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[Home](#) > Gas industry co-regulation model fit for purpose - study

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## Gas industry co-regulation model fit for purpose - study

Matt Ritchie - Tue, 07 May 2019



[1]

Further measures have been proposed to guard against the risk of industry capture of the gas market regulator.

The Gas Industry Company was established in 2004 as the industry body under the co-regulation model. Funded largely through industry levies, the GIC does not have its own regulatory powers but develops arrangements introduced via recommendations to the Minister.

The Major Electricity Users' Group commissioned economic consultancy TDB Advisory to review gas governance arrangements after gas supply constraints contributed to millions in increased energy costs to industry last spring.

The review took into account the issues common to the gas and electricity sectors and the merit of [establishing a joint regulator](#) [2].

Other concerns included whether the GIC is reluctant to regulate against the interests of industry stakeholders and whether the organisation is sufficiently proactive or reactive.

TDB says the Gas Act contains a number of protections against the risk of capture.

“Industry participation under co-regulation increases the risk of industry capture and perceptions of industry capture,” [TDB's report](#) [3] says. “When regulated firms fund the regulator, there may be an incentive for the regulator to see regulated firms as ‘customers’.”

### Capture

The GIC is industry-owned, and tasked with developing arrangements that improve the operation of the gas market. This includes regulation where appropriate, and an oversight function.

Current shareholders are Contact, emsTradepoint, First Gas, Genesis, Greymouth Gas, Mercury, Methanex New Zealand, New Zealand Oil & Gas, Nova Energy, OMV, Powerco, Shell, Trustpower, and Vector.

TDB says the Gas Act provision allowing for the Minister to replace the GIC with an ‘Energy Commission’ is a significant protection against the risk of capture.

“The Minister may replace the GIC for any reason. The legislation provides a clear process for the replacement. In effect, the GIC serves at the Minister’s will and must maintain her or his confidence.”

The majority of the GIC's board are required to be independent of the sector. Non-independent directors are required to act in the GIC's interests rather than those of the companies they are employed by or are directors of.

Four of the GIC's seven-person board are independent. Former Prime Minister Jim Bolger has chaired the board since the GIC's inception. Deputy chair Robin Hill has also sat on the board since it was established. Industry-associated directors are Powerco chief executive Nigel Barbour, Contact chief executive Dennis Barnes, and OMV's senior vice-president for Australasia Gabriel Selischi.

TDB recommends introducing eight-year binding term limits for GIC directors, and amending the constitution to reflect non-independent directors' requirement to act in the interests of the GIC.

## Disclosure

Creating a joint regulator was considered by the electricity price review panel. The panel's [options paper](#) [4], published in February, did not reach a conclusion on whether a joint regulator should be created but did support looking into the costs and benefits of such a move.

TDB considered the option and concluded that creating a joint regulator would not solve the problems confronting the gas and electricity sectors. Information disclosure was the main issue confronting the gas industry, the consultancy says.

The GIC is weighing [options](#) [5] for a gas market information disclosure regime. The co-regulator was asked to look at the issue by Minister of Energy and Resources Megan Woods last year after concerns over information asymmetry were raised during an unplanned outage at the country's largest gas field, Pohokura.

TDB says its conversations with participants revealed frustration that the GIC was not proactive enough in response to concerns about disclosure following the first of two Pohokura outages last year.

TDB says it does not look like capture influenced GIC's action on disclosure. The consultancy's discussions with gas producers suggested either indifference or support for increased disclosure requirements. TDB was also not convinced that upstream producers would hold more influence over the GIC than those calling for disclosure downstream.

"The better explanation for GIC's performance is legislation. GIC does not have a clear statutory authority to compel disclosure from upstream producers. A forthcoming amendment to the Gas Act will establish this authority."

TDB supports a regulated disclosure regime for gas producers that would cover planned and unplanned outages and force majeure events.

The scheme would exclude commercial information, unless this disclosure could be clearly justified. The GIC should aim to be able to deliver its recommendation for the regime as soon as necessary amendments to the Gas Act pass, TDB says.

GIC is currently considering submissions on its gas disclosure options paper, and says a further consultation phase may be required.

- [gas](#) [6]
- [gas disclosure](#) [7]
- [regulation](#) [8]

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**Links**

- [1] <https://www.energynews.co.nz/news-story/gas/42733/gas-industry-co-regulation-model-fit-purpose-study>
- [2] <https://www.energynews.co.nz/news-story/gas/42149/no-strong-support-joint-electricity-gas-regulator-tdb>
- [3] <http://www.meug.co.nz/node/999>
- [4] <https://www.mbie.govt.nz/assets/42ac93a510/electricity-price-review-options-paper.pdf>
- [5] [http://file:///C:/Users/Matt.Ritchie/Downloads/Options-Paper-for-Information-Disclosure-ID-29632-ID-30275%20\(3\).pdf](http://file:///C:/Users/Matt.Ritchie/Downloads/Options-Paper-for-Information-Disclosure-ID-29632-ID-30275%20(3).pdf)
- [6] <https://www.energynews.co.nz/topic/gas>
- [7] <https://www.energynews.co.nz/topic/gas-disclosure>
- [8] <https://www.energynews.co.nz/topic/regulation>