

Guidance Note: Appointing a completely independent expert under Schedule 7 of the CCM Regulations

Regulation 46H of the Gas Governance (Critical Contingency Management) Regulations 2008 requires GIC to appoint a technical expert to assist in assessing the application for a critical processing designation, and allows GIC to appoint a technical expert to assist in any other designation applications.

We must follow the process in Schedule 7 of the Regulations when appointing a technical expert. That means that we may only accept an applicant's recommendation when we are satisfied that the expert is 'completely independent.' If the applicant declines to make a recommendation, then Gas Industry Co may appoint an independent expert.

But the Regulations do not define 'independent' or 'completely independent.' At industry's request, we sought advice about what standards apply to independent experts and completely independent experts. After receiving and considering this advice, we have decided to publish these guidelines.

Who qualifies as an independent expert?

Technical experts may be independent if they:

- have no financial interest in the applicant;
- are not a director, officer, member, employee, or trustee of the applicant; and
- are not otherwise directly or indirectly materially interested in the applicant.

In other words, experts may be independent if they have no material interest in the applicant. For instance, technical experts may be independent if they:

- had an association with the applicant, as long as there are no longer connections between the parties;
- have a negligible shareholding in the applicant;
- worked for the applicant for a short time several years ago but have had no involvement with the applicant since that time.

Who qualifies as a completely independent expert?

Complete independence is a more rigorous standard. The term 'completely independent' suggests that the expert may not have *any* interest in the applicant nor have had any previous interest in the applicant. Basically, the expert may not in any way appear to be influenced by the opinions of the applicant. When evaluating whether or not technical experts are completely independent, we may ask the following questions:

- Does the expert have a disqualifying relationship with the applicant? If the expert is an employee or contractor or has any other interest in the company that could influence the expert's judgment in relation to the applicant, then a disqualifying relationship may exist.
- Does the expert have any past relationship with the applicant? Past relationships may influence an individual's assessment. Any past relationship where the expert's work for the applicant could influence the expert suggests a disqualifying past relationship.
- Has the expert had any affiliation, interest, or association with the applicant? This goes beyond an employment or contractual arrangement and includes investments, dealings, and related enterprises.

Conclusion

Some stakeholders have expressed concern that it may be difficult to find an experienced, completely independent expert in New Zealand. But the Regulations do not give us any discretion to lower the standard. If an applicant wants to avoid having to find a completely independent assessor, one solution is to advise Gas Industry Co that they do not wish to recommend an expert and request that Gas Industry Co choose an independent assessor.

Also note that these guidelines are not rigid. We provide them to inform applicants of some of the factors we may consider when assessing an expert's complete independence. The standard is that we must be satisfied that the expert is free from even the appearance of outside influence or control.