



**Recommendation to the Minister of  
Energy on Amendment to  
Gas Compliance Regulations**

28 January 2008



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## 1 Purpose

This recommendation accompanies a recommendation by Gas Industry Co to the Minister of Energy for rules requiring disclosure of certain information by owners of gas processing facilities (the “information disclosure rules”).

Gas Industry Co is recommending rules to establish a limited information disclosure regime which will:

- make information publicly available on the capability of, and availability of capacity at, gas processing facilities; and
- require facility owners to provide information to Gas Industry Co on their responses to requests for third party access;

over a 5 year period for the purpose of settling the issue of whether regulated protocols for access to gas processing facilities are required.

In order to achieve the purpose of those rules, it will be necessary for Gas Industry Co to be able to enforce compliance with them. In May 2007, Gas Industry Co made a recommendation to the Minister for regulations to enforce the proposed Gas (Switching Arrangements) Rules (the “Compliance recommendation”).<sup>1</sup> The Compliance recommendation, and the accompanying recommendation on the switching rules, are currently awaiting final approval by the Minister.

This recommendation proposes that the proposed Gas (Compliance) Regulations (the “Compliance regulations”) be amended to incorporate enforcement of the proposed Gas (Gas Processing Information Disclosure) Rules.

## 2 Background

In the Compliance recommendation, Gas Industry Co recommended that it establish, through regulations, a regime for enforcement of the proposed Gas (Switching Arrangements) Rules (the “Switching rules”). The work undertaken to design, and consult upon, the proposed compliance regime is set out in detail in the Compliance recommendation.

The compliance regime is made up 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.

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<sup>1</sup> See *Recommendation to the Minister of Energy on Switching Arrangements for the New Zealand Gas Industry* and accompanying *Recommendation to the Minister of Energy on Regulations for Enforcement of Switching Arrangements*, both dated 31 May 2007.

- an Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, and refers settlements and unresolved breaches to the Rulings Panel.
- a one member Rulings Panel which approves or rejects settlements, determines unresolved breaches and orders remedies.

In a statement of proposal issued in September 2007<sup>2</sup>, Gas Industry Co proposed that, as a result of the failure to obtain industry agreement to a voluntary information disclosure regime, the only reasonably practicable option for settling the issue of whether further regulation of access to gas processing facilities was required was to recommend information disclosure rules.

In section 9 of that proposal, it was suggested that, in order to enforce compliance with those rules, the proposed Compliance regulations be amended to cover the gas processing information disclosure rules.

### 3 Process to Establish Regulations

#### 3.1 Legislative powers

##### a) *Power to make regulations for compliance and enforcement*

The specific powers in the Act which allow Gas Industry Co to recommend rules in respect of information disclosure are described in section 3 of this statement of proposal.

In addition, section 43G(2) of the Act provides that the Minister of Energy can recommend to the Governor-General the making of regulations for the purpose of:

...

- (i) *providing procedures for resolving disputes between industry participants:*
- (j) *providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person:*
- (k) *providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court:...*

##### 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:

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<sup>2</sup> See *Statement of Proposal Information disclosure by owners of gas processing facilities* dated September 2007

- contemplate that a Rulings Panel 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 for allocation and reconciliation 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:*
- (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.*

**3.2 Legal requirements when recommending rules or regulations**

**a) Section 43L - consultation**

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

- (a) *undertake an assessment under section 43N [of the Act]; and*
- (b) *consult with persons the recommending body thinks are representative of the interests of persons 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 provided in section 5 of this recommendation.

***b) Section 43N(1) – identification and assessment of options***

Under section 43N(1) of the Act Gas Industry Co is required 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*
- (c) *ensure that 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*
- (d) *prepare a statement of the proposal for the purpose of consultation under section 43L(1).*

***c) Section 43N(2) – statement of proposal***

Under section 43N(2) of the Act, the statement of proposal must 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 Gas Industry Co's statement of proposal, including the assessment of the options identified, is provided in section 4 of this recommendation.

**d) Conclusion**

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

**3.3 Rules or regulations**

**a) Section 43(Q)**

Under section 43Q(1) of the Act, the Minister may make a rule for all or any of the purposes for which a gas governance regulation may be made.

When deciding to make a rule rather than a regulation, under section 43Q(2) of the Act 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.*

**b) Conclusion**

Gas Industry Co considers that the proposed amended 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 compliance and enforcement of the proposed information disclosure rules should be implemented by way of amending the current Compliance regulations.

### 3.4 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 rule or regulation, publicise that recommendation and the assessment completed under section 43N. The recommendation will be made available on Gas Industry Co's website and notified in the Gazette for that purpose. A draft gazette notice is attached as Appendix III.

## 4 Statement of Proposal and Assessment

### 4.1 Statement of proposal

One of the potential issues with a voluntary information disclosure regime is the difficulty of enforcing ongoing compliance with the regime once facility owners have "signed up". It was hoped that facility owners would be incentivised to support an opt-in arrangement as a means of demonstrating support for an industry-led solution in this area. Compliance issues were therefore not considered in the August 2006 discussion paper.

As required by the Act, section 9 of the September 2007 statement of proposal contained a detailed statement of the proposal for enforcement of the proposed information disclosure rules, a statement of the reasons for the proposal, an assessment of the reasonably practicable options, including the proposal, and confirmation that there is not other information that Gas Industry Co considers is relevant. A copy of the amended draft compliance regulations was attached as Appendix C to the statement of proposal.

The proposed amendments are:

- Adding a reference to the information disclosure rules to the purpose statement in rule 3.
- Amending the definition of "rules" in rule 4 to include the information disclosure rules.
- Amending the definition of "participant" in rule 4 to include facility owners.

A copy of the draft amended Compliance regulations is attached as Appendix IV.

### 4.2 Assessment

As with other regulatory arrangements proposed by Gas Industry Co, consideration needs to be given to whether the compliance regime should be effected through a pan-industry agreement or regulations. The objective of any compliance regime is to provide a high degree of confidence that the proposed information disclosure will be adhered to, thereby contributing to the overall achievement of the Government's policy objectives for the gas industry.

Having concluded that rules are required for information disclosure, it follows that it would be most effective for the compliance regime to also be regulated under the Act. Further, as a compliance regime affects peoples' rights, including empowering a decision-making body to make determinations and impose penalties on parties to such determinations, it is

appropriate that the regime should be implemented through regulations under the Act rather than rules.

The costs and benefits of a compliance regime are necessarily linked to ensuring that the benefits of the arrangements which they enforce are achieved. The benefits of the compliance regime are therefore the achievement of the benefits derived from the implementation of those arrangements.

In this case, the benefit of a regime for compliance with, and enforcement of, rules for information disclosure is ensuring the achievement of the benefits described earlier in this statement of proposal. In particular, given that Gas Industry Co has concluded that only a light-handed, low cost approach is justified, it is important that compliance be achieved in the most efficient manner possible.

The likely range of costs for a compliance regime was set out in Appendix 1 of the switching compliance proposal. These covered all the initial establishment and set up costs for the regime, including appointment of investigators and the Rulings Panel.

As those costs will have already been incurred, the costs of information disclosure compliance will only consist of the incremental cost of amending the switching compliance regulations to include information disclosure, and any additional workload for the compliance bodies set out in section 2 above. It is not envisaged, for example, that coverage of the information disclosure rules will require appointment of additional personnel to any of those bodies. Indeed, Gas Industry Co considers that there is a very low likelihood of enforcement procedures being required in respect of information disclosure. It is therefore proposed that any incremental costs be recovered through the Gas Industry Co levy.

## 5 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.

These consultation obligations also apply to a recommendation to amend rules or regulations. Gas Industry Co consulted on the September 2007 statement of proposal over a three week period in September 2007<sup>3</sup>. Submissions were invited from the list of stakeholders in Appendix I.

Submissions on the statement of proposal were received from:

- Genesis Energy
- Mighty River Power

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<sup>3</sup> Gas Industry Co previously consulted stakeholders on the August 2006 discussion paper.

- OMV New Zealand
- Shell (Petroleum Mining) Co
- Swift Energy New Zealand
- Vector.

Except for Mighty River Power, all of the submitters have an ownership interest in producing or soon-to produce gas fields and/or associated gas processing facilities.

Given the lack of agreement on a voluntary information disclosure regime, there was general acceptance that a regulated solution was necessary and that there needed to be an appropriate mechanism for enforcing the proposed rules.

OMV was concerned that, given the high likelihood that parties may not comply with the proposed regulations, the Compliance regulations may be “too cumbersome and will be too expensive to monitor and enforce”. OMV was concerned that the cost of compliance may therefore mean that the regulated outcome is less efficient and pose unnecessary additional cost on the industry. For this reason, the submitter considered that Gas Industry Co should take further steps to implement a non-regulatory regime.

OMV’s submission generally did not support a regulated solution and proposed an alternative. Gas Industry Co’s response to that submission is set out in section 7.1(a) of the recommendation on the information disclosure rules.

Gas Industry Co did not receive any other specific submissions on the proposal to amend the Compliance regulations.

## 6 Potential Risks

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

- greater implementation cost; and
- non-compliance by facility owners.

Gas Industry Co considers the overall risks to be low, as the light handed regulatory approach to information disclosure is likely to result in relatively small upfront and ongoing operational costs. Based on initial attempts by Gas Industry Co to establish a voluntary information disclosure regime and general acceptance of the regime by the majority of facility owners, the risk of non-compliance under a regulated regime is considered low. Gas Industry Co therefore considers that the associated compliance costs will also be low.

## 7 Consideration of Gas Act Objectives

### 7.1 General objectives

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."*

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

- (a) *The facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements;*
- (b) *Energy and other resources are used efficiently;*
- (c) *Barriers to competition in the gas industry are minimised to the long-term benefit of end-users;*
- (d) *Incentives for investment in gas processing facilities, transmission, distribution, energy efficiency and demand-side management are maintained or enhanced;*
- (e) *The full costs of producing and transporting gas are signalled to consumers;*
- (f) *Delivered gas costs and prices are subject to sustained downward pressure;*
- (g) *The quality of gas services and in particular trade-offs between quality and price, as far as possible, reflect customers' preferences;*
- (h) *Risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties;*
- (i) *Consistency with the Government's gas safety regime is maintained; and*
- (j) *The gas sector contributes to achieving the Government's climate change objectives by minimising gas losses and promoting demand-side management and energy efficiency.*

## 7.2 Objectives relating to gas processing

Paragraph 9 of the GPS sets out the Government's expectation that Gas Industry Co will develop and submit to the Minister for approval proposed arrangements, including regulations and rules where appropriate, providing for effective industry arrangements in certain areas. In relation to gas processing, Gas Industry Co is to develop and propose:

*"protocols that set reasonable terms and conditions for access to gas processing facilities."*

In the above context, Gas Industry Co stated in the August 2006 discussion paper and September 2007 consultation proposal, that the regulatory objective for access protocols is to:

*"promote efficient access to gas processing facilities to support Government's overall objective, and the specific outcomes it expects, for the gas industry."*

Stakeholder submissions generally supported this regulatory objective, which Gas Industry Co considers is consistent with the recommended rules for limited information disclosure to settle the issue of whether further regulation is required. The primary intent of the information disclosure proposal is to provide further information on the gas processing market during the transition to a larger number of smaller gas fields. This will help ensure that any later decision to impose access protocols will be soundly based and therefore promote the regulatory objective. The proposed regime will also have the additional benefit of providing a convenient means for gas processing access seekers to identify potential options.

### 7.3 Objectives for compliance and enforcement

Consideration of any compliance and enforcement arrangements to support the information disclosure rules needs to fit within the Government's overall policy objective for the gas industry and the specific outcomes it is seeking for the gas processing market as outlined above.

The regulatory objective for the Compliance regulations was:

*“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 same regulatory objective should apply to any compliance and enforcement regime proposed in relation to the information disclosure rules. Gas Industry Co considers that the proposed amendments to the Compliance regulations will meet this regulatory objective.

## 8 Consultation with MED

Representatives of the Ministry of Economic Development (“MED”) have been briefed regularly by Gas Industry Co on the development of the proposed gas processing facility information disclosure arrangements.

MED has been issued with all relevant documents in conjunction with the industry stakeholders identified in Appendix I. A draft copy of this recommendation was also sent to MED, providing an opportunity for comment prior to it being forwarded to the Board of Gas Industry Co for approval.

## 9 Communications

In accordance with section 43O of the Act, Gas Industry Co intends publishing, within 10 working days after providing 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 II.

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

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.

## **10 Recommendation**

Gas Industry Co recommends to the Minister of Energy under section 43G(2)(l) and section 43S(1) of the Gas Act 1992 the amendment of the Gas (Compliance) Regulations in the form attached as Appendix IV to this recommendation.

## **Appendices**

The following appendices are attached to this recommendation:

- Appendix I: List of stakeholders for consultation
- Appendix II: Notice for Gazette
- Appendix III: Notice for website
- Appendix IV: Amended regulations





# Appendix I: Stakeholder consultation list

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

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

## Appendix II: Notice for Gazette

### **Notice of Making of a Recommendation and Assessment for an Amendment to Gas Governance Regulations**

This notice of a recommendation and assessment of an amendment to 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 a gas governance regulation to the Minister of Energy, Gas Industry Co must publicise the recommendation and the assessment completed under section 43N of the Gas Act.

#### **Recommendation**

On 28 January 2008 Gas Industry Co made a recommendation to the Minister of Energy under sections 43G(2)(k) and 43S of the Gas Act for approval of an amendment to the Gas (Compliance) Regulations to provide for enforcement of rules for information disclosure by gas processing facility owners.

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

Dated at Wellington this [ ] of [ ].

For and on behalf of Gas Industry Co



## Appendix III: 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 28 January 2008, Gas Industry Co made a recommendation for an amendment to regulations for enforcement of rules requiring information disclosure by gas processing facility owners. The text of this recommendation, including the assessment under section 43N of the Act, is available below:

### **Recommendation to the Minister of Energy on Amendment to Gas Compliance Regulations**



## Appendix IV: Amended regulations





## Draft Gas (Compliance) Regulations 2008

Pursuant to sections 43G and 43S of the Gas Act 1992, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## 1 Title

These regulations are the Gas (Compliance) Regulations 2008

## 2 Commencement

These regulations come into force on the 28<sup>th</sup> day after their notification in the *Gazette*.

## 3 Purpose

These regulations provide for the monitoring and enforcement of the:

- (1) Gas (Switching Arrangements) Rules 2008; and
  - (2) Gas (Gas Processing Information Disclosure) Rules 2008;
- made under 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

**business day** means any day of the week except —

- (a) Saturday and Sunday; and
- (b) Any day that Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day, New Year's Day, the day after New Year's Day, and Waitangi Day are observed for statutory holiday purposes; and
- (c) Any other day which the industry body has determined not to be a business day as published by the industry body

**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 and facility owner 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:

- (a) Gas (Switching Arrangements) Rules 2008; and
- (b) Gas (Gas Processing Information Disclosure) Rules 2008;

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 58.

- (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 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 business 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 business 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 at the time the -
  - (a) Computer system used to transmit the notice has received an acknowledgment or receipt to the electronic mail address of the person transmitting the notice; 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 38(3).

**28 Investigator must investigate**

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

**29 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.

**30 Privileges protected**

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

### **31 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*

### **32 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).

### **33 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 32(1) must notify their acceptance of the terms of the settlement in writing to the investigator.

### **34 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 38(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.

**35 Settlements must be published**

- (1) The industry body must publish the terms of every settlement approved by the Rulings Panel under regulation 34.
- (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.

**36 What happens if Rulings Panel rejects settlement**

If the Rulings Panel rejects a settlement under regulation 34(3), it must —

- (a) direct the investigator to further endeavour to effect a settlement under regulation 32; or
- (b) direct the investigator to abandon the investigation; or
- (c) determine the alleged breach itself under regulations 38 to 49.

**37 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 32, the investigator must refer the alleged breach to the Rulings Panel for determination under regulations 46 to 47.
- (2) The timeframe is —
  - (a) within 30 business 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 business days of the investigator further endeavouring to effect a settlement in accordance with a direction given under regulation 36(a).

*Process if alleged breach is determined by Rulings Panel*

**38 Process if Rulings Panel to determine alleged breach**

- (1) This regulation applies if the Rulings Panel —
  - (a) decides under regulation 36(c) that it will determine an alleged breach itself; or

- (b) must determine an alleged breach under regulation 37 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 34(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 business 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 37.
- (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.

### **39 Rulings Panel to set date for considering alleged breach**

- (1) If regulation 38(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 business 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**

#### **40 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.

#### **41 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 39(2).

#### **42 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 39(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 business days before the hearing; or
  - (b) if the Rulings Panel, in its discretion, decides that an urgent hearing is desirable, as soon as practicable.

#### **43 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 business 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.

#### **44 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.

#### **45 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 30.

#### **46 Rights of persons entitled to be heard at hearing**

- (1) Subject to regulations 41 to 43, any person that is entitled to be heard under regulation 39(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 38(2).

#### **47 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 50.
- (2) The Rulings Panel may make the request of its own initiative or following an application by any person referred to in regulation 39(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 30.

#### **48 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.

#### **49 Participant may make written submissions**

- (1) Any person referred to in regulation 39(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**

#### **50 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.

**51 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.

**52 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 Crown 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.

**53 Rulings Panel decisions**

- (1) The Rulings Panel must use reasonable endeavours to make its final decision on each matter under its consideration within 40 business 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 39(2).
- (3) The Rulings Panel must give the decision to the industry body as soon as practicable after the decision is made.

#### **54 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 business 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.

#### **55 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 business days of receiving notice of the direction, or any longer period that the Rulings Panel allows.

#### **56 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).

#### **57 Liability of registry operator**

- (1) The registry operator is liable for any breach of rules 14,15,16,17,19, and 81.5 of the Gas (Switching Arrangements) Rules 2008.
- (2) 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

#### 58 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*

#### 59 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*

#### 60 Membership of Rulings Panel

- (1) The industry body must, by written notice, appoint one person with the characteristics described in regulation 68 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.

#### 61 Alternate member

- (1) The industry body may appoint a person with the characteristics described in regulation 68 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.

## **62 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 68:
- (f) a person who is not a natural person.

## **63 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 66.

#### **64 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 62 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.

#### **65 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.

#### **66 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 64; or
- (b) is removed from office in accordance with regulation 64 or any other enactment; or
- (c) becomes disqualified from being a member under regulation 62; or
- (d) otherwise ceases to hold office in accordance with any enactment.

#### **67 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.

#### **68 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.

**69 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.

**70 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 71 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.

**71 Method of disclosure of interest**

- (1) If regulation 70 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).

**72 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*

**73 Powers**

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

*Miscellaneous provisions*

**74 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 70 and 71; or
- (c) is otherwise compelled by a law other than these regulations.

**75 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.

#### **76 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.

#### **77 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.

#### **78 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.

**79 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.

*Funding*

**80 Funding of market administrator, Investigator and Rulings Panel**

- (1) The industry body must fund the market administrator, any investigators selected by the market administrator and the Rulings Panel.
- (2) The industry body may recover the costs of that funding from industry participants through ongoing fees under these regulations.
- (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.

**81 Ongoing fees**

- (1) The ongoing fees are monthly fees to meet the compliance ongoing costs.
- (2) The compliance ongoing costs will include the costs payable to the market administrator, investigator and Rulings Panel for that year.
- (3) Every person who is liable to pay ongoing fees under the rules for a month is also liable to pay ongoing fees for that month in accordance with these regulations.

**82 How and when estimated ongoing fees payable**

- (1) The estimated ongoing fees are payable to the industry body.
- (2) As soon as practicable after the commencement date, the industry body must determine and publish on its website a breakdown of the estimated compliance ongoing costs the first year or part year of operation of these regulations.

- (3) As soon as practicable after publication of the estimated compliance ongoing costs for the first year or part year of operation, the industry body must notify every person to whom regulation 82(3) applies of the ongoing fees payable by that person in that year or part year calculated in accordance with the following formula:

$A/B$

Where:

$A$  = the compliance ongoing costs estimated in accordance with regulation 82(2) and divided by 12; and

$B$  = the total number of persons liable to pay ongoing fees in respect of the rules.

- (4) For each year following the first year or part year of operation, the industry body must:
- (a) estimate and publish on its website at least 2 months prior to the beginning of that year a breakdown of the estimated compliance ongoing costs for that year; and
  - (b) as soon as practicable after publication of the estimated compliance ongoing costs, notify every person to whom regulation (3) applies of the ongoing fees payable by that person in that year calculated in accordance with the formula in regulation (3).
- (5) On the first business day of each month, the industry body or the market administrator must invoice every person to whom regulation (3) applies for that person's share of the ongoing fees payable during that month calculated in accordance with the formula in regulation (3).

### **83 How and when actual ongoing fees payable**

- (1) The actual ongoing fees are payable to the industry body.
- (2) As soon as practicable after the end of each year, the industry body must determine and publish on its website a breakdown of the actual compliance ongoing costs for that year.
- (3) No less than 10 business days after publication of the actual compliance ongoing costs, the industry body or the market administrator must invoice or issue a credit note to every person to whom regulation 82(3) applies with the difference between:
- (a) That person's share of the actual compliance ongoing costs; and
  - (b) The amount of the estimated compliance ongoing costs paid by that person during the year.

### **84 General provisions regarding fees**

- (1) The due date for the payment of any invoice or credit note is the 10th business day after the date on the invoice or credit note.

- (2) Any person who is liable to pay any fee under regulations 81 to 84 inclusive, and who fails to make payment of such fee on or before the date on which it falls due, is liable to pay an additional fee of 10% of the amount of the fee that is unpaid.
- (3) The additional fee becomes payable and due on the 10th business day after the date that the industry body notifies the person that an additional fee is payable.
- (4) The fees payable under regulations 81 to 84 inclusive are exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985 and goods and services tax on those fees will be added to the invoices issued under regulations 82(5) and 83(3).

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