

Investigator - summary of procedures

[Draft for consultation]

Introduction

1. This is a summary of the procedures of the investigator when dealing with a breach notice alleging breach of any of the following (together, the “Rules”):
 - (a) Gas (Downstream Reconciliation) Rules 2008;
 - (b) Gas (Processing Facilities Information Disclosure) Rules 2008; and
 - (c) Gas (Switching Arrangements) Rules 2008.
2. These procedures may be amended from time to time, and on a case by case basis, with or without any written amendment to this document, provided that any amendment does not conflict with the requirements of the Gas Governance (Compliance) Regulations 2008 (“Regulations”).
3. Attached as **Appendix 1** is an indicative timeline for the investigator’s handling of any breach notice. Dates in the indicative timeline are a combination of:
 - (a) deadlines prescribed in the Regulations; and
 - (b) the performance expectations of Gas Industry Co.
4. In any communications with the investigator, participants should be alert to the requirements of regulation 27(2).

Investigation powers

5. The investigator’s investigation powers are contained in section 43U of the Gas Act 1992 (note also sections 43V and 43W).

Referral to an investigator

6. Alleged breaches will be referred to the investigator in the following circumstances:
 - (a) If, in the opinion of the Market Administrator (“MA”), the alleged breach raises a material issue – regulation 18(3);
 - (b) If the MA is unable to determine whether an alleged breach raises a material issue because the MA cannot obtain sufficient information – regulation 18(4);

- (c) The MA has determined not to take any action on the alleged breach, but one of the parties requires the alleged breach to be referred – regulation 24(1)(a);
 - (d) The MA has not been able to informally resolve the alleged breach by agreement within 35 business days of the MA's notification to participants, and one of the parties requires the alleged breach to be referred – regulation 24(1)(b).
7. The investigator must then carry out an investigation (regulation 28). Subject to the agreement of the MA, the investigator may appoint a person to give advice or assistance to the investigator (regulation 26).

Settlement

8. The investigator must endeavour to effect a settlement (regulation 32).
9. The investigator has wide discretion as to a suitable settlement process, but must consult with all parties before deciding on a process.
10. If the parties agree to a settlement of the alleged breach, the investigator or one of the parties should document the resolution, preferably in terms of the template attached as **Appendix 2**. All parties must notify their acceptance of the terms of the resolution in writing to the investigator (regulation 33(2)).
11. The investigator has 30 business days (or longer upon request of the parties and with the consent of the investigator), from the date the alleged breach is referred to the investigator, to resolve the alleged breach informally, or a further 10 business days if directed by the Rulings Panel ("Panel") to further endeavour to effect a settlement (regulation 37(2)).
12. The investigator must provide the Panel with a report (and recommendation) and settlement agreement (if applicable).

Referral to Panel

13. A matter is referred to the Panel in the following circumstances:
- (a) If a settlement has been effected – regulation 34. The Panel must either:
 - (i) approve the settlement, in which case it is final and binding, and must be published unless the Panel directs otherwise (regulation 35); or
 - (ii) reject the settlement, in which case it must:
 - direct the investigator to further endeavour to effect a settlement, and the investigator will have a further 10 business days within which to do so – regulation 36(a); or
 - direct the investigator to abandon the investigation – regulation 36(b); or

- determine the alleged breach itself – regulation 36(c).
- (b) If the investigator is unable to effect a settlement within the timeframe – regulation 37. In this case the investigator must use reasonable endeavours to give the report to the Panel within 5 business days of the referral (regulation 38(4)), and the Panel must determine the alleged breach.

In either case, the investigator must forward a copy of the report, “as soon as practicable”, to all parties (regulation 38(5)). As per the Panel’s summary of procedures (published on the Gas Industry Co website), the investigator shall use best endeavours to provide the report to the parties at the same time as it is provided to the Panel.

Consideration of alleged breach

14. The investigator is entitled to provide written submissions and evidence if the Panel is to consider an alleged breach on the papers (regulation 39(2)).
15. If the Panel is to hold a hearing to consider an alleged breach, the investigator is entitled to (regulations 39(2) and 46):
- (a) be heard;
 - (b) be represented;
 - (c) be given a reasonable opportunity to make written and oral submissions;
 - (d) call witnesses and to cross-examine any witness called against the investigator;
 - (e) make a plea to the Panel in mitigation of penalties; and
 - (f) have any other person present to give evidence.
16. The Panel may ask the investigator to:
- (a) speak to his or her report and recommendation at a hearing (regulation 46(2)); and
 - (b) obtain any further information (regulation 47).

Appendix 1

INDICATIVE TIMELINE¹

By business day 26²:	MA considers materiality and refers to investigator if insufficient information or if material
After business day 41:	If no resolution by MA, a party may require referral to investigator
Within 30 business days of referral to investigator³:	Investigator investigates and endeavours to effect a settlement
After 30 business days of referral to investigator⁴:	If a settlement has not already been referred to Panel, the investigator refers alleged breach to Panel
Within 5 business days of Panel referral⁵	Investigator gives report to Panel

¹ Note definition of “business day” in regulation 4

² This deadline is a GIC performance expectation, rather than a deadline imposed by the Regulations

³ Or longer by agreement, or within a further 10 business days if directed by the Panel

⁴ Or longer by agreement, or within a further 10 business days if directed by the Panel

⁵ Whether the referral is via regulation 36(c) or 37(1)

Appendix 2

TEMPLATE SETTLEMENT AGREEMENT

[Insert name of party]

[Insert name of party]

[Insert name of party]

**Agreement of settlement of alleged breach *[insert breach notice identifying number]*
of Rule *[insert rule]***

[Insert date]

**Agreement of settlement of alleged breach *[insert breach notice identifying number]*
of Rule *[insert rule]***

Dated:

Between:

[Insert name of party]

[Insert name of party]

[Insert name of party]

Background:

A. *[Insert background]*

B. *[...continued]*

It is agreed:

1) *[Insert agreement]*

2) *[...continued]*

3) This settlement is subject to the approval of the Rulings Panel pursuant to regulation 34 of the Gas Governance (Compliance) Regulations 2008. If the Rulings Panel approves this settlement, this settlement will be final and binding on the parties to this settlement, on all participants, and on the Rulings Panel.

Executed as an agreement:

For *[insert name of party]* by:

Name:

Position:

For *[insert name of party]* by:

Name:

Position:

For *[insert name of party]* by:

Name:

Position:

Rulings Panel:

I approve this settlement pursuant to regulation 34 of the Gas Governance (Compliance) Regulations 2008.

Name:

Date: