



# Current Issues for Domestic and Small Business Gas Consumers

Consultation with  
stakeholders

13 August 2008







## **About Gas Industry Co**

Gas Industry Co was formed to be the co-regulator under the Gas Act.

As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
  - the operation of gas markets;
  - access to infrastructure; and
  - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

## **Authorship**

This paper has been developed using material prepared by several Gas Industry Co staff members (including Nicki Lau Young, Lucy Elwood and Bas Walker) and with input from external consultants Sarah Mehrrens, and Lee Wilson and Victoria Coad (Concept Consulting Group). It also draws on the work of Gas Industry Co's Model Contracts Working Group. Victoria Coad has acted in an editorial capacity.



# Summary of conclusions

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## Overview and purpose

The emphasis of government policy for the energy sector is on enhancing competition as the principal means of providing benefits to consumers. There is an expectation that consumers will benefit over the long-term from the market development work undertaken by Gas Industry Co. However, the Gas Act includes a number of other mechanisms targeted specifically at improving consumer outcomes. The possible existence of weak competition, unequal bargaining power and asymmetry of information can individually, or in combination, give rise to a need to intervene to protect consumer interests.

Generally speaking, it is the smaller consumers who are more likely to be at risk of being adversely impacted by any of these factors. A small consumer is defined in the Gas Act as being a consumer who is supplied with less than 10 terajoules of gas in a year. Domestic and small business consumers make up the majority of small consumers in New Zealand. It is protecting the interests of these groups of consumers that is the focus of this Discussion Paper.

Since its inception in 2004, Gas Industry Co has undertaken a significant body of work aimed at addressing consumer issues, both directly and indirectly. These work streams have largely been progressed as discrete projects, and, while some have been completed, others are less well-advanced and progress has been slower than expected, particularly on matters relying on industry agreement.

The aim of this work is to:

- capture and update the work Gas Industry Co has previously performed in relation to consumer outcomes;
- establish a set of reasonable consumer expectations and assess the likelihood of these being delivered collectively across the current initiatives, in order to identify key issues;
- consider possible means to address the issues identified within the overall policy framework for promoting good outcomes for gas consumers; and
- establish a prioritised Gas Industry Co work programme to address the key issues, drawing on stakeholder views and GPS expectations.

This Discussion Paper forms the basis for seeking stakeholder feedback, with the process for making submissions set out in Section 2.

## Policy framework

The Gas Act 1992 and the Government Policy Statement on Gas Governance (April 2008) taken together and considered in the wider context of energy policy and other relevant statutes (such as the Commerce Act 1986), provide the overall policy framework for promoting good consumer outcomes

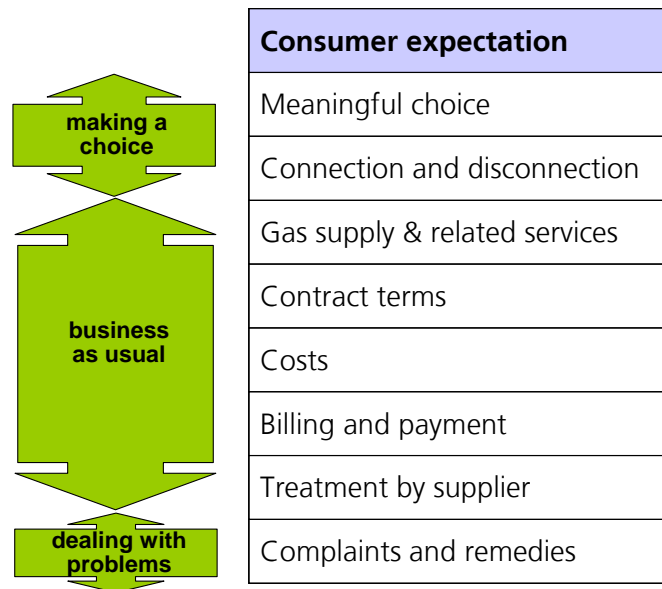
for the gas industry. The policy framework can be summarised as having the following three main strands:

- intervene as required in common good areas such as transmission and distribution;
- facilitate effective competition as the primary vehicle for improving outcomes for all consumers; and
- to the extent this may be insufficient, intervene to protect the interests of domestic and small business consumers.

It is the third strand that is the focus of this work. Factors such as weak or limited competition, unequal bargaining power, and imperfect or asymmetric information can lead to a need for additional measures to improve outcomes for small consumers.

### Consumer expectations

Gas Industry Co has taken a ‘first principles’ approach to establishing a set of reasonable consumer expectations, then determining what the issues might be in delivering on these, with a view to identifying possible means to address these issues. The set of consumer expectations developed is summarised in the figure below.



## Summary of findings

Gas Industry Co's preliminary conclusions can be summarised as follows:

- consistent with the overall policy framework, Gas Industry Co considers that facilitating competition is the primary vehicle for promoting good outcomes for all consumers, however, competition may be insufficient in protecting the interests of small consumers;
- although Gas Industry Co has undertaken a number of initiatives aimed at enhancing the effectiveness of retail competition, not all of these are in place, and it is therefore premature to consider the overall effectiveness of the arrangements;
- to assist in determining when it might be appropriate to instigate regular assessment and monitoring, Gas Industry Co has identified what it considers to be the set of minimum arrangements required for effective competition;
- a set of possible indicators for assessing the level of competition was proposed by Allen Consulting Group in 2006. Gas Industry Co considers that these provide a good starting point for developing performance indicators in the lead up to initiating regular assessment and monitoring;
- Gas Industry Co has also undertaken a number of initiatives aimed at improving outcomes for consumers, particularly domestic and small business consumers, however, not all of these are yet complete, and there have been some unanticipated events encountered in progressing some of them;
- weak competition, unequal bargaining power and information asymmetries have significant potential to adversely impact meeting the proposed set of consumer expectations identified and presented here. From its analysis, Gas Industry Co considers that all three of these are present, to varying degrees, at different stages in the relationship between gas retailers and domestic and small business consumers;
- until the set of minimum arrangements required for effective competition are in place, it is premature to conclude that there is a case for intervention solely on the basis of weak competition. There are, however, issues identified in this analysis that stem from weak bargaining power and information asymmetries; and
- Gas Industry Co has proposed a set of initiatives to address the issues identified, which it now seeks stakeholder comment on.

## Summary of proposed initiatives

Gas Industry Co proposes to undertake the following initiatives to address the issues identified with meeting consumer expectations.

### Information provision to better inform consumer choice

There appear to be significant opportunities to deliver more meaningful and informed choice for domestic and small business consumers through enhanced information provision. Key steps proposed for Gas Industry Co to undertake are:

- identify a set of targeted reports and information to address specific information deficiencies;

- explore the opportunities for commercial entities and/or central agencies to collate and pre-process certain information regarding consumer choice to make it more accessible to a wider range of consumers in a more efficient manner than individuals making their own enquiries; and
- if appropriate, provide advice to the Minister on the findings.

### **Connection/disconnection**

Existing arrangements regarding the (dis)connection process are not proving effective in protecting the interests of domestic and small business consumers. This was the subject of an earlier Gas Industry Co work stream, however, implementation of the proposed industry solution has proved unsuccessful.

Gas Industry Co prefers to affect a solution through rules or regulations made under the Gas Act.

### **Contract terms and conditions**

The nature and extent of gas consumer complaints, coupled with feedback from the consumer forums, points to the fact that some retail contracts are not meeting these expectations, or, put another way, not all small consumers are receiving the benefit of fair contract terms and conditions at all times. Accordingly, Gas Industry Co considers that existing arrangements are not proving effective in protecting the interests of all domestic and small business consumers all of the time.

While acknowledging that current work streams to facilitate enhanced competition in the retail sector may improve outcomes in the future, it considers that poor bargaining power coupled with information asymmetries mean that there is a strong case now to intervene to protect the interests of small consumers.

Gas Industry Co considers that, in view of the significance of these issues and difficulties to date in seeking to implement industry-led voluntary solutions, a regulatory solution is most appropriate. Gas Industry Co has developed the following preferred proposal for protecting the interests of small consumers in their retail contracting arrangements:

- establish minimum terms and conditions for domestic contracts; and
- implement these through either rules or regulations made under the Gas Act.

Gas Industry Co acknowledges that there are alternative approaches it could adopt, such as continuing to rely on general consumer protection law, facilitating a voluntary industry solution, development of model contracts or publication of contract guidelines. However, on the basis of its current assessment, Gas Industry Co considers that these are unlikely to be as effective as regulated minimum contract terms and conditions. Furthermore, it considers that in the absence of regulated contract disclosure, it is unlikely that meaningful monitoring of compliance with voluntary codes or model arrangements is achievable.

Subject to considering stakeholder feedback on its preferred approach, Gas Industry Co proposes developing a draft set of minimum terms and conditions by:



- starting with the draft guidelines published by Gas Industry Co for consultation in November 2005 (attached as Appendix E to this Discussion Paper);
- translating these from contract guidelines into minimum terms and conditions, updating them to take account of experience and changes since that time;
- expanding the set of minimum terms and conditions (if appropriate) to include additional matters covered in relevant overseas jurisdictions (such as the Victorian Code considered in Appendix G);
- expanding the set of minimum terms and conditions (if necessary) to include the other matters identified in this paper for addressing via this mechanism, ie:
  - connection/disconnection practices;
  - minimum requirements for access to related services such as a call centre and metering services;
  - protection from the imposition of additional or unexpected costs;
  - minimum terms and conditions regarding billing and payment; and
  - minimum terms and conditions regarding the ability of the supplier to alter or terminate supply.

Gas Industry Co intends recommending to the Minister that the Gas Act be amended to extend the relevant regulation-making powers to include retail contracts with small business consumers. Gas Industry Co's work in this area will need to reflect the outcome of the Minister's consideration of that recommendation.

### **Complaints and remedies**

The Joint Gas Industry Co and Electricity Commission project regarding approval of a joint complaints resolution scheme is now the primary vehicle for delivering an effective complaints resolution scheme. Gas Industry Co will continue to actively participate in this process with a view to delivering an improved complaints resolution scheme at the earliest opportunity afforded by the joint process.

### **Information provision to support complaint identification and resolution**

There appear to be opportunities to enhance outcomes for domestic and small business consumers in the complaints resolution process through enhanced access to information. Key steps proposed are:

- Gas Industry Co should identify the information domestic and small business consumers require to identify that they have a complaint and to then actively participate in the resolution process.
- Gas Industry Co should assess the availability of this information and explore measures to enhance access if and as required.

### **Next steps**

Gas Industry Co seeks stakeholder feedback on the material presented in this Discussion Paper, and the specific questions posed throughout.

Based on Gas Industry Co's current timetable for this work, the next steps and likely timeframes are set out below.

<b>Work Item</b>	<b>Likely timeframe</b>
Closing date for submissions on consultation paper (allowing a 6 week period)	25 September 2008
Consider responses and prepare recommended next steps for progressing consumer issues	October 2008
Consideration and approval of next steps documents by Board	October / November 2008
Confirmation of, and publication where appropriate, of next steps documents	November 2008
Commencement of initiatives moving forwards	late 2008 / early 2009

Gas Industry Co would like to stress the importance of stakeholder feedback in determining the appropriate steps to progressing consumer issues, and encourages all stakeholders to consider the material presented here and the questions posed.

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# 1

## Introduction

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### Overview

The Gas Act is an important part of an overall framework for improving outcomes for energy consumers. The overall framework includes government policy to promote competition in gas production, electricity generation, energy wholesale markets and energy retail markets, and to regulate natural monopoly aspects of the energy sector. The framework also includes the Electricity Act, the Commerce Act, the Fair Trading Act, the Consumer Guarantees Act and normal commercial law.

The emphasis of government policy for the energy sector is on enhancing competition as the principal means of providing benefits to consumers. There is an expectation that consumers will benefit over the long-term from the market development work undertaken by Gas Industry Co. However, the Gas Act includes a number of other mechanisms targeted specifically at improving consumer outcomes. This recognition has its origins in an observation that, where parties to a transaction have unequal bargaining power, there is a risk that the party with less power will incur a higher cost, or be subject to less favourable contract terms, than they would have if the transaction had been between two parties with equal bargaining power.

Generally speaking, smaller consumers are more likely to be in a position of unequal bargaining power than larger ones. A small consumer is defined in the Gas Act as being a consumer who is supplied with less than 10 terajoules of gas in a year. Domestic and small business consumers make up the majority of small consumers in New Zealand. It is protecting the interests of these groups of consumers that is the focus of this Discussion Paper.

As well as unequal bargaining power, other factors, such as the possibility of limited competition, lack of quality information, and factors external to the sector, can also lead to a need for additional measures to improve consumer outcomes.

Thus there is recognition that a reliance on competitive pressures, combined with direct regulation of natural monopoly distribution businesses, may not be sufficient to ensure good outcomes for all consumers. The small size of the retail gas market and the concentrated nature of the market reinforce a perception that a degree of consumer protection may be warranted.

A key expectation of the co-regulatory model is that it delivers improved outcomes for all gas consumers. In recognition of this, all of Gas Industry Co Strategic Plans have included a strategic priority and corresponding work streams that relate directly to issues of consumer protection. Feedback from consumer forums convened by Gas Industry Co, correspondence from the Minister of Energy, and input from agencies such as the Ministry of Consumer Affairs and the EGCC<sup>1</sup> have reinforced the importance of this work.

## **Progressing consumer issues**

Since its inception in 2004, Gas Industry Co has undertaken a significant body of work aimed at addressing consumer issues, both directly and indirectly. Drawing on expectations in the GPS and correspondence from the Minister, the focus has been in the areas of arrangements for handling consumer complaints, model consumer contract terms and conditions, low fixed charges/transparency of charging, disconnections/reconnections, and consumer switching arrangements. These work streams have largely been progressed as discrete projects, and, while some have been completed, others are less well-advanced and progress has been slower than expected, particularly on matters relying on industry agreement.

While Gas Industry Co is concerned with promoting good outcomes for all gas consumers, it is the interests of domestic and small business consumers that are singled out in the GPS and Act as possibly requiring special protection measures: small consumers are more likely to be adversely affected by unequal bargaining power and information asymmetry, amongst other things. Accordingly, the focus of this Discussion Paper is on improving outcomes for domestic and small business consumers of gas, and, if required, considering possible consumer protection mechanisms for these groups of consumers.

The aim of this work is to:

- capture and update the work Gas Industry Co has previously performed in relation to consumer outcomes;
- establish a set of reasonable consumer expectations and assess the likelihood of these being delivered collectively across the current initiatives, in order to identify key issues;
- consider possible means to address the issues identified within the overall policy framework for promoting good outcomes for gas consumers; and
- establish a prioritised Gas Industry Co work programme to address the key issues, drawing on stakeholder views and GPS expectations.

It is envisaged that that this initiative will then devolve into a number of different projects or work streams, each focusing on a priority area arising from this work.

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<sup>1</sup> The Electricity and Gas Complaints Commission.

## Purpose of this paper

The Project was established in late 2007 and has now progressed to the point where stakeholder feedback is sought on the set of issues identified and the range of possible means to address them. This paper forms the basis for seeking that feedback.

The purpose of this paper is to:

- set out the policy framework for promoting good consumer outcomes in the New Zealand gas sector, and summarise the relevant work streams aimed at improving consumer outcomes;
- outline the set of reasonable expectations for domestic and small business consumers, as developed by Gas Industry Co from stakeholder discussions;
- identify possible issues in meeting these expectations under the current arrangements and suggest Gas Industry Co's preference for resolving some of the issues raised; and
- seek stakeholder feedback on the issues and possible means to address them.

## Structure of this paper

Section		Contents
2.	Submission requirements	Submission process and timing Preferred format for submissions
3.	Industry background	Overview of the New Zealand gas sector and the key players Contractual and institutional arrangements Key observations relevant to progressing consumer issues
4.	NZ policy framework	Government Policy Statement and the Gas Act Role of the key Acts and Agencies Overall framework in NZ
5.	Competition as the primary vehicle	Role of competition in delivering good consumer outcomes Overview of existing work streams aimed at facilitating competition Measuring the effectiveness of competition
6.	Competition may be insufficient	Limitations of competition Possibly weak competition Poor bargaining power Information asymmetry The need for consumer protection mechanisms Powers to regulate and to provide advice to the Minister International comparisons

Section		Contents
7.	Progress with advancing consumer issues to date	Gas Industry Co Consumer forums Consumer complaints and the EGCC Model contracts Low fixed charges and transparency Disconnection/reconnection practices
8.	What are reasonable consumer expectations?	Derivation and underlying philosophy Phases in the consumer-supplier relationship Entering and exiting the relationship – the ‘making a choice’ phase Managing the customer relationship – the ‘business as usual’ phase Complaints and remedies – the ‘dealing with problems’ phase Developing a set of reasonable expectations Meaningful choice Connection and disconnection Gas supply and related services Contractual terms and conditions Costs Billing and payment Treatment by supplier Complaints and remedies Approach adopted in identifying issues and options
10.	Making a choice	Policy objectives and key agencies involved Key parties Issues identified Assessment and proposed initiatives
11.	Business as usual	Policy objectives and key agencies involved Key parties Issues identified Assessment and proposed initiatives
12.	Dealing with problems	Policy objectives and key agencies involved Key parties Issues identified Assessment and proposed initiatives



Section		Contents
15.	In conclusion	Summary of findings The findings in context Next steps
	Appendices	Consultation questions Overview of gas industry Summary of relevant Gas Act provisions Proposed set of consumer expectations Draft Model Contract Guidelines published for consultation by Gas Industry Co in late 2005 Comparison of Draft Model Contract Guidelines with EGCC scheme codes of practice terms Comparison of Draft Model Contract Guidelines with Victorian Code requirements

# 2

## Submissions requirements

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### Submission process and timing

A key purpose of this Discussion Paper is to seek stakeholder feedback on the issues and options presented here, and, in particular, stakeholder responses to the set of questions posed in the Paper. Parties who wish to make a submission on the paper are invited to respond by 5:00 pm on Thursday 25<sup>th</sup> September 2008. Please note that submissions received after this date may not be able to be considered.

Gas Industry Co's preference is to receive submissions in electronic form (Microsoft Word format or pdf) with 'Submission on Consumer Issues Discussion Paper' in the subject header to [submissions@gasindustry.co.nz](mailto:submissions@gasindustry.co.nz). A hard copy would also be appreciated and should be posted to:

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Level 9, State Insurance Tower  
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Tel: +64 4 474 2467  
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Gas Industry Co will acknowledge receipt of all submissions electronically. Please contact Bas Walker if you do not receive electronic acknowledgement of your submission within two business days.

### Submission format

The preferred format for submissions is shown in Appendix A. Gas Industry Co values openness and transparency and, therefore, submissions will generally 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.

# 3

## Industry background

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This section aims to describe the gas industry as background to the policy framework for promoting good outcomes for consumers, and Gas Industry Co's work in the area of addressing consumer issues. It provides an overview of the structure and size of the sector, the key players, and the interfaces between the different parts of the industry. A more detailed discussion of the industry is set out in Appendix B.

### **Market structure and the key players**

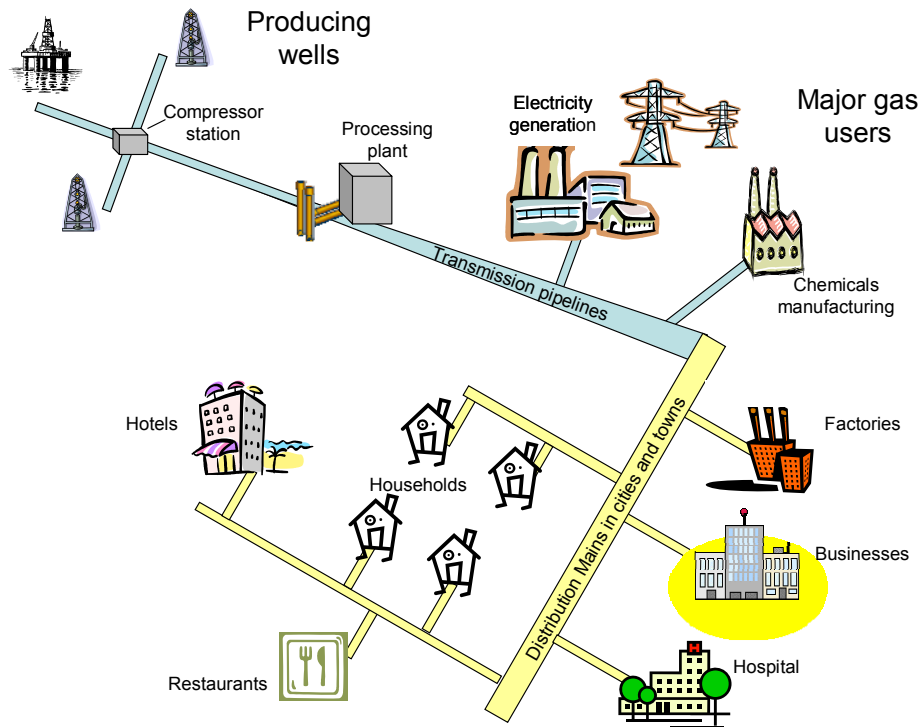
The natural gas industry comprises five main sectors:

- exploration and production;
- transmission;
- distribution;
- the retail sector (including small consumers); and
- major users.

These sectors take the natural gas from the point of extraction (the well head) to the point of consumption (the burner tip). They are depicted in Figure 1, together with the linkages between them. Each is discussed briefly below, and more detailed information is contained in Appendix B.

In addition to reticulated natural gas, some consumers receive their gas in the form of LPG, either reticulated or bottled. An overview of the LPG sector is also included in Appendix B.

Figure 1: Overview of the gas sector



## Exploration and production

Currently, natural gas is produced entirely in the Taranaki region from 15 fields. Total New Zealand gas production for the Calendar Year 2006<sup>2</sup> was just under 150 PJ. The Maui field (owned by Shell Petroleum Mining, OMV and Todd Energy) and the Kapuni field (owned by Shell Petroleum Mining and Todd Energy) together provided 75% of total production. The remaining 25% of net production was provided from a range of other smaller fields in the Taranaki region.

## Transmission

Transmission pipelines transport large volumes of natural gas under high pressure from production fields to distribution networks, or to large customers along the pipeline. The major gas transmission pipelines are:

- the Vector transmission network, which extends to most major North Island centres; and
- the Maui pipeline, extending from South Taranaki north to Huntly, owned by Maui Development Limited but operated by Vector.

<sup>2</sup> Excluding gas re-injected or flared and LPG extracted.

On 1 October 2005 an open access pipeline regime for the Maui pipeline came into effect, allowing all parties to ship gas through the Maui pipeline. The Vector transmission system already operated open access arrangements.

## **Distribution**

The gas distribution networks transport natural gas from transmission pipeline gate stations and reticulate it to houses, offices, hospitals, factories and other end consumers. Distribution companies have network service agreements with retailers to distribute gas to end users and may have interconnection agreements with interconnected transmission pipelines.

There are four gas distributors: Vector, Nova Gas, Wanganui Gas and Powerco. Of these:

- the two main players are Vector and Powerco, with the remaining two significantly smaller; and
- some distributors are also gas retailers (or affiliated with retail business units), and some also distribute electricity.

## **Retail**

The retail market consists of retailers competing to sell natural gas to smaller consumers, which include households, hospitals, factories and businesses. A number of industry documents describe retail customers as those using less than 10 terajoules (TJ) of gas in a year. In particular, 'small consumer' is defined in section 43D of the Gas Act as a consumer who is supplied with less than 10 TJ of gas per year. These are, in general terms, the residential and commercial consumers. In 2006 there were approximately 229,000 residential gas consumers accounting for approximately 5% of total annual production, and 8,000 commercial consumers accounting for 3% of annual consumption<sup>3</sup>. The remaining 92% of annual consumption is in the industrial sector.

There are eleven gas retailers operating in New Zealand: Auckland Gas Company (Todd Energy); Bay of Plenty Energy (Todd Energy); Contact Energy; E-gas; Genesis Energy; Energy Online (Genesis Energy from 1 July 2008), Mercury Energy (Mighty River Power); Ongas (Vector); Greymouth Gas; Nova Gas (Todd Energy) and Energy Direct (Wanganui Gas).

## **Major gas users**

Major users are generally regarded as those using more than 10 TJ of gas in a year. These users include the petrochemicals sector, electricity generation and co-generation. While protecting the interests of these larger consumers is not the focus of this discussion paper, they are included here for completeness.

The petrochemicals sector used around 15% of New Zealand's natural gas during 2006, and electricity generation (excluding cogeneration) accounted for about 56%.

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<sup>3</sup> MED Energy Data File, June 2007

## **LPG**

The sections above generally relate to reticulated supplies of natural gas in New Zealand. Some consumers receive their gas in the form of LPG, either bottled or reticulated. There are some aspects of the LPG sector which are relevant to this work on consumer issues, and a brief overview of the sector is therefore included in Appendix B for completeness.

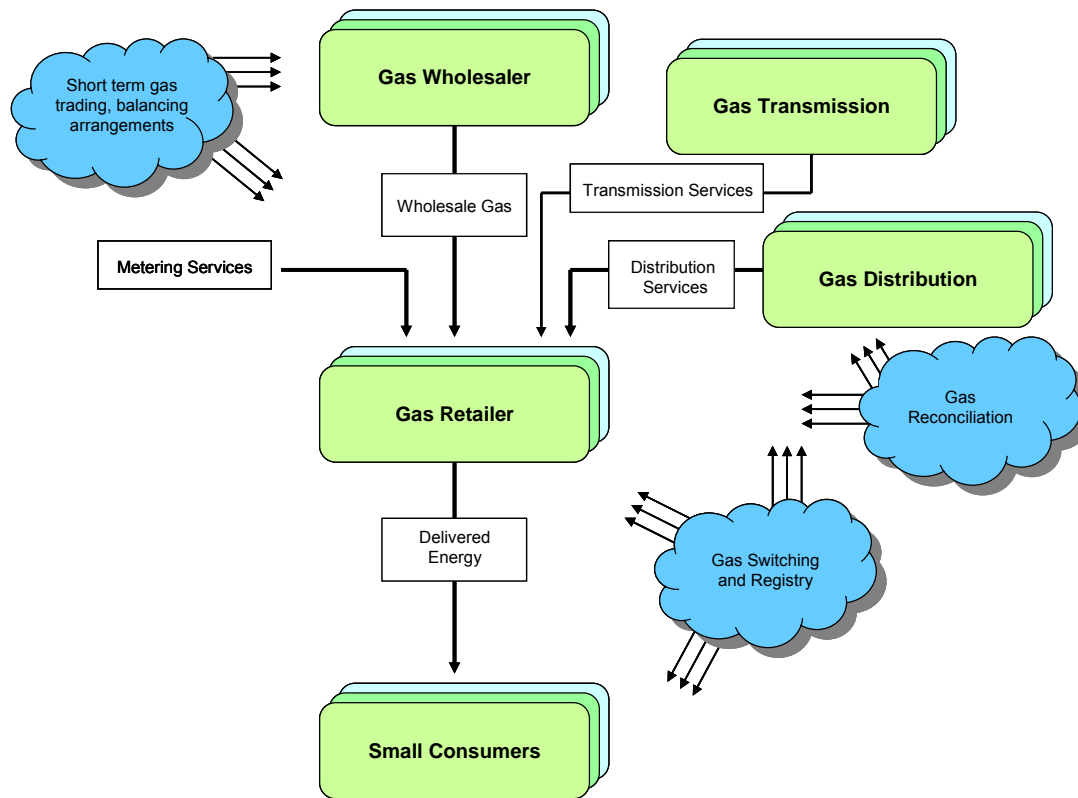
## **Contractual and institutional arrangements**

The contractual relationships between the various parts of the gas market are illustrated in Figure 2, together with key institutional arrangements such as the registry and customer switching.

The nature of the contractual arrangements is relevant here, as domestic and small business customers typically receive a bundled supply under their contracts with gas retailers, that is, gas and related services and their delivery. However, some aspects of the delivered supply relate to services provided by parties outside that direct consumer/retailer contractual relationship. These include services such as transport and metering.

Improving outcomes for these consumers requires consideration of the wider contractual and institutional arrangements to ensure alignment and interface issues do not inhibit any targeted measures proposed.

**Figure 2: Overview of contractual and institutional arrangements**



## Key observations

As input to considering consumer issues and protecting the interests of small consumers, it is important to draw attention to a number of key observations about the New Zealand gas sector.

- the gas sector is very small in New Zealand compared to gas markets internationally. In 2005, natural gas consumption in NZ was less than 20% of that of Australia, and less than 5% of that in the UK<sup>4</sup>;
- gas exploration and production is concentrated in a small number of (typically) large firms and focused on the oil-prone Taranaki region. As a result, the system of gas pipelines is designed to ship bulk gas supplies from Taranaki to most North Island cities and large provincial towns. Gas options in the South Island and some parts of the North Island are limited to bottled LPG and, in a few areas, reticulated LPG;
- distribution system ownership is concentrated in the hands of Vector and Powerco, with some, much smaller, independent networks;
- although there are nine gas retailers, only three retailers make gas supplies widely available and in all three cases gas is offered alongside electricity. The retail gas sector is small compared to the retail

<sup>4</sup> MED Energy Data File, June 2007

electricity sector (eg in 2006 there were approximately 228,000 residential gas consumers compared to 1,603,000 residential electricity consumers<sup>5</sup>); and

- the majority of natural gas is supplied to major users (eg in 2006 the industrial sector, including petrochemicals and electricity generation, accounted for over 90% of total gas consumption<sup>6</sup>). Management of a small number of large gas contracts with such users is generally less intensive than managing a retail gas supply function which involves thousands of very small contracts, for instance, in 2006 there were about 228,000 residential consumers and 9,500 non-residential consumers<sup>7</sup>.

These key observations, in part, shape the possible issues with delivering good outcomes for small consumers, and with identifying possible options to address any issues identified.

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<sup>5</sup> MED Energy Data File, June 2007  
<sup>6</sup> MED Energy Data File, June 2007  
<sup>7</sup> MED Energy Data File, June 2007



# 4 NZ policy framework

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## Regulation-making powers

The legislative framework for governance of the gas industry in New Zealand primarily comprises the Gas Act 1992 (the Gas Act) and the Government Policy Statement on Gas Governance published on 18 April 2008 (the 2008 GPS). The 2008 GPS replaced the GPS published in October 2004 which until recently governed Gas Industry Co's work programme.

Subpart 2 of Part 4A of the Gas Act provides for co-regulation of the gas industry by the Government and Gas Industry Co (as the approved industry body under 43ZL(1) of the Gas Act). Appendix C sets out a summary of the relevant Gas Act provisions.

The Minister of Energy is responsible to the Government for the energy portfolio. The Minister monitors the performance of Gas Industry Co and receives recommendations and advice from Gas Industry Co, as well as reports on progress against the GPS objectives and outcomes.

## Gas Act Objectives

Section 43ZN of the Gas Act sets out a number of objectives to which Gas Industry Co must have regard when recommending rules or regulations under the Gas Act. The principal objective of Gas Industry Co in recommending gas governance regulations and rules is to:

‘...ensure that gas is delivered to existing customers in a safe, efficient, and reliable manner.’

The other objectives are:

- the facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements;
- barriers to competition in the gas industry are minimised;
- incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced;
- delivered gas costs and prices are subject to sustained downward pressure;

- risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties; and
- consistency with the Government's gas safety regime is maintained.

## **GPS Objectives and Outcomes**

Paragraph 9 of the 2008 GPS requires Gas Industry Co to have regard to two further principle objectives – fairness and environmental sustainability – in all of its recommendations.

Gas Industry Co must also have regard to the other objectives set out in the GPS as follows:

- energy and other resources used to deliver gas to consumers are used efficiently;
- competition is facilitated in upstream and downstream gas markets by minimising barriers to access to essential infrastructure to the long-term benefit of end users;
- the full costs of producing and transporting gas are signalled to consumers;
- the quality of gas services where those services include a trade-off between quality and price, as far as possible, reflect customers' preferences; and
- the gas sector contributes to achieving the Government's climate change objectives as set out in the New Zealand Energy Strategy, or any other document the Minister of Energy may specify from time to time, by minimising gas losses and promoting demand-side management and energy efficiency.

The outcomes that the Government is seeking in relation to domestic and small business consumers are as follows:

### **Consumer benefit**

- All small gas consumers have effective access to a complaints resolution system:
  - The Government prefers a least-cost arrangement for the proper handling of consumer complaints. Due to the small size of the retail gas market, the Government considers that consumers' best interests will be served by a joint gas and electricity consumer complaints resolution system. A single multi-fuel complaints system (which may include consumers of liquefied petroleum gas) would provide benefits such as ease of access, consistency of outcomes and efficiencies of scale.
  - The Government expects any consumer complaints resolution system to be free to complainants and to meet the standards of accessibility, independence, fairness, accountability, efficiency and effectiveness contained in equivalent schemes of other comparable countries.
  - The Government expects Gas Industry Co. to work closely with the Electricity Commission to coordinate the approval and governance process between the electricity and the gas sectors to ensure that the Government's expectations are met.
- Contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers.

### Efficient retail market

- Effective and efficient customer switching arrangements that minimise barriers to customer switching.
- Accurate, efficient and timely arrangements for the allocation and reconciliation of downstream gas quantities.
- An efficient market structure for the provision of gas metering, pipeline and energy services.
- The respective roles of gas metering, pipeline and gas retail participants are able to be clearly understood.

### Other outcomes

- Gas governance arrangements are supported by appropriate compliance and dispute resolution processes.
- Gas governance arrangements approved by the Minister of Energy are monitored by Gas Industry Co. for ongoing relevance and effectiveness.
- Good information is publicly available on the performance and present state of the gas sector.

### Relevant Gas Act provisions

There are a number of regulation-making powers in the Gas Act relevant to consumer issues. Some directly relate to consumers, and these include empowering provisions in the areas of complaint resolution and customer switching. Others are indirectly relevant in that they provide for arrangements in the wholesale, transmission and distribution sectors that may facilitate enhanced competition in the retail sector. Table 1 sets out a summary of the relevant Gas Act provisions. The full wording of these provisions is set out in Appendix C.

**Table 1: Summary of Gas Act provisions**

Complaints resolution system (s43E)	Every gas distributor and every gas retailer must participate in a complaints resolution system that is approved by the Minister for the purpose of addressing complaints relating to those gas retailers and gas distributors by all or any of: <ul style="list-style-type: none"><li>• Small consumers (including potential small consumers); and</li><li>• Owners and occupiers of land into, through, or against which pipelines have been laid down or placed.</li></ul>
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Wholesale gas market (s43F(2)(a))	<p>Providing for the establishment and operation of wholesale markets for gas, including for:</p> <ul style="list-style-type: none"> <li>• Protocols and standards for reconciling and balancing gas;</li> <li>• Clearing settling, and reconciling market transactions;</li> <li>• The provision and disclosure of data and other market information;</li> <li>• Minimum standards of market conduct; and</li> <li>• Arrangements relating to outages and other security of supply contingencies.</li> </ul>
Transmission and distribution (s43F(2)(c)&(d))	<p>Prescribing reasonable terms and conditions for access to transmission and distribution pipelines.</p> <p>Requiring expansions, upgrades, or service quality improvements to gas transmission pipelines including specifying how these will be paid for.</p>
Consumer resolution system (s43G(2)(a))	<p>Providing for the establishment of, or participant by gas distributors and gas retailers in, a complaints resolution system (that may include codes of practice) for the purpose of addressing complaints by all or any small consumers (including potential small consumers), or owners and occupiers of land into, through, or against which pipelines have been laid down or placed, relating to gas retailers and gas distributors, or setting out minimum requirements in relation to that system.</p>
Prepayment meters (s43G(2)(b))	<p>Requiring retailers to offer prepayment meters to domestic consumers at a reasonable cost, and prescribing conditions on which those meters must be offered, with the objective of ensuring that all domestic consumers who wish to pay for gas in advance have the option to do so at reasonable cost.</p>
Switching retailers (s43G(2)(c))	<p>Providing for arrangements to enable consumers to switch gas retailers.</p>
Insolvent Gas Retailers (s43G(2)(d))	<p>Providing a system of transition arrangements for consumers in the event of a gas retailer becoming insolvent, and requiring industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other gas retailers.</p>
Information Disclosure (s43G(2)(e))	<p>Providing for the disclosure of information by gas transmitters, distributors and retailers on tariffs and other charges.</p>
Access to meters (s43G(2)(f))	<p>Providing for terms and conditions of access to gas meters by gas retailers.</p>
Customer Account Information (s43G(2)(g))	<p>Providing for information on customer accounts.</p>
Consumer Contracts (s43G(2)(h))	<p>Providing for minimum terms and conditions in contracts between domestic consumers and gas distributors or gas retailers.</p>
Dispute Resolution (s43G(2)(i))	<p>Providing procedures for resolving disputes between industry participants.</p>

Enforcement of regulations (s43G(2)(j))	Providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or any other person or court, and the powers and procedures of that person or court.
Low Fixed Charge Tariff Option (s43H)	Requiring gas providers to offer a low fixed charge tariff option or options for delivered gas to domestic consumers that will assist low-use consumers and encourage energy conservation..

## Relevant consumer Acts and Agencies

Several consumer focussed laws and agencies are relevant when considering issues faced by domestic and small business gas consumers. These are briefly described below:

### Commerce Act

The purpose of the Commerce Act 1986 is to promote competition in markets for the long-term benefit of consumers within New Zealand. It prohibits conduct that restricts competition (restrictive trade practices) and the purchase of a business, shares or assets if that purchase leads to a substantial lessening of competition in the market.

Part 4 of the Commerce Act provides for price control of goods or services that are subject to limited competition. In April 2003 following a request from the Minister of Energy, the Commerce Commission commenced an inquiry into gas pipeline services. As a result of that inquiry some gas distribution services of Powerco and Vector were subjected to price control. The Commerce Commission also recommended that gas pipeline services have industry specific control provisions similar to electricity lines businesses in Part 4A of the Commerce Act. That recommendation is now being pursued in the Commerce Amendment Bill which has been reported back from the Commerce Select Committee.

### Fair Trading Act

The Fair Trading Act 1986 prevents misleading and deceptive conduct and unfair trading practices. The Act applies to all aspects of the promotion and sale of goods and services in trade.

### Consumer Guarantees Act

The Consumer Guarantees Act addresses the guarantees given, or deemed to be given, to (non-business) consumers upon the supply of goods or services. It also provides rights of redress against suppliers and manufacturers in respect of any failure of goods or services to comply with any such guarantees.

### Ministry of Consumer Affairs

The Ministry of Consumer Affairs gives advice to the Government on matters that affect consumers when they buy goods and services. The Ministry of Consumer Affairs administers (ie monitors the

operation of, and provides policy advice to the government on) the Consumer Guarantees Act and the Fair Trading Act. The Ministry also provides advice to the Government on energy safety related issues.

### **Commerce Commission**

The primary role of the Commerce Commission is as New Zealand's principal competition law enforcement agency. Under the Commerce Act, the Commerce Commission also has investigatory and decision-making roles. It is established under section 8 of the Commerce Act. The Commerce Commission enforces (relevantly) the Commerce Act and the Fair Trading Act. It also has a number of industry-specific regulatory roles.

## **Relevant energy industry agencies**

### **Energy Safety Service**

The Energy Safety Service monitors and enforces compliance with laws relating to energy safety such as the Gas Act and the Gas Regulations 1993, and the various Gas Codes of Practice which are developed by Standards New Zealand.

### **Energy Efficiency and Conservation Authority**

The Energy Efficiency and Conservation Authority (EECA) promotes a sustainable energy future by changing the way New Zealanders think about and use energy. EECA works to raise community awareness of energy efficiency issues, and provides businesses and individuals with the tools to make changes.

### **Plumbers, Gasfitters and Drainlayers Board**

The Plumbers, Gasfitters and Drainlayers Board is a statutory board established under the Plumbers, Gasfitters and Drainlayers Act 1976. The Board deals with licensing and registration of (relevantly) gas fitters and can hear complaints about gasfitters and take disciplinary action.

## **Overall framework for promoting good consumer outcomes**

The Gas Act and the 2008 GPS taken together, and considered in the wider context of energy policy and other relevant statutes such as the Commerce Act, provide the overall policy framework for promoting good consumer outcomes for the gas industry and can be summarised as having the following three main strands:

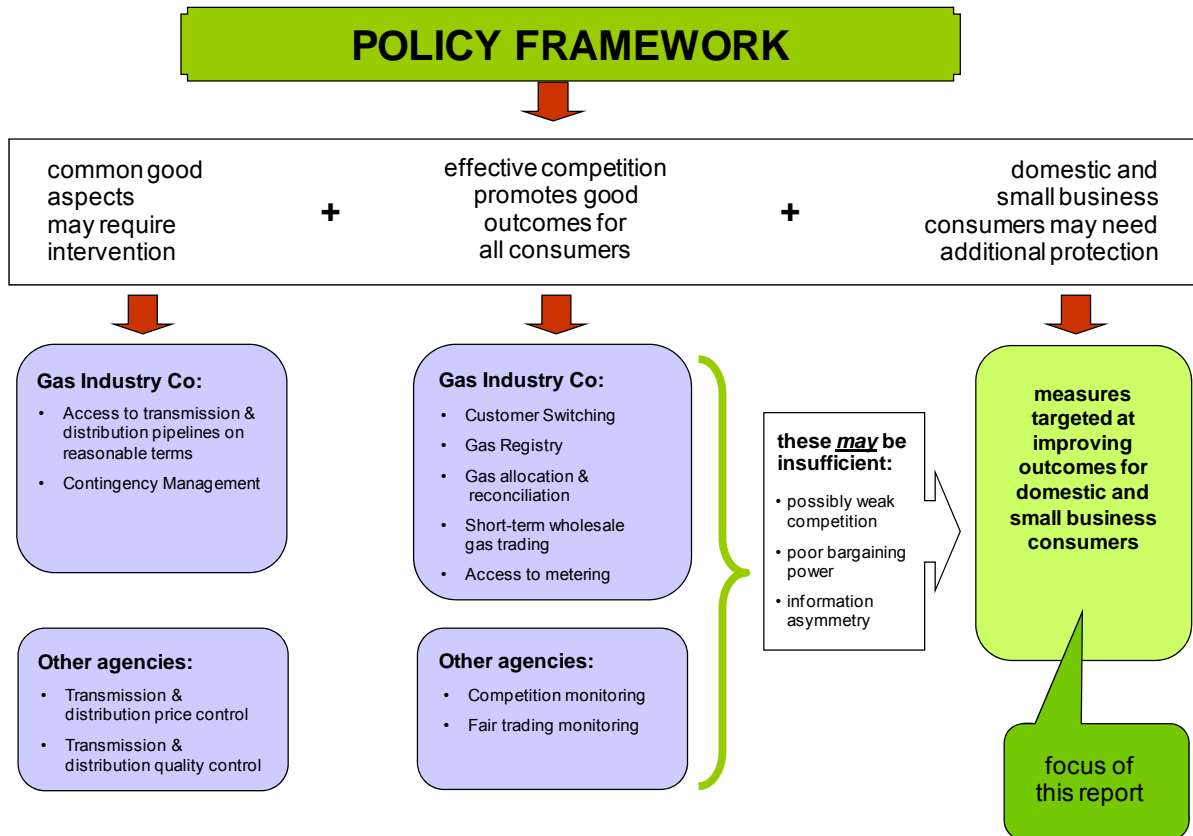
- intervene as required in common good areas such as transmission and distribution;
- facilitate effective competition as the primary vehicle for improving outcomes for all consumers; and
- to the extent that this may be insufficient, intervene to protect the interests of domestic and small business consumers.

The Gas Act includes regulation-making powers in a number of areas that, if invoked, would protect the interests of domestic and/or small business consumers. Thus, the Act clearly contemplates the possibility of the need for intervention. Correspondence from the Minister over recent years has reinforced this.

It is the third strand that is the focus of the Consumer Issues project: determining whether intervention might be required to protect the interests of domestic and small business consumers, and if so, what type of intervention and when.

The overall framework is illustrated in Figure 3 and described further in this and the following two sections of this Discussion Paper.

**Figure 3: Overview of the policy framework for promoting good consumer outcomes**



# 5

## Competition as the primary vehicle

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### Benefits of competition

The Government's general approach to policy for the energy sector is that the long-term interests of consumers are best served by competitive markets. Where this is not possible, or where it is inadequate on its own, some intervention may be required.

There are a number of benefits to developing competition in gas markets. In relation to the retail and distribution sectors, the development of more competitive markets is aimed at delivering the following benefits:

- allowing consumers to choose their supplier, thereby creating downward pressure on prices and promoting better service standards and innovation;
- enhancing transparency and the availability of market information;
- reducing the potential for incumbent gas suppliers to cross-subsidise between competitive and monopoly customers/segments, which become exposed to market forces;
- exposing all participants to market forces, which encourages efficiency across all markets;
- removing the need for a heavy handed regulatory approach and the cost to consumers of this; and
- providing for fair and equitable access to industry infrastructure, while promoting the need for contestable processes that attract new market entrants.

In essence, facilitating competition in the gas sector is designed to deliver gas consumers more choice and access to better prices and services.

It is worth noting that for many consumers, particularly small consumers, electricity is an alternative energy option. Accordingly, competition in the electricity sector also has flow-on benefit for those gas consumers. The reverse is also true, although to a more limited extent, given the nature of gas as an energy source in the New Zealand context. Other energy options include oil and solid fuels. Thus, thinking more broadly than just the gas sector, effective competition across the energy sector can enable consumers to choose between gas and other energy sources, creating downward pressure on price, and promoting better services.



In facilitating competition in the energy sector New Zealand is following a world-wide trend which aims to improve the efficiency of energy production and delivery and provide better outcomes for all consumers.

## **Overview of existing work streams facilitating retail competition**

Work streams to facilitate competition and/or to improve the effectiveness of competitive markets have been a focus for the gas sector over the last decade, with varying degrees of success. Amendments to the Gas Act and the establishment of Gas Industry Co saw the accountability for progressing such initiatives focus around Gas Industry Co (as the approved industry body under the Gas Act).

Key areas that are important for facilitating competition and enhancing outcomes for gas consumers are developing arrangements for:

- customer switching;
- allocation and reconciliation of downstream gas quantities;
- short term wholesale gas trading;
- transmission access;
- distribution contracting; and
- compliance and enforcement.

These are briefly summarised here as background to identifying possible issues in meeting consumer expectations.

### **Customer switching arrangements**

Effective customer switching arrangements enable customers to switch retailers readily. The accuracy and timeliness of this process is an important factor for the competitiveness of the retail market, as an inefficient switching process dilutes incentives for retailers to seek new consumers and for customers to change retailers.

Customer switching in the gas retail market was governed by the voluntary Reconciliation Code, which was developed in July 2000 to provide a framework for multiple retailers to trade natural gas off the same distribution network. The system required a number of parties, including the retailers, distributors, and meter owners to provide data from their individual databases to complete a switch.

Because of the voluntary nature of the Reconciliation Code, there was no mechanism by which compliance by retailers with the switching rules could be enforced. Further, the Code did not require development of a central registry of gas customers which led to inefficiencies and inaccuracies in

customer data, which became especially problematic when a customer requested to switch between retailers.

The October 2004 GPS invited Gas Industry Co to recommend arrangements, including regulations and rules where appropriate, for the standardisation and upgrading of protocols relating to customer switching, so that barriers to customer switching are minimised.

After extensive consultation, Gas Industry Co recommended that the Minister of Energy make rules under the Gas Act for the development of a central registry of gas customers and implementation of switching arrangements. The Gas (Switching Arrangements) Rules 2008 (Switching Rules) were approved by the Minister and gazetted on 14 February 2008. Those parts of the Switching Rules affecting implementation of the gas registry came into effect on 13 March 2008.

The Switching Rules will fully take effect when a registry operator has been appointed and the gas registry established. The indicative 'go live' date for the gas registry is 2 March 2009. The new switching arrangements will significantly improve the efficiency, accuracy and timelines of the switching process, thereby facilitating greater competition in the retail gas market and better outcomes for small consumers.

### **Allocation and reconciliation of downstream gas quantities**

Effective and accurate arrangements for the allocation and reconciliation of downstream gas quantities are key components of an efficient gas market. Each industry participant in the market needs to know how much gas it has been allocated at pipeline receipt points and delivery points, and that all gas quantities are determined by reliable methods.

Downstream reconciliation is concerned with the appropriate allocation and reconciliation of gas quantities, measured at each transmission system gas gate<sup>8</sup>, across the retailers who supply gas to consumers through each distribution system. Various sources of error mean that gas gate measurements will not equate to aggregate customer measurements. The difference is unaccounted for gas ('UFG'). The amount of UFG is affected by many things including the quality of data and the arrangements for reconciliation. UFG needs to be allocated efficiently via the reconciliation process, but more fundamentally needs to be reduced to as low a level as possible.

From 2000, allocation and reconciliation of downstream gas quantities was governed by the voluntary Reconciliation Code under which a person was appointed by gas retailers and distributors to undertake the role of allocation agent. However, the voluntary nature of the Code meant that there were numerous compliance issues, and over time the Code failed to adapt to the changing needs of the market. In particular, the lack of transparency of information, and the outdated methodologies for allocation of UFG, led to increasing uncertainty about current levels of UFG and the fairness of its allocation. It also impeded moves to deal with the causes of excessive UFG.

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<sup>8</sup> A gas gate is the point on the transmission system which supplies gas into a local distribution network.

The problems with the arrangements for downstream allocation and reconciliation were recognised by the industry which requested Gas Industry Co to make it a key priority on its work programme. As expected, Gas Industry Co identified numerous problems with the design of the existing voluntary arrangements in its review. Those issues led to the development of the Gas (Downstream Reconciliation) Rules 2008 (Reconciliation Rules), which were approved by the Minister of Energy and published in the Gazette on 29 May 2008.

The Reconciliation Rules provide for the appointment of a single downstream allocation agent by Gas Industry Co, and establish a standard methodology on all gas gates to ensure that gas quantities and UFG are more fairly and accurately allocated across all retailers. An important feature is the ability to mandate 'event' audits, for example, to examine instances of excessive UFG. The go-live date for the implementation of allocation and reconciliation under these rules is 1 October 2008.

### **Short-term wholesale gas trading**

The decline of the Maui gas field and the development of a more fragmented range of gas producers and fields have contributed to a need for the development of more sophisticated arrangements for the trading of gas. The October 2004 GPS requested that Gas Industry Co develop 'protocols and standards applying to wholesale gas trading, including quality standards, balancing and reconciliation'.

Gas Industry Co is adopting an incremental approach to this work stream area. As a first step, it developed a standard contract to be used for ad hoc bilateral trading between parties. This was released to the industry in April 2007. A standard contract is expected to lower transaction costs, thereby improving efficiency.

Gas Industry Co has also developed a simple IT platform for the efficient trading of short-term quantities of gas, and carried out a trial of the platform in March 2008. The key remaining issue to be resolved is the location of trade, and, in particular, whether this will be a notional hub or a physical point in the Maui pipeline. This issue is expected to be resolved later in 2008 and the platform should be available for use shortly after that point.

### **Transmission access**

The purpose of the gas transmission access work stream is to assess whether the open access arrangements meet the objectives of the Gas Act and 2008 GPS. Gas transmission pipelines in New Zealand have natural monopoly characteristics, which may have the effect of reducing competition or providing inefficient outcomes.

There are many aspects to transmission access, each of which has the potential to increase competition and/or result in efficiencies. This work stream is currently focussing on improving the efficiency of gas transmission pipeline balancing arrangements, improving interconnection arrangements to reduce barriers to competition, and enhancing transportation arrangements, such as facilitating competition among shippers.

## **Distribution contracting**

An important aspect of the efficiency of the retail and distribution sectors is the interface between retailers and distributors. In most cases, retailers do not have a choice about which distributor they use. This creates the potential for inefficient terms and conditions or prices between distributors and retailers, which may be passed on to consumers.

In respect of distribution arrangements, the level of competition in the retail market will be influenced by how easy it is for retailers to enter into contracts with distributors and the reasonableness of conditions in those contracts. The following outcomes in the 2008 GPS reflect this in that:

- gas industry participants are able to access distribution pipelines on reasonable terms and conditions;
- consistent standards and protocols apply to the operations relating to access to all distribution pipelines; and
- there is an efficient market structure for the provision of gas metering, pipeline and energy services.

Preliminary work in this area has been undertaken, however Gas Industry Co has deferred further work at this stage while other key work streams are being progressed.

## **Compliance and enforcement**

The 2008 GPS requires that gas governance arrangements are supported by appropriate compliance and dispute resolution processes. A specific regime for enforcing compliance with the Switching Rules and Reconciliation Rules has been developed by Gas Industry Co and will be established under the Gas Governance (Compliance) Regulations which have been recommended to the Minister and are expected to be approved in August 2008. The focus of the regime is on constant improvement through voluntary reporting by industry participants and consumers, and settlement of breach allegations. It is, however, mandatory for service providers such as the gas registry operator to report breaches, and there is provision for a Rulings Panel to determine material breaches which are unable to be settled.

## **Measuring the effectiveness of competition**

As the primary mechanism for delivering good outcomes for consumers, it is important that the effectiveness of competition be measured and monitored over time to ensure the continued appropriateness of the overall policy framework and the means by which it is being delivered. In particular, as shown in Figure 3 (see page 19), one of the possible drivers for intervening to protect consumer interests is lack of competition.

The initiatives described in the previous section, together with others already completed or underway, all contribute to delivering effective competition in the gas sector. However, the nature of the gas industry, and the relationships between the various sectors it comprises, means that effective

competition can be at risk if some of the 'pieces of the puzzle' are missing. Assessing the level of competition before certain key arrangements that facilitate more effective competition have been fully implemented is likely to provide an incomplete or inaccurate picture, and may result in unnecessary or inappropriately targeted interventions.

This raises two key questions:

- When to assess – given that the industry is currently in a state of institutional development, at what point is it appropriate to assess and monitor the effectiveness of competition?
- How to assess – what is an appropriate set of indicators to adopt when seeking to assess the level of competition in the industry?

These are addressed in the following sections.

### **Determining when to assess**

Assessing competition has been the subject of several reviews and reports over recent years. There are two reports in particular that give guidance in determining when it is appropriate to assess the level of competition in the New Zealand gas industry:

- ACIL Consulting (2001) Review of the New Zealand Gas Sector, prepared for the Ministry of Economic Development; and
- Allen Consulting Group (2006) The New Zealand Gas Industry in 2006 – Review of its State and Performance, prepared for Gas Industry Co.

The ACIL report sets out the following prerequisites for a competitive market:

- Full competition in production, wholesaling and retailing natural gas, and where gas can be freely traded between producers, wholesalers, retailers and consumers;
- An interconnected transmission and distribution system with clear rules for access by all prospective participants. Where pipeline capacity is in competition, capacity is traded and transmission prices are set by reference to the market. Where natural monopoly exists, clear rules for reference pricing are available and disclosure arrangements and legal remedies are available in an economic and timely manner to redress concerns;
- Arrangements in the transmission, retail and distribution sectors that provide confidence in the market that cross-subsidising is not occurring in vertically integrated organisations;
- A market where clear market signals encourage the efficient allocation of resources along the gas supply chain by providing information to market participants through flexible pricing arrangements, contracts of variable length, efficient gas trading mechanisms, and the scope for commercial negotiated settlements;
- A market where pricing is established according to a consumer's willingness to pay and market power does not interfere with the ability of consumers to exercise this preference. This means that

product differentiation can occur between different classes of consumers but price differentiation does not occur between consumer groups exhibiting similar willingness to pay; and

- Contestability in the market with the aim of achieving freedom of choice by all consumers to access gas on the most attractive conditions in terms of price, quality and reliability of service from retailers, wholesalers and producers. Industrial consumers able to negotiate supply and pricing terms that are compatible with their business needs.

The ACIL report findings are reflected in the GPS developed and published in October 2004, particularly the expectations around development of new market arrangements to facilitate competition. Initial Gas Industry Co work programmes drew on the ACIL Report amongst other things.

As input to providing strategic direction for its work programme moving forwards, and assistance in its role of providing advice to the Minister, Gas Industry Co commissioned Allen Consulting Group to review the state and performance of the gas industry in 2006.

The Allen Report confirmed that the priorities and tasks in the GPS<sup>9</sup> were *'... strongly consistent with the need to develop the fundamental elements of a well-functioning gas market, particularly in relation to the wholesale market, access to transmission and distribution pipelines, and the establishment of a customer switching registry'*.

The Allen Report's overall finding was *'...that the state of the New Zealand gas industry is concentrated and that there are substantial opportunities to enable better levels of competition...'*

The Allen Report acknowledged that *'The performance of the industry in developing new market arrangements expected in the GPS has been good...'*, however, it went on to conclude that *'It is too early to meaningfully measure competitive activity because the market systems are not yet in operation and the required information will not be available for a full assessment until April 2009.'*

Drawing on these reports and its own analysis, Gas Industry Co has identified a proposed minimum set of arrangements that it considers need to be implemented and operational before it is practical to make a meaningful assessment of the level of competition:

- a set of switching rules and a functioning gas registry;
- clear rules and arrangements for downstream reconciliation and allocation of gas;
- a transparent, functioning short-term wholesale gas trading market; and
- strong contractual alignment between retail and distribution contracts.

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<sup>9</sup> The October 2004 version of the GPS was in place at that time.

Rather than an absolute set of requirements, Gas Industry Co proposes to regard this set as a guideline, subject to regular review to determine if arrangements have reached a state of implementation where assessment has become practicable and meaningful.

It is important to note that, as suggested in Figure 3 (see page 19), there are other rationales for intervention to protect the interests of small consumers, particularly unequal bargaining power and information asymmetry: it may well be the case that an intervention is warranted on the basis of one or both of these irrespective of the assessed level of competition.

### Determining how to assess

Tracking performance against suitable indicators can, over time, provide insights into the effectiveness of market operations and competitive activity.

The review by Allen Consulting Group included consideration of a possible set of indicators that could be employed to provide a good picture of the level of competition that exists in, or is facilitated by, each sector of the gas industry. The indicators Allen Consulting Group proposed for each sector are reproduced in Table 2 below.

**Table 2: Competitive Activity Indicators as proposed by Allen Consulting Group**

Exploration & production	Processing	Transmission	Wholesale Trading
Participation in government auctions of frontier region blocks (MED)	Offers of excess capacity to new gas suppliers (IS)	Bids and offers of capacity posted (WT)	Bids and offers of gas posted (WT)
Number of wells drilled (MED)	Number of processing contracts in place (IS)	Capacity used and/or reserved (WT)	Number and quantities of short term gas contracts in traded (WT)
Number of mining permits issued (MED)		Number and quantities of short term capacity contracts traded (WT)	Shipper satisfaction with trading arrangements (IS)
		Number of access disputes (IS)	
Evidence of collusion or exclusive dealing (CC)	Evidence of collusion or exclusive dealing (CC)	Confirmation of effective ring-fencing (AP)	Evidence of collusion or exclusive dealing (CC)
Type of new products and evidence of innovation (IS)	Type of new products and evidence of innovation (IS)	Type of new products and evidence of innovation (IS)	Type of new products and evidence of innovation (IS)

Distribution	Retail trading (ind & comm)	Retail trading (residential)
Number of new connections (IS)	Number and type of market offers made (IS)	Number and type of market offers made (IS)
Time and average cost to connect a new customer- Greenfield & brownfield (IS)	Gross, net and multiple switching (SR)	Gross, net and multiple switching (SR)
	Customer satisfaction with retailer arrangements (CS)	Customer satisfaction with retailer arrangements (CS)
Number of access disputes (IS)	Number of customer complaints (EGCC)	Number of customer complaints (EGCC)
Confirmation of effective ring-fencing (AP)	Evidence of collusion or exclusive dealing (CC)	Evidence of collusion or exclusive dealing (CC)
Type of new products and evidence of innovation (IS)	Type of new products and evidence of innovation (IS)	Type of new products and evidence of innovation (IS)

Source: Allen Consulting Group analysis. Proposed information sources: MED is Ministry of Economic Development, CC is Commerce Commission, WT is wholesale trading system; AP is auditor of pipeline owner, ID is information disclosed under the Gas (information disclosure) regulations, SR is switching registry, IS is industry survey, and CS is customer survey.

Gas Industry Co has reviewed these, and related work undertaken by the Electricity Commission in the area of performance indicators. It considers that the indicators proposed by Allen Consulting Group provide a good starting point for the development of meaningful and measurable indicators of the level of competition in the gas industry. This is an area in which Gas Industry Co considers that more work needs to be done. In the lead up to beginning regular assessment and monitoring of the level of competition, there will also need to be refinement to accommodate changes in the industry, experience with the new arrangements and GPS expectations.

As input to further work on indicators, Gas Industry Co would like to take this opportunity to seek stakeholder feedback on the set of indicators proposed by Allens and reproduced in Table 2 above.

*Q1: Do you agree with Gas Industry Co's proposed guidelines for the arrangements that need to be implemented and operational before it is practical and meaningful to assess the level of competition? If not, what alternative guidelines would you propose?*

*Q2: What comments do you have on the set of possible competition indicators described here?*

*Q3: Is there any information or comment you can provide on current industry performance against these indicators?*



*Q4: To what extent do you think that gas faces competition from other energy forms, and how would you characterise that?*

*Q5: Would it be appropriate to include performance indicators relating to competition with other energy options, particularly electricity? If so, what additional information would you suggest?*

# 6

## Competition may be insufficient

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Although effective competition is the primary vehicle for promoting good consumer outcomes, the policy framework contemplates that this may be insufficient. The Gas Act contains regulation-making powers to protect small consumers, and the 2008 GPS sets out expectations in the area of consumer protection.

At the heart of the issue is under what circumstances, and in what way, is it appropriate to intervene to protect consumers?

Consumer protection law regulates private relationships between individual consumers and the businesses that sell the goods and services. Consumer protection covers a wide range of issues, including misleading and deceptive conduct, product liability, privacy rights, unfair business practices, fraud, misrepresentation, and other consumer/business interactions.

Creating an environment where consumers can transact with confidence is seen by Government as the ultimate goal of consumer protection policy; meaning in practice consumers should get what they reasonably expect from a purchase, and if not, have access to redress.<sup>10</sup> This is considered important to Government because where consumers are not confident, they may delay making transactions or choose not to purchase. When consumers lose confidence in a market, unnecessary costs can be incurred. Competition and market efficiency can be adversely affected and consumers transact less and suffer from inertia. Specifically, consumers incur extra costs in gathering information, paying more for products than is optimal, and continuing to purchase from the same supplier to avoid the potential risks associated with switching.

### **Possible need for consumer protection mechanisms**

The Government is committed to ensuring that gas is delivered to gas customers in a fair and equitable manner. It is desirable that 'fairness and equity' are achieved for all consumers, all of the time.

This concept includes ideas about price and service delivery. The concept of fair price and reasonable service levels reflect suppliers' and energy consumers' interests, as well as underlying costs. Fair

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<sup>10</sup> Comment by the Minister of Consumer Affairs in her Foreword to the 'Review of Redress and Enforcement Provisions of Consumer Protection Law: International Comparison Discussion Document', May 2006, by the Ministry of Consumer Affairs

pricing and reasonable service delivery require energy providers to be adequately remunerated, while helping to ensure that vital energy services are widely and efficiently available to potential customers.

There are, however, a number of potential barriers to consumers having access to fair prices and reasonable levels of service, having choices of supply, and making effective decisions about the purchase and subsequent use of products and services. These include:

- weak or limited competition;
- unequal bargaining power; and
- imperfect or asymmetric information.

These are discussed in turn here. They are reflected in Figure 3 (see page 19) (the overall policy framework for promoting good outcomes for consumers) and provide a structure for assessing the current situation, as set out in subsequent sections of this Discussion Paper.

### **Weak or limited competition**

There are a number of factors that can inhibit competition and/or limit its effectiveness in delivering good outcomes for consumers in general, and small consumers in particular.

One of the underlying themes is that the unfair exercise of market power by participants can lead to barriers to competition. This in turn can lead to weak competition with consequential adverse impacts on consumer choice, quality of service and price. The gas transport sector (transmission and distribution) and, to a lesser extent, the gas retail sector, have been criticised for the level of market power participants have. Therefore, the political and regulatory challenge for the market, and the agencies involved in its oversight, is to mitigate that market power without expropriating the legitimate property rights of the existing players, causing the market or existing players to fail, or removing incentives vital for the necessary expansion and investment in the industry.

Another factor is the size and nature of the market itself. Residential customers account for approximately 5% of total production, and direct reticulated industrial and commercial customers account for approximately 25% of the market. There has been relatively little growth in the direct consumer gas market, but active inter-fuel (electricity) and intra-fuel (LPG, both reticulated and bottled) competition. The small size of the gas market, and the limited number of participants, potentially restricts the scope for competition for retail (domestic and small business) consumers. However, to the extent that electricity is an alternative energy option, this is offset when the scope for competition in the electricity market is taken into account.

A third factor is the structure of the market and the players within it. Typically domestic and small business consumers receive a delivered gas supply that bundles gas and transport into a single arrangement between the retailer and the consumer. The contractual interfaces between the parties behind that bundled service can inhibit competition or limit its effectiveness. Some retailers are

vertically integrated; that is, they are both a retailer and distributor of gas. Some are horizontally integrated; that is, they retail both gas and electricity. Vertical and horizontal integration can enhance competition, for instance, by exploiting the synergies between closely related businesses. However, there can also be a loss of transparency and availability, for instance, in wholesale contracting and pricing, when transactions are internalised to the integrated entity. This can weaken competition and be a barrier to entry for new participants.

Competition can stimulate firms to develop new products, services and technologies. This gives consumers greater selection and better products. However, it is important to note that there is no obligation to supply, and that retailers are free to determine what products they wish to sell and to what customers. Greater selection typically causes firms to lower prices for products, compared to what the price would be if there was no, or little, competition and to implement efficiency gains to remain 'competitive'. Conversely, an uncompetitive market can mean that consumers are subject to onerous pricing structures, such as discriminatory pricing or excessive charges for services.

In any market there is always the possibility that a player may become insolvent. There is concern, as a matter of social policy, to ensure security of supply. There are two scenarios for such an insolvency:

- where there are other retailers ready, willing and able to acquire the insolvent retailer's customers – in which case market forces should resolve the issue; or
- where there are no other retailers who wish to supply the insolvent retailer's customers – in which case, regulation may be required to ensure consumers are not adversely affected.

### **Unequal Bargaining Power**

Where parties to a transaction have unequal bargaining power, there is a risk that the party with less power will incur a higher cost, or be subject to unfair contract terms in buying the commodity than they would have if the commodity had been traded between two parties with equal bargaining power. In such a situation, one party is disadvantaged in trading and their market position is worsened. On the other side, the beneficiaries of the trade obtain greater benefits.

Two areas where domestic and small business consumers have a particular disadvantage are their ability to resolve complaints with retailers and their ability to negotiate price and other key terms and conditions. Typically, the smaller the customer the greater the inequality. Accordingly, it is domestic and small business consumers that are likely to be more adversely impacted by unequal bargaining power.

### **Imperfect or asymmetric information**

One of the most significant concerns for consumers is access to and use of information. Consumers require significant information and the nature of their requirements can vary at different points in their relationship. Access to timely, accurate and comprehensible information is required, for instance, when the consumer:

- is choosing between fuel options, selecting a gas supplier and choosing a supply option;
- is considering making significant changes to their energy requirements, such as purchasing new equipment, building renovations, or disconnecting;
- has an enquiry about their gas supply, meter, account or some other aspect of their relationship with the supplier; and
- has a complaint and is seeking resolution and remedies.

Generally, consumers will have less information about a product or service they are purchasing than the supplier – information asymmetry. Consumers also vary in their capacity to seek out, absorb and understand available information. For instance, concerns have been raised that pricing information is not accessible for some consumers, and that it may be difficult for some consumers to compare the options with those offered by other retailers. In some cases, consumers may not receive the information required to make a meaningful choice until after the contract with a supplier has been formed. If consumers do not have timely access to accurate retailer pricing information, or they have to incur a cost to obtain the information, then consumers may not be able to make informed decisions when selecting a gas supplier.

The consequences of decisions made on the basis of imperfect information can be extremely significant for the individual involved. This can result in poor decision outcomes for consumers, and lead to a lack of trust and confidence in products or services. However, the cost to acquire the information required, and the ability to analyse it, need to be balanced against the possible savings to be made from a more informed decision.

## **Powers to regulate and provide advice**

This subsection describes the relevant powers to regulate and other possible intervention mechanisms that could be employed if there is a case for intervention to protect the interests of domestic and small business gas consumers.

Measures available to Gas Industry Co under the Gas Act and the GPS can be summarised (in no particular order) as follows:

- regulations or rules (where there is a relevant power under the Gas Act);
- contractual arrangements or voluntary guidelines;
- information and education; and
- advice to the Minister.

Gas Industry Co does not consider that the co-regulatory model implies a preference for contractual (non-regulatory) solutions. Both contractual and regulatory solutions will be considered in the first

instance. Gas Industry Co has developed the following guidelines to assist in determining when a contractual (non-regulatory) solution may be preferred<sup>11</sup>:

- The contractual option is estimated to be more cost-effective than the other practicable options available (to establish this, all practicable options need to be considered) and is capable of being implemented within the time frames agreed with the Minister in Gas Industry Co's Strategic Plan.
- The contractual option has an effective level of industry commitment. In some cases, this may require a commitment of 100% of all involved industry participants, while in other cases, a level of commitment less than this might be acceptable when it can be demonstrated that the option will still be fully effective at this lower level of commitment.
- The detail of the proposed intervention is expected to evolve rapidly after the start of implementation (frequently, or where interests are common, contracts can be adjusted more rapidly than rules and regulations).

The possible mechanisms are discussed in turn as they relate to possible consumer protection measures.

### **Regulations and rules**

Subpart 2 of Part 4A of the Gas Act provides for co-regulation of the gas industry by the Government and Gas Industry Co (as the approved industry body under 43ZL(1) of the Gas Act). The GPS invites the Gas Industry Co to develop and submit to the Minister for approval, proposed arrangements providing for effective industry arrangements in several areas. To achieve the Government's objectives for the gas industry, the Gas Act provides for the Minister to make rules, or recommend regulations, in respect of a range of matters, as summarised in Table 1 (see page 15). A description of the full set of powers in the Act is set out in Appendix C.

It is also important to note that other agencies have legislative powers relevant here, but these are general rather than gas-specific. These are described earlier in this Discussion Paper in section 4.

### **Contractual arrangements and voluntary guidelines**

Gas Industry Co is able to develop voluntary arrangements as an alternative to recommending regulations or rules. For instance, developing and publishing voluntary model retail contracts could provide an alternative to regulated minimum terms. Similarly, voluntary guidelines on best practice in connection/disconnection practices could assist in addressing any issues identified.

### **Information and education**

Providing targeted information can be a very effective means of intervention. For instance, monitoring and reporting on market activity, publishing complaints statistics, or providing a simple means for

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<sup>11</sup> Information paper on Policy Development, April 2008, [http://www.gasindustry.co.nz/Downloads/Documents/Publications\\_Presentations/140509.pdf](http://www.gasindustry.co.nz/Downloads/Documents/Publications_Presentations/140509.pdf)

consumers to compare tariffs and energy options are all possible means of addressing the issues identified.

### **Advice to the Minister**

Gas Industry Co can provide advice to the Minister on any aspect of the Act or the GPS. This is particularly relevant where Gas Industry Co considers that the most appropriate course of action is within the ambit of another agency such as the Commerce Commission or Ministry of Consumer Affairs.

### **International comparisons**

As input to this work, Gas Industry Co has considered the approach to consumer protection adopted in relevant overseas jurisdictions. In particular, it has focused primarily on the United Kingdom and Australia (particularly Victoria)<sup>12</sup>. In comparing regimes it is important to acknowledge that each jurisdiction delivers consumer protection through a set of (often interrelated) laws and arrangements. This means that it can be misleading to compare individual elements without taking account of the overall framework.

Broadly speaking, New Zealand's consumer protection regime is generally consistent with those that apply in the United Kingdom and Australia. There are, however, two key differences worth noting, and these are discussed here.

### **Gas retail licensing**

In both the UK and Victoria, gas retailers are required to obtain a supply licence in order to retail gas to end consumers. The licence sets out certain obligations on the holder, many of which are aimed at protecting the interests of small consumers. The obligations are enforceable by statutory agencies: OFGEM in the UK and the Essential Services Commission in Victoria.

In New Zealand, gas retailers have a range of obligations under the various Acts (Gas Act, Commerce Act, etc), but there is no document that draws the obligations together into a single gas-specific licence, nor a single agency to enforce such a licence. However, in the case of domestic gas consumers, some aspects of a licensing regime could possibly be achieved through the regulation-making powers in the Gas Act relating to minimum terms and conditions<sup>13</sup>.

### **Prohibition on unfair contract terms**

In the United Kingdom and Australia, the consumer protection legislation specifically prohibits unfair terms. Unfair terms have been defined as 'terms contrary to the requirement of good faith that cause

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<sup>12</sup> This work was undertaken for Gas Industry Co by an independent consultant, Sarah Mehrrens, as part of a wider piece of research on consumer issues for this project.

<sup>13</sup> The Gas Act currently provides for regulating minimum terms and conditions in contracts with domestic consumers, and Gas Industry Co intends writing to the Minister recommending the Act be amended to extend this to include contracts with small business consumers also.

a significant imbalance in the parties' rights and obligations under the contract to the detriment of consumers.'

When the enforcement agencies believe that a contract term is unfair they can take enforcement action even when consumers have signed a contract. In the United Kingdom unfair terms provisions apply to standard contract terms, whereas in Victoria they may apply to both standard and negotiated terms. The term 'unfair' is defined in a general way in both jurisdictions, and a non-exhaustive list of what may constitute an unfair term is provided. In both the United Kingdom and in the state of Victoria only a court can decide whether a term is unfair.

## **Conclusion**

In considering the interests of domestic and small business consumers, reliance on effective competition may be insufficient. Possible cases for intervention arise if there is weak competition, unequal bargaining power or asymmetric information.

Gas Industry Co chooses from a number of possible approaches, ranging from recommending regulatory solutions pursuant to the Gas Act, through to developing voluntary or contractual means such as model arrangements and information provision.

The New Zealand framework for consumer protection is broadly consistent with that of relevant overseas jurisdictions, however there are some key differences relevant to this work. In particular, New Zealand does not have a gas retailer licensing regime (rather, it has industry specific regulations and rules), and there is no general consumer law that prohibits unfair contract terms.

These observations are important inputs to assessing the current situation for domestic and small business consumers, and for proposing a range of options to address any issues identified. This assessment is set out in sections 9, 10 and 11 of this Discussion Paper.



# 7

## Progress with advancing consumer issues to date

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Since its inception, Gas Industry Co has undertaken a number of work streams aimed at improving consumer outcomes. This section provides a comprehensive description of the consumer issues initiatives, to provide the foundation for assessing the current status, identifying issues to be addressed, and determining the appropriate steps for moving forward.

### Gas Industry Co Consumer Forums

Regulatory agencies often struggle to engage with consumers through their regulatory processes. From the outset, Gas Industry Co signalled its intention to proactively seek consumer views in the design and implementation of new gas governance arrangements. It identified that regularly hosting formal structured consumer forums could provide an important mechanism to deliver on that intention.

The inaugural Gas Industry Co Consumer Issues Forum was held in June 2006 and forums have subsequently been held in September 2007 and May 2008. Gas Industry Co reports the outcomes of its Consumer Forums in its Quarterly Reports to the Minister.

The key outcomes of the forums are briefly summarised below.

#### June 2006 and September 2007 Consumer Forum

- General feedback provided by a number of participants indicated that they found the forums interesting and useful, and that they were pleased Gas Industry Co was making an effort to consider consumer views.
- Consumer representatives noted that the EGCC scheme had not been approved by the Minister of Energy and, as such, not all gas consumers currently have access to an independent dispute resolution service (refer section 0 below). The majority of forum attendees were strongly of the view that in the interests of fairness and consistency the Minister should only 'approve' one consumer complaints scheme under the Gas Act. Attendees also noted that the existence of the EGCC dispute resolution service was not widely known/advertised to consumers at that time.
- Forum attendees raised concerns with retail contracts, acknowledging that the large majority of consumer contracts are 'not read, not understood, poorly presented and sometimes not received'. It was therefore the view of the consumer representatives that universal benchmark terms and

conditions are of critical importance to gas consumers. While attendees understood the circumstances that gave rise to the earlier Gas Industry Co recommendation (see section 0), they viewed the development of a model contract or benchmark terms and conditions as a priority for the Gas Industry Co.

- Given the size and nature of the gas market in New Zealand, Forum attendees considered that more standardisation was required to protect and improve consumer outcomes.
- Consumers expressed a desire for more information about their gas supply and the charges they face. They wanted this information to be clearly presented, and they wanted to be able to compare information between retailers and between energy sources, particularly electricity, natural gas and LPG.
- Consumers wanted to have a single point of access into the gas supply system to make it easier and more attractive to be a gas customer.
- Consumers expressed concerns about the rising costs of gas.

### **May 2008 Consumer Forum**

To ensure that this Discussion Paper included up-to-date consumer views, it was decided to focus the May 2008 Consumer Forum around developing and refining the proposed consumer expectations discussed in the next section.

The programme for the Forum comprised:

- Presentation of papers from external speakers setting the context. The speakers comprised representatives from the Commerce Commission and the EGCC and a consultant engaged earlier by Gas Industry Co to examine overseas approaches to dealing with consumer issues.
- Presentation of a Gas Industry Co update including a description of the consumer issues project and progress on related projects on consumer complaints, switching and downstream reconciliation.
- A structured discussion on the proposed set of consumer expectations was generated by splitting the Forum into small groups and asking each group to consider four questions. The questions were aimed at validating or amending the proposed expectations, getting a sense of the relative importance to consumers of each expectation, identifying gaps in current performance in meeting each expectation, and providing each group with the opportunity to suggest actions that could be taken in consequence. A number of changes were made to the expectations as a result of the discussions.

### **Complaints resolution scheme**

This work stream has seen a comprehensive effort across both the electricity and gas sectors over the past few years. The milestones are summarised in Table 3 for ease of reference, and described in more detail in the paragraphs below.

## Early steps – the EGCC Scheme

The first steps in this work began during 2002 as an initiative in the electricity sector, to form what was then known as the Electricity Complaints Commission and to establish a complaints resolution scheme. The scheme was put in place, at least in part, as a result of Government suggestions that some form of complaints resolution scheme was necessary and that industry participants were expected to provide one.

Most gas retailers and some gas distributors became members of the ECC Scheme as electricity companies. From 1 April 2005 the scheme was expanded to include gas complaints and it became the Electricity and Gas Complaints Scheme (EGCC Scheme). Membership of the scheme is voluntary.

The EGCC Scheme provides most electricity and gas consumers with access to an independent dispute resolution service through the Office of the Electricity and Gas Complaints Commissioner for complaints about their supplier. The EGCC Scheme includes a Code of Practice setting out requirements for conduct and good practice by gas and electricity suppliers. It is free to file a complaint, and is funded by its members (electricity and gas retailers and distributors) but is independent of the industry in its investigation processes and decision-making.

## Other schemes

Membership of the EGCC Scheme is reasonably comprehensive amongst electricity and gas retailers, however, there are some retailers that have chosen to remain outside the EGCC Scheme. Some have developed their own schemes. Two particular energy-based complaints resolutions schemes have subsequently been developed:

- The Independent Energy Complaints Resolution Scheme (IECRS) is an electricity and gas disputes adjudication service that is set up to resolve disputes between energy consumers and member suppliers. The current members are Bay of Plenty Energy and King Country Energy.
- The Electricity and Gas Disputes Resolution Service (EGDRS) is an electricity and gas disputes adjudication service that is set up to resolve disputes between energy consumers and member suppliers. The current members are Trustpower and Bosco Connect Limited<sup>14</sup>.

## Approval of a scheme

Section 43E of the Gas Act requires every gas distributor and every gas retailer to participate in a complaints resolution system that is approved by the Minister of Energy.

The October 2004 GPS invited Gas Industry Co to recommend arrangements for the development of efficient and effective arrangements for the proper handling of consumer complaints. In response to this invitation, and following consideration of the issues and options, Gas Industry Co wrote to the Minister in March 2005 recommending the EGCC Scheme be approved as a complaints resolution

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<sup>14</sup> Bosco Connect Limited (owned by a combination of Mighty River Power and private interests) provides electricity, gas and telecommunications services to apartment buildings and embedded networks.

scheme for gas customers under the Gas Act. In the absence of another consumer complaints scheme being approved, this would make the EGCC Scheme mandatory for all gas distributors and retailers.

The Minister advised Gas Industry Co in May 2005 that, while he was pleased with the recommendation made by Gas Industry Co, he anticipated that the EGCC Scheme would need to be expanded to cover owners and occupiers of land and give consideration to complaints raised by consumers of LPG before he could consider approving it. The expansion of the EGCC Scheme to include land owner/occupier complaints came into effect in October 2006.

The Electricity Act also has provision for a complaints resolution system to be approved. However, in that case, approval is given by the Electricity Commission rather than by the Minister of Energy. In mid 2007 MED advised that there was a preference for the Electricity Commission and the Minister to be consistent in their approaches to approval. This was subsequently set out in the revised GPS issued in April 2008, along with other expectations relating to complaints resolution. Accordingly, Ministerial approval of Gas Industry Co recommendation was delayed until this had been completed.

In response, the Electricity Commission and Gas Industry Co initiated a joint work stream to develop proposed requirements for an approved scheme. A joint consultation paper was published in March 2008 proposing a process for approving a single energy-based complaints resolution scheme by the Electricity Commission and the Minister (on recommendation from Gas Industry Co), and proposing certain requirements that any approved scheme would need to meet. The requirements were set out under headings such as objective and scope, membership, procedure, decision-making, member compliance, governance, funding and performance monitoring.

If a joint electricity and gas complaints resolution scheme is approved, participation will be required by all gas and electricity retailers and distributors in accordance with the Gas and Electricity Acts.

Of particular relevance to this work, the consultation document proposed that:

- the arrangements should be capable of covering reticulated LPG;
- an approved scheme would have scheme rules, which would be binding on members; and
- any Code of Practice embodied in the scheme will be restricted to issues relating to consumer complaints.

A number of submissions on the joint consultation paper were received in May 2008. The submissions raised some important issues. As a result it has been decided to extend the process by including an additional consultation step.

### **In summary**

The milestones in the area of consumer complaints are summarised in Table 3 for ease of reference.

**Table 3: Summary of consumer complaints resolution work stream to date**

Date	Development
2001	Electricity retailers and distributors form a voluntary complaints body called the Electricity Complaints Commission.
2004	The Electricity Complaints Commission is expanded to include gas complaints and is renamed the Electricity and Gas Complaints Commission (EGCC).
March 2005	Gas Industry Co recommends EGCC as a complaints resolution scheme for gas customers and requests the Minister approve it under the Gas Act.
May 2005	The Minister advises that, whilst pleased with the recommendation, he does not intend to approve the EGCC at this stage because he anticipates that the scheme will be expanded to cover owners and occupiers of land and to give consideration to complaints raised by users of LPG.
October 2006	Expansion of the EGCC to include land complaints.
May 2007	Gas Industry Co writes to MED requesting that the Minister approve the EGCC scheme.
August 2007	MED advises that officials are of the view that there will be advantages if complaints schemes for gas and electricity are approved in a similar timeframe and a degree of consistency is achieved. Accordingly it is not intended to approve the EGCC at this point.
September 2007	Gas Industry Co has discussions with MED and Electricity Commission regarding a joint approach to approval and governance of a consumer complaints scheme. MED indicates that this will be required in the new GPSs.
March 2008	Gas Industry Co and Electricity Commission publish joint consultation paper proposing a process for approving a single energy-based complaints resolution scheme by the Electricity Commission and the Minister (on recommendation from Gas Industry Co), and proposing certain requirements that any approved scheme would need to meet.
May 2008	Submissions received on joint consultation paper being consider by Gas Industry Co and Electricity Commission.
July 2008	Revised approach including additional consultation step confirmed.

This work stream, initiated in 2002, has evolved over time and with feedback from industry, consumers and the Minister. In the joint Discussion Paper issued in March 2008, Gas Industry Co and the Electricity Commission indicated that the two entities expected to seek applications to be an approved scheme in mid 2008. With the inclusion of an additional consultation step, it is expected that approval of the selected scheme will take effect in mid to late 2009.

## Model Contracts

The October 2004 GPS also invited Gas Industry Co to develop arrangements for model contract terms and conditions between consumers and retailers. The work undertaken to date is described here.

## Early steps

The Model Contracts Working Group (MCWG) was established by Gas Industry Co in 2005 to examine contractual issues arising between retailers and their customers, and to develop contract guidelines and model arrangements for domestic retail contracts. The group was comprised of individuals with experience from across the gas sector including consumer, retail, distribution, and transmission interests, and with an independent chair. The Electricity and Gas Complaints Commissioner also sat on the group as an observer.

Gas Industry Co, through the MCWG forum, reviewed existing domestic contracts with the purpose of determining whether the existing contractual arrangements reflected the rights and responsibilities of each party fairly, and enabled an efficient market where consumers have the option to choose between available suppliers. A set of key objectives was also established covering customer, distributor, retailer and meter owner perspectives, to provide a framework for determining an appropriate set of model contract guidelines moving forwards. A set of model contract guidelines was then developed to meet these objectives, starting with the EGCC Code of Practice. Gas Industry Co consulted on these draft model contract guidelines in late 2005 and the possible mechanisms for their implementation.

In June 2006, following consideration of consultation submissions, Gas Industry Co made a recommendation to the Minister in response to the GPS invitation. The key elements of the recommendation can be summarised as follows:

- Gas Industry Co would not develop a separate model contract but rather recommend that model domestic contract guidelines would continue to be effected through the existing EGCC Scheme (this scheme would continue to administer and develop existing codes of practice in accordance with its own constitution and governance arrangements).
- The Minister would be asked to approve the EGCC Scheme under the Gas Act. This would, in effect, give mandatory status to the EGCC Scheme code of practice.
- The Minister and Gas Industry Co would jointly suggest to the EGCC members that a number of amendments be made to the EGCC Scheme to improve self monitoring and access to the scheme.
- Gas Industry Co would review the effectiveness of the arrangements between consumers and their retailers within two years of the EGCC Scheme being approved. This review would include an evaluation of the nature of the contracts, and an evaluation of the level of compliance by retailers with the code of practice. Following this review, Gas Industry Co would make recommendations to the Minister in light of the review findings.

Some of the key factors considered in making the above recommendation in June 2006 were as follows:

- the gas retail market is relatively small (approximately 230,000 gas customers);
- the (then) current EGCC Scheme code of practice contained requirements which provided a reasonable level of consumer protection to customers; and

- the majority of the gas retailers (at the time of the recommendation) were members of the EGCC Scheme. Only four out of the nine retailers were not members and three of those were owned by the same parent company.

The Minister wrote to Gas Industry Co in July 2006 advising that, whilst he agreed in principle with Gas Industry Co's recommendations, he considered it inappropriate to approve the arrangements until such time as he had approved the EGCC Scheme (progress towards this approval is discussed in the previous section).

### **Developments and recent events**

Since that time there have been a number of developments in the area of retail contracts, and some recent events which have caused Gas Industry Co to revisit its June 2006 recommendation to the Minister on model contracts. These can be summarised as follows:

### **Evidence of problematic relationships**

In August 2007, a retailer wrote to the Fair Trading Branch of the Commerce Commission (and provided Gas Industry Co with a copy) alleging that another retailer:

- does not have appropriate termination and amendment provisions in its contracts with its customers;
- is not properly disclosing contracts to its customers;
- has refused to switch customers at the customers' request;
- has unilaterally amended its customers' contracts to avoid the effect of the termination provisions in those contracts; and
- is making a number of misleading statements about passing on upstream costs in the form of price increases.

The parties concerned were not members of the EGCC scheme and therefore not bound by the code of practice which has provisions that would deal with the allegations relating to disclosure of contracts and inappropriate termination and amendment provisions.

### **Lack of progress in code of practice changes**

An integral part of Gas Industry Co's recommendation to the Minister on model contracts was that there should be a number of amendments to the EGCC Scheme and code of practice to improve self monitoring and access to the scheme. Accordingly, Gas Industry Co wrote to the Chair of the EGCC Scheme in June 2006 requesting that the EGCC Scheme include a number of additional guidelines in its code of practice and consider a number of other amendments and additions to its code of practice. Since that time there have been several points of engagement on the changes sought, however they have not been progressed. Gas Industry Co understands that this is partly due to other priorities and to the EGCC decision to undertake a composite review of both electricity and gas codes of practice.

## **Governance of EGCC Scheme**

There have been some issues raised about aspects of the EGCC Scheme governance arrangements. In particular, there is no obligation for the EGCC Scheme to consider any requested code of practice changes within any particular timeframe and no obligation to apply the Gas Act objectives to its consideration of any proposed code of practice changes. The relatively small number of gas consumers compared to electricity consumers<sup>15</sup> and lower numbers of gas complaints<sup>16</sup>, could perhaps give rise to a tendency for electricity matters to take prominence.

Further, the constitution of the EGCC requires that any change to the code of practice must be supported by a nine tenths majority of the Scheme Amendment Committee which is made up of five retail representatives and five consumer representatives. This is a high threshold for change and may be impeding the progress of efficient and consumer enhancing features.

## **Difficulties in arranging monitoring of contracts**

MED raised concerns during the development of the recommendation on model contract arrangements that there was a lack of proactive external monitoring of retailer compliance with the EGCC Scheme code of practice obligations. In response to this concern, Gas Industry Co explored the possibility of an agency such as the (then<sup>17</sup>) Consumers' Institute undertaking this monitoring role.

Gas Industry Co has not been able to formalise such an arrangement as it has encountered several problems. One in particular is funding, where there is concern that the Gas Act may not provide for the Gas Industry Co levy to be used to meet such costs. In the absence of funding, external monitoring of retailer compliance may not occur.

## **Advice of Allen Consulting Group**

The Allen Consulting Group report entitled: *The New Zealand Gas Industry in 2006*, noted that it was 'not ideal' for the EGCC Scheme to have dual roles (rule making and rule enforcement) albeit in a market the size of the New Zealand gas retail industry and with other competing priorities. The report also suggested that there was an opportunity for the EGCC Scheme code of practice to be brought within the ambit of Gas Industry Co, potentially as a set of rules made under the Gas Act.

## **Reconsideration of Recommendation**

In April 2007, Gas Industry Co reconsidered its earlier recommendation to the Minister in light of these developments and events and decided to keep a watching brief to determine if there were any changes to industry circumstances that might 'tip the balance' in favour of a different recommendation on model contracts.

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<sup>15</sup> For instance, in 2006 there were approximately 229,000 residential gas consumers compared to 1,603,000 residential electricity consumers.

<sup>16</sup> The EGCC Annual Report for 2007 shows that complaints on gas issues represented 5.6% of all complaints, compared to 88.3% for electricity issues.

<sup>17</sup> Consumer's Institute is now known as Consumer NZ.



In September 2007 Gas Industry Co again reconsidered its recommendation, concluding that the balance may now favour a withdrawal of the recommendation. It resolved to revisit its work in this area, through the forum of this Consumer Issues Project, with a view to:

- Determining the preferred mechanism, be it continuing with the EGCC scheme, establishing a voluntary Gas Industry Co code of practice, which is required to be enforced by the approved complaints body, regulated minimum terms and conditions, or some other mechanism identified.
- If required as a result of that preferred position, withdrawing Gas Industry Co's June 2006 recommendation to the Minister on model contracts and replacing it with a new recommendation.

Gas Industry Co wrote to the Minister in December 2007 setting out the status of this work stream and its intention to review its earlier recommendation.

### Revised GPS

In April 2008 the Minister released a revised GPS. The revisions included, amongst other things, a revised outcome regarding retail contracts:

- The 2004 version of the GPS expected 'the development of model contract terms and conditions between consumers and retailers'.
- In the April 2008 version of the GPS, this changed to an outcome that 'contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers'.

The changes refocus the 'outcome' from simply ensuring that model contracts exist, to ensuring more broadly that contractual arrangements adequately protect the long-term interests of small consumers. This amendment allows solutions other than model contracts to be considered.

### In summary

The milestones in the area of model contracts are summarised in Table 4 for ease of reference.

**Table 4: Key milestones in the model contracts work stream**

Date	Development
2005	Gas Industry Co Model Contract Working Group concludes that the existing EGCC code of practice contains (with a few minor exceptions) adequate consumer protection provisions.
June 2006	A recommendation is made to the Minister that a separate model contract is not developed by Gas Industry Co, but rather that model domestic consumer contract guidelines continue to be given effect through the EGCC. Approval of the EGCC by the Minister, along with a number of amendments to the EGCC code of practice, forms an integral part of the recommendation.
June 2006	Gas Industry Co writes to the EGCC Chairperson requesting that the EGCC considers a number of amendments to its code of practice. These requests have not been addressed.

Date	Development
October 2006	Allen Consulting Group report notes that it is not ideal for the EGCC scheme to have dual roles (rule making and rule enforcement).
August 2007	Gas Industry Co advised by a retailer of its concerns regarding the retail practices of another retailer.
September 2007	<p>Gas Industry Co Board determines that there should be a review of the recommendation of model contract arrangements to consider:</p> <ul style="list-style-type: none"> <li>• whether to withdraw the recommendation to the Minister on model contracts of June 2006; and</li> <li>• the preferred approach moving forward.</li> </ul> <p>The options to be considered include a voluntary Gas Industry Co code of practice which is required to be enforced by the approved complaints body, and regulated minimum terms and conditions.</p>
April 2008	Government issues new GPS with revised expectation regarding retail contracts, changing from 'the development of model contract terms and conditions between consumers and retailers' to an expectation that 'contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers'.

Gas Industry Co work in the area of model contracts is now at a crossroads: there is a decision to be made on the most appropriate mechanism for delivering the outcomes contemplated by the GPS. Determining the way forward in this area is a key deliverable of this Consumer Issues Project.

## Low fixed charges and transparency

In November 2005 the Minister wrote to Gas Industry Co on a range of issues in the context of the October 2004 GPS. The letter raised several issues of concern to consumers that the Government was expecting Gas Industry Co to address. The Minister indicated that he was looking for recommendations from Gas Industry Co on a number of matters including:

- the level of fixed charges for small users; and
- the transparency of charges on consumer bills (ie the possible separation of transmission, distribution, and retail components).

Accordingly, Gas Industry Co investigated the issues to consider how best to respond to the Minister on the points he raised.

### Low fixed charges for small users

On the level of fixed charges, Gas Industry Co recommended against preparing regulations to limit or control retail fixed charges for small users, or the charges that retailers pay for transmission, distribution and meter rental. This recommendation was based on three main points:

- The policy rationale to limit fixed charges to small users was not strong and there were no efficiency benefits that Gas Industry Co had been able to identify that would warrant such regulations. There appeared to be low correlation between small gas users and social variables such as household income or consumer age. Limiting fixed charges to small users was therefore unlikely to assist with delivering on social objectives.
- There were alternatives to reticulated natural gas for most small users that provided some competitive tension on charges generally. It could be more efficient for small users to switch to those alternatives.
- In order to successfully regulate low fixed charges to small users, it could be necessary to regulate the transmission, distribution and metering services provided to retailers, and this was likely to involve some significant practical difficulties.

Overall, Gas Industry Co concluded that regulating for low fixed charges to small gas users could produce inefficiencies in the economy and would be unlikely to pass the hurdle of an assessment under section 43N of the Gas Act (which includes a cost-benefit assessment). The Minister accepted Gas Industry Co's recommendation.

### **Transparency of charges**

On the transparency of charges on consumer bills, Gas Industry Co recommended against preparing regulations to compel price component disclosure in customer invoices. This recommendation was based on the following main points:

- Compelling price disclosure on customer invoices to separate transmission, distribution and retail components of price posed some practical difficulties for retailers, it would incur significant costs to reconfigure retailer billing systems, and it could lead to customer confusion. Any advantages of compelling component disclosure tended to be outweighed by some significant disadvantages.
- The main driver for component price disclosure appeared to relate to possible disputes between retailers and network companies about the reason for price increases. Members of the EGCC scheme are already required to provide consumers with accurate written reasons for price changes including any changes in cost components. If this scheme was made compulsory, all retailers would be required to make adequate disclosure whenever they changed prices, including any changes in cost components.

Overall, Gas Industry Co concluded that regulating for price component disclosure in customer invoices would be unlikely to pass the hurdle of an assessment under section 43N of the Gas Act (which includes a cost-benefit assessment). The Minister accepted Gas Industry Co's recommendation.

### **Disconnection/reconnection practices**

The November 2005 letter from the Minister also asked Gas Industry Co to investigate and make recommendations on the issues surrounding meter removal and disconnection and reconnection of customers.

## Initial report to the Minister

The Gas Industry Co report to the Minister in June 2006 recommended that regulations should not be prepared to limit the level of disconnection or reconnection charges or to require those costs to be rolled into standard tariffs. This was because there appeared to be no evidence that disconnection or reconnection charges were significantly above cost and it was generally efficient for the party requesting a disconnection or reconnection to pay for the cost of the disconnection or reconnection.

However, the report to the Minister acknowledged that:

- Arrangements and charging regimes for disconnection and reconnection were confusing for customers and showed only a low degree of standardisation across the industry. It was clear that existing industry practices for disconnection and reconnection did not meet consumers' legitimate expectations.
- Consumer contracts typically contained very little information about the size of potential disconnection and reconnection charges and the circumstances in which those charges would be imposed. Information available on industry participant websites was often incomplete, outdated and confusing.
- In some cases, disconnection had taken place and meters had been removed from consumers' premises in circumstances where this did appear to be efficient.

It was therefore recommended that Gas Industry Co should establish an industry project team to continue the development of an agreement to establish standard practices across the industry for disconnection and reconnection.

## Subsequent progress

An industry project team was established and did address the disconnection and reconnection issues. Although the project team did make some progress with the issues, it struggled to achieve an agreement about where the problems lie and how they might be addressed by the industry. Retailers, distributors and meter owners come to the issue with different commercial drivers and this proved difficult to overcome in a project team setting.

It was therefore left to Gas Industry Co to address the issues and propose some appropriate solutions to the project team and, subsequently, to the industry. Gas Industry Co analysed the issues and identified three possible policy problems that relate to gas disconnections. These were:

- *Different retailer practices following vacancy*: Retailers have adopted different approaches to triggering disconnections following vacancy and different practices for charging customers for those disconnections and subsequent reconnections. The different charges and practices, and the lack of clear consumer information, have reinforced a perception for some consumers that some of these charges and practices are unfair and unreasonable;
- *Seasonal disconnection and reconnection*: Some consumers are requesting disconnections during the summer in order to avoid paying fixed charges to retailers during that period. This leads to unnecessary disconnection and reconnection costs;

- *Inefficient retailer-initiated disconnections following vacancy:* Some retailers appear to be disconnecting residential gas supplies very quickly after a vacancy occurs. Occasionally this has included the removal of the gas meter. In many cases, the departing customer is invoiced for the cost of the disconnection, and any new customer is charged for the cost of a reconnection. This appears to be unnecessary and inefficient because, if a new customer contracts for a gas supply within a short time after the vacancy emerges (as frequently occurs), the cost of the disconnection and subsequent reconnection (both performed by a gas fitter) could have been avoided.

Gas Industry Co proposed a solution to these problems that involved four key elements as follows:

- Retailers would agree to provide clearer information to consumers about charges that will apply to disconnection and reconnection, and the circumstances in which charges will apply as part of their standard terms and conditions, and would make this information readily available to consumers at the time the consumer is choosing a gas retailer and on retailer websites;
- Distribution pipeline companies and retailers would continue to manage the issue of seasonal disconnections;
- Distribution pipeline companies would agree to adopt a policy of ceasing line charges 14 days following a vacancy, rather than the current practice of following a disconnection. This would reduce the incentive for retailers to avoid paying fixed daily pipeline charges by requesting disconnections shortly after a customer vacancy; and
- Distribution pipeline companies and retailers would agree to modify use-of-network agreements to clarify that the responsibility of the existing retailer for monitoring vacant consumer installations must continue through to the point of disconnection.

Gas Industry Co analysis suggested that this should provide sufficient commercial incentive for retailers to modify their approach to triggering disconnections soon after a vacancy and should address some existing concerns about retailer monitoring of vacant premises.

Rather than propose regulations to the Minister to deal with this issue, Gas Industry Co sought an industry solution by way of a request to retailers to provide clearer information as part of their standard terms and conditions, and an agreement with each of the three open-network distribution companies to modify their use-of-network agreements to provide for ceasing line charges 14 days following a vacancy.

### **Recent developments**

Responses to the Gas Industry Co proposal suggest that it would not be possible to obtain industry agreement to the proposal, and it will be necessary to implement any changes to disconnection and reconnection arrangements by way of regulation. Gas Industry Co wrote to the Minister in November 2007 advising him of the status of this work, and of the likely need to revert to more formal regulation.

It is now intended that the problems with disconnection and reconnection practices will be addressed as part of this review.

## In summary

A brief chronology of the key milestones in this work stream is set out in Table 5 for ease of reference.

**Table 5: Key milestones in Disconnection/Reconnection work stream**

Date	Development
November 2005	The Minister writes to Gas Industry Co asking for an investigation of a range of consumer-related issues including the disconnection and reconnection of consumers.
June 2006	Gas Industry Co provides a report to the Minister on a range of consumer issues in response to the November 2005 letter. The report includes a recommendation against regulating disconnection and reconnection charges or practices, but acknowledges that there may be inefficiencies in the arrangements that warrant further investigation.
September 2006	Gas Industry Co establishes an Industry Project Team to examine inefficiencies in the arrangements for disconnection and reconnection and consider whether a set of standard practices could be established to address the issues.
December 2006	The Project Team concludes that it will not be able to reach agreement on the problems or the solutions as a result of intractable differences between retailers and distributors. The Project Team invites Gas Industry Co to take the lead and propose a possible solution.
April 2007	Gas Industry Co investigates the issues, identifies several possible policy problems and a preferred solution, and prepares a report for the Project Team to consider.
May 2007	The Project Team meets to consider Gas Industry Co proposal and again fails to agree a solution.
June/July 2007	Gas Industry Co meets directly with individual industry participants (retailers and distributors) in order to establish whether it would be possible to implement the proposal by way of industry agreement rather than regulation. Despite differences of opinion, it appears that an industry agreement may be possible.
September 2007	Gas Industry Co writes to individual industry participants (retailers and distributors) recommending that they implement the proposal by agreeing to make changes to Network Service Agreements and making information on disconnection and reconnection practices more readily available to consumers.
October 2007	Responses from distributors, in particular, demonstrate that continuing to pursue an industry agreement is unlikely to yield a positive outcome in the near term.
November 2007	Gas Industry Co writes to the Minister advising him of the likely need to revert to more formal regulation.

## **Contractual alignment and bundled services**

Through its interactions with stakeholders, particularly through the consumer forums, it has become apparent that consumer issues extend beyond the relationship with the retailer. In particular, consumer forums held over the last two years, supported by various discussions with industry participants, have reinforced views that consumers tend to be unclear about who to contact in relation to the supply of gas, metering and transport services. Although the industry provides these services on an unbundled basis, it would appear that consumers prefer to deal with a single retailer for bundled services. Gas Industry Co is aware of numerous instances where the outcomes experienced by gas consumers have not been satisfactory due to a lack of clear roles and responsibilities across those parties with a relationship with the consumer – being the meter owner, retailer and network company.

Preliminary work in this area has been undertaken, however Gas Industry Co has deferred further work while other work streams are being progressed.

## **Summary**

In summary, promoting good outcomes for consumers has been a strong theme for Gas Industry Co in its work programme to date, and will continue to be so moving forwards. Some work streams have been completed, and final recommendations provided to the Minister. Others are nearing completion: the work towards approval of a single joint scheme for resolving consumer complaints is an example of this.

While there has been significant activity on a range of consumer issues projects, successful completion has been elusive thus far in several key areas: retail contracts and disconnection/reconnection practices in particular. Determining the appropriate way forward on each of these is at the heart of this Discussion Paper and the review of stakeholder submissions that will follow.

Gas Industry Co acknowledges that there are other consumer issues that have emerged in consumer forums and stakeholder consultation processes, for instance the often voiced view that there is insufficient information available for consumers.

The remainder of this Discussion Paper takes a first principles approach to identifying a set of reasonable consumer outcomes, then determining what the issues might be in delivering on these, with a view to identifying possible means to address these issues.

# 8

## Developing a set of reasonable consumer expectations

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### Introduction

Gas consumers in general, and domestic and small business consumers in particular, are entitled to have confidence in a reasonable set of expectations being met by the provider of their gas supply. This premise has its origins in accepted principles of good business practice, and is supported by consumer legislation such as the Consumer Guarantees Act and the Fair Trading Act. Factors such as the nature of the product or service, the level of competition, relevant regulatory protections and the market positioning of the provider all impact on the extent to which reasonable expectations are met or exceeded.

The remainder of this Discussion Paper identifies a set of reasonable consumer expectations, considers these in the context of the current arrangements, and sets out Gas Industry Co's views on possible issues and options for addressing them.

### Phases in the consumer-supplier relationship

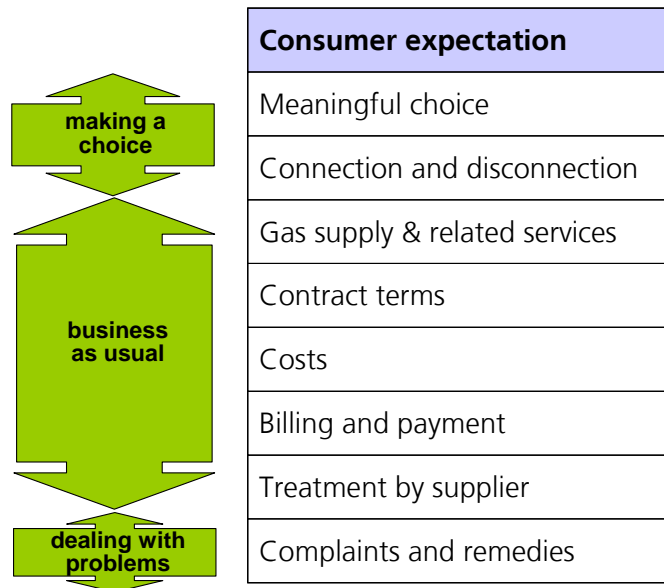
Gas Industry Co has structured its consideration of consumer expectations into the following three key phases in the consumer-supplier relationship:

- entering or exiting the relationship – the 'making a choice phase' in which the consumer decides they have a need for a (new) gas supply and chooses which option best meets their requirements and becomes connected (or chooses to terminate an existing gas supply arrangement);
- managing the contract – the 'business as usual phase' in which the consumer has a contract with the chosen supplier, receives the chosen supply and associated services in accordance with the contract, makes enquiries about any aspect of their supply and receives and pays bills for those services; and
- complaints and remedies – the 'dealing with problems phase' in which the consumer raises complaints or disputes for resolution and has access to remedies.

Each phase has then been expanded further by setting out the key 'topic areas' of consumer expectation relevant to that phase (Figure 4).



**Figure 4: Consumer expectations in each phase of the consumer-supplier relationship**



This structure provides a basis for establishing a set of reasonable consumer expectations specific to each phase.

### **Developing a set of reasonable consumer expectations**

Built around this framework, a set of consumer expectations has been prepared from discussions with consumer representatives and agencies, outputs from industry forums such as the Model Contracts Working Group and a recent workshop specifically on this subject, and stakeholder feedback from other relevant work streams.

In particular, Gas Industry Co convened interviews and forums specifically for this project in April and May 2008. These included:

- stakeholder interviews with key agencies: Ministry of Consumer Affairs, EGGC and Consumer NZ<sup>18</sup>;
- a consumer forum of consumer representatives and agencies; and
- an industry forum of gas retailers.

Consumer expectations were a central part of the discussions in these interviews and forums, and the feedback has been considered in formulating the set of expectations proposed in this Discussion Paper. The full set of consumer expectations developed for this Discussion Paper is contained in Appendix D.

<sup>18</sup> Consumer NZ was formerly known as Consumers' Institute.

It is important to note that the set of expectations has been developed from the perspective of the consumer, and thus may well encompass matters beyond the ambit of the powers in the Gas Act and the outcomes in the GPS. The intention is to establish a complete set of reasonable expectations as a starting point.

## **Identifying issues and options for meeting consumer expectations**

Having developed a proposed set of consumer expectations, Gas Industry Co has considered these in the context of current arrangements and development initiatives and against the policy framework for consumer outcomes. The three phases in the consumer-supplier relationship (described above) provide a helpful framework for identifying and collating the issues and tailoring options for addressing them. Accordingly, Gas Industry Co's assessment has been structured around these three phases.

In the next three sections of this Discussion Paper, one for each phase, Gas Industry Co:

- sets out the proposed consumer expectations for that phase;
- sets out Gas Industry Co's view of the policy objectives for the phase, and describes the agencies with a role in delivering those objectives;
- lists the parties involved in the phase (eg retailers, distributors, etc);
- discusses possible issues in delivering the policy objectives and meeting consumer expectations, together with Gas Industry Co's preliminary assessment of whether there is a case to intervene to protect the interests of domestic and small business consumers; and
- sets out Gas Industry Co's views on possible options for addressing the issues identified.

The Discussion Paper concludes with a summary of proposed next steps, drawn from Gas Industry Co's overall consideration of the extent to which consumer expectations are being met and whether there is a case for intervention to enhance outcomes for domestic and small business consumers.

# 9

## Entering and exiting the relationship: 'making a choice'

This section examines the set of reasonable consumer expectations when entering and exiting the consumer-supplier relationship. It has been termed the 'making a choice' phase, in which the consumer decides they have a need for a (new) gas supply, obtains information about gas options, possible suppliers, and energy alternatives, then determines the option that best meets their requirements. This phase also includes the process of getting connected or disconnected.

The proposed consumer expectations relating to the 'making a choice' phase are set out in Table 6.

**Table 6: Proposed consumer expectations - 'Making a Choice' phase**

	<b>Consumer expectations in the 'making a choice' phase</b>
<b><i>Meaningful choice</i></b>	<ol style="list-style-type: none"><li>1. Suppliers offer a range of products and services for consumers to consider and make informed decisions.</li><li>2. There is ready access to good quality, comprehensive and easy to understand information on gas options, possible gas suppliers and alternatives to gas.</li><li>3. From the options available in the market, consumers are readily able to choose their energy form and supplier, and to modify their choice.</li></ol>
<b><i>Connection and disconnection</i></b>	<ol style="list-style-type: none"><li>4. The connection to supply is safe, reliable and 'fit for purpose', and the connection process is timely and well-managed.</li><li>5. Arrangements for termination of the contract and supply disconnection are reasonable, and are undertaken in a timely and well-managed manner.</li></ol>

This section sets out the policy objectives for this 'making a choice' phase and describes the key agencies that may have a role in its delivery. Issues in meeting the expectations and possible means to address them are then discussed as the basis for seeking stakeholder feedback on appropriate next steps in this area.

## Policy objectives and relevant agencies

Ensuring effective competition is the primary vehicle for delivering meaningful choice for all consumers. However, additional measures may be required to ensure domestic and small business consumers have access to the information required to make an informed choice, can become connected (or disconnected) and are not subject to inappropriate business practices such as misleading material, unfair pressure, inappropriate marketing, or barriers to switching away from an existing supply relationship.

Drawing this together, the policy objectives for the 'making a choice' phase can be expressed as '*having arrangements in place*' that:

'deliver effective competition in the retail and wholesale gas markets in order to deliver meaningful choice for domestic and small business consumers'

'ensure domestic and small business consumers have access to good quality information to inform that choice'

'protect the interests of domestic and small business consumers when choosing a gas supplier and supplier offering'

'protect domestic and small business consumers when getting connected or disconnected'

Considering these policy objectives against the background of the regulatory framework described earlier in this discussion paper suggests the following agencies<sup>19</sup> may have a role to play in delivering the objectives:

- Gas Industry Co is the agency charged with recommending arrangements (including rules or regulations where appropriate) which improve the operation of gas markets and consumer outcomes, both of which are particularly relevant to the policy objectives for the 'making a choice' phase;
- the Commerce Commission is the agency responsible for enforcement of the Fair Trading Act which has two key points of relevance for this phase:
  - it prohibits misleading and deceptive conduct in relation to goods and services, false representations, and unfair practices<sup>20</sup>;
  - it provides for regulations creating consumer information standards for goods and services.
- the Commerce Commission is also responsible for enforcement of the Commerce Act which has five key points of relevance for this phase:
  - practices substantially lessening competition - most commonly in the form of a contract, arrangement, or understanding, that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market;

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<sup>19</sup> See Section 4 for an overview of the agencies and their role in the overall policy framework.

<sup>20</sup> Of relevance here are offering gifts and prizes without the intention of providing them, bait advertising, referral selling, harassment and coercion and pyramid selling schemes.

- price fixing - which the Commerce Act deems (apart from certain exceptions) to be a practice that substantially lessens competition;
- taking advantage of market power - for certain anti-competitive purposes;
- resale price maintenance - which, subject to exceptions, prevents any person from engaging in resale price maintenance; and
- price control - under which the Commission can consider whether it should impose control on the price of goods or services that are subject to limited competition;
- the Ministry of Consumer Affairs administers the Fair Trading Act and the Consumer Guarantees Act and therefore has responsibility for reporting to Government on the need for changes to the current law and other policy matters<sup>21</sup>;
- Consumer NZ provides a 'Gas Price Calculator' which is a web-based interactive calculator for its members to compare gas prices from retailers of reticulated natural gas in the North Island;
- EECA which provides advice on energy options, energy efficiency and options to reduce energy requirements;
- The Energy Safety Service which monitors and enforces compliance with laws relating to energy safety such as the Gas Act and Gas Regulations 1993, and the various Gas Codes of Practice which are developed by Standards New Zealand; and
- The Plumbers, Gasfitters and Drainlayers Board, a statutory board, which deals with licensing and registration of gas fitters.

## Key parties

The key parties directly involved in the 'Making a Choice' phase are the retailers and the consumers. However, the nature of gas and its delivery mean that there are other parties indirectly or optionally involved. These include:

- network companies which transport the gas to the consumers' premises;
- contractors (eg gas fitters) appointed by retailers to establish a connection or disconnection and other supply arrangements on behalf of the retailer;
- electricity retailers which, to the extent that electricity is a substitute for the consumer's gas requirements, provide additional options;
- the EGCC and other complaints resolution bodies which have information on complaints made in relation to each supplier and network company;
- local councils which issue resource consents for gas pipelines; and

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<sup>21</sup> The Fair Trading Act and Consumer Guarantees Act are currently being reviewed by the Ministry of Consumer Affairs. The Ministry released a discussion paper that compares the redress and enforcement provisions of those Acts with provisions found in consumer protection legislation in Australia, Canada, USA and UK.

- private companies which provide advice and expertise on energy supply options, market trends and energy efficiency.

## **Issues in delivering the policy objectives**

In general terms, consumers need to know who to deal with, how to get information on connection options and how to compare the different options in order to make an informed choice appropriate to their needs. They then need to become connected to that chosen supplier. In the case of a consumer choosing to exit an existing relationship, they need to terminate a contract and switch to an alternative supplier, or become disconnected if moving to an alternative energy source.

At present there is a reliance on competitive pressures on retailers to deliver on these requirements, supported by legislated safety outcomes and the general consumer protection mechanisms in place through the Commerce Act, Consumer Guarantees Act and Fair Trading Act. On the face of it this is not necessarily an unreasonable approach since:

- in a fully-functioning competitive market, retailers are incentivised to compete for customers by devising innovative products and services, making these available at competitive prices, and communicating well with prospective consumers;
- the Commerce Act prohibits activities which lessen competition or involve exercise of monopoly power;
- general consumer protection law provides certain protections and prohibitions which can be applied to gas suppliers; and
- safety issues are covered by the Gas Act and Gas Regulations.

However, there are a number of issues with reliance on the existing measures and mechanisms. These are set out below, drawn from observations on the current state of the market and market arrangements, discussions with stakeholders, and anecdotal evidence.

## **Market size and structure**

The market for domestic and small business users of gas is comparatively small and competition is concentrated amongst a few key retailers. The small size of the gas market and number of participants potentially limits the scope for competition for domestic and small business consumers. Furthermore, market structure features such as vertical integration and the contractual interfaces between the participants in behind delivery of a bundled service can inhibit competition or lessen its effectiveness through loss of transparency and increased transaction costs.

Some of the factors affecting market size and structure are harder to address, and perhaps more appropriately regarded as externalities affecting the sector. These include the lack of a reticulated supply of gas in the South Island, although the availability of LPG (bottled or, in certain areas, reticulated) does offset this impact to some extent.

## **Institutional arrangements**

Effective competition requires a number of institutional arrangements to be in place and operating effectively. These include arrangements for customer switching, wholesale gas trading, and allocation and reconciliation of gas quantities. As noted earlier (section 5), major initiatives to deliver suitable arrangements are underway but not yet completed.

## **Access to information to inform decision-making**

The gas market and institutional arrangements for the supply of gas are not well understood by domestic and small business consumers. Aspects of gas supply are inherently complex, and this is compounded by the contractual relationships in behind the retail offering. The ability to switch between gas and electricity for many of these consumers further complicates the information situation. This can mean that the information required to make an informed choice is complex, as is the process to accurately assess that information and determine the best supply option.

Access to timely, accurate and complete information on choices is consistently cited by consumers and consumer agencies as a major failing of the present arrangements.

To make an informed choice, consumers first need to understand that they have a choice. This means knowing enough about the sector to understand who the various participants and agencies are, and who to talk to about their options.

Consumers then need the information on which to base their choice. Key information requirements include:

- their gas supply requirements (eg quantity, specification, connection arrangements);
- which retailers are offering gas supply that could meet those requirements;
- what alternative options might also be relevant (eg LPG, electricity);
- what product offerings (eg tariff options, packages, discounts, payment options) those retailers are offering and the extent to which each matches the consumer's requirements;
- the contract terms for each supply option and how these might impact the choice; and
- the historical performance of each retailer (eg customer satisfaction, complaints).

The information needs to be readily accessible, complete and regularly updated so as to be accurate at the time of consumer decision-making. Unless the required information is readily accessible, the cost to obtain it could outweigh the potential savings to be gained by making a better choice. This is particularly so for domestic and small business consumers.

Retailers may suggest that the provision of information about their products and services is part of their role as a supplier, and that in a competitive market they are incentivised to provide the

information their existing and prospective customers seek. Others contend that if there is weak or limited competition then the incentives are not necessarily sufficiently strong to ensure small consumers have access to timely, accurate and complete information.

Consumers often want access to information from an independent source that is not perceived as having a vested interest. Such services can be augmented by consumers undertaking their own information gathering, or by finding an agency to undertake this on their behalf.

The 'Gas Price Calculator' assists domestic and small business consumers with this by providing an easy-to-use calculator populated by information held in the 'Gas Switch' database. Gas Switch is operated by Consumer NZ and is only available to its members, for which there is an annual fee. There is an electricity equivalent, 'Power Switch', which is available free of charge. Power Switch is also operated by Consumer NZ but is funded by the Ministry of Consumer Affairs. There remains no ability to compare gas and electricity options through a single integrated package. Other information available from agencies such as Consumer NZ and the EECA can provide some assistance in comparing energy options.

There are commercial entities that provide consumers with expert advice on their energy usage and opportunities to reduce costs through improved supply arrangements, however these tend to operate in the small business sector and charge for their services.

For many, the cost to acquire the requisite knowledge could outweigh the potential savings to be gained by making a better choice. This is particularly the case for domestic and small business consumers. By contrast, large gas consumers have a stronger incentive to be able to understand complex information, and are more likely to be in a position to do so.

### **Connection and disconnection process**

There are many factors affecting the process to connect a gas customer, particularly if it is a new connection. These include the location of the consumer's premises, local council requirements, the nature of their gas requirements, and the relationship between the supplier and the party undertaking the (dis)connection. This can mean that seemingly similar customers experience different processes to get connected. There have also been some complaints regarding industry practices in this area.

Consideration of the issues and options has been the subject of a separate Gas Industry Co work stream, as described earlier in this Discussion Paper (section 7). Implementing the proposed industry solution proved unsuccessful, and Gas industry Co now considers that the proposed solution should be effected through a regulated solution to be considered as part of a wider review on consumer contracts and Network Services Agreements.

Ensuring a (dis)connection is safe, reliable and fit for purpose is primarily the responsibility of the Energy Safety Service. However, there is some overlap with Gas Industry Co, whose principle objective



under the Gas Act is to ensure that gas is delivered to existing and new customers in a 'safe, efficient, and reliable manner.'

### **Distribution and Metering Arrangements**

An important consideration for the efficiency of the retail and distribution sector is the interface between retailers and distributors and meter owners. In most cases retailers do not have a choice about which distributor or meter owner they use, posing a possible barrier to entry or lessening of competition.

In respect of distribution arrangements, the level of competition in the retail market will be influenced by how easy it is for retailers to enter contracts with distributors and the reasonableness of conditions in the contract.

In relation to metering arrangements, the restructure of gas and electricity businesses, which followed industry reforms in the 1990s, has resulted in meter ownership being spread amongst distribution companies, retailers and specific metering companies. In the electricity sector there have been some difficulties for retailers wishing to compete in an incumbent's area if the incumbent owns the customer's meters.

However, there is little information available on the nature and efficiency of distribution or metering arrangements. To determine if the market is operating efficiently it may be appropriate to review the efficiency of distribution and metering arrangements.

### **Addressing these issues**

The key questions to be answered when considering the 'making a choice' phase can be summarised as follows:

- are the existing measures sufficient (ie relying on competitive pressure supported by general protection mechanisms in the Commerce Act, Consumer Guarantees Act and Fair Trading Act)?
- if not, what additional measures could Gas Industry Co pursue, and when would it be appropriate to do so?
- what advice could Gas Industry Co provide to the Minister on these issues?

Gas Industry Co has considered these questions against the background of the policy objectives and regulatory framework set out above. It has drawn on feedback from consumer forums, discussions with other agencies and expectations from existing relevant initiatives.

It has reached a preliminary assessment and set of conclusions, and now seeks feedback on these as input to determining the next steps.

## Assessment against consumer expectations

Gas Industry Co's assessment against the consumer expectations for the 'making a choice' phase is set out in Table 7.

**Table 7: Assessment against consumer expectations - 'making a choice' phase**

Consumer expectations in the 'making a choice' phase	Assessment
<p><b>Meaningful choice</b></p> <ol style="list-style-type: none"> <li>1. Suppliers offer a range of products and services for consumers to consider and make informed decisions.</li> <li>2. There is ready access to good quality, comprehensive and easy to understand information on gas options, possible gas suppliers and alternatives to gas.</li> <li>3. From the options available in the market, consumers are readily able to choose their energy form and supplier, and to modify their choice.</li> </ol>	<ul style="list-style-type: none"> <li>• Facilitating effective competition is the primary vehicle for ensuring a diversity of suppliers and supply options.</li> <li>• Institutional arrangements to foster effective competition are not yet fully implemented.</li> <li>• Once these arrangements are fully implemented Gas Industry Co should assess the effectiveness of competition to see if further measures are required</li> <li>• In the interim, general protection mechanisms under the Commerce Act, Consumer Guarantees Act and Fair Trading Act provide backstop protection</li> <li>• Other measures are open to other agencies, such as the Commerce Commission's powers to investigate competitive market behaviours.</li> <li>• There appear to be significant opportunities to improve outcomes for domestic and small business consumers through enhanced information provision on all aspects of this phase. Consumers seek independent authoritative information.</li> <li>• Gas Industry Co should identify a set of targeted reports and information to address specific information deficiencies, and provide this advice to the Minister.</li> <li>• There is a possible role for commercial entities and/or central agencies to collate and pre-process certain information to make it more accessible to a wider range of consumers in a more efficient manner than individuals making their own enquiries. Gas Industry Co should explore such opportunities further.</li> <li>• At this stage there is not a strong case to intervene to impose a direct regulatory solution to enhance information availability, although some rules may be required to support the publications identified if voluntary disclosure of required information proves unsatisfactory.</li> </ul>

<b>Consumer expectations in the 'making a choice' phase</b>	<b>Assessment</b>
<p><b>Connection and disconnection</b></p> <p>4. The connection to supply is safe, reliable and 'fit for purpose', and the connection process is timely and well-managed.</p> <p>5. Arrangements for termination of the contract and supply disconnection are reasonable, and are undertaken in a timely and well-managed manner.</p>	<ul style="list-style-type: none"> <li>• Ensuring a (dis)connection is safe, reliable and fit for purpose is primarily the responsibility of the Energy Safety Service.</li> <li>• Existing arrangements regarding the (dis)connection process are not proving effective in protecting the interests of domestic and small business consumers.</li> <li>• A Gas Industry Co work stream in this area found that there were inefficiencies in the commercial arrangements between distributors and retailers and that, as a result, consumers were sometimes subject to unnecessary disconnection and reconnection charges.</li> <li>• Implementation of the proposed industry solution proved unsuccessful.</li> <li>• Gas Industry Co should seek to effect a solution through minimum terms in consumer contracts and/or Network Service Agreements.</li> </ul>

### **Proposed initiatives**

Gas Industry Co proposes to undertake the following initiatives to address the issues identified with meeting consumer expectations.

### **Information provision to better inform consumer choice**

There appear to be significant opportunities to deliver more meaningful and informed choice for domestic and small business consumers through enhanced information provision. Key steps proposed for Gas Industry Co to undertake are:

- identify a set of targeted reports and information to address specific information deficiencies.
- explore the opportunities for commercial entities and/or central agencies to collate and pre-process certain information regarding consumer choice to make it more accessible to a wider range of consumers in a more efficient manner than individuals making their own enquiries.
- if appropriate, provide advice to the Minister on the findings.

### **Connection/disconnection**

Existing arrangements regarding the (dis)connection process are not proving effective in protecting the interests of domestic and small business consumers. This was the subject of an earlier Gas Industry Co work stream, however, implementation of the proposed industry solution has proved unsuccessful.

Gas Industry Co prefers to effect a solution through rules or regulations made under the Gas Act.

*Q6: Do you agree with the proposed set of reasonable consumer expectations for the 'Making a Choice' phase? If not, what alternative consumer expectations would you propose?*

*Q7: What comments do you have on the issues identified in meeting consumer expectations in the 'Making a Choice' phase?*

*Q8: Do you agree with Gas Industry Co's assessment against consumer expectations for the 'Making a Choice' phase? If not, what alternative assessment would you make?*

*Q9: Do you agree with Gas Industry Co's proposals aimed at enhancing the availability of information to inform consumer choice? If so, what information do you consider should be made available, and which agencies have a role in its provision? If not, what alternative proposals would you suggest?*

*Q10: Do you agree with Gas Industry Co's preference for addressing (dis)connection issues via a regulatory approach? If not, what alternative proposals would you suggest?*

*Q11: What other initiatives would you propose to address issues with meeting consumer expectations in the 'making a choice' phase?*

# 10

## Managing the contract: 'the business as usual' phase

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This section examines the set of reasonable consumer expectations during the 'business as usual' phase, in which the consumer becomes connected to the gas supply and enters a contract with the chosen supplier for supply of gas and related services.

The proposed consumer expectations relating to the 'Business as Usual' phase are set out in Table 8.

**Table 8: Proposed consumer expectations - 'Business as Usual' phase**

	<b>Consumer expectations in the 'Business as Usual' phase</b>
Gas supply & related services	<p>6. The supply of gas is safe, reliable and 'fit for purpose'.</p> <p>7. Other services reasonably required as part of receiving gas supply, such as a call centre and metering services, are readily available and 'fit for purpose'.</p>
Contractual terms and conditions	<p>8. The contractual terms and conditions of supply of gas to the consumer are lawful, fair and reasonable, and equitable between the parties.</p> <p>9. The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the supplier and consumer.</p>
Costs	<p>10. The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply.</p> <p>11. The supplier does not impose additional or unexpected costs on the consumer.</p>
Billing and payment	<p>12. Consumers receive timely and accurate bills for gas and associated services, and the bills are easy to understand.</p> <p>13. Consumers have access to appropriate mechanisms for making payments that take account of consumer circumstances.</p>

	<b>Consumer expectations in the 'Business as Usual' phase</b>
<b><i>Treatment by supplier</i></b>	<p>14. The supplier is honest and open, and acts with integrity in all its dealings with the consumer.</p> <p>15. The supplier answers consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.</p> <p>16. The supplier 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.</p>

This section sets out the policy objectives for this business as usual phase and describes the key agencies that may have a role in its delivery. Issues in meeting the expectations and possible means to address them are then discussed as the basis for seeking stakeholder feedback on appropriate next steps in this area.

## **Policy objectives and relevant agencies**

Ensuring effective competition is an important vehicle for delivering good contracting and customer relationship outcomes for consumers. However, inequality of bargaining power is also likely to be a dominant area of concern. Accordingly, additional measures may be required to ensure domestic and small business consumers in the 'business as usual' phase.

Drawing this together, the policy objectives for the 'business as usual' phase can be expressed as follows:

'that arrangements are in place that deliver effective competition in the retail and wholesale gas markets in order to ensure suppliers face strong incentives to provide services and contracts in a way which meets consumer needs over the long term at the quality required by consumers'

'that contracting arrangements balance the interests of the supplier with the interests and expectations of the consumer in order to facilitate efficient market outcomes'

'that arrangements are in place that protect domestic and small business consumers when contracting for supply'

Considering these policy objectives against the background of the regulatory framework described earlier in this discussion paper suggests the following agencies may have a role to play in delivering the objectives:

- Gas Industry Co, as the industry body approved under the Gas Act, is the agency charged with recommending arrangements (including regulations and rules where appropriate) regarding the operation of gas markets and consumer outcomes, both of which are particularly relevant to the policy objectives for the 'business as usual' phase;

- the Ministry of Consumer Affairs is the agency responsible for administering government policy on<sup>22</sup> the Consumer Guarantees Act which has two key points of relevance for this phase:
  - it sets out enforceable service guarantees in relation to reasonable care and skill, fitness for particular purpose, time of completion and price; and
  - it sets out enforceable goods guarantees in relation to title, acceptable quality, fitness for particular purpose, compliance with description, price and repairs.
- the Commerce Commission is the agency responsible for enforcement of the Fair Trading Act which prohibits misleading and deceptive conduct in relation to goods and services, false representations, and unfair practices<sup>23</sup>;
- the Commerce Commission is also responsible for enforcement of the Commerce Act which has provisions relating to abuse of monopoly power and lessening of competition;
- the Ministry of Consumer Affairs administers the Consumer Guarantees Act and Fair Trading Act and therefore has responsibility for reporting to Government on the need for changes to the current law and other policy matters<sup>24</sup>;
- The Energy Safety Service which monitors and enforces compliance with laws relating to energy safety such as the Gas Act and Gas Regulations 1993, and the various Gas Codes of Practice which are developed by Standards New Zealand; and
- The Plumbers, Gasfitters and Drainlayers Board, a statutory board, which deals with licensing and registration of gas fitters.

## Key parties

The key parties directly involved in the 'business as usual' phase are the retailers and the consumers themselves. Other parties indirectly or optionally involved include:

- contractors (eg gasfitters) appointed by retailers to maintain the connection and other gas supply arrangements on behalf of the retailer;
- the registry operator which will maintain a database of existing gas customers and who each is currently supplied by, and manages the switching process when a customer changes supplier (due to be implemented on 1 March 2009);
- network companies which transport the gas to the consumers' premises and also have a role in providing information to the gas registry; and
- the EGCC which maintains a code of conduct<sup>25</sup> setting out minimum standards of behaviour for member companies and a minimum set of obligations for the member companies in relation to the supply of gas to consumers.

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<sup>22</sup> There is no enforcement agency for this legislation. Consumers can go to the Disputes Tribunal or the Courts to enforce the Act.

<sup>23</sup> Of relevance here is demanding or accepting payment without intending to supply as ordered.

<sup>24</sup> The Fair Trading Act and Consumer Guarantees Act are currently being reviewed by the Ministry of Consumer Affairs. The Ministry released a discussion paper that compares the redress and enforcement provisions of those Acts with provisions found in consumer protection legislation in Australia, Canada, USA and UK. It is proposing measures to strengthen NZ consumer protection legislation.

## Issues in delivering the policy objectives

In general terms, consumers need to enter a suitable contract covering the supply of gas and associated services and obligations, then be party to normal day to day interaction such as receiving the gas supply, making customer enquiries, receiving bills and making payments.

At present there is a reliance on general consumer protection mechanisms in place through the Consumer Guarantees Act and Fair Trading Act, and the (voluntary) EGCC code of practice (for EGCC members). There are a number of issues with the current situation, as evidenced by the number and nature of complaints received by the EGCC and other complaints bodies, and the feedback received in consumer forums.

Issues with the process to make complaints and have these remedied are considered in the following section 'dealing with problems'. However, the nature of complaints received over recent times is a pointer to issues with the contracting and supply arrangements, which are the subject of this section.

The issues identified in the 'business as usual' phase have been collated and are discussed here.

### Balance between interests of parties

Many of the issues raised with contracts relate to an inappropriate balance between the interests of the consumer and those of the retailer. This is a common result of unequal bargaining power and information asymmetry. The issues typically relate to:

- billing and payment problems;
- unanticipated charges;
- metering problems;
- connection and disconnection practices; and
- treatment by call centres and other retailer representatives.

The EGCC codes of practice have attempted to redress the balance for EGCC members by setting out certain requirements for contracts and conduct of scheme members. They are reasonably comprehensive including: how to become a customer; process for changing the contract; service standards; prices, bill and payments; and bonds. However these codes only apply to members of the EGCC scheme and are only enforced where a consumer complains to the EGCC. Retailers who are members of the EGCC scheme have modified their standard terms and conditions in line with the code of practice, however, the extent and nature of complaints suggests that there is some way to go.

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<sup>25</sup> The other complaints schemes do not have a code of conduct.



As described earlier in this Discussion Paper, there are general protection mechanisms such as the Consumer Guarantees Act and Fair Trading Act, however these are not tailored to the complexities of gas supply (see next section). Furthermore, the agencies responsible for enforcing the Fair Trading Act and administering both Acts do so across a very wide range of goods and services. Individual complaints on a domestic gas contract may struggle to compete for limited agency resources, leaving the complainant to pursue the matter themselves through the courts or a disputes tribunal.

It is important to remember that suppliers also have legitimate commercial interests which should be protected. If the balance were to be tipped too far in the interests of consumers, this could have the adverse result of a lessening of competition through the reluctance of existing retailers to take on small customers and/or presenting an unnecessary barrier to entry for new gas retailers.

### **Complexity of contract terms**

Most aspects of retail contracts relate to normal business practices such as billing and payment for which contract terms should be reasonably straightforward and comprehensible. However, gas supply, by its nature, is complex and technical, and involves a number of obligations regarding its delivery, usage and metering. Retail contracts need to include provisions relating to these aspects, which can make parts of the contracts long and difficult to comprehend.

Many of the issues raised in complaints appear to have their origins in the consumer not understanding some of the more technical obligations. Examples include the responsibility for supply between the meter and point of consumption, and metering requirements.

However, technical complexity does not mean that it is impossible for a retailer to set out the terms and conditions in simple terms, and to clearly spell out the respective obligations on the parties to the contract. It is arguable whether there are sufficient incentives on retailers to meet this responsibility under the current arrangements.

### **Contract formation and change practices**

The manner in which gas arrangements are entered into can mean that the contract is formed before the consumer has had a reasonable opportunity to examine the contract. This can expose the consumer to certain obligations (including payment) without them being fully informed as to the nature and consequences of those obligations. Related to this is the process which the supplier is required to follow to make changes to an existing contract and the information to be provided to consumers in relation to such changes.

### **Distribution and Metering Arrangements**

As with the 'making a choice' phase, an important consideration here is the interface between retailers and distributors and meter owners. In most cases retailers do not have a choice about which

distributor or meter owner they use. Therefore, there is the potential for these parties to be able to impose economically inefficient terms and conditions or prices in their contracts with retailers, which may be passed on to consumers. It may be appropriate to review the contractual interface issues relating to distribution and metering arrangements.

### **Customer service and enquiries**

In the normal course of business, consumers often have need to make enquiries of their supplier, for instance in relation to a billing query, gas supply question or for emergencies such as a possible gas leak. Concerns with the manner in which such routine enquiries are answered, and with customer service more generally, are frequently raised in consumer forums.

Retailers may contend that their approach to customer service is a commercial matter for them in their market positioning. This is a reasonable position as in a fully competitive market consumers are readily able to switch away from their current supplier in response to service levels that do not meet their requirements.

Currently the EGCC codes of practice include provisions relating to supplier conduct in the form of minimum standards of behaviour. Until such time as there is an approved complaints scheme it is perhaps premature to consider further action in this regard.

### **Costs**

The Commerce Commission is responsible for enforcement of Part 4 of the Commerce Act, under which the Commission can consider whether it should impose control on the price of goods or services that are subject to limited competition. The Commission has already exercised this power in respect of the gas distribution businesses of Vector and Powerco.

However, Gas Industry Co has a role to play in respect of some aspects of consumer expectation on costs, for example in relation to disclosure of pricing information and the imposition of additional or unexpected costs. These have been the subject of a number of consumer complaints over recent years, particularly in relation to metering charges and fees for connection/disconnection. This is a feature of unequal bargaining power and points to a possible failing in the contract terms and conditions.

### **Billing and payment**

Billing and payment continue to be a significant source of consumer complaints – for instance the EGCC 2007 statistics showed that approximately 40% of the issues raised were related to billing.

As with customer service issues, retailers may contend that their approach to billing and payment is largely a commercial matter for them. This is a reasonable position. In a fully competitive market

consumers are readily able to switch away from their current supplier if they are unhappy with the current billing and payment arrangements. Accordingly, facilitating effective competition is the primary mechanism for improving these outcomes.

However to the extent that there is a need to protect the interests of small consumers (eg as a result of unequal bargaining power or information asymmetry), there may be a need to provide for more targeted regulation of the mechanisms used by retailers to bill their customers.

The development of a central registry of gas customers under the Switching Rules, once completed, is likely to significantly improve this situation, through more accurate recording of customer information and the matching of that to metering and billing.

However, metering issues (eg errors, estimates) are a significant contributor to billing and payment concerns. While certain aspects could potentially be addressed through minimum contract terms (eg on the use of estimates, the right to provide self-readings), other aspects are beyond the scope of the retailer-consumer relationship and may require further consideration as part of a possible review of metering arrangements.

The Gas Act contains regulation-making powers in relation to pre-payment meters. Consumer forums have not, to date, raised particular concerns in relation to pre-payment meters, nor does the GPS set out specific expectations in this area. Accordingly, this matter has not been considered as having a high priority for review.

### **Delivery mechanism for minimum terms or guidelines**

As described earlier in this Discussion Paper (section 7), consideration of retail contracting arrangements was the subject of a substantial Gas Industry Co project in 2005/2006. A key aspect of that work was consideration of the appropriate delivery mechanism for minimum contract terms or guidelines for small consumers. Gas Industry Co has revisited the work of its Model Contract Working Group, in particular the retail contract guidelines Gas Industry Co published for consultation in November 2005. These are attached as Appendix E of this Discussion Paper. Also attached (as Appendix F and G respectively) are comparisons of these against the EGCC codes of practice and the Victorian Code requirements in Australia.

Taking the earlier MCWG work and putting it in the context of the overall framework for consumer protection, the options distil down to the following possible mechanisms:

- general protection mechanisms through the Commerce Act, Consumer Guarantees Act and Fair Trading Act;
- voluntary code of practice made and overseen by Gas Industry Co (with monitoring of compliance against the code undertaken either by consumers or by Gas Industry Co); or
- regulated minimum terms and conditions made under the Gas Act.

Gas Industry Co does not consider that a fully regulated retail contract is a practicable option. It would be difficult and expensive to establish and administer and would necessitate a 'one size fits all' approach, thereby significantly reducing the prospects for flexibility, tailoring, and innovation. Similar views have been expressed in earlier submissions by consumer and industry representatives.

The possible mechanisms identified are briefly discussed in turn below.

### **General protection mechanisms**

The role and provisions of the Commerce Act, Consumer Guarantees Act and Fair Trading Act are set out in section 4 of this paper. While they do provide general levels of consumer protection, they are not specific to gas, which arguably dilutes their effectiveness. Furthermore, the Gas Act and GPS clearly signal Government's desire for gas-specific provisions that protect small consumers' interests in their contracting relationships with retailers. This is supported by feedback from consumer groups and complaints bodies.

### **Voluntary gas specific code of practice**

Under this mechanism a code of practice or model arrangement would be prepared and promulgated by Gas Industry Co in consultation with the industry.

The code of practice or model arrangement generally takes the form of published contract guidelines or model contracts, which give guidance as to good contracting practice. Depending on the scope of matters covered by the guidelines or model contracts, these can be very comprehensive or limited to certain key contracting aspects. This in turn provides varying degrees of flexibility for retailers who may wish to differentiate their contract offering.

A similar approach was previously supported by Gas Industry Co in its recommendation to the Minister on model contracts in May 2006. However, as outlined in section 7 of this paper, experience and events in the intervening time have led Gas Industry Co to review this position.

Suppliers' compliance with the code or model arrangement would either be monitored by consumers themselves, or by Gas Industry Co monitoring and publishing compliance reports ('naming and shaming'). However, without regulated minimum terms and conditions there are limited powers available for Gas Industry Co to gain access to the information it would require in order to undertake such monitoring.

This suggests a hybrid option which involves a voluntary code of practice or model arrangement, but with regulated contract disclosure to enable effective compliance monitoring by Gas Industry Co.

## **Regulated minimum terms and conditions**

The Gas Act includes a power for the Minister to make rules, or recommend regulations, prescribing minimum terms and conditions for contracts between gas retailers or gas distributors and domestic consumers. It is important to note, however, that currently power does not extend to contracts between gas retailers or gas distributors and small consumers (that is, those which consume less than 10TJ of gas per annum). Gas Industry Co therefore intends writing to the Minister recommending the Gas Act be amended to cover all small consumers.

Under this delivery mechanism a set of minimum terms and conditions would be developed for relevant aspects of the contractual relationship between the gas retailer or gas distributor and the domestic consumer and included in rules or regulations made under the Gas Act. It would then be unlawful for gas retailers or gas distributors to offer less than these minimum terms and conditions to domestic consumers.

The approach adopted in Victoria is relevant here. Appendix G to this Discussion Paper sets out a high-level comparison of the scope of the Victorian Code against Gas Industry Co's Draft Model Contract Guidelines. This shows that, while there is a large measure of commonality, there are some significant matters addressed in the Victorian Code that were not included in the Draft Guidelines.

### **10.1 Addressing these issues**

The key questions to be answered when considering the business as usual phase can be summarised as follows:

- Are the existing measures sufficient to meet the policy ideal of protecting the interests of all small consumers all of the time (ie relying on voluntary measures such as codes of practice and/or 'name and shame' arrangements, supported by general protection mechanisms in the Commerce Act and Fair Trading Act)?
- If not, what additional measure should Gas Industry Co pursue? For example, should Gas Industry Co move to develop a set of minimum contract terms and recommend they be implemented through the regulation-making powers under the Act?
- What advice could Gas Industry Co provide to the Minister on these issues?

Gas Industry Co has considered these questions against the background of the policy objectives and regulatory framework set out above. It has drawn on feedback from consumer forums, discussions with other agencies and expectations from existing relevant initiatives.

It has reached a preliminary assessment and set of conclusions, and now seeks feedback on these as input to determining the next steps.

## Assessment against consumer expectations

Gas Industry Co's assessment against the consumer expectations for the 'Business as Usual' phase is set out in Table 9.

**Table 9: Assessment against consumer expectations - 'business as usual' phase**

Consumer expectations in the 'business as usual' phase	Assessment
<p><b>Gas supply &amp; related services</b></p> <p>6. The supply of gas is safe, reliable and 'fit for purpose'.</p> <p>7. Other services reasonably required as part of receiving gas supply, such as a call centre and metering services, are readily available and 'fit for purpose'.</p>	<ul style="list-style-type: none"> <li>Ensuring that gas supply is safe is primarily the responsibility of the Energy Safety Service.</li> <li>Minimum requirements for access to related services could be addressed, if warranted, through provisions in contract guidelines or minimum terms (see below).</li> </ul>
<p><b>Contractual terms and conditions</b></p> <p>8. The contractual terms and conditions of supply of gas to the consumer are lawful, fair and reasonable, and equitable between the parties.</p> <p>9. The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the supplier and consumer.</p>	<ul style="list-style-type: none"> <li>Some contracts are not meeting these expectations and therefore, overall, existing arrangements are not proving effective in protecting the interests of all domestic and small business consumers all of the time.</li> <li>Waiting for more effective competition and/or relying on a 'name and shame' scheme is unlikely to be sufficient to improve outcomes.</li> <li>General protection mechanisms provide a back-stop, but the institutional and technical arrangements surrounding gas supply means gas-specific mechanisms are warranted.</li> <li>There is not yet a complaints scheme approved or regulated under the Gas Act and an approved scheme is unlikely to be able to include regulated minimum terms and conditions.</li> <li>Relying on voluntary arrangements as the delivery mechanism is unlikely to be sufficient.</li> <li>The Gas Act provides regulation-making powers for domestic consumers, and the GPS sets out an expectation that contractual arrangements adequately protect the long-term interests of small consumers.</li> <li>Gas Industry Co considers that voluntary arrangements are unlikely to deliver acceptable outcomes for all small consumers all the time. It therefore considers that regulated minimum terms and conditions are required.</li> <li>Its preferred approach is to develop regulated minimum terms and conditions for domestic retail contracts for consultation with stakeholders, and a regulatory approach to implementing these.</li> <li>Gas Industry Co would develop such a proposal by starting with the model contract guidelines developed in the earlier MCWG</li> </ul>

Consumer expectations in the 'business as usual' phase	Assessment
	<p>forum, updating these to reflect changes since that time and to translate them from guidelines into regulated minimum terms and conditions.</p> <ul style="list-style-type: none"> <li>• Alternative solutions include development of voluntary arrangements, however Gas Industry Co considers that would not achieve the desired outcome.</li> </ul>
<p><b>Costs</b></p> <p>10. The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply.</p> <p>11. The supplier does not impose additional or unexpected costs on the consumer.</p>	<ul style="list-style-type: none"> <li>• Gas Industry Co considers that retail margins are a key indicator of the effectiveness of competition. However, as noted in section 0, it is premature to assess this while key work streams aimed at fostering enhanced competition are not fully implemented.</li> <li>• The Commerce Commission also has a key role in relation to price, for instance in the event that there is a request for a price control inquiry.</li> <li>• Regulated minimum terms and conditions should include provisions protecting consumers' interests in relation to the imposition of additional or unexpected costs.</li> </ul>
<p><b>Billing and payment</b></p> <p>12. Consumers receive timely and accurate bills for gas and associated services, and the bills are easy to understand.</p> <p>13. Consumers have access to appropriate mechanisms for making payments that take account of consumer circumstances.</p>	<ul style="list-style-type: none"> <li>• This is largely a commercial matter for the supplier. Accordingly, facilitating effective competition is the primary mechanism for improving outcomes as it enables customers to exercise choice.</li> <li>• To the extent there is a need to protect small consumers, targeted provisions should be included in regulated minimum terms and conditions.</li> <li>• The customer switching and registry project, once completed, is likely to significantly improve this situation, through more accurate recording of customer information and the matching of that to metering and billing.</li> <li>• Metering issues may require further consideration as part of a separate work stream</li> </ul>

Consumer expectations in the 'business as usual' phase	Assessment
<p><b>Treatment by supplier</b></p> <p>14. The supplier is honest and open, and acts with integrity in all its dealings with the consumer.</p> <p>15. The supplier answers consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.</p> <p>16. The supplier 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.</p>	<ul style="list-style-type: none"> <li>• This is largely a commercial matter for the supplier. Accordingly, facilitating effective competition is the primary mechanism for improving outcomes as it enables customers to exercise choice.</li> <li>• To the extent there is a need to protect small consumers, targeted provisions should be included in regulated minimum terms and conditions.</li> <li>• Voluntary measures could be included as part of an approved complaints resolution scheme. However, until such time as there is an approved complaints scheme it is premature to consider further action here.</li> </ul>

## Proposed initiatives

Gas Industry Co proposes to undertake the following initiatives to address the issues identified with meeting consumer expectations.

### Contract terms and conditions

The nature and extent of gas consumer complaints, coupled with feedback from the consumer forums, points to the fact that some retail contracts are not meeting these expectations, or, put another way, not all small consumers are receiving the benefit of fair contract terms and conditions at all times. Accordingly, Gas Industry Co considers that existing arrangements are not proving effective in protecting the interests of all domestic and small business consumers all of the time.

While acknowledging that current work streams to facilitate enhanced competition in the retail sector may improve outcomes in the future, it considers that poor bargaining power coupled with information asymmetries mean that there is a strong case now to intervene to protect the interests of small consumers.

Gas Industry Co considers that, in view of the significance of these issues and difficulties to date in seeking to implement industry-led voluntary solutions, a regulatory solution is most appropriate. Gas Industry Co has developed the following preferred proposal for protecting the interests of small consumers in their retail contracting arrangements:



- establish minimum terms and conditions for domestic contracts; and
- implement these through either rules or regulations made under the Gas Act.

Gas Industry Co acknowledges that there are alternative approaches it could adopt, such as continuing to rely on general consumer protection law, facilitating a voluntary industry solution, development of model contracts or publication of contract guidelines. However, on the basis of its current assessment, Gas Industry Co considers that these are unlikely to be as effective as regulated minimum contract terms and conditions. Furthermore, it considers that in the absence of regulated contract disclosure, it is unlikely that meaningful monitoring of compliance with voluntary codes or model arrangements is achievable.

Subject to considering stakeholder feedback on its preferred approach, Gas Industry Co proposes to develop a draft set of regulated minimum terms and conditions by:

- starting with the draft guidelines published by Gas Industry Co for consultation in November 2005 (attached as Appendix E to this Discussion Paper);
- translating these from contract guidelines into minimum terms and conditions, updating them to take account of experience and changes since that time;
- expanding the set of minimum terms and conditions (if appropriate) to include additional matters covered in relevant overseas jurisdictions (such as the Victorian Code considered in Appendix G); and
- expanding the set of minimum terms and conditions (if necessary) to include the other matters identified in this paper for addressing via this mechanism, ie:
  - connection/disconnection practices;
  - minimum requirements for access to related services such as a call centre and metering services;
  - protection from the imposition of additional or unexpected costs;
  - minimum terms and conditions regarding billing and payment; and
  - minimum terms and conditions regarding the ability of the supplier to alter or terminate supply.

Gas Industry Co intends recommending to the Minister that the Gas Act be amended to extend the relevant regulation-making powers to include retail contracts with small business consumers. Gas Industry Co work in this area will need to reflect the outcome of the Minister's consideration of that recommendation.

*Q12: Do you agree with the proposed set of reasonable consumer expectations for the 'Business as Usual' phase? If not, what alternative consumer expectations would you propose?*

*Q13: What comments do you have on the issues identified in meeting consumer expectations in the 'Business as Usual' phase?*

*Q14: Do you agree with Gas Industry Co's assessment against consumer expectations for the 'Business as Usual' phase? If not, what alternative assessment would you make?*

*Q15: Do you agree with Gas Industry Co's proposal to move to a regulatory approach for addressing retail contracting issues through a set of minimum terms and conditions? If not, what alternative proposal would you suggest?*

*Q16: In the context of Gas Industry Co's preferred approach, what comments do you have on the Draft Model Contract Guidelines (published in late 2005) attached as Appendix E to this Discussion Paper?*

*Q17: What other initiatives would you propose to address issues with meeting consumer expectations in the 'business as usual' phase?*

# 11

## Complaints and remedies: the ‘dealing with problems’ phase

This section examines the set of reasonable consumer expectations during the ‘Dealing with Problems’ phase, in which the consumer encounters problems and raises complaints which are subsequently addressed. The complaint could be in relation to any aspect of the consumer’s relationship with their supplier, from the process of choosing the supplier and getting connected, to normal day to day transactions, and through to disconnection and termination.

The proposed consumer expectations relating to this phase are set out below in Table 10.

**Table 10: Proposed consumer expectations – ‘Dealing with Problems’ phase**

	Consumer expectations in the ‘dealing with problems’ phase
<b>Access to remedies</b>	17. Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies. 18. Consumers have access to the information necessary to help resolve complaints.

This section sets out the policy objectives for this ‘dealing with problems’ phase and describes the key agencies that may have a role in its delivery. Issues in meeting the expectations and possible means to address them are then discussed as the basis for seeking stakeholder feedback on appropriate next steps in this area.

### Policy objectives and relevant agencies

It is arguable whether effective competition is an appropriate vehicle for delivering good contracting outcomes for consumers: by definition, a complaint is made in relation to an existing supply arrangement and exercising choice by switching to a different supplier is unlikely to resolve that particular complaint, although it may be a factor in the consumer’s decision to switch thereby reducing the possibility of the circumstances repeating.

Poor bargaining power and information asymmetry are the dominant areas of concern in this phase.

It is also important to draw attention to the importance of the contract between the retailer and the customer in promoting good customer relationship outcomes: clearly expressed, comprehensive, fair and balanced terms that are understood by both parties are more likely to result in fewer disputes, and in more timely resolution of any disputes that do arise. Thus there is a very strong link between this phase and the 'business as usual' phase discussed in the previous section.

Drawing this together, the policy objective for the 'dealing with problems' phase can be expressed as follows:

'that contracting arrangements balance the interests of the supplier with those of the consumer in order to facilitate efficient market outcomes'

'that arrangements are in place that protect domestic and small business consumers when they encounter problems in their contracting and supply arrangements'

Considering these policy objectives against the background of the regulatory framework described earlier in this Discussion Paper suggests the following agencies may have a role to play in delivering the objectives:

- Gas Industry Co, as the industry body approved under the Gas Act, is the agency charged with recommending arrangements (including rules or regulations where appropriate) regarding the operation of gas markets and outcomes for domestic and small business gas consumers, both of which are particularly relevant to the policy objectives for the 'dealing with problems' phase.
- the Ministry of Consumer Affairs is the agency responsible for overseeing<sup>26</sup> the Consumer Guarantees Act which has two key points of relevance for this phase:
  - it sets out enforceable service guarantees in relation to reasonable care and skill, fitness for particular purpose, time of completion and price; and
  - it sets out enforceable goods guarantees in relation to title, acceptable quality, fitness for particular purpose, compliance with description, price and repairs.
- the Commerce Commission is the agency responsible for enforcement of the Fair Trading Act which prohibits misleading and deceptive conduct in relation to goods and services, false representations, and unfair practices<sup>27</sup>;
- the Ministry of Consumer Affairs administers the Consumer Guarantees Act and Fair Trading Act and therefore has responsibility for reporting to Government on the need for changes to the current law and other policy matters<sup>28</sup>;

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<sup>26</sup> There is no enforcement agency for this legislation. Consumers can go to the Disputes Tribunal or the Courts to enforce the Act.

<sup>27</sup> Of relevance here is demanding or accepting payment without intending to supply as ordered.

<sup>28</sup> The Fair Trading Act and Consumer Guarantees Act are currently being reviewed by the Ministry of Consumer Affairs. The Ministry released a discussion paper that compares the redress and enforcement provisions of those Acts with provisions found in consumer protection legislation in Australia, Canada, USA and UK. It is proposing measures to strengthen NZ consumer protection legislation.

- the Plumbers, Gasfitters and Drainlayers Board, a statutory board, which deals with licensing and registration of gas fitters; and
- the EGCC provides a complaints resolution service for the customers of its members, which make up the majority of gas retailers and distributors. Two retailers provide their own independent dispute resolution services for their customers.

## **Key parties**

The key parties directly involved in the 'Dealing with Problems' phase are the retailers and the consumers themselves and the complaints resolution body. Other parties indirectly or optionally involved include:

- contractors (eg gasfitters) appointed by retailers to install or maintain the connection and other gas supply arrangements on behalf of the retailer;
- the registry operator who will maintain a database of existing gas customers and who each is currently supplied by, and manage the switching process when a customer changes supplier (due to be implemented on 1 March 2009); and
- network companies which transport the gas to the consumers' premises and also have a role in providing information to the gas registry.

## **Issues in delivering the policy objectives**

In general terms, consumers need access to an effective complaints resolution scheme and to the information necessary for identifying and resolving the complaint.

The process to establish a complaints resolution scheme began some years ago as an industry initiative, and pre-dates the establishment of Gas Industry Co. Since that time Gas Industry Co has been actively involved in various work streams relating to delivering the GPS expectations on complaints resolution. These are described earlier in this Discussion Paper (section 7).

## **Joint electricity and gas scheme**

At present there are three consumer complaints schemes, as described in section 7 of this paper. There is a strong desire amongst consumers for a single scheme, for that scheme to cover both electricity and gas, and for it to be enforceable. The April 2008 GPS echoes this desire.

In March 2008, Gas Industry Co and the Electricity Commission released a joint consultation paper on the approval of a joint electricity and gas complaints resolution scheme. In that paper, Gas Industry Co and the Electricity Commission set out their intent to act jointly to approve a joint complaints resolution scheme. The process involved consultation on the requirements as a first step. When the requirements are finalised, it is intended that applications will be invited for approval as the joint complaints resolution scheme.

Applications will be considered through a joint process involving representatives of both bodies. Once agreement on a preferred applicant is reached, another round of consultation will take place regarding the reasonably practicable alternative options to deliver a complaints resolution scheme.

### **Scheme requirements**

In order to deliver effective complaints resolution, a scheme needs to meet certain requirements.

The March 2008 joint Gas Industry Co and the Electricity Commission consultation paper set out, amongst other things, proposed requirements for a scheme including its objectives and scope, procedures, membership, decision-making, governance, and performance monitoring. Those requirements are now being reviewed as a result of submissions received.

### **Access to information**

Consumers' ability to identify that they have a complaint and then to make that complaint and participate effectively in the resolution process can be hindered by lack of access to information. This is in addition to the powers the complaints body may have to support their role in its investigation and resolution.

Feedback in consumer forums has suggested a role for consumer advocates in the complaints resolution process as a means of addressing poor bargaining power and information asymmetry faced by small consumers, particularly if the complaint relates to complex technical issues.

### **Addressing these issues**

Gas Industry Co is committed to the joint process with the Electricity Commission to approve a complaints resolution scheme.

The key residual questions to be answered when considering the 'Dealing with Problems' phase is:

- Are there any additional issues Gas Industry Co should address?
- What advice could Gas Industry Co provide to the Minister on these issues?

Gas Industry Co has considered this against the background of the policy objectives and regulatory framework set out above. It has drawn on feedback from consumer forums, discussions with other agencies and expectations from existing relevant initiatives.

It has reached a preliminary assessment and set of conclusions, and now seeks feedback on these as input to determining the next steps.

## Assessment against consumer expectations

Gas Industry Co's assessment against the consumer expectations for the 'Dealing with Problems' phase is set out in Table 11.

**Table 11: Assessment against consumer expectations – 'dealing with problems' phase**

Consumer expectations in the 'dealing with problems' phase	Assessment
<p><b>Access to remedies</b></p> <p>17. Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies.</p> <p>18. Consumers have access to the information necessary to help resolve complaints.</p>	<ul style="list-style-type: none"> <li>• The Joint Gas Industry Co and Electricity Commission project regarding approval of a joint complaints resolution scheme is the primary vehicle for delivering an effective complaints resolution scheme.</li> <li>• There is an opportunity to enhance access to information to enable consumers to identify that they have a complaint, make that complaint then actively participate in its resolution.</li> <li>• Gas Industry Co should explore measures to enhance access to such information.</li> </ul>

## Proposed initiatives

Gas Industry Co proposes to undertake the following initiatives to address the issues identified with meeting consumer expectations.

## Complaints and remedies

The Joint Gas Industry Co and Electricity Commission project regarding approval of a joint complaints resolution scheme is now the primary vehicle for delivering an effective complaints resolution scheme. Gas Industry Co will continue to actively participate in this process with a view to delivering an improved complaints resolution scheme at the earliest opportunity afforded by the joint process.

## Information provision to support complaint identification and resolution

There appear to be opportunities to enhance outcomes for domestic and small business consumers in the complaints resolution process through enhanced access to information. Key steps proposed are:

- Gas Industry Co should identify the information domestic and small business consumers require to identify that they have a complaint and to then actively participate in the resolution process; and
- Gas Industry Co should assess the availability of this information and explore measures to enhance access if, and as required.

*Q18: Do you agree with the proposed set of reasonable consumer expectations for the 'Dealing with Problems' phase? If not, what alternative consumer expectations would you propose?*

*Q19: What comments do you have on the issues identified in meeting consumer expectations in the 'Dealing with Problems' phase?*

*Q20: Do you agree with Gas Industry Co's assessment against consumer expectations for the 'Dealing with Problems' phase? If not, what alternative assessment would you make?*

*Q21: In addition to its active participation in the Joint Gas Industry Electricity Commission project, do you consider there are any further initiatives Gas Industry Co should pursue relating to complaints resolution?*

*Q22: Do you agree with Gas Industry Co's proposed initiatives to enhance information provision to support complaint identification and resolution? If so, what information do you consider would be most useful?*

*Q23: What other initiatives would you propose to address issues with meeting consumer expectations in the 'business as usual' phase?*



# 12 In conclusion

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## Summary of findings

Gas Industry Co's preliminary conclusions can be summarised as follows:

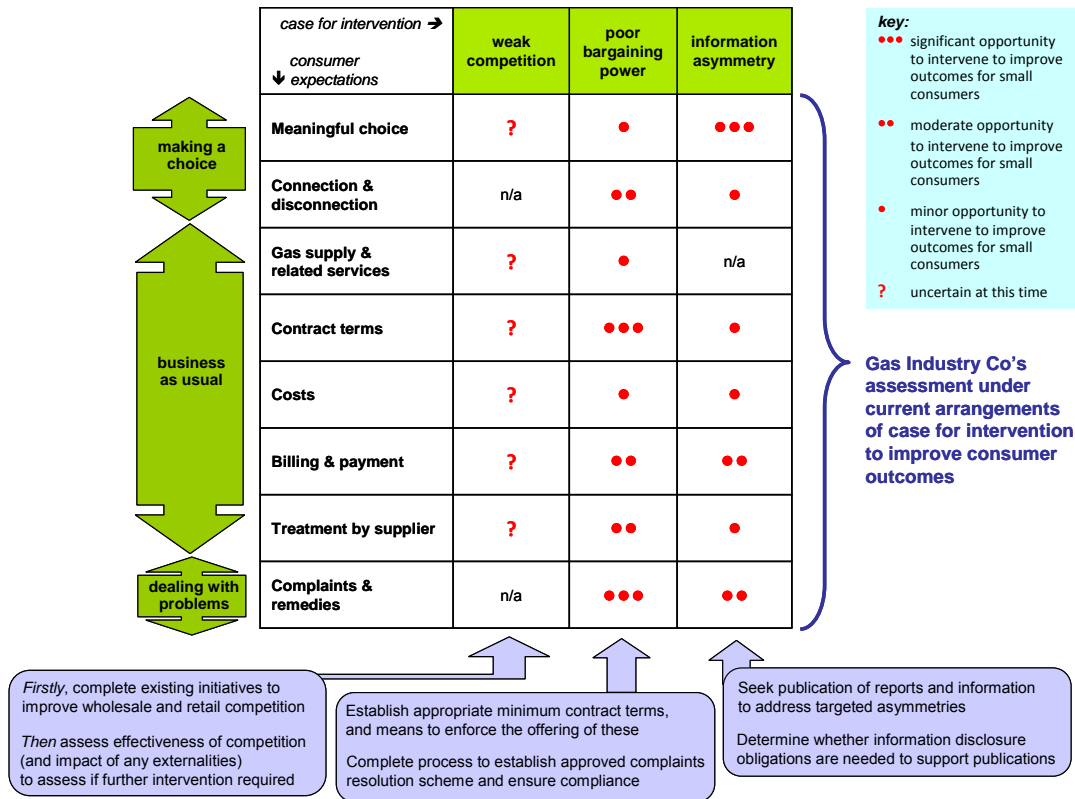
- consistent with the overall policy framework, Gas Industry Co considers that facilitating competition is the primary vehicle for promoting good outcomes for all consumers, however, competition may be insufficient in protecting the interests of small consumers;
- although Gas Industry Co has undertaken a number of initiatives aimed at enhancing the effectiveness of retail competition, not all of these are in place, and it is therefore premature to consider the overall effectiveness of the arrangements;
- to assist in determining when it might be appropriate to instigate regular assessment and monitoring, Gas Industry Co has identified what it considers to be the set of minimum arrangements required for effective competition;
- a set of possible indicators for assessing the level of competition was proposed by Allen Consulting Group in 2006; Gas Industry Co considers that these provide a good starting point for developing performance indicators in the lead up to initiating regular assessment and monitoring;
- Gas Industry Co has also undertaken a number of initiatives aimed at improving outcomes for consumers, particularly domestic and small business consumers, however, not all of these are yet complete, and there have been some unanticipated events encountered in progressing some;
- weak competition, unequal bargaining power and information asymmetries have significant potential to adversely impact meeting the proposed set of consumer expectations identified and presented here, From its analysis, Gas Industry Co considers that all three of these are present, to varying degrees, at different stages in the relationship between gas retailers and domestic and small business consumers;
- until the set of minimum arrangements required for effective competition are in place, it is premature to conclude that there is a case for intervention solely on the basis of weak competition. There are, however, issues identified in this analysis that stem from weak bargaining power and information asymmetries; and
- Gas Industry Co has proposed a set of initiatives moving forwards to address the issues identified, which it now seeks stakeholder comment on.

## The findings in context

The themes that have emerged from this analysis are depicted in the following two diagrams, which relate the overall conclusions back firstly, to the set of consumer expectations and assessed case for intervention, and, secondly, to the overall policy framework.

Gas Industry Co's overall assessment of the case for intervention to improve outcomes for domestic and small business consumers is set out in Figure 5. This has been drawn from its assessment of the extent to which consumer expectations are being met in each of the three customer relationship phases (as described in sections 9, 10 and 11).

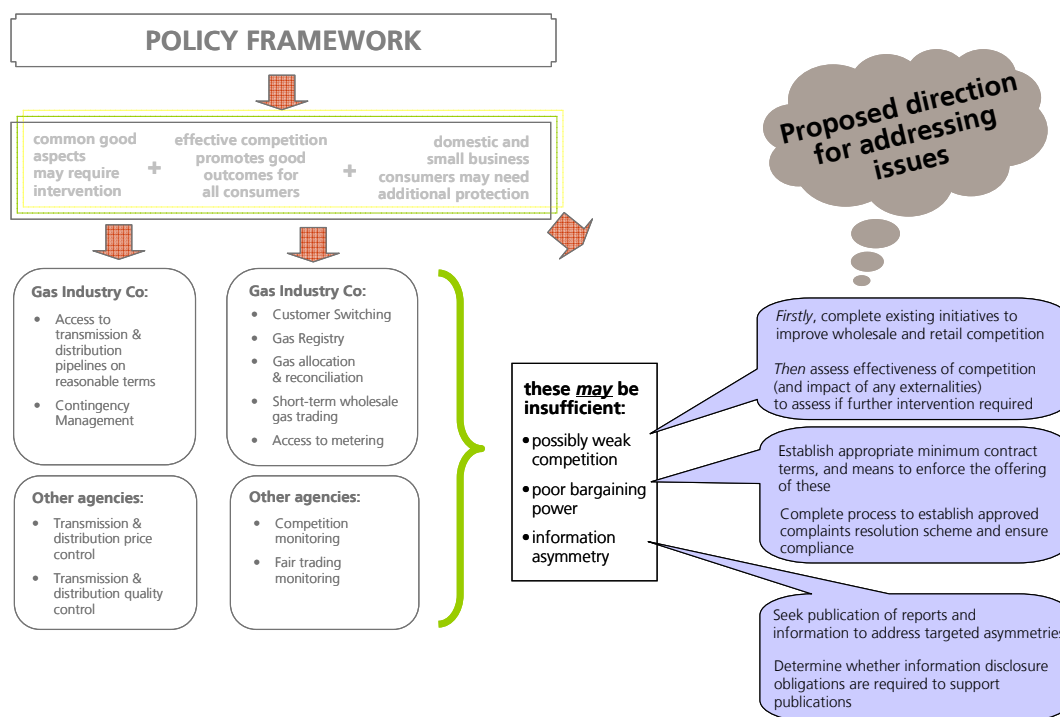
**Figure 5: Overall assessment against consumer expectations**



Gas Industry Co considers that the case for intervening to address weak competition is uncertain at this point in time, as key initiatives aimed at enhancing the effectiveness of competition are not yet fully implemented.

These same overall findings are also shown in the context of the policy framework for protecting the interests of domestic and small business consumers (Figure 6).

**Figure 6: Findings in the context of the overall policy framework**



## Next steps

Gas Industry Co seeks stakeholder feedback on the questions posed in this Discussion Paper, and, more generally, on the material presented.

The submission process is described in Section 2 of this Discussion Paper.

Based on Gas Industry Co's current timetable for this work, the next steps and likely timeframes are set out in Table 12.

**Table 12: Next steps and indicative timeframe**

Work Item	Likely timeframe
Closing date for submissions on consultation paper (allowing a 6 week period)	22 September 2008
Consider responses and prepare recommended next steps for progressing consumer issues	October 2008
Consideration and approval of next steps documents by Board	October / November 2008
Confirmation of, and publication where appropriate, of next steps documents	November 2008
Commencement of initiatives moving forward	late 2008 / early 2009

Gas Industry Co would like to stress the importance of stakeholder feedback in determining the appropriate steps to progressing consumer issues, and encourages all stakeholders to consider the material presented here and the questions posed.

## Appendix A Format for submissions

Gas Industry Co welcomes stakeholder feedback on the material presented in this Discussion Paper, and in particular, responses to the questions posed. These are summarised here for ease of reference.

Responses provided in the format below would greatly assist Gas Industry Co in considering the responses received.

Question	Comment
<p>Q1: Do you agree with Gas Industry Co's proposed guidelines for the arrangements that need to be implemented and operational before it is practical and meaningful to assess the level of competition?</p> <p>If not, what alternative guidelines would you propose?</p>	
<p>Q2: What comments do you have on the set of possible competition indicators described here?</p>	
<p>Q3: Is there any information or comment you can provide on current industry performance against these indicators?</p>	
<p>Q4: To what extent do you think that gas faces competition from other energy forms, and how would you characterise that?</p>	
<p>Q5: Would it be appropriate to include performance indicators relating to competition with other energy options, especially electricity? If so, what additional information would you suggest?</p>	

Question	Comment
<p>Q6: Do you agree with the proposed set of reasonable consumer expectations for the 'Making a Choice' phase?</p> <p>If not, what alternative consumer expectations would you propose?</p>	
<p>Q7: What comments do you have on the issues identified in meeting consumer expectations in the 'Making a Choice' phase?</p>	
<p>Q8: Do you agree with Gas Industry Co's assessment against consumer expectations for the 'Making a Choice' phase?</p> <p>If not, what alternative assessment would you make?</p>	
<p>Q9: Do you agree with Gas Industry Co's proposals aimed at enhancing the availability of information to inform consumer choice?</p> <p>If so, what information do you consider should be made available, and which agencies have a role in its provision?</p> <p>If not, what alternative proposals would you suggest?</p>	
<p>Q10: Do you agree with Gas Industry Co's preference for addressing (dis)connection issues via a regulatory approach?</p> <p>If not, what alternative proposals would you suggest?</p>	
<p>Q11: What other initiatives would you propose to address issues with meeting consumer expectations in the 'making a choice' phase?</p>	

Question	Comment
<p>Q12: Do you agree with the proposed set of reasonable consumer expectations for the 'Business as Usual' phase?</p> <p>If not, what alternative consumer expectations would you propose?</p>	
<p>Q13: What comments do you have on the issues identified in meeting consumer expectations in the 'Business as Usual' phase?</p>	
<p>Q14: Do you agree with Gas Industry Co's assessment against consumer expectations for the 'Business as Usual' phase?</p> <p>If not, what alternative assessment would you make?</p>	
<p>Q15: Do you agree with Gas Industry Co's proposal to move to a regulatory approach for addressing retail contracting issues through a set of minimum terms and conditions?</p> <p>If not, what alternative proposal would you suggest?</p>	
<p>Q16: In the context of Gas Industry Co's preferred approach, what comments do you have on the Draft Model Contract Guidelines (published in late 2005) attached as Appendix D to this Discussion Paper?</p>	
<p>Q17: What other initiatives would you propose to address issues with meeting consumer expectations in the 'Business as Usual' phase?</p>	

Question	Comment
<p>Q18: Do you agree with the proposed set of reasonable consumer expectations for the 'Dealing with Problems' phase?</p> <p>If not, what alternative consumer expectations would you propose?</p>	
<p>Q19: What comments do you have on the issues identified in meeting consumer expectations in the 'Dealing with Problems' phase?</p>	
<p>Q20: Do you agree with Gas Industry Co's assessment against consumer expectations for the 'Dealing with Problems' phase? If not, what alternative assessment would you make?</p>	
<p>Q21: In addition to its active participation in the Joint Gas Industry Electricity Commission project, do you consider there are any further initiatives Gas Industry Co should pursue relating to complaints resolution?</p>	
<p>Q22: Do you agree with Gas Industry Co's proposed initiatives to enhance information provision to support complaint identification and resolution?</p> <p>If so, what information do you consider would be most useful?</p>	
<p>Q23: What other initiatives would you propose to address issues with meeting consumer expectations in the 'business as usual' phase?</p>	



# Appendix B Industry Overview

This Appendix aims to describe the gas industry as background to the policy framework for promoting good outcomes for consumers, and Gas Industry Co's work in the area of addressing consumer issues. It provides an overview of the structure and size of the sector, the key players, and the interfaces between the different parts of the industry.

## Overview of the gas sector

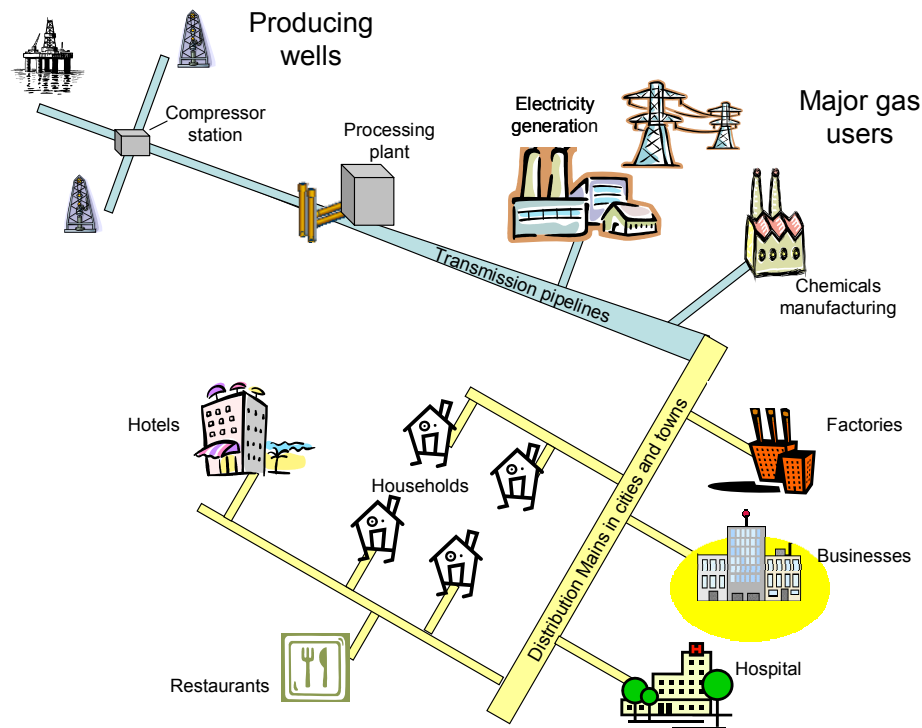
The natural gas industry comprises five main sectors:

- exploration and production;
- transmission;
- distribution;
- the retail sector (including small consumers); and
- major users.

These sectors take the natural gas from the point of extraction (the well head) to the point of consumption (the burner tip). They are depicted in the figure below, together with the linkages between them. Each is discussed in turn below.

In addition to reticulated natural gas, some consumers receive their gas in the form of LPG, either reticulated or bottled. An overview of the LPG sector is also included below.

## Overview of the gas sector



## Market structure and the key players

### Exploration and production

Currently, natural gas is produced entirely in the Taranaki region from fifteen fields. Production has been dominated since the late 1970s by the Maui field (over 58% of net production in Calendar Year 2006).<sup>29</sup> The Maui field (owned by Shell Petroleum Mining, OMV and Todd Energy) and the Kapuni field (owned by Shell Petroleum Mining and Todd Energy) together provide 75% of total production. They are both operated by Shell Todd Oil Services Limited.

The remaining 25% of net production in Calendar Year 2006 was provided from:

- McKee and Mangahewa, owned by Todd Taranaki Limited;
- Waihapa/Ngaere and Tariki/Ahuroa fields, owned by Southern Petroleum New Zealand Exploration Limited and Swift Energy New Zealand Limited;

<sup>29</sup> This information and much of the subsequent narrative comes from the *June 2007 Energy Data File*, published by the Ministry of Economic Development.

- Rimu and Kauri fields owned by Swift Energy New Zealand Limited;
- Ngatoro and Goldie fields, owned by Greymouth Petroleum Acquisition Company Limited, Southern Petroleum (Ochange) Limited and Greymouth Petroleum Limited;
- Kaimiro, owned by Greymouth Petroleum Acquisition Company Limited;
- Turangi, owned by Greymouth Petroleum Holdings Limited, Greymouth Gas Turangi Limited, Greymouth Gas Kaimiro Limited, Greymouth Gas Parahaki Limited, and Greymouth Petroleum Turangi Limited; and
- Pohokura, owned by OMV New Zealand Limited, Todd Pohokura Limited, Shell Exploration NZ Limited.

Total New Zealand gas production for the Calendar Year 2006<sup>30</sup> was 148.6 PJ, an increase of 2.9% compared with 144.4 PJ in the previous year. Many of the fields, in addition to producing natural gas, provide other useful products which include condensate, naphtha, natural gasoline, CO<sub>2</sub> and LPG. These other products are separated and either exported or sold locally. For instance, a proportion of LPG is shipped to the South Island.

Since 2006 the ownership structure of some of New Zealand's producing gas fields has changed. The most significant change was the departure of Swift Energy from New Zealand and the sale of that company's producing fields in late 2007. The Swift Energy assets were purchased by Australian company Origin Energy, with Contact Energy then buying an exclusive right to develop the Ahuroa field as a gas storage facility<sup>31</sup>.

The most recent addition to the list of producing gas fields in New Zealand is the Pohokura gas and condensate field. Pohokura has ultimate recoverable gas reserves of 898 PJs and came on stream in August 2006<sup>32</sup>. Because of its size and deliverability, Pohokura will make an important contribution to the national gas supply as production from the Maui field continues to decline. The Pohokura joint venture partners are Shell Exploration NZ Ltd (48%), OMV NZ Ltd (26%) and Todd Pohokura Ltd (26%).

Another gas field soon to commence production is the Kupe gas/condensate field. Kupe is operated by Origin Energy and had completed development drilling in May 2008. First gas production is expected to begin in mid-2009<sup>33</sup>. Once commissioned, Kupe is expected to produce 20 PJ of gas per annum.

The overall level of exploration and development activity in New Zealand has increased dramatically in recent years. A large portion of the increase in expenditure relates to the development of four new

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<sup>30</sup> Excluding gas re-injected or flared and LPG extracted.

<sup>31</sup> Contact Energy Ltd media release 19-12-2007

<sup>32</sup> Crown Minerals media release, 4-9-2006

<sup>33</sup> Crown Minerals media release, 14-3-2007

offshore field development projects. These include gas/condensate field development at Pohokura and Kupe, and oil field developments at Tui and Maari.

Taranaki remains the only region in New Zealand to produce commercial quantities of gas, and it is also the most heavily explored region in New Zealand. However, New Zealand as a whole is under-explored by international standards and other regions have the potential to produce hydrocarbons. Some other prospective areas include the Great South Basin near the southern tip of New Zealand, Canterbury Basin, East Coast basin, the deepwater portion of Taranaki Basin, and Northland Basin.

The firming of gas supplies in recent years has left some wholesale buyers with gas that is surplus to their immediate requirements and improved liquidity in the re-seller market. In combination with the demands of electricity generation, this is creating pressure for more flexible gas production and supply arrangements.

In addition to exploration for conventional natural gas deposits, coal seam gas (CSG) offers a new potential source of natural gas in New Zealand. The CSG concept is already proven in the United States, and it is playing an increasingly important role in meeting natural gas demand in Australia, particularly the east coast. CSG is still a relatively unknown technology in New Zealand, however CSG exploration and mining permits have been issued by Crown Minerals to several companies, and preliminary resource assessments have been positive.

## **Transmission**

Transmission pipelines transport large volumes of natural gas under high pressure from production fields to distribution networks, or to large customers along the pipeline.

There are over 3,400 km of high-pressure gas transmission pipelines in New Zealand. The major gas transmission pipelines are:

- the Vector transmission network, which extends to most major North Island centres; and
- the Maui pipeline, extending from South Taranaki north to Huntly, owned by Maui Development Limited but operated by Vector.

Other transmission pipelines are owned by Todd Petroleum and Shell, Todd Taranaki, Origin Energy and Westech Energy.

On 1 October 2005 an open access pipeline regime for the Maui pipeline came into effect, allowing all parties to ship gas through the Maui pipeline. The Vector transmission system already operated open access arrangements.

## Distribution

The gas distribution networks transport natural gas from transmission pipeline gate stations and reticulate it to houses, offices, hospitals, factories and other end consumers. There are more than 2,800km of intermediate, medium and low pressure gas distribution pipeline networks in the North Island connected to the high pressure transmission system.

There are four gas distributors: Vector, Nova Gas, Wanganui Gas and Powerco. Of these:

- the two main players are Vector and Powerco, with the remaining two significantly smaller;
- several distributors are also gas retailers (or affiliated with retail business units). Vector acquired NGC's retail arm as part of its acquisition of that company; GasNet<sup>34</sup> and Nova Gas are both affiliated with retail business units;
- Vector, Powerco and GasNet offer common carriage to gas retailers;
- Nova Gas operates by-pass networks in a number of regions, but does not allow third-party retailers to use its networks; and
- Vector and Powerco also distribute electricity.

Distribution companies have network service agreements with retailers to distribute gas to end users and may have interconnection agreements with interconnected transmission pipelines.

## Retail

The retail market consists of retailers competing with one another to sell natural gas to smaller consumers, which include households, hospitals, factories and businesses. It is generally considered to exclude large industrial users and power generators (described below).

A number of industry documents describe retail customers as those using less than 10 terajoules (TJ) of gas in a year. In particular, a 'small consumer' is defined in section 43D of the Gas Act as a consumer who is supplied with less than 10 TJ of gas per year. These are, in general terms, the residential and commercial consumers. In 2006 there were approximately 229,000 residential gas consumers accounting for approximately 5% of total annual production, and 8,000 commercial consumers accounting for 3% of annual consumption<sup>35</sup>. The remaining 92% of annual consumption is in the industrial sector, typically the major users as described below.

There are eleven gas retailers operating in New Zealand: Auckland Gas Company (Todd Energy); Bay of Plenty Energy (Todd Energy); Contact Energy; E-gas; Genesis Energy; Energy Online (Genesis Energy from 1 July 2008), Mercury Energy (Mighty River Power); Ongas (Vector); Greymouth Gas, Nova Gas (Todd Energy) and Energy Direct (Wanganui Gas).

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<sup>34</sup> Gas Net is an independent trading division of Wanganui Gas.  
<sup>35</sup> MED Energy Data File, June 2007

There are no statutory or licensing restrictions on retailers of gas as far as marketing areas are concerned. Gas retailers compete in common geographic areas purchasing gas from the wholesale market. Retailers effectively aggregate all the purchases of many smaller users to form a sizable purchase from gas producers. Wholesale gas is generally purchased at the receipt point into the gas transmission system. The retailer then has this gas transported under a transmission service agreement (transmission) and a network service agreement (distribution) to its various customers. In this way, retailers offer a convenient bundled product to retail customers.

### **Major gas users**

Major users are generally regarded as those using more than 10 TJ of gas in a year. These users include the petrochemicals sector, electricity generation and co-generation. While protecting the interests of these larger consumers is not the focus of this discussion paper, they are included here for completeness.

The petrochemicals sector used around 15% of New Zealand's natural gas during 2006. This gas was used in Methanex's methanol plants at Motunui and Waitara, and the Ballance Agri-Nutrients ammonia/urea plant at Kapuni.

Electricity generation (excluding cogeneration) accounted for about 56% of New Zealand's natural gas produced during 2006. Contact Energy Limited (Otahuhu B, Taranaki Combined Cycle and New Plymouth) and Genesis Power Limited (Huntly) are the main thermal electricity generators in New Zealand using natural gas. A portion of this gas was used for cogeneration. In August 2004, Genesis Energy committed to proceed with the construction of a new gas-fired power station at Huntly ('e3p') and this was commissioned in 2007. The recently published New Zealand Energy Strategy will have significant impacts for gas use in electricity generation, as it sets a 90% renewable energy target for the electricity sector, an emissions trading scheme and a ten-year moratorium on new base-load thermal generation.

Apart from the major users already mentioned, other major users supplied directly from the transmission system include New Zealand Steel, Carter Holt Harvey, Degussa Peroxide, Fonterra Co-operative, NZ Refinery Company, Southdown Cogeneration, and Tasman Pulp and Paper. Many industrial users are connected to gas distribution networks.

### **LPG**

The sections above generally relate to reticulated supplies of natural gas in New Zealand. Some consumers receive their gas in the form of LPG, either bottled or reticulated. There are some aspects of the LPG sector which are relevant to this work on consumer issues, and a brief overview of the sector is therefore included here for completeness.

LPG is typically produced either as a by-product of the direct production of oil and gas, or as a by-product of petroleum production. The first bulk imports of LPG occurred in 1972 when it was shipped

into Auckland, Wellington and Christchurch. In 1974, the Kapuni field started producing LPG which replaced all imports. At present, the majority of NZ's LPG requirements are supplied from domestic production, however, in recent years, LPG imports have been increasing as domestic demand has continued to grow and supply has declined.

The key elements of the LPG supply chain are described below, together with an overview of the players involved.

**Transportation:** LPG gas is delivered by bulk overseas tanker, coastal tanker, train, road or pipelines to cylinder filling plants and intermediate storage areas.

**Bulk Storage:** All imported LPG is currently delivered through facilities in Taranaki owned by Liquigas Limited. It also owns and operates bulk LPG storage facilities at Port Taranaki, Oaonui, Auckland, Christchurch and Dunedin. Liquigas' historical role has been the distribution of bulk LPG supplies from domestic gas fields, principally located in Taranaki, to retailers. Liquigas also acts as a supply management co-ordinator by aggregating demand for the purchase of imported LPG. Retailers may also enter into their own contractual arrangements to purchase imported LPG.

**Retail and Distribution:** The retail LPG market can be viewed as comprising a number of regional geographical markets. The drivers of this regional perspective is that LPG must be stored close to customers for cost effective and timely supply, and that retail customers are unlikely to travel significant distances to purchase LPG. There are four significant LPG retailers and distributors in New Zealand. A feature of New Zealand's LPG retail and distribution participants is that they are all directly, or indirectly through previous ownership arrangements, vertically integrated with upstream ownership interests in producing fields and horizontally integrated with natural gas and other energy products.

- Rockgas is a nationwide retailer of LPG, and is the largest participant in the industry, accounting for approximately half of total wholesale LPG sales. Rockgas was recently acquired by Contact Energy. Rockgas distributes and retails LPG for application in residential, commercial, industrial, horticulture and for automotive LPG. Rockgas operates reticulated LPG networks in Christchurch, Queenstown and Wanaka.
- OnGas is a nationwide supplier of bottled LPG to homes, businesses and for automotive use. OnGas is the second largest participant in the market, accounting for around a quarter of total wholesale LPG sales. OnGas is owned by Vector Limited.
- BOC (a global engineering company) acquired Shell's New Zealand LPG business in early 2007. BOC is a nationwide retailer and distributor of LPG cylinders and automotive LPG, and accounts for approximately 20% of total wholesale LPG sales.
- Nova LPG, Nova Gas's LPG arm, operates in the greater Bay of Plenty region and in Dunedin (which includes the Dunedin reticulated LPG pipeline network). Nova LPG accounts for approximately 10% of total wholesale LPG sales. Nova Gas is part of the Todd Energy group.

*End Users:* LPG is a versatile fuel that is used by a broad range of users with varying annual requirements. End users include the residential market (home heating and cooking appliances), small businesses, industrial processes, automotive (including cars and forklifts) and the leisure market (camping and tramping cylinders). It is delivered to end users through cylinder sales points, service stations, pipelines or the filling of bulk storage facilities at a user’s site.

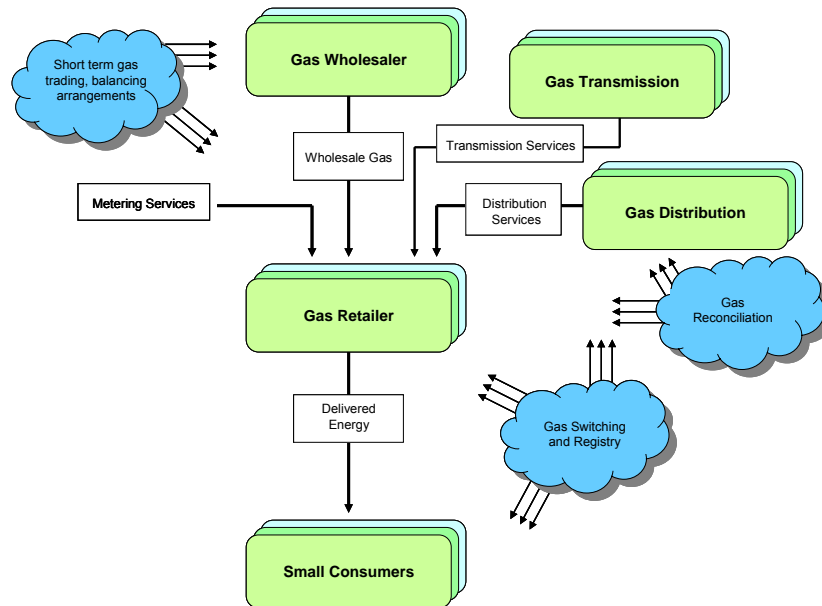
### Contractual and institutional arrangements

The contractual relationships between the various parts of the gas market are illustrated in the figure below, together with key institutional arrangements such as the registry and customer switching.

The nature of the contractual arrangements is relevant here, as domestic and small business customers typically received a bundled supply under their contracts with gas retailers, that is, gas and related services and their delivery. However, some aspects of the delivered supply relate to services provided by parties outside that direct consumer/retailer contractual relationship. These include services such as transport and metering.

Improving outcomes for these consumers requires consideration of the wider contractual and institutional arrangements to ensure alignment and interface issues do not inhibit any targeted measures proposed.

### Overview of contractual and institutional arrangements





# Appendix C Summary of relevant Gas Act provisions

Note: This is not an official copy of these provisions of the Gas Act 1992. These provisions are made available for information only and should not be relied on as authoritative text.

## Gas Act 1992 Part 4A

...

### [43D Interpretation

(1) In this Part, unless the context otherwise requires,--

**board**, in relation to the industry body, means the directors, trustees, or other persons who constitute the governing board of the industry body

**Commission** means the Energy Commission to be established under section 43ZZH

**constitution**, in relation to the industry body, means its constitution or trust deed or other similar governing document

**domestic consumer** means any person who purchases gas in respect of any dwellinghouse

**gas governance regulations** means regulations made under sections 43F to 43T

**gas producer** means a person who supplies gas that is transmitted on gas transmission or distribution pipelines

**GPS objectives and outcomes** means objectives and outcomes set under section 43ZO

**industry body** means the body approved by Order in Council under section 43ZL

**industry participant** means--

- (a) a gas retailer:
- (b) a gas distributor:
- (c) a gas producer:
- (d) a pipeline owner:
- (e) a gas wholesaler:
- (f) a person who purchases gas directly from a gas producer or gas wholesaler or on any wholesale gas market:
- (g) a service provider appointed under any gas governance regulations:
- (h) a gas metering equipment owner:
- (i) a data administrator that provides data administration services to the gas industry,--

but does not include the industry body or the Commission (even to the extent that the industry body or the Commission may be acting as a service provider after an appointment under gas governance regulations)

**member**,--

- (a) in relation to the board of the industry body, means a director or trustee or other person occupying a similar position by whatever name called; and
- (b) in relation to the industry body itself, means a shareholder or beneficiary or other person occupying a similar position by whatever name called

**publicise**, in relation to a document, means,--

- (a) to make the document available to the public, at no cost, on a website maintained by or on behalf of the industry body or the Commission, as the case may be, at all reasonable times; and
- (b) to give notice of the document in the *Gazette*

**recommending body**, in relation to a recommendation for gas governance regulations or rules, means the industry body, the Commission, or the Minister who makes the recommendation

**rules** and **gas governance rules** mean rules made under section 43Q

**Rulings Panel** means any Rulings Panel established under gas governance regulations

**small consumer** means a consumer who is supplied with less than 10 terajoules of gas per year.

Status Compendium

**Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.

## **[Complaints resolution system**

### **[43E Complaints resolution system**

**(1)** Every gas distributor and every gas retailer must participate in a complaints resolution system that is approved by the Minister for the purpose of addressing complaints relating to those gas retailers and gas distributors by all or any of--

- (a) small consumers (including potential small consumers):
- (b) owners and occupiers of land into, through, or against which pipelines have been laid down or placed.

**(2)** This section applies to a gas distributor or a gas retailer provided the Minister has approved, by notice in the *Gazette*, 1 or more complaints resolution systems that apply to that gas distributor or gas retailer.]

Status Compendium

**Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.

## **[Gas industry regulation-making powers**

### **[43F Gas governance regulations for wholesale market, processing facilities, transmission, and distribution of gas**

**(1)** The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the purposes in subsection (2).

**(2)** The purposes are--

#### *Wholesale gas market*

- (a) providing for the establishment and operation of wholesale markets for gas, including for--
  - (i) protocols and standards for reconciling and balancing gas:
  - (ii) clearing, settling, and reconciling market transactions:
  - (iii) the provision and disclosure of data and other market information:
  - (iv) minimum prudential standards of market participation:
  - (v) minimum standards of market conduct:
  - (vi) arrangements relating to outages and other security of supply contingencies:

#### *Processing facilities*

- (b) setting reasonable terms and conditions for access to, and use of, gas processing facilities where--
  - (i) this is reasonably necessary to allow new fields to be developed; and
  - (ii) spare capacity is available or could be made available if the person accessing or using the facilities paid the reasonable costs (including the costs of capital) of providing the additional capacity:

#### *Transmission and distribution of gas*

- (c) prescribing reasonable terms and conditions for access to transmission or distribution pipelines:
- (d) requiring expansions, upgrades, or service quality improvements to gas transmission pipelines including specifying how these will be paid for.]

#### Status Compendium

#### **Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.

### **[43G Other gas governance regulations**

**(1)** The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the purposes in subsection (2).

**(2)** The purposes are--

### *Complaints resolution system*

- (a) providing for the establishment of, or participation by gas distributors and gas retailers in, a complaints resolution system (that may include codes of practice) for the purpose of addressing complaints by all or any of small consumers (including potential small consumers), or owners and occupiers of land into, through, or against which pipelines have been laid down or placed, relating to gas retailers and gas distributors, or setting out minimum requirements in relation to that system, including--
  - (i) provision for compensation up to a maximum of \$20,000 to be awarded, and other actions to be taken, by the complaints resolution agency in relation to those complaints:
  - (ii) provision for rights of review, or rights of appeal on a question of law only, in relation to decisions relating to those complaints:

### *Prepayment meters*

- (b) requiring gas retailers to offer prepayment meters to domestic consumers at a reasonable cost, and prescribing conditions on which those meters must be offered, with the objective of ensuring that all domestic consumers who wish to pay for gas in advance have the option to do so at reasonable cost:  
*Ability of consumers to choose preferred gas retailer*
- [(c)** providing for arrangements to enable consumers to switch gas retailers:]  
*Transition arrangements for insolvent gas retailers*
- (d) providing a system of transition arrangements for consumers in the event of a gas retailer becoming insolvent, and requiring industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other gas retailers:

### *Disclosure of information*

- (e) providing for the disclosure of information by gas transmitters, distributors, and retailers on tariff and other charges:

### *Terms and conditions of access*

- (f) providing for terms and conditions of access to gas meters by gas retailers:

### *Information on customer accounts*

- (g) providing for information on customer accounts:

### *Consumer contracts*

- (h) providing for minimum terms and conditions in contracts between domestic consumers and gas distributors or gas retailers:

### *Dispute resolution procedures*

- (i) providing procedures for resolving disputes between industry participants:
- (j) providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person:

### *Enforcement of gas governance regulations*

- (k) providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedure of that person or court:

### *Processes*

- (l) providing for processes for settling particular issues within the gas industry that may result in recommendations for gas governance regulations or rules, and requiring compliance by industry participants, the industry body, and the Commission with those processes, including compliance with requirements to produce documents as part of those processes.]

### Status Compendium

#### **Hist.**

s43G(2)(c): Repealed and substituted on 20 September 2007 by 2007 No 60, s4. The repealed s43G(2)(c) is listed below for reference

'(c) requiring all gas retailers to comply with, and give effect to, a system or set of rules that will enable any consumer or class of consumer to choose, and alternate, between competing gas retailers, with the objective of promoting competition in gas retail markets:'

#### **Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.

### **[43H Low fixed charge tariff option for domestic consumers**

**(1)** The objective of this section is to enable the making of regulations to ensure that gas providers offer a low fixed charge tariff option or options for delivered gas to domestic consumers that will assist low-use consumers and encourage energy conservation.

**(2)** In this section,--

**delivered gas** includes components like gas supply, line function services, customer service, meter provision, and meter reading services

**fixed charge** means a charge levied for each customer connection in currency per time period (for example, cents per day)

**gas provider** means a gas retailer or other business that contracts with consumers to sell delivered gas or a component of delivered gas.

**(3)** The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the following purposes:

- (a) requiring gas providers to make available to domestic consumers 1 or more tariff options that include a fixed charge for delivered gas to dwellinghouses at not more than a specified amount:

- (b) regulating the variable (cents per kilowatt hour) charges in those required tariff options to ensure that low-use domestic consumers would pay a lower total charge on the required tariff option than on any similar alternative tariff option available from that gas provider:
  - (c) regulating other charges and other terms and conditions of the contracts to which the low fixed charge tariff options in paragraph (a) relate, to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:
  - (d) setting rules as to the offering, supply, advertisement, promotion, availability, and unbundling of regulated charging options:
  - (e) specifying criteria for the Minister to exempt gas providers, or gas providers in relation to particular areas, from the application of the regulations if, in the opinion of the Minister, the gas providers materially comply with the objective of this section.
- (4)** No gas provider that is a customer trust or a community trust may pay a domestic consumer who is on the required tariff option a different rebate only because the consumer is on the required tariff option.
- (5)** Each trustee of a gas provider that contravenes subsection (4) commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000.
- (6)** If the components that make up the delivered gas are unbundled, regulations may be made under subsection (3) for each component, or group of components, of delivered gas to ensure that the objective of this section is achieved for the aggregate of all the components.
- (7)** Subsection (6) applies regardless of whether different components of delivered gas are supplied by the same gas provider.
- (8)** Regulations made under subsection (3) may provide for the way in which the total charge of the low-use domestic consumer is to be assessed, which may be (without limitation) calculated with reference to national data or the data relating to any gas retailer or gas distributor.
- (9)** The Governor-General may, for the purpose of assisting retailers to deliver low fixed charge tariff options, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations for all or any of the following purposes:
- (a) regulating all or any charges charged by gas distributors to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:
  - (b) regulating the terms and conditions under which gas distributors supply their services in relation to domestic consumers to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:
  - (c) setting rules as to the offering, availability, supply, and unbundling of gas distributors' services:
  - (d) regulating the charging, offering, supply, and availability of delivered gas by other gas providers.
- (10)** The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 43I to 43P, make regulations providing for the supply and collection of information from gas providers and gas distributors--
- (a) about contracts, offers, advertising, or promotion relating to the supply of delivered gas, or components of delivered gas, to domestic consumers; or

- (b) information that is necessary for the purposes of calculating the total charge for the low-use domestic consumer.]

Status Compendium Penalty

**Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.

...

**[Supplementary provisions**

**[43S Supplementary empowering provision for regulations and rules**

**(1)** Any regulations or rules made under this subpart may--

- (a) provide for 1 or more persons or bodies or groups of persons to carry out functions in relation to those regulations or rules, and for matters concerning their establishment, constitution, functions, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration and operation, funding by industry participants and reporting requirements:
- (b) provide for systems, processes, and procedures (including dispute resolution procedures), and the keeping, supply, and disclosure of information, in relation to any of the matters specified in this subpart:
- (c) prescribe the form and manner in which information is to be disclosed:
- (d) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner, by persons belonging to any specified class of persons:
- (e) prescribe when and for how long information must be disclosed:
- (f) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements in regulations or rules made under this subpart:
- (g) provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:
- (h) provide for transitional provisions:
- (i) provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

**(2)** Regulations or rules that may be made in respect of all industry participants or classes of industry participants may be made in respect of all or any of the persons in that class and in respect of all or part of their business.

**(3)** In this subpart, unless the context otherwise requires, terms and conditions includes both contractual matters and other types of arrangements and requirements.]

Status Compendium

**Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.

**[43T Supplementary empowering provision for regulations**

Any regulations made under this subpart may provide for offences that are punishable on summary conviction for a contravention of those regulations, or of rules made under section 43Q, and provide for fines not exceeding \$20,000 for those offences.]

Status Compendium


**Hist.**

Part 4A (comprising s43A-s43ZZR): Inserted on 18 October 2004, with subpart 3 (comprising s43ZZG-s43ZZQ) coming into force on a date to be appointed by the Governor-General by Order in Council), by Gas Amendment Act 2004 (2004 No 83), s5.



# Appendix D Proposed set of consumer expectations

For ease of reference, the complete set of consumer expectations proposed by Gas Industry Co in this Discussion Paper is collated here across each of the three phases: 'Making a Choice', 'Business as Usual', and 'Dealing with Problems'.



	<b>Consumer expectations</b>
<b>Meaningful choice</b>	<ol style="list-style-type: none"> <li>1. Suppliers offer a range of products and services for consumers to consider and make informed decisions.</li> <li>2. There is ready access to good quality, comprehensive and easy to understand information on gas options, possible gas suppliers and alternatives to gas.</li> <li>3. From the options available in the market, consumers are readily able to choose their energy form and supplier, and to modify their choice.</li> </ol>
<b>Connection and disconnection</b>	<ol style="list-style-type: none"> <li>4. The connection to supply is safe, reliable and "fit for purpose", and the connection process is timely and well-managed.</li> <li>5. Arrangements for termination of the contract and supply disconnection are reasonable, and are undertaken in a timely and well-managed manner.</li> </ol>
<b>Gas supply &amp; related services</b>	<ol style="list-style-type: none"> <li>6. The supply of gas is safe, reliable and "fit for purpose".</li> <li>7. Other services reasonably required as part of receiving gas supply, such as a call centre and metering services, are readily available and "fit for purpose".</li> </ol>
<b>Contractual terms and conditions</b>	<ol style="list-style-type: none"> <li>8. The contractual terms and conditions of supply of gas to the consumer are lawful, fair and reasonable, and equitable between the parties.</li> <li>9. The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the supplier and consumer.</li> </ol>
<b>Costs</b>	<ol style="list-style-type: none"> <li>10. The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply.</li> <li>11. The supplier does not impose additional or unexpected costs on the consumer.</li> </ol>
<b>Billing and payment</b>	<ol style="list-style-type: none"> <li>12. Consumers receive timely and accurate bills for gas and associated services, and the bills are easy to understand.</li> <li>13. Consumers have access to appropriate mechanisms for making payments that take account of consumer circumstances.</li> </ol>
<b>Treatment by supplier</b>	<ol style="list-style-type: none"> <li>14. The supplier is honest and open, and acts with integrity in all its dealings with the consumer.</li> <li>15. The supplier answers consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.</li> <li>16. The supplier 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.</li> </ol>
<b>Access to remedies</b>	<ol style="list-style-type: none"> <li>17. Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies.</li> <li>18. Consumers have access to the information necessary to help resolve complaints.</li> </ol>



# Appendix E Draft Model Contract Guidelines, Gas Industry Co, November 2005 consultation

The draft guidelines for domestic consumer contracts developed by the MCWG, and published for consultation by Gas Industry Co in November 2005 are set out below. Where relevant, comments on the draft guidelines have also been included to assist in understanding the nature of the guideline.

The purpose of setting out the draft guidelines is to provide stakeholders with the opportunity to assess the draft guidelines in the context of Gas Industry Co’s view that it should develop minimum terms and conditions for contracts between domestic consumers and retailers, and that these should be recommended to the Minister for approval pursuant to the provisions in the Act.

**Table 13: Draft contract guidelines**

Draft Guideline
<p><b>1) How to become a customer</b></p> <p>The contract must clearly define the steps a consumer and retailer must take to form the contract and commence supply.</p> <p>The contract must state clearly when the contract is to commence and supply is to be taken. If the agreed supply date is retrospective, the contract must make this clear to the customer.</p>
<p><b>2) Changes to a contract</b></p> <p>The contract must:</p> <ul style="list-style-type: none"> <li>a) permit changes to be made to the terms and conditions of the consumer contract upon specified notice being given; and</li> <li>b) describe how the parties will propose, communicate and agree any changes to the consumer contract that may be able to be made under that contract (including increases in the price of gas).</li> </ul>
<p><b>3) Service standards</b></p> <p>The consumer contract must describe the services provided to the consumer. This includes any quality of service standards that the company offers.</p> <p>A consumer contract must set out how the Company will respond to the consumer where quality of service standards are not met.</p>

#### **Draft Guideline**

The contract must not contain quality of service standards that are inconsistent with the contract parties' obligations under legislation and regulations. Standards must:

- a) comply with the Gas Act 1992 and the technical regulations and technical gas codes of practice;
- b) be no less than good industry practice prevailing in New Zealand; and
- c) require that equipment used in the provision of line function services will be monitored and maintained in line with good industry practice prevailing in New Zealand.

#### **4) Prices, bills and payment**

If a company increases the price of gas supplied under the consumer contract, the contract must state:

- a) the timeframe and method in which notice will be given before increasing the price of gas; and
- b) that an explanation of the reasons for the increase in price must be provided when it gives the consumer notice about the change; and
- c) that if the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the customer in writing.

The contract will state what will be included in the bill and that the bill will provide sufficient information for the customer to check the billed amounts.

The consumer contract must:

- a) refer to the relevant prices or pricing schedule (as may be produced by the company from time to time) of products and services available to the consumer;
- b) state that the consumer is liable for the charges for all the services provided under the consumer contract;
- c) state the time from which the consumer will be liable for charges.
- d) provide that, except in the case of bills based on estimates, if the company makes an error and charges an incorrect amount to the consumer, then the consumer is:
  - entitled to a refund of the difference between the incorrect and correct amounts where the consumer has paid too much; or
  - is only liable to the company for the correct amount. The contract will state any term limitations that will apply for the recovery of underpayments.
- e) advise the consumer of the billing and/or reconciliation period; and
- f) advise whether the customer is required to pay estimated accounts.

<b>Draft Guideline</b>
If the company offers alternative payment options to consumers, a simple explanation of how those options operate must be set out in the contract or in a separate publication identified in the contract.
<b>5) Bonds</b>
Where the company requires a bond from the consumer, the contract must state: <ul style="list-style-type: none"> <li>a) the period of time within which the bond must be paid to the company;</li> <li>b) how long the company will keep the bond. If the company keeps the bond for longer than 12 months, it must provide its reasons for doing so to the consumer;</li> <li>c) how the bond will be refunded;</li> <li>d) whether or not interest is payable on the bond.</li> </ul>
<b>6) Customer obligations and access</b>
The contract must state: <ul style="list-style-type: none"> <li>a) the physical point at which the customer's responsibility begins; and</li> <li>b) an explanation of the consumer's responsibilities for compliance with all safety and technical requirements under regulations and codes of practice.</li> </ul> <p>The contract will state the rights of the retailer and/or their agents to gain access to their equipment located on the consumer's premises. The contract will also state the consequences the customer will face for not granting access.</p>
<b>7) Metering</b>
Where metering is provided by the retailer, the consumer contract must clearly explain: <ul style="list-style-type: none"> <li>a) the requirements for metering relevant to the pricing option selected by the consumer and any additional costs associated with providing or changing metering equipment must be explained;</li> <li>b) the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes;</li> <li>c) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.</li> </ul>
<b>8) Disconnection and reconnection</b>
The consumer contract must set out the conditions under which consumers can be disconnected and the actions that the customer can take to avoid disconnection.

**Draft Guideline**

A company may only disconnect a consumer for non-payment where the non-payment relates to bills (including a bond) associated with the supply of gas retail services, line function services, and/or gas.

Except for emergency disconnections or in the case of disconnections under the Gas Act or Gas Regulations for safety reasons, or where a customer requests disconnection, consumer contracts must provide:

- a) for at least 7 days notice of warning of disconnection and allow an additional 3 days for the delivery of the notice.
- b) for a final warning no less than 24 hours or more than 7 days before disconnection.

Consumer contracts must explain when charges for temporary disconnection and/or reconnection apply.

**9) Faults and planned shutdowns**

The consumer contract must clearly state:

- a) the circumstances under which the retailer may interrupt supply without prior warning;
- b) a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the consumer;
- c) terms detailing the retailer's rights and obligations under special or emergency operating situations; and
- d) where information on emergency procedures is located and how under emergency conditions information and procedures for reconnection will be achieved.

The contract will give details on where information on the time and duration of unplanned outages can be obtained.

**10) Privacy**

The contract must state that it will comply with the provisions of the Privacy Act 1993, and accordingly:

- a) set out the purposes for which the company collects information from individuals; and
- b) confirm that customers will be able to access to information held about them and have the opportunity to correct this information.

**11) Dispute resolution and liability of the company and consumer**

The contract must contain a clause that states that nothing in the contract will limit the customer's rights under the Consumer Guarantees Act.

**Draft Guideline**

The contract must define the situations covered under Force Majeure clauses and explain how a company will respond in such circumstances.

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

The contract must advise consumers that there is an Electricity and Gas Complaints Commission, its role and how to contact it.

**12) Deliver notices**

The contract must specify how notices under the contract will be delivered to consumers.





# Appendix F Comparison of Draft Model Contract Guidelines, Gas Industry Co November 2005 consultation with EGCC Codes of Practice at that time

The table below compares the draft guidelines developed in late 2005 by the Gas Industry Co to the equivalent provisions in the EGCC Scheme code of practice in place at that time.

The comparison is provided for the purpose of assisting stakeholders in their consideration of the draft guidelines set out in Appendix E to this Discussion Paper.

In addition to the comparison set out in the table, it is worth noting the following:

There are a limited number of draft guidelines which are not included in the code of practice. From discussions with the EGCC Commissioner, it appears that it was not a deliberate choice to exclude these requirements from the gas code of practice. Rather, the gas code of practice was prepared at the time that gas was included as part of the EGCC Scheme and largely reflects the EGCC Scheme electricity code of practice. A decision was made at the time of scheme expansion that it was not appropriate to undertake a significant review of the code contents for gas. Gas Industry Co understands that the EGCC Scheme undertakes a five yearly review (in addition to undertaking general ongoing reviews) of the EGCC Scheme, including a review of its codes of practice.

The draft guidelines which are currently not included in the EGCC Scheme code of practice are as follows:

- a) Commencement of Contract - The guidelines require the contract to clearly define the steps a consumer and retailer must take to form a contract and commence supply, and require the contract to state when the contract is to commence and supply is to be taken. If the agreed supply date is retrospective the contract must make this clear to the customer.
- b) Termination of Contract - The guidelines require the contract to set out the ways in which the company and the consumer may terminate the contract. The contract should clearly set out responsibilities of the consumer when they wish to terminate the account.
- c) Metering - Where metering is provided by the retailer, the consumer contract must clearly explain:

- the requirements for metering relevant to the pricing option selected by the consumer. Any additional costs associated with providing or changing metering equipment must be explained;
  - the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes;
  - the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.
- d) Notice Delivery – The contract must specify how notices under the contract will be delivered to consumers.

Whilst the draft guidelines and the code of practice are in many instances drafted in different ways, the substantive effect of the guidelines is reflected in the code of practice for all but the above contract requirements.

Draft Guideline	Gas Consumer Code of Practice
<p><b>1) How to become a customer</b></p> <p>The contract must clearly define the steps a consumer and retailer must take to form the contract and commence supply.</p> <p>The contract must state clearly when the contract is to commence and supply to be taken. If the agreed supply date is retrospective, the contract must make this clear to the customer.</p>	<p><b>CA9 WHAT CAN THE CONSUMER EXPECT FROM A CONSUMER CONTRACT?</b></p> <p>CA9.1 A Consumer Contract must:</p> <ul style="list-style-type: none"> <li>• Be easy to understand;</li> <li>• Clearly set out the rights and obligations of both the Company and the Consumer;</li> <li>• Refer to any other information that is part of the terms and conditions of the Consumer Contract;</li> <li>• Be easy for Consumers to obtain;</li> <li>• Allow Disconnection only as a last resort except for reasons of safety or other reasons authorised under the Gas Regulations 1993; and</li> <li>• Provide for free, accessible, fair and effective systems for resolving Complaints within a Company.</li> </ul>
<p><b>2) Changes to a contract</b></p> <p>The contract must:</p> <ul style="list-style-type: none"> <li>• permit changes to be made to the terms and conditions of the consumer contract upon specified notice being given; and</li> <li>• describe how the parties will propose, communicate and agree any changes to the consumer contract that may be able to be made under that contract (including increases in the price of gas).</li> </ul>	<p><b>CA10 CHANGES TO CONSUMER CONTRACTS</b></p> <p>CA10.1 If a Company changes the terms and conditions of a Consumer Contract, the Company must:</p> <ul style="list-style-type: none"> <li>• Give no less than 30 days notice before making any changes to the terms and conditions of the Consumer Contract; and</li> <li>• Explain the reasons for the changes to the Consumer Contract terms and conditions when it gives the Consumer notice about the change.</li> </ul> <p>CA10.2 The Consumer Contract must describe how the Company will communicate any changes to the terms and conditions of the Consumer Contract that may be made under the Consumer Contract. However, any change in the frequency of billing and/or frequency of meter reading, must be individually communicated to the Consumer in writing.</p>

Draft Guideline	Gas Consumer Code of Practice
	<p><b>CA11 CHANGES TO PRICE</b></p> <p>CA11.1 If a Company increases the price of Gas supplied under a Consumer Contract, including for example any increase in variable Gas prices and/or daily fixed charge prices, the Company must:</p> <ul style="list-style-type: none"> <li>• Give no less than 30 days notice before increasing the price of Gas; and</li> <li>• Explain the reasons for the increase in price when it gives the Consumer notice about the change.</li> </ul> <p>CA11.2 The Consumer Contract must describe how the Company will communicate any increases in the price of Gas. If the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the Consumer in writing as soon as practicable.</p> <p>CA11.3 For the avoidance of doubt, a Company is not required to give a Consumer advance notification of a decrease in the price of Gas supplied.</p>
<p><b>3) Service standards</b></p> <p>The consumer contract must describe the services provided to the consumer. This includes any quality of service standards that the company offers.</p> <p>A consumer contract must set out how the Company will respond to the consumer where quality of service standards are not met.</p> <p>The contract must not contain quality of service standards that are inconsistent with the contract parties' obligations under legislation and regulations. Standards must:</p> <ol style="list-style-type: none"> <li>a) comply with the Gas Act 1992 and the technical regulations and technical gas codes of practice;</li> <li>b) be no less than good industry practice prevailing in New Zealand; and</li> <li>c) require that equipment used in the provision of line function services will be monitored and maintained in line with good industry practice prevailing in New Zealand.</li> </ol>	<p><b>CA12 SERVICES PROVIDED</b></p> <p>CA12.1 The Consumer Contract must describe the services provided to the Consumer. This includes any quality standards that the Consumer should expect from the Company in providing these services.</p> <p>CA12.2 A Consumer Contract must set out how the Company will respond to the Consumer where quality of service standards are not met, including any compensation that would be paid to the Consumer if the Company does not meet its obligations.</p> <p>CA12.3 The quality of service standards must:</p> <ul style="list-style-type: none"> <li>• Comply with the Gas Act 1992 and the technical regulations and technical Gas codes of practice;</li> <li>• Be no less than good industry practice prevailing in New</li> </ul>

Draft Guideline	Gas Consumer Code of Practice
	Zealand; and <ul style="list-style-type: none"> <li>• Require that equipment used in the provision of Line Function Services will be monitored and maintained in line with good industry practice prevailing in New Zealand.</li> </ul>
<p><b>4) Prices, bills and payment</b></p> <p>If a company increases the price of gas supplied under the consumer contract, the contract must state:</p> <ol style="list-style-type: none"> <li>a) the timeframe and method in which notice will be given before increasing the price of gas; and</li> <li>b) that an explanation of the reasons for the increase in price must be provided when it gives the consumer notice about the change; and</li> <li>c) that if the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the customer in writing.</li> </ol> <p>The contract will state what will be included in the bill and that the bill will provide sufficient information for the customer to check the billed amounts.</p> <p>The consumer contract must:</p> <ol style="list-style-type: none"> <li>a) refer to the relevant prices or pricing schedule (as may be produced by the company from time to time) of products and services available to the consumer;</li> <li>b) state that the consumer is liable for the charges for all the services provided under the consumer contract;</li> <li>c) state the time from which the consumer will be liable for charges.</li> <li>d) provide that, except in the case of bills based on estimates, if the company makes an error and charges an incorrect amount to the consumer, then the consumer is:               <ul style="list-style-type: none"> <li>- entitled to a refund of the difference between the incorrect and correct amounts where the consumer has paid too much; or</li> <li>- is only liable to the company for the correct amount. The contract will state any term limitations that will apply for the recovery of underpayments.</li> </ul> </li> <li>e) advise the consumer of the billing and/or reconciliation period; and</li> <li>f) advise whether the customer is required to pay estimated accounts.</li> </ol>	<p><b>CA13 PRICE INFORMATION</b></p> <p>CA13.1 The Consumer Contract must refer to the relevant prices or pricing schedule (as may be produced by the Company from time to time) of products and services available to the Consumer.</p> <p><b>CA14 BILLING</b></p> <p>CA14.1 Consumer Contracts must set out:</p> <ul style="list-style-type: none"> <li>• That the Consumer is liable for the charges for all the services included in the Consumer Contract and is responsible for making sure that the contractual requirements are met;</li> <li>• That the Consumer will only be liable for charges from the date of occupancy or responsibility unless another date has been agreed between the Consumer and the Company;</li> <li>• That, except in the case of bills based on estimates, if the Company makes an error and charges an incorrect amount, the Consumer:           <ul style="list-style-type: none"> <li>- is entitled to a refund of the difference between the incorrect and correct amounts where the Consumer has paid too much; or</li> <li>- is only liable to the Company for the correct amount; and</li> </ul> </li> <li>• The billing period and/or reconciliation period.</li> </ul> <p>CA14.2 Where a Consumer has chosen a price option offered by a Gas Retailer that includes fixed charges for Gas and Line Function Services, the Company's bill must identify the fixed charge component of the bill separately from the variable charge.</p> <p>CA14.3 If a Company's bill that relates to the supply of Gas and Line Function Services includes charges for other goods and services, those goods and services should be itemised separately unless the</p>

Draft Guideline	Gas Consumer Code of Practice
<p>If the company offers alternative payment options to consumers, a simple explanation of how those options operate must be set out in the contract or in a separate publication identified in the contract.</p>	<p>Consumer has agreed otherwise under the Consumer Contract.</p> <p>CA14.4 If the Consumer Contract is a Combined Electricity and Gas Consumer Contract, the amount payable for electricity and the amount payable for Gas should be itemised separately.</p> <p>CA14.5 If a Company's bill to a Consumer is based on a method of estimating Gas and/or Line Function Services usage:</p> <ul style="list-style-type: none"> <li>• The Consumer should be given the opportunity of reading their own meter(s) and giving the reading(s) to the Company until the Company arranges for the meter to be read;</li> <li>• The Company must provide, on request, a simple explanation of how estimates are calculated and amend an estimated bill when the Consumer provides a valid meter reading;</li> <li>• The Company must make sure that its bills state clearly if an estimate has been used; and</li> <li>• The Company must state in the Consumer Contract whether the Consumer is required to pay estimated accounts.</li> </ul> <p><b>CA16 PAYMENT OPTIONS</b></p> <p>CA16.1 A Company with a Consumer Contract (or the person who does that Company's billing on its behalf) must have policies in place that assist a Consumer who is having difficulty paying a bill.</p> <p>CA16.2 Where currently offered payment options are to change, reasonable notice must be given and adequate information provided to explain the changes to Consumers before the change takes effect. The minimum notification provisions of CA10 Changes to Consumer Contracts apply.</p> <p>CA16.3 If alternative payment options are offered to Consumers, these should be supported by a simple explanation of how the options operate, either in the Consumer Contract or in a separate publication or notice.</p>

Draft Guideline	Gas Consumer Code of Practice
	CA16.4 In the case of a Combined Electricity and Gas Consumer Contract, a Consumer may direct a Company on how payments for the supply of electricity and/or Gas must be applied to that Consumer's account.
<p><b>5) Bonds</b></p> <p>Where the company requires a bond from the consumer, the contract must state:</p> <ol style="list-style-type: none"> <li>the period of time within which the bond must be paid to the company;</li> <li>how long the company will keep the bond. If the company keeps the bond for longer than 12 months, it must provide its reasons for doing so to the consumer;</li> <li>how the bond will be refunded;</li> <li>whether or not interest is payable on the bond.</li> </ol>	<p><b>CA17 BONDS</b></p> <p>CA17.1 If a Company requires a Bond:</p> <ul style="list-style-type: none"> <li>• The Company must give to the Consumer the reason for that decision;</li> <li>• The Bond must not be more than the expected loss if a Consumer doesn't pay;</li> <li>• The Consumer Contract should state if interest is payable on the Bond;</li> <li>• The Bond must be held in trust in a separate account; and</li> <li>• The Consumer Contract must state: <ul style="list-style-type: none"> <li>- the period of time within which the Bond must be paid to the Company; and</li> <li>- how long the Company will keep the Bond and that if the Company keeps the Bond for longer than 12 months, it must provide its reasons for doing so to the Consumer; and</li> <li>- how the Bond will be refunded.</li> </ul> </li> </ul>
<p><b>6) Customer obligations and access</b></p> <p>The contract must state:</p> <ol style="list-style-type: none"> <li>the physical point at which the customer's responsibility begins.</li> <li>an explanation of the consumer's responsibilities for compliance with all safety and technical requirements under regulations and codes of practice.</li> </ol> <p>The contract will state the rights of the retailer and/or their agents to gain access to their equipment located on the consumer's premises. The contract will also state the consequences the customer will face for not granting access.</p>	<p><b>CA21 OBLIGATIONS FROM POINT OF SUPPLY</b></p> <p>CA21.1 A Company must supply information (on request) to a Consumer about a Consumer's Gas supply that explains where the Gas Lines Company's ownership and responsibilities end in relation to the distribution system.</p> <p>CA21.2 A Consumer Contract must set out the responsibilities of the Consumer, the Gas Retailer and the Gas Lines Company (the Gas Retailer and Gas Lines Company may be the same Company) in relation to ownership of equipment. For example, a Consumer Contract must clearly set out the extent to which the Consumer is responsible for maintaining a tree's root system and whether a</p>

Draft Guideline	Gas Consumer Code of Practice
	<p>Consumer may build over underground equipment.</p> <p>CA21.3 A Consumer Contract must explain the Consumer's responsibilities for compliance with all Line Function Services safety and technical requirements under regulations and codes of practice.</p> <p><b>CA22 ACCESS TO PREMISES</b></p> <p>CA22.1 Consumer Contracts must include provisions permitting reasonable access to a Consumer's Premises for the direct purposes of the Gas Retailer or Gas Lines Company and any agent or subcontractor of that Company. The consequences of not granting access should also be set out in the Consumer Contract. Other conditions of access should be in line with the provisions of the Gas Act 1992.</p> <p>CA22.2 Where a Company is in the possession of keys and/or security information for a Consumer's Premises, the Company should have formal procedures for the secure storage, and use of and return of these keys and/or security information.</p>
<p><b>7) Metering</b></p> <p>Where metering is provided by the retailer, the consumer contract must clearly explain:</p> <ul style="list-style-type: none"> <li>a) the requirements for metering relevant to the pricing option selected by the consumer. Any additional costs associated with providing or changing metering equipment must be explained;</li> <li>b) the consumer's responsibility for protecting, not tampering with, and providing access to meter(s) for maintenance and reading purposes;</li> <li>c) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.</li> </ul>	<p><b>CA15 METERING</b></p> <p>CA15.1 Meter readings used by a Company for billing a Consumer must comply with Gas industry standards and codes of practice for meter reading. Meter readings should take place a minimum of four times a year unless the Consumer agrees individually otherwise or does not provide the Company with reasonable access to the meter.</p> <p>CA15.2 On request the Company must inform the Consumer of the results of any meter test, and, if it is not clear in the Consumer Contract, inform the Consumer of any extra charge the Consumer may incur as a result of the Company testing the Consumer's meter prior to undertaking the work.</p> <p>CA15.3 The Company must inform the Consumer prior to taking any action on the Consumer's meter which may impact on the</p>



Draft Guideline	Gas Consumer Code of Practice
	<p>Consumer's bill or result in an extra charge.</p> <p>CA15.4 The obligations on Companies to inform Consumers under Clause CA15.2 and Clause CA15.3 do not apply where the Company has reasonable cause to suspect that fraud, theft or meter tampering has taken place.</p>
<p><b>8) Disconnection and reconnection</b></p> <p>The consumer contract must set out the conditions under which consumers can be disconnected and the actions that the customer can take to avoid disconnection.</p> <p>A company may only disconnect a consumer for non-payment where the non-payment relates to bills (including a bond) associated with the supply of gas retail services, line function services, and/or gas.</p> <p>Except for emergency disconnections or in the case of disconnections under the Gas Act or Gas Regulations for safety reasons, or where a customer requests disconnection, consumer contracts must provide:</p> <ol style="list-style-type: none"> <li>a) for at least 7 days notice of warning of disconnection and allow an additional 3 days for the delivery of the notice.</li> <li>b) for a final warning no less than 24 hours or more than 7 days before disconnection.</li> </ol> <p>Consumer contracts must explain when charges for temporary disconnection and/or reconnection apply.</p>	<p><b>CA18 DISCONNECTION AND RECONNECTION</b></p> <p>CA18.1 Consumer Contracts must set out the conditions under which Consumers can be disconnected.</p> <p>CA18.2 Consumer Contracts must state that a Company may only disconnect a Consumer for non-payment where the non-payment relates to bills (including a Bond) associated with the supply of Gas Retail Services, Line Function Services, and/or Gas.</p> <p>CA18.3 Where a Company intends to disconnect a Consumer because the Company considers that the Consumer has not paid a bill (including a Bond), Disconnection should be the Company's last course of action.</p> <p>CA18.4 If a Consumer has started using and is pursuing the dispute resolution processes set out in the Consumer Contract (including the Electricity and Gas Complaints Commissioner Scheme) in relation to that Consumer not paying the bill, the Company must not disconnect that Consumer or commence credit recovery action until the processes are exhausted.</p> <p>CA18.5 This means that a Consumer should not be disconnected for non-payment of part of an account that is the subject of a dispute resolution process. However, a Consumer may be disconnected for non-payment of that part of an account which is not in dispute.</p> <p>CA18.6 A Consumer should not be disconnected on the basis of an</p>

Draft Guideline	Gas Consumer Code of Practice
	<p>estimated account unless it is fair and reasonable in the circumstances to do so.</p> <p>CA18.7 Except in the case of agreed or emergency Disconnections or in the case of Disconnections under the Gas Act or Gas Regulations for safety reasons, Consumer Contracts must:</p> <ul style="list-style-type: none"> <li>• Provide for at least seven days notice of warning of Disconnection and allow an additional three days for the delivery of the notice; and</li> <li>• Provide for a Final Warning no less than 24 hours nor more than seven days before Disconnection. The Final Warning must specify these timeframes. If the Disconnection is not prevented by the Consumer and not completed within these timeframes, the Company must issue another Final Warning.</li> </ul> <p>CA18.8 Consumer Contracts must explain when charges for temporary Disconnection and/or Reconnection apply. When warnings are delivered as per the provisions of CA18.7, they must include and make explicit what additional charges over and above the recovery of billing arrears will apply.</p> <p>CA18.9 Temporary Disconnection and/or Reconnection charges should not be more than the level required to meet the overall costs of the Disconnection and/or Reconnection service.</p> <p>CA18.10 Disconnection notices should include:</p> <ul style="list-style-type: none"> <li>• Information about the Company's dispute resolution processes;</li> <li>• Contact details of the Company's credit department so that the Consumer can contact that credit department to arrange payment of a bill that has not been paid, and</li> <li>• The cost of Reconnection.</li> </ul>

Draft Guideline	Gas Consumer Code of Practice
<p><b>9) Faults and planned shutdowns</b></p> <p>The consumer contract must clearly state:</p> <ol style="list-style-type: none"> <li>the circumstances under which the retailer may interrupt supply without prior warning.</li> <li>a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the consumer.</li> <li>terms detailing the retailer’s rights and obligations under special or emergency operating situations.</li> <li>where information on emergency procedures is located and how under emergency conditions information and procedures for reconnection will be achieved.</li> </ol> <p>The contract will give details on where information on the time and duration of unplanned outages can be obtained.</p>	<p><b>CA19 FAULTS AND EMERGENCIES</b></p> <p>CA19.1 Information about 24-hour telephone numbers to call for faults and emergencies must be provided on every bill to a Consumer.</p> <p>CA19.2 The Company must provide advice, whether in the Consumer Contract or by any other means (for example in brochures or advertisements), to Consumers on how to turn off their Gas supply in an emergency situation. This advice must be easy for Consumers to obtain and understand.</p> <p><b>CA20 PLANNED SHUTDOWNS</b></p> <p>CA20.1 A Consumer Contract must clearly state a minimum notice period before a Planned Shutdown which should be no less than four days unless agreed otherwise in the Consumer Contract.</p> <p>CA20.2 Companies must notify Consumers of a Planned Shutdown within the notice period.</p>
<p><b>10) Privacy</b></p> <p>The contract must state that it will comply with the provisions of the Privacy Act 1993, and accordingly:</p> <ol style="list-style-type: none"> <li>set out the purposes for which the company collects information from individuals; and</li> <li>confirm that customers will be able to access to information held about them and the opportunity to correct this information.</li> </ol>	<p><b>CA26 PRIVACY</b></p> <p>CA26.1 A Consumer Contract must adhere to the provisions of the Privacy Act 1993 and accordingly:</p> <ul style="list-style-type: none"> <li>Set out the purposes for which the Company collects information from individuals; and</li> <li>Confirm that Consumers will have ready access to information held about them and the opportunity to correct this information.</li> </ul>
<p><b>11) Dispute resolution and liability of the company and consumer</b></p> <p>The contract must contain a clause that states that nothing in the contract will limit the customer’s rights under the Consumer Guarantees Act.</p> <p>The contract must define the situations covered under Force Majeure clauses and explain how a company will respond in such circumstances.</p> <p>The contract must set out the ways in which the company and the</p>	<p><b>CA23 CONSUMER COMPLAINT RESOLUTION</b></p> <p>CA23.1 Companies must have a free, accessible, fair, and effective internal Consumer Complaints handling process.</p> <p>CA23.2 Companies must accept Consumer Complaints in any reasonable form from a Consumer, including written and oral, and via a variety of delivery mechanisms including face-to-face, posted,</p>

Draft Guideline	Gas Consumer Code of Practice
<p>consumer may terminate the contract and should clearly set out responsibilities of the consumer when they wish to terminate the account.</p> <p>The contract must advise consumers that there is an Electricity and Gas Complaints Commission, its role and how to contact it.</p>	<p>hand-delivered, facsimile or electronic.</p> <p>CA23.3 Companies must:</p> <ul style="list-style-type: none"> <li>• Provide information to Consumers about how their Complaint will be dealt with, and by when;</li> <li>• Provide written information about their Consumer Complaints handling processes; and</li> <li>• Treat Consumers courteously and with respect.</li> </ul> <p>CA23.4 Companies must also:</p> <ul style="list-style-type: none"> <li>• Train their staff about their Consumer Complaints handling processes;</li> <li>• Use processes that are easy to understand, easy to use and free to Consumers;</li> <li>• Provide adequate resources for their Complaints handling processes;</li> <li>• Tell Consumers that there is an Electricity and Gas Complaints Commissioner to whom they can go if their Complaint is not resolved; and</li> <li>• Review their Consumer Complaints handling process regularly.</li> </ul> <p>CA23.5 Companies must provide for appropriate remedies to Consumers.</p> <p>CA23.6 Companies must collect and analyse information about Complaints, and use it to adjust business practices as required.</p> <p>CA23.7 For Consumers, Gas Retailers, must have in place an effective process to ensure there has been an offer and acceptance of the Consumer Contract.</p> <p><b>CA24 LIABILITY</b></p> <p>CA24.1 Except as permitted under Clauses CA24.2 and CA24.3, a</p>

Draft Guideline	Gas Consumer Code of Practice
	<p>Consumer Contract must not limit the scope of liability, in contract or tort, of a Company to a Consumer to less than liability for physical damage to property where it can be shown that the Company has been negligent and the amount and nature of the Consumer’s loss was reasonably foreseeable.</p> <p>CA24.2 A Consumer Contract must not limit the monetary amount of liability, whether in contract or tort, of a Company to a Consumer for an event or a series of closely related events occurring on a distribution system to any amount less than \$10,000. This clause does not prevent or limit any provision in a Consumer Contract stating that liability is subject to any monetary cap contained in the Consumer Contract for an event or series of closely related events in relation to more than one Consumer on a distribution system.</p> <p>CA24.3 A Consumer Contract must not fix a per annum cap on liability in respect of one or more Consumers on a distribution system or for events or a series of closely related events occurring on a distribution system.</p> <p>CA24.4 Notwithstanding the provisions of the Code, and in particular Clause CA24, Consumers have access to any remedies that arise under the Consumer Guarantees Act 1993. Where the Code conflicts with the Consumer Guarantees Act, the Consumer Guarantees Act will take precedence.</p> <p><b>CA25 FORCE MAJEURE CLAUSES</b></p> <p>CA25.1 A Consumer Contract must define the situations covered under Force Majeure clauses and explain how a Company will respond in such circumstances.</p>
<p><b>12) Deliver notices</b> The contract must specify how notices under the contract will be delivered to consumers.</p>	



# Appendix G Comparison of Draft Model Contract Guidelines, Gas Industry Co November 2005 consultation with Victorian Code (Australia)

## Background

The Victorian electricity and gas retail markets are competitive, and all customers can decide to choose an energy retailer. The gas industry supplies some 1.4 million Victorian customers with natural gas from the Bass Strait basin supplemented by some gas from the Cooper Basin. In July 1997 the former Gas and Fuel Corporation was disaggregated into three gas distributors and their related gas retailers, which were then sold to private industry.

The Essential Services Commission is the independent regulator of the energy industry in Victoria, Australia. It is also Victoria's independent economic regulator of other essential services such as water and sewerage, ports, grain handling and rail freight industries. The Commission's primary objective under the *Essential Services Commission Act 2001* is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.

In relation to energy, the role of the Essential Services Commission is to:

- regulate the distributors' prices and monitor service standards;
- manage license arrangements for the distribution and sale of gas and electricity in Victoria; and
- ensure compliance by the licensees with codes and guidelines concerning service standards and appropriate conduct.

Electricity and gas companies are required by their licences to comply with service standards in industry codes and other obligations set out in guidelines regulated by the Commission. The codes include dispute resolution procedures. The Energy and Water Ombudsman (Victoria) Ltd has power to handle complaints against gas and electricity companies. The Essential Services Commission has memoranda of understanding with the Ombudsman, and with Energy Safe Victoria (which regulates electrical and gas safety). The Victorian Government has reserve powers to regulate retail prices for

gas customers consuming less than 10TJ/year<sup>36</sup> and electricity customers consuming less than 160MWh/year.

The Essential Services Commission also monitors the financial, price and service performance of Victoria's retail and distribution businesses, and publishes performance reports that monitor trends in performance and stimulate competition by comparison.

## **Victorian Energy Retail Code**

The Victorian Energy Retail Code specifies minimum retail standards for gas customers consuming less than 10TJ/year and electricity customers consuming less than 160 MWh/year, including the rights and obligations of retailers and their customers with respect to billing and payment, customer information, complaints handling and disconnection for non-payment of accounts. It is amended from time to time via a process which includes consultation.

The current Code is Version 4, dated October 2007. It is available in full from the Essential Services Commission website at:

<http://www.esc.vic.gov.au/NR/rdonlyres/638A442B-14B2-45D8-9AFD-041616E521EC/0/October2007EnergyRetailCodeVersion420071018.pdf>

To assist stakeholders in their consideration of the scope and coverage of the draft model contract guidelines published by Gas Industry Co in November 2006 (and republished as part of this consultation, Appendix E), a high level comparison of the respective tables of contents has been prepared.

The table below lists the content headings of the draft guidelines developed in 2006 by Gas Industry Co, and sets out alongside each the headings for the equivalent provisions in the Victorian Energy Retail Code.

In addition to the comparison set out in the table, it is worth noting the following:

- a) The Victorian Energy Retail Code relates to both electricity and gas.
- b) For certain Code requirements there is provision for retailers and customers to agree different terms to those prescribed in the Code.
- c) The Victorian Gas Industry Act (2001) and the Gas Retail Licence also contain provisions relating to the retailing of gas services.

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<sup>36</sup> The New Zealand Gas Act defines a small gas customer as one that uses less than 10TJ per annum.



Draft Gas Industry Co Draft Guideline	Victorian Energy Retail Code – relevant sections	Commentary on key Victorian Code contents not explicitly included in Gas Industry Co draft guidelines
<p><b>1) How to become a customer</b></p> <p>The contract must clearly define the steps a consumer and retailer must take to form the contract and commence supply.</p> <p>The contract must state clearly when the contract is to commence and supply is to be taken. If the agreed supply date is retrospective the contract must make this clear to the customer.</p>	<p><b>Part 1 Connection</b></p> <ol style="list-style-type: none"> <li>1. Customer’s application</li> <li>2. Retailer’s obligation to connect</li> </ol> <p><b>Part 6 Explicit informed consent and variation</b></p> <ol style="list-style-type: none"> <li>19. Explicit informed consent <ol style="list-style-type: none"> <li>19.1 No inconsistency with Code</li> <li>19.2 Creation of a new market contract</li> </ol> </li> </ol> <p><b>Part 7 Term and Termination</b></p> <ol style="list-style-type: none"> <li>22. Term <ol style="list-style-type: none"> <li>22.1 Commencement</li> <li>22.2 Commencement of financial responsibility</li> </ol> </li> <li>23. Cooling off <ol style="list-style-type: none"> <li>23.1 Customer’s right to cancel an energy contract</li> <li>23.2 No right to cancel deemed contracts</li> <li>23.3 Effect of cancellation</li> <li>23.4 Documenting energy contracts and customers’ cancellation rights</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• Retailer’s obligation to connect</li> <li>• Cooling off period</li> </ul>
<p><b>2) Changes to a contract</b></p> <p>The contract must:</p> <ol style="list-style-type: none"> <li>a) permit changes to be made to the terms and conditions of the consumer contract upon specified notice being given; and</li> <li>b) describe how the parties will propose, communicate and agree any changes to the consumer contract that may be able to be made under that contract (including increases in the price of gas).</li> </ol>	<p><b>Part 6 Explicit informed consent and variation</b></p> <ol style="list-style-type: none"> <li>19. Explicit informed consent <ol style="list-style-type: none"> <li>19.1 No inconsistency with Code</li> <li>19.2 Creation of a new market contract</li> </ol> </li> <li>20. Variations require customer’s agreement</li> <li>21. Gazette based variations <ol style="list-style-type: none"> <li>21.1 Gazetted tariffs and gazetted terms and conditions</li> <li>21.2 Deemed contracts</li> </ol> </li> </ol> <p><b>Part 8 General</b></p> <ol style="list-style-type: none"> <li>34. Assignment</li> </ol>	

Draft Gas Industry Co Draft Guideline	Victorian Energy Retail Code – relevant sections	Commentary on key Victorian Code contents not explicitly included in Gas Industry Co draft guidelines
<p><b>3) Service standards</b></p> <p>The consumer contract must describe the services provided to the consumer. This includes any quality of service standards that the company offers.</p> <p>A consumer contract must set out how the Company will respond to the consumer where quality of service standards are not met.</p> <p>The contract must not contain quality of service standards that are inconsistent with the contract parties' obligations under legislation and regulations. Standards must:</p> <ol style="list-style-type: none"> <li>comply with the Gas Act 1992 and the technical regulations and technical gas codes of practice;</li> <li>be no less than good industry practice prevailing in New Zealand; and</li> <li>require that equipment used in the provision of line function services will be monitored and maintained in line with good industry practice prevailing in New Zealand.</li> </ol>	<p><b>Part 8 General</b></p> <ol style="list-style-type: none"> <li>Provision of information <ol style="list-style-type: none"> <li>Retailer's charter</li> <li>This code</li> <li>Energy efficiency advice</li> <li>Information from retailer to distributor</li> </ol> </li> </ol> <p><b>[other service specifications and provisions not included in the Energy Retail Code]</b></p>	<ul style="list-style-type: none"> <li>Requirement for Retailers to have a Charter and provide customer with a copy</li> <li>Charter must include 'details of the rights, entitlements and obligations of retailers and customers relating to the sale of energy and other aspects of their relationship under [this Code] and other applicable law and codes.'</li> <li>Retailer obligation to provide energy efficiency advice</li> <li>Retailer obligation to advise relevant distributor of a customer requiring continuous supply for medical reasons</li> <li>Retailer obligation to advise relevant distributor of a fault if reported by customer</li> </ul>
<p><b>4) Prices, bills and payment</b></p> <p>If a company increases the price of gas supplied under the consumer contract, the contract must state that:</p> <ol style="list-style-type: none"> <li>the timeframe and method in which notice will be given before increasing the price of gas; and</li> <li>an explanation of the reasons for the increase in price must be provided when it</li> </ol>	<p><b>Part 2 Bills</b></p> <ol style="list-style-type: none"> <li>Issuing bills <ol style="list-style-type: none"> <li>Retailer to issue bills</li> <li>Billing cycles</li> <li>Bulk hot water charging</li> </ol> </li> <li>Contents of a bill <ol style="list-style-type: none"> <li>Form of bill</li> <li>Information</li> <li>Bundled charges</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>Certain minimum requirements for information included on bills; in addition to general information (tariff, period, quantities etc) requirements include: <ul style="list-style-type: none"> <li>summary of payment options</li> <li>consumption graphs (actual, historical)</li> <li>for domestic customers, availability of concessions (see</li> </ul> </li> </ul>

Draft Gas Industry Co Draft Guideline	Victorian Energy Retail Code – relevant sections	Commentary on key Victorian Code contents not explicitly included in Gas Industry Co draft guidelines
<p>gives the consumer notice about the change; and</p> <p>c) if the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the customer in writing.</p> <p>The contract will state what will be included in the bill and that the bill will provide sufficient information for the customer to check the billed amounts.</p> <p>The consumer contract must:</p> <p>a) refer to the relevant prices or pricing schedule (as may be produced by the company from time to time) of products and services available to the consumer;</p> <p>b) state that the consumer is liable for the charges for all the services provided under the consumer contract;</p> <p>c) state the time from which the consumer will be liable for charges.</p> <p>d) provide that, except in the case of bills based on estimates, if the company makes an error and charges an incorrect amount to the consumer, then the consumer is:</p> <ul style="list-style-type: none"> <li>- entitled to a refund of the difference between the incorrect and correct amounts where the consumer has paid too much; or</li> <li>- is only liable to the company for the correct amount. The contract will state any term limitations that will apply for the recovery of underpayments.</li> </ul>	<p>4.4 Graphs</p> <p>4.5 Payments for electricity and gas</p> <p>4.6 Payments for other goods and services</p> <p>5. Basis of bill</p> <p>5.1 Bills based on meter readings</p> <p>5.2 Estimations</p> <p>5.3 Bill smoothing</p> <p>5.4 Adjustments</p> <p>5.5 Unsuccessful attempt to read</p> <p>5.7 Proportionate billing</p> <p>6. Adjustment of a bill</p> <p>6.1 Review of a bill</p> <p>6.2 Undercharging</p> <p>6.3 Overcharging</p> <p>7. Payment of a bill</p> <p>7.1 When payment is due</p> <p>7.2 Payment methods</p> <p>7.3 Payment in advance</p> <p>7.4 Late payment fees</p> <p>7.5 Fees and charges for dishonoured payments and merchant service fees</p> <p>7.6 Vacating a supply address</p> <p><b>Part 3 Credit Management</b></p> <p>9. Shortened collection cycle</p> <p>9.1 Retailer’s right to apply a shortened collection cycle</p> <p>9.2 Notice</p> <p>10. Shorter billing cycle</p> <p>9.1 Customer’s right to negotiate a shorter billing cycle</p> <p>9.2 Notice</p> <p>11. Payment difficulties</p> <p>11.1 Capacity to pay</p> <p>11.2 Assessment and assistance to domestic customers</p>	<p>below) and interpreter services</p> <ul style="list-style-type: none"> <li>o contact details for complaint handling process (for reminder notices only)</li> <li>• Concessions are defined to include general concessions, rebates or grants, as well as some specifically defined ones such as the ‘Winter Energy Concession’, ‘Life Support Machines’, ‘Utility Relief Gant Scheme’</li> <li>• Bundled charge components must be provided on request (eg network charges, retail charges, other)</li> <li>• Some conditions on use of estimates, bill smoothing, recovery of under-charged amounts, late-payment fees</li> <li>• Detailed provisions and protections regarding payment difficulties</li> <li>• Retailer obligation to provide information on available tariffs, concessions (domestic customers only)</li> <li>• Retailer obligation to provide historic billing records</li> </ul>

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<p>e) advise the consumer of the billing and/or reconciliation period; and</p> <p>f) advise whether the customer is required to pay estimated accounts.</p> <p>If the company offers alternative payment options to consumers, a simple explanation of how those options operate must be set out in the contract or in a separate publication identified in the contract.</p>	<p>11.3 Energy efficiency field audits</p> <p>11.4 Debt collection</p> <p>12. Instalment plans</p> <p>12.1 Options for domestic customers</p> <p>12.2 Requirements for an instalment plan</p> <p>12.3 Business customers</p> <p><b>Part 8 General</b></p> <p>26. Provision of information</p> <p>26.4 Advice on available tariffs</p> <p>26.5 Concessions</p> <p>27. Historic billing information</p> <p>27.1 Records</p> <p>27.2 Historic billing data</p> <p>30. Illegal consumption</p> <p>31. Additional retail charges</p>	
<p><b>5) Bonds</b></p> <p>Where the company requires a bond from the consumer, the contract must state:</p> <p>a) the period of time within which the bond must be paid to the company;</p> <p>b) how long the company will keep the bond. If the company keeps the bond for longer than 12 months, it must provide its reasons for doing so to the consumer;</p> <p>c) how the bond will be refunded;</p> <p>d) whether or not interest is payable on the bond.</p>	<p><b>Part 3 Credit Management</b></p> <p>8. Refundable advances</p> <p>8.1 Domestic customers</p> <p>8.2 Business customers</p> <p>8.3 Credit management guideline</p> <p>8.4 Use of refundable advances</p>	<ul style="list-style-type: none"> <li>• Restrictions on when a Retailer may require a refundable advance (bond)</li> <li>• Restrictions on size of bond</li> </ul>

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<p><b>6) Customer obligations and access</b></p> <p>The contract must state:</p> <ul style="list-style-type: none"> <li>a) the physical point at which the customer's responsibility begins.</li> <li>b) an explanation of the consumer's responsibilities for compliance with all safety and technical requirements under regulations and codes of practice.</li> </ul> <p>The contract will state the rights of the retailer and/or their agents to gain access to their equipment located on the consumer's premises. The contract will also state the consequences the customer will face for not granting access.</p>	<p><b>Part 8 General</b></p> <ul style="list-style-type: none"> <li>25. Access to supply address</li> <li>26. Provision of information <ul style="list-style-type: none"> <li>26.1 Contact details</li> </ul> </li> </ul> <p><b>[other safety and technical requirements not included in the Energy Retail Code]</b></p>	
<p><b>7) Metering</b></p> <p>Where metering is provided by the retailer, the consumer contract must clearly explain:</p> <ul style="list-style-type: none"> <li>a) the requirements for metering relevant to the pricing option selected by the consumer. Any additional costs associated with providing or changing metering equipment must be explained;</li> <li>b) the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes;</li> <li>c) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.</li> </ul>	<p><b>Part 8 General</b></p> <ul style="list-style-type: none"> <li>25. Access to supply address</li> </ul> <p><b>[other metering requirements and provisions not included in the Energy Retail Code]</b></p>	

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<p><b>8) Disconnection and reconnection</b></p> <p>The consumer contract must set out the conditions under which consumers can be disconnected and the actions that the customer can take to avoid disconnection.</p> <p>A company may only disconnect a consumer for non-payment where the non-payment relates to bills (including a bond) associated with the supply of gas retail services, line function services, and/or gas.</p> <p>Except for emergency disconnections or in the case of disconnections under the Gas Act or Gas Regulations for safety reasons, or where a customer requests disconnection, consumer contracts must provide:</p> <p>a) for at least 7 days notice of warning of disconnection and allow an additional 3 days for the delivery of the notice.</p> <p>b) for a final warning no less than 24 hours or more than 7 days before disconnection.</p> <p>Consumer contracts must explain when charges for temporary disconnection and/or reconnection apply.</p>	<p><b>Part 4 Disconnection</b></p> <p>13. Grounds for disconnection</p> <p>13.1 Non-payment of a bill</p> <p>13.2 Domestic customers without sufficient income</p> <p>13.3 Denying access to the meter</p> <p>13.4 Refusal to provide acceptable identification of refundable advance</p> <p>13.5 A customer’s right to request disconnection</p> <p>14. No disconnection</p> <p>15. Reconnection</p> <p>15.1 Customer’s right of reconnection</p> <p>15.2 Time for reconnection</p>	<ul style="list-style-type: none"> <li>• Detailed restrictions on grounds for disconnection</li> <li>• Detailed disconnection process requirements, including links to payment arrangements/credit management provisions, restrictions on time/day</li> <li>• Obligations on timing for reconnection</li> </ul>
<p><b>9) Faults and planned shutdowns</b></p> <p>The consumer contract must clearly state:</p> <p>a) the circumstances under which the retailer may interrupt supply without prior warning.</p> <p>b) a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the</p>	<p><b>[Provisions relating to faults and planned shutdowns not included in the Energy Retail Code]</b></p>	

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<p>consumer.</p> <p>c) terms detailing the retailer’s rights and obligations under special or emergency operating situations.</p> <p>d) where information on emergency procedures is located and how under emergency conditions information and procedures for reconnection will be achieved.</p> <p>The contract will give details on where information on the time and duration of unplanned outages can be obtained.</p>		
<p><b>10) Privacy</b></p> <p>The contract must state that it will comply with the provisions of the Privacy Act 1993, and accordingly:</p> <p>a) set out the purposes for which the company collects information from individuals; and</p> <p>b) confirm that customers will be able to access to information held about them and the opportunity to correct this information.</p>	<p><b>Part 8 General</b></p> <p>29. Privacy and confidentiality</p>	
<p><b>11) Dispute resolution and liability of the company and consumer</b></p> <p>The contract must contain a clause that states that nothing in the contract will limit the customer’s rights under the Consumer Guarantees Act.</p> <p>The contract must define the situations covered under Force Majeure clauses and explain how a company will respond in such</p>	<p><b>Part 5 Liability</b></p> <p>16. No limitation of liability</p> <p>17. Indemnity</p> <p>18. Force Majeure</p> <p><b>Part 7 Term and Termination</b></p> <p>24. Termination</p> <p>24.1 Termination by customer</p> <p>24.2 Termination for customer’s breach</p>	<ul style="list-style-type: none"> <li>• Restrictions on limitation of liability and indemnity provisions that can be included in contracts</li> <li>• Restrictions on Retailer’s right to terminate</li> </ul>

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<p>circumstances.</p> <p>The contract must set out the ways in which the company and the consumer may terminate the contract. Should clearly set out responsibilities of the consumer when they wish to terminate the account.</p> <p>The contract must advise consumers that there is an Electricity and Gas Complaints Commission, its role and how to contact it.</p>	<p>24.3 Expiry of fixed term contract  24.4 Termination of deemed contract  24.5 From when termination is effective</p> <p><b>Part 8 General</b></p> <p>28. Complaints and dispute resolution  28.1 Complaint handling  28.2 Advice on customer’s rights  28.3 Energy and Water Ombudsman Victoria</p> <p>32. Agreed damages terms</p>	
<p><b>12) Deliver notices</b></p> <p>The contract must specify how notices under the contract will be delivered to consumers.</p>	<p><b>Part 8 General</b></p> <p>33. Notices</p>	