and Gas Industry Co must have regard to the GPS when making recommendations for rules, regulations or non-regulatory arrangements for any part of the gas industry;

¹² Refer to paragraph 1.2 of the ‘Recommendation to the Associate Minister of Energy and Resources on the endorsement of arrangements for the oversight of gas retail contracts’ paper issued March 2010.

¹³ For example, in section 43ZZJ the principal objectives of any Energy Commission (if formed) in relation to gas would be to ‘ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner.’

¹⁴ See, in particular paragraph 9 of the GPS which states ‘the Government’s objective for the entire gas industry is ... To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.’

- Fair and balanced may be seen by some as interchangeable terms. However, the newly enacted consumer law reform changes on unfair contract terms mean the term 'fair' is likely to develop additional industry/commercial meaning.

Specific reference to supporting an effective complaints scheme is no longer required

The EGCC complaints resolution scheme is now an approved scheme with a statutory mandate. Accordingly, a 'complete' consumer contract would include reference to the scheme, and a contract that 'reflects market structures' will also include reference to the scheme. Given this, the first few bullet points of the purpose will ensure the EGCC scheme is supported by Gas Industry Co's oversight of retail contracts, and Gas Industry Co considers the final bullet point can be removed from the purpose statement.

Supporting innovation

It is possible that the phrase 'reflect as far as possible market structures' may be interpreted as too inflexible. For example, Treasury has developed a set of principles to help Government agencies identify and create best practice regulation and two of the key principles identified in that paper are flexibility and durability.¹⁵ The concepts of flexibility and durability suggest regulations must not only adapt to change, but must also have scope to adopt innovative approaches to new situations. Gas Industry Co considers the Scheme should be able to be flexible enough to adapt to future market structures, and this should be reflected in the purpose statement for the Scheme.

Gas Industry Co considers it is important that the purpose allows for innovation. As such, the purpose statement should also support future market structures.

Proposal

Gas Industry Co proposes that going forward the purpose for its oversight of retail gas supply arrangements should be 'to ensure consumer contracts for gas supply:

- Are sufficiently complete, accessible, and fair to support the long term interests of gas consumers;
- Clearly set out the respective obligations of the retailer and the consumer, including any obligations the consumer has to meter and network owners; and
- Reflect and respond to current and future market structures.'

¹⁵ These are described by Treasury as follows:

'Flexibility: regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations. A regulatory regime is flexible if the underlying regulatory approach is principles or performance-based, and policies and procedures are in place to ensure that it is administered flexibly, and non-regulatory measures, including self-regulation, are used wherever possible. Flexibility and durability can be two sides of the same coin; a regime that is flexible is more likely to be durable, so long as the conditions are in place for the regime to 'learn'. Indicators of durability are that feedback systems are in place to assess how the law is working in practice; decisions are reassessed at regular intervals and when new information comes to hand; and the regulatory regime is up-to-date with technological change.'

'Durability: closely associated with flexibility; the regulatory system has the capacity to evolve to respond to new information and changing circumstances.'

Q1: *Do you agree with the proposed purpose of the Oversight Scheme?*

4

Is a Scheme still required?

Discussion

The Gas Act contemplates that before Gas Industry Co makes a recommendation to the Minister on governance arrangements, it will consider all reasonably practicable options¹⁶. There are a range of interventions that Gas Industry Co has considered which could, conceivably, help to achieve the stated purpose of the Scheme.¹⁷ In considering options, Gas Industry Co has been mindful of ensuring that any expected compliance costs are not outweighed by the expected benefits.

Given the significant voluntary progress taken by gas retailers towards better alignment with the Scheme, Gas Industry Co does not consider regulatory intervention is supported or necessary at this time.

Gas Industry Co is of the view that some specific gas industry oversight remains appropriate. Gas Industry Co continues to support an oversight Scheme that is broadly similar to the current Scheme, based on a voluntary, non-regulatory industry led arrangement.

Given there is a broadly similar Electricity Authority scheme, Gas Industry Co has considered whether amalgamating the review of gas retail contracts within the Electricity Authority's scheme would be appropriate. Gas Industry Co considers it is appropriate to maintain a separate gas specific Scheme, but that the Scheme should align with the Electricity Authority arrangements where reasonably practicable.¹⁸

There are a number of reasons for this view. In particular, the regimes need to consider different fuels and network considerations. There could also be new entrant gas retailers who are not covered by the Electricity Authority scheme (for example, who are not dual fuel retailers), or retailers who develop separate contracts for gas supply and electricity supply). Also, as discussed in part 5 of this paper, the GPS use of the term 'small consumer' means the gas scope is different from the electricity 'domestic consumer' scope, and as a consequence of this

¹⁶ See section 43N of the Gas Act.

¹⁷ As noted in the issues paper, Gas Industry Co has considered various regulatory and non-regulatory approaches. For example, these ranged from more heavy handed regulation (for example, rules or regulations under the Gas Act, which impose model contract terms that retailers must incorporate in their gas supply contracts) through to very light handed approaches (for example, publication by Gas Industry Co of a good practice guideline or consumer information sheet, with no formal monitoring of industry uptake or alignment).

¹⁸ We note that there could be gas retailers in the future who are covered by the Scheme, but are not covered by the Electricity Authority scheme (for example, who are not dual fuel or who have separate contracts for gas supply and electricity supply) and also the Gas Act definition of consumer is broader than the Electricity Authority definition of 'domestic consumer'. Gas Industry Co is also interested in the gas supply arrangements for small business consumers, which captures a broader range of consumer than the Electricity Authority review.

Gas Industry Co is also interested in the contractual terms for gas supply available to small business consumers.

At a minimum, Gas Industry Co considers a gas-specific Scheme should provide clear guidance for consumers on the terms which should reasonably be included in their consumer contract. As discussed in part 6 of this paper, Gas Industry Co is proposing this will consist of a published list of Reasonable Consumer Expectations, Benchmarks and Interpretations.

The gas industry is not a static market and no contract is currently fully aligned with the Scheme. As a result, Gas Industry Co considers some form of on-going monitoring and assessment continues to be desirable. Monitoring and assessment will help continue to incentivise retailers to align with the Scheme. Further, the assessment process will also help enable Gas Industry Co to easily assess and report to the Minister on key aspects of the retail gas environment.¹⁹ The proposed monitoring is detailed in part 7.

Proposal

Gas Industry Co continues to support a gas specific oversight Scheme that is broadly similar to the current Scheme. At a minimum, Gas Industry Co considers the Scheme should have the following key components:

- The Scheme will continue to be a voluntary, non-regulatory and industry led arrangement;
- Clear guidance for consumers of the terms which should reasonably be included in their consumer contract; and
- Assessment and on-going monitoring by Gas Industry Co.

As further discussed in parts 5 and 6, Gas Industry Co considers that some aspects of the current Scheme can be amended, given the substantial alignment achieved by industry and the cost savings that those amendments can achieve.

¹⁹ As the 'industry body' under Part 4A of the Gas Act 1992, Gas Industry Co is required to report to the Minister on the state and performance of the gas industry.

5

Is the scope of the Scheme still appropriate?

Discussion

Gas Industry Co has considered whether the scope of the current Scheme remains appropriate. In particular, Gas Industry Co has considered the following aspects.

LPG contracts

Gas Industry Co maintains a watching brief over the LPG sector, but currently has no LPG governance arrangements in place, or in development. The Scheme does not currently address LPG contractual arrangements. Gas Industry Co has considered whether the Scheme should be formally extended to either bottled or reticulated LPG contracts.

Gas Industry Co is aware of some current consumer issues in relation to contracts for the supply of LPG gas, both for customers served by bottled LPG and on reticulated LPG networks. Customers on reticulated LPG networks would have broadly similar customer expectations to customers on reticulated natural gas networks. However, the supply requirements of customers supplied by bottled LPG differ slightly to customers on reticulated networks.

We understand that the EGCC is currently consulting on the inclusion of bottled LPG in the Scheme document. Currently the Scheme includes reticulated LPG. The proposed effective date for inclusion of bottled LPG in the Scheme is 1 March 2014.

The definition of 'gas' in the Gas Act includes LPG in containers. To meet the requirements of the Gas Act, LPG in containers/bottles must be covered by an approved dispute resolution scheme. The EGCC is the approved Scheme. The EGCC is making changes to the Scheme to comply with the Act..

MBIE is currently finalising work on a Discussion Paper on Exemptions which includes a proposal to give a class exemption to 10 kg bottled LPG. The EGCC Board has made a submission in support of this proposal. However, the EGCC Board recognises the Scheme's responsibility to ensure the Scheme document covers other bottled LPG supply not covered by the proposed exemptions.

There is evidence that the current Scheme has had a positive influence on many of the contractual arrangements for reticulated LPG without the Scheme being formally extended to

LPG. This is because the vast majority of LPG retailers are retailers covered by the Scheme and typically these retailers want a degree of consistency between their electricity, gas and LPG terms²⁰.

There is nothing to prevent LPG retailers voluntarily aligning with the Scheme. If any LPG operator wanted to be formally assessed against the Scheme on a voluntary basis and pay for their own assessment, then Gas Industry Co would be happy to facilitate an assessment. But there may be some funding considerations with the Scheme being formally extended to LPG consumers²¹. For the reasons above, Gas Industry Co does not consider there to be any significant concerns which would warrant extending the Scheme to LPG consumers.

Gas Industry Co proposes not to formally extend the regime to LPG contracts.

Special terms

There are an increasing amount of promotional or other special terms offered by retailers to consumers as a result of competition in the retail gas market. The approach taken to date has been to assess only standard published terms, and not assess any special or promotional terms. Where a retailer offers multiple standard terms (for example, a fixed term product and an open term product) then both contracts are assessed. However, where it is a 'special or limited time offer', the contract is not assessed. A consequence of this is that the arrangements for some consumers are not assessed by the Scheme.

Often the special terms tend to include benefits that are not directly related to the 'core service'²². However this is not always the case, as some special terms (for example, dual fuel discounts) directly relate to core aspects of the service (such as pricing and termination).

Often promotional deals have special terms only for the special aspects of the arrangement, with the bulk of matters being covered by the standard gas supply contractual terms. As a result, even if there are numerous consumers at any one time on special terms, many of these consumers will continue to have the core aspects of their service supplied under the retailer's standard published gas contract.

Gas Industry Co considers that any guidance it publishes under the Scheme on the terms which should reasonably be in a consumer contract (for example, Reasonable Consumer Expectations and Benchmarks), should be equally applicable to both special terms, and standard published terms. However, it would not be practicable to formally extend the assessment process to also cover special terms. If terms are only available for a short period, it is quite likely that by the time the assessment results are published the terms would no longer be available.

²⁰ For example, Gas Industry Co is aware of at least two retailers who have a single published supply contract that covers three fuels (LPG, natural gas and electricity).

²¹ The current funding for Gas Industry Co's oversight of retail gas contracts comes via a levy paid (ultimately) by natural gas consumers. There potentially may be some concerns if those funds were used to develop or monitor LPG arrangements.

²² For example, some retailers offer a customer loyalty programme under which customers can get discount vouchers for things like movie tickets, restaurants etc.

As discussed in part 7 of this paper, Gas Industry Co is proposing to change some aspects of the assessment framework and will make clear that the assessor can comment on any special terms which it considers would be of interest to Gas Industry Co given the purpose of the Scheme.²³ However, Gas Industry Co does not consider it necessary for special terms to be formally assessed by the Scheme.

Commercial consumers

The Electricity Authority's 'Minimum Terms' regime is limited to contracts for supply to domestic consumers. Some industry participants have suggested to Gas Industry Co that the gas specific Scheme should also be limited to domestic or residential consumers.

Under section 43G of the Gas Act, gas governance regulations can be made for the purpose of 'providing for minimum terms and conditions in contracts between domestic consumers and gas distributors or gas retailers'. This section supports the regime focusing on domestic gas supply arrangements. The Gas Act also includes a definition of 'small consumer'. The Government has detailed its expectation of Gas Industry Co to ensure that 'contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers'²⁴. A small consumer (section 43D of the Gas Act) means a consumer who is supplied with less than 10 terajoules of gas per year.

The Scheme only assesses standard published gas supply arrangements. As a result, any bespoke or negotiated arrangement that a small consumer does manage to negotiate will not be considered by the Scheme. In these standard arrangements (whether entered into by a domestic or small commercial consumer) the interests of the small consumer tend to be very similar and the respective bargaining power of a small commercial consumer and a domestic consumer are also similar. The terms of supply will generally be offered on a take it or leave it basis, with the main negotiating choice being the exercise of which retailer to use for supply.

Gas Industry Co has previously asked the assessor to identify issues of particular concern in its assessments. Many of the issues raised by the assessor have been issues with published small commercial consumer contracts.

Submitters have suggested that, even if small commercial consumers are covered, the current 10 TJ limit is too high, as these consumers are not on standard terms. Consumers with supply close to 10TJ will usually have a Time of Use meter on site and potentially will have negotiated differentiated pricing and terms. As a consumer's annual supply increases (for example, closer to the 10TJ threshold) their negotiation leverage also increases as does their willingness to actively negotiate their terms of supply. Those negotiated contracts will not be part of the Scheme's assessment process. As a result, Gas Industry Co expects that the effective limit of the Scheme will be much lower than 10TJ, as the Scheme focuses on standard published consumer

²³ For example, if the assessor noticed special terms trialling a new service model (such as the introduction of a new bundled service - for example, gas, electricity and internet - or a new structure of service for example, pre-paid meters) then Gas Industry Co would encourage the assessor to advise Gas Industry Co of this.

²⁴ See paragraph 13 of the GPS.

contracts. Given this, Gas Industry Co considers the 10TJ limit does not need to be expressly stated in the Scheme.

Gas Industry Co notes that it is not alone in considering that small commercial operators may need consumer protection. This issue has been actively considered by MBIE. The newly enacted consumer law reform changes purport to alter (in some circumstances) the ability of some business contracts to contract out of the guarantees in the Consumer Guarantees Act. The Acts propose to give a Court the ability to consider whether the contracting out clause is enforceable, by considering if it was fair and reasonable that the parties be bound by the contracting out provision. The Court may consider factors such as the respective bargaining power of the parties (including the extent to which a party was able to negotiate the terms of the agreement or was required to either accept or reject the agreement).

Inconsistency between published contractual terms and a retailer's practice or policies

The current Scheme focuses on published contractual terms and does not actually assess a retailer's practice. As a result, Gas Industry Co is aware of instances where retailers have practices that appear to align with the Scheme but the assessment identifies those areas as not aligning. The practice taken to date has been to only assess policies if they are directly referred to in the contract.²⁵

It has also been noted that Gas Industry Co does not assess retailers' compliance with their own contracts. As a result there may be instances where a contract ticks off the Benchmark requirements, but the retailers' practices in fact fall short of the requirements. There are also matters where a contract is silent on an issue, but the retailer has policies on its website which directly address the issue.²⁶

Some retailers have suggested that not assessing practices and policies is too narrow an approach, and have suggested that they are obliged to follow their policies (for example, as not following the policy may raise Fair Trading Act issues). Gas Industry Co appreciates that there may be some well-established practices which consumers could enforce without a clear contractual reference, but there will be other material and policies that retailers are able to change at their discretion which offer consumers little protection (when compared to a clear contractual clause).

Extent to which other material is considered

The assessment of the Scheme focuses on published material, and there is an issue with historical non-published material. Sometimes there will be other material provided to a consumer (for example, on the application form) which forms part of the contractual matrix of documents but is not assessed.

²⁵ For example, this could occur if under the contract the retailer had discretion to discontinue supply immediately if the consumer breached the contract, but in practice the retailer does not discontinue supply for minor contractual breaches and always follows an appropriate disconnection policy.

²⁶ For example, a contract may not discuss in detail the use of personal information but a Privacy Policy might, or a contract may be silent on how to turn off a gas supply in an emergency but a Gas Safety policy might cover these matters.

The original recommendation envisaged that there would be additional information provided to the assessor for the purpose of the assessment.²⁷ However, during the planning for the baseline assessment, it became clear that retailers publish the material on their websites that they consider is important as they cannot rely on consumers keeping paper copies. Accordingly, most retailers didn't have any additional material to provide.

Need for clarity

Gas Industry Co notes that to have a fair assessment process it is necessary to clearly describe what material will be assessed. After 'drawing that line' it is important that it is applied consistently across all retailers.

Gas Industry Co considers the current process is clear and fair²⁸. The current process treats all retailers the same. If retailers wish for additional policy documents to be considered, they can be expressly referenced in the standard published contract. If other material is located that is relevant to the assessment, the assessor is free to make a comment on that material (although the material will not change the assessment).

Proposal

The Scheme will apply to all published standard form gas supply arrangements, whether for the supply of domestic or small business consumers.

The Scheme will not cover LPG contracts, including contracts for LPG supplied over reticulated LPG networks. However, if the LPG industry or an LPG retailer see benefit in having an assessment under the Scheme and are willing to fund Gas Industry Co's analysis of this, then Gas Industry Co would be very willing to engage on this matter.

The Benchmarks and proposed RCEs of the Scheme will apply to contracts with special or promotional terms, where relevant, but the assessment of the Scheme will be limited to standard form published arrangements.

Q2: *Do you agree with the Scope of the Scheme?*

²⁷ For example, a retailer would provide information on the number of consumers on the arrangement, information on legacy/grandfathered arrangements and the number of consumers on those arrangements, copies of non-published material (for example, booklets) forming part of the standard consumer contract, etc.

²⁸

6

Are any changes to the Benchmarks appropriate?

Discussion

Under the Scheme, Gas Industry Co will publish clear guidance for consumers on the terms which should reasonably be included in their consumer contract, in order for that contract to achieve the stated purpose. The published terms would still be selective and outcome based. They will not cover every aspect of the contract, and will leave room for retailers to develop their own drafting and innovative practices.

Some amendment appropriate

During previous assessments Gas Industry Co has signalled the ability for the Benchmarks to be improved.²⁹ That said, Gas Industry Co does not consider that wholesale changes to the Benchmarks are necessary. However, Gas Industry Co wishes to propose some amendments where we are satisfied they would improve the Scheme (for example, by improving alignment with the Electricity Authority regime).

Detailed analysis of proposed amendments

To consider what amendments to the Benchmarks are appropriate, Gas Industry Co has prepared the document “Supporting Analysis to Appendix A” (available on our website), which considers:

- Each Benchmark, including;
 - The wording of the Benchmark;
 - The current Interpretation of the Benchmark
 - The 2012 alignment issues of standard published gas supply contracts with the current Benchmarks;
 - The broadly equivalent Electricity Authority requirements and if alignment could be improved;

²⁹ For example, in Benchmark 2 which relates to clear safety information, Gas Industry Co’s Interpretation suggested that some safety information could be moved to “good practice guidelines”. Similarly, some of the Interpretations are quite detailed and amendments to the Benchmarks may be a better way of clarifying their intent.

- Any known consumer issues with respect to the particular benchmark; and
- Any other matters Gas Industry Co considers appropriate.
- Whether any new Benchmarks are necessary (for example, where the assessor has previously indicated that some contractual provisions technically align with the Benchmarks but may be contrary to the intent of the Benchmarks).

Focus on compliance costs

Gas Industry Co notes that many retailers have put significant effort into aligning with the current Benchmarks. Retail contracts are infrequently updated and generally the process of updating the contracts is a time consuming and expensive process.

If there are changes to the Benchmarks (especially significant changes, for example, the introduction of a new Benchmark) then there would be an associated compliance cost. A transitional period may also be required to enable retailers to respond to any new requirements.

However, changes to the documentation of the requirements (for example, to better align with the Electricity Authority regime) which do not result in changes to the technical requirements should not result in significant compliance costs, in fact they may ease the compliance costs.

Alignment with the Electricity Authority should be improved

Retailers have also encouraged Gas Industry Co to consider how alignment with the Electricity Authority's Minimum Term arrangements could be improved. There are a lot of symmetries between Gas Industry Co's Benchmarks and the Electricity Authority's Minimum Terms, but there are some differences.

As noted above, it is obviously important for the industry that the two regimes are consistent. Dual fuel consumer contracts will need to align with both regimes, and Gas Industry Co and the Electricity Authority can ease the compliance costs of retailers by ensuring, for example, that the regimes are, to the maximum extent practicable, written in consistent language, do not have any inconsistent minimum requirements, and have a similar framework.

As noted in Part 2, Gas Industry Co has considered how best to improve alignment with the Electricity Authority's regime but continue to support and monitor a separate gas Scheme. Gas Industry Co considers the best way to achieve this is as follows:

Some changes to the overall structure of the Benchmarks

- The Scheme has Benchmarks and Interpretations. In comparison, the Electricity Authority regime has Reasonable Consumer Expectations (RCEs), Principles and Minimum Terms. Gas Industry Co considers it appropriate to introduce RCEs which are broadly comparable with the Electricity Authority's RCEs. The introduction of RCEs is a mechanism to illustrate that Gas Industry Co is committed to high level consistency between the regimes. Sitting underneath the RCEs, Gas Industry Co is comfortable to continue to have Benchmarks and Interpretations

rather than Principles and Minimum Terms. Benchmarks can be outcome-based and less prescriptive than Minimum Terms – which is considered more appropriate for a non-essential fuel.

Minor wording changes to individual Benchmarks

- Where differences in terminology or details are identified in the Minimum Terms which result in arrangements being assessed differently by the different regimes, Gas Industry Co considers that the Benchmarks should be amended unless there is a good reason for gas taking a different approach. Differences make it more difficult for dual-fuel retailers to align with both regimes.³⁰

Monitoring efficiencies

- All of the domestic retail contracts assessed under the Scheme in 2012 were also assessed by the Electricity Authority's scheduled review of its Principles and Minimum Terms. For matters where substantially similar contractual terms are being assessed by both regimes, Gas Industry Co will liaise with the Electricity Authority about any potential for efficiencies in the process and will keep a watching brief on the Electricity Authority's assessment results. As discussed in Part 7, Gas Industry Co has also considered the monitoring arrangements and considers that less frequent assessment of retail gas contracts can occur.

The Benchmarks need to be responsive to market changes

A static list of Benchmarks may become outdated as the market changes. Market changes may change the relative need for certain Benchmarks.³¹ Also, Gas Industry Co considers that there needs to be a mechanism for Gas Industry Co and the industry to consider the appropriateness of Benchmarks in response to further changes in the market.³²

As the Benchmarks are a non-regulatory, voluntary, industry led regime, Gas Industry Co considers that amendments to the Benchmarks themselves (provided they continue to sit under the RCEs) should be able to occur as and when required. Obviously, Gas Industry Co would need to follow an appropriate process before amending any Benchmarks. This process would need to allow for consultation with industry and other regulators with an interest. Gas Industry Co would need to consider the benefits of any proposed amendments in light of the purpose of the Scheme and also consider the compliance costs of the initiatives and alternatives. A transition period may need to be provided if proposed amendments to the Benchmarks were more than minor.

³⁰ For example, the Benchmarks require retailers to give 7 working days' notice of disconnection and allow 3 working days' for delivery of that notice, whereas the Electricity Authority's Minimum Terms require retailers to ensure the equivalent notice is provided between 7 and 14 working days prior to disconnection. The result is that a contract committing only to give 7 days' notice is assessed as fully aligning with the Electricity Authority regime but not fully aligning with the Gas Industry Co Benchmark

³¹ Some issues have resulted under the current Scheme as a result of the Benchmarks remaining static. For example, Gas Industry Co might have considered amendments to the Benchmarks to reflect the introduction of the 2010 Switching Rules, the endorsement of the EGCC scheme as the consumer complaints scheme under the Gas Act and an increased appreciation by consumers of the Privacy Act. Also, some of the Benchmarks are now accompanied by a long interpretation and it may have been clearer for Gas Industry Co to amend the Benchmark, rather than continuing to expand on the Interpretations.

³² In terms of potential future changes, the Consumer Law Reform Bill which was passed into law in December 2013, and will come into force over the next 15 months, is expected to improve the delivery and acceptable quality guarantees to consumers and prohibit unfair contract terms. Changes to the Benchmarks may be required as a result of the passage into law of this Bill. Other market changes may be more directly relevant. For example, if advanced meters for gas supply are introduced then it would be appropriate to reconsider the contractual terms addressing estimates of consumption and corrections to invoices.

A full statement of proposal paper and Ministerial approval of the amendments to the Benchmarks should not be required, provided that the Scheme remains largely the same and the Benchmarks continue to sit under the umbrella of the proposed RCEs. Gas Industry Co would also keep the Ministry informed of any changes to the Benchmarks, the results of assessments, and any other consumer issues.

Proposal

Proposed Reasonable Consumer Expectations for Gas Industry Co's Retail Contract Oversight Scheme

Gas Industry Co proposes to amend the Benchmarks by introducing a set of Reasonable Consumer Expectations (RCEs). These RCEs will sit above the Benchmarks, such that all Benchmarks must be consistent with the RCEs.

The proposal is for the RCEs for gas to closely follow the Electricity Authority's RCEs. The only changes have directly related to the difference in fuel. The word "electricity" has been replaced by "gas" throughout. Electricity RCE 4 (which states "Consumers can be assured of finding an electricity supplier to provide them with service") has been deleted, as it is not applicable to gas which is not an essential fuel. Finally, the reference to "the Electricity Regulations 1997" in RCE 7 has been replaced with "Gas Regulations (such as the Gas (Safety and Measurement) Regulations 2010)". The proposed RCEs for the Oversight Scheme are set out in Appendix A.

Proposed amendments to the Benchmarks and Interpretations

In addition to introducing the RCEs, Gas Industry Co supports a number of proposed tweaks to the Benchmarks and Interpretations.

The Benchmarks and Interpretations currently proposed by Gas Industry Co are set out in Appendix A. Supporting Analysis to Appendix A provides analysis explaining the proposed amendments, including providing a redlined version of the current Benchmarks and Interpretations, marked up to illustrate the proposed amendments.

Proposed process for changes to the Benchmarks and Interpretations

Gas Industry Co wishes to consult with the industry before confirming these revised Benchmarks and Interpretations. As part of this consultation, Gas Industry Co wishes to discuss with retailers any transitional period that would be required before the proposed changes should take effect. Gas Industry Co's initial thinking is that the proposed changes are largely structural and should not result in any net negative changes in assessment results³³. As a result, Gas Industry Co considers that no transitional period is necessary.

³³ There may, potentially, be one or two new alignment issues for some contracts as a result of the changes (eg as a result of the proposed introduction of Benchmark 4(d)), however Gas Industry Co's analysis suggests any new alignment issues will be outweighed by the proposed removal of other 'technical' alignment issues.

Further, Gas Industry Co does not consider that this process of consulting with industry on the proposed amendments to the Benchmarks and Interpretations needs to delay the issuing of this Statement of Proposal, or any recommendation to the Minister.

Gas Industry Co proposes that the Scheme should allow it to progress amendments to the Benchmarks and Interpretations as and when required, with any amendments being notified to MBIE and the Ministry through usual reporting channels. Accordingly, if the amendments to the Benchmarks and Interpretation are not determined by the time the Recommendation is provided to the Minister, these could be progressed under the revised Scheme once it takes effect.

Q3: Do you support the proposed RCEs?

Q4: Do you support the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs? Or would you prefer Principles and Minimum Terms? Why?

Q5: Do you agree that there should be scope for Gas Industry Co and industry to amend the Benchmarks under the Scheme and provided the Benchmarks support the RCEs?

Q6: Do you have any comments on the proposed amendments to the Benchmarks and Interpretations?

7

How should alignment with the Scheme be assessed and monitored?

Discussion

Assessment process and reports

Gas Industry Co has found it beneficial to use an external assessor and continues to support this. An external assessor is better placed to consider whether “jargon” terminology used by industry and Gas Industry Co is clear to consumers.

Benchmarks are currently assessed against a scale of full, substantial, moderate, low and nil. This scale continues to be supported.

Gas Industry Co’s assessment process and documentation is broadly similar to the Electricity Authority process. One difference is that the Electricity Authority assessment occurs on a more granular level. As a result, the assessment reports look quite different even though the matters being assessed are quite similar. The assessment by each regime can be broadly summarised as follows:

	Gas Industry Co assessment process	Electricity Authority assessment process
Assessment	One assessment per Benchmark. For example, “Moderate” for “Benchmark 9: Clear pricing information”	One assessment against each discrete Minimum Term or part of a Minimum Term. For example, the equivalent Minimum Terms to Benchmark 9 result in 22 separate assessments ³⁴ .
Supporting material	There is a high degree of transparency and consistency across retailers. Retailers are provided with a list of each alignment issue that has been identified in their standard published contract. The assessment is supported by a “Detailed assessment” document which includes the full contractual wording of each contract and highlights the particular text that meets the Benchmark or gives rise to an alignment issue. The detailed assessment also contains the assessment of all other retailers, so that retailers can compare how alternative contractual wording was assessed and check the consistency of the assessment across retailers.	An alignment review report is provided to each retailer which states the relevant clauses in that retailer’s contract and the level of compliance. This report includes a narration to explain the level of compliance, and usually also a brief description on what changes would be needed to achieve full compliance. Gas Industry Co understands each alignment review report is confidential to each retailer.
Other comments	The assessor is encouraged to comment on any clauses which appear contrary to the intent of the Benchmarks even if the text aligns with the Benchmarks.	Where identified, the report comments on alignment issues with Principles and other RCEs.

Gas Industry Co has received positive feedback on its assessment documentation from both retailers and those looking at the reports from a consumer perspective. Gas Industry Co considers the current documentation for the assessments strikes an appropriate balance between consumer and retailer interests - consumers can quickly identify the issues within each contract and see its overall alignment with the Benchmarks; at the same time the Detailed Assessment allows retailers to understand how their assessment result was determined, identify the problematic clauses; and see industry examples of text that has met the Benchmark.

³⁴ A contract assessed as ‘moderate’ against Gas Industry Co’s Benchmark 9 might be assessed as follows under the equivalent Electricity Authority regime as “3.8(c) Moderate, 3.8(e) Moderate, 5.4(a) Full, 5.4(b) Substantial, 5.4(c) Full, 5.4(d)(i) None, 5.4(d)(ii) Substantial, 5.4(e) Moderate, 6.2 (a) Moderate, 6.2(b)(i)-(iii) None, 6.2(c)(i)-(ii) Substantial, 6.2(d) Full, 6.2(e) Full, 6.2(f)(i) None, 6.2(f)(ii) Low, 6.2(f)(iii-iv) Moderate, 6.2(g) None, 6.2(h)(i)-(iii) None, 6.3 (a) None, 6.3(b) None, 6.3(c) None, 6.3(d) None’

While Gas Industry Co continues to support its current assessment process, we do not think it needs to be hard wired into the Scheme. The Scheme should allow for a different process to be adopted in the future if that is considered appropriate.³⁵ However, any changes made should continue to ensure that the assessment process remains transparent and consistent across retailers.³⁶

The assessment should continue to focus on the alignment of standard published retail gas contracts with the Benchmarks. The assessment of RCEs does not need to be qualitatively assessed, although any assessor would be encouraged to comment on issues of alignment that are identified³⁷. Any assessor would also continue to be encouraged to comment on any clauses identified which appear to be contrary to the intent of the Benchmarks, even if strictly aligning with the Benchmarks. Comments from the assessor would be considered during future reviews of the Scheme.

Annual full assessment not supported – more flexibility needed

Under the current Scheme, a “full assessment” is undertaken every year. A “full assessment” is an assessment of every standard published gas contract against every Benchmark.³⁸ The annual full assessment process is a significant piece of work. It involves input from Gas Industry Co, the assessor, and retailers.

Gas Industry Co estimates that the annual cost of a full assessment is approximately \$50,000 - \$70,000 per annum (excluding GST).³⁹

A full assessment has a number of benefits. It provides useful information on the status of the industry and enables a comparison between retailers on a broad range of topics. However, given the substantial level of alignment achieved to date, Gas Industry Co does not support ongoing full assessments every year. An assessment less frequently (for example, once every 3 years) would provide a similar level of benefit, with fewer compliance costs.

In between full assessments, Gas Industry Co would maintain a watching brief, and perform bespoke assessments as required to adequately incentivise retailer alignment with the Scheme and monitor industry changes.

Gas Industry Co considers this more flexible process is likely to be structured as follows:

³⁵ For example, there may be cost savings that can be achieved through combining the Gas Industry Co and Electricity Authority assessment in future years. Also, if there are some Benchmarks where there has been full alignment for a number of years it might be sensible for the assessment to only focus on the problematic Benchmarks

³⁶ The current detailed assessments provided by the external assessors clearly highlight the wording that aligns with the benchmark (in green), aligns but may be contrary to the intent (in orange), and does not align with the benchmark (in red). Retailers have appreciated this level of transparency. It enables a clear mechanism to identify problematic wording and to compare how other retailers have achieved alignment.

³⁷ We note that this approach is consistent with the approach taken by the Electricity Authority with respect to RCEs and Principles

³⁸ Gas Industry Co notes that it postponed the assessment in 2013 while the review of the Scheme occurred.

³⁹ This estimate includes provision for Gas Industry Co’s staff costs, the independent assessor’s fees, each retailer’s costs (for example, staff time in planning for the assessment, considering the draft assessment and providing feedback to the assessor etc).

- Approximately once every 12 months Gas Industry Co will ask retailers to confirm if they have amended their standard published gas contracts and, if they have, to provide an explanation of the changes.
- Gas Industry Co will consider in general terms the nature of amendments being made to retail contracts and whether the amendments justify further assessments in the period between full assessments. If amendments generally maintain or increase the overall level of alignment with the Benchmarks, then additional assessments are unlikely to be required.
- Any other assessments can be conducted on an “as required” basis. In particular, an assessment of one or more contractual arrangements may be undertaken when:
 - a standard published contract is updated;
 - a Benchmark or Interpretation is significantly amended;
 - trends with alignment of a particular Benchmark are identified (for example, if there is one Benchmark which has raised particular alignment concerns); or
 - a new entrant commences gas supply.
- Any ad hoc assessments can be initiated by Gas Industry Co on its own initiative, or following the request of a retailer.⁴⁰ Gas Industry Co will maintain the role⁴¹ of instructing the independent assessor and, subject to any confidentiality concerns, would expect to be provided with a copy of each assessment report.
- The terms for an ad hoc assessment can be agreed at the time. In particular, they may have a reduced and more flexible scope than a full assessment.

Monitoring

Gas Industry Co will also continue to generally monitor changes in the market to ensure the oversight regime continues to support the purpose of the Scheme. This will include continued liaison with other regulators with an interest in standard published retail gas contracts, and consultation with retailers.

After each 3 yearly full assessment, Gas Industry Co will review the assessment outcomes and consider whether the Scheme continues to be appropriate, and report to the Minister on the findings of the review.

⁴⁰ For example, a retailer may wish to commission an assessment in order to better understand how terms it is proposing to publish would be assessed, or in order to update a previously poor assessment to reflect amendments to its contractual terms. Likewise a new entrant may wish to commission a review of proposed contractual terms.

⁴¹ To facilitate Gas Industry Co’s ability to perform ad hoc assessments, Gas Industry Co will maintain a reduced budget for its retail gas oversight scheme in the years when no full assessment is scheduled (for example, to allow for 1-2 ad hoc assessments in the year).

Proposal

Given the levels of industry alignment that have been achieved to date, and the generally infrequent updates to standard published gas supply contracts, Gas Industry Co considers that the current assessment and monitoring regimes should be made more flexible.

Gas Industry Co proposes:

- The ongoing use of an external assessor;
- Flexibility regarding how the assessment reports are structured, provided the reports are transparent and consistent;
- To seek confirmation once every year from retailers as to whether they have amended their standard published gas contracts;
- A full assessment of every standard published consumer gas contract against the Benchmarks every 3 years;
- To arrange other assessments on an “as required” basis. These may have a reduced and more flexible scope than a full assessment;
- To generally monitoring changes in the market;
- A review of the Scheme to ensure it remains appropriate after each 3 yearly full assessment, followed by a report to the Minister on the review’s findings.

Q7: Do you have any comment on the proposed amendments to the scheme operation?

8

Consultation and Next Steps

Submissions

Gas Industry Co invites submissions on the issues set out in this paper. Specific matters on which submissions are sought are set out in each section of the paper, and a suggested format for submissions is set out in the template in Appendix B.

Submissions can be made by registering on Gas Industry Co's website www.gasindustry.co.nz and uploading your submission, preferably in the form of the submissions template attached to the consultation document. All submissions will be published on this website after the closing date. Submissions may be amended up to closure date.

Gas Industry Co will acknowledge receipt of all submissions electronically. Please contact Jay Jefferies (Ph: +64 4 472 1800 or email: jay.jefferies@gasindustry.co.nz) if you do not receive electronic acknowledgment of your submission within two business days.

The closing time for submissions is **5pm on 17 February 2014**. Please note that submissions received after this date may not be able to be considered.

Gas Industry Co values openness and transparency and therefore submissions will be made available to the public on Gas Industry Co's website. Submitters should discuss any intended provision of confidential information with Gas Industry Co prior to submitting the information.

Advice to the Minister

Following the analysis of submissions, Gas Industry Co intends to progress delivery of its advice to the Minister. Depending on the nature of submissions received, it is planned for this advice to be made in late February 2014.

Amendments to the Benchmarks and Interpretations

Gas Industry Co will consider submissions on the proposed amendments to the Benchmarks and Interpretations and issue finalised Benchmarks and Interpretations around the same time as it provides its advice to the Minister.

Appendix A Proposed RCEs and Benchmarks

Proposed Reasonable Consumer Expectations for Gas Industry Co's Retail Contract Oversight Scheme

Gas Industry Co proposes to introduce a set of Reasonable Consumer Expectations (RCEs) which will sit above the Benchmarks, such that all Benchmarks must be consistent with the RCEs.

The proposed RCEs for the Oversight Scheme are set out below:

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

Proposed amendments to the Benchmarks and Interpretations

In addition to introducing the RCEs, Gas Industry Co supports a number of proposed tweaks to the Benchmarks and Interpretations.

The tables below show the amended Benchmarks proposed in this Statement of Proposal paper, and the Interpretations of those Benchmarks. The proposed Benchmarks and Interpretations are similar to the current Benchmarks and Interpretations. The document *Supporting Analysis to Appendix A* (which can be found on our website) includes a redlined version of each Benchmark and Interpretation, which tracks the amendments being proposed.

Benchmark 1 - Clear supply commencement

Benchmark	GIC Interpretation
1.1. The gas supply arrangements must state when the supply 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 supply commencement not contract commencement.</p> <p>It must be reasonably clear when supply commences.</p> <p>The benchmark requires the commencement date to be either:</p> <ul style="list-style-type: none">• an actual date agreed between the Retailer and the Consumer;• 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• a date determined by the switching regulations or rules. <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 arrangements will commence from the date that gas is first supplied to the Consumer.	<p>This benchmark concerns contract commencement not supply commencement. 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">• continuing to receive and use gas at premises where a previous customer has left• arranging for Retailer to turn on gas supply that had been previously turned off. <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"> the contract; or a document referred to in the contract, even if the contract does not specify what information is contained in that other document. <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"> when the Consumer must obtain compliance certificates what the Consumer should do to ensure gas safety at the Consumer's premises, including how to turn off gas supply who the Consumer should call if there is an emergency involving gas at the Consumer's premises.

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"> there are restrictions on the circumstances in which the Consumer can terminate (the Consumer should be able to terminate at ANY time) 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) the Retailer can continue its daily fixed charge until gas is disconnected or decommissioned (as this is outside the Consumer's control). <p>Benchmark may be met where:</p> <ul style="list-style-type: none"> termination is subject to the Consumer allowing the Retailer to perform a final meter reading 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). <p>There is an unnecessary delay 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	<p>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.</p>

supply from that Retailer; and	
(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;	Benchmark met if the expiry date can be calculated as provided in the contract. Benchmark not met if: <ul style="list-style-type: none"> • 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 • 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.
(b) the provisions for early termination (i.e. prior to the expiry date);	Benchmark relates to the Consumer's right to terminate, not the Retailer's. Benchmark is: <ul style="list-style-type: none"> • not met by general right to terminate (eg for breach) or if contract is silent on right to convenience termination • met by a statement that the Consumer has no right or has limited rights to convenience termination.
(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.	If arrangement has separate provisions for price terms, assume that general right to amend contract applies to non-price terms only. Benchmark met if: <ul style="list-style-type: none"> • the Retailer has no express right to amend the contract (assume that the Retailer won't change without each Consumer's agreement) • one month's notice is given (February is less than 30 days). Benchmark not met if less than 30 days' notice can be given. Benchmark not failed merely because the Retailer can change the arrangement on shorter notice, in the event of temporary supply

Benchmark	GIC Interpretation
	emergencies.
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.	This benchmark relates to non-price variations only. Price variations are addressed in benchmark 8. Benchmark met if all non-price variations must be directly communicated to the Consumer.

Benchmark 6 - Clear supply obligations

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

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

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>
...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"> public notice (eg on website or newspaper) automatic price review (eg annual) that is not notified, despite it being "communicated" in the arrangement. <p>Benchmark met by:</p> <ul style="list-style-type: none"> emailed notice notice in next invoice.
(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:	

Benchmark	GIC Interpretation
(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"> if arrangement does not specify where price information can be found if the specified location of price information is not publically available.
(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 clearly specifies the charges that the Consumer will be liable for.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> Consumer liable for unspecified charges (eg "all other costs") the amount of any charges are open ended (does not apply where the Consumer will receive advance notice of change to these charges).
(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"> the contract itself explains how the estimate is calculated; or the contract simply provides that the estimate must be "reasonable". the contract states that an explanation will be given on request (e.g. by calling)
...and of the process that will be used for correcting any estimates;	<p>Benchmark met:</p> <ul style="list-style-type: none"> if Retailer will invoice according to a meter reading performed by the Consumer even where the Consumer's right to request a correction is limited (eg because Consumer can only request a test annually).
(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"> over-charging will be credited against next invoice an appropriate adjustment will be made. <p>However, benchmark not met if:</p> <ul style="list-style-type: none"> the time frame is not mentioned ("next invoice" is acceptable) 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).
...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"> under-charging can be included in subsequent invoice the under-charged amount is payable after the dispute is resolved, even if the amount is not required to be invoiced.
(f) the gas supply arrangements must include reasonable limits on the	"Reasonable limits" on a Retailer's ability to invoice Consumers

Benchmark	GIC Interpretation
Retailer's ability to invoice consumers for amounts which have previously been under-charged.	<p>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"> 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; 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; if a bill is more than three months late, the Company should negotiate an appropriate discount with the Consumer; and no interest will be payable on any incorrect or late bills. The Retailer will not seek to recover amounts for under-charging if an unreasonable period has lapsed (for example 3+ years).
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 does not provide 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"> specifies the costs in a separate schedule; does not mention any additional costs (assume there are none) says costs of an unspecified amount may be payable (eg "inspection, repair and/or replacement costs") and provides that the Consumer will be informed prior to taking any action on a meter which may incur a charge. <p>Benchmark not met if the arrangement:</p> <ul style="list-style-type: none"> says costs of an unspecified amount may be payable, but does NOT provide that the Consumer will be informed prior to taking any action on a meter which may incur a charge.
(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"> the <i>quantum</i> of the correction (eg consumption will be reasonably adjusted); and the <i>manner</i> of the correction (eg invoices will be re-issued and/or the customer's account credited). <p>Benchmark not met by:</p> <ul style="list-style-type: none"> dealing with the method of testing, without describing the quantum or the manner of the correction; ; or providing that consumption will be adjusted; without describing the manner of the correction.

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:	Benchmark met in full if arrangement does not reference bonds (assume that bonds are not required). If arrangements provides that "other lending criteria apply" it is assumed that bonds may be required.
(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.	Benchmark met if arrangement: <ul style="list-style-type: none"> describes the circumstances in which the bond will be released, rather than a specific time period provides an indefinite period for retaining bonds, provided the bond will be returned on termination and payment of outstanding charges.
10.2. If the Retailer keeps the bond for longer than 12 months, it must provide:	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). 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).
(a) its reasons for doing so;	
(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 general statement that the Retailer may terminate or suspend the arrangement for breach.

Benchmark	GIC Interpretation
<p>11.2 Metering</p> <p>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.</p>	

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;	<p>The arrangement must make it clear who has responsibility for:</p> <ul style="list-style-type: none"> providing the meter maintaining the meter.
(b) the frequency of meter readings; and	<p>The arrangement must:</p> <ul style="list-style-type: none"> clearly describe the frequency in which the Retailer will read meters be consistent with the Retailer's legal obligations for frequency of meter reading. <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"> the Gas (Downstream Reconciliation) Rules 2008 require (in general terms) that Retailers must read meters as follows: <ul style="list-style-type: none"> for expected consumption between 250 GJ pa and 10 TJ pa, monthly for all lower expected consumption: <ul style="list-style-type: none"> each individual meter at least once every 12 months, unless exceptional circumstances prevent; and 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).

Benchmark	GIC Interpretation						
	<p>Accordingly, arrangements must provide at least the following:</p> <table border="1"> <tr> <th>Frequency</th><th>Arrangement Type</th></tr> <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>Once every 12 months</td><td>"Residential Only" (although this is the assessed minimum, the vast majority of residential meters would be read more frequently than this. Gas Industry Co is aware that most retailers achieve this).</td></tr> </table>	Frequency	Arrangement Type	Monthly	"Business" or "Business/Residential" (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)	Once every 12 months	"Residential Only" (although this is the assessed minimum, the vast majority of residential meters would be read more frequently than this. Gas Industry Co is aware that most retailers achieve this).
Frequency	Arrangement Type						
Monthly	"Business" or "Business/Residential" (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)						
Once every 12 months	"Residential Only" (although this is the assessed minimum, the vast majority of residential meters would be read more frequently than this. Gas Industry Co is aware that most retailers achieve this).						
(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 NZS5259, which has legal effect under the Gas Act on all meter owners.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> Retailer agrees to comply with: <ul style="list-style-type: none"> "relevant" industry standards and codes of practice, rather than all of them. "industry requirements", rather than "standards and codes of practice". 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). <p>Not met if Retailer merely agrees to comply with "laws", as 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 disconnection, termination or suspension 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"> Benchmark 3 (How to stop being a Consumer of your current Retailer) Benchmark 14 (Faults and Planned Shutdowns).
(a) Set out the conditions under which Consumers can be disconnected;	<p>Benchmark met if:</p> <ul style="list-style-type: none"> there is no ability to disconnect other than under clause benchmark 14 below. 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.
(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 in practice.</p>

Benchmark	GIC Interpretation
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.	Benchmark not met if can discontinue gas supply for non-payment of an invoice for services unrelated to gas supply. 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).
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"> • merely provides that the Retailer will give notice, without specifying the length of notice • allows Retailer to attempt to give the required length of notice (although force majeure clause may apply). <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> <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"> • instructions from a Lines Company or Network Operator to disconnect • breach of contract by the Consumer • mere suspicion that there has been tampering with a meter, equipment, pipes or fittings • failing to advise the Retailer of any damage to metering or network equipment • tampering, hacking into, or interfering with any metering network equipment • deliberately taking advantage of the fact that the meter was inaccurate or not working properly. • restrictions on the availability of gas • non-payment.
(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"> • will give notice, without specifying the length of notice. • will try/attempt to give the required length of notice (although force majeure clause may apply).
(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"> • will give "notice", without specifying the length of notice. • will "try/attempt" to give the required length of notice (although force majeure clause may apply). • will take "reasonable steps" to give the required length of notice (this is less than an "all reasonable endeavours" obligation).
13.4. If a dispute resolution under the gas supply arrangements has been initiated by the Consumer in regard to the cause of any	<p>Benchmark may be met:</p> <ul style="list-style-type: none"> • if Retailer may still disconnect if dispute is not in good faith or is frivolous or vexatious.

Benchmark	GIC Interpretation
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.	<ul style="list-style-type: none"> if disconnection proceeds where undisputed amounts not paid. <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"> by the arrangement merely providing that "charges will apply" if prices are available online, but the online price plan is not referenced in the arrangement if an online price plan is referenced in the arrangement, but the online price plan does not specify disconnection and connection charges. <p>Benchmark met:</p> <ul style="list-style-type: none"> if prices are available online and the price plan is referenced (anywhere) in the arrangement.

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"> "give notice" without specifying any time period "give notice where practical" "try to give notice" "use best endeavours to give advance notice" without specifying any time period. <p>Benchmark met if Retailer:</p> <ul style="list-style-type: none"> must give "as much notice as is reasonably practicable" as a typical force majeure clause would excuse delays beyond the Retailer's control notice period is subject to the network operator or meter owner (whichever is responsible for the shutdown) giving sufficient notice to do so. <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"> 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 arrangement or elsewhere. Accordingly, compliance with this requirement not been assessed for the purpose of compliance with this benchmark during a critical contingency, comply with directions from a

Benchmark	GIC Interpretation
	<p>transmission system owner given under the regulations (regulation 55(1))</p> <ul style="list-style-type: none"> 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 if applicable, urgently notify each of their Consumers affected by the critical contingency that supply has resumed (regulation 56(1)). <p>Accordingly, all arrangements (business or residential) must:</p> <ul style="list-style-type: none"> permit the Retailer to curtail supply in a critical contingency situation. The following phrases meet the benchmark: <ul style="list-style-type: none"> the Retailer may curtail supply to the extent required by law the Retailer does not guarantee supply. 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.
<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"> the contract a document referred to in the contract. <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"> by general obligation to comply with laws if arrangement purports to exclude privacy considerations in relation to personal information obtained from a business.
<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"> by a right to use the personal information for any purpose by general obligation on the Retailer to comply with privacy laws by arrangement merely providing that the information will be used for the purpose for which it was collected (without

Benchmark	GIC Interpretation
	having specified that purpose).
(b) confirm that individuals will be able to access personal information held about them...	Benchmark not met: <ul style="list-style-type: none"> by general obligation on the Retailer to comply with privacy laws by arrangement merely providing that individuals may access telephone recordings of themselves.
...and have the opportunity to correct this information; and	Benchmark not met by general obligation on the Retailer to comply with privacy laws.
(c) set out where the Consumer can get information about how the Retailer collects, uses, discloses and stores personal information about the Consumer.	Benchmark met if the information is included in the contract. Benchmark not met if the information is in an online privacy statement, unless the privacy statement is referred to in the arrangement.

Benchmark 16 - Clear description of liability and redress

Benchmark	GIC Interpretation
16.1 Any exclusion of liability in the gas supply arrangements must be clearly described.	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).
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"> what financial risks are involved (their impact and likelihood) who is best placed to manage the financial risks (including by way of insurance) what premium has been included in the charges to address the risk. <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"> excluding liability for all of the Retailer's obligations; excluding liability for all of the Retailer's core obligations; excluding liability for the acts or omissions of the Retailer's: <ul style="list-style-type: none"> officers, employees or agents, as the retailer in practice acts through them; or subcontractors, as the core obligations of retailers are usually subcontracted (eg the supply of gas is usually subcontracted to network operators). <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	The Benchmark is not met where the Consumer is required to indemnify the Retailer from any loss the Retailer suffers as a result of

Benchmark	GIC Interpretation
all loss the Retailer may suffer as a result of the gas supply arrangement.	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.
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	Benchmark met if: <ul style="list-style-type: none"> • arrangements provide there will be no payment; • 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 • the supplier does not guarantee the continuous supply of gas. "Payment" includes any financial benefit to Consumer (eg discounts). Benchmark not met if the contract is silent as to whether or not payments will be made.
(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.	The objective behind this benchmark is to clearly notify Consumers of their rights. Benchmark not met by: <ul style="list-style-type: none"> • general statement that the Retailer will comply with laws as this does not notify Consumers of this important statutory protection • statement that the Consumer Guarantees Act is excluded to the maximum extent permitted by law as non-business Consumers may wrongly assume they have no Consumer Guarantees Act rights. Benchmark met by: <ul style="list-style-type: none"> • reference to "Consumer protection legislation" instead of "Consumer Guarantees Act" • statement that arrangement does not exclude or limit rights under the Consumer Guarantees Act • 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".

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	Arrangement not met if: <ul style="list-style-type: none"> • Contract procedures inconsistent with internal code of practice • Not clear where Consumers should address complaints to. • Individual Consumers must appoint person from within their "organisation". Benchmark met if there is no express timeline for lodging a complaint, as the complaint may then be raised at any time.

Benchmark	GIC Interpretation
(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"> “the Electricity and Gas Complaints Commission scheme” “an independent dispute resolution scheme approved under the Gas Act”. <p>Benchmark not met by:</p> <ul style="list-style-type: none"> reference to “any independent complaints resolution process” offered by the Retailer 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.

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>	<p>Not met by contact information on a website, as the information must be contained in the arrangement.</p>
<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>	<p>This benchmark relates to general notices, not specifically addressed in other benchmarks.</p>

Appendix B Recommended Format for Submissions

To assist Gas Industry Co in the orderly and efficient consideration of submitters' responses, a suggested format for submissions has been prepared (an electronic copy of which is available on our website). Submitters are also invited to include any other comments in their responses to this Consultation Document.

Name of organisation:

Contact person:

Email address:

Phone:

QUESTION		COMMENT
Q1:	Do you agree with the proposed purpose of the Oversight Scheme?	
Q2:	Do you agree with the Scope of the Scheme?	
Q3:	Do you support the proposed RCEs?	

QUESTION		COMMENT
Q4:	Do you support the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs? Or would you prefer Principles and Minimum Terms? Why?	
Q5:	Do you agree that there should be scope for Gas Industry Co and industry to amend the Benchmarks under the Scheme and provided the Benchmarks support the RCEs?	
Q6:	Do you have any comments on the proposed amendments to the Benchmarks and Interpretations?	
Q7:	Do you have any comment on the proposed amendments to the scheme operation?	