



**Recommendation to the Minister of Energy
on Regulations for Enforcement of
Switching Arrangements**

31 May 2007

Table of Contents

1 Purpose.....1

2 Background.....1

3 Analysis2

4 Process to Establish Regulations4

5 Statement of Proposal8

6 Assessment9

7 Consultation.....13

8 Potential Risks16

9 Consideration of Regulatory Objective17

10 Consultation with MED18

11 Communications18

12 Recommendation19

Appendices.....20

Appendix 1: Summary of proposal21

Appendix 2: Assessment of options and design of compliance arrangements25

Appendix 3: Assessment of costs and benefits of the proposal40

Appendix 4: Extent to which proposal meets regulatory objective43

Appendix 6: List of stakeholders for consultation48

Appendix 7: Notice for Gazette.....50

Appendix 8: Notice for website.....51

Appendix 9: Regulations52

1 Purpose

Gas Industry Co recommends a tailor made regime for the reporting, investigation and determination of breaches of the Gas (Switching Arrangements) Rules 2007 (the “Switching Rules”). This will ensure a high level of compliance with the Switching Rules leading to a greater confidence that the benefits of the new switching arrangements will be realised, and more efficient and fair outcomes for consumers achieved.

In this recommendation Gas Industry Co proposes the enactment of new Gas (Compliance) Regulations 2007 (the “Regulations”) to provide for compliance with, and enforcement of the Switching Rules. In particular, it is proposed the Switching Rules be enforced by a Rulings Panel.

2 Background

The Government Policy Statement on Gas Governance (the “GPS”) invites Gas Industry Co to recommend arrangements, including regulations and rules where appropriate, for the standardisation and upgrading of protocols relating to customer switching, so that barriers to customer switching are minimised.

In response to the Government’s desire to minimise barriers to customer switching and to improve outcomes for consumers, Gas Industry Co has undertaken a review of switching arrangements for retail gas customers in New Zealand. This has built upon a broad industry acknowledgement of the inefficiency and sub-optimal performance of the current switching arrangements.

This review has lead to a Recommendation to the Minister of Energy on Switching Arrangements for the New Zealand Gas Industry (the “Switching Recommendation”) recommending rules which provide for arrangements that will:

- establish a central gas registry as a database of record for all data required to undertake a switch of a customer between gas retailers;
- standardise data exchange protocols across the industry so that switching is effected efficiently and correct data is communicated to all affected parties in a timely manner;
- provide timely and efficient switching processes to consumers and all other participants, providing certainty and enforceability to the industry;
- ensure customer installation data is up to date across the industry enabling more accurate billing of customers and more accurate cost allocations between industry participants; and
- set rules for the operation of the central gas registry.

The proposed Switching Rules will be mandatory on all parties required to effect a switch of a customer between gas retailers.

In conjunction with reviewing switching arrangements, Gas Industry Co has reviewed possible options for a compliance regime to enforce the Switching Rules.

At present, the industry depends on Maui Development Limited (“MDL” as owner of the Maui transmission line) and Vector Limited (“Vector”) (as owner of the Vector transmission pipelines) to enforce existing pan-industry arrangements relating to the transportation of gas. In effect, MDL and Vector require parties who wish to ship gas across their pipelines, or physically connect to their pipelines, to enter contracts that incorporate a range of standard terms, including some industry agreed codes and protocols.

Under these arrangements, enforcing the codes and protocols against non-compliant parties essentially involves either MDL or Vector taking action for breach of contract and demonstrating specific damages. The incentives of either of these parties to take action against their customers for the benefit of other customers are weak. Actions between switching parties to enforce compliance of the switching arrangements are problematic because of the lack of direct contractual nexus or any industry governance structure to support and enforce compliance. This is one of a number of factors identified in the current switching arrangements which contribute to them not achieving the GPS objective.

3 Analysis

3.1 Need for regulations

Gas Industry Co considers that the GPS objectives are more likely to be achieved if the full benefits of the Switching Rules are realised. A compliance regime which incentivizes and provides for a high level of compliance with the Switching Rules is required to ensure these benefits are realised.

A compliance regime that is essentially a continuation of the existing participant enforcement regime, with or without rights for consumers or other parties to enforce rules, is unlikely to result in high compliance with the Switching Rules and in turn unlikely to deliver on the relevant GPS objectives.

The Act includes a range of provisions relating to investigative powers, establishment of a Rulings Panel, orders that may be imposed by the enforcing body, and appeal and review rights. These provisions contemplate a minimal compliance regime being established under the Act to support the new switching arrangements and achieve the principal objectives of the Act.

3.2 Work undertaken

a) *Consultation Paper*

In April 2006 Gas Industry Co issued a Consultation Paper titled “*Compliance and Enforcement Arrangements in the New Zealand Gas Industry*” which set out Gas Industry Co’s review of compliance and enforcement arrangements for consideration by stakeholders.

The review undertaken by Gas Industry Co outlined:

- the legal framework under the Act;
- the objective for compliance and enforcement arrangements;
- the assessment criteria for evaluating options for a compliance regime;

- the necessary functions for a compliance regime and the possible bodies to undertake these functions;
- an evaluation of the options, from voluntary compliance with enforcement of contractual terms at the election of the parties (the status quo), through to a very comprehensive compliance regime including monitoring and surveillance, against the assessment criteria; and
- the preferred compliance model.

The assessment criteria Gas Industry Co used to evaluate the options were: meet the statutory objectives, credibility, efficiency, timeliness, expertise in decision making, and cost effectiveness and scalability. In developing the preferred option cost efficiencies were identified where possible.

The potential options were analysed against the regulatory objective set by Gas Industry Co being:

“to provide a high degree of confidence that the proposed switching rules will be adhered to, and thereby contribute to the better achievement of the Government’s policy objectives for the retail sector of the gas industry.”

Consideration of the regulatory objective is set out in section 9 of this recommendation.

b) Decision Paper on Modified Model

After consideration of the submissions on the Consultation Paper, in July 2006 Gas Industry Co issued a Decision Paper titled “*Decision Paper on Modified Model for Compliance and Enforcement Arrangements for Retail Gas Market Registry and Switching*” and then held an industry workshop to explain the modified compliance model to the industry.

c) Statement of Proposal

Gas Industry Co issued two statements of proposal for the purposes of sections 43L and 43N (2) of the Act in August 2006. The statements of proposal comprised two documents designed to be read in conjunction with each other. Part 1 related to switching arrangements for the New Zealand gas industry and proposed switching rules (the “Switching Proposal”). Part 2 related to compliance and enforcement arrangements, in the form of regulations, to support the proposed switching arrangements and was titled “*Switching Arrangements for the New Zealand Gas Industry - Part 2 Compliance and Enforcement Arrangements 18 August 2006*” (the “Statement of Proposal”).

An industry workshop was held in September 2006 to allow Gas Industry Co to explain the proposed rules and regulations, and give industry stakeholders the opportunity to understand and discuss them prior to completing their submissions.

d) Decision Paper on Switching and Compliance

The proposal was amended to take into account submissions received on the switching and compliance proposals.

Gas Industry Co also identified an issue arising from its own re-appraisal of the arrangements which required further analysis and consultation with industry stakeholders. This related to the extent to which the Registry Operator¹ would be bound under the Regulations.

In January 2007 Gas Industry Co released a decision paper to industry stakeholders informing them of the decisions taken on their submissions to the switching and compliance proposals titled “*Decision Paper Switching and Compliance*”.

This paper invited industry stakeholders to make detailed submissions on the content of the Regulations and further stakeholder input was sought on the amendment to the proposal in respect of coverage of the Registry Operator. That further input resulted in no changes to the Regulations.

3.3 Conclusion

The Act anticipates the creation of a compliance and enforcement regime to support gas governance arrangements.

The regulatory objective of a high level of compliance with the Switching Rules will help to achieve the net benefits of the switching arrangements set out in the Switching Proposal, including efficient switching and tracking of switches, minimising delays in customer switching, and providing more accurate bills leading to less problems for customers switching between suppliers. The result should be more efficient and fair outcomes for consumers.

After following the processes outlined above the conclusion reached by Gas Industry Co is that the only reasonably practicable option to achieve the regulatory objective of a high level of compliance with the Switching Rules is to recommend Regulations to support the Switching Rules.

4 Process to Establish Regulations

4.1 Power to regulate

a) Power to make regulations for compliance and enforcement

The specific powers in the Act which allow the Minister to recommend regulations in respect of retail and customer issues to ensure effective outcomes for customers are described in the Switching Recommendation.

Section 43G of the Act provides that the Minister of Energy can recommend to the Governor-General the making of regulations for the purpose of:

¹ The Registry Operator is the service provider appointed by the industry body to establish, maintain and operate the central gas registry.

“Providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court.”

“Providing procedures for resolving disputes between industry participants; providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person.”

b) Specific provisions relating to enforcement and compliance

Subpart 1 of Part 4A of the Act sets out a broad framework for enforcing compliance with any gas governance rules and regulations made pursuant to Part 4A. The provisions within the Act:

- contemplate that a Rulings Panel² might be established;
- include limits on investigation powers for monitoring and enforcing compliance with gas governance regulations and rules, obligations on industry participants to co-operate with any investigation, and privileges protection (sections 43U to 43W);
- contain a list of the orders that the Rulings Panel can make (sections 43X and 43Y);
- impose limits on tort claims against service providers (section 43Z); and
- establish rights of judicial review and appeal to the Courts (sections 43ZA to 43ZJ).

c) Supplementary powers

In addition, section 43S of the Act includes supplementary empowering provisions applying to any regulation or rule made under Subpart 1 of Part 4A of the Act (which includes rules or regulations for switching arrangements). Those provisions include the ability for rules or regulations to:

- “(a) provide for 1 or more persons or bodies or groups of persons to carry out functions in relation to those regulations or rules, and for matters concerning their establishment, constitution, functions, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration and operation, funding by participants, and reporting requirements:*
- (b) provide for systems, processes and procedures (including dispute resolution procedures), and the keeping, supply and disclosure of information, in relation to any matters specified in this subpart:*
- (c) prescribe the form and manner in which information is to be disclosed:*
-*
- (e) prescribe when and for how long information must be disclosed:*

² A Rulings Panel is defined in s43D as “any Rulings Panel established under gas governance regulations”. Whilst the Act contemplates a Rulings Panel, the identity of the decision maker could be Gas Industry Co or any other person or court.

- (f) *exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements in regulations or rules made under this subpart:*
- (g) *provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:*
- (h) *provide for transitional provisions:*
- (i) *provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.”*

d) Conclusion

Gas Industry Co considers that the Act provides sufficient power for the Governor-General to make the Regulations which are the subject of this recommendation.

4.2 Requirements when recommending rules or regulations

a) Section 43L consultation

Prior to Gas Industry Co recommending rules or regulations to the Minister of Energy under the Act, it must first comply with section 43L(1) of the Act. That section requires Gas Industry Co to:

- “(a) undertake an assessment under section 43N; and*
- (b) consult with persons the recommending body thinks are representative of the interests of persons reasonably likely to be substantially affected by the proposed regulations; and*
- (c) give those persons an opportunity to make submissions; and*
- (d) consider those submissions.”*

A summary of the consultation undertaken by Gas Industry Co is set out in section 7 below.

b) Section 43N(1) assessment

The assessment under section 43N(1) of the Act requires Gas Industry Co to:

- “(a) seek to identify all reasonably practicable options for achieving the objective of the regulation; and*
- (b) assess those options by considering-*
 - (i) the benefits and costs of each option; and*
 - (ii) the extent to which the objective would be promoted or achieved by each option; and*
 - (iii) any other matters that the industry body or the Commission considers relevant; and*

- (iv) *ensure the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance); and*
- (c) *prepare a statement of proposal for the purpose of consultation under section 43L(1)."*

A summary of Gas Industry Co's identification and assessment of the options for compliance arrangements is set out in section 6 below.

c) Section 43N(2) Statement of Proposal

A statement of proposal must, under section 43N(2) of the Act, contain:

- "(a) a detailed statement of the proposal; and*
- (b) a statement of the reasons for the proposal; and*
- (c) an assessment of the reasonably practicable options, including the proposal, identified under subsection (1); and*
- (d) other information that the industry body or the Commission considers relevant."*

A summary of the Statement of Proposal in respect of compliance arrangements is set out in section 5 below.

d) Conclusion

Gas Industry Co considers that it has complied with all of the requirements of sections 43L and 43N of the Act.

4.3 Rules or regulations

Section 43Q(1) of the Act allows the Minister of Energy to make a rule for all or any of the purposes for which a gas governance regulation may be made. In deciding whether to make a recommendation for a rule, the Minister must have regard to only:

- "(a) the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals;*
- (b) the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle;*
- (c) the application of the rule, including:*
 - (i) whether the rule applies principally to a particular group (e.g. industry participants) rather than the general public;*
 - (ii) whether the benefits of publication in accordance with section 43R rather than the Acts and Regulations Publication Act 1989 outweigh the costs of publication by that method;*
- (d) the expertise and rule-making procedures of the recommending body."*

Gas Industry Co considers that the proposed compliance and enforcement arrangements are important in that they:

- govern the rights of individuals in respect of the imposition of remedies;
- govern investigative powers and obligations to co-operate with investigations, including a right of entry into industry participants premises, as specified by the Act;
- govern the possible remedies, including compensation, available to a consumer affected by a participant's breach of the rules, as specified by the Act; and
- create a dispute resolution body defined by the Act.

Given that the subject matter of the Regulations:

- contain matters of general principle in the determination of rule breaches and disputes rather than technical or detailed matters;
- govern how disputes between industry participants will be resolved, and the integrity of the rules maintained; and
- have a wider application than industry participants (as consumers and other affected persons including the Gas Industry Co have a right to report rule breaches);

Gas Industry Co has recommended that the compliance and enforcement arrangements should be implemented by way of regulations rather than rules.

4.4 Publication of notice in Gazette

Gas Industry Co must, no later than 10 working days after it gives a recommendation to the Minister for a gas governance regulation, publicise that recommendation and the assessment completed under section 43N. Publication requires that the recommendation must be made available on Gas Industry Co's website and notified in the Gazette.

5 Statement of Proposal

As required by the Act, the Statement of Proposal contained a detailed statement of the proposal (which is a summary of the Regulations); a statement of the reasons for the proposal; an assessment of the reasonably practicable options, including the proposal; and, confirmation that there is no other information that Gas Industry Co considers relevant.

The reasons for the proposal were that the:

- continuation of the status quo (bilateral contracting with enforcement via the court system) or a voluntary compliance regime does not meet the regulatory objective, as it does not ensure compliance with, nor protect the integrity of, the proposed switching arrangements; and
- a regulation or rules based compliance regime is required to meet the regulatory objective.

Gas Industry Co's view is that:

- the most comprehensive regime (including proactive surveillance, monitoring and auditing) is too costly at this time;

- a properly scoped moderately comprehensive regime which provides pragmatic and efficient resolution of breaches would best meet the regulatory objective; and
- although many variations of a moderately comprehensive compliance regime are possible, Gas Industry Company considers the proposal strikes the appropriate balance between cost effectiveness and comprehensiveness.

The proposal is to establish a compliance and enforcement regime for the reporting, investigation and determination of breaches of the Switching Rules.

The key features of this compliance regime are as follows:

- Registry participants, consumers, and Gas Industry Co may report breaches of the Switching Rules;
- the Registry Operator must report observed breaches of the Switching Rules;
- a Market Administrator will be appointed to receive breach notices, provide a filter so that breach allegations that do not raise material issues are not automatically referred to investigation process and the Rulings Panel; provide a pragmatic, fast and efficient resolution service for complaints that do not raise material issues; refer complaints that do raise material issues or are unresolved to investigators for investigation; but will not have any proactive monitoring or surveillance function;
- Investigators shall be appointed on a case by case basis by the Market Administrator to investigate material or unresolved immaterial breaches, exercise the investigative powers conferred under the Act, endeavour to settle the matter, and refer settlements and unresolved breaches to the Rulings Panel;
- a one member Rulings Panel (who may be aided by industry experts approved by Gas Industry Co) which approves or rejects settlements, determines unresolved breaches and orders remedies as provided under the Act; and
- Gas Industry Co is the market administrator (with the power to appoint another person to perform this role), with the power to appoint Investigators, the Rulings Panel, and select industry experts.

The benefits of the proposal are a high level of compliance with the Switching Rules in order to realise the net benefits derived from implementation of the Switching Rules, including more efficient and fair outcomes for consumers.

The proposal has been amended from that described in the Statement of Proposal to incorporate the changes resulting from the consultation process.

A summary of the proposal is set out in Appendix 1.

6 Assessment

Section 43N of the Act requires that, before making a recommendation to the Minister, Gas Industry Co must seek to identify all reasonably practicable options for achieving the objective of the Regulations and to assess:

- the costs and benefits of each reasonably practicable option, including the proposal;
- the extent to which the regulatory objective would be promoted or achieved by each option; and

- any other matters which Gas Industry Co considers relevant.

The following assessment considers the proposed Regulations in light of the changes to the proposal arising from the consultation process.

6.1 Assessment of reasonably practicable options

Gas Industry Co considered the following options:

- a voluntary compliance and enforcement arrangement, either by maintaining the status quo or establishing a voluntary compliance regime; or
- a regulated compliance and enforcement arrangement which could range from a minimal to a very comprehensive compliance regime.

Gas Industry Co determined that continuation of the status quo or the establishment of a voluntary regime would not adequately ensure adherence with the Switching Rules.

Any voluntary multilateral arrangements are unlikely to be achieved given the:

- difficulty in reaching consensus and execution of a pan-industry compliance agreement which is legally binding within a reasonable timeframe;
- nature of provisions that would need to be included;
- diverse nature of the parties that would be required to agree the provisions to be included in a pan-industry compliance agreement and the fact that they include direct competitors;
- inability to compel new switching participants to execute and join the pan-industry compliance agreement.

Furthermore, as Gas Industry Co has decided that the only reasonably practicable option for switching arrangements is rules under the Act, it follows, in part, that enforcement of those rules should also be regulated under the Act.

Gas Industry Co has considerable doubts whether an industry multilateral arrangement would adequately ensure adherence to the Switching Rules. This is because the rights of enforcement would be restricted to signatories and not necessarily extend to consumers or Gas Industry Co and its service providers. In addition, neither Gas Industry Co nor the Minister of Energy would be able to vary the arrangement over time if required, or ensure that it was being utilised.

Gas Industry Co identified the following flaws in both continuation of the status quo and establishment of a voluntary regime:

- consumers may pursue a switching complaint with the Electricity and Gas Complaints Commission and seek a personal remedy, but there is no jurisdiction within the Commission to order a switching participant to comply with the proposed Switching Rules or to publicly identify the switching participant who is in breach of the rules. Gas Industry Co considers that consumers should be able to report a breach of the rules and seek to have them enforced;
- Gas Industry Co considers that, as the industry body appointed to co-regulate the gas industry, it should be able to report for investigation any rule breaches of which it becomes aware;

- Gas Industry Co considers that the Registry Operator should be required to report any rule breaches it detects when operating the central gas registry as a means of ensuring comprehensive compliance with the central gas registry and switching system; and
- a voluntary enforcement regime would only involve participants monitoring compliance with the arrangements and taking enforcement action against parties not complying with the arrangements.

6.2 Identification of the most reasonably practicable option

Gas Industry Co concluded that the proposed regulated compliance arrangement, relative to a voluntary compliance and enforcement regime, will:

- produce benefits significantly exceeding the costs;
- produce a significantly higher level of compliance; and
- better deliver the regulatory objective.

Accordingly, Gas Industry Co considers that the most reasonably practicable option is a regulated moderately comprehensive compliance regime as outlined in this recommendation.

There is a wide range of potential design options for a regulated compliance arrangement based on regulations under the Act.

Assessment criteria were used to develop the detailed design and functions of the compliance arrangements. The analysis of the detailed design options against these criteria is set out in Appendix 2.

This analysis considers the cost effectiveness of the options. On the basis of this analysis, Gas Industry Co considers that the proposal is the most cost-effective of the reasonably practicable options.

Gas Industry Co has reconsidered the assessment made in the Statement of Proposal in light of submissions and the need for supplementary consultation.

Nothing in the submissions, or the new provision clarifying coverage of the Registry Operator, gives reason for Gas Industry Co to alter its decision that the most reasonably practicable option is a regulated compliance regime as set out in the proposed Regulations.

6.3 Assessment of the costs and benefits

For the purpose of assessing whether a voluntary regime or a moderately comprehensive regulated regime is preferred, the Gas Industry Co analysed a voluntary regime against the proposed regulated compliance arrangements and undertook a cost-benefit analysis.

The assessment of the likely costs of the proposal is set out in Appendix 3.

There is a relatively wide range of possible costs for the proposed Regulations, dependant upon the level of non-compliance which needs to be addressed.³

The benefits of the proposed Regulations are that they allow the benefits of the Switching Rules to be achieved.

As well as ensuring achievement of the benefits of the Switching Rules, the Regulations will result in more fair and efficient outcomes for consumers by:

- providing a high degree of confidence that the proposed Switching Rules will be adhered to; and
- allowing transparency of the level of non-compliance.

Gas Industry Co has concluded that the proposed regulated compliance arrangements will offer a positive net benefit, relative to a voluntary arrangement, as outlined in Appendix 3.

6.4 Extent to which the chosen option for a compliance regime meets the regulatory objective

The criteria used to evaluate the benefits of the proposed regulated compliance regime, and to determine the design of each of the functions within the regime, are set out in Appendix 4.

The compliance arrangements should lead to a good level of compliance, provide a high degree of transparency around the process, and minimise transaction costs as far as possible.

In particular:

- Gas Industry Co's view is that a very comprehensive regime (e.g. a regime including surveillance, monitoring and auditing) would be too costly at this time to meet the efficiency and effectiveness elements of the regulatory objective; and
- the proposed Regulations on the other hand will efficiently overcome the flaws of a voluntary regime/status quo highlighted in section 6.1 above.

Nothing arising from the submissions from industry participants caused Gas Industry Co to alter its conclusion that the existing arrangements for compliance do not meet the regulatory objective, and that the regulatory objective is best achieved by implementing the proposed Regulations.

³ The amendment to provide coverage of the Registry Operator for breaches of process obligations under the Switching Rules is unlikely to give rise to a significant increase in the number of breach allegations requiring investigation or a Rulings Panel hearing. The comparable experience in the electricity sector is that there will be very few breach allegations. Therefore Gas Industry Co considers that coverage of the Registry Operator does not impact on the cost-benefit analysis undertaken in the Statement of Proposal sufficiently to warrant a review of that analysis.

6.5 Other information considered relevant

Gas Industry Co does not believe that any other matter other than the matters detailed in this recommendation is relevant to making an assessment of the proposal under section 43N(1) of the Gas Act.

6.6 Other means to achieve the regulatory objective

For the reasons set out above Gas Industry Co does not believe that the regulatory objective can be satisfactorily achieved by any reasonably practicable means other than the making of the proposed Regulations.

6.7 Conclusion

Overall, Gas Industry Co has concluded that the proposed Regulations are the best option to achieve the regulatory objective.

7 Consultation

Section 43L of the Act requires Gas Industry Co to:

- consult with persons that Gas Industry Co thinks are representative of the interests of persons likely to be substantially affected by the proposal;
- give those persons the opportunity to make submissions; and
- consider those submissions.

Submissions were sought from all of the persons listed in Appendix 5.

Submissions were received from the listed stakeholders on the documents set out in Table 1:

Table 1: Submissions received

Stakeholder		Consultation Paper	Statement of Proposal	Decision Paper
Retailers	Contact Energy	Yes	Yes	Yes
	Genesis Energy	Yes	Yes	Yes
	Wanganui Gas	Yes	Yes	Yes
	Mighty River Power	Yes	Yes	Yes
	Nova Gas	Yes		
Distributors	Vector	Yes	Yes	Yes
	Powerco			Yes
	Gas Net		Yes	
Other	Ministry of Consumer Affairs		Yes	
	Electricity and Gas Complaints Commission	Yes		

7.1 Submissions on Consultation Paper, Statement of Proposal and Decision Paper

a) Submissions on Consultation Paper

While being broadly supportive of improved compliance and enforcement for switching arrangements and the analysis in the consultation paper, in general submitters:

- supported the assessment criteria, although they considered there should be greater emphasis on cost effectiveness and less on scalability;
- were reluctant to support the proposed model because they considered it was premature when the scope of the issues were unclear pending the development of the switching arrangements and determination of the implementation mechanism;
- strongly preferred an early resolution process for immaterial/minor breaches which have no impact on the system or any person, without recourse to a formal investigation process. This was regarded as a more pragmatic and cost effective way of resolving those breaches that were not particularly material;
- preferred voluntary reporting of breaches by participants, to avoid running potentially expensive processes on matters that have no system or financial consequence; and
- supported bilateral contractual enforcement by the courts system rather than a Rulings Panel.

After consideration of the submissions on the Consultation Paper Gas Industry Co decided to:

- limit the scope of the compliance and enforcement arrangements to support of the switching arrangements⁴;
- recommend a regulatory compliance regime with a Rulings Panel;
- include voluntary reporting for participants; and
- introduce a materiality threshold and pre-investigation early resolution process for resolving breaches below this threshold.

b) Submissions on Statement of Proposal

Submitters generally supported the introduction of Regulations to enforce the Switching Rules. In particular submitters agreed that the benefits relative to the costs of the proposal are likely to be superior to a voluntary compliance and enforcement regime, that

⁴ Gas Industry Co initially proposed developing a compliance regime fit for all future gas governance arrangements but such an approach proved difficult to support as the compliance needs were not able to be identified until these arrangements were developed. Although the compliance regime has been designed to accommodate the specific requirements of the Switching Rules, Gas Industry Co is confident that, where appropriate, it is readily expandable to accommodate future gas governance arrangements.

the proposal will lead to a higher level of compliance than a voluntary regime, and that the benefits relative to the costs are likely to be superior to alternative designs.

A number of amendments suggested in the submissions were accepted by Gas Industry Co and incorporated into the proposed Regulations as noted in this recommendation. In particular:

- The philosophy of the compliance regime was emphasised by referring to the role of the Market Administrator being to provide a 'pragmatic, fast and efficient resolution service for complaints that do not raise a material issue'.
- The funding of compliance was clarified by amending the Switching Rules so that the "switching fee" included a proportion of the annual costs of compliance as determined by Gas Industry Co in each year.
- The Market Administrator need only notify other registry participants of alleged breaches rather than publishing them, retaining transparency for participants.
- Penalties will be used to off-set the costs of achieving and incentivising compliance and enforcement of the Switching Rules.

c) Submissions on Decision Paper

There were no detailed submissions on the content of the regulations. The key submissions were as follows.

Coverage of Registry Operator

All submitters supported coverage of the Registry Operator by the Regulations and accepted the need for a liability cap, but with differing views amongst submitters as to the amount and extent of limitation.

It is difficult to predict likely losses and scientifically determine an appropriate liability cap. Gas Industry Co is mindful that an excessive cap may deter prospective service providers from tendering.

Gas Industry Co decided to retain the proposed cap of \$20,000 per event with a total annual cap of \$100,000 per annum. The caps are less than that applicable in the electricity sector as the gas industry is smaller and less complex, resulting in fewer potential losses.

Industry based compliance arrangement

Some submitters requested that a pan industry agreement should be attempted prior to recommending the arrangements as regulations.

Gas Industry Co rejected this submission as it continues to maintain that it would be difficult for industry participants to establish a self-regulating compliance regime in the form of a multilateral contract within a reasonable timeframe and recommends implementation of the compliance and enforcement regime through gas governance regulations.

No publication of alleged breach until breach proven

One industry participant submitted that the notice to participants of alleged breaches should only occur at the investigation phase.

Gas Industry Co has amended the Regulations to require the Market Administrator to only notify other switching participants of an alleged breach rather than publishing notice on its website. By this mechanism participants are able to join the proceedings and thereby transparency is maintained for participants.

Gas Industry Co believes it is appropriate that all participants are notified of the alleged breach before materiality is determined by the Market Administrator and/or any immaterial breach is resolved. It is important that other participants have the right to bring all the facts to the table and comment on materiality, especially as there is no right of appeal from any determination of materiality made by the Market Administrator or against any settlement reached at this stage⁵.

7.2 Points of disagreement with stakeholders

The submissions on the Statement of Proposal and the Decision Paper demonstrated that there is good support for the proposed design of the compliance arrangements, but some opposition to those arrangements being regulated.

A few key points of disagreement emerged from the consultation process indicating:

- a preference for an industry based compliance arrangement rather than a regulated arrangement;
- concern regarding the costs of the proposal in the context of general concern around the cost-benefit analysis of the switching and central gas registry arrangements; and
- a desire for a regulatory objective which had greater emphasis on the efficiency rather than the integrity of the Switching Rules.

The Ministry of Consumer Affairs sought a process for notifying a consumer affected by a switching breach of the possible implications for them and their options for redress. This would require inclusion of a mechanism in the Regulations to notify any consumer who suffers detriment as a result of a breach of the Switching Rules. Gas Industry Co does not consider that it is necessary or in the interests of achieving the regulatory objective at this point in time to amend the Regulations to provide for additional consumer rights. The reasons to support this stance are set out in Appendix 5.

8 Potential Risks

The key risks with the proposal which have been identified by Gas Industry Co are:

- greater costs for compliance than the range predicted resulting from less efficient processes than anticipated, and/or greater reported non-compliance with the Switching Rules than expected, and/or a greater number of breaches than anticipated which are determined to be “material” and referred to an Investigator for

⁵ However, parties to proceedings have the right to require the Market Administrator to refer the matter for investigation where the Market Administrator takes no action or the matter is not settled within a specified timeframe.

investigation. Additional compliance costs are likely to erode some of the benefits for consumers in introducing the Switching Rules;

- the move to voluntary reporting of breaches by registry participants may result in undetected non-compliance with the Switching Rules which may ultimately reduce the benefits for consumers in introducing the rules and erode confidence in the Switching Rules; and
- consumers pursuing complaints with both the Electricity and Gas Complaints Commission and under the Gas (Compliance) Regulations for the same issues.

Gas Industry Co considers that these risks are not sufficiently material to detract from the overall benefit of the proposal because of the following:

- Gas Industry Co is confident that participants should be able to comply with the Switching Rules, as they have been recommended after extensive industry involvement in their development.
- The risk associated with introducing a voluntary reporting regime is balanced by the mandatory obligation on the Registry Operator to report breaches that it detected.
- The risk of dual complaints is considered to be very low. Any such risk has been mitigated by the Regulations allowing the Market Administrator to decline to make a determination in respect of an alleged breach that the Market Administrator considers is more properly dealt with by the Electricity and Gas Complaints Commission. Gas Industry Co will also seek to ensure that there are common understandings between the Gas Industry Co and the Electricity and Gas Complaints Commissioner in respect of any potential overlap of the schemes, as described in Appendix 5.

9 Consideration of Regulatory Objective

9.1 General objectives and outcomes

The GPS sets out the Government's objectives and outcomes for governance of the New Zealand gas industry, and its expectations for industry action. Under section 43ZO of the Act, Gas Industry Co must have regard to those objectives and outcomes when making recommendations for gas governance rules or regulations.

The Government's overall policy objective for the gas industry, as stated in the Act and the GPS is:

"To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner."

Section 43G(2)(c) of the Act also refers to the "objective of promoting competition in gas retail markets".

Paragraph 5 of the GPS adds that, consistent with this overall objective, the Government is seeking certain specific outcomes which include:

"(c) Barriers to competition in the gas industry are minimised to the long-term benefit of end-users;

- (g) *The quality of gas services and in particular trade-offs between quality and price, as far as possible, reflect customers' preferences;*"

a) *Specific switching objectives*

Paragraph 11 of the GPS specifically deals with switching arrangements and states:

"The Minister of Energy invites the industry body to recommend arrangements, including regulations and rules where appropriate, in the following areas:

The standardisation and upgrading of protocols relating to customer switching, so that barriers to customer switching are minimised...."

9.2 Regulatory objective for compliance

Consideration of any compliance and enforcement arrangements to support the Switching Rules needs to fit within the Government's overall policy objective for the gas industry and the specific outcomes it is seeking for the retail sector as outlined above.

Gas Industry Co has determined the regulatory objective for compliance and enforcement is:

"to provide a high degree of confidence that the proposed switching rules will be adhered to, and thereby contribute to the better achievement of the Government's policy objectives for the retail sector of the gas industry".

Gas Industry Co believes that the establishment of an efficient and effective compliance and enforcement regime will meet this regulatory objective.

Gas Industry Co's analysis of the proposal against the regulatory objective is set out in Appendix 4.

10 Consultation with MED

Representatives of the Ministry of Economic Development ("MED") have been regularly briefed by Gas Industry Co on the development of both the switching arrangements and the compliance and enforcement arrangements, including discussing the interface between compliance and enforcement and the Electricity and Gas Complaints Commission complaints scheme. Gas Industry Co has also met with representatives of the Ministry of Consumer Affairs to discuss their concerns regarding this interface.

MED have been issued with all relevant documents in conjunction with the industry stakeholders identified in Appendix 6. MED has been sent draft copies of both the Statement of Proposal and this recommendation with an opportunity for comment prior to those documents being forwarded to the Board of Gas Industry Co for approval.

11 Communications

In accordance with section 43O of the Act, Gas Industry Co intends publishing, within 10 working days after giving it to the Minister, this recommendation and the assessment completed under section 43N in both the Gazette and on the Company's website.

The notice of recommendation to be published in the Gazette is attached as Appendix 7.

A draft of the notice to be published on Gas Industry Co's website is attached as Appendix 8.

Gas Industry Co also intends to notify all stakeholders of the fact that this recommendation has been made and that it is viewable on its website.

12 Recommendation

Gas Industry Co recommends that the Minister of Energy recommend to the Governor-General under section 43G of the Gas Act 1992 the making of the Gas (Compliance) Regulations 2007 in the form attached as Appendix 9 of this recommendation to provide for compliance with, and enforcement of, the Gas (Switching Arrangements) Rules 2007 recommended in conjunction with this recommendation.

Appendices

The following appendices are attached to this recommendation:

- Appendix 1: Summary of proposal
- Appendix 2: Assessment of options and design of compliance arrangements
- Appendix 3: Assessment of costs and benefits of the proposal
- Appendix 4: Extent to which proposal meets regulatory objective
- Appendix 5: Specific consumer issues
- Appendix 6: List of stakeholders for consultation
- Appendix 7: Notice for Gazette
- Appendix 8: Notice for website
- Appendix 9: Regulations

Appendix 1: Summary of proposal

The proposal was for a recommendation to the Minister of Energy under the Act to approve regulations providing for compliance and enforcement of the Switching Rules.

a) Participant coverage

All parties required to affect the switch of a customer between retailers will be required to participate in the central gas registry⁶ (including gas distributors, gas retailers supplying customer installations connected to gas distribution systems and gas transmission and all meter owners with meters recording gas consumption at those customer installations) (referred to as “ registry participants”).

All registry participants bound by the Switching Rules will be bound by the Regulations. Consumers, other affected persons and Gas Industry Co will have the right to invoke the Regulations.

The Registry Operator will be covered by the Switching Rules and included within the definition of registry participant.

b) Overview of compliance proposal

The proposal involves a tailor made compliance regime for the reporting, investigation and determination of breaches of the Switching Rules.

Central to this regime are the:

- Market Administrator which has responsibility for receiving notices of an alleged breach of the rules, attending to administrative tasks, determining the materiality of an alleged breach, attempting to resolve any immaterial breach with the agreement of the parties, but is not obliged to proactively monitor compliance;
- Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, refers settlements and unresolved breaches to the Rulings Panel; and
- One member Rulings Panel which approves settlements, determines unresolved breaches and orders remedies.

c) Reporting of breaches

Participants may report an alleged breach of the rules (a breach) by a participant to the Market Administrator by notice in writing. Consumers or other persons affected by the breach, and Gas Industry Co, may also notify the Market Administrator of alleged breaches of the rules of which they become aware.

The Registry Operator will have a mandatory requirement under the Switching Rules to report breaches of the Switching Rules to the Market Administrator, and may do this in regular reports to the Market Administrator.

⁶ The central gas registry will be the central data base of record to facilitate switching established under the Switching Rules to record the details of all registry participants.

All of the above will be regarded as breach notices.

d) Market Administrator

Gas Industry Co shall initially perform the role of Market Administrator, but shall have the right to appoint another body to undertake this role in the future.

e) Administration of breach notices

The Market Administrator will be responsible for notifying the affected participants of the breach notice.

In response to submissions the requirement to publish all breach notices was amended to require notification only to other switching participants to enable them to join as a party to the proceedings.

The Market Administrator has the power to seek further information about the circumstances of the breach.

f) Determination of materiality of the breach

The Market Administrator is required to determine whether a breach raises a material issue by considering various factors for example impact on the market, or the time that has elapsed (see the Regulations for a full list of these factors).

Where the breach is considered immaterial, the Market Administrator may either take no action, where appropriate, or attempt to resolve the breach by agreement of the parties.

The Market Administrator must refer the breach for independent investigation if:

- the breach raises a material issue;
- the Market Administrator has insufficient information to determine whether the breach is material; or
- the Market Administrator decides that an immaterial breach warrants further investigation for other reasons.

This process is designed to filter breach allegations that do not raise material issues so they are not automatically referred to the investigation process and therefore the Rulings Panel for approval. Such intent is expressed in the regulations.

g) Early resolution

The Market Administrator may use any process to achieve an agreement to resolve immaterial breaches. Every such resolution must be in writing. The Market Administrator is to publish all its determinations including the outcome of any resolutions.

h) Investigator

Gas Industry Co will approve one or more persons who may be selected by the Market Administrator to carry out independent investigations of breaches of the Switching Rules. An approved Investigator will be selected on a case-by-case basis by the Market Administrator to investigate a referred breach. Any appointed Investigator must be free of any conflicts of interest to investigate the breach.

i) Investigation

The Investigator is required to undertake an investigation into the facts of the breach. The Act sets out the limits on the powers of investigation, right of entry into premises, the obligations on the participants to co-operate, and the protection of privileges.

The Investigator has the power to obtain the services of an external auditor or technical expert to assist in the investigation, subject to the approval of the Market Administrator.

j) Settlement

The Investigator must endeavour to effect a settlement using any process agreed by the parties. Any settlement must be in writing and referred to the Rulings Panel for its approval.

k) The Rulings Panel may approve or reject a settlement.

The Investigator has the power to recommend the Rulings Panel reject the settlement if he/she considers it is not in the best interests of the gas industry or the public.

l) Any settlement approved by the Rulings Panel must be published.

Where the Rulings Panel rejects a settlement it may refer it back to the Investigator to further endeavour to achieve a settlement within a limited timeframe (after which it is referred to Rulings Panel for determination), direct the Investigator to abandon the investigation, or determine the breach itself.

The Investigator is to refer any unresolved breach to the Rulings Panel and submit an investigation report the contents of which are specified in the Regulations. The Rulings Panel must consider the Investigator's report and, based on the report, decide whether to hold a hearing on the breach or determine it on the basis of written submissions.

m) Determination by Rulings Panel

The Rulings Panel is to regulate its own procedures in accordance with the principles of natural justice. However the Regulations contain specific requirements in respect of:

- pre-hearing statements and materials;
- private hearings;
- urgent hearings;
- evidence not otherwise admissible;
- rights of parties to be heard; and
- power to request further information.

Gas Industry Co may approve technical experts, external auditors or other persons as industry experts to assist the Rulings Panel.

The Rulings Panel may obtain the advice or assistance of an approved industry expert when determining a breach, with the agreement of Gas Industry Co.

The orders for penalties and remedies that the Rulings Panel may make are set out in the Act, and participants must comply with any order and decisions made by the Rulings Panel.

All decisions are to be published subject to any confidentiality requirements.

n) Appointment of Rulings Panel

One person (plus an alternate in the case of sickness or unavailability), who is suitably qualified and independent, may be appointed by Gas Industry Co as the member of the Rulings Panel for up to five years.

There are a number of general provisions in the Regulations relating to the Rulings Panel, such as liability, right of removal and resignation, right to remuneration, cost and performance objectives, reporting requirements, confidentiality powers, disclosure of interests, validity of acts, ceasing to hold office and other applicable miscellaneous provisions.

There are also provisions requiring confidentiality of information.

o) Appeal and judicial review rights

The appeal and judicial review rights are contained in the Gas Act.

p) Funding

The costs of the Market Administrator, Investigators and the Rulings Panel will be paid by Gas Industry Co and are recoverable from industry participants as fees under the Switching Rules.

Appendix 2: Assessment of options and design of compliance arrangements

Assessment criteria

The design of a compliance regime involves decisions about:

- the entity to be the decision maker;
- the nature of the reporting of alleged breaches;
- the investigation into breach allegations;
- the early resolution of breaches; and
- the enforcement of and remedies for breaches.

The following assessment criteria were used to evaluate options for the design of compliance arrangements.

Table 1: Assessment Criteria

Criteria	Benefits of the proposed compliance regime
Meet the Regulatory Objective	Provide for transparency of the general level of compliance with rules and efficiency of gas system
Credibility	Similar outcomes on similar facts for consistency in application of rules and predictability of outcome for the stabilisation of the industry Conflict free and impartial decision maker
Efficiency	Avoidance of unnecessary formal processes
Timeliness	Dedicated investigation and decision making bodies readily available for resolution of industry disputes
Expertise in decision making	Technical expertise of decision maker (with access to industry expertise) creates a pool and retention of industry knowledge which promotes more efficient and better decision making
Cost effectiveness	Provide for early resolution of disputes Appropriate trade off between costs and quality of compliance Cost and penalties should relate to value at risk
Scalability	Flexible to cater for future arrangements

This section addresses the options which were identified and explains why the preferred option was selected using this assessment criteria.

Options for decision maker

The Act provides for the decision maker under any new compliance arrangement to be the approved industry body or the Energy Commission, or any other person or court. In this section Gas Industry Co considers the respective merits of the most likely entities for this role.

a) Courts

The courts are the traditional forum for resolving disputes. Judges have the necessary “judicial” skills and are (and are seen to be) independent. There are established procedures for using the courts, an established appeal system, and a well developed system for reporting judgments (and therefore establishing precedents to guide other persons).

On the other hand, use of the courts has the following disadvantages:

- court procedures are generally formal, and this can make use of the courts more expensive than other dispute resolution processes;
- it can take longer to have a matter heard by a court than by other dispute resolution processes, due to the competing demands on the court’s time from other disputes or criminal matters. Decisions are not always timely; and
- judges generally do not specialise in the kinds of disputes they hear, therefore this could result in longer and more expensive proceedings and delayed judgments.

b) Industry body or Energy Commission

The Act contemplates that the approved industry body (currently Gas Industry Co) or any potential Energy Commission could be the decision making body in any compliance arrangement.

However, it is generally accepted that a body that creates rules should not have the role of interpreting them. Further, Gas Industry Co has a board comprising a mixture of independent directors and industry representatives which creates conflict risks.

c) Rulings Panel

The Act also contemplates that a Rulings Panel will be established and provide, among other things, that:

- the Rulings Panel may make certain orders and, before making any order, must take into account its previous decisions in respect of any similar situations; and
- an industry participant affected by a decision of the Rulings Panel may appeal that decision to the High Court on the grounds of lack of jurisdiction or a question of law.

A possible disadvantage with a Rulings Panel is that it involves the creation of a standing body of person(s) who may need to be paid some sort of retainer, whether or not there are any disputes to refer to them.

The main advantage of a Rulings Panel is that it enables issues to be dealt with relatively quickly by a person or group of persons who are familiar with the gas industry. This suggests that issues are likely to be dealt with efficiently, at relatively low cost and in a timely fashion. Familiarity with the gas industry may also lead to better quality decisions, especially over time.

d) Mediation and arbitration

Mediation involves the parties to a dispute voluntarily agreeing to discuss it in front of a third party mediator, who tries to facilitate a settlement. None of the parties is bound to accept any suggestion of the mediator, who also has no power to make a decision on the dispute.

Arbitration involves the parties to a dispute agreeing on one or more persons who will hear the parties' arguments and decide the dispute. The decision is binding on the parties, but it is open to a party to challenge an arbitrator's decision in the courts on some limited grounds.

Mediation is not covered by an Act of Parliament, whereas arbitration is governed by the Arbitration Act 1996. Any gas industry arrangements to which mediation and/or arbitration applied would need to include provisions establishing how the mediation and/or arbitration was to be conducted (in case of arbitration, to the extent that this is not already established by the Arbitration Act).

The advantages of mediation and/or arbitration are that generally:

- a dispute can be dealt with more quickly (and therefore less expensively) than by means of court proceedings; and
- the parties to the dispute can choose who is to be the mediator or arbitrator, and can thus ensure that someone who is experienced in the matter will be chosen. In the case of gas industry arrangements, the role of choosing the mediator or arbitrator could potentially be undertaken by Gas industry Co rather than the parties.

The disadvantages of mediation and/or arbitration are that:

- different mediators or arbitrators will usually be chosen for different disputes, and there will be no build up of expertise in the person or body hearing the disputes. This disadvantage could be avoided if Gas Industry Co was given the role of appointing the mediators and arbitrators (or of appointing a panel of persons from whom the parties must chose a mediator or arbitrator); and
- as mediation and arbitration is generally a private matter, there is no reporting of settlements and decisions reached, and therefore no development of precedents to guide other persons. The gas industry arrangements could possibly overcome this disadvantage by requiring settlements and decisions to be reported to the industry.

e) Evaluation

The most likely options have been evaluated against the assessment criteria set out in Table 1 (referred to as the "assessment criteria") and the result is set out in Table 2. This table suggests a convincing case in support of an independent Rulings Panel to make decisions about breaches and sanctions.

Table 2: Evaluation of Decision Maker Role

Criteria	Courts	Industry Body	Rulings Panel	Mediation and Arbitration
Objectives	Poor	Poor	Good	Poor
Credibility	Moderate	Poor	Good	Poor
Efficiency	Moderate	Moderate	Good	Moderate
Timeliness	Poor	Moderate	Good	Moderate
Expertise	Poor -Moderate	Moderate	Good	Moderate
Cost effectiveness	Poor	Moderate	Moderate	Moderate
Scalability	Good	Good	Good	Good

The key issues that drive this outcome are the need for an independent body with expertise and familiarity with the gas industry, timely decision making, and a level of compliance that supports achieving the regulatory objective.

The potentially significant costs and delays in using the courts, and the likelihood that the Switching Rules will be of a technical nature, both work against the other options.

The Rulings Panel could also be given the power to arbitrate on bilateral disputes between switching participants which do not arise from breaches of the Switching Rules, where future rules or industry arrangements provide for this.

Options for monitoring and detection of breaches

The integrity of the Switching Rules requires that breaches of those rules can be identified so that appropriate action can be taken. A monitoring regime does not necessarily need to identify all breaches, but it must be sufficiently robust to support the integrity of the rules. In this section Gas Industry Co considers the respective merits of the most likely options for this role.

a) Monitoring and surveillance function

In some industries and markets it is common to include a monitoring and surveillance function. Such a function usually involves establishing a dedicated team of Investigators and instituting a proactive monitoring of participant and service provider compliance with the rules. If breaches of the rules are detected, further investigations are instituted and all information would be put before some party (for example the Rulings Panel) to establish what further action should be taken.

The need for proactive monitoring and surveillance of the rules by an industry body or otherwise depends on an assessment of the degree of tolerance for breaches of the rules, the incentives for rule compliance, the costs of providing such a service and the likely benefits of early detection.

The main advantages of a monitoring and surveillance function are likely to be a high level of compliance with the Switching Rules and strong alignment with the regulatory objective and objectives of the Act and the GPS.

The main disadvantage of a monitoring and surveillance function is likely to be the cost of implementing the arrangement and consequent costs for participants.

b) Participant reporting

Some compliance regimes rely on participants to report breaches of the rules. In some cases participant reporting is voluntary, while in other cases it is obligatory for any participant observing a breach of the rules to report that breach. In effect it becomes a breach of the rules if a participant observes a breach and fails to report that breach.

The main advantage of a participant reporting regime is the low cost involved. Participants who are active in the gas sector will be trading with other participants, and are likely to become aware of rule breaches through the normal course of business. Including an obligation to report breaches can be effective in encouraging high levels of compliance.

Voluntary reporting is effective in targeting those breaches which are significant or repetitive and with sufficient impact on participants to warrant reporting.

c) Self reporting

A self reporting system places an obligation on participants to report, not only the rule breaches they observe from other participants, but also any breach of the rules they commit themselves. Most participants in the gas sector will have risk management and compliance systems that detect any breaches of rules. Self reporting compliance arrangements can offer a low cost means of achieving high levels of compliance.

A self reporting obligation also creates transparency and provides a useful overview of how the rules are working. If a significant problem is identified with the rules then this can be taken up by Gas Industry Co. A requirement to self report can also help to address possible disincentives for participants to report breaches.

d) Service Provider reporting

Generally any service providers will be at the centre of the arrangements and will be well placed to detect rule breaches. This is certainly true of the new switching and registry arrangements. A mandatory requirement on the Registry Operator to report all breaches could provide a ready overview of the system and workability of the rules.

Service Providers are often bound by the rules and a rule breach reporting obligation can be readily incorporated in the rules. Service Providers usually have a strong interest in servicing an arrangement with good compliance.

e) Consumer reporting

Some rules, particularly those relating to switching consumers from one supplier to another for example, are included predominantly to protect the interests of consumers. Other parties may have low interest in observing compliance with those rules. To overcome concerns of this nature it is commonplace to allow consumers (and often any third party) the right to notify a breach of the rules. In some cases, this right may be limited to situations where the consumer is affected by the breach and it is often the case that some person has the power to reject vexatious and /or frivolous claims.

Consumers will also have rights of complaint under the consumers' complaint service. It will therefore be necessary to design any third party rights to allege rule breaches carefully to ensure that the two jurisdictions do not overlap inefficiently.

f) Evaluation

The most likely options have been evaluated against the assessment criteria and the result is set out in Table 3. This table suggests that deciding on a breach detection system is effectively a trade-off between achieving a high level of compliance and alignment with the regulatory objective, and the cost effectiveness of the arrangement.

Table 3: Evaluation of breach detection

Criteria	Monitoring	Participant	Self-reporting	Service Providers	Consumers
Objectives	Good	Moderate	Moderate	Moderate	Poor
Credibility	Good	Moderate	Moderate	Moderate	Poor
Efficiency	Moderate	Good	Good	Good	Good
Timeliness	Good	Good	Good	Good	Poor
Expertise	Good	Moderate	Good	Good	Poor
Cost effectiveness	Poor	Good	Good	Good	Good
Scalability	Good	Good	Good	Good	Good

Providing a proactive monitoring and surveillance arrangement in order to ensure a high level of compliance is likely to impose a significant cost, both directly and for participants. It is suggested that this level of cost is not justified for the gas industry, particularly at this point in time.

However Gas Industry Co should have the right to report a breach for investigation where it becomes aware of a breach and considers it warrants investigation.

The proposed approach is to provide for voluntary reporting of breaches by all participants and mandatory reporting by the Registry Operator. The Registry Operator would have an obligation to report all breaches of the rules that it becomes aware of, whether they are its own breaches or breaches by participants.

It is proposed that any other person (including consumers) should also be able to report a breach of the rules.

Options for administration and receipt of breach notices

In any compliance regime it needs to be clear, if a breach is detected and needs to be reported, who should receive notice of any alleged breach. The main options to act as the recipient of breach notices include the affected party, Gas Industry Co, another independent party, or the Rulings Panel. In this section Gas Industry Co considers the respective merits of the most likely options for this role.

a) Affected party

In a relatively minimal compliance system, without any centralised compliance arrangements, it would be normal for the affected party to be notified of any alleged breach by the party detecting the breach. In these circumstances the resolution of that breach, and any remedy, would become a matter for bilateral enforcement between the parties.

b) Independent body

The advantage of having an independent body tasked with receiving notices of breaches and notifying industry participants is that that body can manage compliance in the overall interest of the industry (including consumers). It may be the case that the industry as a whole has an interest in pursuing a breach, but that no individual industry participant has a sufficient incentive to use their own resources to pursue the matter.

There are several options for establishing an independent body tasked with managing compliance. The options include:

- Gas Industry Co;
- the Rulings Panel; and
- an Independent Investigator.

The functions required of this central body are receipt of the report of breach, notification to the industry (if required), and then processing of the breach for investigation.

c) Evaluation

The most likely options have been evaluated against the assessment criteria and the result is set out in Table 4. This table suggests that deciding on who should receive notices of possible breaches is mostly concerned with the cost effectiveness of the arrangements.

Table 4: Evaluation of Recipient

Criteria	Affected Party	Gas Industry Co	Independent Party	Rulings Panel
Objectives	Good	Good	Good	Poor
Credibility	Moderate	Good	Good	Good
Efficiency	Moderate	Good	Moderate	Moderate
Timeliness	Good	Good	Good	Good
Expertise	Good	Good	Good	Good
Cost effectiveness	Good	Good	Moderate	Moderate
Scalability	Good	Good	Good	Good

Gas Industry Co has administrative resources, is involved in many matters with industry participants, and is well-placed to take on the role of receiving notice of possible breaches of the rules. Because the receipt of notices is essentially an administrative role, issues of a possible conflict with industry representatives on the board do not arise. Establishing another independent body, or assigning the role to the Rulings Panel, appear to be an unnecessary and higher cost alternative.

It is proposed that Gas Industry Co take on the administrative role of receiving breach notices.

Options for investigation of breaches

The investigative function is contemplated by the Act which sets out obligations on industry participants who are being investigated to co-operate and limits investigation powers.

Once a notice of a potential breach of the rules is received some party needs to be assigned the role of Investigator. The Investigator examines the issues around the potential breach and needs to have powers of discovery in order to gather all the facts. In this section we consider the respective merits of the most likely options for this role.

a) The parties

The minimal option involves relying on the parties to a dispute or self-reported breach to undertake the investigation and present all the information to the Rulings Panel for a ruling. In a dispute situation the parties would need some power of discovery in order to make this option workable.

Although there is an option that precludes an investigation and allows direct reference of the breach to the Rulings Panel this is likely to be inefficient. Minor breaches could be readily resolved by some independent party and/or admission of breach and it seems sensible to provide arrangements to provide for those outcomes. There could be significant delays in a hearing if insufficient information is provided to the decision maker. It is consistent with the good judicial practice in dispute resolution to have discovery or investigation prior to a hearing and to assist in the settlement process.

b) Gas Industry Co

It would be possible to assign the role of Investigator to Gas Industry Co. Gas Industry Co is an existing function with staff who are experienced in gas industry matters and rules. There are several compliance models that involve the regulator assuming the investigation role and this is the model adopted under electricity industry governance in New Zealand.

However, a conflict may emerge for Gas Industry Co under this model because of the industry representatives on its Board. Any investigation function needs to be independent (and seen to be independent) of the participants.

c) Independent Investigator

It would be possible to appoint an independent Investigator to investigate potential breaches of the rules on a case by case basis. Under this model, Gas Industry Co could appoint Investigators without creating a conflict for its industry representative Board members.

An advantage of an independent Investigator, appointed on a case by case basis, is that the role can be developed in response to the need, rather than establishing a resource in advance. Gas Industry Co would, however, need to identify one or more potential resources that would be suitable for appointment.

d) Rulings Panel

Another option is to provide the Rulings Panel with the power to investigate breaches of the rules itself. Many functioning compliance systems have adopted this model. The advantage of this arrangement is that compliance could be managed within one function and using one set of resources.

The main disadvantage of using the Rulings Panel in this role is that there is potential for development of bias and improper reliance on information obtained in the investigation process, and a risk of costs escalating. The incentive to resolve breaches quickly, and in advance of any hearing, may be reduced by a possible preference of the Rulings Panel to have hearings of matters. The functions of investigation and rulings are more efficiently managed if kept separate.

e) Evaluation

The most likely options have been evaluated against the assessment criteria and the result is set out in Table 5. This table suggests that deciding on who should investigate possible breaches of the rules is mostly concerned with how best to achieve credibility and independence in the investigation process, while keeping costs low.

Table 5: Evaluation of Investigator

Criteria	The Parties	Gas Industry Co	Independent Investigator	Rulings Panel
Objectives	Poor	Good	Good	Moderate
Credibility	Poor	Moderate	Good	Moderate
Efficiency	Moderate	Good	Good	Good
Timeliness	Good	Good	Good	Good
Expertise	Good	Good	Good	Good
Cost effectiveness	Good	Moderate	Moderate	Moderate
Scalability	Good	Good	Good	Good

The Rulings Panel is not preferred because of the concerns outlined above.

The preferred model is a hybrid between Gas Industry Co and an independent Investigator depending on the nature of the breach. Both are evaluated favourably against the assessment criteria.

It is proposed that Gas Industry Co, an industry body with knowledge of the industry and rules, is well placed to filter breach allegations that do not raise material issues. This role would be undertaken as Market Administrator and as an extension of the administrative

tasks described in the previous section. Such a role for Gas Industry Co as co-regulatory body is consistent with the Company's purposes set out in its constitution, and has minimal risk of creating conflicts of interests for its industry Board members.

This would enable provision of a fast and efficient resolution service for breaches that do not raise material issues (it is anticipated that some of these minor /technical breaches will be included in reports from the Registry Operator). This option still allows for material breaches to be referred to an independent Investigator for an independent investigation, and this is where the risk of conflict potential is greater as the matters under investigation are likely to be of greater consequence to industry participants.

Gas Industry Co has considered the potential risk of conflict where industry participants are Board members and assessed this risk as set out in table 6.

Table 6: Evaluation of Risk of Conflicts

Functions performed by Gas Industry Co with risk of conflict of interest	Checks and Balances
Market Administrator	<p>The Board is responsible for all decisions of Gas Industry Co acting as Market Administrator and the Board's independence is protected by having a majority of independent members as mandated by the Gas Act.</p> <p>The Regulations provide that where the Market Administrator determines that a breach is immaterial and that no action need be taken on an alleged breach or there has been no settlement within a specified timeframe, any party to an alleged breach may require the matter to be referred to investigation. In this manner parties to alleged breaches have the option of referring an immaterial breach to an investigation by an independent investigator.</p> <p>The Market Administrator must publish all of its determinations on materiality and the outcomes of any resolutions, thus providing transparency of its decision making on the matter of materiality.</p>
Appointment of Investigator	<p>The Regulations specify selection criteria for investigators and investigators are appointed on a case by case basis when satisfying the test of independence.</p> <p>The Board's independence in exercising this power of appointment is protected by having a majority of independent members with a constitutional requirement that there must be a majority of independent directors for a quorum.</p> <p>All settlements in the investigation process must be approved by the Rulings Panel and must be published by the Rulings Panel. This achieves transparency of the investigation process and outcomes.</p>
Appointment of Rulings Panel	<p>The Regulations specify the characteristics required of Rulings Panel member and restrict specified interests e.g. financial interests in industry.</p> <p>The Board's independence in exercising this power of</p>

Functions performed by Gas Industry Co with risk of conflict of interest	Checks and Balances
	<p>appointment is protected by having a majority of independent members with a constitutional requirement that there must be a majority of independent directors for a quorum.</p> <p>All hearings of the Rulings Panel are in public unless decided by the Rulings Panel to be private and any such decision on privacy must be published.</p> <p>All decisions of the Rulings Panel are transparent due to the mandatory publication of all its decisions.</p>

This Market Administrator role for Gas Industry Co is preferred on the grounds that it should be more efficient both in terms of cost and in terms of securing the required expertise. It allows for an in-house reporting and resolution service for minor breaches, and a “pay as you go” approach for investigations that enables Gas Industry Co to ensure that the right expertise is suited to each case. The voting requirements of the Board of Gas Industry Co and the Regulations provide sufficient checks and balances on potential conflicts of interest of industry board members when Gas Industry Co carries out the above functions.

Options for early resolution and/or settlement

It is often efficient in compliance systems to incorporate options for early resolution and settlement of breaches, rather than requiring all breaches to proceed for a ruling and/or a hearing by the Rulings Panel. This is particularly so in a system that includes an obligation to report breaches. Many breaches could prove to be technical in nature, or it may be that no other party has suffered as a consequence of the breach. In these circumstances, the option of an early resolution can help to reduce costs.

In other situations where there are two parties to a dispute about a possible breach, it is often efficient to allow for a settlement between the parties

In this section Gas Industry Co consider the respective merits of the most likely options for a party to assume the role of proposing early resolution or settlement of a possible breach.

a) The parties

The minimal option involves simply allowing the parties to a breach to propose an early resolution or settlement. In the case of a self-reported breach, the rules could provide for the participant to admit the breach and propose a remedy. Where there is more than one party involved they could negotiate a bilateral or multilateral settlement amongst themselves.

Under this arrangement it may be necessary, in order to maintain confidence in the regime, to publish all resolutions and settlements. It may also be necessary to allow interested parties to lodge objections or to participate in some other manner.

b) Independent Investigator

Sometimes there will be only one party to the breach, being the participant who is in breach and self-reported. If an independent Investigator has investigated the circumstances of the breach, that person will be well-placed to consider appropriate remedies. Once the breach has been investigated an appropriate resolution could be negotiated with the Investigator subject to prescribed criteria. Such resolution may be achieved by an agreed change in practice, a warning, an agreed penalty payment or compensation payment, or other remedial options.

Should there be a number of similar breaches overtime, the Independent Investigator is likely to have a clear knowledge of the circumstances, experience with the appropriate remedy, and could be well-placed to develop an efficient alternative to relatively expensive hearings as the compliance regime evolves.

Settlement may also achieve a wider understanding of the parties' positions and allow better long-term relationships than judicial intervention. It is the preferred option in most dispute resolution forums.

c) Market Administrator

The above also applies to the preliminary process where the Market Administrator considers immaterial breaches and endeavours to achieve an early resolution of these breaches. However, there will not be a full investigation of the breach on the basis that the facts are reasonably obvious and no investigation is required. If the facts are not obvious or complex then that is a ground for the Market Administrator to refer the breach for an independent investigation.

d) The Rulings Panel

It would be possible to provide for the Rulings Panel to take on the role of early resolution and settlement of disputes. Upon receipt of all the information from the Investigator, the Rulings Panel could then work with the parties to avoid a formal hearing.

However, this is a mediation role which tends to require a different skill set from adjudication. For this reason, these roles are often separated. If they are retained within one body it is usually required that the adjudicator be a different person than the mediator in order to ensure an open process and to encourage full and frank discussion in the mediation process.

e) Evaluation

The most likely options have been evaluated against the assessment criteria and the result is set out in Table 7. This table suggests that the party best placed to recommend early resolution and settlement of disputes is the Market Administrator for immaterial breaches and the Independent Investigator for material or unresolved breaches.

Gas Industry Co's preferred model is to include provision for early resolution of a breach, and a settlement process between the parties, and to assign this role to the Market Administrator in the first instance for immaterial breaches and then the Independent Investigator in respect of material breaches.

Table 7: Evaluation of Early Resolution and Settlement

Criteria	The Parties	Independent Investigator Market Administrator	Rulings Panel
Objectives	Poor	Good	Moderate
Credibility	Poor	Good	Moderate
Efficiency	Moderate	Good	Good
Timeliness	Good	Good	Good
Expertise	Good	Good	Good
Cost effectiveness	Good	Moderate	Moderate
Scalability	Good	Good	Good

Gas Industry Co also recommends transparency of settlements to allow it to have a wider view of the efficacy of the compliance arrangements and their functioning.

A significant issue is to ensure that the needs of the industry as a whole are met by these processes. There is a risk that early resolution and/or settlement will assist the parties, but preclude the opportunity for the wider industry to debate and be involved in the issues raised. Also, significant powers would reside in the Investigator if he/she has the final say on whether the settlement/early resolution of material breaches was acceptable from an industry perspective.

It is therefore proposed that the Investigator should have an obligation to refer all early resolutions and settlements to Gas Industry Co or the Rulings Panel for acceptance or rejection. The preferred model is for the Rulings Panel to have this function.

It is anticipated that a significant number of these referrals would lead to approval of the Investigator's recommendations (especially where there is a large volume of similar breaches with the same proposed resolution).

Options for enforcement

If a breach is not settled or is not subject to early resolution, then it will need to proceed to the Rulings Panel for consideration and this could involve a formal hearing process. In this situation somebody needs to present the evidence and argue the case that a breach has occurred. This is effectively the role of a prosecutor.

In this section Gas Industry Co consider the respective merits of the most likely options for a party to assume the role of prosecutor when an issue needs to proceed for resolution by the Rulings Panel.

a) The affected party

The minimal option involves the affected party presenting the information to the Rulings Panel and arguing the case for an appropriate penalty. The other party to the breach would have rights to defend the proceedings.

In many circumstances there would be a risk under this arrangement that some breaches were not dealt with, or not dealt with effectively, because no party was inclined to take action. Further, if there is no party actually affected by a rule breach then there may be no incentive for any participant to pursue the breach.

b) The Independent Investigator

The Independent Investigator will have all the information available, remains independent of the parties to any dispute, and appears to be a logical candidate to take on the role of prosecutor when a ruling is required.

The Independent Investigator would assume the role similar to a prosecutor at any hearing and all parties (the party in breach, the affected party, and any other interested parties) should have rights to present views to the Rulings Panel and/or attend hearings.

c) The Rulings Panel

Under some compliance regimes the rulings body takes on the role of presenting and considering the merits of the case, effectively acting as prosecution and judge at the same time. European justice systems often involve this approach. However, this approach is inconsistent with New Zealand's jurisprudence which prefers to retain separation between the prosecution role and the rulings role.

Under this model the Rulings Panel would take on the role of examining and cross-examining witnesses at a hearing. Other parties would need to have rights to present evidence in support of either side, and the Independent Investigator would need to be available for examination by the Rulings Panel and cross-examination by the parties to the dispute.

d) Evaluation

The most likely options have been evaluated against the assessment criteria and the result is set out in Table 8. This table suggests that the party best placed to assume the role of prosecution when a ruling is required is the independent Investigator.

Table 8: Evaluation of Enforcement Role

Criteria	Affected Party	Independent Investigator	Rulings Panel
Objectives	Poor	Good	Moderate
Credibility	Poor	Good	Moderate
Efficiency	Moderate	Good	Moderate
Timeliness	Good	Good	Good

Criteria	Affected Party	Independent Investigator	Rulings Panel
Expertise	Good	Good	Good
Cost effectiveness	Moderate	Good	Moderate
Scalability	Good	Good	Good

Gas Industry Co's preferred model is that the independent Investigator should have the power to prosecute a breach that is not resolved earlier.

Appendix 3: Assessment of costs and benefits of the proposal

The administrative costs of the proposed compliance arrangement have been assessed using the same parameters used for the cost-benefit analysis of the proposed switching and registry arrangements. This involves an analysis period of five years and a discount rate of 9.0%. Although the costs will obviously last for much longer than five years, in order to accurately contrast the costs with the benefits, it is necessary to use the same timeframe.

The actual costs are somewhat speculative and will depend upon the number of breaches of the rules, the extent to which alleged breaches are resolved or settled early in the process, the number of investigations, and the number of decisions required of the Rulings Panel. On the one hand, during the early phase of the new switching arrangements there might be relatively low reporting of breaches and costs might build up over time as a result of participants and consumers becoming more aware of possible breaches. On the other hand, there might be a higher level of breaches during the early phase of the arrangements if retailer systems struggle to cope with rules that have not been applied previously. Over time, as retailer systems improve, the level of reported breaches could fall.

The uncertainty suggests a relatively wide range of possible costs. The estimate of costs has therefore been built up using a wide range of costs for each function forming part of the compliance proposal. The analysis suggests that the net present value cost is likely to be between \$0.26m and \$0.86m as outlined on the following table.

Item	Daily Rate	Low		High	
		Days	Annual Cost	Days	Annual Cost
Market Administration	\$500	50	\$25,000	100	\$50,000
Rulings Panel	\$2,500	5	\$12,500	20	\$50,000
Investigations	\$1,500	20	\$30,000	80	\$120,000
Annual Total			\$67,500		\$220,000
Net Present Value Cost			\$262,551		\$855,723

These costs have been estimated for a stand-alone compliance regime in support of the switching and registry arrangements. They therefore assume a certain level of standing costs associated with establishing the market administration function, the Rulings Panel and a body of potential Investigators. To the extent that the compliance arrangements are extended to cover other rules and arrangements, these standing costs will be spread over a wider base. However, for the purpose of this analysis, it is assumed that the costs are all attributable to the switching and registry arrangements.

An assessment of the relative costs and benefits is set out below.

Assessment of the Relative Costs and Benefits

Option	Proposal for regulated compliance	Voluntary Enforcement and Compliance
Administrative Compliance Costs	<p>The proposal will involve some administrative compliance costs as described and estimated in Appendix 1. The proposal has been specifically designed to keep these to a minimum, consistent with achieving a good level of compliance. The estimated cost is between \$0.26m and \$0.86m net present value, with a high degree of uncertainty. To the extent that the compliance arrangements can be applied to other arrangements and rules, the costs attributable to switching and registry are likely to reduce.</p>	<p>Bilateral enforcement removes the need for a central compliance function and administrative costs.</p> <p>–</p>
Participant Costs	<p>Under the proposal, participants will need to maintain internal compliance mechanisms and resources to deal with compliance issues as they arise. The proposal attempts to keep these to a minimum by providing a materiality threshold and processes for early resolution and settlement. The objective is to focus internal compliance activity on the important outcomes.</p>	<p>Under bilateral enforcement participants will still need to maintain internal compliance mechanisms and resources to deal with compliance issues as they arise. The cost of these arrangements would depend upon the extent to which participants enforce the arrangements on a bilateral basis, but the Gas Industry Co expects that they could be higher than under the proposal, because of duplication of enforcement efforts.</p> <p>However, if enforcement results in legal proceedings this can be costly for participants.</p> <p>If participant costs were low relative to the proposal, it is likely that compliance would be poor, reducing the benefits of the switching and registry arrangements.</p>
Switching and Registry Benefits	<p>The benefits of the proposal are the benefits identified in the Switching proposal. The most likely range of the benefits relating to improvements in retail competition has been estimated to be between \$1.93m and \$4.51m (net present value) on a conservative basis. These estimates assume relatively high compliance levels. In addition the other benefits relate to improvements in customer satisfaction.</p>	<p>Under bilateral enforcement the benefits of the switching and registry arrangements will depend upon the extent to which bilateral enforcement achieves the benefits detailed in the Switching proposal. This is a matter of judgement; however the Gas Industry Co considers that experience in the gas sector suggests that compliance is likely to be poor and that only a proportion of the benefits will be achieved.</p>

Option	Proposal for regulated compliance	Voluntary Enforcement and Compliance
Overall Net Benefit	<p>The assessed overall net benefit of the proposal relative to the bilateral enforcement option depends on a series of judgements about costs and outcomes and is difficult to estimate. However, the Gas Industry Co notes that the estimated administrative costs of the proposal are most likely to be between 15% and 20% of the identified quantifiable benefits of the switching and registry arrangements. These benefits have been estimated using conservative assumptions.</p>	<p>In order to prefer a bilateral enforcement arrangement, on the basis of a benefit cost analysis, one would need to make a judgement that participant costs would be no higher than under the proposal and that the majority of the benefits of the switching and registry arrangements could be delivered with a bilateral enforcement process.</p> <p>The Gas Industry Co does not subscribe to this view.</p>

This assessment of the costs and benefits of the proposal draws on the assessment of the costs and benefits of the Switching Proposal. In particular, the assessment draws on the quantification of the net benefits provided in Appendix 1 of the Switching Recommendation. Only those benefits that it was practical to quantify were included in that assessment.

The benefits that were identified as difficult to quantify were the benefits to consumers of a clearer set of rules governing customer switches, a more timely switching process, and more accurate billing information. Accordingly Gas Industry Co considers that the assessment of the benefits in the table above is conservative.

Appendix 4: Extent to which proposal meets regulatory objective

The regulatory objective is likely to be achieved if the compliance arrangements:

- establish a standardised process for remedies (including remedies available to a consumer affected by a participant's breach of the proposed switching rules), investigations (including requiring participants to co-operate with investigations) and dispute resolution
- deliver a high degree of compliance with Switching Rules that have been developed to meet the statutory objectives;
- promote a high degree of transparency around the compliance process so that parties can observe the level of compliance and the consequences of rule breaches; and
- deliver a high degree of transactional efficiency. In other words the costs of the regime are appropriately balanced against the benefits of the regime.

Gas Industry Co considers the compliance arrangements proposed should lead to a good level of compliance, provide a high degree of transparency around the process, and minimise transaction costs as far as possible while meeting the desire for a high level of compliance.

a) Credibility

The proposed compliance arrangements should deliver a high degree of credibility to switching arrangements because they provide for:

- an independent Rulings Panel to make decisions on breaches of the switching rules and appropriate sanctions;
- the appointment of independent Investigators to investigate all allegations of material rule breaches;
- any affected consumer or person and Gas Industry Co able to make allegations about breaches of the rules;
- early resolution and/or settlement of immaterial breaches by the Market Administrator;
- early resolution and/or settlement of material breaches to be approved by the Rulings Panel; and
- all decisions (apart from administrative ones) about investigations and rulings on material or unresolved immaterial breaches to be made independently from industry participants and Gas Industry Co.

b) Efficiency

The proposed compliance arrangements should support efficiency in the gas industry arrangements because they promote:

- a high degree of compliance with the Switching Rules that have been developed to meet the statutory objectives; and

- a high degree of transparency around the compliance process so that parties can observe the level of compliance and the consequences of rule breaches.

c) Timeliness

The proposed compliance arrangements should deliver timely decisions about possible breaches of the Switching Rules because they provide for:

- immediate notification of breaches to the Market Administrator;
- timely resolution of immaterial breaches by the Market Administrator;
- timely appointment of Investigators as required for material or non resolved immaterial breaches;
- time frames for reporting investigations to the Rulings Panel;
- scope for early resolution and settlement of breaches; and
- a dedicated available Rulings Panel to determine disputes.

d) Appropriate expertise

The proposed compliance arrangements should deliver the appropriate expertise because they provide for:

- appointment of a Rulings Panel member with the power to appoint expert advisers on a case by case basis;
- appointment of Investigators on a case by case basis; and
- the Market Administrator to oversee immaterial breaches and to perform most of the administrative tasks associated with breaches.

e) Cost effectiveness

The proposed compliance arrangements should deliver a cost effective arrangement with a high degree of transactional efficiency because they provide for:

- the early resolution of immaterial breaches by the Market Administrator without the need for a full scale investigation process;
- the appointment of Investigators on a case by case basis, rather than establishing an investigations infrastructure in advance;
- reliance on voluntary reporting by switching participants, reporting by consumers and other affected persons, reporting by Gas Industry Co, and mandatory reporting by the Registry Operator, instead of a monitoring and surveillance function; and
- a single member Rulings Panel, with the power to appoint expert advisers on a case by case basis.

f) Scalability

The preferred set of arrangements should deliver a readily scalable arrangement because they provide for:

- the appointment of Investigators on a case by case basis; and

- the appointment of technical expertise on a case by case basis to support the Rulings Panel.

Gas Industry Co's view is that the proposed compliance arrangements would meet the regulatory objective.

The assessment of the extent to which the proposal meets the regulatory objective is set out in the table below.

Extent to which proposal meets regulatory objective

Regulatory Objective	Extent to which Regulatory Objective is met by proposal
<p>To establish a compliance and enforcement regime which provides a high degree of confidence that the proposed switching rules will be adhered to, and thereby contribute to the better achievement of the Government's policy objectives for the retail sector of the gas industry.</p>	<p>The proposal is designed to deliver a high level of compliance with the switching rules in order to realise the net benefits of the switching arrangements set out in the Switching Proposal, including efficient switching and tracking of customers and the quantities of gas they purchase. Good compliance with these rules minimise delays in customer switching, provide more accurate bills for, and lead to less problems for, customers switching between suppliers. The result should be more efficient and fair outcomes for consumers.</p> <p>To the extent that customer choice is facilitated by the switching and registry arrangements and the associated compliance arrangements, customers should be more able to express preferences for particular quality and price packages.</p> <p>The switching rules provide for the standardisation and upgrading of the protocols for customer switching and are designed to minimise the barriers to customer switching. The proposed compliance arrangement is designed to provide a high degree of confidence that these outcomes will be achieved.</p> <p>The way the Rulings Panel, Market Administrator, Investigator, and reporting requirements all interrelate, means the Gas industry Co are confident that the proposal will result in an effective and efficient compliance regime that provides a reasonably high level of compliance with the switching rules and hence ensures their integrity.</p>

As well as ensuring the benefits of the switching regime are achieved, a compliance and enforcement regime will also result in more efficient and fair outcomes for consumers by:

- providing a high degree of confidence that the proposed switching rules will be adhered to: and
- allowing transparency of the level of non-compliance.

Appendix 5: Specific consumer issues

Sufficient consumer rights

The Ministry of Consumer Affairs sought a process for notifying consumers affected by switching breaches of the possible implications for them and their options for redress, suggesting the market administrator could undertake this function.

Gas Industry Co has taken the view that the Regulations should not be amended to provide for any additional consumer rights as it does not consider such an amendment is either necessary or in the interests of achieving the regulatory objective at this point of time.

The reasons for taking this view are as follows:

- In the switching context, the types of breaches that will impact most upon consumers are likely to be timing of switches and incorrect meter readings. We consider that these breaches are likely to be readily identifiable by consumers, and are best dealt by the Electricity and Gas Complaints Commission (“EGCC”) which has the expertise and resources to undertake enquiries on behalf of consumers. Such complaints are commonly dealt with by the EGCC in the comparable electricity sector. We note that there is no obligation to notify consumers in the electricity compliance scheme.
- The consumer’s right to raise a rule breach under the compliance regulations will continue to exist if for some reason the door is shut to the EGCC scheme (e.g. the jurisdictional threshold is exceeded).
- One of the limits of the EGCC scheme is that the identity of the retailer is not able to be disclosed. Where appropriate it will be open to the EGCC to advise consumers who have made a switching complaint to the EGCC scheme to also notify the rule breach under the compliance regulations, in this manner providing greater transparency of rule breaches.
- The role of the market administrator is to filter out and resolve immaterial breaches in a fast, efficient and pragmatic manner. The market administrator has no power to obtain information or undertake an investigation. It would therefore be extremely difficult for the market administrator to determine, in respect of a particular breach, whether the consumer has been disadvantaged.
- No consumer information is held on the registry. No consumer information will be provided in a breach notice or a published ruling. Consumer information would therefore have to be provided to the market administrator outside of the registry. However, the market administrator has no power to require the provision of that information.
- Any notification obligation more properly rests with the retailer who has the contractual relationship with the consumer. However, if the retailer is required to notify the consumer of a proven or admitted breach which has adversely affected that consumer then the notice would need to be sufficiently detailed to enable the consumer to properly assess their situation, accept any offer made by the retailer, or decide to seek further redress via the EGCC. A number of issues arise:
 - How would the retailer’s compliance with the obligation to the consumer be tracked and enforced?

- Who determines whether the consumer has been significantly disadvantaged, which may require greater investigation than that required to determine a rule breach at additional cost?
- As already stated, it is not clear that the Gas Act provides the Rulings Panel with sufficient power to make orders relating to notification of consumers, particularly where it is approving a settlement.
- All these matters may impose additional processes in, and costs on, the compliance regime without achieving any direct or indirect improvement in compliance by participants with the switching rules; in fact such a provision may act as a disincentive for switching participants to report breaches.

Relationship with EGCC

Gas Industry Co will seek to ensure that there is:

- good communications between the EGCC and the Gas Industry Co on compliance matters;
- a process for resolving potential dispute overlaps;
- a process for consumers to be referred to their rights under the Regulations if their complaint involves switching rule breaches which the EGCC considers should be reported; and
- an opportunity for EGCC to report any trends of non compliance they have observed.

In the event that a retailer proposes another complaints scheme similar protections can be a condition of approval under the Gas Act.

Gas Industry Co has an ongoing obligation to review any arrangements it recommends to ensure they are meeting the regulatory objective. This will include the switching compliance regulations. We suggest such a review should include reconsideration of the issue that you have raised to ensure that consumer needs are being met over time.

Appendix 6: List of stakeholders for consultation

Age Concern	Fletcher Building Ltd
AGL	Four Winds Communication
Arete Limited	Gas Association of New Zealand
Austral Pacific Energy	Gas Net
Balance Agri Nutrients	Genesis Energy
Bay of Plenty Electricity	Greymouth Petroleum
Bell Gully	Greypower
Blue Scope Steel	Heinz Watties Ltd
BRG	Kensington Swan
Bridge Petroleum	Kerridge & Partners
Carter Holt Harvey	KPMG
Castalia	LPG Associations of New Zealand
CGNZ	Major Electricity Users Group
Clifford Chance Law Office	Marsh Limited
Commerce Commission	Maui Development Ltd
Concept Consulting	M-Co
Consumers Institute	Methanex New Zealand
Contact Energy Ltd	Mighty River Power
Craftware Computing Ltd	Ministry of Consumer Affairs
E-Gas	Ministry of Economic Development
Electricity and Gas Complaints Commission	Multigas (NZ) Ltd
Electricity Commission	National Council of Women
Energy Efficiency and Conservation Authority	New Zealand Oil and Gas Ltd
Energy Link Ltd	NZPWC
Exergi	NZRC
	New Steel

Nova Gas Ltd	Simpson Grierson
NZ Water and Wastes Association	Stigley & Co
O-I New Zealand Ltd	Strata Energy Consulting
OMV New Zealand Ltd	Swift Energy Ltd
Pan Pac Forest Products Ltd	Tap Oil Ltd
Parliament	Tatua Co-op Dairy
Parsons Brinkerhoff Associates	The Australian Gas Light Company
PB World	Thorndon Chambers
PEPANZ	Todd Energy Ltd
Powerco Ltd	TWS Consulting Ltd
Pricewaterhouse Coopers	Vector Ltd
RBZ Energy Ltd	VUW School of Economics and Finance
Richard Clarke QC	Wanganui Gas Ltd
Russell McVeagh	Westech Energy
SBT Group	
Shell (Petroleum Mining) Ltd	
Shell Todd Oil Services Ltd	

Appendix 7: Notice for Gazette

Notice of Making of an Assessment and Recommendation for Gas Governance Regulations

This notice of an assessment and recommendation for gas governance regulations is issued by Gas Industry Company Limited ("Gas Industry Co") approved as the industry body by Order in Council under section 43ZL of the Gas Act 1992 ("Gas Act").

Section 43O of the Gas Act provides that, no later than 10 working days after making a recommendation for gas governance regulations to the Minister of Energy, Gas Industry Co must publicise the recommendation and the assessment completed under section 43N of the Act.

Recommendation

On 31 May 2007 Gas Industry Co made a recommendation to the Minister of Energy for approval of the Gas (Compliance) Regulations 2007 to provide for compliance with, and enforcement of, the Gas (Switching Arrangements) Rules 2007 recommended in conjunction with that recommendation.

The recommended Regulations will establish a compliance and enforcement regime to support the Gas (Switching Arrangements) Rules 2007, consisting of:

- a Market Administrator which has responsibility for receiving notices of reported breaches of the rules, attending to administrative tasks, determining the materiality of breaches, and attempting to resolve any immaterial breach with the agreement of the parties;
- an Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, refers settlements and unresolved breaches to the Rulings Panel; and
- a Rulings Panel which approves or rejects settlements, determines unresolved breaches and orders remedies.

A copy of Gas Industry Co's recommendation, including the assessment made under section 43N, is available at no cost on Gas Industry Co's website:
<http://www.gasindustry.co.nz>

Dated at Wellington this 14th day of June 2007.

For and on behalf of Gas Industry Co

Rt. Hon. James Bolger ONZ,
Chair.

Appendix 8: Notice for website

Under section 43O of the Gas Act 1992, Gas Industry Co must, no later than 10 working days after making a recommendation to the Minister of Energy on gas governance arrangements, publicise that recommendation and the assessment completed under section 43N of the Act.

On 31 May 2007, Gas Industry Co made two recommendations in respect of arrangements for consumers switching between retailers and an associated compliance regime. The texts of both these recommendations, including the assessments made under section 43N of the Act, are available below:

Recommendation on Gas (Switching Arrangements) Rules 2007

Recommendation on Gas (Compliance) Regulations 2007

Appendix 9: Regulations

Draft Gas (Compliance) Regulations 2007

1 Title

These regulations are the Gas (Compliance) Regulations 2007

2 Commencement

These regulations come into force 28 days after the date these regulations are notified in the Gazette.

3 Purpose

These regulations provide for the monitoring and enforcement of the Gas (Switching Arrangements) Rules 2007 made by the Minister of Energy under section 43Q of the Gas Act 1992, as may be amended from time to time.

4 Interpretation

(1) In these regulations, unless the context otherwise requires —

Act means the Gas Act 1992

breach notice means any notice given under regulation 9 , 10 or 11

Commission means the Energy Commission established under section 43ZZH of the Act

industry body means the industry body approved by the Governor General by Order in Council under section 43ZL of the Act. In the event that the industry body is revoked under section 43ZM of the Act, all references to the industry body shall be replaced with references to the Commission

investigator means any investigator appointed under regulation 25

notifying participant means a participant that gives a breach notice under regulation 9

market administrator means the industry body or the service provider appointed by the industry body under regulation 5 to undertake the role of market administrator

participant means a registry participant as defined in the rules and includes the registry operator

publish means, in relation to a document, to make that document available at no cost —

(a) on the industry body's website at all reasonable times; and

(b) in any other manner that the industry body may decide

registry operator means the service provider appointed by the industry body to establish, maintain, and operate the registry

rules means the Gas (Switching Arrangements) Rules 2007 as amended from time to time and includes every schedule to the rules, any code of practice and any technical code and every amendment to, deletion of, or addition to, any of the rules

Rulings Panel or **Panel** means the Panel established by regulation 59.

- (2) Any term that is defined in the rules and used, but not defined, in these regulations has the same meaning as in the rules.
- (3) Any term that is defined in the Act and used in these regulations, but not defined in these regulations or the rules, has the same meaning as in the Act.

5 Role of market administrator

- (1) The role of the market administrator is to —
 - (a) receive breach notices; and
 - (b) provide a filter so that breach allegations that do not raise material issues are not automatically referred to the investigation process and the Rulings Panel; and
 - (c) provide a pragmatic, fast and efficient resolution service for complaints that do not raise a material issue; and
 - (d) refer complaints that do raise material issues to investigators for investigation.
- (2) The industry body may, from time to time, by agreement with a person, appoint that person to undertake the role of market administrator.
- (3) To avoid any doubt, the industry body does not have a conflict of interest by reason of the fact that it may be carrying out the role of market administrator.

6 Breaches

- (1) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that —
 - (a) has contravened the provision; or
 - (b) has attempted to contravene the provision; or
 - (c) has aided, abetted, counselled, or procured any other participant to contravene the provision; or
 - (d) has induced, or attempted to induce, any other participant, whether by threats or promises or otherwise, to contravene the provision; or

- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other participant of the provision; or
 - (f) has conspired with any other participant to contravene the provision.
- (2) In these regulations, unless the context otherwise requires, a reference to a breach (including an alleged breach) of the rules refers only to a breach —
- (a) that was discovered, or ought reasonably to have been discovered, within 3 years of the date of the breach; and
 - (b) that occurred within 10 years of the date of any investigation or other proceedings under these regulations.
- (3) The rules specify which rule breaches are enforceable against the registry operator under these regulations.

7 Relationship between remedies under these regulations or the rules and other remedies

- (1) There is no remedy, other than the remedies provided in these regulations, in respect of a breach of these regulations or the rules.
- (2) In particular, no one can bring an action for breach of statutory duty that is based on a breach of these regulations or the rules by a participant or a service provider.
- (3) However, this regulation does not affect —
- (a) Any right to recover a debt owing under these regulations or the rules by a participant; or
 - (b) Any right to bring any action for any tort other than a breach of statutory duty, for breach of contract, or for any other wrong that arises from any act or omission that is also just happens to be a breach of these regulations or the rules.

Part 1

Reporting and investigation of breaches

Participants must investigate complaints made to them

8 Participants must investigate complaints made to them

- (1) Any person may complain, in writing, to a participant about any business activity of the participant that the person believes might constitute a breach of the rules.
- (2) The participant must ensure that the complaint is promptly, thoroughly, and fairly investigated by the participant, and that appropriate remedial action is taken.

- (3) The participant must promptly notify the person who made the complaint in writing of the result of the investigation and the remedial action (if any) taken by the participant.

Voluntary reporting to market administrator of alleged breaches

9 Participant may notify market administrator of alleged breach

- (1) If any participant believes, on reasonable grounds, that it or another participant has breached the rules, that participant may notify the market administrator as soon as possible of that alleged breach.
- (2) The notice must be in writing and must specify —
 - (a) the participant that is alleged to have breached the rules; and
 - (b) the rule allegedly breached; and
 - (c) the circumstances relating to the alleged breach; and
 - (d) the date and time on which the alleged breach occurred.

10 Voluntary reporting of alleged breaches

- (1) Any consumer or other person (other than a participant) may notify the market administrator if the consumer or other person believes, on reasonable grounds, that —
 - (a) a participant has breached the rules; and
 - (b) that the consumer or other person is affected by that alleged breach.
- (2) The industry body may notify the market administrator of an alleged breach of the rules by a participant of which the industry body becomes aware of by other means.

Mandatory reporting to market administrator of alleged breaches

11 Registry operator must notify market administrator of alleged breach

- (1) If the registry operator believes, on reasonable grounds, that any other participant has breached the rules, then the registry operator must notify the market administrator of the alleged breach as soon as possible.
- (2) The notice must be in writing and must specify —
 - (a) the participant that is alleged to have breached the rules; and

- (b) the rule allegedly breached; and
 - (c) the circumstances relating to the alleged breach; and
 - (d) the date and time on which the alleged breach occurred.
- (3) The registry operator may include notices under subclause (2) in regular reports to the market administrator as agreed between the registry operator and the market administrator.

12 Market administrator must notify participant allegedly in breach

- (1) If the market administrator receives a breach notice, the market administrator must —
- (a) acknowledge receipt of the breach notice by any manner considered appropriate by the market administrator; and
 - (b) notify the participant allegedly in breach of the following:
 - (i) the name of the notifying participant; and
 - (ii) the rule allegedly breached and the circumstances relating to the alleged breach; and
 - (iii) the date and time the alleged breach occurred.
- (2) The market administrator must use reasonable endeavours to give the acknowledgement and notice within 5 working days of receiving the breach notice.

13 Alleged breach must be notified and affected participants may join as parties

- (1) At the same time as the market administrator gives notice under regulation 12(1)(b), the market administrator must notify all other participants of the contents of that notice.
- (2) Within 5 working days after the market administrator notifies the participants of the content of the notice under subclause (1), any participant may notify the market administrator that it considers that it is affected by the alleged breach and wishes to become a party to the breach notice.
- (3) The participant is then joined as a party to the breach notice.

14 Market administrator may request further information

The market administrator may request information about the circumstances of the alleged breach from any of the following:

- (a) the notifying participant or other person that gave the breach notice:
- (b) the participant who is allegedly in breach:

- (c) the registry operator:
- (d) any other participant that has joined as a party to the breach notice.

15 Market administrator must keep information confidential

- (1) The market administrator must keep confidential all information provided or disclosed to it except to the extent that disclosure —
 - (a) is required to enable the market administrator to carry out its obligations and duties under these regulations or the rules; or
 - (b) is otherwise compelled by law.
- (2) Participants that provide or disclose information to the market administrator must identify to the market administrator any information that the participant —
 - (a) considers to be confidential; and
 - (b) considers should not be published under regulation 20 .

Notices and receipt of information

16 Giving of notices

- (1) If these regulations require any notice to be given, the notice must be in writing and be —
 - (a) delivered by hand to the nominated office of the addressee; or
 - (b) sent by post to the nominated postal address of the addressee; or
 - (c) sent by facsimile to the nominated facsimile number of the addressee; or
 - (d) sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.
- (2) In the case of an emergency, a person may give notice other than in accordance with subclause (1), but the person must as soon as practicable confirm the notice in writing and by a method set out in subclause (1).

17 When notices taken to be given

- (1) In the absence of proof to the contrary, notices are taken to be given,-
 - (a) In the case of notices delivered by hand to a person, when actually received at that person's address;

- (b) In the case of notices sent by post, at the time when the letter would in the ordinary course of post be delivered; and in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted;
 - (c) In the case of notices sent by fax, at the time indicated on a record of its transmission;
- (2) In the case of notices sent by electronic transmission or any other similar method of electronic communication -
- (a) At the time the computer system used to transmit the notice –
 - (i) Has received an acknowledgment or receipt to the electronic mail address of the person transmitting the notice; or
 - (ii) Has not generated a record that the notice has failed to be transmitted; or
 - (b) The person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

Market administrator to determine materiality

18 Market administrator to determine materiality

- (1) The market administrator must determine whether an alleged breach raises a material issue on the information provided in the breach notice and any other information obtained in accordance with regulation 14.
- (2) If, in the opinion of the market administrator, the alleged breach does not raise a material issue, the market administrator may, in its discretion,–
 - (a) determine to take no action on the alleged breach; or
 - (b) attempt to resolve the alleged breach with the agreement of the parties in accordance with regulation 21.
- (3) If, in the opinion of the market administrator, the alleged breach raises a material issue, the market administrator must refer the alleged breach to an investigator for investigation.
- (4) If the market administrator is unable to determine whether an alleged breach raises a material issue because the market administrator cannot obtain sufficient information, the market administrator must refer the alleged breach to an investigator for investigation.
- (5) The market administrator may decline to make a determination in respect of an alleged breach that –
 - (a) relates to a matter that has already been referred to; or

- (b) the market administrator considers is more properly dealt with by; the Electricity and Gas Complaints Commission or any other approved complaints resolution system.

19 Factors to be taken into account when determining materiality

- (1) The market administrator must, in determining whether or not an alleged breach raises a material issue, take into account the following factors:
 - (a) the severity of the alleged breach:
 - (b) whether the alleged breach had a material impact on the operation of the market:
 - (c) whether the alleged breach appears to have been intentional or malicious:
 - (d) whether the participant allegedly in breach took remedial action immediately upon, or soon after, discovery of the breach:
 - (e) whether the alleged breach has a potential anti-competitive effect:
 - (f) whether the alleged breach has resulted in costs being borne by other participants or persons:
 - (g) whether the alleged breach is admitted:
 - (h) whether the alleged breach was an isolated event, or indicates a systemic problem with compliance with the rules:
 - (i) whether the breach allegation is frivolous or vexatious or is not made in good faith:
 - (j) whether, considering the length of time that has elapsed between the date when the alleged breach became known to the participant allegedly in breach and the date when the alleged breach was reported to the market administrator, an investigation of the alleged breach is no longer practicable or desirable:
 - (k) whether the participant allegedly in breach is, or has been, subject to any other orders under these regulations:
 - (l) the likelihood that the same breach or a similar breach may occur in the future:
 - (m) whether the participant allegedly in breach has benefited from the breach:
 - (n) whether the complexity of facts warrant investigation:
 - (o) any other factors that the market administrator considers relevant.

- (2) The market administrator may publish guidelines from time to time to illustrate how it is weighting and applying these criteria.

20 Decision to be made expeditiously and in a fair and reasonable manner

- (1) The market administrator must make its determination under regulation 18 expeditiously and in a fair and reasonable manner.
- (2) If regulation 18(2)(a) applies, the market administrator must notify the following parties of its determination as soon as practicable:
- (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.

21 Market administrator to use informal resolution process

- (1) If regulation 18(2)(b) applies, the market administrator must endeavour to resolve the alleged breach with the agreement of the following parties:
- (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.
- (2) In effecting an agreement, the market administrator may use any process that the market administrator thinks fit.
- (3) Every resolution under regulation 18(2)(b) must —
- (a) be in writing; and
 - (b) specify the details of any breach of the rules that is admitted by a participant; and
 - (c) record the terms of the resolution.
- (4) The persons referred to in subclause (1) must notify their acceptance of the terms of the resolution in writing to the market administrator.

22 Market administrator must publish decisions

The market administrator must —

- (a) notify the industry body in a monthly report to the industry body; and
- (b) subject to regulation 15, publish;

all of its determinations under regulation 18, including the outcome of any resolutions achieved under regulation 21.

Provisions relating to referral of alleged breaches to investigator

23 Market administrator to refer alleged breaches to investigator

- (1) This regulation applies if —
- (a) the market administrator determines under regulation 18(3) that an alleged breach raises a material issue in relation to compliance with the rules and must be referred to an investigator for investigation; or
 - (b) the market administrator determines under regulation 18(4) that the alleged breach will be referred to an investigator for investigation.
- (2) The market administrator must —
- (a) refer the alleged breach to an investigator appointed under regulation 25 selected by the market administrator for the investigation; and
 - (b) notify the following parties that the alleged breach has been referred to an investigator, including the identity of that investigator and contact details:
 - (i) the notifying participant or other person that gave the breach notice; and
 - (ii) the participant allegedly in breach; and
 - (iii) any other participant that has joined as a party to the breach notice under regulation 13; and
 - (c) provide the investigator with all relevant materials provided to, or created by, the market administrator concerning the alleged breach.

24 Right to refer alleged breach to investigator directly

- (1) This regulation applies if —
- (a) the market administrator has determined not to take any action on the alleged breach; or
 - (b) the attempt of the market administrator to resolve the alleged breach with the agreement of the parties in accordance with regulation 21 has been unsuccessful within 35 days after the alleged breach was notified under regulation 13.
- (2) The following parties may require the market administrator to refer the alleged breach to the investigator:

- (a) the notifying participant or other person that gave the breach notice; or
 - (b) the participant allegedly in breach; or
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.
- (3) If subclause (2) applies, regulation 23(2) applies to the market administrator.

Investigation of alleged breaches

25 Appointment and selection of investigators

- (1) The industry body must appoint one or more persons as investigators who have the requisite skills and experience to carry out independent investigations of alleged breaches.
- (2) In selecting an investigator under regulation 23, the market administrator must take reasonable steps to ensure that the investigator selected is free from conflicts of interest in carrying out the investigation.

26 Investigator may appoint other persons to give advice

In carrying out an investigation, the investigator may, subject to the agreement of the market administrator, appoint any external auditor, technical expert, or other persons that the investigator thinks fit to give advice or assistance to the investigator.

27 Investigator must keep information confidential

- (1) The investigator must keep, and must ensure that every person appointed by an investigator under regulation 26 keeps, confidential all information provided or disclosed to them, except to the extent that disclosure —
 - (a) is required to enable the investigator or other person to carry out its obligations and duties under these regulations; or
 - (b) is otherwise compelled by law.
- (2) The investigator must require participants that provide or disclose information to the investigator must identify any information that the participant considers —
 - (a) to be confidential; and
 - (b) should not be included in the investigator's report under regulation 39(3).

28 Funding of market administrator and Investigator

- (1) The industry body must fund the market administrator and any investigators selected by the market administrator.

- (2) The industry body may recover the costs of that funding from industry participants through the ongoing fees in the rules.
- (3) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.

29 Investigator must investigate

The investigator must conduct an investigation of the facts surrounding all alleged breaches notified to it under regulations 21 and 22.

30 Participants must co-operate with investigation

Every participant must co-operate fully with any investigation carried out by the investigator in accordance with section 43U of the Act.

31 Privileges protected

Privileges are protected in accordance with section 43V of the Act.

32 Limits on investigation powers

The investigation powers of the investigator are limited by section 43W of the Act.

Procedures if alleged breach resolved by settlement

33 Settlement process

- (1) The investigator must endeavour to effect a settlement of every alleged breach under investigation by agreement between —
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.
- (2) In effecting a settlement, the investigator may use any process that the investigator thinks fit, after consultation with the persons referred to in subclause (1).

34 Settlements must be written, etc

- (1) Every settlement must —
 - (a) be in writing; and
 - (b) specify the details of any breach of the rules that is admitted by a participant; and
 - (c) record the terms of the settlement.

- (2) The persons referred to in regulation 33(1) must notify their acceptance of the terms of the settlement in writing to the investigator.

35 Rulings Panel decides whether to approve settlements

- (1) The investigator must provide to the Rulings Panel —
- (a) a copy of the settlement; and
 - (b) a report containing as much of the information specified in regulation 39(3) as the investigator reasonably considers relevant in the circumstances of the matter.
- (2) The investigator may make a recommendation to the Rulings Panel that the Rulings Panel should not approve the settlement on the ground that the settlement is not in the best interests of the gas industry or the public.
- (3) The Rulings Panel must either —
- (a) approve the settlement, in which case the settlement is final and binding on all participants; or
 - (b) reject the settlement.

36 Settlements must be published

- (1) The industry body must publish the terms of every settlement approved by the Rulings Panel under regulation 35.
- (2) However, the Rulings Panel may direct the industry body not to publish any part, or all, of any particular settlement if the Rulings Panel considers that there are special circumstances that justify the non-publication.

37 What happens if Rulings Panel rejects settlement

If the Rulings Panel rejects a settlement under regulation 35(3), it must —

- (a) direct the investigator to further endeavour to effect a settlement under regulation 33; or
- (b) direct the investigator to abandon the investigation; or
- (c) determine the alleged breach itself under regulations 39 to 50.

38 What happens if investigator unable to effect settlement

- (1) If, within the timeframe specified in subclause (2), an investigator is unable to effect a settlement of an alleged breach in accordance with regulation 31, the investigator must refer the alleged breach to the Rulings Panel for determination under regulations 47 to 48.

- (2) The timeframe is —
- (a) within 30 working days (or any longer period that the investigator agrees in writing) of the alleged breach being referred to the investigator under regulation 23; or
 - (b) if applicable, within 10 working days of the investigator further endeavouring to effect a settlement in accordance with a direction given under regulation 37(a).

Process if alleged breach is determined by Rulings Panel

39 Process if Rulings Panel to determine alleged breach

- (1) This regulation applies if the Rulings Panel —
- (a) decides under regulation 37(c) that it will determine an alleged breach itself; or
 - (b) must determine an alleged breach under regulation 38 because an investigator has been unable to effect a settlement between the parties.
- (2) The investigator must provide to the Rulings Panel a report and recommendation sufficient to enable the Rulings Panel to determine the alleged breach.
- (3) The report must, to the extent reasonably practicable, specify or contain the following information:
- (a) the rule allegedly breached; and
 - (b) the participant allegedly in breach; and
 - (c) the estimated date and time the breach allegedly occurred; and
 - (d) the relevant issues raised by the participant allegedly in breach in response to the allegations of breach; and
 - (e) the comments made to the investigator by any other person in response to the relevant issues raised by the participant allegedly in breach; and
 - (f) any additional information that the investigator considers relevant to the decision of the Rulings Panel as to how the matter may be dealt with by the Rulings Panel; and
 - (g) the investigator's assessment of the impact on the other participants of the conduct alleged to constitute the breach; and
 - (h) the investigator's assessment of the likelihood of the alleged breach recurring; and

- (i) details of any similar situations previously dealt with by the Rulings Panel, including any settlement approved by the Rulings Panel under regulation 35(3) in response to those situations (if known by the investigator); and
 - (j) a copy of all correspondence with the investigator or market administrator relating to the alleged breach.
- (4) The investigator must use reasonable endeavours to give the report to the Rulings Panel within 5 working days of —
 - (a) the Rulings Panel deciding that it will determine the alleged breach; or
 - (b) the investigator referring the alleged breach to the Rulings Panel for determination under regulation 38.
- (5) The investigator must forward a copy of the report to the following parties as soon as practicable:
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.

40 Rulings Panel to set date for considering alleged breach

- (1) If regulation 39(1) applies, the Rulings Panel must set a date for considering the alleged breach, and must give to the persons referred to in subclause (2) at least 20 working days notice of the place, date, and time at which the Rulings Panel will consider the alleged breach.
- (2) The following persons are entitled to be heard at any hearing or, if there is to be no hearing, to provide written submissions and evidence:
 - (a) the notifying participant or other person that gave the breach notice:
 - (b) the participant allegedly in breach:
 - (c) any participant that has joined as a party to the breach notice under regulation 13:
 - (d) the investigator who investigated the alleged breach.

Part 2

Proceedings of Rulings Panel

41 Rulings Panel may regulate own procedures

- (1) The Rulings Panel may regulate its own procedures, except as otherwise provided in these regulations, and subject to the requirements of natural justice.
- (2) The Rulings Panel must provide a summary of its procedures to the industry body and the industry body must publish those procedures.

42 Rulings Panel must conduct hearings

- (1) The Rulings Panel must conduct a hearing in respect of a matter that is being considered by the Rulings Panel —
 - (a) if the Rulings Panel considers that it is appropriate for any participant to be given an opportunity to be heard; or
 - (b) if any participant requests a hearing in respect of the matter.
- (2) Hearings must be in public, unless the Rulings Panel directs otherwise.
- (3) If there is no hearing the Rulings Panel must consider and decide the matter on the basis of the written submissions and evidence provided in accordance with regulation 40(2).

43 Pre-hearing statements and materials

- (1) If there is to be a hearing, the Rulings Panel must ensure that the persons referred to in regulation 40(2) have been provided with —
 - (a) a copy of any report provided by the investigator under regulation 39; and
 - (b) a copy of all relevant material collected or prepared during the course of the investigation of the matter up to the time the statement is provided.
- (2) The Rulings Panel must comply with subclause (1) —
 - (a) not less than 10 working days before the hearing; or
 - (b) if the Rulings Panel, in its discretion, decides that an urgent hearing is desirable, as soon as practicable.

44 Private hearings may be opposed

- (1) If the Rulings Panel decides that a hearing should be held in private, it must advise the industry body, and the industry body must publish the decision of the Rulings Panel and the grounds for that decision.
- (2) Any participant that disagrees with the decision may, within 5 working days of the decision being published, make a written submission to the Rulings Panel setting out the reasons for its disagreement.
- (3) The Rulings Panel must consider the submission and then advise the industry body of its decision in respect of that submission.

- (4) The industry body must publish any further decision of the Rulings Panel and the grounds for that further decision.

45 Urgent hearings

If the Rulings Panel considers that the subject matter of a hearing involves a significant area of dispute, or is a matter of urgency, it must arrange for a hearing to take place as soon as practicable.

46 Evidence not otherwise admissible

- (1) The Rulings Panel may receive in evidence any statement, document, or information that would not otherwise be admissible as evidence that may, in its opinion, assist it to deal effectively with its consideration of a matter.
- (2) This regulation is subject to regulation 31.

47 Rights of persons entitled to be heard at hearing

- (1) Subject to regulations 42 to 44, any person that is entitled to be heard under regulation 40(2) at any hearing of the Rulings Panel, —
- (a) is entitled to be represented:
 - (b) must be given a reasonable opportunity to make written and oral representations:
 - (c) is entitled to call witnesses and to cross-examine any witness called against it:
 - (d) is entitled to make a plea to the Rulings Panel in mitigation of penalties:
 - (e) is entitled to have any other person present to give evidence.
- (2) At any hearing of the Rulings Panel, the investigator who has investigated the alleged breach must, if requested to do so by the Rulings Panel, speak to his or her report and recommendation provided under regulation 39(2).

48 Rulings Panel may request further information

- (1) The Rulings Panel may request the investigator to obtain any further information if the Rulings Panel considers that, in relation to any matter before it, the Rulings Panel does not have sufficient information for it to determine what action to take under regulation 51.
- (2) The Rulings Panel may make the request of its own initiative or following an application by any person referred to in regulation 40(2).
- (3) Participants must provide any information reasonably requested by the Rulings Panel or the investigator under this regulation.
- (4) Subclause (3) is subject to regulation 31.

49 Rulings Panel may seek advice

- (1) The industry body may approve as industry experts any external auditor, technical expert, or other person to give advice or assistance to the Rulings Panel as and when required.
- (2) In determining an alleged breach of the rules, the Rulings Panel may, subject to the agreement of the industry body, employ or otherwise seek advice or assistance from not more than 2 industry experts approved by the industry body.

50 Participant may make written submissions

- (1) Any person referred to in regulation 40(2) may make written submissions to the Rulings Panel on the subject of any order that the Rulings Panel may make, including any penalty.
- (2) Any submission under this regulation must be made by the date set by the Rulings Panel as the closing date for submissions.

Part 3

Decisions of Rulings Panel

51 Rulings Panel may make certain orders

The Rulings Panel may, after considering any allegation that a participant has breached the rules, make any order specified in section 43X(1) of the Act.

52 Offence to breach compliance orders

Every participant commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who breaches an order made under section 43X(1) of the Act.

53 Rulings Panel may order payment of civil pecuniary penalty up to \$20,000

- (1) The Rulings Panel may require a participant to pay to the industry body a civil pecuniary penalty of an amount not exceeding \$20,000 in any case where that participant has breached any provision of the rules.
- (2) When ordering payment of a civil pecuniary penalty, the Rulings Panel must —
 - (a) take account of the level of civil pecuniary penalties it has ordered in any similar situations; and
 - (b) seek to order payment of a civil pecuniary penalty that is commensurate with the seriousness of the case.
- (3) In making that assessment, the Rulings Panel must have regard to the following matters:

- (a) the severity of the breach:
- (b) the impact of the breach on other participants:
- (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
- (d) the circumstances in which the breach occurred:
- (e) any previous breach of the rules by the participant:
- (f) whether the participant disclosed the matter to the market administrator:
- (g) the length of time the breach remained unresolved:
- (h) the participant's actions on learning of the breach:
- (i) any benefit that the participant obtained, or expected to obtain, as a result of the breach:
- (j) any other matters that the Rulings Panel thinks fit.

54 Rulings Panel decisions

- (1) The Rulings Panel must use reasonable endeavours to make its final decision on each matter under its consideration within 40 working days of the date by which it has received all written and oral submissions on the matter.
- (2) The Rulings Panel must give the decision, in writing together with the reasons for the decision, to the persons that were entitled to be heard under regulation 40(2).
- (3) The Rulings Panel must give the decision to the industry body as soon as practicable after the decision is made.

55 Decisions must be published

- (1) The industry body must publish every decision made by the Rulings Panel under this Part, together with the reasons for the Panel's decision, within 10 working days of receiving the decision from the Rulings Panel.
- (2) However, the industry body must not publish any part, or all, of any particular decision if the Rulings Panel advises the industry body that there are special circumstances that justify the non-publication.

56 Participants must comply with orders and directions

- (1) Every participant must comply with every order relating to it, including any direction or arrangement made by the Rulings Panel for the purpose of giving effect to the order.

- (2) Every participant must perform any action, or make any payment, directed by the Rulings Panel within 10 working days of receiving notice of the direction, or any longer period that the Rulings Panel allows.

57 Sums to be paid by party are debt due

- (1) Any sum due to be paid by a participant under these regulations is a debt due by the participant and is recoverable as such in any court of competent jurisdiction..
- (2) A failure by a participant to pay a sum due to be paid under these regulations is a breach of these regulations.
- (3) A sum that is not paid when due bears interest at the prescribed rate (within the meaning of section 87 of the Judicature Act 1908).

58 Liability of registry operator

The registry operator is not liable under these regulations for a sum in excess of –

- (a) \$20,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or
- (b) \$100,000 in respect of all events occurring in any financial year.

Part 4

Rulings Panel

59 Establishment of Rulings Panel

- (1) A Rulings Panel is established.
- (2) The Rulings Panel is a body corporate with perpetual succession.

Functions of Rulings Panel

60 Functions of Rulings Panel

The functions of the Rulings Panel are to —

- (a) determine, in accordance with these regulations, whether a participant has committed a breach of the rules:
- (b) propose to the industry body that it recommend to the Minister a change to any regulation or rule that the Rulings Panel considers, in the course of considering any matter, to be necessary or desirable:
- (c) exercise any other functions or powers conferred on the Rulings Panel by these regulations.

Membership of Rulings Panel

61 Membership of Rulings Panel

- (1) The industry body must, by written notice, appoint one person with the characteristics described in regulation 69 to be the member of the Rulings Panel.
- (2) A member of the board of the industry body may not be appointed as a member of the Rulings Panel.
- (3) The appointment is effective from the latest of —
 - (a) the date specified in the notice of appointment; or
 - (b) the day that the appointee provides the industry body with written consent to the appointment and a written undertaking to be bound by these regulations.

62 Alternate member

- (1) The industry body may appoint a person with the characteristics described in regulation 69 to act as the alternate of the member of the Rulings Panel in accordance with this regulation.
- (2) The alternate member may act in place of a member of the Rulings Panel, but only if that member of the Rulings Panel is unable by illness, absence, or other reason to so act.
- (3) The alternate member is to be treated as a member of the Rulings Panel for the purposes of the performance or exercise of any function, duty, or power under these regulations.
- (4) Unless the context otherwise requires, a reference to a member of the Rulings Panel in these regulations also includes a reference to the alternate member.
- (5) No appointment of a person under this regulation as the alternate member and no acts done by that person or the Rulings Panel while that person is the alternate member, may in any proceedings be questioned on the ground that the occasion of the person's appointment had not arisen or had ceased.

63 Restrictions on membership of Rulings Panel

The following persons are disqualified from being members of the Rulings Panel:

- (a) a person who is an undischarged bankrupt:
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993:

- (c) a person who is subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act:
- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person:
- (e) a person who has failed to disclose all interests under regulation 69:
- (f) a person who is not a natural person.

64 Term of appointment

- (1) A member of the Rulings Panel —
 - (a) holds office for the term specified in his or her notice of appointment, which may be up to 5 years; and
 - (b) may be reappointed; and
 - (c) continues in office despite the expiry of his or her term of office until—
 - (i) that member is reappointed; or
 - (ii) that member's successor is appointed; or
 - (iii) the industry body informs that member by written notice that he or she is not to be reappointed and no successor is to be appointed.
- (2) This clause is subject to regulation 67.

65 Removal and resignation of member of Rulings Panel

- (1) The industry body must remove a member of the Rulings Panel in the event of his or her serious misconduct, inability to perform the functions of the office, or if he or she becomes a person to whom any of the paragraphs in regulation 63 apply.
- (2) The industry body must state its reasons in any notice of removal.
- (3) The industry body must fill the vacancy created by a removal as soon as possible.
- (4) A member of the Rulings Panel may resign from office by written notice to the industry body signed by him or her.
- (5) The resignation is effective on receipt by the industry body of the notice, or at any later time specified in the notice.

66 No compensation

No member of the Rulings Panel is entitled to any compensation or other payment or benefit relating to his or her removal from office.

67 Member ceasing to hold office

A member of the Rulings Panel ceases to hold office if he or she —

- (a) resigns in accordance with regulation 65; or
- (b) is removed from office in accordance with regulation 65 or any other enactment; or
- (c) becomes disqualified from being a member under regulation 63; or
- (d) otherwise ceases to hold office in accordance with any enactment.

68 Validity of acts

The acts of a person as a member of the Rulings Panel are valid even if —

- (a) the person's appointment was defective; or
- (b) the person is not qualified for appointment.

69 Characteristics of Rulings Panel

A member of the Rulings Panel —

- (a) must have the requisite knowledge, skills, and experience to carry out the functions to be performed by the Rulings Panel; and
- (b) must act impartially in carrying out those functions.

70 Member of Rulings Panel must not be interested

(1) No person may be appointed as a member of the Rulings Panel if that person —

- (a) has a material financial interest in a participant; or
- (b) is a director, officer, member, employee, or trustee of a participant; or
- (c) is otherwise directly or indirectly materially interested in a participant.

(2) A member is "interested" in a matter relating to the Rulings Panel if, and only if, the member —

- (a) is a party to, or will or may derive a material financial benefit from the matter; or
- (b) has a material financial interest in another party to the matter or in a person to whom the matter relates; or

- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from the matter; or
- (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from the matter; or
- (e) is otherwise directly or indirectly materially interested in the matter.

71 Obligation to disclose interest

- (1) Any member of the Rulings Panel who is interested in a matter relating to the Rulings Panel must —
 - (a) disclose the nature of the interest in accordance with regulation 72 as soon as practicable after he or she becomes aware that he or she is interested; and
 - (b) immediately step aside from any deliberations or decision of the Rulings Panel in relation to the matter.
- (2) If subclause (1) applies, the alternate member must act in place of the interested member.

72 Method of disclosure of interest

- (1) If regulation 71 applies, the member must disclose the details listed in subclause (2) in an interests register and to the industry body.
- (2) The details are —
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

73 Remuneration and expenses of Rulings Panel

A member of the Rulings Panel is entitled to receive, from the funds of the Rulings Panel, —

- (a) remuneration and other benefits for services as a member at a rate and of a kind determined by the industry body; and
- (b) reasonable and actual travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

Other matters relating to Rulings Panel

74 Funding of Rulings Panel

- (1) The industry body must fund the Rulings Panel.
- (2) The industry body may recover the costs of that funding from industry participants through the charging of ongoing fees under the rules.
- (3) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.

75 Powers

The Rulings Panel has all the powers necessary to enable it to perform its functions.

Miscellaneous provisions

76 Rulings Panel to keep information confidential

The Rulings Panel must keep confidential all information provided or disclosed to it under these regulations except to the extent that disclosure —

- (a) is required to enable the Rulings Panel to carry out its obligations and duties under these regulations; or
- (b) is necessary for complying with regulations 71 and 72; or
- (c) is otherwise compelled by a law other than these regulations.

77 Rulings Panel may prohibit publication of information

- (1) The Rulings Panel may prohibit the publication or communication of any information or document —
 - (a) that is, or is intended to be, supplied or given or tendered to, or obtained by, the Rulings Panel under these regulations; or
 - (b) in connection with any notification, investigation, report, or procedure under Part 1 or 2 or 3.
- (2) The Rulings Panel may make the prohibition only after it has had regard to the following factors:
 - (a) whether the information or document is confidential, commercially sensitive, or otherwise unsuited to publication or communication; and
 - (b) whether the publication or communication is required to enable the Rulings Panel to carry out its obligations under these regulations; and
 - (c) whether the publication or communication is compelled by a law other than these regulations; and
 - (d) the rules of natural justice.

- (3) The Rulings Panel may make the prohibition —
- (a) on the application of any participant or on its own application; but
 - (b) only after notifying each participant that the Rulings Panel considers would be affected by the publication, communication, or prohibition; and
 - (c) only after having regard to any views that the participant may make known to the Rulings Panel within the time specified by the Panel.

78 Liability of Rulings Panel

No member or employee of the Rulings Panel is personally liable for —

- (a) any liability of the Rulings Panel; or
- (b) any act done or omitted to be done by the Rulings Panel, any member, or any employee of the Rulings Panel, in good faith in pursuance or intended pursuance of the functions, duties, or powers of the Rulings Panel.

79 Rulings Panel costs and performance objectives

- (1) As early as practicable before the beginning of each financial year, the industry body and the Rulings Panel must agree on a budget for the expenses anticipated by the Rulings Panel, and on any performance objectives for the next 12 months.
- (2) Each month, the Rulings Panel must provide the industry body with a written report on actual costs incurred during the month compared with budgeted costs.
- (3) If the Rulings Panel anticipates incurring expenditure in excess of any budgeted amount, it must notify the industry body and apply for a variation to the agreed budget.

80 Rulings Panel reports quarterly on other matters

At the end of each quarter of the financial year, the Rulings Panel must provide the industry body with —

- (a) a summary of the decisions made by the Rulings Panel during that quarter, including details of all awards of costs and compensation; and
- (b) a summary of the current workload of the Rulings Panel, ability to meet performance objectives, and resources; and
- (c) any other matters of concern.

81 Rulings Panel reports annually

At the end of each financial year, the Rulings Panel must provide the industry body with an annual report —

- (a) summarising the performance of the Rulings Panel against budget for the financial year; and
- (b) summarising the decisions of the Rulings Panel during the financial year; and
- (c) summarising the performance of the Rulings Panel during the financial year against agreed performance objectives; and
- (d) commenting on any area of these regulations or the rules where the Rulings Panel considers that a change is required.