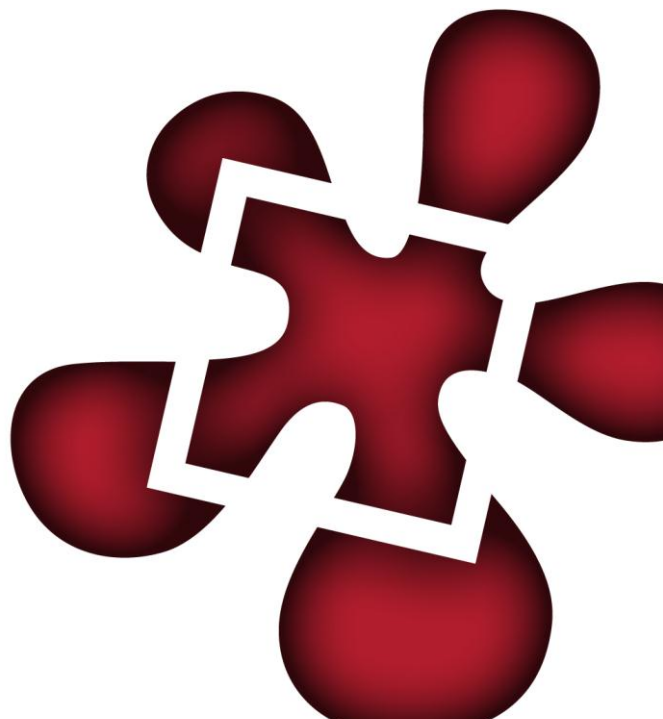


Benchmark Assessment Report - 2012

A report on the level of alignment of retail gas supply arrangements with Gas Industry Co's benchmarks

31 October 2012



Contents

1	Introduction	3
2	Key findings	3
3	Scope	5
3.1	Benchmarks and interpretations	5
3.2	Gas supply arrangements	6
3.3	Retailers	7
3.4	Assessed documents	7
4	Methodology	8
4.1	Independence	8
4.2	Timetable	8
4.3	Detailed assessment	8
4.4	Retailer feedback	8
4.5	Consistency	9
4.6	Electricity review process	10
5	Overall results	11
5.1	Overall compliance	11
5.2	Results differ from last year	11
5.3	Most common alignment issues	11
5.4	Alignment by arrangement	12
5.5	Alignment by benchmark	12
6	Retailer results	13
6.1	Bay of Plenty Energy (BoPE)	13
6.2	Contact Energy	14
6.3	Energy Direct NZ	14
6.4	Energy Online	15
6.5	Genesis Energy	15
6.6	Mercury Energy	16
6.7	Nova Energy	16
7	Particular concerns	17
7.1	Lock in	18
7.2	Disconnections	18
7.3	Clarity of price and price changes	19
7.4	Exclusion of liability	19
8	Contrary to intent	20
8.1	Back to back clauses	21
8.2	Closely related to current benchmarks	21
8.3	Broad discretions	21
8.4	Clearer drafting required	21
9	Trends	21
9.1	Overall improvement	21
9.2	Improvement by arrangement	22
9.3	Improvement by Benchmark	22
9.4	Comments on other factors relevant to this assessment	24
	Attachment 1: Benchmarks and interpretation	26
	Attachment 2: Documents reviewed	39
	Attachment 3: Issues by arrangement	43
	Attachment 4: Alignment landscape	48

1 Introduction

In March 2010, Gas Industry Co recommended arrangements for the oversight of retail gas contracts to the Associate Minister of Energy and Resources (“the Recommendation”). The Recommendation provided for the assessment of published gas supply arrangements with a set of outcome-based benchmarks (the “Benchmarks”). The Benchmarks are listed in Attachment 1.

Recognising that retailers may need time to bring their standard contracts into line with the Benchmarks, the Recommendation proposed that publication of the results of the first two assessments (termed the “baseline assessment” and “transitional assessment”) should not disclose the performance of individual retailers. However, it was proposed that the third assessment (termed the first “full assessment”) would identify each retailer’s compliance.

The Associate Minister endorsed the Recommendation. Elwood Law was subsequently engaged by Gas Industry Co to perform the baseline assessment of gas supply arrangements as at 15 June 2010, the transitional assessment of arrangements as at 1 July 2011, and the first full assessment of gas supply arrangements as at 1 July 2012.

This report presents the findings of the first full assessment of the alignment of retail gas supply arrangements with Gas Industry Co’s benchmarks. It is set out in the following sections:

- Key findings
- Scope
- Methodology
- Overall results
- Retailer results
- Issues of particular concern
- Arrangements contrary to the Benchmarks’ intent
- Trends

This is the first assessment in which each retailer’s individual level of alignment with the Benchmarks has been published. It discloses this year’s findings, as well as key information about the assessments in previous years. The report identifies the significant steps the industry has taken towards alignment with the Benchmarks since they were introduced, but indicates that some retail gas contracts continue to have moderate or low alignment with the Benchmarks.

The regime is voluntary and there are no direct consequences that result from poor alignment. However, Elwood Law understands that Gas Industry Co will consider the assessment findings when considering policy proposals in this area. Gas Industry Co’s work in this area is summarised on its website (see, in particular, <http://gasindustry.co.nz/work-programme/retail-contracts>).

2 Key findings

Alignment with the Benchmarks has been measured on a scale of “full”, “substantial”, “moderate”, “low” or “none”. An overview of the assessment results is provided in the Alignment Landscape in Attachment 4.

The overall alignment of all published gas supply arrangements in the 2012 assessment with the Benchmarks is “substantial”. This is an improvement on the overall level of alignment of the arrangements assessed in 2010 and 2011 (which had “moderate” alignment). It shows the overall level of alignment year-by-year is increasing. This is also indicated by the greater number of “substantial” ranking arrangements and lesser number of “low” ranking

arrangements:

Extent of alignment	Number of arrangements		
	2012	2011	2010
Substantial	6	3	2
Moderate	3	4	6
Low	1	3	4
Total	10	10	12

The following table summarises the extent of alignment of each arrangement in the 2012 assessment:

Retailer	Average alignment
BoPE	Substantial
Contact	Substantial
Energy Direct - Business	Moderate
Energy Direct - Residential	Moderate
Energy Online	Substantial
Genesis Energy	Substantial
Mercury - Residential	Substantial
Mercury - Business	Moderate
Nova – Residential	Substantial
Nova – Business	Low

During the past two years many gas retailers have taken major steps towards bringing their contracts into line with the Benchmarks. It is encouraging and significant that the six published residential gas supply arrangements that overall have “substantial” alignment have all been amended since the Benchmarks were introduced.

Energy Direct is the only retailer that has not updated its residential gas supply arrangements since the Benchmarks were introduced. However, it has advised that it is working on an update and that feedback received from the assessment process is being taken into account.

It is also notable that compliance of the published gas supply arrangements for business customers show lower levels of alignment with the Benchmarks than for residential customers.

In total, we identified 52 alignment “issues” across one or more of the arrangements. Eleven of these issues were widespread (found in more than 50% of the arrangements). This is proportionately fewer widespread issues than identified in the 2010 baseline arrangements (where 30 of 68 issues were widespread). On average, each gas supply arrangement included 17 alignment issues (compared with an average of 29 alignment issues in the 2010 baseline arrangements).

Using the number of issues in each arrangement as a guide, the “best performing” gas supply arrangements were those of Genesis Energy and Energy Online (each with 8 issues), and the “worst performing” was the Nova

Energy Business arrangement (with 37 issues). However, simply comparing the *number* of issues is not the best guide to alignment, as not all of the alignment issues are of equal concern. For example, some contracts have an alignment issue due merely to a technical drafting issue (despite the retailer's practices and policies being in line with the relevant Benchmark), but other alignment issues reflect matters which are of greater consumer concern. Gas Industry Co also asked Elwood Law to identify issues which, in our view, are of particular concern. We discuss such issues in section 7 below.

While alignment with the Benchmarks is trending in the desirable direction, it is clear that progress towards alignment with some Benchmarks is slower than progress towards alignment with others. This can be seen below in the table below. However, we note that the apparent improvement in the Benchmark measuring "reasonable retailer liability limitations" is more due to a change in Gas industry Co's approach to that Benchmark than due to any underlying change in the arrangements being assessed.

Benchmarks – Baseline Improvements	Change
16. Reasonable retailer liability limitations	Significantly Better
7. Clear supply restoration procedures	
1. Clear supply commencement	
17. Clear dispute resolution	
3. Clear consumer exit rights (open term)	
14. Clear supply interruption procedures	
2. Clear safety information	
10. Clear bond obligations	Much Better
8. Clear price increases	
12. Clear metering obligations	
6. Clear supply obligations	
4. Clear consumer exit rights (fixed term)	
15. Clear privacy obligations	
18. Clear communication	Better
13. Clear disconnection process	
9. Clear pricing information	
5. Clear contract variation procedures (non-price)	
11. Clear consumer site responsibilities	Similar

Even for those retailers that have updated their arrangements to align with the Benchmarks, none have achieved "full" compliance. It appears that where commercial and other drivers do not support alignment with the Benchmarks, less movement towards alignment has occurred.

3 Scope

3.1 Benchmarks and interpretations

Our assessment of retail gas supply arrangements is based on the Benchmarks and Gas Industry Co's interpretations of the Benchmarks which are included in Attachment 1 ("the Interpretations"). The Interpretations provide further

guidance on which contractual terms meet a Benchmark and which don't.

The Benchmarks have been modified slightly over the past two years as follows:

- In June 2011, Gas Industry Co reviewed and restated the Benchmarks. The restatement did not substantially alter the Benchmarks themselves, but reordered them, removed some duplicated statements and made other minor clarifications.
- In March 2012, Gas Industry Co issued a Decision Paper which further clarified the Interpretation for Benchmarks 16 and 9. The change of the most substance was the change to the Interpretation for Benchmark 16 (Liability). This was amended such that, in essence, a limitation clause is to be assumed to be reasonable unless liability is completely excluded or the retailer requires the customer to provide an indemnity for the retailer's obligations. As a result of the revised Interpretation, the level of alignment with Benchmark 16 in 2012 has substantially improved (when compared with both the 2010 and 2011 assessments).

Our assessment in 2012 identified some areas where the Interpretations could usefully be clarified further. We proposed to Gas Industry Co the clarifications marked in underlined and struck through text in Attachment 1. Gas Industry Co has confirmed that our 2012 assessment can be performed against this clarified text, but noted that it may consider the Interpretations further when it analyses the results of this assessment and considers any policy implications.

3.2 Gas supply arrangements

Because Gas Industry Co's oversight of gas supply arrangements is a voluntary process, retailers are not obliged to provide documents to Elwood Law for the purpose of this assessment. Accordingly, documents that are not available from a retailer's website have not been assessed unless specifically provided by a retailer for assessment.

This assessment was intended to cover retail gas supply arrangements as at 1 July 2012. However, we note that:

- As 1 July 2012 was not a working day for us, many of the documents were physically downloaded from the retailers' websites on Monday, 2 July 2012.
- The Contact gas supply arrangement we assessed did not take effect until 1 October 2012. Contact advised us prior to 1 July that an update was planned, and provided us with the updated contract early in July.
- Nova Energy and BOPE both updated their standard residential contracts at some point in early July. The discovery of the contracts after the preparation of our initial draft assessment report caused some delays in our assessment process.

Gas Industry Co asked us to perform our assessment on the updated Contact, Nova Energy and BOPE contracts as if the arrangements were published on the 1 July assessment date, as in each case the arrangements would each be effective prior to the publication of this report. Also, the inclusion of the updated agreements would ensure that our assessment report (as at the date of its publication) would provide accurate (rather than outdated) market information.

Gas Industry Co has advised that our assessment should also be limited to gas supply arrangements for reticulated natural gas consumers (whether retail or business) whose consumption is less than 10 TJ per annum. We understand retail contracts for the supply of reticulated or bottled LPG are out of scope.

We understand that both OnGas and Greymouth Petroleum supply some customers whose consumption is less than 10 TJ per annum. However, there are no published agreements for the supply of gas to such customers and most customers are on separately negotiated agreements. We could not find a published agreement on either the Greymouth Petroleum or OnGas website, although these may be available on request (for example, the OnGas site did state as a benefit of its service “Transparent contract terms and conditions”). Gas Industry Co has confirmed that OnGas and Greymouth Petroleum arrangements are out of scope in 2012.

The Recommendation notes that subsequent assessments may include further gas supply arrangements, for example if significant contracting is not done on standard published terms. Retailers have previously advised that there is minimal contracting on non-published or non-standard terms for customers whose consumption is less than 10 TJ per annum. On this basis, Gas Industry Co confirmed that “Special Terms” are out of scope for the 2012 assessment. However, it would be appropriate for Gas Industry Co to reconsider this point for each assessment as there appears to be growing market use of Special Terms, in particular increasing use of promotional terms, additional dual fuel terms (which usually set out consumer benefits) and fixed term contracts.

3.3 Retailers

Based on the above definition of gas supply arrangements, the following retailers are included in this assessment:

- Bay of Plenty Energy
- Contact Energy
- Energy Direct NZ
- Energy Online
- Genesis Energy
- Mercury Energy
- Nova Energy

3.4 Assessed documents

Each retailer included in the assessment was asked by us to confirm all documentation comprising their published gas supply arrangements. The full list of documentation included in this assessment is set out in Attachment 2.

Some of the assessed retailers publish a single standard contract, and others publish one contract for residential consumers and another contract for business consumers. Where a retailer has more than one standard contract, each contract has been separately assessed.

In total, 10 gas supply arrangements were assessed across the 7 retailers. Most of the gas supply arrangements comprise various documents, such as an application form, standard terms and conditions, pricing plan and dispute resolution procedures.

Documents other than the contract were only included in the assessment process where the document was “identified in the contract”. Where a document was not referenced in the contract (eg a “welcome pack” letter) it was, for the purpose of this assessment, interpreted as not forming part of the gas supply arrangement. This is because it may be difficult for the customer to enforce a document that didn’t clearly form part of their contract.

4 Methodology

4.1 Independence

Elwood Law has performed its assessment independently of Gas Industry Co, but consistently with the Interpretations. This report does not bind Gas Industry Co.

4.2 Timetable

Our assessment proceeded in accordance with the following timetable:

Step	When
Published terms and conditions downloaded from websites.	1 or 2 July 2012
Draft assessment reports provided to all retailers for information and feedback.	20 August 2012
Feedback on draft assessments provided by retailers.	By 1 October 2012
Assessment reports finalised.	25 October 2012

4.3 Detailed assessment

In addition to this assessment report, our analysis is documented in a “Detailed Assessment” document. The Detailed Assessment has been provided to each retailer and Gas Industry Co.

The Detailed Assessment aims to provide full transparency of our assessment. It allows retailers and Gas Industry Co to understand the judgment calls that we have made in performing this assessment. It will also be a useful tool in the event that a retailer wishes to consider how other retailers have achieved alignment with a particular Benchmark. For example, a retailer wishing to update its contract to address a particular alignment issue can identify the wording used by retailers that do not have that alignment issue.

4.4 Retailer feedback

Each assessed retailer was provided with a draft copy of this report and the Detailed Assessment on 20 August 2012 and was provided an opportunity to provide feedback. This report has considered all feedback received. The more common themes arising from retailer feedback, and Elwood Law’s response to them, are as follows:

Common Feedback	Common Response
We disagree with the Benchmarks and/or the Interpretations.	Any suggestions that Benchmarks or Interpretations should be amended have been forwarded to Gas Industry Co. The Interpretations will likely develop over time as amendments to contractual wording can raise previously unconsidered nuances. Any changes to the Interpretations that were proposed during consultation were discussed with Gas Industry Co and Gas Industry Co has confirmed that this assessment can be performed against the Interpretations in Attachment 1.
Further consistency with the Electricity Authority’s Minimum Terms is required.	We identified some areas where an arrangement did not meet the Gas Industry Co Benchmark but did meet a similar Electricity Authority Minimum Term. The Electricity Authority process is discussed further below. The feedback from industry has urged Gas Industry Co to consider further any areas of disconnect. For example, Mercury Energy stated “It is imperative [Gas Industry Co and the Electricity Authority] work together to align these documents as much as possible, particularly given that most Retailers’ contractual documentation takes into account both gas and electricity arrangements.”

Common Feedback	Common Response
Our arrangement meets the Benchmarks.	Some arrangements fail simply because of insufficient clarity. With the exception of Benchmark 16 (Liability), to meet a Benchmark the arrangement needs to be drafted in a way that is reasonably clear to a reasonable consumer. In our interpretation of liability provisions, we have assessed phrases in terms of their clarity to a lawyer, even where a consumer may not understand those phrases (eg we have assessed phrases such as “consequential loss” as being clear).
This is covered in our “XYZ” document.	The scope of our assessment is limited to the contract and documents that are referenced in the contract. For the “XYZ” document to be taken into account, it needs to be appropriately referenced in the contract so that it is clearly part of the gas supply arrangement.
In practice we meet the Benchmark.	We have been asked to assess the content of a retailer’s gas supply arrangement against the Benchmarks, not to assess the retailer’s practices against the Benchmarks. We understand this is because a consumer may only be able to enforce its contractual terms. In response to feedback that certain clauses do not align with the Benchmarks, some retailers have explained how their practices align with the Benchmarks. Many of the issues involve contractual wording which gives the retailer a broad discretion (eg a discretion to disconnect a customer), but in practice the retailer only exercises that discretion consistently with the Benchmark. In order to comply with the Benchmarks the wording of the contract would need to be updated to reflect the requirements of the Benchmarks.
Our contract is reasonable	In response to our draft assessment, some retailers explained that their contractual provisions were reasonable, in that they struck a reasonable balance between the interests of the retailer and the interest of the consumer. One retailer stressed that their consumers are of vital importance to their business, so it is in their best interests to appropriately protect and consider their customers’ interests. We have identified some examples where wording does not meet the Benchmark but appears to us to be reasonable. This feedback has been provided to Gas Industry Co, so that Gas Industry Co can consider whether any changes to the Benchmarks are required.

Overall we have been pleased with the level of engagement of retailers on the draft assessment. We received feedback from all of the retailers on the draft assessment, including written responses and feedback provided in meetings and over the phone. The engagement has confirmed that retailers are eager to meet reasonable consumer expectations, but also have to balance those expectations against other requirements (such as complying with obligations in network contracts). In addition, Energy Direct has advised us that they plan to improve its level of alignment by amending its contractual arrangements in the coming year.

4.5 Consistency

We have aimed to be consistent in our assessment. The identification of discrete alignment “issues” has helped us to ensure a consistent approach. A full list of these issues is contained in Attachment 3. The issues identified are very similar to those identified in last year’s assessment.

We tried to clearly indicate in the draft assessment reports that were provided

for consultation where the assessment on a particular point changed from a previous year's assessment. For the most part any changes were due to changes in a retailer's contract, changes to documents referenced in the contract (such as disputes policies) or changes in Gas Industry Co's Interpretations. In a few cases we have changed a previous assessment on a discrete issue (for example, when wording in another document, such as an application form, was brought to our attention and changed our approach).

Where a change also would be applicable to an earlier year's assessment, for the purposes of our 2012 reporting, we updated our analysis of those earlier years with the same change. This "normalisation" of our earlier results ensures that our trend analysis in this report is not affected by a mere change in assessment approach, but truly reflects changes in the underlying arrangements. However, it does mean that the 2011 and 2010 data in this report (and in the material supporting this year's assessment) may vary slightly to the analysis in the published 2011 and 2010 assessment reports.

Some Benchmark alignment issues are more severe than others. As with last year, our scoring weights some issues more heavily than others but a consistent approach is adopted across all retailers. This means that retailers whose arrangements include the same issues will receive the same score.

As noted on page 21 of the Recommendation, Gas Industry Co requires each retailer's overall compliance with each Benchmark to be given a broad qualitative assessment (i.e. "Full", "Substantial", "Moderate", "Low" or "None") rather than a detailed quantitative score. Accordingly, the scores derived for each Benchmark have been translated into a qualitative assessment on a basis agreed with Gas Industry Co. Again, this translation process has been equivalent to last year.

In addition to the Detailed Assessment and this report, our assessment comprises a scoring spreadsheet that translates the alignment issues identified in the Detailed Assessment into qualitative scores. This spreadsheet is confidential to Gas Industry Co.

4.6 Electricity review process

The Electricity Authority is performing a similar assessment exercise in relation to domestic electricity supply arrangements, also with a 1 July assessment date. Gas Industry Co and the Electricity Authority met during the assessment process to share information and discuss the position of (and how to best assist) dual-fuel retailers responding to both the Electricity Authority and Gas Industry Co's processes. All of the gas supply arrangements assessed in this report are dual-fuel agreements, and all of the domestic arrangements will be assessed against both the Electricity Authority and Gas Industry Co's arrangements. The Electricity Authority's process does not consider standard supply arrangements for business consumers.

Although the Electricity Authority and Gas Industry Co processes for reviewing retail supply agreements address similar concerns, the results in one review are not directly comparable to the results in the other. This is because there are some key differences between the electricity and gas assessment requirements. The electricity assessment is reported at a more granular level (with assessment of each minimum term, and in some cases each sub-clause within a minimum term, on a scale of full, substantial, moderate, low and none). Compliance on the Benchmarks is reported on the same scale (ie full, substantial, moderate, low and none) but at the Benchmark/topic level. As a result, it is difficult to do direct comparisons between the electricity and gas assessment regimes.

In addition, due to the different features of electricity and gas supply, it is not

5 Overall results

surprising that there are scope differences between the Electricity Authority minimum terms and gas Benchmarks (for example, the gas Benchmarks do not restrict the ability to disconnect customers on Fridays or on public holidays, and the gas Benchmarks do not require customers to have an option of accessing information on outages via a means that does not require an electricity supply).

Where we have identified differences between the regimes we have provided information on these to both Gas Industry Co and the Electricity Authority.

5.1 Overall compliance

The overall degree of alignment, when averaged across all assessed arrangements and all Benchmarks, is “Substantial”, based on a scale of “Full”, “Substantial”, “Moderate”, “Low” and “None”. This overall degree of alignment is an improvement on the overall “Moderate” result of the 2011 and 2010 assessments.

A breakdown of alignment by arrangement and Benchmark is provided in the “Compliance Landscape” in Attachment 4.

5.2 Results differ from last year

The results of this assessment are different from the results of last year’s assessment and an analysis of trends is included in section 9. There has been significant improvement since the 2011 assessment, but direct comparisons are not entirely straightforward. In particular, there have been changes to:

- The arrangements themselves: the 10 arrangements assessed this year are not the same as the 10 arrangements assessed in 2011. For example, Contact has replaced its previously separate business and residential contracts, with a single agreement covering all residential and business customers who contract on standard terms, and conversely Mercury Energy previously only had one agreement but now has separate arrangements for residential and business consumers.
- The Interpretations: the changes to the Interpretation of Benchmark 16 released by Gas Industry Co earlier this year has improved the level of compliance, despite in many cases the words being assessed not having actually changed.

5.3 Most common alignment issues

The following alignment issues were particularly wide-spread – being found in 50% or more of the arrangements. A breakdown of each issue in each arrangement is provided in Attachment 3.

Some Benchmarks (e.g. Benchmark 10 relating to bonds) were not relevant for all gas supply arrangements. For such Benchmarks the percentage is based on the number of gas supply arrangements applicable to the issue concerned.

Issue	Percentage of arrangements with the issue
13.4. No clear obligation, except for emergency disconnections, to give 7 days' warning of disconnection, allowing a further 3 days for delivery.	100%
13.8. No clear obligation to delay disconnection for dispute resolution relating to the disconnection, where that dispute relates to an issue other than an invoice or payment of an invoice.	100%

Issue	Percentage of arrangements with the issue
13.3. Retailer can disconnect a consumer's gas supply for non-payment of non-gas invoices.	80%
13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection.	80%
2.2. No clear information on and procedures for reconnection after the emergency will be provided.	70%
15.6. Not clear where the consumer can obtain information about how the retailer collects, uses, discloses and stores his/her personal information.	70%
9.7. No clear statement of the term limits applying to the recovery of previous under charging.	60%
2.1. No clear description of how consumers can turn off their gas supply in an emergency.	50%
5.3. No clear requirement that material changes in terms of the arrangement will be directly communicated to the consumer, not through public notice.	50%
7.2 No clear mention of payments (if any) to the consumer for service disruption.	50%
9.1. No clear reference to relevant prices or pricing schedule.	50%

5.4 Alignment by arrangement

The average degree of alignment of the gas supply arrangements with the Benchmarks is as follows:

Extent of alignment	Number of arrangements		
	2012	2011	2010
Full	0	0	0
Substantial	6	2	1
Moderate	3	5	4
Low	1	3	7
None	0	0	0
Total	10	10	12

5.5 Alignment by benchmark

The average degree of alignment per Benchmark topic is set out in the table below. The table shows significant improvement across the Benchmarks since the baseline review in 2010.

Benchmark	2012 Alignment	2011 Alignment	2010 Alignment
1. Clear supply commencement	Subst	Mod	Mod
2. Clear safety information	Low	Low	None
3. Clear consumer exit rights (open term)	Subst	Mod	Mod
4. Clear consumer exit rights (fixed term)	Subst	Subst	Mod

Benchmark	2012 Alignment	2011 Alignment	2010 Alignment
5. Clear contract variation procedures (non-price)	Mod	Mod	Mod
6. Clear supply obligations	Subst	Subst	Subst
7. Clear supply restoration procedures	Subst	Mod	Mod
8. Clear price increases	Mod	Mod	Low
9. Clear pricing information	Mod	Mod	Mod
10. Clear bond obligations	Subst	Mod	Mod
11. Clear consumer site responsibilities	Subst	Subst	Subst
12. Clear metering obligations	Subst	Mod	Mod
13. Clear disconnection process	Mod	Low	Low
14. Clear supply interruption procedures	Subst	Mod	Mod
15. Clear privacy obligations	Mod	Mod	Mod
16. Reasonable retailer liability limitations	Subst	Low	Low
17. Clear dispute resolution	Subst	Mod	Mod
18. Clear communication	Subst	Mod	Mod

6 Retailer results

This section of the report presents (in alphabetical order) each retailer's results.

Section 7 of this report, identifies 6 alignment issues which we consider are of particular concern. We have indicated below which of the retailer's gas supply arrangements give rise to an alignment issue which we consider is of particular concern. However, care should be taken when considering the practical effect on this. A retailer whose gas supply arrangement includes issues of particular concern does not necessarily have poor practices. Despite the contract not requiring the retailer to take certain steps, the retailer may in practice always comply with the requirement in the Benchmark. Conversely, another retailer's contract may require them to take certain steps, but in practice its systems may not achieve full compliance with that requirement.

6.1 Bay of Plenty Energy (BoPE)

Bay of Plenty Energy	2012
Overall compliance	Substantial
Number of issues	11
Number of issues of particular concern	1

The BOPE arrangement has among the lowest number of individual issues of any retailer, and substantial alignment with the Benchmarks. The BOPE arrangement only includes one alignment issue of particular concern - issue 13.5. This issue is that there is "no clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection".

The BOPE contract provides for the final warning for disconnections due to non-payment (likely to be the vast majority of disconnections), but the

contract allows for other disconnections without notice (eg where the customer refuses to provide access, where the Network Operator asks for the disconnection or where people or animals at the residence are acting in an intimidating or threatening manner).

6.2 Contact Energy

Contact Energy	2012
Overall compliance	Substantial
Number of issues	9
Number of issues of particular concern	0

Contact recently updated its gas supply arrangement, with the agreement taking effect from 1 October 2012. The new arrangement covers both residential and business customers.

The new arrangement has an overall alignment of “substantial” and less alignment issues than most other retailers. While there is scope for alignment with the Benchmarks to be further improved, we note that the arrangement does not include any of the alignment issues that we consider are of particular concern and feedback from Contact suggests the retailer’s practices (in relation to the remaining issues) are likely to meet the requirements of the Benchmarks.

6.3 Energy Direct NZ

Energy Direct NZ – Residential	2012
Overall compliance	Moderate
Number of issues	25
Number of issues of particular concern	2

Energy Direct NZ – Business	2012
Overall compliance	Moderate
Number of issues	29
Number of issues of particular concern	3

Energy Direct has not amended its residential or business arrangements since our baseline review in 2010. Each arrangement contains considerably more alignment issues than the average across the sector, but neither is the worst performing gas supply arrangement. We understand that Energy Direct is currently planning an update to both of its arrangements.

The residential arrangement includes the following alignment issues of particular concern:

- Issue 8.3. Where a price increase is more than 5%, no clear requirement to send separate notice of the increase to the consumer.
- Issue 13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection.

The business arrangement also includes these two alignment issues of particular concern and in addition includes issue 16.10 (ie the contract includes a very comprehensive list of exclusions, which effectively excludes all of the retailer’s liability).

We discuss in section 7 below why, in our view, these issues are of particular concern. We understand that our feedback on the arrangements will be considered by Energy Direct in its process of updating its arrangements.

6.4 Energy Online

Energy Online	2012
Overall compliance	Substantial
Number of issues	8
Number of issues of particular concern	1

The Energy Online gas supply arrangement was updated earlier this year, and now resembles the Genesis Energy gas supply arrangement. The update significantly improved the alignment of the Energy Online gas supply arrangement with the Benchmarks. The new arrangement is one of the best of any retailer, with an overall alignment of “substantial” and, together with Genesis Energy, the fewest number of alignment issues.

While the arrangement has one alignment issue which we consider is of particular concern, the retailer’s practices appear suitable. The alignment issue (issue 13.5) relates to their being no clear obligation, except for emergency disconnections, to provide a final warning not less than 24 hours before disconnection.

The contract explicitly provides for this notice to be given where the retailer is initiating the disconnection (eg due to no payment being received). But technically the contract does not require this notice to be provided where the network company requires Energy Online to disconnect the customer. This clause may reflect requirements in a network company’s gas distribution contract. We note that Gas Industry Co is introducing a Gas Distribution Contracts Oversight Scheme, which was endorsed by the Minister of Energy and Resources last month, which will consider whether the core terms in distribution contracts are clear, reasonable and enhance market efficiency.

6.5 Genesis Energy

Genesis Energy	2012
Overall compliance	Substantial
Number of issues	8
Number of issues of particular concern	1

Genesis Energy was the first retailer to update its contracts following the publication of the Benchmarks and to take positive steps towards better alignment.

The arrangement is one of the three best, with an overall alignment of “substantial”. It has the fewest number of alignment issues of any of the arrangements, together with Energy Online.

As with Energy Online, while the arrangement has one alignment issue which we consider is of particular concern, the retailer’s practices appear suitable. The alignment issue relates to their being no clear obligation, except for emergency disconnections, to provide a final warning not less than 24 hours before disconnection. However, again the contract does provide for notice for retailer disconnections, but not where the network company requires Genesis Energy to disconnect the customer.

Genesis Energy has advised that it will consider our feedback on this issue

during its next review of its retail contract, which is currently planned for May 2013, and in its discussions with distribution networks.

6.6 Mercury Energy

Mercury – Residential	2012
Overall compliance	Substantial
Number of issues	11
Number of issues of particular concern	0

Mercury Energy - Business	2012
Overall compliance	Moderate
Number of issues	18
Number of issues of particular concern	1

Mercury Energy updated its residential contract with effect from 1 July 2012, and has also published a standard business supply agreement. The result of the residential contract update is an arrangement with substantial alignment against the Benchmarks and no alignment issues of particular concern.

In general terms the alignment issues in the residential contract are largely technical in nature, and the retailer's practices appear to be consistent with the Benchmarks. In response to our draft analysis of the alignment issues, Mercury Energy has advised us that a number of terms have been drafted to align with the electricity minimum terms and it has stressed that the disconnect between the minimum terms and Benchmarks makes compliance more difficult to achieve.

Mercury Energy's business arrangement achieved an overall alignment of "moderate". The business arrangement includes one alignment issue of particular concern, namely it does not include a clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection (issue 13.5). For example, the arrangement allows for immediate disconnection if the Network Operator instructs Mercury to disconnect a customer's supply immediately.

Mercury Energy has noted our feedback on the business arrangement and advised it will be considered when the terms are next updated.

6.7 Nova Energy

Nova Energy – Residential	2012
Overall compliance	Substantial
Number of issues	10
Number of issues of particular concern	1

Nova Energy - Business	2012
Overall compliance	Low
Number of issues	37
Number of issues of particular concern	2

The Nova Energy and BOPE residential contracts are nearly identical to each

other (ie apart from the particular retailer's name and contact details). However, overall the Nova Energy gas supply arrangement includes one less alignment issue than the BoPE arrangement. This arose due to us being able to locate certain information referred to in the contract on Nova's website, but not on BoPE's website.

The assessed Nova Energy residential arrangement includes among the lowest number of individual alignment issues of any retailer. However the arrangement does include one alignment issue that in our view is of particular concern. This issue is that there is "no clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection" (issue 13.5).

As with the BOPE contract, the arrangement does provide for the final warning for disconnections due to non-payment (likely to be the vast majority of disconnections), but the contract allows for other disconnections without notice (eg where the customer refuses to provide access, where the Network Operator asks for the disconnection or where people or animals at the residence are acting in an intimidating or threatening manner).

The Nova Energy business arrangement is the least aligned of any retail gas supply arrangement with the Benchmarks. It has the highest total number of alignment issues of any of the assessed gas supply arrangements, and includes the following alignment issues of particular concern:

- Issue 4.1. Consumer can't switch to an alternative retailer at the end of the term, unless the current retailer is unwilling to match the alternative retailer's offer. This is discussed further in section 7.1.
- Issue 13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection. For example, at the end of the term Nova could disconnect the customer without notice.

Nova Energy does not consider the Gas Industry Co oversight regime should cover the gas supply arrangements in respect of commercial businesses, as Nova Energy considers these customers have a better understanding of their contractual obligations. Nova Energy considers the electricity review approach, of limiting the assessment to contracts for residential or domestic customers, is more appropriate. We have been asked by Gas Industry Co to include business arrangements in this assessment, and have provided Nova Energy's feedback to Gas Industry Co.

7 Particular concerns

The Recommendation envisaged (on Page 40) that this assessment would:

"Point out issues of particular concern, explain why they are of concern and identify the extent to which they are widespread (or apply only to a small number of retailers.)"

Alignment issues that Elwood Law considers would be of particular concern are those where the potential impact on consumers may be significant. The issues identified below reflect Elwood Law's view, and may not be consistent with Gas Industry Co's opinion of what it considers are issues of particular concern. The identification of the issues of particular concern is not meant to suggest that other alignment issues are not of concern.

In the two previous assessments, we also highlighted alignment issues where the information provided to consumers is substantially different to that envisaged by the Benchmarks. However, in most cases retailers have advised that in practice they do comply with best industry practice and/or the Benchmarks. Given this, we have not identified such issues in this year's

report, as the consumer impact of the alignment issues is not likely to be large.

7.1 Lock in

Nova Energy's fixed term business arrangement includes provisions which make it very difficult for a consumer to exit the arrangement. In particular, consumers can't switch to an alternative retailer at the end of a fixed term, unless Nova Energy is unwilling to match the alternative retailer's offer (see alignment issue 4.1). If Nova Energy matches the offer or if the consumer does not provide sufficient notice that it intends to switch retailers, the contract automatically rolls over for another fixed term period of the same length. If at the end of the initial fixed term a consumer switches in breach of this provision, it appears that a substantial termination charge could be incurred.

In addition, the fixed term contract does not limit Nova Energy's ability to increase prices during the term. So, for example, the wording would technically allow Nova Energy to reduce its rates to match another retailer and lock the customer in for another fixed term, but then subsequently increase its rates after that additional term had commenced.

Elwood Law considers this provision unreasonably restricts consumer choice and does not appear necessary to protect the legitimate interests of the supplier. The provision also appears inconsistent with the intent of the Gas (Switching Arrangements) Rules 2008. Finally, if Nova Energy used the contractual provisions in the manner proposed above and did not clearly bring the clause to the attention of customers prior to signing, then it may potentially be misleading conduct under the Fair Trading Act.

Some jurisdictions (including the UK and Australia) provide that unfair terms in consumer contracts are void. In these jurisdictions a lock in provision such as Nova Energy's could be void (assuming the Nova Energy arrangement couldn't contract out of the regime). It is noted that New Zealand does not currently prohibit unfair terms in consumer contracts. However, this issue is being considered by Parliament in the current Consumer Law Reform process.

7.2 Disconnections

Many arrangements do not include the level of detail envisaged by the Benchmarks in respect of the processes that must be followed in relation to disconnections. In particular, we note that 7 of the 10 arrangements do not adequately include a clear obligation to provide a final warning no less than 24 hours or more than 7 days before disconnection, for all but emergency disconnections. Most of these contracts do include a requirement for this warning where the disconnection relates to non-payment, but not where the disconnection is for other causes.

We note that there are "moderate" alignment results across the board for the disconnection Benchmark (Benchmark 13). However, we believe retailers' disconnection practices generally align well with the requirements in Benchmark 13. In particular, the majority of disconnections are due to customers not paying their accounts on time or are emergency disconnections, and the contracts in general terms address the Benchmark requirements appropriately in terms of these disconnections.

The disconnection alignment issues are primarily where disconnections occur for reasons other than non-payment and which are not emergency disconnections (eg in response to a customer materially breaching the contract or where the disconnection is requested by the network company). In these circumstances the contracts often allow for disconnections to occur immediately (ie without notice) and it is those provisions that raise alignment issues.

The disconnection of supply may have significant impacts on a consumer, such that a robust disconnection process is justified. That said, we are not aware of particular concerns in terms of disconnection practices. We believe that in general terms disconnection is seen as a last resort measure and where a retailer is able to provide notice of disconnection and avoid disconnection, it will do so. One retailer stressed that its consumers are of vital importance to its business, and so it is in its interests not to disconnect them inappropriately.

Despite us being generally comfortable with the industry's disconnection practices (based on the information we have been provided), we have raised disconnection issues as an area of particular concern as the potential impact on consumers may be significant. It is also an area of general relevance to Gas Industry Co when considering the Gas Distribution Oversight Scheme (as some of the alignment issues appear to result from terms which distributors require retailers to include in retail contracts), and when considering any areas of mismatch between the Electricity Authority's minimum terms and Gas Industry Co's Benchmarks.

7.3 Clarity of price and price changes

The key variable for many consumers will be price. The Benchmarks envisage customers being given at least 30 days' notice of price increases and that such notice will be separately communicated in writing to the Consumer if the price increase is more than 5%.

However, two of the arrangements do not commit to providing individual notice of price increases of more than 5%. In particular, both of Energy Direct's contracts would allow material price increases to be notified to consumers through publication in a newspaper. However, we believe Energy Direct in practice individually notifies each customer *and* places a notice in the newspaper, such that its practices do not give rise to particular concern.

It is notable that in the years' since the introduction of the Benchmarks, the contractual arrangements have trended towards better alignment with the pricing requirements. For example, in our baseline assessment one contract only agreed to provide "at least 48 hours notice" of any changes in prices, and this could potentially have been provided by updating a price list on a website. The industry appears to be lifting its game in this regard.

We have noted in 8.2 below that in some cases retailers could materially increase prices during a fixed term contract with the consumers being unable to exit the arrangement in response to the price increase without paying an early termination fee. This could warrant further consideration, although the changes proposed in the Consumer Law Reform Bill may help to address the issue.

7.4 Exclusion of liability

The liability Benchmark requires "any exclusion of liability in the gas supply arrangements to be clearly specified and reasonable". Gas Industry Co's revised Interpretation of the Benchmark assumes that liability provisions are reasonable unless all liability is excluded or the customer is required to provide a broad indemnity.

Only the Energy Direct business arrangement has been assessed as effectively excluding all liability of the retailer. We have assessed this as being an issue of particular concern. In addition, we note that most of the contracts include clauses significantly limiting the retailer's liability, and a number require the consumer to indemnify the retailer (including for damage that is out of the consumer's control).

In our view, the limitation of liability provisions and the indemnities included

8 Contrary to intent

in the contracts generally favour industry interests, rather than consumer interests. This is not surprising given the commercial drivers of the industry.

We have not been asked to provide advice on whether these clauses are appropriate, and we note that other factors (such as insurance) would influence any such analysis. In addition, we note that the current Consumer Law Reform Bill before Parliament has proposed some changes to retailer and distributor guarantees, which, if passed, would also be relevant to the liability of retailers and distributors to consumers.

The Recommendation (page 41) envisaged that Elwood Law would:

“Look at issues such as the use of wording that is technically aligned but contrary to the intentions of the benchmarks.”

The Recommendation (page 1) stated its objective as follows:

The objective for the work, taking into account industry and stakeholder comments, is to determine the most appropriate gas governance arrangement for the oversight of retail contract terms in the gas industry so as to ensure that consumer contracts for gas supply:

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

It has been difficult to report comprehensively on provisions that are contrary to the intent of the Benchmarks. One stated objective for the Benchmarks is that the Benchmarks “are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers”. Thus, considering whether a clause in a contract which technically aligns with a Benchmark is consistent with the intentions of the Benchmarks would involve considering (among other things) whether the clause is balanced and supports the long term interests of gas consumers. Such an assessment requires a policy view as well as a legal interpretation.

In raising issues which may be contrary to the intent of the Benchmarks we have primarily focused on terms which appear to be “unbalanced” or “unclear”.

Where Elwood Law has identified provisions that we consider *may* be contrary to the intentions of the Benchmarks, these have been noted in the Detailed Assessment and brought to Gas Industry Co’s attention. We have not highlighted in the Detailed Assessment clauses where Gas Industry Co has previously advised Elwood Law (in response to the 2010 or 2011 assessments) that it has no current concerns with the clauses.

We are not sure whether the examples raised are in fact contrary to the intentions. Elwood Law believes that a consideration of whether or not contract wording is *actually* contrary to the intentions of the benchmarks requires further assessment, and is beyond the scope of our “paper based” assessment.

The types of issues identified can generally be grouped as follows:

8.1 Back to back clauses

Most of the arrangements include clauses where the retailer is passing on obligations to the consumer that reflect the retailer's agreement with other industry players. Such "back to back" provisions are understandable, but in some cases the provisions may operate unfairly. An example of such a clause is "The Customer agrees to comply with any requirement of the operator of the Gas Network ... and any obligation or requirements set out in any agreement between such network operator and [the Retailer] intended to be passed onto the Customer, shall be binding on the Customer."

We consider that a customer should be able to ascertain the meaning of the contract they are agreeing to, and it is inconsistent with the intent of the Benchmarks for a customer to be asked to agree to provisions in a network contract which the customer has not seen. However, Gas Industry Co also has an oversight role in the industry and may be comfortable that there are no clauses in the relevant network contracts which would not support the long term interests of gas consumers. The work under the Gas Distribution Contracts Oversight Scheme may help to flesh out any issues in this area.

8.2 Closely related to current benchmarks

In some cases we have identified clauses that relate to current Benchmarks but which are not assessed by our assessment and appear to have negative consumer impact. For example, some of the fixed term contracts appear to allow the retailer to materially increase the price during the term, without the customer being able to exit the arrangement without payment of an early termination fee.

Also, many of the Benchmarks are "informational" (e.g. set out the conditions under which gas can be disconnected) rather than "prescriptive" (e.g. such conditions must be reasonable). The review has identified some wording which on the face of it appears unbalanced (e.g. "we reserve the right to discontinue the supply of energy" (i.e. on any grounds)) but will technically meet the informative Benchmark standard. It is possible, but further analysis would be required, that such wording may not accord with the intentions of the Benchmarks.

8.3 Broad discretions

We have identified a number of clauses which give the retailer a very broad discretion, and could allow the retailer to behave in a manner that would be inconsistent with the intent of the Benchmarks. However, often the retailers have advised us of their practices which appear to be reasonable.

8.4 Clearer drafting required

We have identified some clauses where the intended meaning and application of the clause is unlikely to be clear to a reasonably informed consumer. In some jurisdictions reviews of consumer contracts require all clauses to be clear to the consumer, even if a lawyer or an engineer could understand the clause. Except in relation to liability clauses, we have typically only raised comments which we consider would be unclear to all readers of the contract.

9 Trends

9.1 Overall improvement

The following table shows the key trends since 2010 in the degree of alignment of retail gas supply arrangements with the Benchmarks.

The number of arrangements that are in substantial compliance with the Benchmarks has increased from 1 to 6. The total number of alignment issues identified across all arrangements has halved from 351 to 166. The average number of alignment issues per arrangement has gone from 29 down to 17.

And the number of widespread compliance issues (ie found in more than 50% of the then current arrangements) has reduced from 29 to 13.

Given these trends, the monitoring of retail gas contracts against the Benchmarks is clearly having some effect. However, no arrangement fully complies with the Benchmarks and four arrangements remain in moderate or low compliance. There would seem to be still some way to go.

Trends	2012	2011	2010
Total number of arrangements	10	10	12
Number of arrangements updated or introduced since baseline review	7	1	N/A
Number of arrangements that are in "substantial" alignment	6	2	1
Number of arrangements that are in "moderate" alignment	3	5	7
Number of arrangements that are in "low" alignment	1	3	4
Total number of alignment issues across all arrangements	166	271	351
Highest number of alignment issues in a single arrangement	37	46	46
Average number of alignment issues per arrangement	17	27	29
Alignment issues arising across 50% or more of the arrangements	11	27	30
Total number of alignment issues of particular concern across all arrangements	12	18	25

9.2 Improvement by arrangement

This is the first year we have identified each retailer's assessment in our reports. In line with the recommendation, the publication of results has previously kept each retailer's compliance anonymous.

Consistent with the results in previous years being unattributed, this report does not include detailed information on the assessment results in previous years. However, the overall improvement in alignment with the Benchmarks has been achieved by retailers updating their gas supply arrangements. Of the 10 arrangements assessed in this review, it is the 6 residential arrangements that were updated since the baseline review in 2010 that best align with the Benchmarks.

The three worst aligned arrangements account for more than half of the alignment issues identified in this year's review and none of those arrangements have been updated since the Benchmarks were introduced, although we understand updates of two of those arrangements are planned.

9.3 Improvement by Benchmark

The extent to which the arrangements align on average with each Benchmark differs for each Benchmark, and it seems that some Benchmarks are harder for Retailers to align with than others. The table below shows the average alignment of the arrangements against each Benchmark, listed in rough order of alignment.

Benchmark	Average Alignment		
	2012	2011	2010
11. Clear consumer site responsibilities	Subst	Subst	Subst
7. Clear supply restoration procedures	Subst	Mod	Mod
6. Clear supply obligations	Subst	Subst	Subst
17. Clear dispute resolution	Subst	Mod	Mod
3. Clear consumer exit rights (open term)	Subst	Mod	Mod
10. Clear bond obligations	Subst	Mod	Mod
16. Reasonable retailer liability limitations	Subst	Low	Low
12. Clear metering obligations	Subst	Mod	Mod
1. Clear supply commencement	Subst	Mod	Mod
18. Clear communication	Subst	Mod	Mod
4. Clear consumer exit rights (fixed term)	Subst	Subst	Mod
14. Clear supply interruption procedures	Sub	Mod	Mod
5. Clear contract variation procedures (non-price)	Mod	Mod	Mod
8. Clear price increases	Mod	Mod	Low
9. Clear pricing information	Mod	Mod	Mod
15. Clear privacy obligations	Mod	Mod	Mod
13. Clear disconnection process	Mod	Low	Low
2. Clear safety information	Low	Low	None

The level of alignment with some Benchmarks has increased more than with other Benchmarks. The following table shows the extent of improvement in average alignment with each Benchmark since the baseline review in 2010.

Benchmarks – Baseline Improvements	Change
16. Reasonable retailer liability limitations (Note)	Much better
1. Clear supply commencement	
17. Clear dispute resolution	
7. Clear supply restoration procedures	
2. Clear safety information	
3. Clear consumer exit rights (open term)	Better
10. Clear bond obligations	
15. Clear privacy obligations	
4. Clear consumer exit rights (fixed term)	
12. Clear metering obligations	

Benchmarks – Baseline Improvements	Change
13. Clear disconnection process	Similar
5. Clear contract variation procedures (non-price)	
6. Clear supply obligations	
8. Clear price increases	
9. Clear pricing information	
11. Clear consumer site responsibilities	
18. Clear communication	
14. Clear supply interruption procedures	

Note: The apparent improvement in Benchmark 16 (Liability) is primarily due to Gas Industry Co's amended Interpretation for that Benchmark (see section 3.1 above).

9.4 Comments on other factors relevant to this assessment

Significant progress has been made towards alignment, particularly in relation to residential gas supply arrangements. While alignment with the Benchmarks is trending in the desirable direction, the progress made to date identifies that achieving alignment in some areas is more difficult than others. There appear to be commercial and other factors which make it more difficult for retailers to voluntarily comply with some of the Benchmarks.

The two Benchmarks where contracts perform the worst are Benchmark 2 which relates to clear safety information and Benchmark 13 which relates to clear disconnection procedures. Amendments made to the contracts to date suggest that alignment with Benchmark 2 should voluntarily improve over time (as two contracts which have been updated since the Benchmarks were introduced both have full alignment with this Benchmark) but industry alignment with Benchmark 13 is less certain (as the contracts which have been amended since the Benchmarks were introduced continue to have alignment issues). However, we note that in general terms, in relation to both Benchmark 2 and Benchmark 13 there are a high number of technical alignment issues and, based on the drafting and discussions with retailers, the retailer practices appear to be more consistent with the Benchmarks than the average assessments of "low" and "moderate" suggest.

It is acknowledged that there are large compliance costs associated with a retailer updating a retail contract. For those retailers who have not yet updated their contracts, the naming of the retailer's alignment in this report may act as an incentive for additional steps to be taken towards alignment prior to future assessments. If a retailer is planning an update to its terms and conditions, the Detailed Assessment will enable the retailer to identify how other retailers have achieved aligned with a particular Benchmark.

Parliament has issued the Consumer Law Reform Bill, which proposes amendments to the Fair Trading Act and the Consumer Guarantees Act. The Bill, if enacted, will impact on the retail gas industry and retailers may revisit their contracts if the Bill is enacted. For example, if enacted as currently drafted, the Bill would:

- include new provisions in the Fair Trading Act to prevent unfair contract terms in standard form contracts (reflecting similar provisions in the Australian legislation);
- include new provisions in the Fair Trading Act which restrict the ability of parties "in trade" to contract out of the provisions of the Act;

- include in the Consumer Guarantees Act a specific guarantee of acceptable quality in relation to the supply of gas; and
- amend the Consumer Guarantees Act in relation to the ability of business arrangements to contract out of that Act (eg, a court could determine that it was not fair and reasonable for a business gas supply arrangement to contract out of the Consumer Guarantees Act given the respective bargaining power of the parties).

Elwood Law has provided a copy of all of the analysis that underlies the information summarised in this report to Gas Industry Co to assist with future assessments and identification of trends.

Attachment 1: Benchmarks and interpretation

Benchmark 1 - Clear supply commencement

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

Benchmark 2 - Clear safety information

Benchmark	GIC Interpretation	Issues
2. The gas supply arrangements must provide information to Consumers on the following aspects of gas supply and the interruption of gas supply:		
(a) the responsibilities of the parties involved in the supply of gas, which may include all or any of the Retailer, Distributors, and meter owners;	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether the responsibilities have been accurately and comprehensively detailed. Specific responsibilities of the parties involved in the supply of gas are already assessed under the following benchmarks:</p> <ul style="list-style-type: none"> Benchmark 6 – services provided by the Retailer Benchmark 12 – requirements for metering Benchmark 14 – faults and planned shutdowns Benchmark 7 – Retailer's response to supply disruption Benchmark 11 – site responsibilities. <p>It is not considered that any additional responsibilities need be defined in an arrangement to meet the objectives of this assessment. Accordingly, it is not proposed to score this benchmark 2(a) separately. Gas Industry Co will consider moving this benchmark into the good practice guidelines.</p>	
(b) where information on emergency procedures is located, including how the Consumer can turn off their gas supply in an emergency and how information on and procedures for reconnection after the emergency will be provided; and	<p>This benchmark requires the arrangement to provide "safety information" to Consumers. Safety issues are also addressed by other industry requirements and Gas Industry Co acknowledges that, in an emergency, safety information recorded in contractual arrangements is unlikely to be immediately at hand. However, contractual arrangements are a mechanism for raising safety awareness.</p> <p>Benchmark met if the specified safety information is contained in:</p> <ul style="list-style-type: none"> the contract a document referred to in the contract, even if the contract does not specify what information is contained in that other document. <p>For future reviews, Gas Industry Co will consider:</p> <ul style="list-style-type: none"> moving this benchmark 2(b) to the good practice guidelines, as other regulatory arrangements address safety and information recorded in an arrangement is unlikely to be immediately at hand in an emergency 	<p>2.1. No clear description of how consumers can turn off their gas supply in an emergency.</p> <p>2.2. No clear information <u>about, or on how information on and</u> procedures for, reconnection after an emergency. <u>the emergency will be provided.</u></p>

	<ul style="list-style-type: none"> amending this benchmark 2(b) to require arrangements to include safety awareness provisions such as: <ul style="list-style-type: none"> when the Consumer must obtain compliance certificates what the Consumer should do to ensure gas safety at the Consumer's premises, including how to turn off gas supply who the Consumer should call if there is an emergency involving gas at the Consumer's premises. 	
(c) where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.	As this benchmark concerns supply interruptions, it is scored together with benchmark 14.	

Benchmark 3 - Clear consumer exit rights (open term)

Benchmark	GIC Interpretation	Issues
3. Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer:	<p>If an arrangement has an initial fixed term followed by an open term, both benchmark 4 and 3 are relevant respectively.</p> <p>"Cease gas supply" includes provisions dealing with disconnection, discontinuing supply, terminating the agreement, exiting and ceasing being a customer.</p>	
(a) at any time without unnecessary delay;	<p>Benchmark not met if:</p> <ul style="list-style-type: none"> there are restrictions on the circumstances in which the Consumer can terminate (the Consumer should be able to terminate at ANY time) following termination, the charges only cease on a date agreed by the Retailer (as the Retailer could unreasonably withhold its agreement, except under the switching rules) the Retailer can continue its daily fixed charge until gas is <u>disconnected or decommissioned</u> (as this is outside the Consumer's control). <p>Benchmark may be met where:</p> <ul style="list-style-type: none"> termination is subject to the Consumer allowing the Retailer to perform a final meter reading the length of notice that the Consumer must give is specified, but there is not a corresponding obligation on the Retailer to disconnect (one is implied). <p>There is an unnecessary delay if more than one month's notice of termination is needed.</p>	<p>3.1. There are restrictions on the circumstances in which the consumer can terminate an open term arrangement.</p> <p>3.2. Following termination of an open term arrangement, the charges only cease on a date agreed by the retailer.</p> <p>3.3. The consumer's ability to terminate an open term arrangement is subject to an unnecessary delay.</p> <p><u>3.6. The retailer can continue its daily fixed charge until gas is disconnected or decommissioned.</u></p>
(b) irrespective of any offer that the existing Retailer may make with respect to price or any other aspect of continued supply from that Retailer; and	Benchmark not met where the Consumer can't switch to an alternative Retailer, unless the current Retailer is unwilling to match the alternative Retailer's offer.	3.4. The consumer can't switch to an alternative retailer, unless the current retailer is unwilling to match the alternative retailer's offer.
(c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees.		3.5. The consumer is subject to penalty fees on termination of an open term arrangement.

Benchmark 4 - Clear consumer exit rights (fixed term)

Benchmark	GIC Interpretation	Issues
4. Fixed term gas supply arrangements must clearly state:	If application form or terms and conditions do not specify a fixed term, assume that the arrangement is for open term only and that the benchmark is not applicable.	
(a) the expiry date;	<p>Benchmark met if the expiry date can be calculated as provided in the contract.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> arrangement automatically rolls over for the same fixed term, unless prior notice is given. Gas Industry Co considers that roll-overs should be on an open term basis the Consumer can't switch to an alternative Retailer at the end of the term, unless the current Retailer is unwilling to match the alternative Retailer's offer. 	<p>4.1. Consumer can't switch to an alternative retailer at the end of the term, unless the current retailer is unwilling to match the alternative retailer's offer.</p> <p>4.2. Contract automatically rolls over for same fixed term, unless prior notice is given.</p>
(b) whether or not there are provisions for early termination (i.e. prior to the expiry date); and	<p>Benchmark relates to the Consumer's right to terminate, not the Retailer's.</p> <p>Benchmark is:</p> <ul style="list-style-type: none"> not met by general right to terminate (eg for breach) or if contract is silent on right to convenience termination met by a statement that the Consumer has no right or has limited 	4.3. Not clear whether or not the consumer can terminate before fixed expiry date.

Benchmark	GIC Interpretation	Issues
	rights to convenience termination.	
(c) the basis on which any early termination charges will be calculated, if early termination is allowed.	Benchmark met if no early termination charge is mentioned.	4.4. No clear basis on which early termination charge will be calculated.

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

Benchmark	GIC Interpretation	Issues
5.1. Open term contracts may permit the Retailer to change the non-price terms and conditions of the gas supply arrangements upon giving the Consumer no less than 30 days' notice of the changes.	<p>Benchmark also applies to fixed term contracts. For those contracts, the benchmark is not met unless the Consumer may terminate the contract before the changes come into effect, and without any obligation to pay fees for the period past the date of termination.</p> <p>If arrangement has separate provisions for price terms, assume that general right to amend contract applies to non-price terms only.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> the Retailer has no express right to amend the contract (assume that the Retailer won't change without each Consumer's agreement) one month's notice is given (February is less than 30 days). <p>Benchmark not met if less than 30 days' notice can be given.</p> <p>Benchmark not failed merely because the Retailer can change the arrangement on shorter notice, in the event of temporary supply emergencies.</p>	<p>5.1. Non-price terms of the arrangement can be changed on less than 30 days' notice.</p> <p>5.2. Non-price terms of the arrangement can be changed without notice.</p> <p><u>5.4. Consumer has no right to terminate a fixed term contract following a variation by the retailer.</u></p>
5.2. The gas supply arrangements must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated to Consumers and not through public notices.	<p>This benchmark relates to non-price variations only. Price variations are addressed in benchmark 8.</p> <p>Benchmark met if all non-price variations must be directly communicated to the Consumer.</p>	5.3. No clear requirement that material changes in terms of the arrangement will be directly communicated to the consumer, not through public notice.

Benchmark 6 - Clear supply obligations

Benchmark	GIC Interpretation	Issues
6. The gas supply arrangements must describe the services to be provided to the Consumer.	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether the specific services of any Retailer have been accurately and comprehensively described in any arrangement.</p> <p>The following benchmarks already assess services that will be provided by the Retailer:</p> <ul style="list-style-type: none"> Benchmark 7 – Retailer's response to supply disruptions Benchmark 11 – Retailer's site obligations Benchmark 12 – Retailer's metering obligations Benchmark 14 – Retailer's obligations under special or emergency operating situations. <p>It is considered that the only service not sufficiently addressed in other benchmarks is the supply of gas. Each arrangement should reasonably include an obligation that the Retailer will supply gas of certain quality to a specified point.</p>	
	<p>Supply obligation</p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> the Retailer's obligation is to: <ul style="list-style-type: none"> endeavour to supply gas (including "best" and "reasonable" endeavours and "aim to") supply up to a maximum quantity of gas provide an "energy service" or "energy supply" rather than "supply gas" the Retailer cannot guarantee to provide a continuous supply of gas the arrangement describes the point of supply, but there is no express requirement for the Retailer to supply to that point (the obligation is assumed) supply is subject to the safety of the Consumer's site when connected to the local distribution gas network supply must be exclusively from the Retailer obligations for transporting gas across a distribution network is excluded only where the network operator requires its own agreement with the Consumer. 	<p>6.1. No obligation on the retailer to supply gas.</p> <p>6.2 Some ambiguity in the retailer's obligation to supply gas.</p>
	<p>Quality</p> <p>Benchmark may be met if:</p>	6.3. No clear requirement to meet regulatory quality

Benchmark	GIC Interpretation	Issues
	<ul style="list-style-type: none"> the Retailer agrees to comply with all relevant laws; or quality may vary for reasons beyond the Retailer's control 	standards.
	<p>Point of supply</p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> the point of supply is: <ul style="list-style-type: none"> <i>as defined by reference to gas regulations (see regulation 5 of the Gas (Safety and Measurement) Regulations 2010) the point at which gas exits the meter</i> <i>defined as "all energy past the meter is your responsibility"</i> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> the arrangement only describes the point of <i>electricity</i> supply the Retailer or network company can <i>determine</i> the point of supply (too general), <u>unless the arrangement also details where the point of supply is usually.</u> the point of supply is described as "<i>the point</i> at which gas flows from a gas network into the Consumer's installation, appliance or reticulation system" as that point itself is unclear. 	6.4. No clear description of the point to which gas will be supplied.

Benchmark 7 - Clear supply restoration procedures

Benchmark	GIC Interpretation	Issues
7. Where services are not provided as described, the gas supply arrangements must:	Benchmark relates to how the Retailer <i>responds</i> to interruptions to <i>gas supply</i> , not other service issues. The <i>circumstances</i> in which supply may be interrupted are addressed in benchmark 14.	
(a) set out how the Retailer will respond to the Consumer where services are not supplied as described;	<p>Benchmark not met by a <i>standard complaints procedure</i>. Supply interruptions should be dealt with more promptly.</p> <p>Benchmark met by:</p> <ul style="list-style-type: none"> reasonable endeavours obligation (e.g. by the Retailer using reasonable endeavours to restore supply as soon as reasonably practicable); or the Retailer 'working with the relevant parties to try to minimise any inconvenience'. 	7.1. No clear description of how the retailer will respond to supply interruptions.
(b) whether any payments will be made to the Consumer as a result of services not being supplied; and	<p>Benchmark met if:</p> <ul style="list-style-type: none"> arrangements provide there will be no payment; <u>the contract expressly and clearly excludes all of the retailer's liability for supply interruptions, except any liability under the Consumer Guarantees Act (e.g. "we will not be liable to you for loss or damage in connection with any interruption or reduction in the supply of gas into the gas network, or the quality of that gas, except to the extent (if any) that we are liable under the Consumer Guarantees Act 1993 to compensate you for such loss or damage"); or</u> <u>the supplier does not guarantee the continuous supply of gas.</u> <p>"Payment" includes any financial benefit to Consumer (eg discounts).</p> <p>Benchmark not met if the contract is silent as to whether or not payments will be made.</p>	7.2. No clear mention of payments (if any) to the consumer for service disruption.
(c) make it clear that any redress offered by the Retailer in relation to services not being supplied as described, is in addition to and does not detract from, the Consumer's rights under the Consumer Guarantees Act 1993.	<p>The objective behind this benchmark is to clearly notify Consumers of their rights.</p> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <i>general</i> statement that the Retailer will comply with laws as this does not notify Consumers of this important statutory protection statement that the Consumer Guarantees Act is <i>excluded to the maximum extent permitted by law</i> as non-business Consumers may wrongly assume they have no Consumer Guarantees Act rights. <p>Benchmark met by:</p> <ul style="list-style-type: none"> reference to "Consumer protection legislation" instead of "Consumer Guarantees Act" statement that arrangement does not exclude or limit rights under the Consumer Guarantees Act exclusion of the Consumer Guarantees Act as permitted under that Act (i.e. for businesses) an exclusion of liability clause not excluding Consumer Guarantees Act liability eg "except to the extent of any liability arising pursuant to the Consumer Guarantees Act". 	7.3. No clear statement that the consumer's redress for service disruption are in addition to rights under Consumer Guarantees Act.

Benchmark 8 - Clear price increases

Benchmark	GIC Interpretation	Issues
8. In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state:		
(a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice;		8.1. Length of notice of price increases less than 30 days.
(b) the method by which notice shall be given...	<p>Benchmark not met:</p> <ul style="list-style-type: none"> by provision that Consumers can request the cause of a price increase where the method of notice is unclear. <p>Benchmark met by public notice (eg on website or newspaper).</p> <p>Benchmark may be met by a general notice clause specifying how all notices from the Retailer will be given.</p>	8.2. No clear method of notifying price increases.
...provided that, if the increase in price is more than 5%, a separate notice of the increase must be individually communicated to the Consumer in writing...	<p>Benchmark not met by:</p> <ul style="list-style-type: none"> public notice (eg on website or newspaper) automatic price review (eg annual) that is not notified in accordance with benchmark 6.1, despite it being "communicated" in the arrangement. <p>Benchmark met by:</p> <ul style="list-style-type: none"> emailed notice notice in next invoice. 	8.3. Where a price increase is more than 5%, no clear requirement to send separate notice of the increase to the consumer.
...as soon as possible; and	This benchmark does not need to be scored, as benchmark 8(a) requires that not less than 30 days' notice be given.	
(c) that the notice will include the reasons for the increase.	Benchmark met if contract only requires notice of the general reasons for the increase.	8.4. No clear requirement to state reasons for a price increase when providing notice of the increase.

Benchmark 9 - Clear pricing information

Benchmark	GIC Interpretation	Issues
9.1. The gas supply arrangements must:		
(a) refer to the relevant prices or pricing schedule (as may be produced by the Retailer from time to time) of products and services available to the Consumer;	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether prices are accurately and comprehensively described in any arrangement.</p> <p>The benchmark requires the prices to be clear to the Consumer, whether in the arrangement itself (eg application form) or publically available (eg on the Retailer's website or in another publically accessible location).</p> <p>Benchmark met if a price plan is referenced to in the arrangement but the arrangement does not describe where Consumers may find the price plan, provided the price plan is in fact available on the Retailer's website.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> if arrangement does not specify where price information can be found if the specified location of price information is not publically available. 	9.1. No clear reference to relevant prices or pricing schedule.
(b) state that the Consumer is liable for the charges, but only for those charges, for all of the services provided under the gas supply arrangements;	<p>Benchmark met if contract clearly specifies the charges that the Consumer will be liable for.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> Consumer liable for unspecified charges (eg "all other costs") the amount of any charges are open ended (does not apply where the Consumer will receive advance notice of change to these charges). 	9.2. The extent of some charges are too open ended.
(c) state the time from which the Consumer will be liable for the charges;	The intention behind this benchmark is adequately addressed in benchmark 1. No need to assess here.	
(d) in the case of bills based on estimates, the Retailer will provide a simple explanation of how the estimate will be calculated...	<p>Benchmark met if the:</p> <ul style="list-style-type: none"> the contract itself explains how the estimate is calculated; or the contract simply provides that the estimate must simply be 	9.3. No clear explanation of how estimates will be calculated.

Benchmark	GIC Interpretation	Issues
	<p>"reasonable".</p> <ul style="list-style-type: none"> the contract states that an explanation will be given on request (e.g. by calling) 	
...and of the process that will be used for correcting any estimates;	<p>Benchmark met:</p> <ul style="list-style-type: none"> if Retailer will invoice according to a meter reading performed by the Consumer even where the Consumer's right to request a correction is limited (eg because Consumer can only request a test annually). 	9.4. No clear explanation of the process that will be used for correcting 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 any amount that has been overcharged...	<p>Benchmark met if:</p> <ul style="list-style-type: none"> over-charging will be credited against next invoice an appropriate adjustment will be made. <p>However, benchmark not met if:</p> <ul style="list-style-type: none"> the time frame is not mentioned ("next invoice" is acceptable) the Consumer can only request metering tests each 12 months and adjustment only extends back to the date of testing (as refund may exclude many months of overcharging). 	9.5. No clear provision that retailer will promptly refund or credit any over charge.
...and may invoice the Consumer for any underpayments subject to sub-clause (f); and	<p>Benchmark relates to under-charging by Retailer, not under-payment by Consumer.</p> <p>Benchmark not met if arrangement does not provide that under-charging may be invoiced.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> under-charging can be included in subsequent invoice the under-charged amount is payable after the dispute is resolved, even if the amount is not required to be invoiced. 	9.6. No clear provision that the retailer may invoice the consumer for previous under charging.
(f) the gas supply arrangements will state the term limitations that will apply for the recovery of underpayments.	<p>Benchmark relates to under-charging by Retailer, not under-payment by Consumer.</p> <p>Benchmark not met if arrangement does not provide any term limitations.</p> <p>However benchmark may be met if the Retailer can charge beyond a specified term limit if:</p> <ul style="list-style-type: none"> it should not reasonably have been expected to have been aware of the error the Consumer contributed to the error, or could have reasonably been expected to have known about the error. 	9.7. No clear statement of the term limits applying to the recovery of previous under charging.
9.2. If the Retailer offers alternative payment options to Consumers, a simple explanation of how those options operate must be set out in the gas supply arrangements.	<p>Benchmark met if arrangement does not provide for payment options (assumed that Retailer does not offer any).</p>	9.8. No clear explanation of how payment options operate.
<p>9.3. Metering:</p> <p>In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:</p> <p>(a) any additional costs associated with providing, correcting, changing, or removing metering equipment, which may be listed in a separate schedule;</p>	<p>Benchmark met if the arrangement:</p> <ul style="list-style-type: none"> specifies the costs in a separate schedule; does not mention any additional costs (assume there are none) says costs of an unspecified amount may be payable (eg "inspection, repair and/or replacement costs") but does not specify the amount of those costs, and provides that the Consumer will be informed prior to taking any action on a meter which may incur a charge. <p>Benchmark not met if the arrangement:</p> <ul style="list-style-type: none"> says costs of an unspecified amount may be payable, but does NOT provide that the Consumer will be informed prior to taking any action on a meter which may incur a charge. 	9.9. No clear <u>description of any</u> additional costs associated with providing, <u>correcting, or</u> changing <u>or removing</u> metering equipment.
(b) the process to be followed in the event that either the Retailer or the Consumer suspects that a meter is recording or reading incorrectly...		9.10. No clear process to follow if consumer suspects meter is reading incorrectly.
...and the method for correcting previous billed consumption if found to be incorrect.	<p>Benchmark requires the contract to deal with both:</p> <ul style="list-style-type: none"> the <u>quantum of the correction</u> (eg consumption will be reasonably adjusted); and the <u>manner of the correction</u> (eg invoices will be re-issued and/or the customer's account credited). <p>Benchmark not met by:</p> <ul style="list-style-type: none"> dealing with the method of testing, without describing the <u>quantum or the manner of the correction</u>; <u>process, or</u> providing that consumption will be "adjusted accordingly", <u>without describing the manner of the correction.</u> 	9.11. No clear method for correcting <u>incorrect readings</u> , <u>previous consumption if meter found to be faulty</u> .

Benchmark 10 - Clear bond obligations

Benchmark	GIC Interpretation	Issues
10.1. Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state:	Benchmark met in full if arrangement does not reference bonds (assume that bonds are not required). If arrangements provides that "other lending criteria apply" it is assumed that bonds may be required.	
(a) the requirement for the Retailer to provide to the Consumer the reasons for requiring a bond;	Benchmark not met if arrangement says "if we have concerns about your ability to pay we may require a bond". The arrangement must oblige the Retailer to give more detailed reasons in each case.	10.1. The retailer is not required, in each case, to give reasons for requiring bonds.
(b) the period of time within which the bond must be paid to the Retailer; and	This benchmark does not need to be scored. It is reasonable for bonds to be paid before supply commences. Any additional time for payment allowed by a Retailer will not prejudice the Consumer.	
(c) how long the Retailer will keep the bond.	Benchmark met if arrangement: <ul style="list-style-type: none"> describes the circumstances in which the bond will be released, rather than a specific time period provides an indefinite period for retaining bonds, provided the bond will be returned on termination and payment of outstanding charges. 	10.2. Not clear how long bonds may be kept for.
10.2. If the Retailer keeps the bond for longer than 12 months, it must provide: (a) its reasons for doing so;	Benchmark not met if arrangement includes no restriction on the time that a bond may be kept (assume it may be kept for longer than 12 months). Benchmark met if arrangement provides that the balance of any bond will be repaid after 12 months if you have paid all invoices on time (assume that reason for keeping it is non-payment of invoices on time).	10.3. Bond may be kept for longer than 12 months, and reasons for doing so are not clear.
(b) information on how the bond will be refunded; and		10.4. Not clear how bonds are refunded.
(c) whether or not interest is payable on the bond.		10.5. Not clear if interest is payable by the retailer on bonds.

Benchmark 11 - Clear consumer site responsibilities

Benchmark	GIC Interpretation	Issues
11.1 The gas supply arrangements must:		
(a) describe the physical point at which the Consumer's responsibility begins;	The requirement to define the point of supply is assessed in benchmark 6. No separate assessment required.	
(b) explain the Consumer's responsibilities in relation to gas lines, meters and other equipment on the Consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice;	"On the Consumer's premises" includes both sides of the point of supply. Benchmark not met if the Consumer is required to provide certification in relation to the Retailer's equipment at the Consumer's site.	11.1. Consumer's site responsibilities not clear. 11.2. Consumer is required to provide certification in relation to the retailer's equipment at the consumer's site.
(c) state the rights of the Retailer and/or their agents to gain access to gas lines and equipment located on the Consumer's premises; and	"On the Consumer's premises" includes both sides of the point of supply.	11.3. Rights of retailer to access consumer premises unclear.
(d) the consequences the Consumer may face for not granting access.	Benchmark not met by general statement that the Retailer may terminate or suspend the arrangement for breach.	11.4. No clear consequences stated for consumer for not granting access to their premises.
11.2 Metering In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe the Consumer's responsibility for protecting, not tampering with, and providing access to meter(s) for maintenance and reading purposes.		11.5. Consumer responsibility for protecting metering equipment is not described or is unclear.

Benchmark 12 - Clear metering obligations

Benchmark	GIC Interpretation	Issues
12. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:	See also benchmarks 8 and 11.	

Benchmark	GIC Interpretation	Issues								
(a) the requirements for metering relevant to the pricing options selected by the Consumer;	<p>The arrangement must make it clear who has responsibility for:</p> <ul style="list-style-type: none">providing the metermaintaining the meter.	<p>12.1. Not clear who has responsibility for providing the meter.</p> <p>12.2. Not clear who has responsibility for maintaining the meter.</p>								
(b) the frequency of meter readings; and	<p>The arrangement must:</p> <ul style="list-style-type: none">clearly describe the frequency in which the Retailer will read metersbe consistent with the Retailer’s legal obligations for frequency of meter reading. <p>Gas Industry Co assumes all TOU (time of use) meters will comply with legal frequency obligations. In terms of Retailer’s legal obligations for frequency of non-TOU meters:</p> <ul style="list-style-type: none">the Gas (Downstream Reconciliation) Rules 2008 require (in general terms) that Retailers must read meters as follows:<ul style="list-style-type: none">for expected consumption between 250 GJ pa and 10 TJ pa, monthlyfor all lower expected consumption:<ul style="list-style-type: none">each individual meter at least once every 12 months, unless exceptional circumstances prevent; andat least 90% of the meters once every 4 months (Gas Industry Co notes that this aggregate obligation cannot be applied at the level of individual arrangements)Under the EGCC’s Gas Code of Practice meter readings should take place a minimum of four times a year, unless the Consumer agrees individually otherwise or does not provide the Retailer with reasonable access to the meter. For the purpose of this benchmark, the code is not a legal obligation unless the Retailer agrees in the arrangement to comply with it. <p>Accordingly, arrangements must provide at least the following:</p> <table><tr><th>Frequency</th><th>Arrangement Type</th></tr><tr><td>Monthly</td><td>“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)</td></tr><tr><td>Four times a year (including “plans to” or “should” do so, but not “several times a year”)</td><td>“Residential Only” where the Retailer agrees in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)</td></tr><tr><td>Once every 12 months</td><td>“Residential Only” where Retailer does not agree in the arrangement to comply with industry codes of practice</td></tr></table> <p>The “individual agreement” noted in the Code of Practice cannot be contained in the Retailer’s standard documentation but must be provided individually (for example a Consumer may agree that the Retailer may miss a meter read where the Consumer recently provided its own estimate).</p> <p>The benchmark is not met if the arrangement states that a longer time between readings is permitted for rural meters.</p>	Frequency	Arrangement Type	Monthly	“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)	Four times a year (including “plans to” or “should” do so, but not “several times a year”)	“Residential Only” where the Retailer agrees in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)	Once every 12 months	“Residential Only” where Retailer does not agree in the arrangement to comply with industry codes of practice	<p>12.3. No clear description of the frequency in which the retailer will read meters.</p> <p>12.4. Frequency of meter reading not consistent with the retailer’s legal obligations.</p>
Frequency	Arrangement Type									
Monthly	“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)									
Four times a year (including “plans to” or “should” do so, but not “several times a year”)	“Residential Only” where the Retailer agrees in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)									
Once every 12 months	“Residential Only” where Retailer does not agree in the arrangement to comply with industry codes of practice									
(c) the obligation to ensure metering is conducted in accordance with relevant industry standards and codes of practice.	<p>Relevant standards and codes of practice include:</p> <ul style="list-style-type: none">NZS5259, which has legal effect under the Gas Act on all meter ownersEGCC’s Gas Code of Practice, which is not legally binding in itself. <p>Benchmark met if:</p> <ul style="list-style-type: none">Retailer agrees to comply with:<ul style="list-style-type: none">“relevant” industry standards and codes of practice, rather than all of them.“industry requirements”, rather than “standards and codes of practice”.<u>The contractual wording implies metering will be in accordance with relevant industry standards and codes of practice (for example, this is implied if the retailer agrees to fix the meter and adjust the customer’s account if the meter doesn’t comply with industry requirements).</u> <p>Not met if Retailer merely agrees to comply with “laws”, as the EGCC Code of Practice is not a law and NZS5259 is not directly binding on</p>	<p>12.5. Requirement to ensure metering is in accordance with relevant industry standards and codes of practice is not described or is unclear.</p>								

Benchmark	GIC Interpretation	Issues
	Retailers.	

Benchmark 13 - Clear disconnection process

Benchmark	GIC Interpretation	Issues
13.1. The gas supply arrangements must:	Benchmark addresses disconnection, termination or suspension by the Retailer for the Consumer's breach. These are distinct to "disconnections" dealt with in other benchmarks: <ul style="list-style-type: none"> Benchmark 3 (How to stop being a Consumer of your current Retailer) Benchmark 14 (Faults and Planned Shutdowns). 	
(a) Set out the conditions under which Consumers can be disconnected other than in accordance with clause 13.2 below;	Benchmark met if: <ul style="list-style-type: none"> the Retailer can disconnect on any grounds there is no ability to disconnect other than under clause benchmark 14 below. 	13.1. No clear grounds on which the retailer can disconnect.
(b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection.	Benchmark not met if the arrangement is silent on this, even if the actions the Consumer can take to prevent disconnection are notified in practice .	13.2. No clear requirement for disconnection notices to state the actions consumers can take to avoid disconnection.
13.2. A Retailer may only disconnect a Consumer for non-payment where the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds.	Benchmark not met if can discontinue gas supply for non-payment of an invoice for another form of energy (particularly applicable in dual energy arrangements).	13.3. Retailer can disconnect a consumer's gas supply for non-payment of non-gas invoices.
13.3 Except for emergency disconnections, or in the case of disconnections under the provisions of the Gas Act 1992 or Gas Regulations, or where a Consumer requests disconnection, the gas supply arrangements must provide:	<u>Notice requirements apply regardless of whether the retailer or network company is disconnecting.</u> Notice requirement not met if arrangement: <ul style="list-style-type: none"> merely provides that the Retailer will give notice, without specifying the length of notice allows Retailer to attempt to give the required length of notice (although force majeure clause may apply). "Emergency disconnections" relate to disconnections for the purpose of protecting health, safety or damage to property. Grounds for disconnection under regulatory arrangements are primarily focused on safety. <u>The benchmark can be met where emergency disconnections include disconnections where the retailer suspects that the metering equipment or other equipment at your premises supplied by us or a network company or meter company has been tampered or interfered with.</u> Accordingly, the following wording does not meet the benchmark as the wording may extend beyond emergency or safety purposes: <ul style="list-style-type: none"> instructions from a Lines Company or Network Operator to disconnect breach of contract by the Consumer mere suspicion that there has been tampering with a meter, equipment, pipes or fittings (it may not be the Consumer's fault) failing to advise the Retailer of any damage to metering or network equipment tampering, hacking into, or interfering with any metering network equipment deliberately taking advantage of the fact that the meter was inaccurate or not working properly. <u>restrictions on the availability of gas</u> <u>non-payment.</u> 	
(a) for the receipt by the Consumer of at least 7 working days' written notice of warning of disconnection after allowing 3 days for the delivery of the notice;	See comments above. Benchmark not met if arrangements merely provide that the Retailer: <ul style="list-style-type: none"> will give notice, without specifying the length of notice. will try/attempt to give the required length of notice (although force majeure clause may apply). 	13.4. No clear obligation, except for emergency disconnections, to give 7 days' warning of disconnection, allowing a further 3 days for delivery.
(b) for the receipt of a final warning by the Consumer, no less than 24 hours before disconnection and after allowing for a reasonable period of time between the receipt of the written warning under (a) and the final warning.	See comments above. <u>Benchmark may be met if retailer agrees to take "all reasonable steps" to provide the notice.</u> Benchmark not met if arrangements merely provide that the Retailer: <ul style="list-style-type: none"> will give "notice", without specifying the length of notice. will "try/attempt" to give the required length of notice (although force majeure clause may apply). <u>will take "reasonable steps" to give the required length of notice (this is less than an "all reasonable endeavours" obligation).</u> 	13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours or more than 7 days before disconnection.
13.4. If a dispute resolution under the gas	Benchmark <u>may be</u> met:	13.6. No clear obligation to delay

Benchmark	GIC Interpretation	Issues
supply arrangements has been initiated by the Consumer in regard to the cause of any disconnection, then disconnection action specifically related to that cause must be delayed until after the conclusion of the dispute resolution process or when the dispute resolution processes have been exhausted.	<ul style="list-style-type: none"> if Retailer may still disconnect if dispute is not in good faith or is frivolous or vexatious. <u>if disconnection proceeds where undisputed amounts not paid.</u> <p><u>Benchmark not met if disconnection only delayed for payment disputes.</u></p> <p><u>Benchmark does not require dispute resolution process to have been completed where it is an emergency disconnection or if customer is contesting minor or inconsequential issue.</u></p>	<p>disconnection for dispute resolution relating to the disconnection, <u>where that dispute relates to an invoice or payment of an invoice.</u></p> <p><u>13.8. No clear obligation to delay disconnection for dispute resolution relating to the disconnection, where that dispute relates to an issue other than an invoice or payment of an invoice.</u></p>
13.5. The gas supply arrangements must set out the charges that will apply to disconnection and/or connection and where information on those charges is located, and the circumstances under which the charges will apply.	<p>Benchmark not met:</p> <ul style="list-style-type: none"> by the arrangement merely providing that “charges will apply” if prices are available online, but the online price plan is not referenced in the arrangement if an online price plan is referenced in the arrangement, but the online price plan does not specify disconnection and connection charges. <p>Benchmark met:</p> <ul style="list-style-type: none"> if prices are available online and the price plan is referenced (anywhere) in the arrangement. 	13.7. No clear description of disconnection and reconnection charges.

Benchmark 14 - Clear supply interruption procedures

Benchmark	GIC Interpretation	Issues
14.1. The gas supply arrangements must clearly: (a) describe the circumstances under which supply may be interrupted without prior warning;	Benchmark met with any description of circumstances (assume the description is comprehensive) including “for reasons beyond our control”.	14.1. No clear description of the circumstances in which supply may be interrupted.
(b) provide a minimum notice period before a planned shutdown, which should be no less than four business days unless agreed otherwise with the Consumer; and	<p>Benchmark not met if arrangement merely provides that the Retailer will:</p> <ul style="list-style-type: none"> “give notice” without specifying any time period “give notice where practical” “try to give notice” “use best endeavours to give advance notice” without specifying any time period. <p>Benchmark met if Retailer:</p> <ul style="list-style-type: none"> must give “as much notice as is reasonably practicable” as a typical force majeure clause would excuse delays beyond the Retailer’s control notice period is subject to the network operator or meter owner (whichever is responsible for the shutdown) giving sufficient notice to do so. <p>The phrase “unless agreed otherwise with the Consumer” refers to a case specific agreement and thus reference to a shorter notice period in the arrangement itself is insufficient.</p>	14.2. No clear obligation to give a minimum of 4 <u>business</u> days’ notice of planned shutdowns.
(c) describe the Retailer’s rights and obligations under special or emergency operating situations.	<p>Specifically, this benchmark addresses “critical contingencies” under the Gas Governance (Critical Contingency Management) Regulations 2008. Under these regulations, Retailers must:</p> <ul style="list-style-type: none"> notify each of their Consumers to apply to the Retailer if the Consumer wishes to be classified as an “essential service provider” or “minimal load Consumer” (regulations 44 and 45). In practice, this classification will not be relevant to the vast majority of Consumers on standard gas supply arrangements and the necessary notice may be covered in an application form, in the gas supply arrangement or elsewhere. Accordingly, compliance with this requirement not been assessed for the purpose of compliance with this benchmark during a critical contingency, comply with directions from a transmission system owner given under the regulations (regulation 55(1)) on receiving such a direction, urgently notify each of their Consumers affected by the critical contingency to curtail demand in accordance with the direction (regulation 56(1)). Directions 	<p>14.3. No clear right for the retailer to curtail supply in a critical contingency situation.</p> <p>14.4. No clear obligation for the retailer to urgently notify the consumer <u>to curtail demand during a critical contingency situation, or of supply resumption afterwards a critical contingency.</u></p>

Benchmark	GIC Interpretation	Issues
	<p>for a Consumer to curtail its demand are only of practical relevance for Consumers with very large consumption or agreed “minimum load” requirements. For the purpose of this review, it is assumed that minimum load Consumers are on bespoke agreements. For the Consumers covered by this review it is understood their gas will either be supplied in a contingency or curtailed</p> <ul style="list-style-type: none"> if applicable, urgently notify each of their Consumers affected by the critical contingency that supply has resumed (regulation 56(1)). <p>Accordingly, all arrangements (business or residential) must:</p> <ul style="list-style-type: none"> permit the Retailer to curtail supply in a critical contingency situation. The following phrases meet the benchmark: <ul style="list-style-type: none"> the Retailer may curtail supply to the extent required by law the Retailer does not guarantee supply. require the Retailer to urgently notify the Consumer of supply resumption following a critical contingency situation. A simple statement that the Retailer will “comply with laws” is not sufficient as most Consumers would not be aware of this particular legal requirement. <u>However, it is sufficient to regularly update a fault information line or website.</u> 	
<p>14.2. Provision of information to Consumers</p> <p>The gas supply arrangements must provide information to Consumers on where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.</p>	<p>Benchmark not met unless the information is referred to in:</p> <ul style="list-style-type: none"> the contract a document referred to in the contract. <p>The contract does not need to specify what particular information is contained in a referenced document.</p>	<p>14.5. No clear information about where the consumer may access information about supply interruptions and no obligation that this information will be updated by the retailer as often as is practicable</p> <p><u>14.6 No obligation for the retailer to update (as often as practicable) information regarding supply interruptions.</u></p>

Benchmark 15 - Clear privacy obligations

Benchmark	GIC Interpretation	Issues
	<p>Benchmark applies to residential arrangements and to business arrangements (to the extent personal information is held about individuals in that business).</p>	
<p>15. The gas supply arrangements must provide that the Retailer will comply with the provisions of the Privacy Act 1993, and accordingly the gas supply arrangements must:</p>	<p>Benchmark met by obligation to comply with relevant privacy laws, without mentioning the Act.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> by general obligation to comply with laws if arrangement purports to exclude privacy considerations in relation to personal information obtained from a business. 	<p>15.1. No clear express requirement that retailer will comply with the Privacy Act or relevant privacy laws.</p>
<p>(a) set out the purposes for which the Retailer may collect personal information from the Consumer;</p>	<p>Benchmark not met:</p> <ul style="list-style-type: none"> by a right to use the personal information for any purpose by general obligation on the Retailer to comply with privacy laws by arrangement merely providing that the information will be used for the purpose for which it was collected (without having specified that purpose). 	<p>15.2. The purposes for which the retailer may collect personal information are not set out.</p> <p>15.3. The retailer may use personal information for ANY purpose.</p>
<p>(b) confirm that individuals will be able to access personal information held about them...</p>	<p>Benchmark not met:</p> <ul style="list-style-type: none"> by general obligation on the Retailer to comply with privacy laws by arrangement merely providing that individuals may access telephone recordings of themselves. 	<p>15.4. No clear confirmation that individuals may access their personal information.</p>
<p>...and have the opportunity to correct this information; and</p>	<p>Benchmark not met by general obligation on the Retailer to comply with privacy laws.</p>	<p>15.5. No clear confirmation that individuals are able to correct their personal information.</p>
<p>(c) set out where the Consumer can get information about how the Retailer collects, uses, discloses and stores personal information about the Consumer.</p>	<p><u>Benchmark met if the information is included in the contract.</u></p> <p>Benchmark not met if the information is in an online privacy statement, unless the privacy statement is referred to in the arrangement.</p>	<p>15.6. Not clear where the consumer can obtain information about how the retailer collects, uses, discloses and stores his/her personal information.</p>

Benchmark 16 - Clear retailer liability limitations

Benchmark	GIC Interpretation	Issues
16. Any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable.	<p>The benchmark requires that allocations of financial risk be 'reasonable'. In this case, reasonableness depends on factors such as:</p> <ul style="list-style-type: none"> what financial risks are involved (their impact and likelihood) who is best placed to manage the financial risks (including by way of insurance) what premium has been included in the charges to address the risk. <p>At this stage, Gas Industry Co has not performed a comprehensive analysis of these factors in the retail gas supply market. Until such time as this analysis is performed, an 'exception approach' is to be applied to the assessment of reasonableness. Under this exception approach the reviewers are to assume that an exclusion of liability is not unreasonable and meets the benchmark, except where:</p> <ul style="list-style-type: none"> the contract limits all of the Retailer's liability for all acts or omissions; or the Consumer is asked to indemnify the Retailer from any loss the Retailer may suffer as a result of the gas supply. <p>Gas Industry Co considers that a complete exclusion of all liability and/or requiring a customer to provide a full indemnity is clearly unreasonable, and in some cases may even breach the Consumer Guarantees Act 1993.</p> <p><u>As per previous assessments, this benchmark does not address exclusions to the benefit of Consumers.</u></p>	<p><u>Issues 16.1 to 18.8 relate to gas Industry Co's earlier interpretation.</u></p>
	<p><u>(Complete exclusions of liability include express statements that all liability is excluded and include contractual drafting which, in practice, excludes all retailer liability. For example:</u></p> <ul style="list-style-type: none"> <u>excluding liability for all of the Retailer's obligations;</u> <u>excluding liability for all of the Retailer's core obligations;</u> <u>excluding liability for the acts or omissions of the Retailer's:</u> <ul style="list-style-type: none"> <u>officers, employees or agents, as the retailer can only act through them; or</u> <u>subcontractors, as the core obligations of retailers are usually subcontracted (eg the supply of gas is usually subcontracted to network operators).</u> <p><u>The benchmark may be met where the claim must be lodged within a certain time of the event or damage occurring.</u></p>	<p><u>16.9. The contract expressly excludes all of the retailer's liability.</u></p> <p><u>16.10. The contract in practice excludes all of the retailer's liability.</u></p>
	<p><u>The benchmark is not met where the customer must indemnify the retailer from any loss the retailer suffers as a result of the gas supply. These very broad indemnities have the potential of making customers responsible for loss they did not cause and could not have prevented. They also have the potential of making customers responsible for loss caused by the retailer itself.</u></p>	<p><u>16.11. A broad indemnity may make the customer responsible for loss it did not cause and could not have prevented.</u></p>
	<p>2. Clarity</p> <p>As a consequence of this assessment approach, it is expected that the assessment of clauses limiting liability will primarily focus on whether any such limits are clearly stated.</p> <p><u>Due to the nature of this benchmark, clarity can be assessed in terms of what is likely to be clear to a lawyer, rather than what is likely to be clear to an average consumer. For example, phrases such as "consequential loss", "direct loss" and "indirect loss" may be assessed as clear, as they are likely to be clear to a lawyer (even if not clear to a consumer).</u></p>	<p><u>16.12. The retailer's exclusion of liability is unclear.</u></p>

Benchmark 17 - Clear dispute resolution

Benchmark	GIC Interpretation	Issues
17. The gas supply arrangements must:		
(a) advise Consumers, either directly or by reference to other accessible documents, of the process they should follow, including timelines, to bring a complaint to the Retailer, for resolution directly between the Retailer and the Consumer; and	<p>Arrangement will be marked down not met if:</p> <ul style="list-style-type: none"> Contract procedures inconsistent with internal code of practice Not clear where Consumers should address complaints to Individual Consumers must appoint person from within their "organisation". <p><u>Benchmark met if there is no express timeline for lodging a complaint.</u></p>	<p>17.1. Some issues with internal complaints procedure.</p> <p>17.2. No internal dispute resolution scheme.</p>

Benchmark	GIC Interpretation	Issues
	<u>as the complaint may then be raised at any time.</u>	
(b) advise Consumers that complaints not resolved to their satisfaction may be taken to the scheme approved under the Gas Act 1992.	<p>Benchmark requires reference to:</p> <ul style="list-style-type: none"> “the Electricity and Gas Complaints Commission scheme” “an independent dispute resolution scheme approved under the Gas Act”. <p>Benchmark not met by:</p> <ul style="list-style-type: none"> reference to “any independent complaints resolution process” offered by the Retailer a restriction of the time within which the Consumer may refer the matter to the EGCC for investigation, <u>which is contrary to the rules of the scheme.</u> 	<p>17.3. No clear reference to EGCC complaints scheme.</p> <p>17.4. The time within which the consumer may refer the matter to the EGCC complaints scheme is limited in <u>a manner which is contrary to the rules of the scheme.</u></p>

Benchmark 18 - Clear communication

Benchmark	GIC Interpretation	Issues
<p>Consumers to Retailers</p> <p>18.1. The gas supply arrangements must provide advice to the Consumer on practicable and effective means for the Consumer to communicate with the Retailer on any issues over which they have concerns or need information.</p>	Not met by contact information on a website, as the information must be contained in the arrangement.	18.1. No clear advice on how the consumer can communicate with the retailer.
<p>Retailers to Consumers</p> <p>18.2. The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer...</p>	This benchmark relates to general notices, not specifically addressed in other benchmarks.	18.2. No clear description of how the consumer will generally be notified by the retailer.
...and must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated and not through public notices.	Assess this benchmark together with benchmark 5 (Changes to gas supply arrangements) and benchmark 8(b) (Clear price increases).	

Attachment 2: Documents reviewed

The following table lists the documents reviewed in this assessment. The documents are listed in alphabetic order, by retailer name.

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
Bay of Plenty Energy	Terms of Supply http://www.bope.co.nz/apply/standard_terms.php	PDF: http://www.bope.co.nz/documents/apply_form.pdf Online: http://www.bope.co.nz/apply/form.php	Not available on website.	No separate privacy policy.	Complaints Process http://www.bope.co.nz/complaints/index.php
Contact Energy	Standard Residential and Business Terms effective from 1 October 2012 http://www.contactenergy.co.nz/web/pdf/legal/cen-res-and-bus-terms-and-conditions.pdf	Residential automated form https://www.contactenergy.co.nz/web/houseMovers?vert=fh Business automated form https://www.contactenergy.co.nz/web/joinContact?siGnUpType=bus&vert=sb	Residential automated price plans http://www.contactenergy.co.nz/web/supplyMap?display=pricing&vert=fh Businesses need to call Contact for their plan https://www.contactenergy.co.nz/web/business/pricing?vert=sb Service fees http://www.contactenergy.co.nz/web/findoutabout/servicefees?vert=fh	No separate privacy policy.	SmoothPay Terms and Conditions http://www.contactenergy.co.nz/web/pdf/legal/smoothpay_terms_and_conditions.pdf Dual Energy terms and conditions http://www.contactenergy.co.nz/web/pdf/legal/StandardDualEnergyTermsandConditionsJan2010.pdf Residential switching http://www.contactenergy.co.nz/web/pdf/legal/switching_terms_and_conditions.pdf Complaints Process http://www.contactenergy.co.nz/web/view?page=/contentiw/pages/shared/complaintsprocedure&vert=fh SME complaints process http://www.contactenergy.co.nz/web/shared/complaintsprocedure?vert=sb

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
Energy Direct	Residential Customer Supply Agreement http://www.energydirectnz.co.nz/PDF/customer-supply-form.pdf	Residential application form http://www.energydirectnz.co.nz/PDF/res-application.pdf	Residential pricing, by region http://www.energydirectnz.co.nz/home-service-fees.html Service fees http://www.energydirectnz.co.nz/PDF/OCT2010-prices/EDNZ_Combined_Service_Fee_Schedule_Oct_2010.pdf	No separate privacy policy.	Making a complaint http://www.energydirectnz.co.nz/making-a-complaint.html Handling Customer Complaints Code of Practice http://www.energydirectnz.co.nz/PDF/handling_customers.pdf Paying your Energy Account Code of Practice http://www.energydirectnz.co.nz/PDF/paying_your_bills.pdf
	Standard Business Customer Supply Agreement http://www.energydirectnz.co.nz/PDF/business-supply-form.pdf	Business application http://www.energydirectnz.co.nz/PDF/bus-application.pdf	Business pricing on request http://www.energydirectnz.co.nz/bus-service-fees.html Service fee: as above.	No separate privacy policy.	
Energy Online	Energy Online Standard Terms and Conditions of Supply of Energy: http://www.energyonline.co.nz/terms	Online application http://www.energyonline.co.nz/home/join_us/online_signup_form	Schedule of fees residential http://www.energyonline.co.nz/residential/schedule_of_fees Schedule of fees business http://www.energyonline.co.nz/business/schedule_of_fees Schedule of fees farming http://www.energyonline.co.nz/farming/schedule_of_fees	Privacy policy: http://www.energyonline.co.nz/home/site_map/privacy_policy	Complaints (residential): http://www.energyonline.co.nz/residential/when_things_go_wrong Complaints (business): http://www.energyonline.co.nz/business/when_things_go_wrong
Genesis Energy	Genesis Energy Terms and	Online residential	Residential pricing plans:	http://www.genesisenergy.co.nz/privacy-policy	

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
	<p>Conditions</p> <p>http://www.genesisenergy.co.nz/genesis/second-level-nav\$/terms-&-conditions/en/genesis-energy-terms-and-conditions.cfm</p> <p>As above.</p>	<p>https://www.genesisenergy.co.nz//genesis/for-home/join-us/join-us_home.cfm?&CFID=3464161&CFTOKEN=74002898</p> <p>Online business</p> <p>https://www.genesisenergy.co.nz/genesis/for-business/join-us/join-us_home.cfm</p>	<p>http://www.genesisenergy.co.nz/genesis/for-home/pricing-plans/see-our-electricity-and-gas-pricing-plans\$.cfm</p> <p>Business pricing on request</p> <p>http://www.genesisenergy.co.nz/genesis/for-business/pricing-plans/pricing-plans_home.cfm</p>	<p>co.nz/genesis/index.cfm?C2B40BF5-CB34-B897-04B6-A58D445ECE42</p>	
Mercury	<p>Standard Residential Terms and Conditions From 1July 2012</p> <p>http://www.mercury.co.nz/Terms-Conditions/Residential-Terms-and-Conditions-as-of-July-1,-201.aspx</p>	<p>Online application</p> <p>https://www.mercury.co.nz/forms/services.aspx?action=join</p>	<p>Electricity and gas plans:</p> <p>http://www.mercury.co.nz/Home/Products.aspx</p>	<p>No separate privacy policy.</p>	<p>Complaints:</p> <p>http://mercury.custhelp.com/app/answers/detail/a_id/325/kw/complaints</p>
	<p>Standard Commercial Terms and Conditions for Gas</p> <p>http://www.mercury.co.nz/Terms-Conditions/Commercial-gas.aspx</p>	<p>None – see pricing estimate request form.</p>	<p>Pricing structure options:</p> <p>http://www.mercury.co.nz/For-your-Business/Pricing-options.aspx</p> <p>Pricing estimate request:</p> <p>http://www.mercury.co.nz/For-your-Business/Get-a-pricing-estimate.aspx</p> <p>Service fees:</p> <p>http://www.mercury.co.nz/servicefees.aspx</p>	<p>No separate privacy policy.</p>	
Nova Energy	<p>Standard Terms Residential Gas and Electricity Supply</p> <p>http://www.novaenergy.co.nz/?q=node/53</p>	<p>Online residential and commercial</p> <p>http://www.novaenergy.co.nz/join-nova-energy</p> <p>Residential Application</p>	<p>Regional price plans</p> <p>http://www.novaenergy.co.nz/gas-electricity-prices</p>	<p>No separate privacy policy.</p>	<p>http://www.novaenergy.co.nz/dual-energy-advantage</p> <p>Complaints:</p> <p>http://www.novaenergy.co.nz/we-are-here-help</p>

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
		Form http://www.novaenergy.co.nz/forms/nova_energy_application_residential.pdf			
	Standard Terms For Commercial Gas & Electricity Supply http://www.novaenergy.co.nz/node/52	Online residential and commercial http://www.novaenergy.co.nz/join-nova-energy Commercial Application Form http://www.novaenergy.co.nz/sites/default/files/uploads/images/commercial_gas_elec_a.pdf	As above	No separate privacy policy.	As above

Attachment 3: Issues by arrangement

This Attachment lists all of the different types of failures to align with the benchmarks (referred to as “issues”) and which gas supply arrangements contain each issue.

Alignment Issues	Retailer									
	BoPE	Contact	ED - Res	ED - Bus	Genesis Energy	Energy Online	Mercury - Res	Mercury - Bus	Nova - Res	Nova - Bus
1. Clear supply commencement										
1.1. Not clear when gas supply will commence.			x					x		
1.2. Not clear that, where the arrangement is completed after the retailer has begun supplying gas to the consumer, the arrangement commences from date that gas was first supplied by the retailer to the consumer.										x
2. Clear safety information										
2.1. No clear description of how consumers can turn off their gas supply in an emergency.			x	x			x	x		x
2.2. No clear information about, or procedures for, reconnection after an emergency.	x		x	x			x	x	x	x
3 Clear consumer exit rights (open term)										
3.1. There are restrictions on the circumstances in which the consumer can terminate an open term arrangement.										
3.2. Following termination of an open term arrangement, the charges only cease on a date agreed by the retailer.										
3.3. The consumer's ability to terminate an open term arrangement subject to an unnecessary delay.										
3.4. The consumer can't switch to an alternative retailer, unless the current retailer is unwilling to match the alternative retailer's offer.										
3.5. The consumer is subject to penalty fees on termination of an open term arrangement.										
3.6. The retailer can continue its daily fixed charge until gas is disconnected or decommissioned.	x				x	x		x	x	
4 Clear consumer exit rights (fixed term)										
4.1. Consumer can't switch to an alternative retailer at the end of the term, unless the current retailer is unwilling to match the alternative retailer's offer.										x
4.2. Contract automatically rolls over for same fixed term, unless prior notice is given.										x
4.3. Not clear whether or not the consumer can terminate before fixed expiry date.	x								x	
4.4. No clear basis on which early termination charge will be calculated.	x								x	

Alignment Issues	Retailer									
	BoPE	Contact	ED - Res	ED - Bus	Genesis Energy	Energy Online	Mercury - Res	Mercury - Bus	Nova - Res	Nova - Bus
5. Clear contract variation procedures (non-price)										
5.1. Non-price terms of the arrangement can be changed on less than 30 days' notice.										
5.2. Non-price terms of the arrangement can be changed without notice.										x
5.3. No clear requirement that material changes in terms of the arrangement will be directly communicated to the consumer, not through public notice.					x	x	x	x		x
5.4. Consumer has no right to terminate a fixed term contract following a variation by the retailer.										x
6. Clear supply obligations										
6.1. No obligation on the retailer to supply gas.										
6.2 Some ambiguity in the retailer's obligation to supply gas.										
6.3. No clear requirement to meet regulatory quality standards.										
6.4. No clear description of the point to which gas will be supplied.										x
7. Clear supply restoration procedures										
7.1. No clear description of how the retailer will respond to supply interruptions.										
7.2 No clear mention of payments (if any) to the consumer for service disruption.			x	x	x	x				x
7.3 No clear statement that the consumer's redress for service disruption are in addition to rights under Consumer Guarantees Act.										
8. Clear price increases										
8.1. Length of notice of price increases less than 30 days.							x	x		x
8.2. No clear method of notifying price increases.										x
8.3. Where a price increase is more than 5%, no clear requirement to send separate notice of the increase to the consumer.			x	x						
8.4. No clear requirement to state reasons for a price increase when providing notice of the increase.			x	x			x			x
9. Clear pricing information										
9.1. No clear reference to relevant prices or pricing schedule.	x	x					x	x		x
9.2. The extent of some charges are too open ended.				x						

Alignment Issues	Retailer									
	BoPE	Contact	ED - Res	ED - Bus	Genesis Energy	Energy Online	Mercury - Res	Mercury - Bus	Nova - Res	Nova - Bus
9.3. No clear explanation of how estimates will be calculated.			x	x				x		
9.4. No clear explanation of the process that will be used for correcting estimates.			x	x						x
9.5. No clear provision that retailer will promptly refund or credit any over charge.										
9.6. No clear provision that the retailer may invoice the consumer for previous under charging.										
9.7. No clear statement of the term limits applying to the recovery of previous under charging.		x		x	x	x	x			x
9.8. No clear explanation of how payment options operate.										
9.9. No clear description of any additional costs associated with providing, correcting, changing or removing metering equipment.										
9.10. No clear process to follow if consumer suspects meter is reading incorrectly.										
9.11. No clear method for calculating adjustments if meter found to be faulty.										
10. Clear bond obligations										
10.1. The retailer is not required, in each case, to give reasons for requiring bonds.			x							
10.2. Not clear how long bonds may be kept for.										
10.3. Bond may be kept for longer than 12 months, and reasons for doing so are not clear.										
10.4. Not clear how bonds are refunded.	x								x	
10.5. Not clear if interest is payable by the retailer on bonds.										
11. Clear consumer site responsibilities										
11.1. Consumer's site responsibilities not clear.										
11.2. Consumer is required to provide certification in relation to the RETAILER'S equipment at the consumer's site.			x	x						
11.3. Rights of retailer to access consumer premises unclear.										
11.4. No clear consequences stated for consumer for not granting access to their premises.			x	x						x
11.5. Consumer responsibility for protecting metering equipment is not described or is unclear.										
12. Clear metering obligations										

Alignment Issues	Retailer								
	BoPE	Contact	ED - Res	ED - Bus	Genesis Energy	Energy Online	Mercury - Res	Mercury - Bus	Nova - Res
12.1. Not clear who has responsibility for providing the meter.									
12.2. Not clear who has responsibility for maintaining the meter.									
12.3. No clear description of the frequency in which the retailer will read meters.									
12.4. Frequency of meter reading not consistent with the retailer's legal obligations.				x				x	x
12.5. Requirement to ensure metering is in accordance with relevant industry standards and codes of practice is not described or is unclear.									x
13. Clear disconnection process									
13.1. No clear grounds on which the retailer can disconnect.									
13.2. No clear requirement for disconnection notices to state the actions consumers can take to avoid disconnection.			x	x					x
13.3. Retailer can disconnect a consumer's gas supply for non-payment of non-gas invoices.		x	x	x	x	x	x	x	x
13.4. No clear obligation, except for emergency disconnections, to give 7 days' warning of disconnection, allowing a further 3 days for delivery.	x	x	x	x	x	x	x	x	x
13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours before disconnection.	x		x	x	x	x		x	x
13.6. No clear obligation to delay disconnection for payment dispute.			x	x					x
13.7. No clear description of disconnection and reconnection charges.	x								x
13.8. No clear obligation to delay disconnection for dispute resolution relating to the disconnection, where that dispute relates to an issue other than an invoice or payment of an invoice.	x	x	x	x	x	x	x	x	x
14. Clear supply interruption procedures									
14.1. No clear description of the circumstances in which supply may be interrupted.									
14.2. No clear obligation to give a minimum of four business day's notice of planned shutdowns.			x	x					x
14.3. No clear right for the retailer to curtail supply in a critical contingency situation.									
14.4. No clear obligation on the retailer to urgently notify the consumer of supply resumption after a critical contingency situation.			x	x				x	x
14.5. No clear information about where the consumer may access information about supply interruptions.			x	x				x	x
14.6 No obligation for the retailer to update (as often as practicable) information regarding supply interruptions.			x	x				x	x

Alignment Issues	Retailer									
	BoPE	Contact	ED - Res	ED - Bus	Genesis Energy	Energy Online	Mercury - Res	Mercury - Bus	Nova - Res	Nova - Bus
15. Clear privacy obligations										
15.1. No clear express requirement that retailer will comply with the Privacy Act or relevant privacy laws.			x	x						x
15.2. The purposes for which the retailer may collect personal information are not set out.			x	x						x
15.3. The retailer may use personal information for ANY purpose.										
15.4. No clear confirmation that individuals may access their personal information.		x								x
15.5. No clear confirmation that individuals are able to correct their personal information.		x								x
15.6. Not clear where the consumer can obtain information about how the retailer collects, uses, discloses and stores his/her personal information.	x		x	x			x	x	x	x
16. Reasonable retailer liability limitations										
16.9. The contract expressly excludes all of the retailer's liability.										
16.10. The contract in practice excludes all of the retailer's liability.				x						
16.11. A broad indemnity may make the customer responsible for loss it did not cause and could not have prevented.		x		x						
16.12. The retailer's exclusion of liability is unclear.		x		x						
17. Clear dispute resolution										
17.1. Some issues with internal complaints procedure.										x
17.2. No internal dispute resolution scheme.										
17.3. No clear reference to EGCC complaints scheme.				x						
17.4. The time within which the consumer may refer the matter to the EGCC complaints scheme is limited										
18. Clear communication										
18.1. No clear advice on how the consumer can communicate with the retailer.								x		
18.2. No clear description of how the consumer will generally be notified by the retailer.			x							x

Attachment 4: Alignment landscape

This Attachment shows the level of alignment on a scale of full (being the best), substantial, moderate, low and none (being the worst) for each gas supply arrangement against each benchmark in 2012, and then the overall alignment of all arrangements in the 2012, 2011 and 2010 assessments:

2012 Landscape	BoPE	Contact	Energy Direct - Residential	Energy Direct - Business	Energy Online	Genesis	Mercury - Residential	Mercury - Business	Nova - Residential	Nova - Business	2012 Overall	2011 Overall	2010 Overall
1. Clear supply commencement	Full	Full	Low	Full	Full	Full	Full	Low	Full	Moderate	Substantial	Moderate	Moderate
2. Clear safety information	Low	Full	None	None	Full	Full	None	None	Low	None	Low	Low	None
3. Clear consumer exit rights (open term)	Substantial	Full	N/A	N/A	Substantial	Substantial	Full	Substantial	Substantial	N/A	Substantial	Moderate	Moderate
4. Clear consumer exit rights (fixed term)	N/A	N/A	Full	Full	N/A	N/A	N/A	N/A	Moderate	Low	Substantial	Substantial	Moderate
5. Clear contract variation procedures (non-price)	Full	Full	Full	Full	Moderate	Moderate	Moderate	Moderate	Full	None	Moderate	Moderate	Moderate
6. Clear supply obligations	Full	Full	Full	Full	Full	Full	Full	Full	Full	Moderate	Substantial	Substantial	Substantial
7. Clear supply restoration procedures	Full	Full	Substantial	Substantial	Substantial	Substantial	Full	Full	Full	Substantial	Substantial	Moderate	Moderate
8. Clear price increases	Full	Full	Low	Low	Full	Full	Low	Moderate	Full	Low	Moderate	Moderate	Low
9. Clear pricing information	Moderate	Moderate	Moderate	Moderate	Substantial	Substantial	Moderate	Moderate	Full	Low	Moderate	Moderate	Moderate
10. Clear bond obligations	Moderate	Full	Moderate	N/A	Full	Full	Full	Full	Moderate	N/A	Substantial	Moderate	Moderate
11. Clear consumer site responsibilities	Full	Full	Moderate	Moderate	Full	Full	Full	Full	Full	Substantial	Substantial	Substantial	Substantial
12. Clear metering obligations	Full	Full	Full	Moderate	Full	Full	Full	Moderate	Full	Low	Substantial	Moderate	Moderate
13. Clear disconnection process	Moderate	Substantial	Low	Low	Moderate	Moderate	Substantial	Moderate	Moderate	Low	Moderate	Low	Low
14. Clear supply interruption procedures	Full	Full	Low	Low	Full	Full	Full	Moderate	Full	Low	Substantial	Moderate	Moderate
15. Clear privacy obligations	Substantial	Moderate	Low	Low	Full	Full	Substantial	Substantial	Substantial	None	Moderate	Moderate	Moderate
16. Reasonable retailer liability limitations	Full	Low	Full	Low	Full	Full	Full	Full	Full	Full	Substantial	Low	Low
17. Clear dispute resolution	Full	Full	Full	Low	Full	Full	Full	Full	Full	Substantial	Substantial	Moderate	Moderate
18. Clear communication	Full	Full	Low	Full	Full	Full	Full	Moderate	Full	Low	Substantial	Moderate	Moderate
Arrangement average rating	Substantial	Substantial	Moderate	Moderate	Substantial	Substantial	Substantial	Moderate	Substantial	Low	Substantial	Moderate	Moderate
Issues of particular concern	1	0	2	3	1	1	0	1	1	2	12	18	25
Total number of issues	11	9	25	29	8	8	11	18	10	37	166	271	351

When considering the levels of alignment, please note some of the alignment issues are due merely to technical drafting issues.