



## Consultation paper

# Proposal for changes to the scheme documents to comply with the proposed scheme requirement from the Electricity Commission and Gas Industry Co for approval of a scheme

July 2008

Introduction .....	1
Approach taken.....	2
Consultation with Stakeholders .....	3
Background.....	3
Reason for proposing the changes now.....	5
Change process.....	5
Features required in an approved scheme.....	7
How the proposed assessment criteria and Wood Report recommendations have been incorporated in the scheme documents .....	9
Role of the Board and of members.....	9
Changes to the way scheme documents can be changed.....	10
Attached documents.....	10

### Introduction

1. The Board of the Electricity and Gas Complaints Council (the Board) and the Electricity and Gas Complaints Commission (the Commission) is seeking your comments on proposals to change the Constitution for the Electricity and Gas Complaints Commissioner Scheme (the scheme documents).
2. The Board and the Commission are proposing changes to

- a) Meet the assessment criteria proposed by the regulators for approval of a consumer complaint resolution scheme for electricity and gas complaints
  - b) Implement the recommendations from the Wood Report (recommendations following a review of the efficiency and effectiveness of the Commissioner's complaint handling processes)
  - c) Tidy up the scheme documents and remove any redundant clauses
3. The Board and the Commission set up a Working Group to consider changes that need to be made to the scheme documents. The Working Group has prepared this paper.
4. The members of the Working Group are:

**Board members**

- Gillian Blythe, Meridian Energy
- Jo McKirdy, Contact Energy
- Nigel Barbour, Powerco
- Viv Wright, Electra

**Consumer representatives**

- David Russell
- Frances Ah Mu, Wellington Community Law Centre

**Approach taken**

5. The Working Group has taken the approach that it will only propose changes where
- a) necessary to meet the assessment criteria proposed by the regulators
  - b) desirable to implement the recommendations from the Wood Report into the efficiency and effectiveness of complaint handling within the Commissioner's office<sup>1</sup>

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<sup>1</sup> One further change is proposed to allow the Commissioner to close a file after issuing a proposed recommendation in circumstances where no objections are received. The reason for this is to reduce cost and the time a file remains open.

6. Where proposing changes to meet the assessment criteria, the Working Group used the words of the regulators unless there were practical or legal reasons not to do so.
7. On 11 July 2008, the Working Group sought an initial view from members on the proposed processes for amending the scheme documents. The Working Group made some changes to the proposal following this preliminary consultation.
8. Consultation with stakeholders is the next step in this process.

### **Consultation with Stakeholders**

9. The Board and the Commission seek your submissions on the specific questions set out in **Appendix Three** by **5 pm on Friday 29 August 2008**.

Please respond with your feedback (electronic form preferred) to:

Hellene Wallwork  
[h.wallwork@egcomplaints.co.nz](mailto:h.wallwork@egcomplaints.co.nz)  
Electricity and Gas Complaints Commission  
PO Box 6144  
Wellington

10. Consumer or community groups may make their submissions in person to Hellene Wallwork. If you would prefer to make your submission this way, please contact Hellene on 04 914 4537.
11. Submissions received will be provided to the Working Group, the Board and the Commission. The Board and the Commission also propose to post the submissions on the Electricity and Gas Complaints Commission's website. If you do not want your submission to be available in this manner, please state this clearly in your submission.

### **Background**

12. The Electricity Act and the Gas Act provide for the approval of a consumer complaint resolution scheme for consumer complaints by the Electricity

Commission and the Minister of Energy (on the recommendation of the Gas Industry Co) respectively.

13. The regulators have agreed they will act jointly in approval of a complaints resolution scheme. The regulators jointly issued a consultation paper earlier this year, setting out the proposed assessment criteria for approval of a scheme for handling electricity and gas consumer complaints.
14. The regulators have made it clear that if there are no applications that sufficiently satisfy the criteria for approval, they will jointly consider several options which could include:
  - approaching a particular scheme to see if it could be modified sufficiently to reconsider approval of the scheme;
  - calling for new applications;
  - making a recommendation for the regulations of a complaint resolution scheme.
15. The Board and the Commission believe members of the scheme would prefer to keep an industry led scheme, rather than face further regulation of the industry.
16. The Board and the Commission asked the Working Group to review the scheme documents to identify the changes required to meet the proposed assessment criteria set by the regulators. Included in the review were changes to implement the recommendations of the Wood Report – the recent review of the efficiency and effectiveness of complaint handling within the Commissioner’s office.
17. Because of the time needed to amend the scheme documents, the Working Group has identified changes required to the Constitution based on the proposed assessment criteria set out in the regulators’ consultation document. The proposed assessment criteria may change when the regulators confirm the criteria for approval.
18. The regulators have said they will confirm the criteria for approval on 1 September 2008, and applications for approval will close on 1 December 2008. Once the regulators confirm the criteria, the Board and the Commission will review the proposed changes to the scheme against the confirmed criteria. If

there are substantive changes needed to the scheme documents, a further short round of consultation may take place.

### **Reason for proposing the changes now**

19. The Board and Commission are proposing the changes now because of the short period between when the regulators will confirm their criteria and when applications for approval close.
20. The regulators will confirm their assessment criteria on 1 September. Applications for approval will close on 1 December. Under the scheme documents, it is not possible to carry out consultation, complete the Scheme Amendment Committee process and have the member vote within a three-month time-frame.
21. If the regulators' requirements change in a significant way, there is the opportunity for the Board and Commission (either through this Working Group or directly) to re-consult with stakeholders on any significant changes.
22. The regulators have developed the assessment criteria from the Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes, and largely, the scheme documents already comply. These benchmarks guided the industry steering group when designing the scheme in 2000-2001. Some of the proposed assessment criteria are already embedded in the scheme documents and the Commissioner's current practices - to that extent, the Working Group does not consider them to be controversial.

### **Change process**

23. The scheme documents do not comply in all respects with the proposed assessment criteria, and so need to be changed. There are two processes for changing the scheme documents:
  - a) Most of the deed itself can be changed by member vote (requiring 75% of retailer members and 75% of lines members voting in favour)
  - b) Clause 6 (which establishes the Scheme Amendment Committee process – see paragraph 24 below) can only be changed by member vote after the proposed change has been approved by a Scheme Amendment Committee

- c) The Rules, Terms of Reference and codes of practice can be changed by a Scheme Amendment Committee process.
24. The Scheme Amendment Committee is established by the Chair of the Electricity and Gas Complaints Council, John Robertson. It is made up of the six members of the Board and six consumer representatives nominated by Consumers NZ (formerly Consumers Institute). The Scheme Amendment Committee votes on proposed changes, and only those receiving support from 10 of the 12 Committee members are passed.
25. After submissions have been received and considered by the Board and the Commission, the Board and the Commission will finalise the proposal in the form of amendments to the existing scheme documents.
26. The Commission will recommend to the Board changes to the rules, terms of reference and codes, which will initiate the Scheme Amendment Committee process. The Board will propose changes to the deed and dispute resolution protocols to members, and give notice of a general meeting at which the vote of members will take place.
27. The proposals set out in this paper address all the requirements of the regulators, with the exception of the funding requirements. These requirements are being addressed in a separate process managed by the Board. As a first step the Board has commissioned an independent report on how levies are struck and apportioned between members. The Board intends to implement the recommendations of this report shortly. Implementation of these recommendations will satisfy the requirements of the regulators relating to funding.

28. An indicative timeline for the change process is set out below:

Dates	Responsible	Task
22 July – 1 Sept	Commission (working group)	Consultation period
1 September	Regulators	Assessment criteria confirmed
1 Sept – 5 Sept	Commission (working group)	Review submissions and assessment criteria Commission paper prepared
8 – 12 Sept	Commission (working group)	Possible further consultation, if significantly changed assessment criteria
15 Sept	Commission	Commission meeting – decide on changes to scheme documents to recommend to Board
16 Sept	Commission	Recommend changes to the Board
by 19 Sept	Consumers NZ	Nominate six consumer representatives for SAC
22 Sept	Chair of Board	Establish SAC
13 Oct	SAC	Final date for vote on proposed changes
20 Oct	Board	Notice to Council members of changes proposed to deed and DRP
10 Nov	Council	Vote on changes to deed and DRP
1 Dec		Submit application for approval

### Features required in an approved scheme

29. Section 158G of the Electricity Act says every electricity distributor and every electricity retailer must participate in a complaints resolution scheme that is approved by the Electricity Commission for the purpose of addressing complaints relating to electricity retailers and electricity distributors. This requirement only applies once the Electricity Commission has approved one or more complaints resolution schemes. The Electricity Act also requires any approved scheme to cover any person (including potential consumers and owners and occupiers of land).

30. Under section 172D (1)(27) the Governor General may, by Order in Council, made on the recommendation of the Minister, make rules or regulations for:

*“providing for the establishment of, and participation by electricity distributors and electricity retailers, in, a complaints resolution system ...for the purpose of addressing complaints by any person (including potential consumers and owners and occupiers of land) relating to electricity retailers and electricity distributors ...”*

31. The Government Policy Statement on Electricity Governance states the Government’s expectation that any approved complaints resolution scheme will include the following features:

- *“An independent, complaints resolution scheme that is consistent with international best practice in the field of consumer complaints resolution systems (for example the Australian Benchmarks for Industry Based Consumer Dispute resolution Schemes which were developed in consultation with the New Zealand Ministry of Consumer Affairs)*
- *“A decision-making process and administration of the scheme that is independent from scheme members*
- *“Membership by all distributors (including Transpower) and retailers*
- *“Robust internal complaints-handling processes within all member companies*
- *“A document that sets out the minimum standards of conduct for scheme members*
- *“Self-funding by the industry*
- *“Compensation for consumers where appropriate*
- *“Is practical, resolves disputes quickly and cost-effectively without unduly protracted or costly processes”*

32. Section 43E of the Gas Act says every gas distributor and every gas retailer must participate in a complaints resolution system that is approved by the Minister for the purpose of addressing complaints relating to those gas retailers and gas distributors. This requirement only applies once the Minister has approved one or more complaints resolution systems.

33. Section 43G of the Gas Act gives the Governor General the power to make rules or regulations to establish a complaints resolution system for gas complaints.

34. On consumer complaint resolution, the Government Policy Statement of Gas Governance includes the statement:

*“The Government expects any consumer complaints resolution system to be free to complainants and to meet appropriate international benchmarks such as accessibility, independence, fairness, accountability, efficiency and effectiveness.”*

35. The regulators have jointly proposed assessment criteria which they set out in their consultation document “*Approval of a Joint Electricity and Gas Complaints Resolution Scheme*” available from the Electricity Commission and Gas Industry Co websites. Appendix A includes the assessment criteria (see paragraph 36 below).

#### **How the proposed assessment criteria and Wood Report recommendations have been incorporated in the scheme documents**

36. Appendix One contains the assessment criteria proposed by the regulators.

37. Appendix Two contains the recommendations from the Wood Report, cross-referenced to the proposed changes. You will notice there is a degree of overlap between the recommendations from the Wood Report and the regulators’ proposed assessment criteria.

38. Appendix Three summarises the changes to the scheme documents, cross referencing the changes to either the assessment criteria proposed by the regulators or the recommendations from the Wood Report.

#### **Role of the Board and of members**

39. In order to meet the proposed assessment criteria, some of the Board’s duties will need to be either transferred to the Commission, or carried out with the approval of the Commission. In order to meet the proposed assessment criteria, the Commission will have to approve changes to the constitution.

## Changes to the way scheme documents can be changed

40. Associated with the changes to the role of the Board and of members are changes to the way the scheme documents can be changed. The current processes for changing the scheme documents are summarised in Appendix Five.
41. The proposed assessment criteria require that the Commission (as the overseeing entity) has a greater say in changing the scheme documents. As for changes to the role of the Board and of members, the Working Group has had regard to the interests of members as creators and owners of the scheme, as well as the need to demonstrate independence of the scheme as required by the regulators.
42. Appendix Six summarises the way in which the Working Group is proposing changes could be made to the scheme documents, **once the scheme is approved**. It is proposed that the Board and the Commission will have the flexibility to bring different amendments into force at different times. Some of the amendments set out in this paper may come into effect immediately once they have been approved by the Board or Commission. For other matters the amendments may only come into effect when the regulators approve the scheme.

## Attached documents

43. Accompanying this paper are:
- a) The proposed scheme requirements from the regulators (Appendix One)
  - b) A summary of the John Wood report recommendations, cross-referenced to the scheme documents (Appendix Two)
  - c) The Working Group's summary of the proposed changes to the scheme documents (Appendix Three)
  - d) A marked-up version of the proposed changes to the scheme documents (Appendix Four)
  - e) A summary of the current processes for changing the scheme documents (Appendix Five)

- f) A summary of the proposed processes for changing the scheme documents  
(Appendix Six)



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