



Recommendation to the
Associate Minister of Energy
and Resources on the
endorsement of arrangements
for the oversight of gas retail
contracts

Date issued: March 2010





About Gas Industry Co.

Gas Industry Co was formed to be the co-regulator under the Gas Act.

As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Executive summary

This report recommends that the Associate Minister of Energy and Resources endorses a proposed industry arrangement for the oversight of retail gas supply arrangements (based on retail contracts). Two oversight options (a voluntary approach and regulated minimum terms) are analysed, and it is concluded that the voluntary approach is preferable.

The recommended arrangement comprises the following:

- Selective, outcome-based benchmark terms have been developed based on industry best practice and in consultation with industry participants
- The recommended oversight arrangement will monitor gas supply arrangements based substantially on published terms and conditions, all residential consumers, and all appropriate legacy arrangements (not agreements based on significantly negotiated terms).
- A 1 June 2010 commencement date is desirable to enable some harmonisation with parallel activity by the Electricity Commission.
- A baseline assessment will be conducted on current gas supply arrangements by an independent contractor, with a further transitional assessment being conducted in a year's time (June 2011).
- Monitoring will take a qualitative assessment approach and Gas Industry Co will assist with providing guidance on the interpretation of benchmark terms (which will be published).
- Based on the results of the assessments, Gas Industry Co will maintain a 'watching brief' to determine whether or not further action, such as selective or full regulation of benchmark terms, is necessary.

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1

Introduction

1.1 Purpose of paper

This report recommends that the Associate Minister of Energy and Resources endorses proposed voluntary arrangements for the oversight of retail gas supply arrangements (mainly comprising retail contracts). Although this is an industry-led arrangement, not subject to proposed rules or regulations, the endorsement of the Minister is sought to provide an assurance that the arrangement is a satisfactory reflection of the requirements set out in the Government Policy Statement (GPS).

The report sets out the details of the proposed approach including the establishment of retail contract benchmarks, a specification for their coverage of consumer and contract types, and the monitoring by Gas Industry Co of the extent of the implementation of the benchmarks by gas retailers. Supporting analysis is also provided.

1.2 Objectives

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

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

1.3 Report structure

The balance of this report is structured as follows:

Section heading	Summary
Background	<ul style="list-style-type: none">• Describes work undertaken to-date.
Policy framework	<ul style="list-style-type: none">• The relevant Gas Act 1992 and the Government Policy Statement (GPS) provisions are outlined.
Analysis	<ul style="list-style-type: none">• Describes and evaluates options for the governance of retail contracts.
The recommended arrangement	<ul style="list-style-type: none">• Presents the benchmark terms and discusses coverage and monitoring.
Implementation	<ul style="list-style-type: none">• Sets out the preferred commencement date and transitional period.
Consultation	<ul style="list-style-type: none">• Provides information about the consultation undertaken on the proposal.
Risks	<ul style="list-style-type: none">• Describes implementation risks and mitigation strategies.
Recommendations	<ul style="list-style-type: none">• Sets out the formal recommendation to the Associate Minister.

2 Background

2.1 Initial work by Gas Industry Co

The October 2004 GPS invited Gas Industry Co to develop arrangements for Model Contract Guideline terms between consumers and retailers. In response to this, a Model Contract Guidelines Working Group (MCWG) was set up in 2005 to examine contractual issues arising between retailers and their customers, and develop contract guidelines and model arrangements for domestic retail contracts. The group was composed of individuals with experience across the whole of the gas sector and with an independent chair.

Existing contracts were reviewed to see whether they reflected the rights and responsibilities of each party fairly, and enabled a gas market where consumers had the option to choose between available suppliers. Based on this and a set of key objectives, and starting with the Electricity and Gas Complaints Commission (EGCC) Code of Practice, a set of Model Contract Guidelines was developed.

Stakeholders were consulted about the content and method of implementation of the guidelines. Following consideration of consultation submissions, a recommendation was made to the Minister of Energy in June 2006. The essence of the recommendation was that the EGCC Code of Practice should be used as the benchmark for retail contracts rather than developing separate Model Contract Guidelines, subject to the EGCC making some amendments and that scheme being approved under the Gas Act to give the Code mandatory status.

For a variety of reasons, that recommendation was not adopted. Thus, Gas Industry Co decided to revisit work in this area and that intention was conveyed in a letter to the Minister in December 2007. In April 2008, the Minister released a revised GPS. The changes included, amongst other things, a revised outcome regarding retail contracts. The April 2008 GPS sought an outcome that 'contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers' (less specific than the previous outcome of model contract guidelines).

2.2 Recent work

In late 2007, Gas Industry Co undertook a broad-based review of consumer issues. The aim was to capture and update previous work in relation to consumer outcomes, establish a reasonable set of consumer expectations as a means of identifying key issues needing to be addressed and, as a result

of considering possible means for addressing those issues, suggest an ongoing work programme for Gas Industry Co.

The review led to the development of a consultation paper on consumer issues, which was published for consultation in August 2008. The analysis in the paper was based on a proposed set of 'consumer expectations' and the paper proposed work programme initiatives in several areas including retail contract terms.

Submissions were received and analysed, and the analysis, together with Gas Industry Co's response, was published in a response document in May 2009. In this document it was proposed to position future work on retail contracts as a defined set of minimum terms. In regard to "next steps", it was suggested that an appropriate course of action would be to issue a consultation paper on options for implementation of minimum terms. The options examined would be likely to include publication of benchmarks with voluntary disclosure, publication of benchmarks with regulated (mandatory) disclosure, and regulated (mandatory) terms.

A consultation paper titled 'Options for the Governance of Retail Contract Terms' was subsequently published in October 2009. The consultation paper set out proposed retail contract benchmarks and examined two options for implementation – voluntary benchmarks with the extent of uptake subject to regular monitoring, and regulated (mandatory) benchmarks terms with compliance subject to the existing compliance regime. Eight submissions were received, all from industry participants. Input from consumers was also provided by a workshop held in conjunction with the 2009 Consumer Forum. The analysis of and response to submissions on the consultation paper was published on 29 January 2010.¹

Based principally on the response document, but also taking account of related work by the Electricity Commission and further discussion within Gas Industry Co, a detailed design for the proposed arrangement was published in early February 2010. This design document was not subject to formal consultation, but a general invitation was issued to stakeholders to provide comment if they so wished and a workshop with gas industry participants was held on 24 February 2010. Direct discussions were also held with officials from the Ministry of Consumer Affairs (MCA) and the Ministry of Economic Development (MED). The results from these interactions were very positive and indicated strong support for the approach being proposed.

A final opportunity was provided for the industry to forward any final comments by 10 March 2010. Comments received have been taken into account in the present recommendation.

1

http://www.gasindustry.co.nz/sites/default/files/u24/Response_to_and_Analysis_of_Submissions_on_the_Retail_Contracts_Consultation_Paper_issued_on_5_October_2009_152072.4.pdf

2.3 The EGCC Gas Consumer Code of Practice and related work by the Electricity Commission

The Electricity and Gas Complaints Commissioner Scheme (EGCC) was approved in December 2009 as a complaints resolution system under both the Electricity Act and the Gas Act 1992. The Constitution of the EGCC includes a 'Gas Consumer Code of Practice,' which was used as a source document in developing the proposed retail contract benchmarks. There is thus a great deal of common content, but there are also items included in one and not the other and vice versa. The language also differs because of the higher level outcome focus of the Gas Industry Co benchmarks.

Parallel work is being carried out by the Electricity Commission with respect to electricity supply contracts. The Electricity Commission's work seeks to develop 'minimum terms' rather than 'benchmarks' and there are some differences in the extent of coverage of topics. These reflect differences between the energy forms, the legislative obligations of the participants in each industry, and the organisations with oversight of them. It is thus considered inappropriate to commit to full harmonisation at this time.

However, there are no inconsistencies between the Gas Industry Co benchmarks and the Electricity Commission minimum terms that would create difficulties for dual fuel retailers. That is, where coverage of the topics is equivalent, it is expected that alignment with the Gas Industry Co benchmarks would generally provide alignment with the Commission's minimum terms, and vice versa.

A more explicitly aligned approach is being taken with implementation, mainly to simplify and minimise the costs of alignment activity and reporting for dual-fuel retailers. The two agencies have agreed that a common start date would be desirable and that there should be common reporting and assessment dates once the arrangements are fully operational. However, there may be some differences in approach during the transitional period. This is explained in Section 6, which deals with implementation.

3

Policy framework

3.1 Regulation-making powers

The legislative framework for governance of the gas industry in New Zealand primarily comprises the Gas Act 1992 (the Gas Act) and the Government Policy Statement on Gas Governance published on 18 April 2008 (the GPS).

Subpart 2 of Part 4A of the Gas Act provides for co-regulation of the gas industry by the Government and Gas Industry Co (as the approved industry body under 43ZL(1) of the Gas Act).

The Minister of Energy and Resources is responsible for the energy portfolio. The Minister monitors the performance of, and receives recommendations and advice from, Gas Industry Co. Responsibility for gas industry matters was transferred to the Associate Minister on 5 March 2009.

3.2 Gas Act objectives

Section 43ZN of the Gas Act sets out a number of objectives to which Gas Industry Co must have regard when recommending rules or regulations under the Gas Act. The principal objective of Gas Industry Co in recommending gas governance regulations and rules is to:

...ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner.

The other objectives are:

- 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;
- barriers to competition in the gas industry are minimised;
- incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced;
- delivered gas costs and prices are subject to sustained downward pressure;

- risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties; and
- consistency with the Government's gas safety regime is maintained.

3.3 GPS objectives and outcomes

Objectives

The GPS requires Gas Industry Co to have regard to two further principal objectives – fairness and environmental sustainability – in all of its recommendations.

Gas Industry Co must also have regard to the other objectives set out in the GPS as follows:

- energy and other resources used to deliver gas to consumers are used efficiently;
- competition is facilitated in upstream and downstream gas markets by minimising barriers to access to essential infrastructure to the long-term benefit of end users;
- the full costs of producing and transporting gas are signalled to consumers;
- the quality of gas services where those services include a trade-off between quality and price, as far as possible, reflect customers' preferences; and
- the gas sector contributes to achieving the Government's climate change objectives as set out in the New Zealand Energy Strategy, or any other document the Minister of Energy may specify from time to time, by minimising gas losses and promoting demand-side management and energy efficiency.

Outcomes: Consumer benefits

The specific outcome that the Government is seeking in relation to retail contracts for domestic and small business consumers is as follows:

- Contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of small consumers.

However, the other outcome under this heading is also relevant:

- All small gas consumers have effective access to a complaints resolution scheme.

Retail contracts define the relationship between the parties and are thus a primary reference for determining whether a complaint is justifiable.

Outcomes: Efficient retail contracts

There are two other outcomes under this heading that are also relevant to the present work:

- an efficient market structure for the provision of gas metering, pipeline, and energy services; and
- the respective roles of gas metering, pipeline, and gas retail participants are able to be clearly understood.

These outcomes are included because:

- the contracting arrangements between meter owners, pipeline owners, retailers, and consumers vary and this creates the potential for confusion and lack of clarity of roles; and
- there may be inefficiencies or mismatches in the 'contract' cascade between retailers and meter owners, or retailers and network owners.

3.4 Recommendation of industry-led arrangements as an alternative to rules or regulations

The process for Gas Industry Co to make recommendations on rules and regulations is set out in section 43L and sections 43N to 43Q of the Gas Act. Section 43N(1)(c) in particular requires that Gas Industry Co:

Ensure that the objective of the regulations [rule] is unlikely to be satisfactorily achieved by any reasonable practicable means other than the making of the regulations [rule] (for example, by education, information, or voluntary compliance

The need to consider alternatives to rules and regulations is also set out in the GPS, as follows:

Gas Industry Co may recommend non-regulatory arrangements, including voluntary codes or multilateral contracts, or that rules or regulations be made under the Gas Act 1992, for the governance of the gas industry, whichever Gas Industry Co considers most practicable to achieve the objectives and outcomes described in the Gas Act 1992 and this policy statement.

The approach recommended in this report is for an industry-led arrangement. Later sections of the report set out the rationale for this approach and provide a cost benefit comparison with the option of regulation.

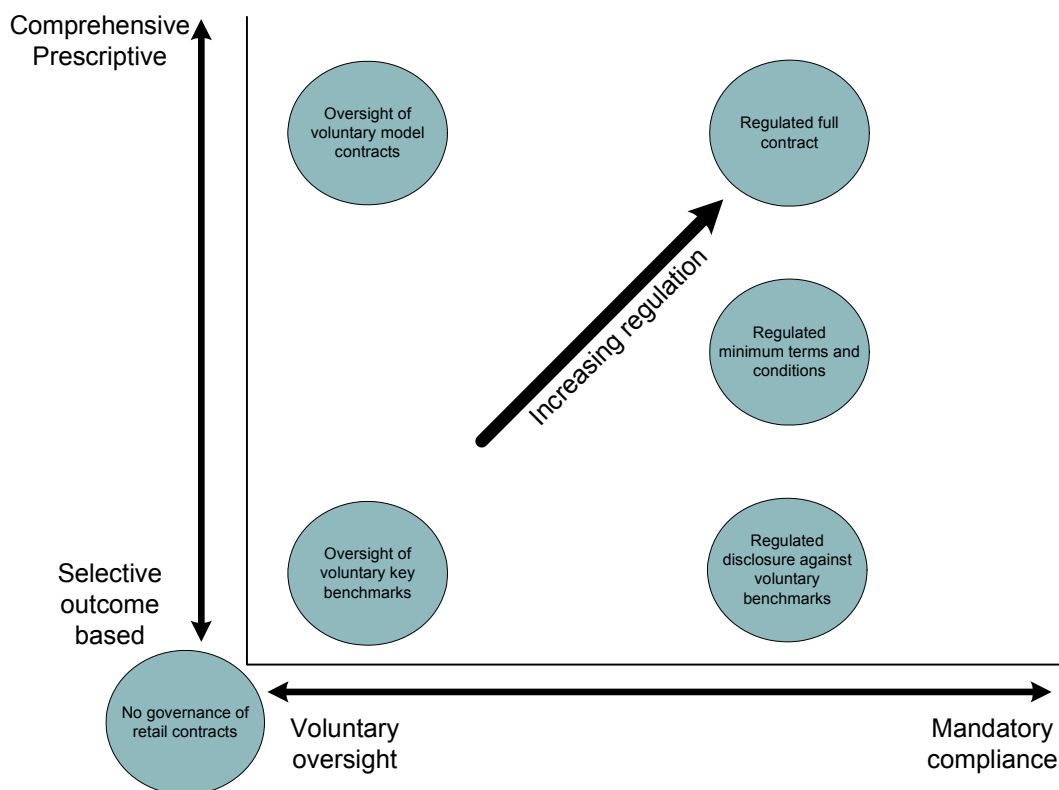
4 Analysis

4.1 Options

The small scale of gas consumption in New Zealand by residential and small business users, combined with the competition that gas faces from alternate energy sources, means that a careful decision needs to be made about the options for governance of retail contract terms. The options potentially available range from no overt governance (industry-led action with no oversight) to regulated (mandatory) contracts. Within this spectrum the main variables are:

- whether any oversight is partial (selected terms) or comprehensive;
- whether the benchmarks set are performance related (that is, define the outcome but leave discretion for determining the most appropriate drafting of the detail) or prescriptive; and
- whether the oversight regime is absent, voluntary, or mandatory.

The first two variables can be considered together in most instances, so the options available can be represented by the following two-dimensional diagram. Some specific options are noted:



4.2 The rationale for some level of oversight

The initial question is whether any level of explicit oversight is justified.

This question was explored in the Consumer Issues Consultation Paper of August 2008, which pointed out the potential barriers to consumers having access to fair prices and reasonable levels of service, having choices of supply, and making effective decisions about the purchase and subsequent use of products and services. This consultation paper also noted:

In August 2007 a retailer wrote to the Fair Trading Branch of the Commerce Commission alleging that another retailer does not have appropriate termination and amendment provisions in its contracts with its customers, is not properly disclosing its contracts to its customers and has unilaterally amended its customer's contracts to avoid the effect of the termination provisions in those contracts.

In the May 2009 response document it was then noted that:

There is evidence that some retailers do not have acceptable contracts, and those retailers account for an appreciable proportion of retailed gas.

This led to the view that renewed work on contract terms was appropriate.

The analysis presented in the Options Consultation Paper of October 2009, on the alignment of current published terms with the benchmarks, adds further weight to the conclusion set out above. The consultation paper notes in particular two instances of retailers offering contract terms that effectively lock the consumer into a contract roll-over. For example:

If the customer does not want to continue with 'Retailer X', the customer must give 'Retailer X' at least five business days to match any price or other terms offered by another retailer. Only if 'Retailer X' does not match that offer can the customer terminate.

The terms of concern are unchanged as at the date of the current paper.

It might be argued that the need to match the alternative terms makes it a reasonable arrangement. However, there may be reasons other than the offered terms for wanting to change supply. In effect, the provision is considered unfair as it limits consumer choice.

The two retailers concerned account for about 15% of the gas allocated under the Gas (Downstream Reconciliation) Rules 2008. This is a reasonable proxy for market share of smaller consumers as the reconciliation system excludes direct connect supply to large consumers. This is suggested to represent a sufficient proportion of gas consumers to warrant oversight of retail contract terms, even if other consumers have better contracts.

More generally, a question is whether it would be useful to retailers for there to be some oversight of their practices against a set of benchmarks. At present, the only benchmarks available are those in the EGCC Gas Consumer Code of Practice. The alignment between this Code and the current practice of

EGCC members has not been specifically analysed. However, the analysis carried out in the October 2009 consultation paper indicated that, while alignment was generally reasonable, there were cases of misalignment that would at least be drawn to the retailer's attention if there was structured oversight in place. Such oversight is not provided by the EGCC because it is not a part of the EGCC's mandate; in essence, the Code is only invoked when a complaint is made and proceeds to a determination.

In the most recent consultation, some retailers have made a point of identifying the benefits to them in having structured oversight in place. These benefits include, especially, the opportunity to benchmark their practice against other retailers, both to ensure best practice and to enhance their ability to compete.

The conclusion is that there are some shortcomings in current practice that potentially impact on enough consumers and are sufficient on their own to justify a degree of structured oversight. There is also clearly general value in such oversight in assisting retailers to maintain alignment between their contracts and best industry practice and to enhance competitive ability.

4.3 Level of specification of terms

As indicated by the diagram above, an issue to be determined is whether benchmark terms should be selective or comprehensive, and outcome based or prescriptive. While there are four choices apparently available, in practice they generally collapse to two choices: comprehensive/prescriptive vs. selective/outcome based.

The Gas Industry Co preference, strongly supported by the industry, is for a selective and outcome based approach. The reasons are that:

- only some terms are a potential concern from a consumer outcomes perspective and oversight should be restricted accordingly;
- a comprehensive approach would be more likely to increase compliance costs for the industry, with marginal benefit at best, because of the wider scope of potential non-compliance;
- it benefits both the industry, and Gas Industry Co in its oversight role, to have a sharp rather than a blunt focus;
- a comprehensive approach would significantly increase the financial and other costs of maintaining the reference terms;
- it is less costly to maintain outcome based specifications because they are less susceptible to minor shifts in 'policy' and are, in general, easier to design; and
- outcome based specifications provide flexibility for the industry in deciding exactly how to treat the specifications in drafting their own contracts. This flexibility enables retailer-specific concerns and

issues to be accounted for, and generally provides more scope for competition at the margin in the terms offered to consumers.

4.4 Cost/benefit analysis of the preferred option

Preferred option

The preferred option, and that proposed for endorsement and implementation in this report, is the publication of recommended benchmark terms, with monitoring of voluntary uptake occurring on the basis of voluntary disclosure. There would be a substantial transitional period during which public disclosure of monitoring results would be limited.

The sub-option of regulated disclosure was considered, but set aside for the time being on the basis that voluntary disclosure is already occurring. As a matter of common practice, retailers publish standard terms on their websites. At least in the first instance, therefore, regulated disclosure would impose costs with no benefit.

Counterfactual option

The counterfactual option analysed is full regulation for benchmark terms with enforcement provided by the existing Gas Governance (Compliance) Regulations 2008. It is anticipated that the regulations would set out benchmarks and provide for breaches of the requirements (that is, contracts that do not conform to the minima) to be dealt with through the existing compliance regime. Breach reports would be able to be made by a contract party, such as a customer; by an agent (for example, a consumer group acting for consumers); or by Gas Industry Co. To assist the monitoring of compliance, there would be a requirement for public disclosure of the general terms applied by retailers. For this option it would again be sensible to have a substantial transitional period, with non-compliance not constituting a breach during this period.

A sub-option in this case is to regulate only a small number of particularly important contract terms. While this might reduce costs with little reduction in benefit, it would be appropriate to first operate the system on a voluntary basis so that the terms for regulation could be selected on an effective basis. Selective regulation might also be most effective if operated in conjunction with a more widely based voluntary approach. For all of these reasons, selective regulation is considered to be an option for future rather than immediate consideration.

Cost/benefit analysis

The analysis presented below is qualitative rather than quantitative, because the benefits especially are not able to be quantified. Qualitative statements also make it easier to take account of uncertainty and risk. The costs and benefits described are no less real because of that. The analysis is based on descriptive statements rather than, for example, the use of a semi-quantitative scoring system.

The costs and benefits considered are largely those set out in the options consultation paper of October 2009, but there are some additional items reflecting suggestions in the industry submissions subsequently received. The analysis assumes that participation in the voluntary arrangement is sufficient for it to be adequately effective. If this condition was not met, then the likely fall back would be partial regulation. As already indicated, partial regulation is considered to be a future rather than an immediate option.

The costs to be considered comprise:

- delay in establishment leading to a delay in achieving benefits;
- the cost of regulatory error (for example, setting benchmarks that are detrimental to consumers);
- the cost (or loss of benefit) from the impact of the arrangement on dynamic efficiency (reduced innovation) and restriction on the flexibility to develop contract terms which differentiate competing retailers;
- costs incurred in establishing the proposed regime;
- costs incurred by the industry in transitioning to new or revised contractual arrangements;
- ongoing cost incurred by the industry in meeting reporting or similar requirements;
- ongoing costs incurred by the industry in responding to changes in the benchmarks over time;
- ongoing costs incurred by the industry in providing an adequate assurance (to themselves) of compliance; and
- operational costs for Gas Industry Co.

The benefits to be considered comprise:

- the benefits to consumers from having higher quality contracts governing supply;
- the benefits to consumers and to retailers from enhancing competition; and
- operational benefits, e.g. flexibility of operations and ability to make changes.

The analysis is summarised in the following table:

Costs	Option 1: Voluntary benchmarks	Option 2: Regulated minimum terms
Commencement delay	Minimal: No rules or regulations required	Significant: It will take time and resources to achieve acceptance in principle by the Government of the need to regulate, and the process of getting regulations in place is likely to take months if not longer.
Regulatory error	Minimal: The process followed has allowed chances of regulatory error to be minimised, and if difficulties arise in practice the voluntary approach will allow this to be readily adjusted.	Significant: Although the process has allowed chances of regulatory error to be minimised, there will be considerable difficulties in making adjustments (because of the need to amend regulations) if difficulties arise in practice.
Reduced innovation and competitive flexibility	Minimal: The outcome based form of the benchmarks and the voluntary approach provide ample scope for retailers to innovate and establish a competitive edge.	Minor to significant: Despite the outcome format of the benchmarks, retailers will be less inclined to innovate and differentiate because of the consequences of non-compliance.
Establishment costs	Minor: Restricted to cost to Gas Industry Co for establishing a monitoring regime.	Significant: Cost of developing and implementing regulations as well as accompanying monitoring and reporting regime. Also costs to industry of establishing their operating regime.
Transitional costs	Minor to significant: Indications are that most retailers would have to make changes to be fully compliant but cost will be limited by voluntary nature of regime, i.e. ability to not comply if cost excessive and not considered to be justified, and by having a substantial transitional period.	May be substantial: More significant than for Option 1 and may be substantial, as there will be no discretion on the degree of compliance. Will be ameliorated to some extent by having the proposed transitional period.
Ongoing Costs to industry from required actions	Minimal.	Moderate to significant: Likely to be some costs created by interaction with compliance regime and these could be significant if (for example) there are many unfounded complaints or the ruling process is used excessively to make interpretations.

Costs	Option 1: Voluntary benchmarks	Option 2: Regulated minimum terms
Ongoing costs from responding to benchmark changes	Minimal: Because of the process gone through major changes in the benchmarks are unlikely and there will generally be time to make any changes to contracts.	Minor: Because of the process gone through major changes in the benchmarks are unlikely and there will generally be time to make any changes to contracts. However, there will be some costs because of the lack of discretion.
Industry initiated assurance costs	Minimal: No reasons to expect industry expenditure on assurance because regime is voluntary.	Minor: Because of the implications of non-compliance, likely to be some ongoing costs in being assured of compliance.
Operational costs of scheme	Minor: There will be some costs associated with providing information but this is not expected to be onerous.	Significant: There will be costs associated with the operation of the compliance regime and costs associated with making changes to the regulations if that proves to be appropriate.

Benefits	Option 1: Voluntary benchmarks	Option 2: Regulated minimum terms
Benefits to consumers from better quality contracts	There will be benefits to consumers but difficult to quantify. Benefits will be reduced to the extent that retailers do not comply with benchmarks, and the extent to which retailers are already compliant.	Benefits to consumers also difficult to quantify, both in absolute terms and relative to Option 1. On the one hand benefits likely to be higher than for Option 1 because of the requirement to be compliant but there is considerable uncertainty about the extent to which compliance will be improved by moving to a regulated regime. On the other hand the greater flexibility inherent in Option 1 could well advantage rather than disadvantage consumers. On balance the advantage of Option 2 may be no more than moderate.
Competition benefits	There will be competition benefits but difficult to quantify. Some retailers have confirmed this benefit in noting the competition advantage of being able to benchmark against industry practice. The inherent flexibility (retailer discretion) in this approach will prevent competition benefits being hindered.	Competition benefits also difficult to quantify but on balance there may be little net difference from Option 1. Benefits may be higher than for Option 1 because of the requirement to be compliant; but there is again considerable uncertainty about the extent to which compliance will be improved by moving to a regulated regime. On the other hand, even if the benchmarks are unchanged a regulated regime will make retailers more cautious in differentiation because of the consequences of being non-compliant.

Benefits	Option 1: Voluntary benchmarks	Option 2: Regulated minimum terms
Operational benefits	There will be benefits relative to Option 2 in terms of the ease with which the benchmarks and the process can be modified to reflect experience and changing circumstances.	There will be significant difficulties in making changes to the regulations because of the need to go through Government processes.

Overall assessment

Option 1: Voluntary benchmarks	<p>Benefits: Benefits are difficult to quantify but there are expected to be benefits to consumers from better quality contracts and some enhancement of competition. The extent of benefit will depend on the degree of voluntary industry participation. There will be operational benefits relative to Option 2 because of the voluntary approach and lower costs.</p> <p>Costs: Of nine cost items analysed, only one has a cost that exceeds minor or minimal and that is the transitional cost to retailers of bringing contracts into line with the benchmarks. This cost is assessed as minor to significant.</p> <p>Net benefit/cost: Because of the very low costs associated with this item it is very likely that there will be a net benefit.</p>
Option 2: Regulated minimum terms	<p>Benefits: There are likely to be benefits to consumers from better quality contracts but the extent to which these benefits exceed those for Option 1 will depend on the balance between more assured compliance and lack of flexibility. There may also be competition benefits but these may be minimal if the need for formal compliance inhibits flexibility. There will be less operational flexibility than for Option 1.</p> <p>Costs: Of nine cost items analysed, seven have costs that are rated as significant or possibly significant. There are thus likely to be very significant costs involved overall.</p> <p>Net benefit/cost: Because costs are very significant overall and benefits to a degree uncertain and unable to be quantified, it cannot be concluded with any certainty that benefits will exceed costs.</p>

The conclusion from this assessment is that “Option 1: Voluntary benchmarks” is the preferred option because there is greater certainty of benefits exceeding costs. This is driven by:

- the low costs of Option 1 compared to Option 2;
- lack of certainty about the extent to which the benefits of Option 2 might exceed those of Option 1.

5

The recommended arrangement for endorsement

5.1 Retail contract benchmarks

A proposed set of retail contract benchmarks was initially published in the October 2009 consultation paper. The benchmarks were selective (did not cover every possible provision that could belong in a retail contract) and were written in an outcome-based, rather than prescriptive, form. The principal references for the benchmarks were the model contract terms developed by Gas Industry Co in 2005, through an industry working group, and the EGCC code of practice. Some reference was made to the retail code of the Victorian Essential Services Commission.

The benchmarks were further developed in accordance with the responses set out in the January 2010 response document, and published in the February 2010 design document. Changes made include simplification of the language, standardisation of a uniformly high level approach, and deletion of most specific references to legislation, regulations, and rules. Particular changes were made under some topics in response to submissions, and account was also been taken of the related proposals published by the Electricity Commission for electricity supply contracts. Some further minor change have been made followed discussions on the design document proposals

The proposed benchmarks resulting from this process are set out in Appendix A.

The following structure has been adopted:

- Definitions – with particular reference to the use of the term ‘gas supply arrangements’ throughout the benchmarks to encompass all documents relevant to the supply of gas.
- Good practice guidelines – incorporating material that is relevant to satisfactory retail contract terms but is to do with the approach rather than the specific content of the gas supply arrangements.
- The benchmarks – directly relevant to the content of the gas supply arrangements, set out under 16 topic headings.

5.2 Scope of supply arrangements to be covered

The supply arrangements covered by these proposals need to be limited to exclude large consumers, who are able to safeguard their own interests in a competitive market. However, the definition of small consumers (less than 10TJ per annum) in the Gas Act is not a sufficient constraint in this context. Industry submissions have identified two alternative approaches:

- to reduce the quantity threshold to 1 TJ per annum, or
- to limit the scope of coverage to contracts using standard terms and conditions (that is, to exclude negotiated contracts).

The January 2010 response document expresses a preference for the exclusion of negotiated contracts, but a greater range of options exist than are indicated in that document. The table below sets out a more extensive list of options and gives the pros and cons of each.

Option	Pros	Cons
1. Limit to consumers using less than 1 TJ per annum	<ul style="list-style-type: none"> • This has the advantage of being clear cut and quantitative 	<ul style="list-style-type: none"> • Some consumers on standard terms and conditions may be above the 1 TJ limit • Conversely, there may be negotiated contracts that are below the 1 TJ limit and should be excluded • Gas Industry Co will be reliant on retailers identifying those contracts covered • There may be issues around consumers with variable load that straddle the limit • Monitoring will also be difficult and costly as it will be insufficient only to monitor standard terms and conditions
2. Limit coverage to contracts based on published standard terms and conditions	<ul style="list-style-type: none"> • Clear cut • Enables a straightforward, low-cost monitoring regime • No additional disclosure activity required from retailers 	<ul style="list-style-type: none"> • Even trivial or minor variations from the standard contract will result in some exclusions from monitoring • If there are a significant number of legacy contracts (that is, contracts that predate the currently published conditions) monitoring may give a misleading result

Option	Pros	Cons
3. Limit coverage to contracts based substantially on published standard terms and conditions (variation on #2)	<ul style="list-style-type: none"> • Does not exclude contracts with only minor variations from published terms • Implicitly addresses the issue of legacy contracts. 	<ul style="list-style-type: none"> • It would be difficult not to allow some retailer discretion on what constitutes a minor variation, which could lead to differences between retailers and affect comparisons • Gas Industry Co would be reliant on retailers to disclose the nature of variations and the number of contracts involved • Monitoring would thus be more difficult and costly
4. Limit coverage to domestic consumers (that is, exclude commercial consumers)	<ul style="list-style-type: none"> • Covers those consumers most 'at risk' (for whom consumer protections are usually designed) 	<ul style="list-style-type: none"> • Excludes small commercial consumers who may be just as much 'at risk' • Requires information from retailers on the extent to which domestic consumers are or are not covered by standard terms and conditions • Monitoring should be relatively low cost
5. Retain wider limit of 10 TJ per annum but allow contract to be 'opted out' of coverage by monitoring (if agreed between the consumer and the retailer)	<ul style="list-style-type: none"> • Clear cut • Certainty that monitoring will include all consumers who might need to be covered 	<ul style="list-style-type: none"> • Requires extensive information to be provided by retailers on the status of contracts • Could unfairly and inappropriately expose retailers to scrutiny if large customers with negotiated contracts refuse to agree to the 'opt out' • Monitoring is likely to be very high cost because of the need to consider a variety of contract variations

As can be seen from the table none of the options is clearly the best. There are pros and cons in all cases. It is therefore appropriate to consider which option (or combination) best meet key criteria. The key criteria are suggested to be:

- Criterion 1: Certainty of coverage of the most vulnerable consumers – particularly residential² but also small commercial;
- Criterion 2: Monitoring of alignment to be low cost and on the same basis for all retailers;
- Criterion 3: Avoidance of substantial costs and requirements for an ongoing flow of information, from retailers.

² "Residential" here has the same meaning as "domestic" as used in the Gas Act.

If the options are scored out of 3 (3 being most favourable) against each of the criteria the results are as follows:

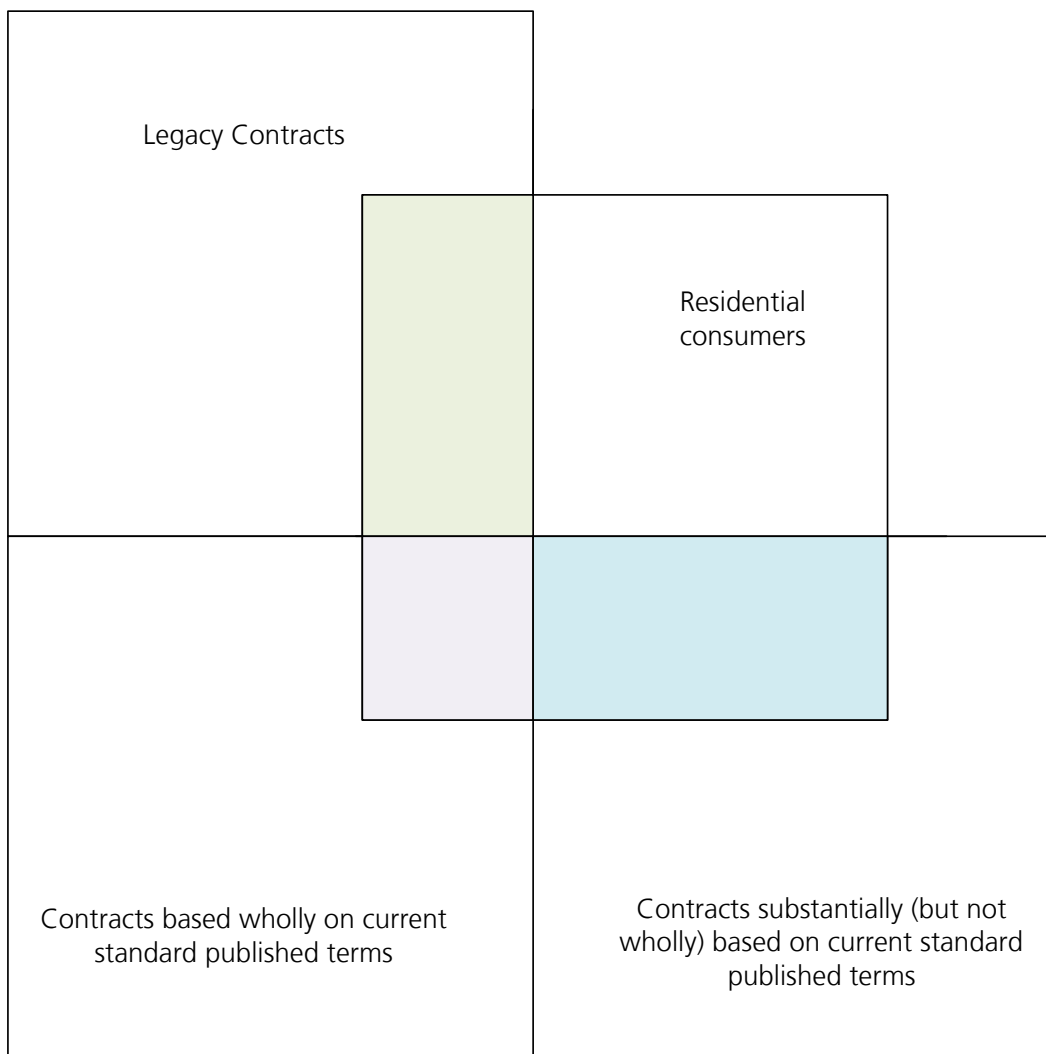
Option	1	2	3	4	5
Criterion 1	2	2	3	2	3
Criterion 2	1	2	2	2	1
Criterion 3	1	3	2	2	1
Total	4	7	7	6	5

On this basis, Options 2 and 3 best fit the criteria. The key advantage is the use of published standard terms and conditions as the basis for monitoring. Option 4 (a focus on domestic consumers) also rates relatively well. On this basis the following option for coverage is proposed:

- **All residential consumer supply arrangements, whether or not they use only current standard published terms.** This is mainly a safety net as it is unlikely that there will be a number of residential consumers who have partly negotiated contracts. The initial intention would be not to monitor such contracts actively because it would not be cost-effective to do so, but rather to establish what they represent as an approximate proportion of total residential contracts.
- **All consumers, including commercial consumers, whose supply arrangements are substantially or wholly based on current published standard terms.** ‘Substantial’ in this context means that all published terms that directly relate to a benchmark are included in the gas supply arrangements. This means that it should be sufficient to monitor the published terms as contracts fitting the ‘substantially based’ prescription will be effectively monitored at the same level as contracts that use the full published terms. Under this prescription both open term and fixed term contracts would be included. Again it would initially be proposed to establish the proportionate significance of supply arrangements that fall into the ‘substantially based’ category.
- **Legacy contracts based on terms and conditions that were standard at the time the contract was established are to be covered.** Again it is not initially proposed to actively monitor such contracts because it would not be cost-effective to do so, but rather to monitor the proportion of contracts in this category.

The intention is that coverage, as stated, will apply to consumers on private (bypass) networks as well as those on open networks.

Coverage is illustrated by the diagram below, which is not to scale. The diagram in particular shows how the requirement to cover residential contracts overlaps with the other requirements.



5.3 Monitoring framework

The analysis of published standard terms and conditions will be based on all of the standard terms published by each retailer. Some retailers publish a single set of standard terms, and others publish separate standard terms for residential and commercial customers. In the latter cases, the two sets of terms and conditions will be separately analysed and not combined in any way (this avoids making subjective judgments about the relative significance of the two sets of standard terms).

The methodology for analysis will be as follows:

- A quantitative scoring system will **not** be used as it is felt to be inappropriate to make quantitative judgments on the relative importance of the individual benchmarks. There will also be fine judgements to be made about the degree of alignment with the benchmarks. Instead the following qualitative scale of alignments will be applied:

Full	Substantial	Moderate	Low	None
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- The scale will be initially applied to the degree of alignment with the benchmarks on a clause by clause basis, rather than subjectively to all of the clauses, as a single package, under each topic. This avoids implicitly giving equal weight to topics with little content as compared to topics with substantial content.
- It is stressed that the key factor will be the extent to which the intention of the benchmark is achieved. A variety of different wordings in the retailer supply arrangements could be equally effective in this.
- An overall assessment will then be given in two parts – a straight average of the clause-by-clause assessments, accompanied by a comment on any areas of non-alignment that are considered to be of particular concern or otherwise warranting comment.

The analysis will be carried out by an independent consultant selected by Gas Industry Co in consultation with the industry. Consultation will take the form of inviting comment (or alternative suggestions) on a proposed selection. As the cost of monitoring is not expected to be substantial, and prior knowledge of the area of work is advisable, the monitoring role will not be tendered unless credible options become apparent that warrant that step. Use of an independent consultant gives some assurance of objectivity in the assessment process. The contractor's assignment will be for about 20 months initially so that it includes the baseline assessment, the first transitional assessment and any modifications to that assessment occurring up to the completion of the 18 month transitional period.

The outcome focus of the benchmarks means that, in several cases, they are not quantitatively clear-cut, for example, terms such as 'practicable', 'effective', 'reasonable', and 'clearly describe' are used throughout. Gas Industry Co will provide guidance to the independent contractor on how such terms should be interpreted and this is likely to be an interactive process, particularly during the first assessment. The final guidance will be published as a part of the assessment to ensure full transparency for the industry.

The steps in the assessment process and timing are expected to be approximately as follows:

Timing	Step
- 4 weeks	Step 1: Request issued to retailers for the provision of information as set out in sub-section 5.4 below
- 1 week	Step 2: Initial guidance on interpretation of terms issued to monitoring contractor
0	Formal reference date for assessment
0	Step 3: Published terms and conditions downloaded from websites. Target date for receipt of information from retailers
+ 3 weeks	Step 4: Draft individual assessments completed including updating of interpretations if appropriate

Timing	Step
+ 4 weeks	Step 5: Individual assessments provided to retailer for information and comment
+ 5 weeks	Step 6: Individual assessments updated if appropriate. Composite assessment completed
+ 6 weeks	Step 7: Assessments issued after final review by Gas Industry Co for consistency and accuracy

5.4 Provision of information by retailers

The coverage of supply arrangements proposed will need the provision of some information from retailers. Because implementation is voluntary, this information will be requested but not required. If the information provided is incomplete, then:

- in the case of coverage, estimates of industry wide numbers will be made based on the data available; and
- in the case of the degree of alignment, assessment will be based on the documents able to be independently accessed.

No information will be requested for the baseline assessment. As already indicated, this assessment will be based only on published terms and conditions.

For all subsequent assessments the following information will be requested from retailers in the lead-up to the assessment:

- The estimated number of residential consumer supply arrangements that involve some negotiated (non standard) contract terms and fall outside the 'substantially based' category, and fall outside the category of legacy contracts (A). As appropriate, this estimate may include residential consumers on private (bypass) networks.
- The estimated number of consumers of all types with supply arrangements that fall into the 'substantially based' category with respect to current published standard terms and conditions but are not wholly based (B).
- The estimated number of consumers with legacy supply arrangements (C).
- The number of consumers with supply arrangements that use wholly current standard, published terms and conditions (D).
- The estimated total number of consumers with supply arrangements covered by the benchmarks (should equal A + B + C + D).
- Identification of documents other than the published terms and conditions that are relevant to the analysis of gas supply arrangements and where those documents can be accessed. If the documents are not publically accessible, Gas Industry Co will seek the provision of sample documents.

6

Implementation

6.1 Commencement

The commencement date for the arrangement will not be finally confirmed until the arrangement has been endorsed by the Associate Minister. However, having consulted with the Electricity Commission, the date indicatively proposed for both the Electricity Commission and Gas Industry Co is 1 June 2010. As previously explained, a common date will minimise any costs for dual-fuel retailers.

Prior to commencement and after confirmation of the Minister's endorsement, the details of the arrangement will be published on the Gas Industry Co website.

As at the commencement date, a baseline assessment of the degree of alignment of published standard conditions with the benchmarks will be carried out, in accordance with the framework set out above. Subsequently:

- the relevant individual baseline assessments will be provided to each retailer, and discussed if so requested, so that all industry participants are fully informed before they take any action to respond to the benchmarks;
- an industry wide summary of the baseline assessment will then be prepared, provided to the Associate Minister for information and then published.

It is noted that publication of all assessments will be on the Gas Industry Co website. It is possible that live links will also become available from other websites and Gas Industry Co will cooperate with other organisations wishing to arrange that facility.

6.2 Monitoring during the transitional period

A transitional period of 18 months from the commencement date is proposed but with the possibility of some variation as explained below. Thus, if the commencement date is 1 June 2010, then the transitional period will expire on 31 November 2011.

Only one planned assessment will occur during this period and this will be as at 1 June 2011; that is, one year after commencement. The Electricity Commission has indicated that it will carry out a transitional assessment on the same date.

However, Gas Industry Co will provide for retailers to request individual assessments at other times using the agreed framework and methodology. There will be a fixed charge for such assessments based on the estimated costs, and this cost will be published as a part of the final arrangements.

The result of the transitional assessment will be individual retailer reports and a composite report in the same format as for ongoing monitoring (see next sub-section below). However, only the transitional composite report will be published initially. Individual retailer reports will be provided only to the retailer concerned.

The results from the transitional assessment will be used especially to establish the degree of progress made by each retailer in progressing toward full alignment. Where little or no progress has occurred, the reasons will be investigated and the need for any consequential action determined. At the extreme, if there was little or no progress and little indication of industry intention to align, then it might be appropriate to recommend regulation of at least selected benchmarks.

The Electricity Commission plans to have a two year transitional period rather than the 18 months proposed by Gas Industry Co. In this case, Gas Industry Co is reluctant to harmonise dates immediately because it is felt that 18 months is long enough and no industry participants have disagreed with that time frame. A compromise approach is however proposed so that:

- If there is good progress toward alignment across all retailers, and thus no indication of problems, the first full assessment of alignment will be delayed until 1 June 2012, which is the same as the Electricity Commission; but
- If progress toward alignment is not satisfactory across all retailers, the 18 month transitional period will be retained and the transitional assessment published in full, including individual assessments, at the end of the 18 month period. However, in fairness to retailers who have implemented changes during the intervening 6 months, Gas Industry Co will accept updates provided by retailers who choose to provide these.

6.3 Ongoing monitoring

Ongoing monitoring will consist of an annual assessment. As noted above, to achieve harmonisation of dates with the Electricity Commission, the first on-going assessment is tentatively set for 1 June 2012. Subsequent assessments will occur annually, also as at 1 June.

Monitoring will result in an assessment report for each retailer and a consolidated assessment for all retailers. Both types of reports will be published.

A proposed template for the consolidated assessment report is set out in Appendix B. The individual retailer reports will have a similar format.

The results from ongoing monitoring will be a valuable resource for retailers, consumers, and other organisations. Particular issues expected from the results will be:

- the extent of retailer participation in the arrangements; and
- the general degree of alignment and thus the extent to which particular benchmarks are proving to be problematic to implement and why.

After the first full assessment, a review of the implementation of the arrangement will be carried out by Gas Industry Co with a focus on these issues. It is anticipated that this review will have one of three outcomes:

- Continuation of the arrangement as it exists; or
- Continuation of the arrangement with modifications. The most likely modifications will be to the benchmarks, either to better reflect emerging consumer concerns or to deal with issues of practicability for the industry; or
- The recommendation of partial or full regulation in the event that the arrangement is clearly not working adequately. If regulation is partial then the industry-led arrangement may continue in parallel, with appropriate modifications.

7

Consultation

There has been extensive consultation with stakeholders in the lead-up to the preparation of this recommendation. Excluding the consultation on model contracts, which is effectively a separate work programme at a much earlier time, consultation is summarised as follows.

Consultation document or process	Purpose and response
Issue of consultation paper "Current Issues for Domestic and Small Business Gas Consumers" in August 2008. This was a formal consultation.	Purpose was to provide a broadly based review of consumer issues, define a set of consumer expectations and, on this basis, set out a proposed forward work programme in the consumer issues area. Ten stakeholder submissions were received. Analysis of and response to submissions published in May 2009. In the retail contracts area, a proposed programme of work was developed.
Issue of consultation paper "Options for the Governance of Retail Contract Terms" in October 2009. This was a formal consultation.	Purpose was to present options for retail contracts governance and, as a result of considering submissions, to select a preferred option and to complete design of the arrangement. Eight industry submissions were received along with input from the 2009 Consumer Forum. Analysis of and response to submissions was published in January 2010 setting out and specifying in broad terms a preferred approach.
Issue of proposed design document in February 2010 followed by an industry workshop and discussions with MED and MCA. This was not a formal consultation.	Purpose was to present details of the arrangement to the industry and officials, for discussion and final confirmation. Results of workshop discussion were considered in preparing the current recommendation.

8

Risks

Risks associated with the implementation of this recommendation, and proposed mitigation strategies, are set out in the table below.

Risk	Risk rating	Mitigation strategies
1. There is significant non-participation by some retailers in the voluntary arrangement	High/Medium	Two retailers in particular have shown little interest in the proposed arrangement. They may extend this by declining to participate. If this is the case it will be evident in the transitional assessment. The mitigation strategy will be to directly engage with any such retailers to try to persuade a change of view. If this is not effective it may be appropriate to recommend at least selective regulation of some of the benchmarks.
2. Retailers participate in the arrangement but the rate of progress toward alignment is extremely slow	Medium/Low	This risk has already been mitigated to some extent by agreeing with industry participants on an 18 month transitional period. If the transitional assessment nevertheless indicates an unacceptable degree of progress, discussions will be initiated with retailers to find out why. Corrective strategies will depend on the outcome of those discussions.
3. Achievement of alignment as between benchmarks (but across most retailers) is markedly variable, i.e. some benchmarks are aligned and some are not.	Medium/Low	This will not become evident (or not) until the first on-going assessment is completed. If appropriate, discussions will be initiated with retailers to find out why some benchmarks are proving difficult. The response will depend on the outcome of those discussions but could include a better explanation of what is intended, or modifications of the benchmarks.
4. Insufficient information is provided by retailers to reasonably establish the extent of coverage of consumers and contract types.	Medium/Low	If insufficient information is provided the first recourse will be to find out why and to encourage a higher degree of information provision. If this is still not satisfactory it may be necessary for Gas Industry Co to carry out its own assessment in consultation with the industry. Lack of this information is unlikely of itself to be a reason for moving to regulation.

Risk	Risk rating	Mitigation strategies
5. A significant number of retailers stop publishing their standard terms and conditions	Low	There are good competitive reasons for retailers to continue publication, and little reason to stop given the voluntary approach being taken. If there was a change in publications approach, the monitoring system would begin to fail and it could be necessary to recommend moving to regulated disclosure.
6. Information provided by retailers indicates that the coverage provided by monitoring published terms and conditions is substantially deficient.	Low	If coverage proves to be deficient then it may be necessary to move toward a more interactive monitoring regime based on the analysis of samples of actual contracts. This would however, significantly increase monitoring costs.
7. Interpretation of benchmark requirements leads to significant variation in responses and the effective degree of alignment between retailers.	Low	Some variation is expected and will benefit competition. However, if the variation is tantamount to not aligning with benchmarks satisfactorily it may be necessary to tighten the wording of the affected benchmarks, or provide more definitive interpretative information.
8. Differences in effective requirements between the gas and electricity sectors create significant disadvantage for dual-fuel retailers.	Low	The principal mitigation strategy has been to maintain close liaison with the Electricity Commission so that the gas and electricity requirements are consistent. Liaison will continue into the future so that difficulties in practical application can be picked up and issues resolved jointly.

9

Recommendation

Gas Industry Co recommends that the Associate Minister of Energy and Resources endorses the voluntary arrangements set out in this report for the oversight by Gas Industry Co of retail gas supply arrangements (mainly retail contracts), incorporating:

- Publication of benchmarks setting out the outcomes to which retail gas supply arrangements should be aligned;
- A framework for the monitoring of alignment for individual retailers and across all retailers;
- An interim assessment of alignment after 1 year, and
- The full publication of alignment results after a transitional period of 18 months to 2 years.

The date for commencement will be confirmed after the Associate Minister's consideration of this report, but a date of 1 June 2010 is preferred to provide harmonisation of dates with parallel work for the electricity industry by the Electricity Commission.

Appendix A Proposed Retail Contract Benchmarks

Definitions

Consumer – a person who is supplied, or who applies to be supplied, with gas and associated services by a Retailer. For completeness the term “Consumer” is deemed to include other parties such as residential property owners who may need to give permissions or be otherwise involved in setting up, operating or terminating gas supply arrangements.

Distributor - has the same meaning as ‘Gas Distributor’ as set out in s 2(1) of the Gas Act 1992 including application to operators of bypass networks.

Gas supply arrangements – includes all documents relevant to the supply of gas to the Consumer including the contract and other publications (e.g. application for supply, pamphlets containing supporting information) so long as these other documents are identified in the contract and are either publically available or accessible for monitoring purposes. Such documents may be in hard copy form or in electronic form, e.g. available for downloading from a website.

Line function services – has the same meaning as set out in s 2(1) of the Gas Act 1992

Retailer – any person who supplies gas and associated services to a Consumer or Consumers.

Good Practice Guidelines

The following guidelines describe good practice in relation to gas supply arrangements:

1. When setting up gas supply arrangements, there must be a reasonable opportunity for the Consumer to agree to the terms being offered by the Retailer.
2. The Retailer should make information available to Consumers setting out all the regulatory and technical requirements necessary for supply to occur, or refer Consumers to where they can obtain information about those requirements.
3. The Retailer should advise the Consumer that the establishment and commencement of gas supply arrangements may be conditional upon the Consumer’s property meeting all the necessary regulatory requirements for supply to occur and the reasonable technical requirements of the Distributor.

4. The Retailer should take reasonable steps to ensure that the Consumer understands any restrictions on the Consumer's ability to terminate their gas supply arrangements with the Retailer before the Consumer enters into the gas supply arrangements.

Benchmarks

1. How to become a Consumer

- 1.1 The gas supply arrangements must state when supply is to commence, with this to be agreed between the Retailer and the Consumer unless the date is determined by the processes under any relevant regulations or rules governing switching;
- 1.2 Where the gas supply arrangements are completed after the Retailer has begun supplying gas to the Consumer, the gas supply arrangements will commence from the date that gas is first supplied to the Consumer.

2. Provision of information to Consumers

- 2.1 The gas supply arrangements must provide information to Consumers on the following aspects of gas supply and the interruption of gas supply:
 - (a) the responsibilities of the parties involved in the supply of gas, which may include all or any of the Retailer, Distributors and meter owners;
 - (b) where information on emergency procedures is located, including how the Consumer can turn off their gas supply in an emergency and how information on and procedures for reconnection after the emergency will be provided;
 - (c) where the Consumer may access information about supply interruptions, with this information to be updated by the retailer as often as is practicable.

3. How to stop being a Consumer of your current Retailer.

- 3.1 Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer:
 - (a) at any time without unnecessary delay;
 - (b) irrespective of any offer that the existing Retailer may make with respect to price or any other aspect of continued supply from that Retailer; and
 - (c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees.

3.2 Fixed term gas supply arrangements must clearly state the expiry date and specify whether or not there are provisions for early termination, i.e. prior to the expiry date, and must, if relevant, set out those provisions and the basis on which any early termination charges will be calculated.

4. Changes to gas supply arrangements

4.1 Open term contracts may permit the Retailer to change the non-price terms and conditions of the gas supply arrangements upon giving the consumer no less than 30 days' notice of the changes.

5. Service standards

5.1 The gas supply arrangements must describe the services to be provided to the Consumer.

5.2 Where services are not provided as described, the gas supply arrangements must:

- (a) set out how the Retailer will respond to the Consumer where services are not supplied as described and whether any payments will be made to the Consumer as a result;
- (b) make it clear that any redress offered by the Retailer in relation to services not being supplied as described, is in addition to and does not detract from, the Consumer's rights under the Consumer Guarantees Act.

6. Prices, bills and payment

6.1 In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state:

- (a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice;
- (b) the method by which notice shall be given provided that if the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the Consumer in writing as soon as possible; and
- (c) that the notice will include the reasons for the increase.

6.2 The gas supply arrangements must:

- (a) refer to the relevant prices or pricing schedule (as may be produced by the Retailer from time to time) of products and services available to the Consumer;
- (b) state that the Consumer is liable for the charges, but only for those charges, for all of the services provided under the gas supply arrangements;

- (c) state the time from which the Consumer will be liable for the charges;
- (d) in the case of bills based on estimates, include a simple explanation of how the estimate will be calculated and of the process that will be used for correcting any estimates;
- (e) provide that if the Retailer makes an error and charges an incorrect amount to the Consumer, then upon becoming aware of the error the Retailer will promptly refund any amount that has been overcharged; and may invoice the consumer for any underpayments subject to sub-clause (f); and
- (f) the gas supply arrangements will state the term limitations that will apply for the recovery of underpayments.

6.3 If the Retailer offers alternative payment options to Consumers, a simple explanation of how those options operate must be set out in the gas supply arrangements.

7. Bonds

7.1 Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state:

- (a) requirement for the Retailer to provide to the Consumer the reasons for requiring a bond;
- (b) the period of time within which the bond must be paid to the Retailer;
- (c) how long the Retailer will keep the bond. If the Retailer keeps the bond for longer than 12 months, it must provide its reasons for doing so;
- (d) how the bond will be refunded; and
- (e) whether or not interest is payable on the bond.

8. Obligations of the parties in relation to supply to the site and access

8.1 The gas supply arrangements must:

- (a) describe the physical point at which the Consumer's responsibility begins;
- (b) explain the Consumer's responsibilities pursuant to sub-clause 8.1(a) including in relation to gas lines, meters and other equipment on the Consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice;
- (c) state the rights of the Retailer and/or their agents to gain access to gas lines and equipment located on the consumer's premises and the consequences the Consumer may face for not granting access.

9. Metering

9.1 In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:

- (a) the requirements for metering relevant to the pricing options selected by the consumer, including the frequency of meter readings;
- (b) the obligation to ensure metering is in accordance with relevant industry standards and codes of practice;
- (c) any additional costs associated with providing, correcting, changing, or removing metering equipment, which may be listed in a separate schedule;
- (d) the Consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes; and
- (e) the process to be followed in the event that either the Retailer or the Consumer suspects that a meter is recording or reading incorrectly and the method for correcting previous billed consumption if found to be incorrect.

10. Disconnection and reconnection

10.1 The gas supply arrangements must:

- (a) Set out the conditions under which Consumers can be disconnected other than in accordance with clause 10 below;
- (b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection.

10.2 A Retailer may only disconnect a Consumer for non-payment where the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds.

10.3 Except for emergency disconnections, or in the case of disconnections under the provisions of the Gas Act or Gas Regulations, or where a Consumer requests disconnection, the gas supply arrangements must provide:

- (a) for the receipt by the Consumer of at least 7 working days' written notice of warning of disconnection after allowing 3 days for the delivery of the notice;

(b) for the receipt of a final warning by the Consumer, no less than 24 hours before disconnection and after allowing for a reasonable period of time between the receipt of the written warning under (a) and the final warning.

10.4 If a dispute resolution under the gas supply arrangements has been initiated by the Consumer in regard to the cause of any disconnection, then disconnection action specifically related to that cause must be delayed until after the conclusion of the dispute resolution process or when the dispute resolution processes have been exhausted.

10.5 The gas supply arrangements must set out the charges that will apply to disconnection and/or connection and where information on those charges is located, and the circumstances under which the charges will apply.

11. Faults and planned shutdowns

11.1 The gas supply arrangements must clearly:

(a) describe the circumstances under which supply may be interrupted without prior warning;

(b) provide a minimum notice period before a planned shutdown, which should be no less than four business days unless agreed otherwise with the Consumer;

(c) describe the Retailer's rights and obligations under special or emergency operating situations.

12. Privacy

12.1 The gas supply arrangements must provide that the Retailer will comply with the provisions of the Privacy Act 1993, and accordingly the gas supply arrangements must:

(a) set out the purposes for which the retailer may collect personal information from the Consumer;

(b) confirm that individuals will be able to access personal information held about them and have the opportunity to correct this information; and

(c) set out where the Consumer can get information about how the Retailer collects, uses, discloses and stores personal information about the Consumer.

13. Limitation of liability

13.1 Any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable.

14. Dispute resolution

14.1 The gas supply arrangements must;

- (a) advise Consumers, either directly or by reference to other accessible documents, of the process they should follow, including timelines, to bring a complaint to the retailer, for resolution directly between the Retailer and the Consumer;
- (b) advise Consumers that complaints not resolved to their satisfaction may be taken to the scheme approved under the Gas Act 1992.

15. How Consumers communicate with the Retailer

15.1 The gas supply arrangements must provide advice to the Consumer on practicable and effective means for the Consumer to communicate with the Retailer on any issues over which they have concerns or need information.

16. How Retailers communicate with the Consumer

16.1. The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer, and must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated and not through public notices.

Appendix B Template for consolidated annual assessment report

Alignment of Industry Retail Gas Supply Arrangements with the Gas Industry Co Benchmarks Published On (Date)

Assessment date: (date)

Assessment carried out by: (name and organisation)

Background

Brief description of the objective of the benchmark monitoring regime and its key design elements. Set out the coverage specification.

Identify how many assessments have been carried out to date, and whether they have been transitional or on-going.

Identify any particular issues arising in previous assessments that might be a particular focus in the current assessment.

Participating retailers

List out.

Summary and analysis of information provided by retailers on contracts covered

Current Summary

Provide some supporting text on makeup of figures and especially the degree to which returns from retailers have been full, or have contained gaps that have had to be filled with estimates. Name retailers who have declined to provide information

Category of Consumer	No of Consumers Number (% of total)
(A) Estimated number of residential consumer supply arrangements that involve some negotiated (non standard) contract terms and fall outside the 'substantially based' category, and fall outside the category of legacy contracts. This estimate may, as appropriate, need to include residential consumers on private (bypass) networks.	

Category of Consumer	No of Consumers Number (% of total)
(B) Estimated number of consumers of all types with supply arrangements that fall into the 'substantially based' category with respect to published standard terms and conditions but are not wholly based	
(C) Estimated number of consumers with legacy supply arrangements	
(D) Estimated number of consumers with supply arrangements that use wholly current standard published terms and conditions	
Total number of consumers with supply arrangements covered by the benchmarks (= A +B + C + D)	

Trend Analysis

Identify and comment on changes (trends) from previous assessments. A trend of particular significance for example may be in the percentage of legacy contracts still in place.

Alignment with the benchmarks

Interpretation of terms

In assessing the degree of alignment, key words in the benchmarks have been interpreted as set out in Appendix A.

Comment as appropriate on changes since the last assessment and any particular difficulties in making the interpretations.

Overall alignment

The overall degree of alignment averaged across all retailers is -----.

Particular issues that have arisen from the analysis are as follows:

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

Variation in alignment between retailers

Appendix B sets out the variation in alignment between retailers on a clause-by-clause basis. The results are summarized, on a topic basis, in the table below.

Topic	Average rating	Individual retailer ratings (on a confidential basis initially)	Comment
		Initially identify as Retailer 1, Retailer 2 etc but identify retailers by name once transitional period complete.	

Trend analysis

Look at trends in overall degree of alignment over time – steady, deteriorating, or improving? Look at trends for particularly significant clauses or topics. Look at trends in the way the benchmarks have been interpreted or applied.

Issues arising

Look at whether the analysis indicates other issues are arising; for example, changes in the degree to which terms and conditions are being published. Look at issues such as the use of wording that is technically aligned but contrary to the intentions of the benchmarks.

Conclusions

Set out conclusions that summarise the points set out in the body of the text. NB: The emphasis should be on conclusions, not recommendations

Appendix A

Set out the interpretations of words in the benchmarks determined by Gas Industry Co as an input to the analysis.

Appendix B

A full analysis of alignment across all retailers is set out in the tables below. There is a separate table for each Topic.

Topic:

Clause	Average rating	Individual retailer ratings (on a confidential basis initially)	Comment
		Initially identify as Retailer 1, Retailer 2 etc but identify retailers by name once transitional period complete.	