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SCHEDULE B

TERMS OF REFERENCE

B1. POWERS AND OBLIGATIONS OF THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER

Statement of jurisdiction

B1.1 The Electricity and Gas Complaints Commissioner's principal powers and duties are to:

- (a) consider, at no charge to the **Complainant Consumer**, a ~~Consumer~~ Complaint ~~by a Consumer~~:
 - (i) about the provision of Services to the Consumer; or
 - (ii) about any other matter in respect of which a Complaint may be made under this Scheme;
- (b) consider, at no charge to the Land Owner or Land Occupier, any Land Complaint; and
- (c) facilitate the resolution of such Complaints in accordance with these Terms of Reference, the Codes of Practice, and the Protocols.

B1.2 In considering any Complaint and in granting any remedy under Clause B3 the Electricity and Gas Complaints Commissioner must determine what he or she considers is fair and reasonable in the circumstances after:

- (a) observing and applying any applicable law, rule of law or judicial authority;
- (b) applying the Consumer Contract or, in the case of Land Complaints, any applicable Land Agreement provided that:
 - (i) where the Consumer Contract does not comply with any provision of the relevant Code of Practice, that provision in the relevant Code of Practice prevails;
 - (ii) in the case of a Consumer Complaint, where the Consumer Contract does not comply with good industry practice prevailing in New Zealand or any relevant technical codes of practice prevailing in New Zealand and applicable to the subject matter of the Complaint which are not in conflict with the Code of Practice, good industry practice and the relevant technical codes of practice prevail; and
 - (iii) in the case of a Land Complaint, Clause CB5.3 of the Land Code of Practice applies; and
- (c) in relation to a Consumer Complaint under Clause B1.1(a)(ii), having regard to any agreement (including a deed) or a code of practice between Council Members in respect of Consumer switching between competing Retailers.

B1.3 In determining what is good industry practice, the Electricity and Gas Complaints Commissioner must consult within the industry and, as he or she thinks fit, with the Board, **the Electricity Commission and the Gas Industry Co**

B1.4 In considering any Complaint and in granting any remedy under Clause B3, the Electricity and Gas Complaints Commissioner is not bound by any previous decision made by the Electricity and Gas Complaints Commissioner or any predecessor in his or her office.

Limits on jurisdiction

B1.5 The Electricity and Gas Complaints Commissioner does not have the jurisdiction to:

- (a) review and comment on the amount of charges for Services in relation to Consumer Complaints, but the Electricity and Gas Complaints Commissioner may consider whether appropriate information about charges has been made available to the Consumer and whether these charges for Services specified in a Consumer Contract have been correctly applied;
- (b) consider any matter where it appears to the Electricity and Gas Complaints Commissioner that the Complaint is part of, or is related to, another Complaint which the Complainant has made;
- (c) consider a Complaint that involves a claim in excess of the applicable monetary amount set out in Clause B1.5A, unless agreed to by the Council Member concerned in accordance with Clause B3.10 and that Council Member has given any consent that is required by Clause D3.2(a) or DA3.2(a);
- (d) consider a Complaint which has become a “test case” in accordance with Clause B4 and proceedings have been initiated;
- (e) consider a Complaint if it appears to the Electricity and Gas Complaints Commissioner that on the basis of the facts presented by the Complainant that the relevant Council Member has made a reasonable offer in settlement of the Complaint; or
- (f) consider any matter excluded from the definition of Land Complaint under Clause 1.3. [subject to definition discussion]

B1.5AA The Electricity and Gas Complaints Commissioner will ensure Complainants are advised of the reasons their Complaint is outside the jurisdiction of the scheme or otherwise excluded.

B1.5A For the purposes of Clauses B1.5(c), B3.9, B3.10, and B3.11, the applicable monetary amount is:

- (a) where the act or omission giving rise to the Complaint first occurred prior to 18 April 2005, \$10,000; or
- (b) where the act or omission giving rise to the Complaint first occurred on or after 18 April 2005, \$20,000.

B1.5B For Land Complaints:

- (a) in determining the value of a claim for the purposes of Clause B1.5(c), the Electricity and Gas Complaints Commissioner will take into account the reasonable costs that would be incurred by a Council Member in carrying out any actions that might reasonably be required by any award in respect of the Complaint, if it is upheld; and

- (b) in determining the value of an award or Complaint for the purposes of Clauses B3.9, B3.10, and B3.11, the Electricity and Gas Complaints Commissioner will take into account the reasonable costs that would be incurred by a Council Member in carrying out any actions required by the award.

B1.5C For the avoidance of doubt, in applying Clause B1.5B, the Electricity and Gas Complaints Commissioner must not take into account:

- (a) any administrative (including legal) costs of a Council Member in responding to a Complaint or any request from the Electricity and Gas Complaints Commissioner relating to a Complaint; or
- (b) any levy payable by a Council Member under Clause 4.1B(b).

Limit on jurisdiction in relation to Council Members that are subject to the Chief Ombudsman's jurisdiction

B1.6 The Electricity and Gas Complaints Commissioner may act as a first-point of review for Complaints against Council Members who are subject to the Chief Ombudsman's jurisdiction under the Ombudsmen Act 1975 (the Chief Ombudsman's jurisdiction) if the Complaint relates to a matter within the Electricity and Gas Complaints Commissioner's jurisdiction.

B1.7 When conveying his or her decision to a Complainant, who has made a Complaint against a Council Member which is subject to the Chief Ombudsman's jurisdiction, the Electricity and Gas Complaints Commissioner must advise the Complainant that he or she has the right to reject the Electricity and Gas Complaints Commissioner's decision and seek an investigation of his or her Complaint by the Chief Ombudsman's office.

Council Members can extend jurisdiction on ad hoc basis

B1.8 Subject to Clause D3.2(a) and Clause DA3.2(a), a Council Member may consent to a Complaint being received by the Electricity and Gas Complaints Commissioner where the Electricity and Gas Complaints Commissioner would not otherwise have jurisdiction to determine that Complaint. A Council Member extending the Electricity and Gas Complaints Commissioner's jurisdiction on this ad hoc basis can elect to limit the Electricity and Gas Complaints Commissioner's ability to resolve the Complaint to making a recommendation or a finding of facts.

Consideration, or continued consideration, of a Complaint

B1.9 The Electricity and Gas Complaints Commissioner may only consider (or continue to consider) a Complaint if he or she is satisfied that:

- (a) the Complainant is, or has the authority to represent the Consumer, Land Owner or Land Occupier to whom the Complaint relates;
- (b) the Complaint has been referred to the in-house complaints handling service of the Council Member concerned and has reached "deadlock", that is:
 - (i) the Complaint has taken longer to resolve than 20 Working Days and the Council Member concerned has not notified the Complainant in Writing that it has good

reason to extend the time for resolving the Complaint and what that good reason is; and

- (ii) in any case, the Complaint has taken longer to resolve than 40 Working Days; or
- (iii) if the Complainant is dissatisfied with a proposal for resolution of the Complaint made by a Council Member at any time;

(c) the Council Member concerned has informed the Complainant that deadlock has been reached and the Complainant makes the Complaint to the Electricity and Gas Complaints Commissioner within two Months of the complaint reaching being informed that deadlock is reached. (The Electricity and Gas Complaints Commissioner may extend the two Month time limit if the Council Member did not comply with Clause D1.3(a) and Clause D1.3(g), Clause DA1.3(a) and Clause DA1.3A(c), or Clause DB1.4(a) and Clause DB1.7(c), or there are good grounds for doing so); and

(d) the act or omission giving rise to the Complaint first occurred:

- (i) in the case of an electricity-related Complaint, on or after **1 October 2001**;
- (ii) in the case of a Gas-related or a combined electricity and Gas Complaint, on or after **1 April 2005**; or
- (iii) in the case of a Land Complaint, on or after **1 October 2006**,

provided that the Electricity and Gas Complaints Commissioner may decide not to consider (or continue to consider) a Complaint if the Complainant knew of the act or omission giving rise to the Complaint for more than three Months before the Complaint was made to the Council Member.

Factors relevant to decision not to investigate a Complaint

B1.10 The Electricity and Gas Complaints Commissioner may decide not to investigate a Complaint if he or she considers that:

- (a) it is more appropriate that the Complaint be considered by another body or Person or under a statutory process;
- (b) a Complaint is or is being pursued in a manner that is trivial, vexatious or was not made in good faith;
- (c) a Complainant does not, or ceases to, have a sufficient interest in the subject matter of the Complaint;
- (d) the Complaint and any other Complaint by the same Complainant in respect of the same subject matter is, has been or during the course of any investigation by the Electricity and Gas Complaints Commissioner becomes, the subject of any proceedings in or before any court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or any investigation by an Ombudsman under the Ombudsmen Act 1975; or

- (e) the Complainant (or any Consumer he or she represents), to whom any Council Member concerned or interested in the Complaint owes a duty of confidence, has not waived in Writing the duty of confidence owed to the Complainant (or the Consumer, as the case may be) in respect of any information which the Electricity and Gas Complaints Commissioner may request a Council Member to produce for the purpose of his or her consideration of a Complaint.

B2. PROCEDURAL REQUIREMENTS

Establishing procedures

B2.1 Subject to the other provisions of these Terms of Reference, the Electricity and Gas Complaints Commissioner must, in his or her own discretion, decide the procedure to be adopted for considering Complaints made to the Electricity and Gas Complaints Commissioner. The procedures established by the Electricity and Gas Complaints Commissioner must be simple for Complainants to understand and easy to use, and provide for:

- (a) The use of appropriate techniques including conciliation, mediation, and facilitated negotiation between the parties, in attempting to settle complaints
- (b) Informal proceedings which discourage a legalistic adversarial approach
- (c) A Complainant's case to be presented orally or in writing at the discretion of the Electricity and Gas Complaints Commissioner
- (d) Both parties having the opportunity to rebut the arguments of, and information provided by, the other party
- (e) Both parties to a Complaint having the opportunity to present their case to the Electricity and Gas Complaints Commissioner if a face to face hearing is involved
- (f) The right for the Complainant to be supported by another person at any face to face hearing;
- (g) Discouragement of the use of legal representatives at any face to face hearings before the decision maker except in special circumstances;
- (h) Any party to have legal representation if they wish
- (i) Complainants to be advised during their initial contact with the scheme, and again at the time of any decision, that they have the right to access the legal system at any stage of the complaints process
- (j) The opportunity for a party to be legally represented where the other party has chosen to be legally represented
- (k) The member to pay the legal costs of a complainant where the member is the party seeking to be legally represented and the decision maker agrees to that request

B2.1A The Electricity and Gas Complaints Commissioner will arrange services to assist Complainants to access the scheme (such as appropriate services to meet the needs of Complainants with disabilities and from non-English speaking backgrounds) at no cost to the Complainant.

B2.1B Where the Complainant is unable to put a Complaint in writing, the Electricity and Gas Complaints Commissioner will arrange to record the Complaint in writing and send it to the Complainant for confirmation.

B2.2 If the Complaint is a Lines Complaint in respect of Services provided under an Interposed Consumer Contract the relevant Lines Company or the Retailer with the Consumer Contract (whichever Council Member is not the Council Member designated under the relevant Protocol as the Council Member responsible for managing and resolving the Complaint) must be recognised by the Electricity and Gas Complaints Commissioner as a Person with an interest in the Complaint.

B2.2A The Electricity and Gas Complaints Commissioner will ensure complainants receive a receipt indicating the acceptance of the complaint within two weeks of receiving the complaint. The receipt is to include information on the process for resolving complaints, including when the complainant can expect updates.

Confirmation of waiver

B2.3 The Electricity and Gas Complaints Commissioner must promptly ~~advise forward to the Council Member named in the Complaint (and where necessary, any Council Member with an interest in the Complaint) that the complainant has waived any waivers of that Council Member's duty of confidentiality referred to in Clause B1.10(e) that have been received by the Electricity and Gas Complaints Commissioner.~~

Initial consideration of jurisdiction to consider Land Complaints

B2.3A For a Land Complaint, as soon as reasonably possible after receiving a Complaint, the Electricity and Gas Complaints Commissioner must:

- (a) identify the matters that the Complaint relates to and the Lines Company Council Member that the Complaint is about;
- (b) request the Council Member to provide any information by a specified date (which must allow a reasonable period of time to provide the information) that, in the view of the Electricity and Gas Complaints Commissioner, would assist the Electricity and Gas Complaints Commissioner in determining the value of the claim for the purposes of Clause B1.5(c);
- (c) after receiving any information requested under Clause B2.3A(b) or the date specified under Clause B2.3A(b) (in the event no information is provided) or as soon as reasonably possible after notifying the Council Member of the Complaint (in the event no request is made under Clause B2.3A(b)), determine whether or not he or she has jurisdiction to consider, and should investigate, the Complaint under the Terms of Reference and the Constitution.

Information relating to Complaints

B2.4 The Electricity and Gas Complaints Commissioner may require:

- (a) a Council Member named in a Complaint and any Council Member with an interest in a Complaint to provide any information that, in the view of the Electricity and Gas Complaints Commissioner, relates to that Complaint; and
- (b) that any Council Member provide the Electricity and Gas Complaints Commissioner with any information reasonably requested regarding the Council Member's in-house Complaints handling process and a nominated point of contact to work with the Electricity and Gas Complaints Commissioner in the resolution of any Complaint in which the Council Member is named or the Council Member has an interest and to update this information when necessary.

B2.5 Council Members must, as soon as is reasonably required, disclose the information requested by the Electricity and Gas Complaints Commissioner. However, a Council Member is exempt from disclosing such information if the Council Member certifies to the Electricity and Gas Complaints Commissioner:

- (a) that the disclosure of the information would place the Council Member in breach of its duty of confidentiality to a third Person who has refused its consent to disclosure despite the Council Member using its best endeavours to obtain such consent; or
- (b) the Council Member does not have the information requested.

B2.5A Where a Council Member provides information to the Electricity and Gas Complaints Commissioner which identifies a third party, the information may be provided to the Complainant with deletions, where appropriate, at the discretion of the Electricity and Gas Complaints Commissioner.

B2.5B The Electricity and Gas Complaints Commissioner will encourage but cannot compel Complainants to provide information about a Complaint.

Disclosure of information to parties

B2.6 If any party to a Complaint:

- (a) supplies information to the Electricity and Gas Complaints Commissioner and requests that he or she treat it as confidential, the Electricity and Gas Complaints Commissioner must not disclose that information to any other Person (subject to Clauses A5.1 and A5.2), except with the consent of the party supplying the information;
- (b) requests access to any information on the Electricity and Gas Complaints Commissioner's file, the Electricity and Gas Complaints Commissioner must, subject to these Terms of Reference, legal requirements and any procedural standard developed by Commission and the Electricity and Gas Complaints Commissioner, make the information available; and
- (c) supplies information to the Electricity and Gas Complaints Commissioner in relation to a Complaint and the Electricity and Gas Complaints Commissioner has resolved the Complaint or ceased to consider the Complaint, he or she must if requested return any information supplied by the party to that party as soon as is reasonably practicable.

B2.7 If any Person threatens a Council Member's staff, agents or property and the Electricity and Gas Complaints Commissioner becomes aware of that threat, the Electricity and Gas Complaints Commissioner must report that threat to that Council Member.

Responding to General Enquiries

B2.8 The Electricity and Gas Complaints Commissioner may respond to General Enquiries, provide general information and give advice on the procedure for referring a Complaint to the Electricity and Gas Complaints Commissioner. It is not a function of the Electricity and Gas Complaints Commissioner to provide information about Retailers or Lines Companies or Services if that information is not related to a Council Member's participation in the Scheme or resolving a Complaint.

Use of company information on ownership of Lines Equipment.

B2.9 Where a Land Complaint is dependent for its resolution on determining whether or not a Lines Company owns the Lines Equipment that the Complaint relates to, and the Electricity and Gas Complaints Commissioner would be prevented by Clause B1.5(f) from considering that matter, the Lines Company's geographical information system or equivalent network records will be taken by the Electricity and Gas Complaints Commissioner as evidence of ownership, unless the Complainant provides evidence to the contrary. The Electricity and Gas Complaints Commissioner will not inquire into the issue of whether the Lines Company's records are accurate, unless such contrary evidence is provided by the Complainant.

B3. SETTLEMENTS, RECOMMENDATIONS AND AWARDS

Settlement by agreement

B3.1 At any time that the Electricity and Gas Complaints Commissioner is considering a Complaint he or she may seek to promote a settlement or withdrawal of the Complaint by agreement between the Complainant and the Council Member(s) concerned.

Recommendations

B3.2 If there is no such agreement, the Electricity and Gas Complaints Commissioner, at the request of the Complainant or the Council Member concerned, may make a recommendation for settlement or withdrawal of the Complaint. He or she must:

- (a) first give the Complainant and the Council Member concerned (and any Council Member with an interest in the Complaint) ~~20~~ 15 Working Days notice of his or her intention to make such recommendation;
- (b) during the period of that notice (or such longer period as the Electricity and Gas Complaints Commissioner may agree) allow the Complainant and the Council Member(s) concerned to make further representations to the Electricity and Gas Complaints Commissioner in respect of the Complaint; and
- (c) if no agreement has been reached at the end of the period of notice, make a recommendation.
- (d) Provided that if no response is received from either party within the 15 working days, the Electricity and Gas Complaints Commissioner may, at her discretion, not proceed to make a recommendation.

B3.3 A recommendation must:

- (a) state the name of the Council Member(s) concerned in relation to the Complaint;
- (b) be in Writing;
- (c) state the recommendation, and if the Complaint is upheld against a Council Member (and if upheld against more than one Council Member the proportions to which each is recommended to contribute to resolve the Complaint); and
- (d) include a summary of the Electricity and Gas Complaints Commissioner's reasons for making his or her recommendation.

B3.4 If, in making a recommendation:

- (a) the Electricity and Gas Complaints Commissioner is minded to:
 - (i) propose that a Complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the Complainant and the Council Member concerned; or
 - (ii) make a recommendation for the settlement or withdrawal of a Complaint; and
- (b) that settlement or withdrawal would involve the provision by a Council Member(s) of any service or require an action to be taken or the provision of valuable consideration (whether in the form of a money payment or otherwise);

the Electricity and Gas Complaints Commissioner's recommendation must, unless the Council Member(s) concerned named in the recommendation has otherwise requested or agreed, state that it is open for acceptance by the Complainant only if he or she accepts it in **full and final settlement** of the subject matter of the Complaint.

B3.5 [Not used]

Awards

B3.6 If the Electricity and Gas Complaints Commissioner has made a recommendation which, within 20 15 Working Days after it is made, has been accepted by the Complainant but not by the Council Member(s) named in the recommendation, the Electricity and Gas Complaints Commissioner may make an award against that Council Member(s).

B3.7 Council Members are bound by the terms of an award and they must pay any money sum, provide any service (in respect of a Consumer Complaint only) or take any action required to carry out and implement an award made against them in accordance with these Terms of Reference.

B3.8 An award may comprise the provision of a service (in respect of a Consumer Complaint only) or require an action to be taken or the provision of valuable consideration (whether in the form of money payment or otherwise).

B3.9 Subject to Clause B3.10, the value of any award must not exceed the applicable monetary amount set out in Clause B1.5A and must not include any sum granted under Clause B3.16 or any award levy payable (or part thereof) by the Council Member(s).

B3.10 Any Complaints involving a claim with a value in excess of the applicable monetary amount set out in Clause B1.5A may be considered by the Electricity and Gas Complaints Commissioner if the Council Member concerned:

- (a) in the case of a Complaint not exceeding the Extended Amount in value, agrees to extend the Electricity and Gas Complaints Commissioner's jurisdiction to allow the Electricity and Gas Complaints Commissioner to make a recommendation and if required make an award up to the value of the Extended Amount (whether in the form of money or otherwise). The Council Member is then be bound by any such award made; and
- (b) in the case of a Complaint exceeding the Extended Amount in value, agrees to allow the Electricity and Gas Complaints Commissioner to review the circumstances of the Complaint and make a finding of fact for the Council Member (but the Electricity and Gas Complaints Commissioner cannot make any recommendation or award).

For the purposes of this Clause B3.10, the **Extended Amount** means:

- (a) where the act or omission giving rise to the Complaint first occurred prior to 18 April 2005, \$25,000; or
- (b) where the act or omission giving rise to the Complaint first occurred on or after 18 April 2005, \$50,000.

B3.11 For the avoidance of doubt,

- (a) any decision of a Council Member not to allow Complaints exceeding the applicable monetary amount set out in Clause B1.5A in value to be considered by the Electricity and Gas Complaints Commissioner must not be able to be the subject of a further Complaint to the Electricity and Gas Complaints Commissioner from the Complainant (or if representing a Consumer, from that Consumer).

(b) The Electricity and Gas Complaints Commissioner will not make awards for punitive damages.

B3.12 An award must:

- (a) state the name of the Council Member(s) against whom the Complaint is being upheld;
- (b) be in Writing;
- (c) state the nature and value of the award and if the award is made against more than one Council Member, the proportions to which each Council Member must contribute to the cost of the award;
- (d) include a summary of the Electricity and Gas Complaints Commissioner's reasons for making the award; and
- (e) state that, if within ~~20~~ **15** Working Days after its issue the Complainant agrees to accept it in full and final settlement of the subject matter of the Complaint, the award is binding on the Complainant and (in accordance with Clause B3.6) the Council Member(s) against which it is made.

B3.13 Despite the requirements in Clause B2.6, the Electricity and Gas Complaints Commissioner must

issue a copy of the award to:

- (a) the Complainant;
- (b) any Council Member against which the award is made; and
- (c) any Council Member interested in the Complaint.

B3.14 The Electricity and Gas Complaints Commissioner must require a Written statement from the Complainant or any Consumer he or she represents which:

- (a) is addressed to the Electricity and Gas Complaints Commissioner and the Council Member(s) against which the award is made and any Council Member interested in the Complaint; and
- (b) indicates his or her acceptance of the award together with any amount awarded under Clause B3.15 in **full and final settlement** of the subject matter of the Complaint.

B3.15 If a Complainant elects not to accept a recommendation or award of the Electricity and Gas Complaints Commissioner, then the Complainant is entitled to pursue his or her remedies in any other forum and the Council Member will be fully released from the Electricity and Gas Complaints Commissioner's decisions in relation to that Complaint.

Reimbursement for incidental expenses or inconvenience suffered

B3.16 The Electricity and Gas Complaints Commissioner may, in addition to any award, specify a sum to be paid to the Complainant (or any person the Complainant represents), up to a maximum of \$2,000, that he or she considers is appropriate:

- (a) reimbursement for incidental expenses reasonably incurred in making and pursuing the Complaint;
or
- (b) compensation for inconveniences arising from making and pursuing the Complaint, including any inconvenience attributable, in whole or in part, to the failure of one or more Council Members to comply with the Protocol.

Publication of names

B3.17 The Electricity and Gas Complaints Commissioner may:

- (a) in respect of any award accepted by a Complainant, make publicly available through any medium he or she thinks fit from time to time, and in his or her annual report:
 - (i) the name of the Council Member in respect of whom the award is made;
 - (ii) the subject matter of the Complaint;
 - (iii) the amount of the award and any additional sums ordered in respect of the Council Member; and
 - (iv) if the Complainant has given his or her consent, the name of the Complainant; or

- (b) in any general summary information relating to awards accepted by Complainants made publicly available through any medium, the name of a Council Member(s) in respect of whom an award has been made that in the Electricity and Gas Complaints Commissioner's opinion warrants particular attention in the context of the general summary information.

B4. TEST CASES

Pursuing a Complaint as a "test case"

B4.1 At any time before the Electricity and Gas Complaints Commissioner has made an award, a Council Member named in the Complaint may (subject to Clause D3.2(c) or Clause DA3.2(c) where applicable) give the Electricity and Gas Complaints Commissioner notice in Writing stating that in the opinion of the Council Member and for the reasons set out in the notice, the Complaint should be pursued in court proceedings, as it involves or may involve:

- (a) an issue which may have important consequences for the business of the Council Member or similar businesses to the Council Member's business; or
- (b) an important or novel point of law.

B4.2 The Council Member must also write to the Complainant (addressing the notice to any Consumer the Complainant may be representing) stating that it proposes to pursue the Complaint as a "test case" and outlining the process by which this will occur. The Council Member must copy that correspondence to the Electricity and Gas Complaints Commissioner.

Requirements on Council Members for "test cases"

B4.3 The Council Member must:

- (a) institute in any Court in New Zealand proceedings in respect of the Complaint within four Months of the date of the notice to the Complainant; or
- (b) assist the Complainant (or any Consumer, Land Owner or Land Occupier the Complainant represents) to institute proceedings in any Court in New Zealand within six months of the date of the notice to the Complainant;
- (c) pay the Complainant's (or any Consumer, Land Owner or Land Occupier the Complainant represents) costs and disbursements (including reasonable costs of legal representation on a solicitor/own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Council Member (except by way of respondent's notice, cross-appeal or other similar procedure); and
- (d) make interim payments on account of such costs identified in Clause B4.3(c) if and to the extent that it is reasonable to do so.

B4.3A For the avoidance of doubt, in relation to a Land Complaint, the Council Member is liable to pay the Complainant's costs under Clause B4.3(c) only to the extent the costs relate to the aspect of the Court proceedings that was the subject of the Complaint.

Effect on Electricity and Gas Complaints Commissioner

- B4.4 Providing the Electricity and Gas Complaints Commissioner concurs with the Council Member's statement and considers the notice required under Clause B4.2 to the Complainant (and any Consumer the Complainant represents) is accurate and clear, the Electricity and Gas Complaints Commissioner must suspend consideration of the Complaint for six Months.
- B4.5 Once proceedings are instituted, the Complaint is deemed to be withdrawn. If proceedings are not instituted within six Months, the Electricity and Gas Complaints Commissioner may elect to resume consideration of the Complaint.

B5. ADMINISTRATIVE RESPONSIBILITIES

Responsibilities and requirements

B5.1 The Electricity and Gas Complaints Commissioner is responsible for:

- (a) meeting the performance standards and other requirements agreed with the Commission from time to time as set out in the Electricity and Gas Complaints Commissioner's performance agreement including:
 - (i) ensuring that he or she employs or contracts, at a reasonable cost and as considered necessary to assist in resolving disputes, one or more persons with expertise in and knowledge of the electricity and gas sectors, including in the operation of electricity lines and gas pipelines and in dealing with Land-related issues; and
 - (ii) forming a technical advisory panel with particular knowledge of the electricity and gas sectors, including good industry practice in the operation of electricity lines and gas pipelines and in dealing with Land-related issues;
- (b) attending, in a non-voting capacity, meetings of the Commission and/or the Board at the invitation of the Commission and/or the Board;
- (c) liaising, and consulting with other industry bodies, and developing working procedures with these bodies where appropriate;
- (d) promoting the Scheme and the Electricity and Gas Complaints Commissioner's Complaint-handling procedures generally, and in such as way as to be sensitive to people who are disadvantaged or have special needs;
- (e) reviewing these Terms of Reference and the Codes of Practice and making recommendations to the Commission on any amendments he or she considers are required;
- (f) in consultation with the Commission, preparing:
 - (i) an Electricity and Gas Complaints Commissioner's plan that includes goals, output targets and performance standards for a period corresponding with the Financial Year; and
 - (ii) a financial budget in respect of a period that corresponds with the Financial Year;

(g) controlling and monitoring expenditure within the financial budget and providing regular reports to the Commission on expenditure;

(ga) report regularly to the Commission on the performance of the scheme against the achievement standards set by the Electricity Commission and the Gas Industry Co;

(gb) conducting reviews internally each year of the performance of the scheme including a review against

(i) the achievement standards set by the Electricity Commission and the Gas Industry Co

(ii) the performance standards set by the Commission, and

(iii) any particular issues raised by the Gas Industry Co and the Electricity Commission,

these reviews to include seeking periodic feedback from stakeholders about the performance of the scheme

(gc) responding in a timely and appropriate manner to any recommendations of the Commission in response to complaints about the operation of the scheme

(gd) identifying and reporting on material problems with Council Member compliance with the scheme rules to the Commission

(ge) keeping systematic records of all complaints and enquiries, their progress and outcomes;

(h) preparing an annual report containing, in relation to the preceding Financial Year of the Electricity and Gas Complaints Commissioner, ,

(i) a general review of his or her activities during that year (including information identifying the separate costs of the Commissioner's activities relating to Land Complaints and the Electricity and Gas Complaints Commissioner's activities relating to Consumer Complaints),

(ii) the results of internal reviews of performance under B5.1(h),

(iii) problems with Council Member compliance reported to the Commission,

(iv) information about how the scheme works

(v) the number and types of complaints the scheme receives and their outcome

(vi) the time taken to resolve complaints

(vii) any systemic problems arising from complaints

(viii) examples of representative case studies

(ix) information about how the scheme ensures equitable access

(x) a list of scheme members supporting the scheme, together with any changes during the year

(xi) a list of any scheme members who did not meet their obligations (in a material way) as members of the scheme

(xii) information about new developments or key areas in which policy or education initiatives are required

(xiii) a report on compliance with the achievement standards set by the Electricity Commission and the Gas Industry Co

(xiv) a report on the performance standards agreed with the Commission

(xv) the findings of the independent review (if relevant for that year)

(xvi) a financial report containing sufficient information to allow scheme members and other stakeholders to understand how the scheme funding is being utilised; and

(xvii) any other information the Commission requests and, at least 28 days before the Commission's annual general meeting, sending that annual report to the Commission, the Council chairperson and Council Members;

(ha) providing written reports of determinations to Council Members and any interested bodies for the purpose of:

(i) educating Council Members and consumers;

(ii) demonstrating consistency and fairness in decision making

(i) at the Electricity and Gas Complaints Commissioner's discretion, making:

(i) ad hoc confidential reports to Council Members on matters coming to his or her attention concerning their general compliance with Scheme (including where in the Commissioner's opinion the general energy policy or commercial practices of a Council Member have contributed to a complaint, have been identified as a source of a number of similar complaints, or have impeded the investigation or handling of a particular complaint);

(ii) general observations about the purpose and operation of the Scheme in any public forum;

(iii) a report to the Commission on issues arising that relate to the electricity and Gas sector as a whole, or any other initiative, affecting the Scheme; and

(iv) observations about the effectiveness of the Council Member's internal complaints process;

(ia) having a mechanism to ensure that the time limits for dealing with complaints are complied with as far as possible

(j) keeping data in accordance with the Privacy Act 1993, on General Enquiries and Complaints and remedies for reporting purposes, to identify the sources of practices giving rise to similar Complaints, and to assist in the Board and Commission's determination and application of award levies.

(k) Reporting quarterly to the Commission if the Electricity and Gas Complaints Commissioner has been unable to achieve the performance standards agreed with the Commission, on the cases, the reasons for the delay, and seeking solutions if delays are likely to occur again

(l) Identifying, registering and investigating systemic issues, and referring systemic issues to Council Members and the Electricity Commission and the Gas Industry Co

B5.2 The Electricity and Gas Complaints Commissioner is responsible to the Commission for the day to day administration and conduct of the operations of the Electricity and Gas Complaints Commissioner. He or she has the power to incur expenditure on behalf of the Commission in accordance with the current financial budget and expenditure authority approved by the Commission.

B5.3 The Electricity and Gas Complaints Commissioner must not exercise any power which the Rules expressly give to the Commission or to any other Person.

B5.4 In consultation with the Commission chairperson and subject to his or her approval, the Electricity and Gas Complaints Commissioner has the power on behalf of the Commission to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement including delegating to employees decision making powers (but excluding the power to recommend settlement of complaints).