



# Options for the Governance of Retail Contract Terms

## Consultation Paper

**Date issued: 5 October 2009**

**Submissions close: 3 November 2009**







## **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 and Resources 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**

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**Submissions close:** Tuesday 3 November 2009

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# Executive summary

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## Introduction

The current paper presents options for the implementation of gas governance arrangements for a set of selective, benchmark terms for retail contracts. The purpose of the paper is to invite submissions from stakeholders on the options set out. The closing date for submissions is Tuesday 3 November 2009. Prior to that, there will be a workshop for consumers during the annual Consumer Forum to be held on Friday 16 October 2009.

## Background

Work on retail contracts was started by Gas Industry Co in 2005 and resulted in the development of proposed Model Contract Guidelines by the Model Contract Guidelines Working Group. However, this work was set aside and instead the adoption of the EGCC<sup>1</sup> Code of Practice recommended to the Minister. The recommendation was not actioned for a number of reasons and eventually reviewed by Gas Industry Co in December 2007. A number of stakeholders have argued for the separation of responsibility for developing retail benchmarks from their application and enforcement.

In 2008, a fresh approach was taken through the publication of a consumer issues consultation paper covering a broad range of consumer issues. An analysis of submissions and a response was published in May 2009 and the current work is primarily based on that material. Within the same general time frame, new work was also initiated on complaints resolution through a joint project between Gas Industry Co and the Electricity Commission. This work does not duplicate retail contract work, as any approval of a scheme will only relate to complaints resolution, not benchmark terms.

## Policy framework

The general policy framework is provided by the objectives in the Gas Act and relevant outcomes in the gas GPS. The primary outcome is:

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

However, other relevant outcomes include those on clarity of roles and responsibilities, efficient market structures for metering, network and energy services, and complaints resolution.

A regulatory objective for the current work is stated which incorporates the relevant GPS<sup>2</sup> outcomes.

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

<sup>2</sup> Government Policy Statement on Gas Governance, April 2008

## **General approach**

A diagrammatic description of the different approaches possible for the governance of retail contracts is provided, which ranges from voluntary industry-led action at one extreme to regulated contract terms at the other. Key parameters are the form in which terms are expressed, and the degree of oversight of compliance exercised.

Justification is presented for at least some degree of external oversight. There is, in particular, concern over contractual terms used by some retailers that are unfair and inhibit consumer choice. However, external oversight would have more general value as well.

The different options for expressing terms are examined and a clear preference expressed and justified for the use of 'benchmarks' that are selective (only cover key issues) and expressed in outcome terms to give retailers some flexibility in deriving the contract detail.

## **Benchmark retail contract terms**

The broad scope of the benchmarks that should be adopted is examined against defined criteria, and the 18 consumer expectations published by Gas Industry Co. Specifications for the benchmarks are then developed, using the Model Contract Guidelines as the starting point but also taking account of the EGCC Code of Practice and the Energy Retail Code published by the Essential Services Commission in Victoria.

The result is a set of 29 clauses under 15 primary headings, that are broadly comparable to the existing Model Contract Guidelines, but there are some additional provisions to cover gaps and the wording has been generally reviewed to be tighter and more consistent across all benchmarks.

The proposed benchmarks are compared with the standard terms published on eight retailers' websites. The median degree of alignment is somewhat better than 'partial' (based on a five level set of grades ranging from 'none' to 'full'), but there is considerable variability between retailers, with one retailer being only 'minimally' aligned at one extreme and another being 'substantially' aligned at the other extreme. The alignment also varies markedly between benchmarks.

Appendix D sets out the proposed benchmarks and the comparison with existing retail terms.

## **Options for implementation**

Whatever the approach to implementation, it is considered that a common set of benchmark terms should be adopted. In particular the terms should not be restricted and made more specific if they are regulated rather than being voluntary.

Two options are defined and subjected to a preliminary cost benefit analysis. They are:

- voluntary benchmarks with the extent of uptake subject to regular monitoring by Gas Industry Co (the option of regulated disclosure was not considered to be justified at this stage because standard terms are already published by retailers); and
- regulated (mandatory) benchmark terms with compliance subject to the existing compliance regulations.

In both cases there would be a substantial transitional period, as it would take some time for retailers to realign their terms with the benchmarks.

The preliminary (qualitative) cost benefit analysis is indeterminate in that the regulated option probably has higher benefits but also has higher costs. The crucial factors in determining a preference will be the risks and uncertainties associated with alternative courses of action. Gas Industry Co has no stated preference at this stage.





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# 1

## Introduction

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### 1.1 Purpose

One of the requirements of the GPS is for Gas Industry Co to undertake work, as appropriate, to ensure that contractual arrangements between gas retailers and small consumers adequately protect the long term interests of small consumers. The proposed regulatory objective for this work is set out in Section 3 below.

Work in this area has been underway since 2005. The scope and background to the work is explained in Section 2 below. It has led to the current report that presents options for the implementation of gas governance arrangements for retail contract terms. Within this scope, the opportunity is being taken to suggest terms that clarify the roles of parties in dealing with connections and disconnections, and in providing distribution and metering services associated with the supply of gas. These matters are also addressed in the GPS.

The purpose of the report is to invite submissions from stakeholders on the options set out, and on that basis, to prepare a statement of proposal for the implementation of a preferred option.

### 1.2 Structure of paper

The paper is structured as follows:

Section	Title	Content
2	Background	Initial work on Model Contract Guidelines in 2005 and parallel work on complaints resolution is described, leading to the publication of a consumer issues consultation paper in 2007. The response to submissions on this paper provides the technical basis for the current project.
3	Policy framework	The general policy framework provided by the Act and the GPS is described. The specific GPS outcome on retail contracts is set out and is the primary policy driver for the current work. However, other relevant outcomes deal with information on and market structures for distribution and metering services. A regulatory objective for the present work is set out.
4	General approach	The general approach to governance of retail contract terms is described in terms of the options available. The question of whether there should be any governance arrangement is then specifically examined and also the question of whether benchmark terms should be prescriptive/comprehensive or outcome based/selective.

Section	Title	Content
5	Developing benchmark retail contract terms	The appropriate scope of retail contract benchmarks is examined through a high level comparison of existing Model Contract Guidelines (Appendix A) against an agreed set of 'consumer expectations'.
6	Proposed Benchmarks	The proposed benchmarks are set out including relevant source material, such as the Model Contract Guidelines, the EGCC Code of Practice and the ESC Energy Retail Code which are set out in Appendices A, B and C respectively.
7	Comparison of benchmarks with current industry practice	The resulting benchmarks are compared with standard terms published by the industry.
8	Options for implementation	Two implementation options are examined – one based on voluntary compliance with monitoring, and the other on regulated (mandatory) terms. The same set of benchmarks is applied to both options. A preliminary cost benefit analysis is presented, which gives an indeterminate result.

### 1.3 Submission requirements

A key purpose of this Consultation Paper is to seek stakeholder feedback on the issues and options presented 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 Tuesday 3 November 2009. Please note that submissions received after this date may not be able to be considered.

Submissions can be made by registering on Gas Industry Co's website [www.gasindustry.co.nz](http://www.gasindustry.co.nz) and uploading your submission, preferably in the form of the submissions template attached as Appendix E to this document. All submissions will be published on the website after the closing date. For further information, see *Help for New Users* on the Gas Industry Co homepage. Submitters should discuss any intended provision of confidential information with Gas Industry Co prior to submitting the information.

A hard copy of the submission would also be appreciated and should be sent to:

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E: [bas.walker@gasindustry.co.nz](mailto:bas.walker@gasindustry.co.nz)

Gas Industry Co will acknowledge receipt of all submissions electronically. Please contact Bas Walker by email or Kirsten West by phone (04 472 1800) if you do not receive electronic acknowledgement of your submission within two business days.

## **1.4 Stakeholder meetings**

The annual Gas Industry Co Consumer Forum will be held on Friday 16 October in the Maui Room at Gas Industry Co. The Forum will run from 10.00am to 1.00pm. The Forum is intended for consumers, consumer representative groups, and interested state agencies. Although the Forum will be concerned generally with work to achieve good outcomes for consumers, the programme will provide for a short workshop on retail contracts in the context of the options paper.

# 2 Background

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## 2.1 Work on Model Contract Guidelines

The October 2004 GPS invited Gas Industry Co to develop arrangements for Model Contract Guidelines terms between consumers and retailers. In response to this, a Model Contract Guidelines Working Group (MCWG) was set up in 2005 to examine contractual issues arising between retailers and their customers, and develop contract guidelines and model arrangements for domestic retail contracts. The group was composed of individuals with experience across the whole of the gas sector and with an independent chair.

Existing contracts were reviewed to see whether they reflected the rights and responsibilities of each party fairly, and enabled a gas market where consumers had the option to choose between available suppliers. Based on this and a set of key objectives, and starting with the EGCC Code of Practice, a set of Model Contract Guidelines was developed. The guidelines are set out in Appendix A of this report.

Stakeholders were consulted about the content and method of implementation of the guidelines. Following consideration of consultation submissions, a recommendation was made to the Minister in June 2006. The essence of the recommendation was that the EGCC Code of Practice should be used as the benchmark for retail contracts rather than developing a separate Model Contract Guidelines, subject to the EGCC making some desirable amendments and the EGCC scheme being approved under the Gas Act to give the Code mandatory status. The current EGCC Code of Practice is set out in Appendix B of this report.

In July 2006, the Minister responded to Gas Industry Co by declining to approve the recommendation until the EGCC scheme had been approved. The EGCC scheme has not been approved in the time since, and the history of this and recent developments are discussed in subsection 2.2 below. However, there were other issues that influenced subsequent events and these included concerns raised about the governance of the EGCC scheme, allegations about inappropriate terms relating to a retailer who was not a member of the EGCC scheme, lack of progress by the EGCC with code of practice amendments, and submissions from industry participants in favour of separating responsibility for the content of the Code of Practice from its enforcement.

As a result, in April 2007 Gas Industry Co decided to maintain a watching brief to see whether the recommendation should be reconsidered and, in September 2007, concluded that the balance of information could favour a withdrawal of the recommendation. It was decided to revisit work in this area and that intention was conveyed in a letter to the Minister in December 2007.

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 Guidelines terms between consumer 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'.

## **2.2 Associated work on Complaints Resolution**

Work on retail contract terms has always been interlinked with work on complaints resolution. In March 2005, Gas Industry Co recommended to the Minister of Energy that the EGCC scheme be approved as the complaints resolution scheme for gas consumers. The Minister declined to approve this recommendation, seeking instead for the scheme to be extended to cover disputes with owners and occupiers of land. The EGCC scheme was amended to include land disputes and, in March 2006, Gas Industry Co again recommended that the EGCC scheme be approved under the Gas Act. Since then, two other energy-based complaints schemes have been established, although both are regional rather than national.

Acceptance of Gas Industry Co's second recommendation that the EGCC scheme be approved was declined by the Minister of Energy for a number of reasons, including a preference for the approved scheme to be dual fuel. This preference was formally stated in the 2008 Government Policy Statements for electricity and gas. As a result, a joint project on complaints resolution was initiated by the Electricity Commission and Gas Industry Co.

Proposed requirements for a joint scheme were published for consultation in March 2008. Based on the confirmed requirements, a Request for Applications was publicised in September 2009, and the EGCC selected as the preferred scheme subject to some changes being made to the EGCC rules. In anticipation of these changes being made, a further consultation paper was issued in March 2009, comparing the options of approving the EGCC with other options including a fully regulated scheme. However during this process it became apparent that the EGCC scheme members would not approve the desired rule changes within the timeframes expected. Since this time, scheme members have been in dialogue with each other and with officials on possible changes to the EGCC scheme. The Electricity Commission and Gas Industry Co have extended the timeframes for changes to the EGCC scheme to allow this dialogue to occur.

## **2.3 Consumer issues consultation paper**

In large part because of the need to revisit the work on retail contract terms, but for wider reasons as well, Gas Industry Co decided in late 2007 to undertake a broadly based review of consumer issues. The aim was to capture and update previous work in relation to consumer outcomes, establish a reasonable set of consumer expectations as a means of identifying key issues needing to

be addressed, and as a result of considering possible means for addressing those issues, suggesting a forward work programme for Gas Industry Co.

The review led to the development of a consultation paper on consumer issues, which was published for consultation in August 2008. The analysis in the paper was based on a proposed set of 'consumer expectations' and the paper proposed work programme initiatives in the areas of:

- information provision to better inform consumer choices;
- connections/disconnections;
- retail contract terms; and
- complaints and remedies.

Submissions were received and analysed, and the analysis, together with Gas Industry Co's response, was published in a response document in May 2009. In the area of retail contracts, the submissions received are summarised below. The analysis is related directly to the questions asked.

Questions	Summary of submissions
<p>Do you agree with Gas Industry Co's proposals to move to a regulatory approach for addressing retail contracting issues through a minimum set of minimum terms? If not, what alternative proposal would you accept?</p>	<p>Four submitters (Contact, Nova Gas, MRP, and the LPG Association) explicitly disagreed that regulatory arrangements were needed. However, responses to subsequent questions indicated that the disagreement was with regulations as opposed to minimum terms and a voluntary approach would be more acceptable, eg Contact, MRP.</p> <p>Reasons for disagreeing with regulations included that consumer choice of gas mitigates most of the issues identified (ie the balance between the interests of the parties). It also means that any given retailer cannot hold its customers captive to unreasonable terms. Retailers also state they are not aware of any shortcomings in their retail contract terms.</p> <p>Other submitters were more generally equivocal. Genesis disagreed on the grounds that network service arrangements should be examined first.</p> <p>EDNZ also expressed a preference for a voluntary approach, although they could see the merits of regulations. EDNZ also said they would prefer minimum terms to be stated so that supplier contracts could be 'personalised' to reflect the suppliers circumstances.</p> <p>There was some support for using the EGCC Code of Practice rather than the Model Contract Guidelines proposals as the point of reference (Vector, Contact).</p> <p>Only the Wellington Law Community Centre expressed unequivocal support for a regulatory approach.</p>
<p>In contrast to Gas Industry Co's preferred approach, what comments do you have on the draft Model Contract Guidelines published in late 2005?</p>	<p>Some submitters made comments on some of the specific Model Contract Guidelines provisions (Wellington Law Centre, Genesis) although the Genesis comments were aimed mostly at their use in regulations.</p>



Questions	Summary of submissions
	<p>Several submitters supported the use of the Model Contract Guidelines, in some cases so long as they stay voluntary (EDNZ, MRP, Novas Gas).</p> <p>As already indicated, two submitters (Vector and Contact) preferred to use the EGCC Code of Practice.</p>

## 2.4 Submissions analysis

In responding to the submissions, the response document made the following comments:

- Gas Industry Co accepts that, if a minimum terms approach is adopted, a judgement will be needed on how far to go to, on the one hand, provide essential protection for consumers and on the other, provide flexibility for retailers. This issue will be addressed in the options paper on retail terms.
- Gas Industry Co accepts that many retailers do have good quality retail contracts. However, there is evidence that some retailers do not have acceptable contracts, and those retailers account for an appreciable proportion of retailed gas. The EGCC Code of Practice is not and cannot be an acceptable means for addressing the acceptability of these contracts because not all retailers are members of the EGCC.
- Gas Industry Co accepts that it would be desirable to deal with all contracts (network as well as retail) simultaneously; however it is not practicable to do so. The scope of work would be too wide to be easily manageable, there would be mismatches with the wider programmes in each work stream area, and this would be outside the budget either available or potentially available to Gas Industry Co for such work.
- The evidence is that some retailers have questionable contract terms, so a fully voluntary approach is demonstrably not fully effective. However Gas Industry Co is committed to producing an options paper in the future that includes a range of options for modifying the status quo. This will provide an opportunity for the evidence to be more firmly examined.
- It is not practicable to fully merge the electricity and gas approaches as the jurisdictions are different, but the issue of compatibility of approach between the agencies (Electricity Commission and Gas Industry Co) would need to be considered in selecting a preferred option.

In regard to the future work programme, a summary of conclusions in the response document is as follows:

- Parallel work is being done jointly with the Electricity Commission on the establishment of a single, dual fuel, consumer complaints scheme. Work on retail terms needs to be linked with this, so there is complete coverage of consumer issues by the chosen scheme.
- It is proposed to position future work in terms of a defined set of minimum terms, whether these are voluntary or mandated.
- Action to be taken will be determined in the context of planning for FY2010. However, an appropriate course of action would be to issue an options paper on options for implementation of minimum terms. The options examined would be likely to include publication of benchmarks with voluntary disclosure, publication of benchmarks with regulated (mandatory) disclosure, and regulated (mandatory) terms.
- Retail-related aspects of connection/disconnection issues will be considered in further work on retail contract terms.

The response document also set out a final proposed set of 18 'consumer expectations', to provide a reference for all future work on consumer outcomes. These consumer expectations have been published on the Gas Industry Co website and are set out in the left column of the table on page 27.

# 3

## Policy Framework

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### 3.1 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).

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 Minister of Energy and Resources 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. The Minister of Energy and Resources delegated responsibility for gas industry matters to the Associate Minister on 5 March 2009.

### 3.2 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 and new 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.

### **3.3 GPS Objectives and Outcomes**

#### **Objectives**

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.

#### **Outcomes: Consumer benefits**

The specific outcome that the Government is seeking in relation to retail contracts for domestic and small business consumers is as follows:

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

However, the other outcome under this heading is also relevant:

- All small gas consumers have effective access to a complaints resolution scheme.

The two outcomes are linked because retail contracts define the relationship between the parties and are thus a primary source of reference for determining whether a complaint is justifiable.

## **Outcomes: Efficient retails contracts**

There are two other outcomes under this heading that are also relevant to the present work and they are:

- an efficient market structure for the provision of gas metering, pipeline, and energy services; and
- the respective roles of gas metering, pipeline, and gas retail participants are able to be clearly understood.

Our understanding is that these outcomes were included because:

- the contracting arrangements between meter owners, pipeline owners, retailers, and consumers vary and this creates the potential for confusion and lack of clarity of roles; and
- there may be inefficiencies or mismatches in the 'contract' cascade between retailers and meter owners, or retailers and network owners.

## **3.4 Regulatory objective for work on retail contracts**

The proposed regulatory objective for the current work is to:

- Determine the most appropriate gas governance arrangement for the oversight of retail contract terms in the gas industry so that all contracts between retailers and consumers<sup>3</sup>;
  - address the range of issues that are likely to be faced between consumers and retailers;
  - are easy to understand and clearly set out the respective obligations of the retailer and consumer (including any obligations the consumer has to meter or network owners);
  - achieve an equitable balance between the interests of gas retailers and consumers;
  - reflect as far as possible efficient market structures; and
  - support the achievement of an effective complaints resolution scheme for consumers.

**Q1:** Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.

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<sup>3</sup> For the purposes of this paper, a small consumer is a consumer who is supplied with less than ten terajoules of gas per year.

# 4

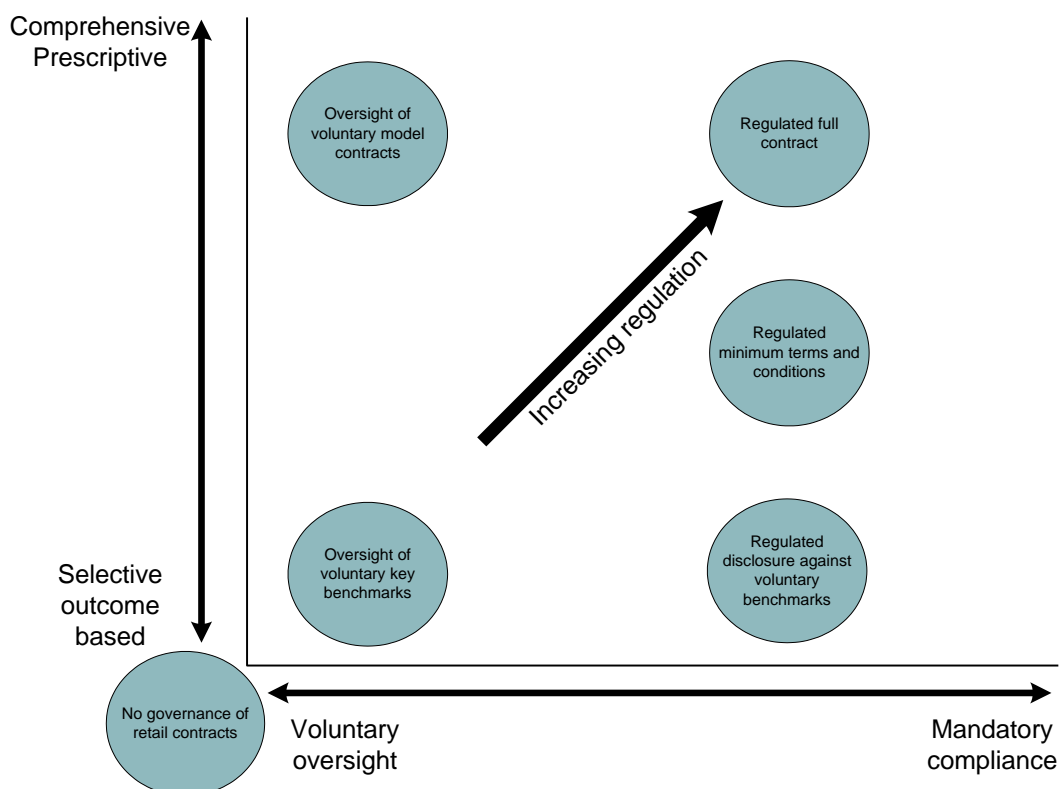
## General approach

### 4.1 The options generally available

The small scale of gas consumption in New Zealand by residential and small business users combined with the competition that gas faces from alternate energy sources means that a careful decision needs to be made about the options for governance of retail contract terms. There are clearly a range of options available for the governance of retail contract terms. They range from no overt governance (industry led action with no oversight) to regulated (mandatory) contracts. Within this spectrum the main variables are:

- whether any oversight is partial (selected terms) or comprehensive;
- whether the benchmarks set are performance related (that is, define the outcome but leave discretion for determining the most appropriate drafting of the detail) or prescriptive; and
- whether the oversight regime is absent, voluntary, or mandatory.

The first two variables can be considered together in most instances, so the options available can be represented by the following two-dimensional diagram. Some specific options are noted:



The initial question to address is whether there should be any oversight at all; that is, should the status quo of no oversight continue? This question is addressed in section 4.2 below.

Next, section 4.3 looks at the question of whether a prescriptive/comprehensive or selective/outcome based approach should be taken. This is considered to be a background issue rather than a primary policy issue, as explained below, which is why it is considered at this stage in the paper. The primary policy issue arising is that of the specific benchmark terms that should be adopted and this is considered in Section 4 to 7 of the paper.

The remaining question concerns the level of oversight that should be exercised. This is dealt with in a separate section – Section 8 of the paper.

## **4.2 The justification for oversight**

The initial question is whether any level of explicit oversight is justified.

This question was explored most recently through the Consumer Issues Consultation Paper, which pointed out the 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. The Consultation Paper also noted:

In August 2007 a retailer wrote to the Fair Trading Branch of the Commerce Commission alleging that another retailer does not have appropriate termination and amendment provisions in its contracts with its customers, is not properly disclosing its contracts to its customers .... and has unilaterally amended its customer's contracts to avoid the effect of the termination provisions in those contracts.

In the response document it was then noted as follows:

There is evidence that some retailers do not have acceptable contracts, and those retailers account for an appreciable proportion of retailed gas.

This led to the tentative view that renewed work on contract terms was appropriate.

The analysis done for the present paper on the alignment of current published terms with the benchmarks adds further weight to this conclusion. There are two instances of retailers offering contract terms that effectively lock the consumer into a contract roll-over. For example:

If the customer does not want to continue with 'Retailer X', the customer must give 'Retailer X' at least five business days to match any price or other terms offered by another retailer. Only if 'Retailer X' does not match that offer can the customer terminate.

It might be argued that the need to match the alternative terms makes it a reasonable arrangement. However, there may be reasons other than the offered terms for wanting to change supply. In effect the provision is unfair and limits consumer choice.

The two retailers concerned account for about 15% of the gas allocated under the Gas (Downstream Reconciliation) Rules 2008. This is a reasonable proxy for market share of consumers as the reconciliation system excludes direct connect supply to large consumers. This is suggested to

represent a sufficient enough proportion of gas consumers to warrant oversight of retail contract terms, even if other consumers have better contracts.

More generally, a question is whether it would be useful to retailers for there to be some oversight of their practices against a set of benchmarks. At present, the only benchmarks available are those in the EGCC Code of Practice. The alignment between this Code and the current practice of EGCC members has not been specifically analysed, because the focus of the current paper is on the new benchmarks. However, indications from the analysis are that, while alignment is generally reasonable, there are cases of misalignment that would at least be drawn to the retailer's attention if there was structured oversight in place. Such oversight is not provided by the EGCC because it is not a part of the EGCC's mandate; in essence, the Code is only invoked when a complaint is made and proceeds to a determination.

The conclusion is that there are some shortcomings in current practice that potentially impact on enough consumers and are sufficient on their own to justify a degree of structured oversight. There is also likely to be more general value in such oversight in assisting retailers to maintain alignment between their contracts and best industry practice.

**Q2:** Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms? If you disagree explain why.

### **4.3 Level of specification of terms**

As indicated by the diagram above, an issue to be determined is whether benchmark terms should be selective or comprehensive, and outcome based or prescriptive. While there are four choices apparently available, in practice they generally collapse to two choices: comprehensive/prescriptive vs. selective/outcome based.

The preference stated in the Consumer Issues Consultation Paper is for finding minimum terms; that is, selective rather than comprehensive. The reasons given are that only some terms are a potential concern from a consumer outcomes perspective and (regulatory) oversight should be restricted accordingly.

There are other reasons for being selective:

- a comprehensive approach is more likely to increase compliance costs for the industry, with marginal benefit at best, because of the wider scope of potential non-compliance;
- it benefits both the industry, and Gas Industry Co in its oversight role, to have a sharp rather than a blunt focus; and
- a comprehensive approach significantly increases the financial and other costs of maintaining the reference terms.



The arguments for an outcome based rather than a prescriptive approach overlap with those for being selective (which is why selectivity and an outcome approach tend to be linked.) The reasons include the following:

- It is less costly to maintain outcome based specifications because they are less susceptible to minor shifts in 'policy' and are, in general, easier to design.
- Most importantly, outcome based specifications provide flexibility for the industry in deciding exactly how to treat the specifications in drafting their own contracts. This flexibility enables retailer-specific concerns and issues to be accounted for, and generally provides more scope for competition at the margin in the terms offered to consumers.

In this paper the description 'benchmark' rather than 'minimum' terms is preferred. This is because it is a better description of how outcome based specifications are used, and recognises that some of the benchmarks may not be strictly 'minima' in the way they are written.

**Q3:** Do you agree the 'benchmark' terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive? If you disagree explain why, and describe your preferred approach.

# 5

## Developing benchmark retail contract terms

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### 5.1 Reference material

As proposed in the response document on consumer issues, the following sources of information are used in the analysis below on the development of benchmark terms:

- the draft Model Contract Guidelines set out in the Gas Industry Co consultation paper of November 2005 (Model Contract Guidelines) - see Appendix A;
- the guidelines in the EGCC Code of Practice as at July 2009 (EGCC Code) - see Appendix B; and
- version 5 (January 2009) of the Energy Retail Code of the Essential Services Commission in Victoria (ESC Code) – see Appendix C.

### 5.2 Focus on bundled service

Domestic and small business consumers typically receive a bundled supply under their contracts with gas retailers, that is gas and related services and their delivery. This bundled service (gas, metering, and transport) is the focus of this paper.

**Q4:** Do you agree the focus of governance on retail contracts should be on the bundled service (gas, metering, transport) received by consumers?

**Q5:** Are you aware of any instances in the gas industry of consumers having direct contracts with meter owners or distributors? If so, how should these contracts be governed?

### 5.3 Identification of benchmark topics

It is intended that the benchmarks are selective; that is, they only cover issues that are considered to be important to achieving fair and reasonable contracts between consumers and retailers. In reaching a judgement on that, it is convenient to use as the first reference point the 18 'consumer expectations' published by Gas Industry Co. To be included at all, a benchmark should be relevant to achieving an expectation.

The detailed criteria for deciding whether or not a key benchmark is appropriate are:

- the extent to which the benchmark is necessary to ensure a fair and reasonable outcome for the consumer, having regard for the information and knowledge asymmetry between the retailer and the consumer;
- the extent to which the benchmark is necessary to ensure that the respective obligations of the retailer and the consumer are comprehensively set out; and
- the extent to which the benchmarks are appropriate to rectify known adverse provisions in existing retail contracts.

In the following table, the consumer expectations are set out, identifying whether or not the expectation was covered by the original Model Contract Guidelines, and a view set out on whether or not the expectation should be covered by a benchmark and/or whether a benchmark is appropriate, measured against the criteria above.

Consumer expectation	Covered by Model Contract Guidelines?	Establishment as benchmark and why
<b>Meaningful choice</b>		
1. Suppliers offer a range of products and services for consumers to consider and make informed decisions.	No.	Not relevant as refers to pre-contract activity.
2. There is ready access to cost-effective, good quality, comprehensive, and easy to understand information on gas options, possible gas suppliers, and alternatives to gas.	No.	Not relevant as refers to pre-contract activity.
3. From the options available in the market, consumers are readily able to choose their energy form and supplier, and to modify their choice.	No.	Not relevant as refers to pre-contract activity.
<b>Connections and disconnections</b>		
4. The connection to supply is safe, reliable, and 'fit for purpose', and the connection process is timely and well managed.	Yes. Section 1 (cl 1.1 and 1.2) refer to setting up supply, and Section 3 (cl 3.1, 3.2 and 3.3) refers to service standards.	Setting up supply is fundamental to the contractual relationship and is a matter over which the retailer has full control but the consumer no control. It should thus be covered by the benchmarks.  It is considered that the Model Contract Guidelines proposals could be strengthened by requiring agreement rather than requiring processes to be specified.

Consumer expectation	Covered by Model Contract Guidelines?	Establishment as benchmark and why
5. Arrangements for termination of the contract and supply disconnection are reasonable, and are undertaken safely and in a timely and well managed way.	Partially. Section 8 (cl 8.1 to 8.4) deals with connection and reconnection. The Model Contract Guidelines deal generally with the need for provisions for termination but do not place constraints on the scope of those provisions.	Terminating the contract and/or disconnecting supply are again fundamental to the contractual relationship and are a matter over which the retailer has full control and the consumer little control. It is particularly important that actions around termination should be fair to both parties while reflecting the need for a competitive market with real choice for consumers. Some industry contracts do not meet this standard.  The existing Model Contract Guidelines proposals do not sufficiently cover this area.
<b>Gas supply and related services</b>		
6. The supply of gas is safe, reliable, and 'fit for purpose'.	Yes. Section 3 (cl 3.1 to 3.2) deals with service standards. Section 9 (cl 9.1 and 9.2) deals with faults and planned shutdowns that can be considered to be an element in the quality of supply.	Assurance that a good quality gas supply will be maintained, accepting the need for occasional disruption of supply for good reasons such as the correction of faults, is again fundamental to the contractual relationship and is a matter over which the retailer has full control and the consumer little control.  The existing Model Contract Guidelines proposals generally cover this area appropriately.
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'.	Partially. Section 7 (cl 7.1) covers metering. Provision of a call centre is not covered.	The existing Model Contract Guidelines are necessary but not sufficient, ie metering is covered but not communications with the retailer. It is essential that all of the services to be supplied are described for the security of both parties. The ability of the consumer to communicate with the retailer is an important provision and should be included in the benchmarks.
<b>Contractual terms</b>		
8. The contractual terms of supply of gas to the consumer are lawful, fair, and reasonable, while accurately reflecting any upstream conditions or constraints.	Expectation stated in very general terms and can be considered to cover parts of the Model Contract Guidelines not covered elsewhere. These provisions comprise Section 10 (Privacy) and Section 12 (Deliver notices).	This expectation is about the general impact of the contract rather than individual terms.  Sections 10 and 12 are both important and should be included in the benchmarks.
9. The contractual terms are complete, easy to understand,	Partially. Section 6 (cl 6.1 and 6.2) deal with customer obligations.	The first part of the expectation is about the presentation not the

Consumer expectation	Covered by Model Contract Guidelines?	Establishment as benchmark and why
and clearly set out the respective obligations of the supplier and the consumer.		content of the contract. Customer obligations are dealt with sufficiently well and are appropriate to include in the benchmarks. Retailer obligations are spread over several terms of the Model Contract Guidelines, and an issue to consider is whether these terms, collectively, are sufficient.
<b>Costs</b>		
10. The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply.	No.	Not appropriate for coverage in the contract because of information difficulties. Also fair and reasonable prices are primarily a consequence of competition rather than the content of the contract.
11. The supplier does not impose additional or unexpected costs on the consumer.	Partially covered by cl 4.1 although this refers to increases in price rather than additional costs.	This is an important expectation that is not wholly covered at present. Coverage could possibly be improved by tightening the existing provisions rather than introducing new provisions.
<b>Billing and payment</b>		
12. Consumers receive timely and accurate bills for gas and associated services, and the bills are easy to understand.	Partially covered by cl 4.3(d), for estimates.	This is again an important expectation that should be covered to a greater extent than at present. However, while the issue of timeliness can be captured in a contract, ease of understanding is too subjective and is better captured in a Code of Conduct.
13. Consumers have access to appropriate mechanisms for making payments that take account of consumer circumstances.	Partially covered by cl 4.4.	Although this is an important expectation it may be difficult to encapsulate in contractual form in a way that preserves a reasonable balance between retailer and consumer rights. However, ways of improving on the current Model Contract Guidelines might be explored.
<b>Treatment by the supplier</b>		
14. The supplier is open and honest, and acts with integrity in all its dealings with the consumer.	No	Not suitable for inclusion in a contract because it is behavioural, but very appropriate for inclusion in a Code of Conduct.
15. The supplier will either directly answer where possible, or otherwise assist in obtaining an answer to consumers' enquiries	No.	Not suitable for inclusion in a contract because it is behavioural, but very appropriate for inclusion in a Code of Conduct.

Consumer expectation	Covered by Model Contract Guidelines?	Establishment as benchmark and why
about all aspects of their supply, billing, and contracting arrangements in a timely, courteous, and accurate manner.		
16. Apart from safety, maintenance, and similar actions under the Gas Regulations 1993, 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 that may have triggered the action.	Yes. Covered by Section 8 – cl 8.1 to 8.4.	This is an important protection for the customer and should be included as a benchmark. The existing Model Contract Guidelines provide good coverage.
<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.	Yes. Covered by Section 11 – cl 11.1 to 11.4.	This is an important protection for the consumer and should be included as a benchmark. The existing Model Contract Guidelines provide good coverage but should be reviewed to reflect current dispute resolution arrangements across the industry and the work on a joint approved scheme by GIC and the EC.
18. Consumers have access to the information necessary to help resolve complaints.	No.	This is an important protection for the customer but could possible be incorporated in general provisions for providing information to consumers – see above under expectation 7.

**Q6:** Do you agree with the analysis of the need for, and scope of, benchmark terms relative to consumer expectations? If not explain why.

# 6

## Proposed benchmarks

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### 6.1 Generation of benchmark specifications

The development of specifications set out below uses the topic headings in the existing Model Contract Guidelines, with exceptions or modifications as follows:

- there is a new heading (Paragraph 2) to cover the subject of ‘termination and renewal of contracts’;
- there is a new heading (Paragraph 14 ) to cover the subject of ‘communication from the consumer to the retailer’;
- the subjects of ‘complaints resolution’ and ‘liability’ have been separated as they cover significantly different subjects (now Paragraphs 12 and 13); and
- other headings have been adjusted in a minor way.

The existing Model Contract Guidelines wording has been used as the starting point, reflecting the process of industry consultation that was involved in reaching agreement on that wording. However, changes have been made as appropriate to reflect current circumstances and the analysis in this paper, and to generally tidy up the wording.

### 6.2 Proposed benchmarks

#### 1. How to become a customer

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the ESC Energy Retail Code. There are no equivalent provisions in the EGCC Code of Practice.

Model Contract Guidelines provisions	ESC Energy Retail Code provisions
1.1 The contract must clearly define the steps a consumer and retailer must take to form the contract and commence supply. 1.2 The contract must state clearly when the contract is to commence and supply	<b>22.1 Commencement</b> (a) a retailer and a customer must agree on a date when their energy contract commences to be effective. (b) ..... if the customer is transferring from another retailer to the retailer, the energy contract is not made and therefore cannot commence to be effective before the

Model Contract Guidelines provisions	ESC Energy Retail Code provisions
is to be taken. If the agreed supply date is retrospective, the contract must make this clear to the customer.	customer has given explicit informed consent.

Item 1.1 in the Model Contract Guidelines is not necessary, given item 1.2.

The ESC Code provides some recognition that there must be agreement between the parties on commencing supply before the contract takes effect. However, normal practice is that contract terms are provided by the retailer rather than 'negotiated'. An additional clause is thus proposed to reflect the need for at least tacit agreement. Thus the benchmark is:

Proposed benchmark: How to become a customer
1.1 The contract must state when the contract is to commence and supply is to be taken, and this must be agreed between the retailer and the consumer. If either date is retrospective the contract must make this clear to the consumer.
1.2 The contract must provide a reasonable opportunity for the consumer to agree to the terms offered or terminate the contract and supply without charge.

**Q7:** Are the benchmark terms proposed for 'how to become a customer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 2. How to stop being a customer of your current retailer

The subjects of terminating a contract and terminating supply, ie disconnection, overlap to some degree. However, current practice is to reserve provisions on disconnection and reconnection to the actions of the retailer - it is convenient to retain this approach and this subject is dealt with in Paragraph 9 below. In this present Paragraph 2 it is assumed that a request by a consumer for disconnection will usually be associated with termination of contract – either because the customer is ceasing supply altogether or changing to a new retailer.

The table below sets out the current provisions in the proposed Model Contract Guidelines and relevant provisions in the ESC Energy Retail Code. There are no provisions on termination in the EGCC Code of Practice.

Model Contract Guidelines provisions	ESC Energy Retail Code provisions
11.3 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.	<p><b>13.5 A customer's right to request disconnection</b></p> <p>On request a retailer must disconnect customers and, if requested, finalise the customer's account in accordance with the customer's request.</p> <p><b>24.3 Expiry of fixed term contract</b></p> <p>(a) Prior to the expiry of the fixed term, the retailer must notify the customer of the following information .... (including) ....the tariff and terms and conditions that will apply to the customer beyond the expiry of the fixed term if the customer does not exercise any</p>



Model Contract Guidelines provisions	ESC Energy Retail Code provisions
	other options ,, with these options to include ... the customer entering into a market contract with the retailer or any other retailer.

The Model Contract Guidelines only provides for termination provisions to be set out – it does not prevent those provisions being onerous or unreasonable. The ESC Code is more specific but leaves unstated the important question of providing notice in the case of a customer requesting disconnection. However, it is reasonably clear on the right of the customer to terminate a contract irrespective of any offer that may be made by the existing retailer. Although it might seem self evident, it is also important that termination occurs in accordance with the Gas (Switching Arrangements) Rules 2008 that are now in operation.

Based in part on the ESC approach the following new benchmark is proposed:

Proposed benchmark: How to stop being a customer of your current retailer
<p>2.1 The contract must provide that, subject only to any initial term that may be agreed in the contract, the consumer shall have the right to terminate the contract with, and cease gas supply and charges, the existing retailer, for any reason including to obtain supply from a new retailer and irrespective of any offer that the existing retailer makes in respect of price or any other aspect of continued supply; on no more than one months notice and any shorter period allowed by the retailer.</p> <p>2.2 The contract must provide that:</p> <p>(a) if the consumer is switching retailers, termination will be effected in accordance with the Gas (Switching Arrangements) Rules 2008;</p> <p>(b) if the customer is ceasing gas supply altogether, termination will be effected as soon as reasonably practicable following the consumer’s notice of termination.</p>

**Q8:** Are the benchmark terms proposed for ‘how to stop being a customer of your current retailer’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

### 3. Changes to a contract

The table below sets out the current provisions in the proposed Model Contract Guidelines, the equivalent provisions in the EGCC Code of Practice and the equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
<p>2.1 The contract must</p> <p>(a) permit changes to be made to the terms and conditions of the consumer contract upon specified notice being given; and</p> <p>(b) describe how the parties will</p>	<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</li> </ul>	<p><b>20. Variations require Customers Agreement</b></p> <p>(a) The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between</p>

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
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).	<p>notice before making any changes to the terms and conditions of the Consumer Contract; and</p> <ul style="list-style-type: none"> <li>Explain the reasons for the changes in 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>	<p>the customer and the retailer.</p> <p>Note: In the case of the variation of some terms and conditions an energy contract, the customer's explicit informed consent may also be required if an agreement between the customer and there retailer to vary the term or condition is to be effective.</p>

The ESC Energy Retail Code provisions require agreement between the parties whereas the EGCC Code implies a right for the retailer to unilaterally decide on all changes. This reflects the reality that terms and conditions will generally be changed by the retailer, not the consumer, however there should be a right to terminate for materially unfavourable charges. The proposed benchmark is as follows:

<b>Proposed benchmark: Changes to a contract</b>
<p>3.1 The contract may permit the retailer to change the non-price terms of the contract upon giving the consumer no less than 30 days notice of the changes.</p> <p>3.2 The contract must provide that if the changes so notified by the retailer or subsequently negotiated are, together, materially less favourable to the consumer than under the existing contract, then the consumer may, regardless of whether the contract has a fixed term, terminate the contract on no more than one month's notice, or any shorter period allowed by the retailer, given before the date on which the charges were to become effective.</p>

**Q9:** Are the benchmark terms proposed for 'changes to a contract' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

#### 4. Service standards

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the EGCC Code of Practice. There are no equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>3.1 The consumer contract must describe the services provided to the consumer. This includes any quality of service standards that the company offers.</p> <p>3.2 A consumer contract must set out how the Company will respond to the consumer where quality of service standards are not met.</p> <p>3.3 The contract must not contain quality of service standards that are inconsistent with the contract parties' obligations under legislation and regulations. Standards must:</p> <p>(a) comply with the Gas Act 1992 and the technical regulations and technical gas codes of practice;</p> <p>(b) be no less than good industry practice prevailing in New Zealand; and</p> <p>(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.</p>	<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 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> </ul>

The Model Contract Guidelines provisions are very similar to the EGCC Code provisions. However, it is considered that a more condensed formulation should be sufficient, for example the reference to the equipment used in the provision of Line Function Services seems excessively detailed given the overarching obligations to meet service and quality of service standards. The proposed benchmarks are thus:

<b>Proposed benchmark: Service standards</b>
<p>4.1 The contract must describe the services and quality of service standards provided to the consumer.</p> <p>4.2 The contract must provide that the services and quality of service standards will at all times be:</p> <p>(a) consistent with all legal obligations relating to the supply of gas;</p> <p>(b) no less than good industry practice then prevailing in New Zealand.</p> <p>4.3 The contract must be set out how the retailer 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 retailer does not meet its obligations.</p>

**Q10:** Are the benchmark terms proposed for 'service standards' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 5. Prices, bills and payment

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the EGCC Code of Practice. The equivalent provisions in the ESC Energy

Retail Code are too extensive to be set out in table format. However all of the relevant provisions are included in Appendix D.

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>4.1 If a company increases the price of gas supplied under the consumer contract, the contract must state:</p> <p>(a) the timeframe and method in which notice will be given before increasing the price of gas; and</p> <p>(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</p> <p>(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.</p> <p>4.2 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>4.3 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>(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>4.4 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><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 give no less than 30 days notice before increasing the price of Gas; and explain the reasons for the increase in price when it gives the Consumer notice about the change.</p> <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>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 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; and</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>

Model Contract Guidelines provisions	EGCC Code of Practice provisions
	<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 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>

It is noted that the ESC provisions are consistent with the Model Contract Guidelines and EGCC Code provisions but are more detailed than both of the latter. This detail is not considered to be necessary.

The Model Contract Guidelines provisions and the EGCC Code provisions are very similar with the EGCC Code providing more detail. It is considered that some of that detail may be appropriate to a Code of Practice but is not necessary for benchmark terms. The wording of the Model Contract Guidelines provisions has also been simplified to some extent. The proposed benchmark is thus:

<b>Proposed benchmark: Prices, bills and payment</b>
<p>5.1 In order to increase the price of gas supplied under the contract, the contract must state:</p> <ul style="list-style-type: none"> <li>(a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice;</li> <li>(b) the method in which notice will be given provided that 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 possible; and</li> <li>(c) that the notice will include an explanation of the reasons for the increase.</li> </ul> <p>5.2 The contract must:</p>

- (a) refer to the relevant prices or pricing schedule (as may be produced by the retailer from time to time) of products and services available to the consumer;
- (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) in the case of bills based on estimates, include a simple explanation of how the estimate will be calculated, and of the process that will be used for correcting any estimates
- (e) provide that if the retailer makes an error and charges an incorrect amount to the consumer, then upon becoming aware of the error the retailer:
  - will promptly refund or credit to the consumer any amount that has been overcharged;,,
  - may invoice the consumer for any underpayments, but the contract will state the term limitations that will apply for the recovery of underpayments.

5.3 If the retailer 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.

**Q11:** Are the benchmark terms proposed for 'prices, bills and payment' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 6. Bonds

The table below sets out the current provisions in the proposed Model Contract Guidelines, and the equivalent provisions in the EGCC Code of Practice. There are no directly equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
<p>5.1 Where the company requires a bond from the consumer, the contract must state:</p> <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>	<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 on trust in a separate account; and</li> </ul> <p>The Consumer Contract must state:</p> <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</li> </ul>	<p>Does not directly cover bonds although Section 8 covers REFUNDABLE ADVANCES – see Appendix C.</p>

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
	<p>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</p> <ul style="list-style-type: none"> <li>• how the Bond will be refunded.</li> </ul>	

The Model Contract Guidelines provisions are very similar to those in the EGCC Code with the latter containing slightly more detail. The provisions about explaining the reasons for a bond are considered to be important and worth including. The proposed benchmark is thus:

Proposed benchmark: Bonds
<p>6.1 Where the retailer requires a bond from the consumer, the contract must state:</p> <ul style="list-style-type: none"> <li>(a) a requirement for the retailer to provide to the consumer the reasons for requiring a bond;</li> <li>(b) the period of time within which the bond must be paid to the retailer;</li> <li>(c) how long the retailer will keep the bond. If the retailer keeps the bond for longer than 12 months, it must provide its reasons for doing so to the consumer;</li> <li>(d) how the bond will be refunded; and</li> <li>(e) whether or not interest is payable on the bond.</li> </ul>

**Q12:** Are the benchmark terms proposed for 'bonds' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 7. Obligations of parties in relation to supply to the site and access

The title of this Paragraph has been extended so that it can cover both retailer and customer obligations in relation to the delineation of responsibilities and access. The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the EGCC Code of Practice (including those relating to point of supply obligations). There are no equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>6.1 The contract must state:</p> <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</li> </ul>	<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 Consumer may build over underground</p>

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>regulations and codes of practice.</p> <p>6.2 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>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>

The Model Contract Guidelines and EGCC Code provisions cover similar ground, but the latter is more explicitly about associated retailer obligations. More generally it is considered that these provisions would be more balanced if they covered the obligations of all parties, particularly in regard to activities and equipment around the point of supply. As a reflection of the GPS outcomes on market structures for other services including distribution and metering, it is also considered that there should at least be an obligation on the retailer to make clear in the contract what the responsibilities for these other services are. The proposed benchmarks are thus:

<b>Proposed benchmark: Obligations of parties in relation to supply to the site and access</b>
<p>7.1 The contract must:</p> <ul style="list-style-type: none"> <li>(a) describe the physical point at which the customer's responsibility begins;</li> <li>(b) explain the consumer's responsibilities pursuant to sub-clause 7.1(a) including in relation to gas lines, meters and other equipment on the consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice;</li> <li>(c) explain the responsibilities of the other parties to gas supply; comprising the retailer; and distributors and meter owners if those responsibilities are not included in the retailers responsibilities; and</li> <li>(d) state the rights of the retailer and/or their agents to gain access to gas lines and equipment located on the consumer's premises and the consequences the consumer may face for not granting access.</li> </ul>

**Q13:** Are the benchmark terms proposed for 'obligations of the parties in relation to supply to the site and access' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

**Q14:** Clause 7.1(c) reflects the outcomes in the GPS that relate to efficient market structures and good understanding of roles, in relation to gas metering, pipeline and energy services. Accepting the limitations in what can be covered in a retail contract, does this clause go as far as possible in reflecting these outcomes? Provide alternative wording if you think that amended or extended wording would improve the clause.



## 8. Metering

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the EGCC Code of Practice. There are no directly equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>7.1 Where metering is provided by the retailer, the consumer contract must clearly explain:</p> <p>(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;</p> <p>(b) the consumer’s responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes;</p> <p>(c) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.</p>	<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 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>

The Model Contract Guidelines and EGCC Code provisions are similar, but the EGCC Code is more explicit in relation to retailer obligations and some of these provisions are considered to be appropriate for the benchmarks. The provisions should also apply irrespective of meter ownership. It is thus proposed that the benchmarks are as follows:

Proposed benchmark: Metering
<p>8.1 In relation to the metering of gas supply to the consumer, the contract must clearly describe:</p> <p>(a) the requirements for metering relevant to the pricing option selected by the consumer, including the frequency of meter readings, which shall not be less than four times per year;</p> <p>(b) the obligation to ensure metering is in accordance with relevant industry standards and codes of practice;</p> <p>(c) any additional costs associated with providing or changing metering equipment that may be listed in a separate pricing schedule;</p> <p>(d) the consumer’s responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes; and</p> <p>(e) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly and the method for correcting previous readings if found to be incorrect.</p>

**Q15:** Are the benchmark terms proposed for 'metering' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 9. Disconnection and reconnection

The table below sets out the current provisions in the proposed Model Contract Guidelines, the equivalent provisions in the EGCC Code of Practice and the equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
<p>8.1 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>8.2 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>8.3 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>8.4 Consumer contracts must explain when charges for temporary</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 Commission 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 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</li> </ul>	<p>Extensive provisions set out in PART 4 DISCONNECTION</p> <p>See Appendix C for details</p>

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
disconnection and/or reconnection apply.	<p>Consumer and not completed within these timeframes, the Company must issue another Final Warning.</p> <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>	

As discussed in the background to this paper, future work remains to be done on policy problems relating to connection and disconnection. However, this work crosses over between the activities and obligations of retailers and distributors, and some of the issues need to be resolved between retailers and distributors rather than through retail contracts. The only policy issue that is directly relevant is that of retailers providing clearer information on disconnection and reconnection charges and the circumstances in which they will apply. The benchmarks proposed below include this requirement.

The Model Contract Guidelines provisions are very similar to those of the EGCC Code, although a useful feature of the latter is the inclusion of provisions preventing disconnection if dispute resolution processes have been activated. The ESC Code covers the same ground but is much more detailed. This additional detail is not considered to be necessary for outcome based benchmarks. The proposed benchmarks are thus:

<b>Proposed benchmark: Disconnection and reconnection</b>
<p>9.1 The consumer contract must:</p> <ul style="list-style-type: none"> <li>(a) set out the conditions under which consumers can be disconnected other than in accordance with clause 10 below;</li> <li>(b) provide that any notice of such disconnection will describe the actions that the consumer can take to avoid disconnection.</li> </ul> <p>9.2 A retailer may only disconnect a consumer for non-payment where the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds.</p> <p>9.3 Except for emergency disconnections or in the case of disconnections under the Gas Act or Gas Regulations for safety reasons, or where a consumer requests disconnection, the contract must provide:</p> <ul style="list-style-type: none"> <li>(a) for at least seven days written notice of warning of disconnection and allow an additional three days for the delivery of the notice; and</li> <li>(b) for a final warning no less than 24 hours or more than seven days before disconnection.</li> </ul> <p>9.4 If a dispute resolution under the contract has been initiated by the consumer in regard to the cause of any proposed disconnection, then disconnection action must be delayed until after the conclusion of the dispute resolution process.</p> <p>9.5 The contract must set out the charges that will apply to disconnection and/or reconnection, and the circumstances under which the charges will apply.</p>

**Q16:** Are the benchmark terms proposed for ‘disconnection and reconnection’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 10. Faults and planned shutdowns

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the EGCC Code of Practice. There are no equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>9.1 The consumer contract must clearly state:</p> <ul style="list-style-type: none"> <li>(a) the circumstances under which the retailer may interrupt supply without prior warning;</li> <li>(b) a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the consumer;</li> <li>(c) terms detailing the retailer’s rights and obligations under special or emergency operating situations; and</li> <li>(d) where information on emergency procedures is located and how under emergency conditions information and procedures for reconnection will be achieved.</li> </ul> <p>9.2 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>

The Model Contract Guidelines and the EGCC Code contain very similar provisions, but there are more details in the latter, some of which are important to consumers for safety reasons. It is thus proposed that the benchmarks should be:

Proposed benchmark: Faults and planned shutdowns
<p>10.1 The contract must clearly:</p> <ul style="list-style-type: none"> <li>(a) describe the circumstances under which the retailer may interrupt supply without prior warning;</li> <li>(b) provide a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the consumer;</li> <li>(c) describe the retailers rights and obligations under special or emergency operating situations; and</li> <li>(d) describe where information of emergency procedures is located, including information on how the consumer can turn off their gas supply in an emergency; and how under emergency conditions information and procedures for reconnection will be achieved.</li> </ul> <p>10.2 The contract will give details on where information of the time and duration of unplanned outages can be obtained.</p>

**Q17:** Are the benchmark terms proposed for ‘faults and planned shutdowns’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 11. Privacy

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the EGCC Code of Practice. There are no equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions
<p>10.1 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 have the opportunity to correct this information.</p>	<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>

The provisions of the Model Contract Guidelines and the EGCC Code are essentially the same so there is no reason to change the content of the Model Contract Guidelines proposal although some tidying up of the wording is suggested. The proposed benchmark is thus:

Proposed benchmark: Privacy
<p>11.1 The contract must provide that the retailer will comply with the provisions of the Privacy Act 1993 and accordingly the contract must:</p> <p>(a) set out the purposes for which the retailer may collect personal information from the consumer; and</p> <p>(b) confirm that individuals will be able to access personal information held about them and have the opportunity to correct this information.</p>

**Q18:** Are the benchmark terms proposed for ‘privacy’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

## 12. Liability of the company and consumer

The table below sets out the current provisions in the proposed Model Contract Guidelines, the equivalent provisions in the EGCC Code of Practice, and refers to some of the equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
<p>11.1 The contract must contain a clause that states that nothing in the contract will limit</p>	<p><b>CA24 Liability</b></p> <p>CA24.1 Except as permitted under Clauses CA24.2 and CA24.3, a Consumer Contract must not limit the scope of liability, in contract</p>	<p>There are extensive provisions covering liability and force majeure in PART 5 LIABILITY. These are too extensive to be</p>

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
<p>the customer's rights under the Consumer Guarantees Act.</p> <p>11.2 The contract must define the situations covered under Force Majeure clauses and explain how a company will respond in such circumstances.</p>	<p>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>CA25 FORCE MAJEURE CLAUSES</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>listed in their entirety, but are set out in Appendix C.</p> <p>The following clause is particularly relevant:</p> <p><b>16. No limitation of liability</b></p> <p>(a) A retailer must not include any term or condition in its energy contract with a consumer:</p> <ul style="list-style-type: none"> <li>• The effect of which is to limit the liability of the retailer to the customer for any breach by the retailer of their energy contract; and for any negligence by the retailer;</li> <li>• In the case of a domestic consumer, requiring the customer to take reasonable precautions to minimise the risk of loss or damage to any equipment, premises or business of the customer which may result from poor quality or reliability of energy supply.</li> </ul>

The provisions in the ESC Code are covered reasonably well by those in the EGCC Code. However, the latter is considerably more extensive than the Model Contract Guidelines provisions, especially on limitations to liability. The EGCC Code clearly contemplates that limits will be set. The ESC Code in contrast prevents any limitation on liability. On balance it is considered that the benchmarks should stay silent on financial limitation to liability, so there is no encouragement to set a cap, noting that this increases the degree of reliance on the Consumer Guarantees Act for consumer protection. However, it is considered appropriate that contracts should specify any exclusions of liability and this should be general rather than restricted to force majeure. The proposed benchmark is thus as follows:

<p><b>Proposed benchmark: Liability of the company and consumer</b></p>
<p>12.1 Except to the extent that the retailer is legally entitled to exclude the provisions of the Consumer Guarantees Act, the contract must provide that nothing in the contract will limit the consumer's rights</p>

under the Consumer Guarantees Act.

12.2 Any exclusion of liability in the contract must be clearly specified and reasonable.

**Q19:** Are the benchmark terms proposed for 'liability of the retailer and the consumer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

### 13. Dispute resolution

The table below sets out the current provisions in the proposed Model Contract Guidelines, the equivalent provisions in the EGCC Code of Practice and the equivalent provisions in the ESC Energy Retail Code.

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
<p>11.4 The contract must advise consumers that there is Electricity and Gas Complaints Commission, its role and how to contact it.</p>	<p>CA23 CONSUMER COMPLAINT RESOLUTION</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, 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><b>28.1 Complaint handling</b></p> <p>A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling. The retailer must include information on its complaint handling processes in the retailer's charter.</p> <p><b>28.2 Advice on customer's rights</b></p> <p>When a retailer responds to a customer's complaint, the retailer must inform the customer:</p> <p>(a) that the customer has a right to raise the complaint to a higher level within the retailer's management structure; and</p> <p>(b) if, after raising the complaint to a higher level the customer is still not satisfied with the retailer's response, the customer has a right to refer the complaint to the Energy and Water Ombudsman Victoria or other relevant external dispute resolution body. This information must be given in writing.</p> <p><b>28.3 Energy and Water Ombudsman Victoria</b></p> <p>A <i>retailer</i> must include the phone number of the Energy and Water Ombudsman Victoria on any <b>disconnection</b> warning.</p>

Model Contract Guidelines provisions	EGCC Code of Practice provisions	ESC Energy Retail Code provisions
	CA23.6 Companies must collect and analyse information about Complaints, and use it to adjust business practices as required.	

The Model Contract Guidelines provision was written at a time when only one, voluntary, industry scheme was available and needs to be rewritten to reflect current circumstances. These circumstances include the possibility of a scheme being approved under the Act and, in the meantime, the existence of schemes other than the EGCC. It is also proposed that acceptable industry schemes should have the characteristic of providing for independent determinations if other approaches fail. At least for the time being it would be appropriate to take account of some of the details in the EGCC Code, especially those relating to the handling of complaints by the retailer itself.

The proposed benchmark is thus as follows:

<b>Proposed benchmark: Dispute resolution</b>
<p>13.1 The contract must advise consumers of the process that they should follow to bring a complaint to the retailer for resolution directly between the retailer and the consumer, including associated timelines and the resolution options available.</p> <p>13.2 The contract must;</p> <ul style="list-style-type: none"> <li>(a) nominate an independent dispute resolution scheme to which consumers may take a complaint if they are not satisfied by the result from the retailer’s own dispute resolution process.</li> <li>(b) describe how the consumer may access the scheme.</li> </ul> <p>13.3 This independent dispute resolution scheme;</p> <ul style="list-style-type: none"> <li>(a) must be a scheme approved under the Gas Act if such approval has been given;</li> <li>(b) must otherwise provide for an independent determination of a complaint if other options for resolution, within the scheme, are not successful.</li> </ul>

**Q20:** Are the benchmark terms proposed for ‘dispute resolution’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.

#### 14. How consumers communicate with the retailer

The proposed benchmarks and the references used deal comprehensively with communications between the retailer and the consumer including the delivery of notices (Paragraph 15), and also provides for communication between the consumer and the retailer in regard to faults and emergencies, and the making of complaints (Paragraphs 9 and 12 of the benchmarks). However, it is important that customers have a more general avenue to communicate with the retailer on other issues and to request information. Usually this is through call centres but there should be flexibility to have other mechanisms.



Accordingly the following additional benchmark is proposed:

<b>Proposed benchmark: How consumers communicate with the retailer</b>
14.1 The contract must provide advice to the consumer on a practicable and effective means for the consumer to communicate with the retailer on any issues over which they have concerns or need information.

**Q21:** Are the benchmark terms proposed for ‘how consumers communicate with the retailer’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details

## 15. Notices from the retailer

The table below sets out the current provisions in the proposed Model Contract Guidelines and the equivalent provisions in the ESC Energy Retail Code. There are no equivalent provisions in the EGCC Code of Practice.

Model Contract Guidelines provisions	ESC Energy Retail Code provisions
12.1 The contract must specify how notices under the contract will be delivered to consumers	<b>32 Notices</b> (a) A notice, consent, document, or other communication given by a retailer under an energy contract must be in writing and given by hand, by fax, by mail or by e-mail.

The existing Model Contract Guidelines provision is consistent with the ESC Code although the latter is more detailed. It is considered that this detail is best left to the discretion of the retailer as different approaches may apply in different situations. The proposed benchmark is thus:

<b>Proposed benchmark: Notices from the retailer</b>
15.1 The contract must specify how notices from the retailer will be delivered to the consumer.

**Q22:** Are the benchmark terms proposed for ‘notices from the retailer’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details

## Consolidation

A consolidated list of the proposed benchmarks is set out in Appendix D. A question to address is that of whether the consolidated list is sufficiently comprehensive or perhaps even too comprehensive. This can be best addressed by looking at the benchmarks in their entirety.

**Q23:** Viewing the proposed benchmarks as a whole, are there topics that should have been included and have not, or are there terms that have been included but might be removed to make the benchmarks more compact? Give reasons for any views expressed, and examples where appropriate

### 6.3 Exclusion of unacceptable terms

The analysis above is based largely on a positive analysis of what should be included or stated to ensure that contracts address the range of issues likely to be faced between gas retailers and consumers. The regulatory objective also requires that contracts achieve an equitable balance between the interests of consumers and retailers. This implies the exclusion of terms that are clearly unfair to consumers. One example has already been picked out (that of locking consumers into contract roll over) and has been explicitly countered in the design of the benchmarks. However, the following terms may also be considered not to be in the interests of consumers.

Example of term	Comment
If any person living at your property owes us money we may refuse to supply energy to your property until that amount has been paid	Term may be unfair to the consumer who may have no supply related connection with or control over the other person who has the debt.
We are not under any obligation to continue to supply you with energy. We may for example terminate supply where we believe the supply is impractical, uneconomic etc .....;	Term may be unfair to the consumer who may have made other commitments or have expectations that rely on continuing supply
If the gas supply at your premises is disconnected (but not decommissioned) we may still charge you a daily fixed charge for gas ....	Term may be unfair to the consumer who may be faced with the continuation of daily charges for an indefinite period despite disconnection.

It may be appropriate to establish a list of such unfair provisions, and consider whether the benchmarks should be extended or phrased in such a way as to make the continuation of such terms contrary to the benchmarks. The alternative approach is to specifically forbid certain terms but this is potentially unwieldy

**Q24:** Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?.

**Q25:** Are there other examples of unfair terms in use that should be excluded from acceptable terms? If the answer is yes please give examples.

# 7

## Comparison of benchmarks with current industry practice

### 7.1 Analysis of degree of alignment with benchmarks

Submissions on the 'Consumer Issues Consultation Paper' contained strong calls for Gas Industry Co to demonstrate that current retail contract practice falls short of reasonable consumer expectations and/or are unfair. Therefore, Gas Industry Co commissioned an independent consultant to compare current industry practice with the proposed benchmarks.

Appendix D sets out a summary comparison of the proposed benchmarks with current industry practice, based on the standard terms published on retailers' websites. Detailed results for each retailer will be made available to that retailer, both for the information of retailers and to provide a check on the analysis.

The table below provides a summary of the degree of alignment for each topic area (in some cases by clause within topic areas) and across all retailers.

Area topic	Degree of alignment across all retailers
1. How to become a customer	Overall there is minimal alignment with clause 1.1, and no alignment with clause 1.2 which is a new provision..
2. How to stop being a customer	Overall there is partial alignment with clause 2.1 and no alignment with clause 2.1. Both provisions are new.
3. Changes to a contract	Overall there is substantial alignment with clause 3.1, and no alignment with clause 3.2 which is a new provision.
4. Service standards	Overall there is partial alignment with clause 4.1, minimal alignment with clause 4.2 and no alignment with clause 4.3.
5. Prices, bills and payment	Overall there is partial alignment with clause 5.1 and 5.2 and very polarised alignment (either full or none) with clause 5.3.
6. Bonds	Overall there is partial alignment with clause 6.1
7. Obligations of parties in relation to supply to the site and access	Overall there is substantial alignment with clause 7.1.
8. Metering	Overall there is substantial alignment with clause 8.1
9. Disconnection and reconnection	Overall there is partial alignment with clauses 9.1, 9.2, 9.3, 9.4 and 9.5
10. Faults and planned shutdowns	Overall there is partial alignment with clauses 10.1 and 10.2
11. Privacy	Overall there is substantial alignment with clause 11.1 but sharply polarized between full and no alignment.

Area topic	Degree of alignment across all retailers
12. Limitation of liability	There is full alignment across all retailers for clauses 12.1 and 12.2.
13. Dispute resolution	Overall there is partial alignment with clauses 13.1, 13.2 and 13.3.
14. How the consumer communicates with the retailer	Overall there is minimal alignment with clause 14.1, which is a new provision
15. Notices from the retailer	Overall there is partial alignment with clauses 15.1.
Overall assessment	Overall there is partial alignment between the proposed benchmarks and industry practice, but within this the alignment ranges from full (for clause 12, 1) to none (for clauses 1.2, 2.1, 3.2 and 4.3.). The instances of no alignment generally apply to provisions that are new, which is not unreasonable.

## 7.2 Analysis of degree of alignment across retailers

The table below analyses the data by retailer, again on the basis of area topic, to give an indication of variability in alignment between retailers. The comparison is to determine the degree of 'alignment' without at this stage necessarily suggesting that misalignment should be characterised as good, bad or in any other way. A graded scale of alignment is used which is – none, minimal, partial, substantial, full. The summary assessments assume that all separately assessed clauses under the topic heading have equal status which is a very empirical simplification. The assessment scores are thus only useful in relative terms rather than having any absolute significance.

These results lead to the following observations:

- No retailer is consistently more or less in alignment, compared with other retailers, across all area topics, ie there is considerable variation between topic areas.
- The median result is for alignment to be somewhat better than partial and more retailers fall into the 'partial-substantial' category than any other.
- There is one outlier at each extreme – minimal alignment in one case and substantial alignment in the other.

Although not directly shown in the table, retailers who are members of the EGCC have a substantially better level of alignment (at least partial-substantial) than retailers who are not members of the EGCC (ranging from minimal to partial).

It should be noted that this analysis was based of retail terms published on websites. There may be other material which forms part of the contract between retailers and consumers.

**Q26:** To what extent do you think the published standard retail terms reflect the current practice of contracts between retailers and consumers (persons consuming less than 10 terajoules per annum)?

Area topic	Retailer 1	Retailer 2	Retailer 3	Retailer 4	Retailer 5	Retailer 6	Retailer 7	Retailer 8
1	Minimal	None	Minimal	Partial	Minimal	None	Partial	Partial
2	None	None	Partial	None	Partial	Partial	Partial	Minimal
3	None	None	Partial	Partial	Partial	Partial	Partial	Partial
4	Minimal	None	Substantial	Partial	Minimal	None	Partial	Partial
5	Minimal	Minimal		Substantial	Minimal	Substantial	Substantial	Substantial
6	None	Partial	Full	None	Substantial	Minimal	Full	Partial
7	Partial	Partial	Full	Substantial	Substantial	Substantial	Full	Substantial
8	Partial	Partial	Partial	Substantial	Substantial	Partial	Partial	Substantial
9	Partial	Substantial	Substantial	Partial	Partial	Partial	Substantial	Partial
10	Minimal	Partial	Partial	Minimal	Partial	Partial	Partial	Partial
11	None	Substantial	Substantial	None	Substantial	Full	Full	Partial
12	Full	Full	Full	Full	Full	Full	Full	Full
13	None	Partial	Partial	Partial	Substantial	Full	Full	Minimal
14	None	None	None	None	None	Full	None	None
15	Minimal	None	Full	None	Partial	Full	Full	None
<b>Overall assessment</b>	<b>Minimal</b>	<b>Minimal - Partial</b>	<b>Partial - Substantial</b>	<b>Minimal - Partial</b>	<b>Partial - Substantial</b>	<b>Partial - Substantial</b>	<b>Substantial</b>	<b>Partial</b>

# 8

## Options for implementation

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### 8.1 Selection and definition of implementation options

There are a range of options for implementation that range from a purely voluntary regime at one extreme to a fully regulated regime at the other. Within this range there is also potential scope to change the form of the benchmarks (minimum terms). It could be argued for example that:

- At the voluntary end of the spectrum, there is more scope to have a reasonably extensive set of benchmarks, and to use outcome formulations that provide considerable discretion;
- If the minimum terms are regulated for, there would be more inclination to have fewer items and to use more precise language to reflect the higher consequences of non-compliance and the need to be able to clearly determine breaches.

The view taken in this paper is that it would be preferable and feasible to use a common set of benchmarks across the whole spectrum of possibilities – in essence if there is justification for including an item then that should be that, irrespective of the degree of oversight. In the case of a regulated option, there is also no reason to suppose that the Rulings Panel would be unable to handle outcome based specifications that might need interpretation as a part of the rulings process.

**Q27:** Do you agree that a common set of benchmarks or minimum terms and conditions should be used, irrespective of whether implementation is voluntary or mandatory (regulated)? If you disagree, explain why.

In terms of the degree of oversight, the following options are proposed for analysis:

#### **Option 1: Publication of recommended benchmark terms, with monitoring of uptake occurring on the basis of voluntary disclosure**

Although the regime proposed is one of voluntary compliance, monitoring of compliance is proposed to provide feedback and this requires disclosure of actual practice. In principle there is then a choice between voluntary or regulated disclosure. However, the evidence is that voluntary disclosure is already occurring. As a matter of common practice retailers publish standard terms on their websites. At least in the first instance therefore, regulated disclosure would impose costs with no benefit. It is anticipated that monitoring would occur through the preparation of an annual analysis by Gas Industry Co, comparing actual practice with the benchmarks – retailer by retailer. Because it would take time to achieve compliance (changing standard terms is a non-trivial process

for retailers), there would need to be a considerable transitional period – possibly 18 months. During this period, feedback to retailers would be on a confidential, individual basis.

### **Option 2: Regulation for minimum terms with enforcement provided by the existing Gas Governance (Compliance) Regulations 2008**

It is anticipated that the regulations would set out minimum terms and provide for breaches of the requirements, ie contracts that do not conform to the minima, to be dealt with through the existing compliance regime. Breach reports would be able to be made by: a contract party, ie a customer; by an agent, eg a consumer group acting for consumers; or by Gas Industry Co. To assist the monitoring of compliance, there would be a requirement for public disclosure of the general terms applied by retailers. For this option it would also be sensible to have a substantial transitional period, with non-compliance not constituting a breach during this period.

**Q28:** Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified? If you think that other options should have been selected or the specifications should be changed, set out your proposals and explain why.

## **8.2 Preliminary cost benefit analysis**

The analysis below uses the status quo as the baseline, because it is convenient to do so. The analysis presented is qualitative rather than quantitative, because the benefits especially are not able to be quantified. Qualitative statements also make it easier to take account of uncertainty and risk. The costs and benefits described are no less real because of that. The analysis is based on descriptive statements rather than, for example, the use of a semi quantitative scoring system.

The costs to be considered comprise:

- costs incurred in establishing the proposed regime;
- costs incurred by the industry in transitioning to new or revised contractual arrangements;
- ongoing cost incurred by the industry in meeting reporting or similar requirements;
- ongoing costs incurred by the industry in providing an adequate assurance (to themselves) of compliance; and
- operational costs for Gas Industry Co.

The benefits to be considered comprise:

- the benefits to consumers from having higher quality contracts governing supply;
- the benefits to consumers and to retailers from enhancing competition; and

- operational benefits, eg flexibility of operations and ability to make changes.

Factors to be considered for the first two benefits are the changes to industry practice that might be prompted by the option being considered and the proportion of retailers (consumers) whose contracts would be affected by the changes.

The analysis is summarised in the following table:

	<b>Option 1: Voluntary benchmarks</b>	<b>Option 2: Regulated minimum terms</b>
<b>Costs</b>		
Establishment costs	Minor. Restricted to cost to Gas Industry Co for establishing a monitoring regime.	Significant: Cost of developing and implementing Regulations as well as accompanying monitoring and reporting regime. Also costs to industry of establishing their operating regime.
Transitional costs	Significant. Indications are that most retailers would have to make changes to be fully compliant but cost will be limited by voluntary nature of regime, ie ability to not comply if cost excessive and not considered to be justified.	More significant than for Option 1 and may be substantial, as there will be no discretion on the degree of compliance. Could be ameliorated to some extent by having a longer transitional period than for option 1.
Ongoing Costs to industry from required actions	Minimal.	Likely to be some costs created by interaction with compliance regime and these could be significant if (for example) there are many unfounded complaints or the ruling process is used excessively to make interpretations.
Industry initiated assurance costs	Minimal.	Because of the implications of non-compliance, likely to be some ongoing costs in being assured of compliance.
Operational costs of scheme	Minimal.	Significant. There will be costs associated with the operation of the compliance regime and costs associated with making changes to the regulations if that proves to be appropriate.
<b>Benefits:</b>		
Benefits to consumers from better quality contracts	There will be benefits to consumers but very difficult to quantify. Benefits will be reduced to the extent that retailers do not comply with the benchmarks, and the extent to which retailers are already compliant.	Benefits to consumers also difficult to quantify but likely to be higher than for Option 1 because of the requirement to be compliant. However there is considerable uncertainty about the extent to which compliance will be improved by moving to a regulated regime.
Competition benefits	There will be competition benefits but very difficult to quantify. Benefits will be reduced to the extent that retailers do not comply with the benchmarks, and the extent to which retailers are already compliant.	Competition benefits also difficult to quantify but likely to be higher than for Option 1 because of the requirement to be compliant; but there is again considerable uncertainty about the extent to which compliance will be improved by moving to a regulated regime.



	<b>Option 1: Voluntary benchmarks</b>	<b>Option 2: Regulated minimum terms</b>
Operational benefits	There will be benefits relative to Option 2 in terms of the ease with which the benchmarks and the process can be modified to reflect experience and changing circumstances.	There will be significant difficulties in making changes to the regulations because of the need to go through Government processes.
Overall assessment:	Benefits are difficult to quantify but there are expected to be benefits to consumers from better quality contracts and some enhancement of competition. The only significant cost is likely to be the transitional cost to retailers of bringing contracts into line with the benchmarks	Benefits to consumers and for competition are likely to be higher than for option 1 because of the requirement to be compliant, but there is considerable uncertainty around this. There will be less operational flexibility than for Option 1 and there will be significant to substantial costs in both developing and implementing the regime, and in ongoing operations.

### 8.3 Conclusions from the analysis

The analysis is indeterminate in that both the costs and benefits of Option 2 (regulated minimum terms) are higher than for Option 1 (voluntary benchmarks). However, the uncertainty bounds are different:

- It is certain that the costs of a regulated solution (Option 2) will be higher than for the voluntary benchmarks (Option 1), although the quantum of this difference has not yet been estimated. However, reasonable estimates can be made.
- The size of the benefits, and thus the significance of the difference in benefit between Options 1 and 2 is, in contrast, inherently uncertain. Uncertainties are of two types – the extent to which full compliance with the benchmarks/ minimum terms would benefit consumers and enhance competition, and the comparative effectiveness of a regulated approach as against a voluntary approach. If there was for example a high level of compliance with the voluntary benchmarks, there would be little or no incremental benefit in moving to a regulated regime.

The broad conclusion is that it would be difficult to justify moving directly to a regulated regime, because of the higher costs and unclear incremental benefits. A more appropriate course of action may be to establish the voluntary regime represented by Option 1, and monitor the outcomes achieved.

However, there are risks associated with this course of action. If, for example, it transpired that there was little or no response to the voluntary benchmarks, or that unsatisfactory practices by some companies were continuing – then there would a strong basis for reassessing the costs and benefits and then moving to a regulated regime. However, the net costs associated with this would be the highest of all possible scenarios because the whole options and statement of proposal process would have to be repeated, and also benefits would be deferred. If, on reflection, this risk was considered to be significant, it might be more cost-effective in the longer run to move straight to a regulated solution.

At this stage Gas Industry Co does not have a strong preference.

**Q29:** Do you agree that all of the relevant benefits, costs, risks and uncertainties of the options have been identified and appropriately characterised? If you disagree please provide alternative or additional material and explain your reasoning.

**Q30:** What degree of commitment do you think is required from retailers, in relation to the voluntary alignment of their contracts with the proposed benchmarks, to shift the cost/benefit analysis away from regulated benchmarks terms?

**Q31:** Based on the analysis above or any additional analysis that you include in your submission, what do you think the preferred option for inclusion in the statement of proposal should be? Explain why.

# Appendix A Draft Model Contract Guidelines

Draft Model Contract Guidelines: Gas Industry Co November 2005
<p><b>1) How to become a customer</b></p> <p>1.1 The contract must clearly define the steps a consumer and retailer must take to form the contract and commence supply.</p> <p>1.2 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>2.1 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>3.1 The consumer contract must describe the services provided to the consumer. This includes any quality of service standards that the company offers.</p> <p>3.2 A consumer contract must set out how the Company will respond to the consumer where quality of service standards are not met.</p> <p>3.3 The contract must not contain quality of service standards that are inconsistent with the contract parties' obligations under legislation and regulations. Standards must:</p> <ul 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></ul>
<p><b>4) Prices, bills and payment</b></p> <p>4.1 If a company increases the price of gas supplied under the consumer contract, the contract must state:</p> <ul 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></ul> <p>4.2 The contract will state what will be included in the bill and that the bill will provide sufficient</p>

**Draft Model Contract Guidelines: Gas Industry Co November 2005**

information for the customer to check the billed amounts.

4.3 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.

4.4 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

**5) Bonds**

5.1 Where the company requires a bond from the consumer, the contract must state:

- a) the period of time within which the bond must be paid to the company;
- 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;
- c) how the bond will be refunded;
- d) whether or not interest is payable on the bond.

**6) Customer obligations and access**

6.1 The contract must state:

- a) the physical point at which the customer's responsibility begins; and
- b) an explanation of the consumer's responsibilities for compliance with all safety and technical requirements under regulations and codes of practice.

6.2 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.

**7) Metering**

7.1 Where metering is provided by the retailer, the consumer contract must clearly explain:

- 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;
- b) the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes;
- c) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.

**8) Disconnection and reconnection**

8.1 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.

8.2 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.

8.3 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 seven days notice of warning of disconnection and allow an additional three days for the delivery of the notice.
- b) for a final warning no less than 24 hours or more than seven days before disconnection.

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

**9) Faults and planned shutdowns**

9.1 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.

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

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**10) Privacy**

10.1 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**

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

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

11.3 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.

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

**12) Deliver notices**

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

# Appendix B EGCC Code of Practice

<b>Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice</b>	
<b>CA1. WHAT IS THE GAS CODE?</b>	
CA1.1	The Code contains undertakings by Gas Company members of the Electricity and Gas Complaints Council to their Consumers under the Scheme for fair and reasonable dealings with Consumers.
CA1.2	The provisions of the Code should be interpreted in light of Clause CA2 and Clause CA3 and should be applied in a manner which is consistent with these Statements of Purpose and Principles.
<b>CA2 STATEMENT OF PURPOSE</b>	
CA2.1	The Electricity and Gas Complaints Commissioner Scheme is designed to create a forum where Consumers can access an independent dispute resolution service for complaints about their Gas Retailer and Gas Lines Company.
CA2.2	The purpose of the Electricity and Gas Complaints Commissioner Scheme is to provide a service that is: (a) Free to Consumers; (b) Accessible; (c) Fair; (d) Effective; (e) Accountable; and (f) Independent.
CA2.3	The Code is a document which sets out the principles, requirements, services and actions a Consumer can reasonably expect from their Gas Retailer or Gas Lines Company.
<b>CA3 STATEMENT OF PRINCIPLES</b>	
CA3.1	The following Principles articulate the basic values which underpin the Code's purpose and objectives: (a) Consumer complaints should be handled promptly, fairly, and with respect to complainants throughout the process; (b) All information given to Consumers should be accurate, up to date and easy to understand; (c) Consumer Contracts should clearly define the rights and obligations of the contracting parties, and Companies must bring these rights and obligations to the attention of Consumers; and (d) The Code sets out certain minimum standards of behaviour of good industry practice, and Consumer Contracts should seek to exceed those minimums where possible.
<b>CA4 LOCATION OF DEFINITIONS</b>	
CA4.1	Words that are capitalised (e.g. Consumer Contract, and Company) have specific meanings in this Code. If these words are not defined when first used, they are defined under CA29 Definitions at the back of the Code.
<b>CA5 WHO IS COVERED BY THE CODE?</b>	
CA5.1	Every Gas Retailer and Gas Lines Company who is a member of the Electricity and Gas Complaints Council is covered by this Code.

<b>Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice</b>	
CA5.2	This means that they must follow the provisions set out in the Code.
<b>CA6</b>	<b>WHAT IS A CONSUMER CONTRACT?</b>
CA6.1	A Consumer Contract is an agreement between a Consumer and a Company for the supply of Gas and/or Line Function Services.
<b>CA7</b>	<b>WHAT IS THE CONNECTION BETWEEN THE CODE AND A CONSUMER CONTRACT?</b>
CA7.1	The Code explains to Consumers what they can expect in their dealings with a Gas Retailer or Gas Lines Company.
CA7.2	A Consumer Contract must not contain provisions which are inconsistent with the Code. The provisions of the Code will apply to the extent of any inconsistency.
CA7.3	A Consumer Contract may include terms or conditions additional to or more favourable to the Consumer than those set out in the Code but these terms or conditions must not be inconsistent with the undertakings of the Code.
<b>CA8</b>	<b>WHO DEALS WITH COMPLAINTS RELATING TO THE CODE?</b>
CA8.1	Only the Company and the Electricity and Gas Complaints Commissioner can deal with complaints relating to the Code.
<b>CA9</b>	<b>WHAT CAN THE CONSUMER EXPECT FROM A CONSUMER CONTRACT?</b>
CA9.1	A Consumer Contract must: <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>
<b>CA10</b>	<b>CHANGES TO CONSUMER CONTRACTS</b>
CA10.1	If a Company changes the terms and conditions of a Consumer Contract, the Company must: <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>
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.
<b>CA11</b>	<b>CHANGES TO PRICE</b>
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:



<b>Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice</b>
<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>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 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> </ul>
<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> <li>○ The billing period and/or reconciliation period.</li> </ul> </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 Consumer has agreed otherwise under the Consumer Contract.</p>

## **Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice**

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.

CA14.5 If a Company's bill to a Consumer is based on a method of estimating Gas and/or Line Function Services usage:

- 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;
- 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;
- The Company must make sure that its bills state clearly if an estimate has been used; and
- The Company must state in the Consumer Contract whether the Consumer is required to pay estimated accounts.

### **CA15 METERING**

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.

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.

CA15.3 The Company must inform the Consumer prior to taking any action on the Consumer's meter which may impact on the Consumer's bill or result in an extra charge.

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.

### **CA16 PAYMENT OPTIONS**

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.

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.

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.

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.

### **CA17 BONDS**

CA17.1 If a Company requires a Bond:

- The Company must give to the Consumer the reason for that decision;
- The Bond must not be more than the expected loss if a Consumer doesn't pay;

## Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice

- The Consumer Contract should state if interest is payable on the Bond;
- The Bond must be held on trust in a separate account; and
- The Consumer Contract must state:
  - the period of time within which the Bond must be paid to the Company; and
  - 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 how the Bond will be refunded.

### CA18 DISCONNECTION AND RECONNECTION

CA18.1 Consumer Contracts must set out the conditions under which Consumers can be disconnected.

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.

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.

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.

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.

CA18.6 A Consumer should not be disconnected on the basis of an estimated account unless it is fair and reasonable in the circumstances to do so.

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:

- Provide for at least seven days notice of warning of Disconnection and allow an additional three days for the delivery of the notice; and
- 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.

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.

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.

CA18.10 Disconnection notices should include:

- Information about the Company's dispute resolution processes;
- 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

<b>Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice</b>
<ul style="list-style-type: none"> <li>• The cost of Reconnection.</li> </ul>
<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>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 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>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, 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> </ul>

## Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice

- Treat Consumers courteously and with respect.

CA23.4 Companies must also:

- Train their staff about their Consumer Complaints handling processes;
- Use processes that are easy to understand, easy to use and free to Consumers;
- Provide adequate resources for their Complaints handling processes;
- Tell Consumers that there is an Electricity and Gas Complaints Commissioner to whom they can go if their Complaint is not resolved; and
- Review their Consumer Complaints handling process regularly.

CA23.5 Companies must provide for appropriate remedies to Consumers.

CA23.6 Companies must collect and analyse information about Complaints, and use it to adjust business practices as required.

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.

### CA24 LIABILITY

CA24.1 Except as permitted under Clauses CA24.2 and CA24.3, a 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.

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.

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.

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.

### CA25 FORCE MAJEURE CLAUSES

CA25.1 A Consumer Contract must define the situations covered under Force Majeure clauses and explain how a Company will respond in such circumstances.

### CA26 PRIVACY

CA26.1 A Consumer Contract must adhere to the provisions of the Privacy Act 1993 and accordingly:

- Set out the purposes for which the Company collects information from individuals; and
- Confirm that Consumers will have ready access to information held about them and the opportunity to correct this information.

### CA27 OVERSIGHT AND REVIEW OF THIS CODE

## Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice

CA27.1 The Electricity and Gas Complaints Commission is responsible for overseeing and reviewing this Code.

### CA28 ENFORCEMENT OF THE CODE

CA28.1 The undertakings of a Company in this Code are not intended to create rights enforceable by a Consumer against a Company under the Contracts (Privity) Act 1982.

### CA29 DEFINITIONS

CA29.1 Terms used in this Code have the following meanings:

- Bond means the bond or sum of money provided by a Consumer as security for non-payment.
- Code means this Code of Practice which comprises Schedule CA of the Constitution for the Electricity and Gas Complaints Commissioner Scheme.
- Combined Electricity and Gas Consumer Contract means a Consumer Contract for the sale of electricity and for the sale of Gas by the Company to a Consumer. To avoid doubt, a Consumer who has separate Consumer Contracts for the sale of electricity and for the sale of Gas does not, by virtue of having those two separate Consumer Contracts, have a Combined Electricity and Gas Consumer Contract.
- Company means a member of the Electricity and Gas Complaints Commissioner Scheme who is either a Gas Retailer and/or a Gas Lines Company. 'Companies' and Gas Companies have corresponding meaning.
- Consumer means:
  - A person who is supplied, or who applies to be supplied, with Gas by a Gas Retailer in accordance with a Consumer Contract for consumption of Gas;
  - A person who is supplied, or who applies to be supplied, with Line Function Services in accordance with a Consumer Contract and who also consumes Gas;
  - Includes any person using the services supplied under that Consumer Contract or paying part or all of the fees for the services provided under the Consumer Contract.
- Consumer Contract means the agreement with a Consumer providing for the supply of Gas and/or Line Function Services to a Consumer and includes any additional publications, which contain information about the service to Consumers.
- Disconnection means the movement or removal of equipment so that no Gas can flow to a Consumer's Premises.
- Electricity and Gas Complaints Commission means the Commission set up under the Electricity and Gas Complaints Commissioner Scheme. It provides an independent overview of the Scheme and comprises an independent chairperson, two representatives of industry members and two consumer representatives appointed by the Minister of Consumer Affairs.
- Electricity and Gas Complaints Commissioner is the person appointed to that position by the Electricity and Gas Complaints Commission.
- Electricity and Gas Complaints Commissioner Scheme means the Electricity and Gas Complaints Commissioner Scheme implemented by the Electricity and Gas Complaints Council.
- Electricity and Gas Complaints Council means the governing body under the Electricity and Gas Complaints Commissioner Scheme.
- Force Majeure means circumstances beyond the control of the Company. For example, failure to supply Gas due to causes beyond the Company's control such as a storm.

## Electricity and Gas Complaints Commission (EGCC): The Gas Consumer Code of Practice

- Gas means natural gas that is supplied to a Consumer through a gas distribution system (a network of pipelines) but excludes, to avoid doubt:
  - LPG; and
  - CNG for transportation purposes.
- Gas Lines Company means a Company which operates a Gas distribution system for supplying Gas and provides Line Function Services to Gas Retailers or directly to Consumers. Gas Lines Companies includes line function services businesses, whether incorporated or not. A Gas Lines Company may also be a Gas Retailer.
- Gas Retailer means a person who supplies Gas to Consumers. A Gas Retailer may also be a Gas Lines Company.
- Line Function Services has the meaning set out in section 2 of the Gas Act 1992 (but excludes Gas transmission, as that term is defined in the Gas Act 1992) and as further provided for in a Consumer Contract and includes metering services where a Lines Company provides these services.
- Planned Shutdown means the period when Gas is not available due to routine planned maintenance. A planned shutdown excludes situations where the Gas distribution system needs to be taken out of service for emergency reasons such as to ensure the integrity of the Gas distribution system or for safety. In general, Planned Shutdowns (where required) would be used for all work falling under the Gas Lines Company's Asset Management Plan.
- Point of Supply means the point at which a Gas Lines Company's distribution system is connected to a Consumer's Premises.
- Premises means the site to which Gas is supplied or is to be supplied to a Consumer.
- Provide a Final Warning means that the Company must take all reasonable steps to ensure a Consumer receives this warning. This may include making contact to the Consumer's last known address or phone number.
- Reconnection means the movement or replacement of equipment so that Gas can flow to a Consumer's Premises which had been disconnected.
- Retail Services mean all services supplied under an interposed Consumer Contract (except Line Function Services) and all services supplied under a supply only Consumer Contract and includes metering services where a Gas Retailer provides or has provided these services.





# Appendix C Victorian Retail Code

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

### 1. CUSTOMER'S APPLICATION

If a *customer* wants to be *connected* at a *supply address* by a *retailer*, the *customer* must:

- (a) make application (in person, by telephone or in *writing*);
- (b) pay any *connection* charge as and when required by their *energy contract*; and
- (c) if the *retailer* does not already have this information, provide:
  - acceptable identification;
  - contact details; and
  - if the request relates to a rental property, contact details for the property owner or the owner's agent.

### 2. RETAILER'S OBLIGATION TO CONNECT

If a retailer has an obligation to connect, a *retailer* must *connect* a *customer* at the *customer's supply address* as soon as practicable after the *customer* applies for *connection* in accordance with clause 1. Without limiting clause 36.1, by no later than the next *business day* after the application is made or their *energy contract* commences to be effective (whichever occurs last), the *retailer* must make a request to the relevant *distributor* to *connect* the *customer's supply address* to the *distributor's* distribution system.

### 3. ISSUING BILLS

#### 3.1 Billing cycles

A *retailer* must issue a bill to a *customer* for energy consumed at the *customer's supply address*:

- (a) in the case of an *electricity contract*, at least every three months;
- (b) in the case of a *gas contract*, at least every two months; and
- (c) in the case of a *dual fuel contract*, at least as often as the *retailer* and the *customer* have agreed. That agreement is not effective unless the *customer* gives *explicit informed consent*.

#### 3.2 Bulk hot water charging

A *retailer* must issue bills to a *customer* for the charging of the energy used in the delivery of bulk hot water in accordance with Appendix 2 of this Code. Where a *retailer* charges for *energy* in delivering either *gas bulk hot water* or *electric bulk hot water* to a *relevant customer*, the *retailer* must include at least the following information (as applicable) in the *relevant customer's* bill:

- the relevant *gas bulk hot water rate* applicable to the *relevant customer* in cents per litre;
- the relevant electricity rate(s) being charged to the *relevant customer* for the electricity consumed in the *electric bulk hot water* unit in cents per kWh;
- the relevant *electric bulk hot water conversion factor* for *electric bulk hot water* in kWh/kilolitre;
- the total amount of *gas bulk hot water* or *electric bulk hot water* in kilolitres or litres consumed in each period or class of period in respect of which the relevant *gas bulk hot water rate* or electricity tariffs apply to the *relevant customer* and, if the *customer's meter* measures and records consumption data only on the accumulation basis, the dates and total amounts of the immediately previous and current *meter* readings or estimates;

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

- the deemed *energy* used for *electric bulk hot water* (in kWh); and
- separately identified charges for *gas bulk hot water* or *electric bulk hot water* on the *customer's* bill.

### 5. BASIS OF BILL

#### 5.1 Bills based on meter readings

A *retailer* must:

- (a) unless a *customer* gives *explicit informed consent*, base a *customer's* bill on a reading of the *customer's* *meter*; and
- (b) in any event, use its *best endeavours* to ensure the *customer's* *meter* is read at least once in any 12 months.

A *retailer* does not breach clause 5.1(b) if the *retailer* is unable to read a *meter* in any relevant period as a result of the *customer* breaching clause 25 or some other event outside the *retailer's* control.

#### 5.2 Estimations

(a) Despite clause 5.1, if a *retailer* is not able to reasonably or reliably base a bill on a reading of the *meter* at a *customer's* *supply address*, the *retailer* may provide the *customer* with an estimated bill that is either:

- based on the *customer's* reading of the *meter*, the *customer's* historical billing data or, where the *retailer* does not have the *customer's* historical billing data, average consumption at the relevant tariff calculated over the period covered by the estimated bill; or
- if the *customer* is a second tier electricity customer, prepared on a basis that conforms with the basis used to determine *retailers'* responsibility in the wholesale electricity market for electricity supply under applicable regulatory instruments.

(b) Despite clause 5.1, if in the context of an electricity *customer transferring* from one *retailer* to another *retailer* applicable regulatory instruments permit an estimate of consumption rather than a *meter* reading, the *retailer* may provide the *customer* with an estimated bill prepared on a basis that conforms with the basis used to determine *retailers'* responsibility in the wholesale electricity market for electricity supply under applicable regulatory instruments.

#### 5.3 Bill smoothing

Despite clause 5.1, a *retailer* may provide a *customer* with estimated bills under a bill smoothing arrangement if:

- (a) each bill in a 12 month period is for the same amount;
- (b) the amount payable under each bill is set on the basis of the *retailer's* estimate of the amount of *energy* the *customer* will consume over the 12 month period;
- (c) that estimate is based on the *customer's* historical billing data for the preceding 12 month period or, where the *retailer* does not have that data, average consumption at the relevant *tariff* for a 12 month period;
- (d) in the -seventh month of each 12 month period, the *retailer*:
  - re-estimates the amount of *energy* the *customer* will consume over the current 12 month period, taking into account any meter readings and relevant seasonal factors; and
  - if there is a difference between the initial estimate and the re-estimate of greater than 10%, re-sets the amount payable under each of the remaining bills in that 12 month period to reflect that difference; and
- (e) at the end of each 12 month period, the *meter* is read and the *retailer* adjusts for any undercharging or

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

overcharging under clause 6.2 or 6.3.

### 5.4 Adjustments

(a) If a *retailer* has provided a *customer* with an estimated bill, and the *retailer* subsequently reads the *customer's meter* or otherwise gets a reliable *meter* reading or, in the case of gas only, updated data from the *distributor* or from VENCORP, the *retailer* must adjust the bill in accordance with the *meter* reading or the updated data and clause 6.

(b) Clause 5.4(a) does not apply in respect of an estimate permitted by clause 5.2(a) for gas or, for electricity, by dot point 2 of clause 5.2(a) or by clause 5.2(b) for electricity. Instead, to the extent that *applicable regulatory instruments* permit a substitute or replacement estimate to be used to determine *retailers' responsibility* in the wholesale electricity market for electricity supply or *retailers' responsibility* for gas supply, the *retailer* must adjust the bill based on the substitute or replacement estimate in accordance with clause 6.

(c) Clause 5.4(a) also does not apply in respect of an estimated bill permitted by clause 5.3.

### 5.5 Unsuccessful attempt to read

Where an attempt to read the *customer's meter* is unsuccessful due to an act or omission on the part of the *customer*, and the *customer* subsequently requests a *retailer* to replace an estimated bill with a bill based on an actual reading of the *customer's meter*, the *retailer* must use its *best endeavours* to do so and may impose an *additional retail charge* on the *customer* in respect of costs incurred complying with the *customer's* request.

### 5.6 Unmetered supplies for electricity

Despite clause 5.1, if there is no electricity *meter* in respect of the *customer's supply address*, the *retailer* must base the *customer's* bill on *energy data* which is calculated in accordance with *applicable regulatory instruments*.

### 5.7 Proportionate billing

Where a *customer's* bill covers a period other than the *customer's* usual *billing cycle* or a period during which the *customer's tariff* changes, the *retailer* must charge in proportion to the relevant periods and clearly show relevant details on the bill.

## 6. ADJUSTMENT OF A BILL

### 6.1 Review of a bill

A *retailer* must review a *customer's* bill at the *customer's* request. During the review, the *customer* must pay that portion of the bill under review that the *customer* and the *retailer* agree is not in dispute or an amount equal to the average amount of the *customer's* bills in the previous 12 months (whichever is the lower). If the bill under review is:

(a) correct, the *customer* must either pay the unpaid amount or request the *retailer* to arrange a *meter* test in accordance with *applicable regulatory instruments*. If the *customer's meter* is found to comply with *applicable regulatory instruments*, the *customer* must pay the cost of the test and pay the unpaid amount; or

(b) incorrect, the *retailer* must adjust the bill under clause 6.2 or 6.3.

### 6.2 Undercharging

(a) If a *retailer* has undercharged or not charged a *customer*, the *retailer* may recover the amount undercharged from the *customer*, subject to the following limits:

- if the undercharging resulted from a failure of the *retailer's* billing systems, the *retailer* may recover no more than the amount undercharged in the 9 months prior to the date on which the *retailer* notifies the

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

customer that undercharging has occurred;

- otherwise, the retailer may recover no more than the amount undercharged in the 12 months prior to that date.

(b) The amount recoverable is not limited under clause 6.2(a) to the extent that the undercharging resulted from an unlawful act of the *customer* or from the *customer's* failure to comply with clause 25.

(c) To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the *customer's meter* has been read;

(d) Where a *retailer* recovers an amount undercharged from a *customer*, the *retailer* must:

- list the amount to be recovered as a separate item in a special bill or in the customer's next bill together with an explanation of the amount;
- not charge the customer interest on the amount undercharged; and
- offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.

### 6.3 Overcharging

(a) If a *retailer* overcharges a customer by an amount of \$50 or less, the *retailer* must credit the amount to the next bill issued to the *customer* after the *retailer* becomes aware of the overcharging.

(b) If a *retailer* overcharges a *customer* by an amount exceeding \$50, the *retailer* must inform the *customer* within 10 *business days* after becoming aware of the overcharging and must repay any amount overcharged by crediting the *customer's* next bill or as otherwise reasonably directed by the *customer*.

## 7. PAYMENT OF A BILL

### 7.1 When payment is due

(a) A *customer* must pay a bill by the pay by date specified in the bill.

(b) The pay by date on the initial bill must not be less than 12 *business days* from the date of dispatch.

(c) Unless the *retailer* specifies a later date, the date of dispatch is the date of the bill.

### 7.2 Payment methods

(a) A *retailer* must accept payment from a *customer* using any of the following payment methods:

- in person at a network of agencies or payment outlets;
- by mail; and
- by direct debit arrangement.

(b) A *retailer* must obtain a customer's *explicit informed consent* to any direct debit arrangement, including:

- the amount, preferred date and frequency of the direct debits;
- that the arrangement may be cancelled through the relevant financial institution or the retailer, at the option of the customer;
- that, if the customer cancels the arrangement through the financial institution, the customer must use best endeavours to notify the retailer as soon as practicable after the cancellation;
- that, if the customer cancels the arrangement through the retailer, the retailer must use best endeavours to notify the financial institution as soon as practicable after the cancellation;

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

- if their energy contract is a market contract, another payment method to apply if the customer cancels the direct debit arrangement; and
- that, if a last resort event occurs in respect of the retailer, the retailer must immediately cancel the direct debit arrangement and notify both the customer and the financial institution of the cancellation.

(c) If a direct debt arrangement is entered into verbally, the *retailer* must provide the *customer* with written confirmation of the terms and conditions of the direct debit arrangement within 7 days.

### 7.3 Payment in advance

On request, a *retailer* must also accept payment from a *customer* in advance.

### 7.4 Late payment fees

(a) A *retailer* must not impose a *late payment fee* on any *customer* unless and until, having regard to any *guideline* on *late payment fees*, the *Commission* has given the *retailer* its approval for the *retailer* to do so.

(b) The amount of any *late payment fee* must be fair and reasonable having regard to related costs incurred by the *retailer*.

### 7.5 Fees and charges for dishonoured payments and merchant service fees

(a) If a *domestic customer* pays the *retailer's* bill and through fault of the *domestic customer* the payment is dishonoured or reversed, resulting in the *retailer* incurring a fee, the *retailer* may recover the fee from the *domestic customer*. An amount may also be payable by the *domestic customer* under an *agreed damages term*.

(b) If a *domestic customer* pays the *retailer's* bill using a method which results in the *retailer* incurring a merchant service fee, the *retailer* may only recover the amount of that fee from the *domestic customer* if their *energy contract* is a *market contract*.

### 7.6 Vacating a supply address

(a) A *customer* must give a *retailer* notice of the date on which the *customer* intends to vacate, or did vacate, the *customer's supply address*, and a forwarding address to which a final bill may be sent. A *customer* does not avoid liability to pay a *retailer* for *energy* consumed at a *supply address* by vacating that *supply address*.

(b) Subject to clause 7.6(c), a *customer* must pay a *retailer* for *energy* consumed at the *customer's supply address* until the later of :three *business days* after the date on which the *customer* gives the *retailer* notice under clause 7.6(a); or the date on which the *customer* vacates the *supply address*.

(c) A *customer* may cease to be liable to pay for *energy* consumed at the *customer's supply address* from the date specified in the following paragraphs, if that date is earlier than the date determined under clause 7.6(b):

- if a customer demonstrates to the retailer that the customer was evicted or otherwise forced to vacate the supply address, the date on which the customer gives the retailer notice under clause 7.6(a);
- if the retailer and another customer enter into a new energy contract for the supply address (which may be a deemed contract), the date on which the obligation to pay for energy under the new energy contract is effective;
- if another retailer becomes responsible for the supply address, the date on which the other retailer becomes so responsible; and
- if the supply address is disconnected, the date on which the supply address is disconnected.

(d) If the *customer* and the *retailer* have an *energy contract* for another *supply address*, the *retailer* may include in a bill for *energy* consumed at that other *supply address* the amount payable for *energy* consumed at

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

the vacated *supply address* (together with all the other details required by clause 4.2 to be included in respect of both the vacated and the other *supply address*)

### 8. REFUNDABLE ADVANCES

#### 8.1 Domestic customers

(a) A *retailer* may only require a *domestic customer* to provide a *refundable advance* if:

- the domestic customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than \$120;
- within the previous two years the domestic customer has used energy otherwise than in accordance with applicable laws and codes;
- the domestic customer is a new customer and has refused to provide acceptable identification; or
- subject to clause 8.1(b), the retailer determines the domestic customer has an unsatisfactory credit rating, but only if the retailer has first offered the domestic customer an instalment plan and the domestic customer has not accepted the offer.

(b) Despite clause 8.1(a), a *retailer* may not require a *domestic customer* to provide a *refundable advance* on the grounds of an unsatisfactory credit rating if the *retailer's* determination of that credit rating was based on a *relevant default* and:

- the relevant default relates to an energy bill in respect of which the domestic customer has made a complaint in good faith or which the domestic customer has requested the relevant retailer to review, and that complaint or review has not been resolved or completed; the retailer has not complied with clause 11.2; or
- the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made.

(c) The amount of the *refundable advance* must not be if the *domestic customer* provides, or the *retailer* otherwise has, historical billing data for the *domestic customer's* own consumption at the relevant *supply address* for the 12 months ending on the last billing date before the *refundable advance* is required, more than:

- for any energy contract other than a dual fuel contract, 37.5%; and
- for a dual fuel contract where:
  - the retailer requires the refundable advance because the retailer has decided the domestic customer has an
  - unsatisfactory credit rating, 25%; and
  - the retailer otherwise requires the refundable advance, 37.5%, of the amount billed to the domestic customer for the supply and sale of energy to the supply address over those four quarters; or
  - otherwise, more than the corresponding percentage of the average amount the retailer billed domestic customers for the supply and sale of energy over those 12 months.

#### 8.2 Business customers

A *retailer* may require a *business customer* to provide a *refundable advance* if the *retailer's* decision to require the provision of a *refundable advance* is fair and reasonable in all the circumstances.

#### 8.3 Use of refundable advances

## Extracts from the Victorian Essential Services Commission Energy Retail Code, January 2009

(a) A retailer must pay to a customer interest on the amount of a refundable advance at the bank bill rate. Interest is to accrue daily and is to be capitalised (if not paid) every 90 days.

(b) A retailer must repay to a customer and in accordance with the customer's reasonable instructions the amount of a refundable advance, together with accrued interest, within 10 business days of the customer:

- completing one year's payment (in the case of a domestic customer) or two years' payment (in the case of a business customer) by the pay by dates on the retailer's initial bills; or
- ceasing to take supply at the relevant supply address.

If no reasonable instructions are given by the customer, a retailer must credit the amount of a refundable advance, together with accrued interest, on the customer's next bill.

(c) A retailer may only use a customer's refundable advance and accrued interest to offset any amount owed by a customer to the retailer if the customer:

- fails to pay a bill and that results in disconnection of the customer and the customer no longer has a right to be reconnected under clause 15.1; or
- vacates the supply address, requests disconnection or transfers to another retailer.

(d) If a retailer uses a refundable advance, the retailer must provide to a customer an account of its use. The retailer must pay any balance of the refundable advance to the customer within 10 business days.

### 9. SHORTENED COLLECTION CYCLE

#### 9.1 Retailer's right to apply a shortened collection cycle

A retailer may only place a customer on a shortened collection cycle if:

(a) in the case of a domestic customer, the retailer has complied with clause 11.2; and

(b) in the case of a domestic customer or of a business customer, the retailer has given to the customer:

- reminder notices for three consecutive bills or disconnection warnings for two consecutive bills; and
- prior to the third reminder notice or second disconnection warning, a notice informing the customer that:
  - receipt of the third reminder notice or second disconnection warning may result in the customer being placed on a shortened collection cycle;
  - being on a shortened collection cycle means the customer will not receive a reminder notice until the customer has paid three consecutive bills in the customer's billing cycle by the pay by date;
  - alternative payment arrangements may be available; and
  - the customer may obtain further information from the retailer (on a specified telephone number).

#### 9.2 Notice

A retailer must give a customer notice that the retailer has placed the customer on a shortened collection cycle within 10 business days of doing so.

### 10. SHORTER BILLING CYCLE

#### 10.1 Customer's right to negotiate a shorter billing cycle

A retailer and a customer may agree a billing cycle with a regular recurrent period:

(a) in the case of an electricity contract, of less than three months; and

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(b) in the case of a *gas contract*, of less than two months.

That agreement is not effective unless the *customer* gives *explicit informed consent*. Under the agreement, the *retailer* may impose an *additional retail charge* on the *customer* for making the different *billing cycle* available.

### 11. PAYMENT DIFFICULTIES

#### 11.1 Capacity to pay

A customer must contact a retailer if the customer anticipates that payment of a bill by the pay by date may not be possible.

#### 11.2 Assessment and assistance to domestic customers

If:

(a) a domestic customer so contacts a retailer and they do not agree on an alternative payment arrangement; or

(b) the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance, the retailer must:

- assess in a timely way whatever information the customer provides or the retailer otherwise has concerning the customer's capacity to pay, taking into account advice from an independent financial counsellor if the retailer is unable to adequately make that assessment;
- on request, make available to the customer documentary evidence of the retailer's assessment;
- unless the customer has in the previous 12 months failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan, offer the customer an instalment plan; and
- provide the customer with details on concessions including the Utility Relief Grant Scheme, telephone information about energy efficiency and advice on the availability of an independent financial counsellor.

#### 11.3 Energy efficiency field audits

A retailer must consider conducting an energy efficiency field audit to assist a domestic customer to address the difficulties the customer may have paying the retailer's bills. The retailer need only conduct such an audit if the retailer and the domestic customer reach an agreement to that effect. To avoid doubt, any charge the retailer imposes for conducting the audit is not an additional retail charge.

#### 11.4 Debt collection

A retailer:

(a) may not commence legal proceedings for recovery of a debt from a domestic customer unless and until the retailer has complied with all applicable requirements of clause 11.2;

(b) may not commence legal proceedings for recovery of a debt while a customer continues to make payments according to an agreed payment arrangement; and

(c) must comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 60 of the Trade Practices Act 1974 (Cth)

### 12. INSTALMENT PLANS

#### 12.1 Options for domestic customers



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In offering an instalment plan to a domestic customer, a retailer must offer each of:

- (a) an instalment plan under which the customer may make payments in advance towards the next bill in the customer's billing cycle; and
- (b) an instalment plan under which the customer may pay any amount in arrears and continue consumption.

### 12.2 Requirements for an instalment plan

A retailer offering an instalment plan must:

- (a) specify the period of the plan and the amount of the instalments (which must reflect the customer's consumption needs and capacity to pay), the number of instalments and how the amount of them is calculated, the amount of the instalments which will pay the customer's arrears (if any) and estimated consumption during the period of the plan;
- (b) make provision for re-calculating the amount of the instalments where the difference between the customer's estimated consumption and actual consumption may result in the customer being significantly in credit or debit at the end of the period of the plan;
- (c) undertake to monitor the customer's consumption while on the plan and to have in place fair and reasonable procedures to address payment difficulties a customer may face while on the plan; and
- (d) provide the customer with energy efficiency advice and advice on the availability of an independent financial counsellor.

### 12.3 Business customers

A retailer must consider any reasonable request from a business customer for, and may impose an additional retail charge on the business customer if they enter into, an instalment plan.

## 13. GROUNDS FOR DISCONNECTION

### 13.1 Non-payment of a bill

A retailer may only disconnect the supply address of a customer, being a customer who fails to pay the retailer by the relevant pay by date an amount billed in respect of that supply address, if:

- (a) the failure does not relate to an instalment under the customer's first instalment plan with the retailer;
- (b) the retailer has given the customer:
  - a reminder notice not less than 14 business days from the date of dispatch of the bill. The reminder notice must include a new pay by date which is not less than 20 business days from the date of dispatch of the bill. No reminder notice is required if the customer is on a shortened collection cycle under clause 9.1; and
  - a disconnection warning:
    - if the customer is on a shortened collection cycle under clause 9.1, not less than 16 business days from the date of dispatch of the bill. The disconnection warning must include a new pay by date which is not less than 20 business days from the date of dispatch of the bill; or
    - otherwise, not less than 22 business days from the date of dispatch of the bill. The disconnection warning must include a new pay by date which is not less than 28 business days from the date of dispatch of the bill;
- (c) the retailer has included in the disconnection warning:

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- if the customer is a domestic customer and has a dual fuel contract:
  - a statement that the retailer may disconnect the customer's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning and the customer's electricity on a day no sooner than 22 business days after the date of receipt of the disconnection warning; and
  - a statement that disconnection of the customer's gas may result in a variation of the tariffs and terms and conditions of the dual fuel contract as provided for in the dual fuel contract. If no variation is provided for in the dual fuel contract and neither does the dual fuel contract provide that there is to be no variation, the tariffs and terms and conditions of the dual fuel contract are to be varied such that on and from then:
    - the timeframe for disconnecting the customer's electricity is the timeframe stated in the disconnection warning;
    - the supply and sale of electricity otherwise continues at the tariff, and on the terms and conditions, that would apply if the customer were party to a deemed contract under section 37 of the Electricity Act; and
    - the supply and sale of gas otherwise continues at the tariff, and on the terms and conditions, that would apply if the customer were party to a deemed contract under section 44 of the Gas Act;
- in any other case, a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the disconnection warning; and a telephone number for payment assistance enquiries; and

(d) the customer has called the telephone number referred to in paragraph (c) and the retailer has responded to the customer's enquiry and has provided advice on financial assistance;

(e) the customer is a domestic customer and has a dual fuel contract with the retailer and the customer's electricity is to be disconnected, the retailer has given the customer a further disconnection warning no less than six business days before the electricity is disconnected; and

(f) the customer is on a shortened collection cycle under clause 9.1 and the retailer has contacted the customer in person or by telephone to advise of the imminent disconnection, and, before disconnection, the customer:

- does not provide a reasonable assurance to the retailer that the customer is willing to pay the retailer's bills; or
- does so, but then:
  - does not pay the retailer the amount payable by the pay by date on the relevant disconnection warning. This does not apply if the retailer and the customer have agreed to a new payment arrangement;
  - does not agree to a new payment arrangement within five business days after the date of receipt of the disconnection warning; or
  - does not make payments under such a new payment arrangement.
  - To avoid doubt, if the customer does not agree to such a new payment arrangement or does not so make payments under such a new payment arrangement, the retailer may disconnect the customer without again having to observe this clause 13.1.

### 13.2 Domestic customers without sufficient income

Despite clause 13.1, a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through lack of sufficient income of the customer until the retailer has also complied with clause 11.2, using its best endeavours to contact the customer in person or by telephone, and the customer has not

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accepted an instalment plan within five business days of the retailer's offer.

### 13.3 Denying access to the meter

A retailer may disconnect a customer if, due to acts or omissions on the part of the customer, the customer's meter is not accessible for the purpose of a reading for three consecutive bills in the customer's billing cycle but only if:

(a) the retailer or the relevant meter reader has:

- used its best endeavours, including by way of contacting the customer in person or by telephone, to give the customer an opportunity to offer reasonable access arrangements;
- each time the customer's meter is not accessible, given or ensured the retailer's representative has given the customer a notice requesting access to the customer's meter; and
- given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the notice; and

(b) due to acts or omissions on the part of the customer, the customer's meter continues not to be accessible.

### 13.4 Refusal to provide acceptable identification or refundable advance

A retailer may disconnect a customer if the customer refuses when required to provide acceptable identification (if the customer is a new customer of the retailer) or a refundable advance but only if:

(a) the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and

(b) the customer has continued not to provide the acceptable identification or the refundable advance.

### 13.5 A customer's right to request disconnection

On request, a retailer must disconnect a customer and, if requested, finalise the customer's account in accordance with the customer's request.

## 14. NO DISCONNECTION

Despite clause 13, a *retailer* must not *disconnect*:

(a) a *domestic customer* for non-payment of a bill:

- where the amount payable is less than \$120 (exclusive of GST)
- if the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made; or

(b) any *customer* for non-payment of a bill:

- if the customer has made a complaint directly related to the non-payment of the bill to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains unresolved; or
- if the only charge the customer has not paid is not a charge for the supply or sale of energy;

(c) a *customer* if:

- for electricity, the customer's supply address is registered by the relevant distributor as a life support machine supply address; or
- for gas, the customer's supply address is registered by the retailer or a distributor as a medical exemption supply address. A retailer must register a supply address as a medical exemption supply address if a

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customer requests registration and provides a current medical certificate certifying that a person residing at the supply address has a medical condition which requires continued supply of gas; or

(d) a *customer*, unless otherwise requested by that *customer*:

- after 2 pm (for a domestic customer) or 3 pm (for a business customer) on a weekday; or
- on a Friday, on a weekend, on a public holiday or on the day before a public holiday.

### 15. RECONNECTION

#### 15.1 Customer's right of reconnection

If a *retailer* has *disconnected* a *customer* as a result of:

(a) non-payment of a bill, and within 10 *business days* of *disconnection* either:

- the customer pays the bill or agrees to a payment arrangement; or
- being eligible for a Utility Relief Grant, the customer applies for such a grant;

(b) the *customer's meter* not being accessible, and within 10 *business days* of *disconnection* the *customer* provides access or makes available reasonable access arrangements;

(c) the *customer* obtaining supply otherwise than in accordance with applicable laws and codes, and within 10 *business days* of *disconnection* that ceases and the *customer* pays for the supply so obtained or agrees to a payment arrangement; or

(d) the *customer* refusing to provide *acceptable identification* or a *refundable advance*, and within 10 *business days* of *disconnection* the *customer* provides it, on request, but subject to other applicable laws and codes and the *customer* paying any *reconnection charge*, the *retailer* must *reconnect* the *customer*.

#### 15.2 Time for reconnection

(a) If a *customer* makes a request for *reconnection* under clause 15.1:

- before 3 pm on a business day, the retailer must reconnect the customer on the day of the request; or
- after 3 pm on a business day, the retailer must reconnect the customer on the next business day or, if the request also is made before 9 pm and the customer pays any applicable additional after hours reconnection charge, on the day requested by the customer.

A *retailer* and a *customer* may agree that later times are to apply to the *retailer*.

(b) Despite clause 36.1, the obligation of a *retailer* to *reconnect* a *customer* under clause 15.2(a) is absolute. If *reconnection* does not occur by the relevant time, it is not sufficient to discharge the *retailer's* obligation that the *retailer* may have used *best endeavours* to procure the relevant *distributor* to *reconnect* the electrical system or *natural gas installation* at the *customer's supply address* to the *distributor's* distribution system.

### 16. NO LIMITATION OF LIABILITY

(a) A *retailer* must not include any term or condition in its *energy contract* with a *customer*:

- the effect of which is to limit the liability of the retailer to the customer:
  - for any breach by the retailer of their energy contract; and
  - for any negligence by the retailer in relation to their energy contract;
  - in the case of a domestic customer, requiring the customer to take reasonable precautions to minimise the risk of loss or damage to any equipment, premises or business of the customer which may result from poor quality or reliability of energy supply.

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(b) Clause 16(a) does not prevent the inclusion of a term or condition in an *energy contract*:

- of the sort contemplated by section 68A of the Trade Practices Act 1974 (Cth) or any other similar statutory provision;
- under which the customer acknowledges the extent of the retailer's responsibility for the quality and reliability of energy supply under their energy contract;
- confirming that, under the energy contract, there is no variation or exclusion of the operation of:
  - for electricity, section 117 of the Electricity Act or section 78 of the National Electricity Law; or
  - for gas, section 232 or 233 of the Gas Act or section 33 of the Gas Safety Act 1997, (if that is the case); or
  - requiring a business customer to take reasonable precautions to minimize the risk of loss or damage to any equipment, premises or business of the business customer which may result from poor quality or reliability of energy supply.

### 17. INDEMNITY

A *retailer* must not include an indemnity or other term or condition in its *energy contract* with a *customer* the effect of which is to entitle the *retailer* to recover from the *customer* in respect of:

- any breach by the customer of their energy contract; or
- any negligence by the customer in relation to their energy contract, any greater amount than that which, under the common law (including in equity) or statute, the retailer is entitled to as compensation for the customer's breach of their energy contract or negligence.

### 18. FORCE MAJEURE

(a) If but for this clause 18 a *retailer* or a *customer* would commit a *force majeure breach* of their *energy contract*:

- the obligations of the retailer or the customer under their energy contract are suspended to the extent to which they are affected by the force majeure event as long as the force majeure event continues; and
- the retailer or the customer must give the other prompt notice of that fact including full particulars of the force majeure event, an estimate of its likely duration, the obligations affected by it and the extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

(b) For the purposes of clause 18(a), if the effects of a *force majeure event* are widespread the *retailer* will be deemed to have given a *customer* prompt notice if it makes the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the *force majeure event* or otherwise as soon as practicable.

(c) A *retailer* may agree with a *customer* that the *retailer* is not to have the benefit of clause 18(a) in respect of any *force majeure event*.

(d) A *retailer* or a *customer* claiming a *force majeure event* must use its *best endeavours* to remove, overcome or minimise the effects of the *force majeure event* as quickly as possible. However, this does not require the *retailer* or the *customer* to settle any industrial dispute in any way it does not want to.

(e) Nothing in this clause 18 nor in any term or condition of a *retailer* and *customer's energy contract* which is not inconsistent with this clause 18 varies or excludes the operation of:

- for electricity, section 117 of the Electricity Act or section 78 of the National Electricity Law; and
- for gas, section 232 or 233 of the Gas Act or section 33 of the Gas Safety Act 1997.

## 19. MARKET CONTRACTS

### 19.1 Creation of a new market contract

If:

- (a) a *retailer* and a *customer* agree to a new term or condition in addition to the terms and conditions of an existing *deemed contract* or an existing *energy contract* which resulted from the acceptance by the *customer* of the *retailer's* relevant *standing offer*, or instead of one of those terms and conditions; and
- (b) the new term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (\*),<sup>2</sup> the existing *energy contract* terminates and the *retailer* and the *customer* enter into a new *market contract* on new terms and conditions which include the inconsistent term or condition.

## 20. VARIATIONS REQUIRE CUSTOMER'S AGREEMENT

- (a) The *tariff* and any terms and conditions of an *energy contract* between a *customer* and a *retailer* may only be varied by agreement in *writing* between the *customer* and the *retailer*.<sup>3</sup>
- (b) If the amount of the *tariff* changes in accordance with a term or condition of an *energy contract* previously agreed between the *customer* and the *retailer*, no further agreement is required. between the *retailer* and the *customer* to effect such *tariff* change, provided that, where the contract is a *market contract*, the *customer* had given its *explicit informed consent* to the inclusion of the relevant term or condition in the *energy contract*.
- (c) Also for the avoidance of doubt, if the *tariff* and terms and conditions of a *dual fuel contract* vary on *disconnection* by a *retailer* of a *domestic customer's* gas in accordance with and as contemplated by a *disconnection* warning, no further agreement is required.

## 21. GAZETTE BASED VARIATIONS

### 21.1 Gazetted tariffs and gazetted terms and conditions

- (a) This clause 21.1 applies despite clause 20(a) in respect of any *energy contract* between a *customer* and a *retailer* which resulted from the acceptance by the *customer* of the *retailer's* relevant *standing offer*.
- (b) Any *energy contract* to which this clause 21.1 applies may provide for variation of a *tariff* applicable to the *customer* but not so that the *tariff* may at any time exceed the corresponding *gazetted tariff* at that time.
- (c) Any *energy contract* to which this clause 21.1 applies may provide that, if a *gazetted term or condition* is varied then, with effect from when that variation takes effect, the terms and conditions of the *energy contract* are varied as follows:
- if the variation effectively amends an existing gazetted term or condition, by amending in the same way the corresponding term or condition of the energy contract; or
  - if the variation effectively includes an additional gazetted term or condition, by including in the same way a corresponding term or condition in the energy contract.

### 21.2 Deemed contracts

Clause 20(a) does not apply to an *energy contract* *deemed* to apply between a *customer* and a *retailer* under:

- (a) for electricity, section 37 or section 39 of the *Electricity Act*; or
- (b) for gas, section 44 or section 46 of the *Gas Act*,

to the extent that the *tariff* and terms and conditions under that *deemed contract* may be varied as contemplated by:

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(c) for electricity, section 38 of the *Electricity Act*; or

(d) for gas, section 45 of the *Gas Act*.

### 22. TERM

#### 22.1 Commencement

(a) A *retailer* and a *customer* may agree on a date when their *energy contract* commences to be effective.

(b) Despite clause 22.1(a):

- if the *energy contract* is to include a term or condition which is inconsistent with a term or condition set out in this Code marked with an asterisk (\*); or
- if the *customer* is transferring from another *retailer* (with whom the *customer* had an *energy contract* for the relevant supply address) to the *retailer*, the *energy contract* is not made and therefore cannot commence to be effective before the *customer* has given explicit informed consent.

#### 22.2 Commencement of financial responsibility

In respect of each *supply address* of a *customer* which is the subject of an *energy contract* with a *retailer*, the *retailer's* obligation under the *energy contract* to sell *energy* and the *customer's* obligation under the *energy contract* to pay for *energy* consumed at the *supply address* do not become binding unless and until:

(a) for:

- electricity, the *retailer* is responsible for the *supply address*; and
- gas, if the *retailer* acquires gas in a wholesale gas market for retail sale, the *retailer* is responsible for the *supply address*; and

(b) if the *energy contract* is entered into by the *customer* and the *retailer* in connection with the termination of another *energy contract* between them for the *supply address*, the expiry of any *cooling-off period* in respect of the new *energy contract*.

### 23. INTENTIONALLY LEFT BLANK

### 24. TERMINATION

#### 24.1 Termination by customer

(a) A *customer* may terminate an *energy contract* with a *retailer*.

(b) If a *customer* is not a *deemed customer* and wants to terminate an *energy contract* with a *retailer* under clause 24.1(a), the *customer* must give the *retailer* 28 days notice.

(c) If a *customer* is a *deemed customer* and wants to terminate an *energy contract* with a *retailer* under clause 24.1(a), the *deemed customer* need not give any notice.

(d) If an *energy contract* is:

- a fixed term contract and it is terminated by the *customer* under clause 24.1(a); or
- an evergreen contract and it is terminated by the *customer* under clause 24.1(a) before the maturity date,

the *retailer* may, subject to clause 24.6, impose an early termination fee on the *customer* if:

- their *energy contract* includes details of the amount or manner of calculating the early termination fee (consistent with clause 32); and

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- the imposition of an early termination fee in the circumstances is not prohibited by any relevant guideline.

### 24.2 Termination for customer's breach

A *retailer* may not terminate an *energy contract* with a *customer* for the *customer's* breach of their *energy contract* unless:

(a) the breach is one conferring on the *retailer* a right to *disconnect* the *customer* under clause 13, the *retailer* has *disconnected* the *customer* at all relevant *supply addresses* and the *customer* no longer has a right under clause 15.1 to be *reconnected*; or

(b) the *customer* and the *retailer* enter into a new *energy contract*, or the *customer* has *transferred* to another *retailer*, in respect of all relevant *supply addresses*, (whichever occurs first).

### 24.3 Expiry of fixed term contract

If the *energy contract* between a *customer* and a *retailer* is a *fixed term contract*:

(a) prior to the expiry of the fixed term, the *retailer* must notify the *customer* of the following information:

- that the energy contract is due to expire;
- when the expiry will occur;
- of the tariff and terms and conditions that will apply to the customer beyond the expiry of the fixed term if the customer does not exercise any other option (which the retailer may determine at its discretion); and
- what the customer's other options are. These include:
  - the customer requesting that the customer's local retailer, which may be the retailer, make the customer a standing offer; and
  - the customer entering into a market contract with the retailer or any other retailer.

The information must be given no sooner than two months before, and no later than one month before, the expiration of the fixed term (unless the fixed term is less than one month in which case the information must be given to the *customer* at the commencement of the fixed term); and

(b) on and from the expiry of the fixed term unless by then the *customer* has entered into another *energy contract* for the relevant *supply address*, the *energy contract* between the *customer* and the *retailer* continues at the *tariff* and on the terms and conditions the subject of the *retailer's* notice under clause 24.3(a). Despite clause 20(a), the agreement of the *customer* to any variation in the *tariff*, terms and conditions is not required.

### 24.4 Termination of deemed contract

For the purposes of:

(a) section 39(5)(b) of the *Electricity Act*; or

(b) section 46(5)(b) of the *Gas Act*,

a *deemed contract* under that section comes to an end at the end of the period covered by the second bill issued by the *retailer* to the *customer*.

### 24.5 From when termination is effective

Despite any other term or condition of their *energy contract*, the termination of an *energy contract* between a *customer* and a *retailer* is not effective until:



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- (a) if the *energy contract* is terminated because the *customer* and the *retailer* enter into a new *energy contract* for a relevant *supply address*, the expiry of any *cooling-off period* in respect of the new *energy contract*;
- (b) if the *energy contract* is terminated because the *customer* wants to *transfer* to another *retailer* in respect of a relevant *supply address*, when the other *retailer* becomes *responsible* for that *supply address*; or
- (c) if the *energy contract* is terminated in connection with a relevant *supply address* having been *disconnected*, when the *customer* no longer has a right under clause 15.1 to be *reconnected*, (whichever occurs last).

### 24.6 Termination in the event of a last resort event

- (a) Where a *retailer* and a *customer* have entered into an *energy contract*, other than a *dual fuel contract*, and a *last resort event* occurs in relation to the *retailer*, that *energy contract* will automatically terminate and the *customer* will not be liable for any termination fee or other penalty.
- (b) Where a *retailer* and a *customer* have a *dual fuel contract* under which both gas and electricity are sold under the one contract and:
- last resort events simultaneously occur in relation to the retailer in relation to both fuels, that energy contract will automatically terminate and the customer will not be liable for any early termination fee or other penalty; or
  - a last resort event occurs in relation to the retailer in relation to one of the fuels
    - the energy contract will automatically terminate to the extent it applies to the fuel in relation to which the last resort event occurred and, subject to cl 24.6(b)(ii)(B) below, will continue in relation to the other fuel on the same terms and conditions in so far as they apply to the sale of that other fuel; and
    - the customer may, within fourteen (14) days of the last resort event occurring, terminate the energy contract in relation to that other fuel by giving the retailer seven (7) days notice; and in either case, the customer will not be liable for any early termination fee.
- (c) Where a *retailer* and a *customer* have a *dual fuel contract* which comprises two separate *energy contracts*, one each for gas and electricity, with synchronised billing cycles, and:
- last resort events simultaneously occur in relation to the retailer in relation to both fuels, those energy contracts will automatically terminate and the customer will not be liable for any early termination fee or other penalty; or
  - a last resort event occurs in relation to the retailer in relation to one of the fuels:
    - the energy contract for the fuel in relation to which the last resort event occurred will automatically terminate and the customer will not be liable for any early termination fee or other penalty; and
    - the energy contract for the other fuel will continue on the same terms and conditions.

## 25. ACCESS TO SUPPLY ADDRESS

A *customer* must allow a *retailer* or the *retailer's* representative safe, convenient and unhindered access to the *customer's supply address* and *meter* for the purpose of reading the *customer's meter* and for *connection*, *disconnection* and *reconnection*. The *retailer* or the *retailer's* representative must carry or wear official identification and, on request, show that identification to the *customer*.

## 26. PROVISION OF INFORMATION

### 26.1 Contact details

A *customer* must inform a *retailer* as soon as possible of any relevant change to contact details.

## 26.2 Retailer's charter

(a) A *retailer* must give a copy of its charter to a *domestic customer*:

- at or as soon as practicable after the time the domestic customer is connected at a new supply address or transfers from another retailer to the retailer;
- on request by the customer following which the copy is to be handed to the domestic customer or posted to the customer's address within two business days of the request.
- where the domestic customer is a deemed customer, as soon as practicable after their energy contract begins.

(b) The charter must include details of the rights, entitlements and obligations of *retailers* and *domestic customers* relating to the sale of *energy* and other aspects of their relationship under this Code and other applicable law and codes.

(c) On request, a *retailer* must provide the charter to a *domestic customer* in large print or, if the *retailer* has a significant number of *domestic customers* from the same non-English speaking background as the *domestic customer*, in the *domestic customer's* non-English language.

(d) A *retailer* must periodically include a statement on a *domestic customer's* bills that, on request, the *domestic customer* is entitled to a free copy of the *retailer's* charter.

## 26.3 This Code

On request, a *retailer* must give to a *customer* a copy of this Code (which, if so requested, must be a large print copy). The *retailer* may impose an *additional retail charge* on the *customer* for this. A *retailer* must also inform a *customer* of any amendment to this Code that materially affects the *customer's* rights, entitlements and obligations as soon as reasonably practicable after this Code is amended.

## 26.4 Advice on available tariffs

(a) On request, a *retailer* must provide a *customer* with reasonable information on *tariffs* the *retailer* may offer to the *customer*. The information must be given to the *customer* within 10 *business days* of the *customer's* request and, if the *customer* requests it, in *writing*.

(b) A *retailer* must give notice to a *customer* of any variation to the *retailer's tariffs* that affects the *customer*. The notice must be given as soon as practicable and in any event no later than the *customer's* next bill.

## 26.5 Concessions

On request, a *retailer* must provide to a *domestic customer* information on all *concessions*.

## 26.6 Energy efficiency advice

On request, a *retailer* must provide *energy efficiency advice* to a *customer*.

## 26.7 Information from retailer to distributor

As soon as practicable, a *retailer* must:

- provide the relevant *distributor* with confirmation from a registered medical practitioner or a hospital that a person residing at a *customer's supply address* requires a life support machine or otherwise has a medical condition that requires continued supply, if the *customer* provides that confirmation to the *retailer*; or
- inform the relevant *distributor* that the *customer's supply address* is affected by a fault, if the *customer* provides that information to the *retailer*.

## 27. HISTORICAL BILLING INFORMATION

### 27.1 Records

A *retailer* must retain a *customer's* historical billing data for at least two years, even though in the meantime the *customer's energy contract* with the *retailer* may have terminated.

### 27.2 Historical billing data

(a) On request, a *customer's* current *retailer* must provide to the *customer* any of the *customer's* historical billing data then retained by the *retailer* for any period nominated by the *customer*. The *retailer* may impose an *additional retail charge* on the *customer* but only if the request is not the first request made by the *customer* within the preceding year or the data requested relates to a period prior to the preceding two years

(b) If a *customer* has *transferred* to another *retailer* and requests from its previous *retailer* historical billing data relating to a period within two years prior to the date of the request then, even though the *customer's energy contract* with the previous *retailer* may otherwise have terminated, the previous *retailer* must provide the *customer* with any of the data then retained by the *retailer* and requested by the *customer*. The previous *retailer* may impose an *additional retail charge* on the *customer* for the provision of this information.

(c) A *retailer* must use its *best endeavours* to provide historical billing data to a *customer* within 10 *business days* of the *customer's* request or such other period they agree.

(d) If historical billing data is required for the purposes of handling a genuine complaint made by a *customer*, in no circumstances may a *retailer* charge the *customer* for providing the data.

## 28. COMPLAINTS AND DISPUTE RESOLUTION

### 28.1 Complaint handling

A *retailer* must handle a complaint by a *customer* in accordance with the relevant Australian Standard on Complaints Handling. The *retailer* must include information on its complaint handling processes in the *retailer's* charter.

### 28.2 Advice on customer's rights

When a *retailer* responds to a *customer's* complaint, the *retailer* must inform the *customer*:

(a) that the *customer* has a right to raise the complaint to a higher level within the *retailer's* management structure; and

(b) if, after raising the complaint to a higher level the *customer* is still not satisfied with the *retailer's* response, the *customer* has a right to refer the complaint to the Energy and Water Ombudsman Victoria or other relevant external dispute resolution body. This information must be given in *writing*.

### 28.3 Energy and Water Ombudsman Victoria

A *retailer* must include the phone number of the Energy and Water Ombudsman Victoria on any *disconnection* warning.

## 29. ILLEGAL CONSUMPTION

(a) Despite clause 6.2, if a *retailer* has undercharged or not charged a *customer* as a result of the *customer's* fraud or consumption of electricity intentionally otherwise than in accordance with applicable law or codes, the *retailer* may estimate the consumption for which the *customer* has not paid and take debt recovery action for all of the unpaid amount.

(b) Clause 11.2 does not apply if, in the *customer's* dealings with the *retailer*, the *customer* is convicted of an

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offence involving fraud or theft.
<p><b>30. ADDITIONAL RETAIL CHARGES</b></p> <p>A <i>retailer</i> may impose an <i>additional retail charge</i> on a <i>customer</i>:</p> <p>(a) if their <i>energy contract</i> is a <i>market contract</i>, whether or not the imposition of an <i>additional retail charge</i> is expressly provided for in a term or condition set out in this Code; and</p> <p>(b) otherwise, only where the imposition of an <i>additional retail charge</i> is expressly provided for in a term or condition set out in this Code.</p> <p>The amount of any <i>additional retail charge</i> must be fair and reasonable having regard to related costs incurred by the <i>retailer</i>.</p>
<p><b>31. AGREED DAMAGES TERMS</b></p> <p>(a) Any <i>agreed damages term</i>, whether providing for a <i>late payment fee</i>, an early termination fee or otherwise, must either include the amount that will be payable by the <i>customer</i> to the <i>retailer</i> for the <i>customer's</i> breach of their <i>energy contract</i> or include a simple basis for determining that amount.</p> <p>(b) Subject to clause 32(c), the amount payable by a <i>customer</i> under an <i>agreed damages term</i> must be a fair and reasonable pre-estimate of the damage the <i>retailer</i> will incur if the <i>customer</i> breaches their <i>energy contract</i>, having regard to related costs likely to be incurred by the <i>retailer</i>.</p> <p>(c) Any amount of an early termination fee payable by a <i>customer</i> upon the <i>customer</i> breaching their <i>energy contract</i> must be determined by reference to, and must not exceed, the total of the following direct costs incurred by the <i>retailer</i> in relation to that particular <i>customer</i> which remain unamortised at the time of termination:</p> <ul style="list-style-type: none"> <li>• pro-rata costs of procuring the customer to enter into the contract</li> <li>• additional costs of giving effect to the early termination of the contract, final billing and ceasing to be responsible for the supply address; and</li> <li>• the value of any imbalance in the retailer's electricity or gas hedging program to the extent that it is directly attributable to that breach of contract.</li> </ul>
<p><b>32. NOTICES</b></p> <p>(a) A notice, consent, document or other communication given by a <i>retailer</i> under an <i>energy contract</i> must be in <i>writing</i> and given by hand, by fax, by mail or by e-mail.</p> <p>(b) Clause 33(a) does not apply if a term or condition set out in this Code provides or otherwise contemplates that a notice, consent, document or other communication may be given by a <i>retailer</i> otherwise than in <i>writing</i>.</p>
<p><b>33. ASSIGNMENT</b></p> <p>(a) A <i>retailer</i> may only <i>assign</i> the <i>retailer's energy contract</i> with a <i>customer</i> with the <i>customer's</i> consent.</p> <p>(b) Clause 34(a) does not apply if the <i>assignment</i> forms part of the transfer to the same third party of all or substantially all of the <i>retailer's</i> retail sales business.</p>
<p><b>34. DEFINITIONS</b></p> <p>In this Code, including the preamble, unless the context otherwise requires: <i>acceptable identification</i> in relation to:</p> <p>(a) a <i>domestic customer</i>, includes one or more of the following: a driver's licence, a current passport or other form of photographic identification, a Pensioner Concession Card or other current entitlement card issued by</p>

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the Commonwealth or a birth certificate;

(b) a *business customer* which is a sole trader or partnership, includes one or more of the forms of identification for a *domestic customer* for each of the individuals that conduct the business; and

(c) a *business customer* which is a company, includes the company's Australian Company Number or Australian Business Number.

*additional retail charge* means a charge relating to the sale of *energy* by a *retailer* to a *customer* other than a charge based on the *tariff* applicable to the *customer* and which must be calculated in accordance with clause 31 of this Code. To avoid doubt:

(a) any network charge relating to the supply, but not sale, of *energy* to a *customer's supply address* is not an *additional retail charge* (whether or not the network charge is bundled in the *retailer's tariff*);

(b) without limiting paragraph (a), any charge the *retailer* may impose as a direct pass through of a distribution tariff, excluded service charge for electricity, ancillary reference tariff for gas or other charge imposed on the *retailer* by a *distributor* for *connection to*, or use of, the *distributor's* distribution system is not an *additional retail charge*; and

(c) any amount payable by a *customer* to a *retailer* for the *customer's* breach of their *energy contract*, whether under an *agreed damages term* or otherwise, is not an *additional retail charge*.

*agreed damages term* means a term or condition of an *energy contract* under which a *customer* and a *retailer* have agreed the amount, or a basis for determining the amount, that will be payable by the *customer* to the *retailer* for the *customer's* breach of their *energy contract*.

*amount outstanding*, in respect of an *energy* or water bill issued to a *domestic customer*, means:

(a) unless paragraph (b) applies, any amount which is not paid by the due date specified on the bill; or

(b) if the *domestic customer* and the relevant service provider enter into an agreement or arrangement for the *domestic customer* to pay the amount or an instalment on a later date, any amount or instalment which is not paid by that later date in accordance with the agreement or arrangement. *applicable regulatory instruments* may include (but is not necessarily limited to) one or more of the following:

(a) for electricity:

- the National Electricity Rules;
- the Metrology Procedure;
- the Electricity Customer Transfer Code; and
- the Electricity Customer Metering Code; and

(b) for gas:

- the Gas Distribution System Code;
- the Retail Rules; and
- the Market and System Operation Rules;
- or any other regulatory instrument which substitutes, amends or supplements any of the above.

*assigned meter identifier* means:

(a) for electricity, the National Meter Identifier assigned to the *customer's* metering installation; and

(b) for gas, the Meter Installation Reference Number assigned to the *customer's* metering installation.

*assignment* includes dispose of, declare a trust over or otherwise create an interest in rights under an *energy*

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*contract.*

*bank bill rate* in respect of the interest a *retailer* must pay to a *customer* on the amount of a *refundable advance*, means a daily published rate no less than the pre-tax rate of return the *retailer* would earn over the period the *retailer* retains that amount if it were invested in bank bills that have a tenor equal to 90 days.

*best endeavours* in relation to a person, means the person must act in good faith and do what is reasonably necessary in the circumstances.

*billing cycle* means the regular recurrent period in which a *customer* receives a bill from a *retailer*.

*business customer* means a *customer* who is not a *domestic customer*.

*business day* means a day other than a Saturday or Sunday or a *public holiday*.

*checksum* means:

- (a) for electricity, the National Meter Identifier checksum; and
- (b) for gas, the Meter Installation Reference Number checksum.

*Commission* means the Essential Services Commission under the *Essential Services Commission Act 2001*.

*concession* means a concession, rebate or grant including, without limitation, those known as or relating to:

- (a) Winter Energy Concession;
- (b) Life Support Machines;
- (c) Group Homes;
- (d) Multiple Sclerosis or Associated Conditions;
- (e) Service to Property Charge Supply Concession;
- (f) Property Transfer Fee Waiver; and
- (g) Utility Relief Grant Scheme.

*connect* means:

- (a) for electricity, the making and maintaining of contact between the electrical systems of two persons allowing the supply of electricity between those systems; and
- (b) for gas, the joining of a *natural gas installation* to a distribution system *supply point* to allow the flow of gas.

*cooling-off period* in respect of an *energy contract* means any period within which the *customer* has a right to cancel the *energy contract* under clause 6.3 of the Code of Conduct for Marketing Retail Energy in Victoria issued by the Commission in October 2004 or the Fair Trading Act 1999 (Vic).

*customer* means a person other than:

- (a) for electricity, a *retailer*; and
- (b) for gas, a participant or market participant as defined in the *Market and System Operation Rules*, who buys or proposes to buy energy from a *retailer*.

*date of receipt* in relation to a notice given by a *retailer* means:

- (a) if the *retailer* hands the notice to the *customer*, the date the *retailer* does so;
- (b) if the *retailer* leaves the notice at the *customer's supply address*, the date the *retailer* does so; or
- (c) if the *retailer* gives the notice by post, a date two *business days* after the date the *retailer* posts the notice.

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*deemed* in respect of an *energy contract* means an *energy contract* deemed to apply between a *customer* and a *retailer* under the *Electricity Act* or the *Gas Act* and *deemed*

*contract* has a corresponding meaning.

*deemed customer* means a person who is *deemed* to have an *energy contract*.

*disconnect* means:

(a) for electricity, the disconnection of contact between the electrical systems of two persons preventing the supply of electricity between those systems; and

(b) for gas, the separation of a *natural gas installation* from a distribution system to prevent the flow of gas.

*distributor* means a person who holds, or in the case of electricity only is exempt from holding, a distribution licence under the *Electricity Act* or the *Gas Act*.

*domestic customer* means a *customer* who purchases *energy* principally for personal, household or domestic use at the relevant *supply address*.

*dual fuel contract* means an *energy contract* for the sale of electricity and for the sale of gas by a *retailer* to a *customer*, or two *energy contracts* between the same *customer* and the same *retailer*, one an *electricity contract* and one a *gas contract*, under which

*billing cycles* for electricity and gas are synchronised. The *dual fuel contract* may also oblige the *retailer* to connect the *customer's supply address* or to otherwise procure the supply of electricity or of gas or of both electricity and gas.

*electric bulk hot water* means water centrally heated by electricity and delivered to a number of *customer supply addresses* where the *customer's* consumption of hot water is measured with a *meter* and where an *energy bill* is issued by a *retailer*.

*electric bulk hot water conversion factor* means the *conversion factor* used by *retailers* to bill *electric bulk hot water customers*. The *electric bulk hot water conversion factor* will have a maximum value of 89kWh per kilolitre. Where *customers* are currently billed using a lower *electric bulk hot water conversion factor*, or a lower *electric bulk hot water conversion factor* for the site is assessed, *retailers* must bill *customers* using the lower *electric bulk hot water conversion factor*.

*Electricity Act* means the *Electricity Industry Act 2000*.

*electricity contract* means a contract for the sale of electricity by a *retailer* to a *customer*. The *electricity contract* may also oblige the *retailer* to connect the *customer's supply address* or to otherwise procure the supply of electricity.

*Electricity Customer Metering Code* means the industry code of that name certified by the *Commission*.

*Electricity Customer Transfer Code* means the industry code of that name certified by the *Commission*.

*energy* means electricity or gas or both electricity and gas.

*energy contract* means an *electricity contract* or a *gas contract* and may include a *dual fuel contract*.

*evergreen contract* means an *energy contract*, other than a *fixed term contract*, which includes a *maturity date*.

*explicit informed consent* means consent given:

(a) by the *customer* directly to the *retailer* or the *retailer's marketing representative*:

- in writing or by electronic communication signed by the customer; or
- except for the purposes of clause 5.1 and 10.1 of this Code, orally;

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(b) only after the *retailer* or the *retailer's marketing representative* has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the *customer*, including each specific purpose and use of the consent; and

(c) by a person competent to do so.

*fixed term contract* means an *energy contract* the term of which continues for a fixed, certain or definite period including, in the case of a *deemed contract*, any fixed, certain or definite period under or contemplated by the *Electricity Act* or the *Gas Act*.

*force majeure breach* means a breach by a *retailer* or a *customer* of their *energy contract* which, but for clause 18, the *retailer* or the *customer* would commit arising only through a *force majeure event*.

*force majeure event* means an event outside the reasonable control of a *retailer* or a *customer*.

*franchise customer* in relation to the period ending on:

(a) for electricity, 31 December 2000; and

(b) for gas, 31 August 2001,

means a franchise customer within the meaning of:

(a) for electricity, the *Electricity Industry Act 1993* immediately before 1 January 2001; and for gas, the *Gas Industry Act 1994* immediately before 1 September 2001. *FRC date* means the date on which there ceases to be in effect an Order made under section 35 of the *Gas Act* (i.e., the date from which all *customers* will be able to choose their gas *retailer*).

*Gas Act* means the *Gas Industry Act 2001*.

*gas bulk hot water* means water centrally heated by gas and delivered to a number of *customer supply addresses* where the *customer's* consumption of hot water is measured with a *meter* and where an *energy bill* is issued by a *retailer*.

*gas bulk hot water rate* means the gas price in cents per litre that is used by a *retailer* to charge *customers* for energy in delivering *gas bulk hot water*.

*gas contract* means a contract for the sale of gas by a *retailer* to a *customer*. The *gas contract* may also oblige the *retailer* to connect the *customer's supply address* or to otherwise procure the supply of gas.

*Gas Distribution System Code* means the code of that name certified by the *Commission*.

*gazetted tariff* at any time means a *tariff* determined by a *retailer* and published by the *retailer* in the Government Gazette and at that time effective under:

(a) for electricity, section 35 of the *Electricity Act*; and

(b) for gas, section 42 of the *Gas Act*.

A *gazetted tariff* corresponds with a *tariff* applicable to a *customer* under an *energy contract* if it is the *tariff* that a *retailer* would be required to offer to the *customer* if the *customer* at that time made a request for a *standing offer* in respect of the relevant *supply address*.

*gazetted term or condition* at any time means a term or condition determined by a *retailer* and approved by the *Commission* and published by the *retailer* in the Government Gazette and at that time effective under:

(a) for electricity, section 35 of the *Electricity Act*.

(b) for gas, section 42 of the *Gas Act*.

*guideline* means a guideline published by the *Commission*.

*late payment fee* means an amount payable by a *customer* to a *retailer* in connection with the *customer*



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having breached the *customer's* obligation to pay an amount due on or before the pay by date on the *retailer's* initial bill.

*last resort event* in respect of a *retailer* means when:

- (a) the *retailer's* retail licence is suspended or revoked; or
- (b) the right of the *retailer* to acquire:

for electricity, electricity from the wholesale electricity market; and for gas, gas from a wholesale gas market or a producer, is suspended or terminated, whichever first occurs.

*local retailer* has the same meaning :

- (a) for electricity, as made under Order-in-Council S11 dated 11.1.02 in accordance with section 35 of the *Electricity Act*; and
- (b) for gas, as made under Order-in-Council S197 dated 29.10.02 in accordance with section 42 of the *Gas Act*.

*market contract* means an *energy contract* between a *customer* and a *retailer* which is not a *deemed contract* nor an *energy contract* arising from the acceptance of a *standing offer*.

*Market and System Operation Rules* means the rules referred to in Division 1 of Part 4 of the *Gas Act*.

*marketing representative* includes an employee, agent, representative, contractor or person acting on behalf of a *retailer*, who is engaged in marketing and or selling the *retailer's energy contracts*.

*maturity date* in respect of an *energy contract* means a date included in the *energy contract* on which a fixed, certain or definite period ends:

- (a) before which, if the *customer* terminates the *energy contract*, the *retailer* may have a right to impose an early termination fee; and
- (b) after which, if the *customer* terminates the *energy contract*, the *retailer* has no right to impose an early termination fee.

*meter* in respect of a *customer* means:

- (a) for electricity, the device which measures and records the consumption of electrical energy consumed at the *customer's supply address*;
- (b) for gas, an instrument that measures the quantity of gas passing through it and includes associated equipment attached to the instrument to filter, control or regulate the flow of gas and;
- (c) for *electricity bulk hot water* or *gas bulk hot water*, the device which measures and records the consumption of bulk hot water consumed at the *customer's supply address*.

*Metrology Procedure* means the Victorian Electricity Supply Industry Metrology Procedure published under the *National Electricity Rules*.

*National Electricity Rules* means the Rules made under the National Electricity (Victoria) Law applicable in Victoria as a result of the operation of section 6 of the *National Electricity (Victoria) Act 2005*.

*natural gas installation* means any gas equipment located at a *customer's supply address* downstream of the *supply point* that is not part of a distribution system.

*public holiday* means a public holiday appointed under the *Public Holidays Act 1993*.

*reasonable assurance* in relation to a *customer's* willingness to pay means a fair and reasonable expectation, based on all the circumstances leading to, and which are anticipated to follow, the assurance that the *customer* will pay.

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*reconnect* means to connect following a disconnection.

*refundable advance* means an amount of money or other arrangement acceptable to a *retailer* as security against a *customer* defaulting on a final bill.

*relevant customer* means a person, or a member of a class of persons, to whom an Order under:

- (a) for electricity, section 36 of the *Electricity Act*; and
- (b) for gas, section 43 of the *Gas Act*, applies.

*relevant default* in relation to a *domestic customer*, occurs where:

(a) within the previous five years, the *domestic customer* has failed to pay a bill under an *energy* contract with the *retailer* or any former or other *retailer* or in respect of the *customer's* water consumption, where:

- the amount outstanding is greater than or equal to [\$120];
- the payment is at least 60 days overdue; and
- the retailer, the former or other retailer or water provider has taken steps to recover the whole or any part of the amount outstanding;

(b) within the past five years, a court has issued judgment against the *domestic customer* in relation to a debt; and

(c) the *domestic customer* has been declared bankrupt and the bankruptcy order has not been discharged.

*responsible* in respect of a *retailer* and a *supply address* means the *retailer* is responsible for the *energy* supplied at the *supply address* for the purposes of settlement of a relevant wholesale *energy* market under *applicable regulatory instruments*. *retailer* means a person who holds a retail licence under the *Electricity Act* or under the *Gas Act*.

*Retail Rules* means the relevant retail gas market rules (as defined in Division 2 of Part 4 of the *Gas Act*) applicable to the *customer's supply point*. *second tier electricity customer* means, in respect of the relevant *supply address*, the *customer* who purchases electricity otherwise than directly and in its entirety from the *retailer* that is the *local retailer* in respect of that *supply address*.

*standing offer* means an offer made by a *retailer* as contemplated by:

- (a) for electricity, section 35 of the *Electricity Act*; and
- (b) for gas, section 42 of the *Gas Act*.

*supply address* includes:

(a) for electricity, the relevant market connection point (as defined in the *National Electricity Rules*) in respect of that supply address; and

(b) for gas, the point where gas leaves the distribution system before being supplied to a *customer*, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.

*supply point* means the point where gas or electricity leaves the distribution system before being supplied to the customer, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.

*tariff* means a price for the supply or sale of *energy*.

*transfer* in respect of a *customer* and two *retailers*, means that *responsibility* for the relevant *supply address* of the *customer* has transferred from one of the *retailers* to the other.

*writing* includes any mode of representing or reproducing words, figures, drawings or symbols in visible form.

## 35. INTERPRETATION

### 35.1 Connection, disconnection and reconnection

A retailer is not in a position to *connect, disconnect or reconnect* the electrical system or *natural gas installation* at a *customer's supply address* to a *distributor's* distribution system. In this Code unless the context otherwise requires, a reference in a term or condition to a *retailer*:

(a) having a right or not having a right to *disconnect* a *customer* is to be construed as a reference to the *retailer* having a right or not having a right to procure the *distributor* to *disconnect*; or

(b) being obliged to *connect, disconnect or reconnect* a *customer* is to be construed as a reference to the *retailer* being obliged to use its *best endeavours* to procure the *distributor* to *connect, disconnect or reconnect* the electrical system or *natural gas installation* at the *customer's supply address* to the *distributor's* distribution system.

### 35.2 General

In this Code including the preamble, unless the context otherwise requires:

(a) headings and footnotes are for convenience or information only and do not affect the interpretation of this Code or of any term or condition set out in this Code;

(b) words importing the singular include the plural and vice versa;

(c) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;

(d) a reference to a clause or appendix is to a clause or appendix of this Code;

(e) a reference to any statute includes all statutes varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;

(f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document;

(g) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;

(h) other parts of speech and grammatical forms of a word or phrase defined in this Code have a corresponding meaning;

(i) a period of time:

- which dates from a given day or the day of an act or event is to be
- calculated exclusive of that day; or
- which commences on a given day or the day or an act or event is to be
- calculated inclusive of that day;

(j) a reference to:

- time is a reference to Standard Time within the meaning of the Summer Time Act 1972 and not Summer Time within the meaning of that Act;
- a day is a reference to a period commencing immediately after midnight and ending the following midnight; and

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- a month is a reference to a calendar month; and

(k) an event which is required under any term or condition set out in this Code to occur on or by a stipulated day which is not a *business day* may occur on or by the next *business day*.

## Appendix D Analysis of current practice

The analysis below summarises the results from the retailer-by-retailer comparison of current terms (as published on websites) against the proposed benchmark terms. This analysis was carried out by an independent consultant, and has been accepted by Gas Industry Co without variation to preserve this independence. Where both residential and business terms were provided, both were analysed but the summary below is based on residential terms where these are separately identified. The analysis included eight retailers comprising:

- Energy Direct
- Genesis Energy
- Mercury Energy
- Nova Energy
- Auckland Gas
- Bay of Plenty Energy
- Contact Energy
- E-Gas

The degree of alignment was found to vary quite widely. To simplify the analysis the following broad categories were used, without trying to specifically define these:

- Full
- Substantial
- Partial
- Minimal
- None

Each table below looks at the proposed terms under a separate topic heading.

Benchmark	Summary Analysis
<b>1. How to become a customer</b>	
1.1 The contract must state when the contract is to commence and supply is to be taken, and this must be agreed between the retailer and the customer. If either date is retrospective the contract must make this clear to the consumer.	Five retailers have no or minimal alignment, two retailers have partial alignment and one retailer has full alignment. In the two cases of partial alignment, contract commencement is covered but not commencement of supply.
1.2 The contract must provide a reasonable opportunity for the consumer to agree to the terms offered or terminate the contract and supply without charge.	There is no alignment across all retailers, ie the issue is not addressed by any retailer. It is noted that this clause is additional to both the 2005 Model Contract Guidelines proposals and the EGCC Code of Practice, so it is not surprising that it is not reflected in actual terms.
<b>2. How to stop being a customer</b>	
2.1 The contract must provide that, subject only to any initial term that may be agreed in the contract, the consumer shall have the right to terminate the contract with, and cease gas supply and charges, the existing retailer, for any reason including to obtain supply from a new retailer and irrespective of any offer that the existing retailer makes in respect of price or any other aspect of continued supply; on no more than one months notice and any shorter period allowed by the retailer.	<p>It is noted that this is a new provision not contained in either the EGCC Code of Conduct or the 2005 Model Contract Guidelines. It is included to react to some instances of very adverse provisions in existing contracts. Despite this there is relatively high level of substantial or full alignment – four out of the eight retailers. However there are four retailers who have no or minimal alignment. The results are polarized in that there are no instances of partial alignment.</p> <p>There are two examples of provisions which are unacceptable as they enable the consumer to be locked in to contract rollover. Both provisions have a similar form in that they provide for the contract to automatically roll over, unless the retailer chooses not to match the terms offered by an alternative supplier. If there is no alternative offer the contract automatically rolls over.</p>
2.2 The contract must provide that;  (a) if the consumer is switching retailers, termination will be effected in accordance with the Rules governing switching;  (b) if the customer is ceasing gas supply altogether, termination will be effected as soon as reasonably practicable following the consumer's notice of termination.	This is also a new provision not contained in either the EGCC Code of Conduct or the 2005 Model Contract Guidelines. It is included to, amongst other things, explicitly cover the situation of termination of supply altogether, and to provide a cross reference to the Gas (Switching Arrangements) Rules 2008. There is effectively no alignment across all retailers, although this is partly to be expected as the switching rules have only been in place for a short period of time.

<b>3. Changes to a contract</b>	
3.1 The contract may permit the retailer to change the non-price terms of the contract upon giving the consumer no less than 30 days notice of the changes.	There is full alignment for six retailers, and none for two retailers. In the latter cases the issue is not addressed in the stated terms. In all of the cases of full alignment (up to) 30 days is the benchmark period of notice.
3, 2 The contract must provide that if the changes so notified by the retailer or subsequently negotiated are, together, materially less favourable to the consumer than under the existing contract, then the consumer may, regardless of whether the contract has a fixed term, terminate the contract on no more than one month's notice, or any shorter period allowed by the retailer, given before the date on which the charges were to become effective.	There is no alignment for any retailer. It is noted that this is a new provision which is not contained in either the Model Contract Guidelines or the EGCC Code of Conduct so in that sense the result is not surprising.
<b>4. Service Standards</b>	
4.1 The contract must describe the services and quality of service standards provided to the consumer.	There is full alignment for four retailers, partial alignment for two retailers and no alignment for two retailers. In the cases of full alignment there is variation in the amount of detail provided and in the way it is provided, which is a reasonable reflection of the discretion intended.
4.2 The contract must provide that the services and quality of service standards will at all times be:  (a) consistent with all legal obligations relating to the supply of gas;  (b) no less than good industry practice then prevailing in New Zealand.	There is full alignment for one retailer, partial alignment for three retailers and no alignment for four retailers. In the cases of no alignment, the matter is not addressed at all. In all of four cases of partial or full alignment, there is a reasonable amount of material relevant to the benchmark but some are more comprehensive than others.
4.3 The contract must be set out how the retailer 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 retailer does not meet its obligations.	There is no alignment across all retailers. In every case the only provision offered is access to the standard complaints procedure. It is noted that clause 4.3 reflects, to a large degree, both the 2005 Model Contract Guidelines and the EGCC Code.
<b>5. Price, bills and payment</b>	
5.1 In order to increase the price of gas supplied under the contract, the contract must state:  a) the length of notice that shall be given before the price increase takes effect ,which shall be not less than 30 days from the giving	Four retailers have substantial or full alignment, one retailer has partial alignment and three retailers have no alignment.  In the cases of no alignment there is still considerable detail but it is one sided, ie gives the retailers rights and the consumer none. In the cases of substantial alignment, the main omission is that of having to explain the

Benchmark	Summary Analysis
<p>of notice;</p> <p>(b) the method in which notice will be given provided that that 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 possible.; and</p> <p>c) that the notice will include an explanation of the reasons for the increase.</p>	<p>reasons for the increase.</p> <p>The results are quite polarised, ie there is only one case of partial alignment. Cases of reasonable alignment correspond quite well with membership of the EGCC scheme.</p>
<p>5.2 The contract must:</p> <p>a) refer to the relevant prices or pricing schedule (as may be produced by the retailer from time to time) of products and services available to the consumer;</p> <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) In the case of bills based on estimates, include a simple explanation of how the estimate will be calculated, and of the process that will be used for correcting any estimates</p> <p>(e) Provide that if the retailer makes an error and charges an incorrect amount to the consumer, then upon becoming aware of the error the retailer:</p> <ul style="list-style-type: none"> <li>- will promptly refund or credit to the consumer any amount that has been overcharged,;</li> <li>- may invoice the consumer for any underpayments, but the contract will state the term limitations that will apply for the recovery of underpayments.</li> </ul>	<p>Three retailers have substantial or full alignment, three retailers have partial alignment, and two retailers have no alignment.</p> <p>A reasonably common element, even where alignment is minimal, is in the provision of a pricing schedule. Other elements of non-alignment follow no particular pattern, ie retailers are aligned or not in different areas for different retailers</p>
<p>5.3 If the retailer offers alternative payment options to consumers, a simple explanation of how those options operate must be set out in</p>	<p>Alignment in this case is very polarised with four retailers fully aligned and four retailers with no alignment. Cases of full alignment correspond quite</p>



Benchmark	Summary Analysis
the contract or in a separate publication identified in the contract	well with membership of the EGCC scheme.
<b>6. Bonds</b>	
<p>6.1 Where the retailer requires a bond from the consumer, the contract must state:</p> <ul style="list-style-type: none"> <li>a) a requirement for the retailer to provide to the consumer the reasons for requiring a bond;</li> <li>b) the period of time within which the bond must be paid to the retailer;</li> <li>c) how long the retailer will keep the bond. If the retailer keeps the bond for longer than 12 months, it must provide its reasons for doing so to the consumer;</li> <li>d) how the bond will be refunded; and</li> <li>e) whether or not interest is payable on the bond.</li> </ul>	<p>There are three retailers who are fully aligned, two retailers are partially aligned and three retailers have no alignment.</p> <p>In the cases of no alignment the matter is not addressed in the terms. In the cases of partial alignment this is again due to matters not being addressed, and not to the inclusion of adverse terms.</p> <p>It is noted that the proposed clause is essentially the same as the equivalent clause in the EGCC Code. However, one of the cases of partial alignment relates to an EGCC member</p>
<b>7. Obligations of parties in relation to supply to the site and access.</b>	
<p>7.1 The contract must :</p> <ul style="list-style-type: none"> <li>a) describe the physical point at which the customer’s responsibility begins;</li> <li>b) explain the consumer’s responsibilities pursuant to sub-clause 7.1(a) including in relation to gas lines, meters and other equipment on the consumer’s premises and for compliance with all safety and technical requirements under regulations and codes of practice.</li> <li>(c) explain the responsibilities of the other parties to gas supply; comprising the retailer; and distributors and meter owners if those responsibilities are not included in the retailers responsibilities;</li> </ul>	<p>In this case the assessment is separately against the component parts of clause 7.1.</p> <p>For 7.1(a), three retailers have full alignment, one retailer has partial alignment and there are four retailers with no alignment.</p> <p>For 7.1(b) there are five retailers who are fully aligned and three who are partially aligned, There are no cases of no alignment indicating that most retailers consider this part of the contract to be important.. In some of the cases there is a great deal of detail provided.</p> <p>For 7.1(c) there are seven cases of full alignment and one case of partial alignment. So although this is a substantially new clause, it is a contractual area that is already well covered. The issues this raises is whether the detailed information being provided helps meet their GPS outcomes and this needs to be separately analysed.</p>

Benchmark	Summary Analysis
(d) state the rights of the retailer and/or their agents to gain access to gas lines and equipment located on the consumer's premises and the consequences the consumer may face for not granting access.	For 7.1(d) four retailers are fully aligned, four retailers are partially aligned and there are no cases of no alignment. Again access is evidently an important issue.
<b>8. Metering</b>	
<p>8.1 In relation to the metering of gas supply to the consumer, the contract must clearly describe:</p> <ul style="list-style-type: none"> <li>a) the requirements for metering relevant to the pricing option selected by the consumer, including the frequency of meter readings, which shall not be less than four times per year;</li> <li>b) the obligation to ensure metering is in accordance with relevant industry standards and codes of practice;</li> <li>c) any additional costs associated with providing or changing metering equipment which may be listed in a separate pricing schedule;</li> <li>d) the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes; and</li> <li>e) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly and the method for correcting previous readings if found to be incorrect.</li> </ul>	Four retailers are substantially in alignment and four retailers are partially in alignment. There are no cases of no alignment. This is again a provision which is reasonably well covered in existing contracts although coverage is not complete in any case. Some of the standard terms in regard to metering are very detailed.
<b>9. Disconnection and reconnection</b>	
<p>9.1 The consumer contract must;</p> <ul style="list-style-type: none"> <li>(a) set out the conditions under which consumers can be disconnected other than in accordance with clause 10 below ;</li> <li>(b) provide that any notice of such disconnection will describe the actions that the consumer can take to avoid disconnection.</li> </ul> <p>9.2 A retailer may only disconnect a consumer for non-payment where</p>	There are three retailers who are substantially aligned, five retailers are partially aligned and there are no cases of no alignment. This is thus again an area which is reasonably well covered by all retailers although there are no cases of full coverage. Some of the standard terms provide considerable detail on connections and disconnections.

Benchmark	Summary Analysis
<p>the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds.</p> <p>9.3 Except for emergency disconnections or in the case of disconnections under the Gas Act or Gas Regulations for safety reasons, or where a consumer requests disconnection, the contract must provide:</p> <p>a) for at least 7 days written notice of warning of disconnection and allow an additional 3 days for the delivery of the notice; and</p> <p>b) for a final warning no less than 24 hours or more than 7 days before disconnection.</p> <p>9.4 If a dispute resolution under the contract has been initiated by the consumer in regard to the cause of any proposed disconnection, then disconnection action must be delayed until after the conclusion of the dispute resolution process.</p> <p>9.5 The contract must set out the charges that will apply to disconnection and/or reconnection, and the circumstances under which the charges will apply.</p>	
<p><b>10. Faults and planned shutdowns</b></p>	
<p>10.1 The contract must clearly:</p> <p>a) describe the circumstances under which the retailer may interrupt supply without prior warning;</p> <p>b) provide a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the consumer;</p> <p>c) describe the retailers rights and obligations under special or emergency operating situations; and</p> <p>d) describe where information of emergency procedures is located, including information on how the consumer can turn off their gas</p>	<p>There six retailers who have partial alignment and two retailers who have minimal alignment. Most significantly there are no cases of substantial or full alignment so this is an area in which there is a difference between current practice and the proposed clause across the industry. The most consistent difference is in the absence of a commitment to provide information on emergency procedures and outages.</p>

Benchmark	Summary Analysis
<p>supply in an emergency; and how under emergency conditions information and procedures for reconnection will be achieved.</p> <p>10.2 The contract will give details on where information of the time and duration of unplanned outages can be obtained.</p>	
<b>11. Privacy</b>	
<p>11.1 The contract must provide that the retailer will comply with the provisions of the Privacy Act 1993. and accordingly the contract must:</p> <p>a) set out the purposes for which the retailer may collect personal information from the consumer; and</p> <p>b) confirm that individuals will be able to access personal information held about them and have the opportunity to correct this information.</p>	<p>Six retailers have substantial or full alignment, and two retailers have no alignment. The approaches taken are thus very polarised.</p>
<b>12. Limitation of liability</b>	
<p>12.1 Except to the extent that the retailer is legally entitled to exclude the provisions of the Consumer Guarantees Act, the contract must provide that nothing in the contract will limit the consumer's rights under the Consumer Guarantees Act.</p> <p>12.2 Any exclusion of liability in the contract must be clearly specified and reasonable.</p>	<p>In this area there is full alignment across all retailers.</p>
<b>13. Dispute resolution</b>	
<p>13.1 The contract must advise consumers of the process that they should follow to bring a complaint to the retailer for resolution directly between the retailer and the consumer, including associated timelines and the resolution options available.</p> <p>13.2 The contract must;</p>	<p>Three retailers have full or substantial alignment, three retailers have partial alignment and two retailers have no alignment. The degree of alignment corresponds quite well to membership of the EGCC.</p>

Benchmark	Summary Analysis
<p>(a) nominate an independent dispute resolution scheme to which consumers may take a complaint if they are not satisfied by the result from the retailer's own dispute resolution process.</p> <p>(b) describe how the consumer may access the scheme.</p> <p>13.3 This independent dispute resolution scheme;</p> <p>(a) must be a scheme approved under the Gas Act if such approval has been given;</p> <p>(b) must otherwise provide for an independent determination of a complaint if other options for resolution, within the scheme, are not successful.</p>	
<p><b>14. How the consumer communicates with the retailer</b></p>	
<p>14.1 The contract must provide advice to the consumer on a practicable and effective means for the consumer to communicate with the retailer on any issues over which they have concerns or need information.</p>	<p>One retailer is fully aligned, one is partially aligned (business customers but not residential customers) and six have no alignment. As this is a new provisions which is not reflected in either the Model Contract Guidelines provisions or the EGCC Code, the degree of non alignment is not surprising. However, it is noticeable that two retailers already partially or fully take the course of action in clause 14.1.</p>
<p><b>15. Notices from the retailer</b></p>	
<p>15.1 The contract must specify how notices from the retailer will be delivered to the consumer.</p>	<p>Three retailers are fully aligned, one retailer is partially aligned and three retailers have either minimal or no alignment.</p>



## Appendix E Format for Submissions

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

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

Question	Comment
<b>Q1:</b> Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.	
<b>Q2:</b> Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms? If you disagree explain why.	
<b>Q3:</b> Do you agree the 'benchmark' terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive? If you disagree explain why, and describe your preferred approach.	
<b>Q4:</b> Do you agree the focus of governance on retail contracts should be the bundled service (gas, metering, transport) received by consumers?	
<b>Q5:</b> Are you aware of any instances in the gas industry of consumers having direct contracts with meter owners or distributors? If so, how should these contracts be governed?	
<b>Q6:</b> Do you agree with the analysis of the need for and scope of benchmark terms relative to consumer expectations? If not explain why.	

Question	Comment
<p><b>Q7:</b> Are the benchmark terms proposed for 'how to become a customer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	
<p><b>Q8:</b> Are the benchmark terms proposed for 'how to stop being a customer of your current retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	
<p><b>Q9:</b> Are the benchmark terms proposed for 'changes to a contract' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	
<p><b>Q10:</b> Are the benchmark terms proposed for 'service standards' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	
<p><b>Q11:</b> Are the benchmark terms proposed for 'prices, bills and payment' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	
<p><b>Q12:</b> Are the benchmark terms proposed for 'bonds' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	
<p><b>Q13:</b> Are the benchmark terms proposed for 'obligations of the parties in relation to supply to the site and access' appropriate? If</p>	



Question	Comment
not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q14:</b> Clause 7.1(c) reflects the outcomes in the GPS which relate to efficient market structures and good understanding of roles, in relation to gas metering, pipeline and energy services. Accepting the limitations in what can be covered in a retail contract, does this clause go as far as possible in reflecting these outcomes? Provide alternative wording if you think that amended or extended wording would improve the clause.	
<b>Q15:</b> Are the benchmark terms proposed for 'metering' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q16:</b> Are the benchmark terms proposed for 'disconnection and reconnection' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q17:</b> Are the benchmark terms proposed for 'faults and planned shutdowns' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q18:</b> Are the benchmark terms proposed for 'privacy' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q19:</b> Are the benchmark terms proposed for	

Question	Comment
'liability of the retailer and the consumer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q20:</b> Are the benchmark terms proposed for 'dispute resolution' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q21:</b> Are the benchmark terms proposed for 'how consumers communicate with the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q22:</b> Are the benchmark terms proposed for 'notices from the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	
<b>Q23:</b> Viewing the proposed benchmarks as a whole, are there topics which should have been included and have not, or are there terms which have been included but might be removed to make the benchmarks more compact? Give reasons for any views expressed, and examples where appropriate.	
<b>Q24:</b> Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?	
<b>Q25:</b> Are there other examples of unfair terms in use which should be excluded from acceptable terms? If the answer is yes please	

Question	Comment
give examples.	
<p><b>Q26:</b> To what extent do you think the published standard retail terms reflect the current practice between retailers and consumers (persons consuming less than 10 terajoules per annum)?</p>	
<p><b>Q27:</b> Do you agree that a common set of benchmarks or minimum terms and Q27: conditions should be used, irrespective of whether implementation is voluntary or mandatory (regulated)? If you disagree, explain why.</p>	
<p><b>Q28:</b> Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified? If you think that other options should have been selected or the specifications should be changed, set out your proposals and explain why.</p>	
<p><b>Q29:</b> Do you agree that all of the relevant benefits, costs, risks and uncertainties of the option had been identified and appropriately characterised. If you disagree please provide alternative or additional material and explain your reasoning.</p>	
<p><b>Q30:</b> What degree of commitment do you think is required from retailers, in relation to the voluntary alignment of their contracts with the proposed benchmarks, to shift the cost/benefit analysis away from regulated benchmarks terms?</p>	
<p><b>Q31:</b> Based on the analysis above or any additional analysis that you include in your submission, what do you think the preferred</p>	

Question	Comment
option for inclusion in the statement of proposal should be? Explain why.	