

Terms of reference for Insolvent Retailers Working Group (IRWG)

Background and purpose

1. The IRWG has been established to assist Gas Industry Co in designing the drafting instructions for regulations that could be made urgently following the insolvency of a gas retailer.
2. This is necessary owing to Gas Industry Co's consultation process that followed the insolvency of the E-Gas group of companies in late 2010; the consultation process resulted in a Recommendation to the Minister of Energy and Resources in April 2013 that permanent backstop regulation is not necessary for a gas retailer default but that it would be prudent to have drafting instructions prepared for regulations that could be made urgently in the (unlikely) case of intervention being required.
3. The market failure risk identified in the policy process was that of 'orphaned customers' who are customers connected to a gas network and are, or at least are capable of, consuming gas, but without a viable retailer to pay for the use of such gas. This is a market failure because the use of gas by orphaned customers will be treated as unaccounted-for-gas (UFG) under the Gas (Downstream Reconciliation) Rules 2008 (DR Rules) and would therefore be borne by viable retailers and their customers.
4. Retailer insolvencies are rare events. Orphaned customers will result only if a liquidation or receivership process does not result in a sale of customers. The incentives of other parties in the supply chain when a retailer becomes insolvent are mostly aligned with the achievement of a commercial sale of customers. Up until the point that customers are sold or disclaimed, the insolvency practitioner will be responsible for meeting the financial obligations of the insolvent retailer. Orphaned customers are therefore an unlikely outcome of a rare event. The insolvency of a retailer is neither a market failure nor a reason for regulatory intervention *per se*.
5. The design of any backstop measure is constrained by regulatory provisions:
 - the empowering provision in the Gas Act (s. 43(G)) provides that the purposes for which regulations may be made are:

Transition arrangements for insolvent gas retailers

providing a system of transition arrangements for consumers in the event of a gas retailer becoming insolvent, and requiring industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other gas retailers.

Note this empowering provision clearly limits the transition arrangements to insolvent gas retailers – intervention is not possible for a potential or likely insolvency. Another key point to note is that the purpose for which such regulations may be made must have the objective of either protecting consumers or managing the liabilities of other gas retailers; and

- any regulatory arrangement that Gas Industry Co recommends to manage retailer insolvency must be consistent with (i.e. not interfere with) the Companies Act 1993, the Receiverships Act 1993, and the Corporations (Investigation and Management) Act 1989.

6. Additional background is available on Gas Industry Co's website:

<http://gasindustry.co.nz/work-programme/insolvent-retailers>.

7. The IRWG has therefore been established to:

- agree on the optimal way of allocating any orphaned customers that result from a retailer insolvency; and
- agree on drafting instructions to achieve such an allocation.

Role

8. The key role of the IRWG is to provide expert advice to Gas Industry Co on matters assigned to it according to the "Key Deliverables" section below.

9. That advice will include, but is not limited to, providing analysis, feedback, and assistance on drafting instructions.

10. In providing its advice, the IRWG will take into account:

- a. the industry governance arrangements set out in Part 4A of the Gas Act, in particular the section 43ZN objectives;
- b. the 2008 Government Policy Statement on Gas Governance;
- c. the regulatory constraints discussed in section 5 above; and
- d. the need to reconcile divergent views wherever possible.

11. Members are expected to possess a good or advanced level of knowledge in the technical operation of the gas registry (including population of fields), and must be familiar with the operation of the DR Rules and the Gas (Switching Arrangements) Rules 2008.

Key deliverables

12. It is intended by Gas Industry Co that each meeting will require key milestones being met in order to have drafting instructions completed and issued for public consultation.

Working group – meeting dates and agenda items

| Meeting # | When | Indicative agenda items | Expected outcome |
|-------------------------------|----------------------------|---|--|
| 1 | Wed 16 Oct (11 am-2 pm) | Gas Act context Agree on Terms of Reference Issues raised by previous consultations Framework for backstop regulations | Familiarise members with context. Begin discussing framework for the drafting instructions. |
| 2 | Wed 27 Nov (11 am-2 pm) | Discuss parameters for the drafting instructions | Agree on parameters for drafting instructions. |
| Further meetings as necessary | | | |

13. The timetable above should be treated as indicative only. Additional meetings may be required depending on the progress the group is making.

Gas Industry Co's role

14. Gas Industry Co will facilitate all meetings of the IRWG.

15. IRWG meetings will be carried out in accordance with agendas determined by Gas Industry Co in advance of meetings. Reasonable notice of meetings must be given by Gas Industry Co, including the time and venue.

16. Gas Industry Co will prepare minutes following all meetings. Draft minutes will be circulated to members for comment before being finalised. Final minutes will be made publicly available on Gas Industry Co's website.

17. Gas Industry Co will make all IRWG material available on its website unless specific material has been agreed as confidential by members.

18. Gas Industry Co intends to produce all material for the IRWG although the IRWG will be required from time to time to complete certain tasks such as providing input of drafting.

IRWG's decision-making process

19. Gas Industry Co retains the sole right to make final decisions.

20. Gas Industry Co encourages the IRWG to provide consensus advice. Where the IRWG is unable to provide consensus advice, this will be clearly recorded in the minutes by Gas Industry Co.

21. The IRWG must provide its advice in accordance with the constraints listed in paragraph 5 above.

22. For the avoidance of doubt, consensus advice from the IRWG will not bind Gas Industry Co to implement or recommend that advice.

IRWG Membership

23. IRWG will consist of the following members, appointed for their expertise in reconciliation, allocation and switching processes (in addition to Gas Industry Co attendees):

- a. Joan Purdie, Vector, Group Manager, Transaction Processing
- b. Anna Carrick, Vector Manager, Natural Gas Trading
- c. Jim Raybould, Mighty River Power, Gas Manager
- d. Mark Herman, Powerco, Customer & Commercial Manager
- e. Andrew Maseyk, Genesis, Reconciliation and Commercial/Technical Manager
- f. Rod Crone, Contact, Network & Reconciliation Manager

24. Members are not required to be independent persons but members are expected to provide reasoned, impartial advice. Members are appointed as individuals and not as representatives of their organisations.

25. Members will be responsible for:

- a. complying with the requirements set out in these terms of reference;
- b. being available for all IRWG meetings unless arranged otherwise prior to the meeting;
- c. informing Gas Industry Co of any actual or perceived conflicts of interest that may affect their ability to perform their functions as a IRWG member;
- d. carrying out any tasks or actions assigned by Gas Industry Co; and
- e. not speaking to the media on any matter relating to the IRWG.

26. Members are appointed until IRWG is disestablished.

27. If for any reason a member needs to withdraw from the IRWG then the member must give Gas Industry Co reasonable notice. Following that notice, Gas Industry Co may seek nominations for a replacement member.

28. Failure to perform to a standard acceptable as determined by Gas Industry Co may result in the termination of a member's appointment.

Meetings

29. IRWG members will be expected to make themselves available for meetings in person.
30. IRWG members are not entitled to send an alternate to meetings unless agreed by Gas Industry Co and the alternate has a good understanding of the IRWG's work.
31. Members may be granted leave from a meeting or meetings at Gas Industry Co's discretion. Any member who, without unauthorised leave, misses two consecutive IRWG meetings will be deemed to be removed from the IRWG.